

Tenants at Foreclosure: Washington Metro Area Matrix

Landlord's Foreclosure Process

Issue	D.C.	Maryland	Virginia	National (PTFA)
Foreclosure Prerequisites	Governed by deed of trust or mortgage contract	Property must be in default at least 90 days before lender can file foreclosure action	Governed by deed of trust or mortgage contract	Depends on state law
Foreclosure Process	<ul style="list-style-type: none"> The lender can initiate foreclosure sale without going to court. The lender must give the borrower a notice of default and 30 days to cure the default. If the default hasn't been cured within 30 days of notice, the trustee can sell the property without a judicial proceeding. The time, place and terms of property sale upon default are defined by the mortgage contract or the deed of trust. A notice of foreclosure sale must be filed with recorder of deeds. 	<ul style="list-style-type: none"> Although a foreclosure sale can occur on the courthouse steps, the sale must be ratified by court. First notice is given to the "occupant" at the time that foreclosure is filed in court and at least 45 days before the sale. Second notice, giving the date and time of sale, is sent to the "occupant" 10 to 30 days before the foreclosure sale. Once the foreclosure sale occurs, the court may ratify sale after 30 days. If ratified, the purchaser takes the deed and then gives a 90-day notice required under <i>PTFA</i> and state law. 	<ul style="list-style-type: none"> The lender can initiate the foreclosure sale without going to court. Upon default, the lender sends notice to the tenant specifying a 30 – 60 -day time frame for paying the debt (time period for notice determined by mortgage contract or deed of trust). A notice of sale, stating terms of sale, must be given by certified mail to borrower at least 14 days before the foreclosure sale. Foreclosure sale must be held no earlier than 8 days after the first advertisement and no later than 30 days after the last advertisement is published. 	<ul style="list-style-type: none"> <i>Protecting Tenants at Foreclosure Act 2009 (PTFA)</i> provides a minimum level of tenant protection at foreclosure. Applies to all residential properties which suffer foreclosure Protects tenants from summary eviction If there is more than 90 days on lease, tenant has the right to stay until end of the lease. If there are less than 90 days on the lease, tenant entitled to 90 days notice. <i>PTFA</i> does not affect state / local laws that offer additional protections for tenants. Applies to foreclosure on any type of property (single and multi-family) Must be bona fide tenant
<p>Note: A foreclosure sale typically occurs on the steps of the courthouse without going into court in Virginia and Washington, D.C. In Maryland, a judicial court process is typically used during a foreclosure sale.</p>				

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Tenant Protections

Issue	D.C.	Maryland	Virginia	National (PTFA)
Is notice of foreclosure given to a tenant?	No	Two notices sent by first-class mail to "occupant" before sale	No	Depends on state law
What are tenant's rights in foreclosure proceedings?	None	Bona fide tenant retains "right to possession" and foreclosure sale purchaser must file "Motion for Judgment Awarding Possession," serve occupant, and obtain court judgment to take possession	None	<i>PTFA</i> protects tenants regardless of immigration status
Is tenancy automatically terminated at foreclosure?	Tenancy survives foreclosure: local law is stronger than <i>PTFA</i> protections.	State law is similar to <i>PTFA</i> . Effective June 1, 2010	No state protections <i>PTFA</i> applies	<i>PTFA</i> provides minimum level of protection for tenants. See below for details.
What is the time frame for tenants to vacate the property after foreclosure?	D.C. has a stronger law than <i>PTFA</i> . It is illegal to evict tenants in the District simply because of a foreclosure. The new owner becomes the landlord and there is no change in the tenant's rights.	<i>PTFA</i> applies	<i>PTFA</i> applies	<ul style="list-style-type: none"> • If tenant has more than 90 days remaining on their lease, tenant can stay until end of lease • If the tenant has less than 90 days remaining on their lease, tenant gets at least 90 days notice • Exception: If purchaser will occupy unit as primary residence, they can terminate lease on 90 days notice
Pending Policy Changes / Current Developments	N/A	HB 711 / SB 654 effective June 1, 2010 incorporates <i>PTFA</i> rights into State law; provides guidelines for sending 90-day notice; no sunset date.	HB 231 requires that the successor of a landlord who held a security deposit is required to refund it to the tenant. Law goes into effect July 1.	<i>PTFA</i> expires on 12.31.2012. H.R. 4766, pending, would eliminate the sunset in the current law and extend the <i>PTFA</i> protections indefinitely.
Relevant Authorities	D.C. Code § 42-3505.01 (2001)	Maryland Rules 14-101 et seq, Md. Code Ann., Real Prop. art.§7-105 et seq	<i>The Virginia Residential Landlord and Tenant Act:</i> VA 55-248.2 - 55.248.40	<i>Protecting Tenants in Foreclosure Act of 2009 (PTFA), P.L. 111-22</i>