



# Renters: The Forgotten Victims of Florida's Foreclosure Crisis



By Purvi Shah

**W**hile much of the national and local discourse on foreclosures has focused on homeowners and financial institutions, low-income renters are the hidden victims of the foreclosure crisis. As foreclosures sweep across Florida, scores of low-income renters are losing their homes through no fault of their own.



By Jeffrey Hearne

National statistics show that 20 percent of the properties facing foreclosure in 2008 were actually rental properties.<sup>1</sup> Moreover, since rental properties often house multiple families, it is estimated that renters actually make up a whopping 40 percent of the families facing eviction due to foreclosure.<sup>2</sup> Furthermore, it is estimated that low-income communities of color which house a large amount of rental housing, disproportionately bear the brunt of renter displacement from foreclosures.

## A True Story

It's Monday morning and the apartment is bustling with children getting ready for school; a line outside the bathroom, the cereal box passed around the table, and Mom pushing everyone to get ready just a little faster so they aren't late. When mom, Marlene,<sup>3</sup> closes and locks the door behind her as the children start their walks to school, she says a quick prayer wishing that her home will not get robbed again while she is out protecting other people's valuables as a security guard.

Marlene's two bedroom apartment, carved out of a dilapidated single-family home in Miami's Liberty City, is a foreclosed property. Marlene was duped into renting the apartment from a landlord that failed to disclose that a final judgment of foreclosure existed when she moved in. In fact, Marlene only discovered her home was in foreclosure a few months after moving in when her landlord stopped making payments to the water utility company and failed to make repairs.

With the help of a legal services attorney, Marlene was able to stop the issuance of a writ of possession by the bank and obtained a court order requiring the bank to comply with the Protecting Tenants at Foreclosure Act (PTFA). However, with windows and doors that do not close, a ceiling that leaks from water damage, a kitchen infested with roaches, and a fear of rats biting her children while they sleep, Marlene and her children are falling through the gaps in the PTFA.

Marlene says "The last year has been pure hell. I am a hardworking person who always paid my rent. I had nothing to do with the foreclosure, yet my kids and I are paying the price for it with our lives."

## New Federal Renter Protections: The Protecting Tenants at Foreclosure Act

To address this critical problem and to stabilize neighborhoods, Congress passed the Protecting Tenants at Foreclosure Act (Title VII of S. 896, Pub. L. No. 111-22, §§701 - 704 (2009) ("PTFA"). This law immediately went into effect when President Obama signed it on May 20, 2009, and it applies to all pending and future residential



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*Marlene and her family.*

foreclosures, regardless of whether the tenant has a written lease.

Prior to PTFA, when a foreclosure was filed, most plaintiffs would also sue the tenant in possession. As such, the foreclosure would terminate the tenancy, regardless of whether there was an unexpired lease, and the purchaser at the foreclosure sale could obtain a writ of possession to remove the tenant from the property. PTFA significantly changed this process.

- **Tenants with an Existing Lease:** PTFA requires a new owner acquiring property at a foreclosure sale, including plaintiffs acquiring the property, to honor all terms and conditions of existing leases. The only exception to this is when the new owner wants to live in the property; however, new owners wanting to live in the property must provide the tenant with at least 90 days written notice to terminate the tenancy.
- **Tenants without an Existing Lease:** In the case of tenants without a current lease, usually month-to-month tenants, the new owner must provide the tenant with a minimum 90 day written notice before terminating tenancy. This also applies when the tenancy has less than 90 days remaining in its term. Because this notice must be sent by the new owner, the notice cannot be sent until after the clerk issues the certificate of title, otherwise a new owner would not exist to issue the notice.

## Gaps in the PTFA: Renters' Ongoing Challenges

Unfortunately, neither PTFA nor Florida law resolves the host of problems renters face during foreclosure. Many times rental buildings in foreclosure deteriorate rapidly as financially-strapped landlords stop spending time, money and attention on a property they are about to lose. Some landlords abandon their properties wholesale, others simply stop paying bills such as master-metered utilities causing those utilities to be shut off and leaving tenants without water or electricity. Additionally, landlords in foreclosure are even less likely to maintain the tenant's security deposit.

