

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1362

INTRODUCER: Senator Rodriguez

SUBJECT: Rental Agreements

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Favorable
2.			CM	
3.			RC	

I. Summary:

SB 1362 provides for the protections of the federal Protecting Tenants at Foreclosure Act (PTFA) to take effect as a state law if the federal act is repealed.

Under the PTFA, a person who acquires a foreclosure property (“successor in interest”) must give the tenant at least 90 days’ notice before evicting him or her. And if the tenant had signed a “bona fide” lease before foreclosure, the successor in interest must allow him or her to remain for the term of the lease, even if that exceeds 90 days, unless the successor in interest sells to a person who intends to occupy the property as a primary residence.

Additionally, the bill repeals this state’s current foreclosure-tenant-rights statute, which affords less protection than the federal statute.

II. Present Situation:

Overview

The rights of a tenant to remain in a foreclosed property are provided in both federal and state statutes. The federal statute grants tenants a longer period of protection from eviction and thus preempts the state statute.¹

¹ See *Mik v. Federal Home Loan Mortg. Corp.*, 743 F.3d 149 (6th Cir. 2014).

Foreclosure

A foreclosure is a civil action in which a mortgagor seeks to have

the mortgaged property sold under an order of the court and the proceeds applied in payment of the debt. The primary purpose of the suit is to subject the mortgaged property to the payment of the debt.²

Federal Law

Under the federal Protecting Tenants at Foreclosure Act, a successor in interest to a foreclosure property obtains the property subject to the tenant's rights.³ Accordingly, the successor in interest must give the tenant at least 90 days' notice before evicting the tenant, regardless of whether the tenant had a lease or when the lease terminates.⁴ And if the tenant had signed a "bona fide" lease before foreclosure, the successor in interest must allow him or her to remain for the term of the lease, even if that exceeds 90 days, unless the successor in interest sells to a person who intends to occupy the property as a primary residence.⁵

A lease or tenancy is bona fide if:

- The mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;
- The lease or tenancy was the result of an arms-length transaction; and
- The rent due under the lease is at or near fair-market value or the rent is subsidized under a housing welfare program.⁶

In addition to the generally applicable provisions described above, tenants with Section 8 housing choice voucher assistance enjoy other protections.⁷ Particularly, they may retain their Section 8 lease and the successor-in-interest must assume the housing assistance payment contract associated with that lease.⁸

Florida Law

Section 83.561, F.S., is this state's version of the PTFA. Under s. 83.561, F.S., however, a successor in interest may evict a tenant on 30 days' notice, instead of 90 days'. Moreover, this timeframe is not subject to the terms of a lease under which the tenant inhabits the foreclosed property.

² *Georgia Cas. Co. v. O'Donnell*, 147 So. 267, 268 (1933).

³ Pub. L. 111-22 Sec. 702. This Act was repealed by its sunset provision in 2014, but was reenacted permanently in 2015. *See* Pub. L. 115-174 Sec. 304.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Pub. L. 111-22 Sec. 703.

⁸ *Id.*

III. Effect of Proposed Changes:

The bill provides that if the federal Protecting Tenants at Foreclosure Act (PTFA) is repealed, a state law providing most of the same rights to tenants in foreclosed properties will take effect.

Under the PTFA, a successor in interest, which will likely be the purchaser of a property at a foreclosure sale, must give a tenant at least 90 days' notice before evicting him or her. And if the tenant signed a "bona fide" lease before foreclosure, the successor in interest must allow him or her to remain for the term of the lease, even if that exceeds 90 days. However, the successor in interest does not have to honor the term of a bona fide lease if the successor in interest sells the property to a person who intends to occupy the property as a primary residence.

Additionally, the bill repeals this state's current foreclosure-tenant-rights statute, which affords less protection than the federal statute.

The bill takes effect on July 1, 2020, but the provisions providing for the rights under the PTFA to become state law take effect upon the repeal of the PFTA.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 83.5615 of the Florida Statutes.

This bill repeals section 83.561 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.