

Lecture Notes for Intro 2/Module 6: Special Situations

Tenants in Foreclosed Property

Tenants may have the right to terminate the lease early:

§ 42-45.2. Tenants residing in certain foreclosed property.

Any tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding under [GS Ch. 45, Art. 2A] may terminate the rental agreement for the dwelling unit after receiving notice pursuant to G.S. 45-21.17(4) by providing the landlord with a written notice of termination to be effective on a date stated in the notice of termination that is at least 10 days, but no more than 90 days, after the sale date contained in the notice of sale, provided that the mortgagor has not cured the default at the time the tenant provides the notice of termination. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy.

Purchasers of foreclosed property step into the shoes of the landlord.

The Protecting Tenants at Foreclosure Act is a federal law with a bumpy history and fairly simple provisions: When property purchased at foreclosure is occupied by a *bona fide* tenant, the new owner “takes subject to the lease.” In other words, the purchaser – like it or not – becomes a landlord, stepping into the shoes of the previous landlord. But the PTFA goes further, requiring that all tenants receive a minimum 90-day notice before being required to vacate. If the lease is for a fixed term exceeding 90 days, the tenant is entitled to occupy the property until the end of the lease, subject to an exception if the purchaser wishes to occupy the property as a primary residence.

The most common legal issue in these cases is whether the occupant is a *bona fide tenant*. If not, the purchaser’s remedy for gaining possession of the property is to obtain a writ of possession issued by the clerk as part of the foreclosure proceeding pursuant to GS 45-21.29. If so, the new landlord will be appearing in front of you, in a summary ejectment proceeding.

So, what’s a *bona fide* tenant? There are three requirements:

1. The occupant is not the mortgagor (owner of the property prior to foreclosure), or the mortgagor’s child, spouse, or parent;
2. The rental agreement is the product of an arms-length transaction; and
3. The rent is “not substantially less” than the fair rental value of the property (unless lesser amount is due to government subsidy).

Note that this is yet another example of a special rule related to termination of a lease: it does not give the tenant the right to occupy the property rent-free, engage in criminal activity, or violate the lease in ways that trigger a forfeiture clause.

NOTE: A recent federal case adopted an interesting interpretation of the PTFA with potential implications for NC magistrates. In House v. Fed. Home Loan Mortg. Corp., 261 F. Supp. 3d 623, 632–34 (E.D.N.C. 2016), aff'd, 699 F. App'x 259 (4th Cir. 2017), the Court said, “Although the PTFA abrogates otherwise conflicting state law so that tenants may remain in a foreclosed-upon property, it does not create a landlord-tenant relationship beyond the PTFA period.” Based on this finding that the landlord-tenant relationship between the parties ended when the ninety-day notice period ended, the Court held that the owner’s decision to obtain a writ of possession from the clerk, rather than file a summary ejectment action before the magistrate, did not constitute wrongful eviction. While the opinion in House makes for fascinating reading, it remains to be seen whether NC courts will be persuaded by its reasoning.

Victims of Domestic Violence

When a tenant or household member is a victim of domestic violence, sexual assault, or stalking, they may special legal rights under both federal and state law which are exceptions to general landlord-tenant law.

GS 42-40(4): defines *protected tenant* as tenant or household member who is a victim of domestic violence under Chapter 50B . . . or sexual assault or stalking under Chapter 14.

GS 42-42.2: Prohibits discrimination in rental decisions based on this status

GS 42-42.3: Sets out obligations of landlord and tenant related to changing locks on rental property

GS 42-45.1: Governs early termination of rental agreement by “protected tenant”

The Servicemembers’ Civil Relief Act (SCRA)

SCRA applies to residential leases for premises occupied by SM or dependent. (Dependent is defined as spouse, child, or any other person for whom SM provided at least 50% support during the last 180 days.)

Right to early termination

Lease must have been entered into by SM (1) prior to enlistment or (2) after enlistment but SM is deployed or receives permanent change of station orders for at least 90-day period.

Requires SM to submit written notice + copy of order OR letter from commanding officer.

Termination effective 30 after next rent payment is due.

Enforcement of prohibition against self-help eviction

SCRA prohibits self-help eviction of SM & dependents, and makes violation a misdemeanor, punishable by fine or up to 1 year imprisonment.

Postponement of eviction/rent adjustment

Primary impact is authorization of courts to postpone evictions for up to 3 months when military service *materially affects* ability of family to pay rent. Default stay for 90 days, but courts have significant discretion, both as to length of stay and to “grant to the landlord such relief as equity may require.”

Limitation on waiver by SM

Rights under SCRA may be waived but must be (1) in 12-point type, (2) in writing, in document separate from lease, and (3) after enlistment.

NOTE: In 2019 the NC General Assembly enacted *The North Carolina Servicemembers Civil Relief Act* (GS Ch. 127B, Art. 4). The Act, among other things, incorporated into State law the provisions of the federal SCRA and extended the benefits thereunder to members of the NC National Guard.