Under PTFA, the new owner assumes the role of the landlord. While this allows Florida's Landlord-Tenant Act to apply to the new owner, it does not provide an immediate solution to many of challenges tenants living in these properties are dealing with. For example, in the current declining real estate market, oftentimes the foreclosure plaintiff ends up purchasing the property at the foreclosure sale. This means that financial institution such as banks and/or securitized trusts are becoming the new owners of foreclosed properties. Many of these institutions are large and based outside of Florida, making it virtually impossible for the tenant to communicate with their new landlord, especially when there are repairs needed or the tenant needs the security deposit back.

## THE INNOCENT TENANT- Florida Legislation for 2010

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The Florida Senate Judiciary Committee staff have convened several meetings of stakeholders to determine the application of The Federal Protecting Tenants at Foreclosure Act to Florida's Residential Landlord Tenant Act, Part II, Chapter 83; staff has also published an interim project report on this issue. It is abundantly clear that without revisions of Part II, Chapter 83, there is and will continue to be confusion statewide among tenants, servicers and courts. Florida Legal Services strongly supports SB 606 and HB 415 to revise Florida's Residential Landlord Tenant Act to fully incorporate the protections for tenants intended by the federal law.

### **SB 606/HB 415 in 2010**

This bill creates a section within Florida's Residential Landlord Tenant Act, Part II, Chapter 83, Florida Statutes, to explain and provide the protections of the Protecting Tenants at Foreclosure Act, P.S. 11-222, effective May 20, 2009. Upon issuance of a certificate of title after a foreclosure sale, the immediate purchaser takes title to the premises as a landlord if tenants are present. The landlord may terminate the tenant's rental agreement by delivering a written 90-day termination notice. If there is a written lease, the tenant may remain in the unit until the lease expires or at least 90 days after the tenant receives the written 90-day termination notice, whichever is longer. If the immediate purchaser at the foreclosure sale sells the premises to a purchaser who will live in the premises, then the immediate purchaser may terminate the tenancy with the 90-day notice, even if there is a written lease extending beyond the 90 days. The newly created section provides a 90-day notice form. These provisions do not apply if the mortgagor or an immediate family member is occupying the unit, the rental agreement is not an "arms-length transaction," or the rent is below the fair market rent unless the unit is subsidized by the federal, state, or local government.

The section also provides that the tenant shall be given credit for any deposit money or advance rent paid to the original landlord.

Although the plaintiff may eventually hire a real estate agent to handle the property, it may take months before anyone contacts the tenant. During that time, utility services may be interrupted and conditions may continue to deteriorate. Additionally, these new owners often do not want to make repairs to the property and claim that they have no obligation to return the security deposit since it was paid to the previous owner. Low-income tenants must frequently choose between living in these conditions or moving out and becoming homeless.

While PTFA is clearly a step in the right direction, neither the PTFA nor other Florida law provides a clear way to deal with the host of challenges tenants living in a foreclosed properties face with respect to notice, repairs, utility shut-offs and security deposits.

### **Conclusion: Fill in the Gaps with Local Legislation**

The PTFA can protect innocent renters like Marlene from rapid eviction. However, while the PTFA is a much-needed step in the right direction, it does not provide any protection for tenants living in foreclosed properties from absentee landlords and banks, utility shut-offs, deteriorating conditions, and theft of security deposits.

As such, state and municipal governments have a moral obligation to people like Marlene to fill the gaps in federal legislation and ensure security for families renting in foreclosed properties. Local and state legislation is sorely needed to remedy these problems so that low-income tenants no longer have to choose between living in these conditions or moving out and becoming homeless. HNN

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*1 National Low Income Housing Coalition, Special Topic: Renters in Foreclosure, available at [www.nlihc.org/template/page.cfm?id=159](http://www.nlihc.org/template/page.cfm?id=159).*

*2 Id. • 3 Names have been changed.*