

Foreclosure – Tenant Rights

What is a foreclosure?

When a property owner does not pay the mortgage or taxes, the property goes into foreclosure, and the property may be sold. When this happens, a tenant may be evicted even if the rent is paid on time and/or there is a current lease.

Do I still pay rent to my landlord?

The creditor (usually a bank or the government) the landlord has not paid may ask the court to appoint a receiver to manage the property. When this happens, you should get what is called a *notice to attorn*. This is a notice that says that the tenant should treat the receiver as the landlord. All future rent payments should be made to the receiver, not to the landlord. If the tenant does not pay the rent to the receiver, the tenant may be evicted. In addition to collecting rents, the receiver is responsible for the care and upkeep of the property. You should tell the receiver about any repairs that need to be made to the property. The receiver is responsible for repairs.

If you do not receive a *notice to attorn* you should continue to pay rent to your landlord until you are notified that the property has been sold.

What happens after a property is foreclosed upon?

After the foreclosure, the property is sold at an auction. The purchaser at the auction may ask the Court for a *writ of assistance* to evict the tenants. This means that you may be evicted even if you are not behind in the rent and have a current lease. While most evictions take place in a city or town court, this eviction will take place in Supreme Court. If you were not named in or served with the original foreclosure papers, or if you rented the property after the foreclosure process began, you should not be evicted at this time.

How soon will I be put out if the Court allows the purchaser to evict the tenants?

You will be served with a 72 hour notice to move. Even though 72 hours is three days, it usually takes 5 - 7 days before the tenant is put out by a civil officer.

What do I do if I receive this type of eviction notice?

First read the papers very carefully and follow the directions. If you are unsure of what you should do, contact Neighborhood Legal Services for assistance.

I was not named in the foreclosure action and I have a one year lease agreement. Can the new owner evict me?

Yes. To begin this type of eviction the new owner must show the tenant the deed that made them the new owner of the property. If you had a lease with the previous owner that was signed before the start of the foreclosure action, the lease term should continue on and you should be able to stay in your apartment.

I was not named in the foreclosure action, and I have a month-to-month tenancy. Can the new owner evict me?

If there is no lease, a month-to-month lease or a lease that can be ended by either party at any time the new owners must give a 90 day notice to move. If rent is owed to the new owner, the 90 day notice does not apply. The standard non-payment steps may be taken and the tenant can be evicted in a very short period of time. If you are served with a non-payment or hold-over petition, the court date will be between 5 and 12 days after you are served with court papers, and the eviction can take place in as little as 72 hours after the court date.

Is the law different if I receive a federal housing subsidy?

Yes, if you receive a subsidy, for example Section 8, there must be “good cause” for you to be evicted. Good cause can mean a variety of things as far as the law is concerned, but the courts have determined that a foreclosure proceeding involving the owner of the property is NOT by itself good cause to evict a subsidized tenant. The new owner may be able to evict you before the expiration of your lease if the new owner is going to live in the property and the owner has served you with a 90 day notice to move. The law also provides protections for domestic violence, dating violence or stalking.

What if the new owner agreed to let me stay?

If the new owner has agreed to let you stay and has accepted rent from you for a period after the sale of the property was finalized, you may be able to claim that the owner agreed to let you stay. If this is the case, the landlord would have to bring an eviction for nonpayment of rent or “holding over” after the lease has ended, other violations, or provide you with a 30-day notice to vacate. Section 8 tenants or tenants who live in rent-controlled or rent-stabilized apartments, may have additional rights if they do not wish to move.

What happens to my security deposit if the new owner evicts me?

If the new owner does not know that you paid a security deposit to the original owner, you may not be able to get the security deposit from the new owner when you move. In that situation, you can try to get the security deposit from the original owner by suing that person in Small Claims Court.

What happens if I receive a different type of eviction notice?

The new owner may evict you for other reasons. Once a foreclosure sale is final, the new owner may start an eviction proceeding, even if you were not named in the foreclosure papers. Tenants can be evicted in city or town court for nonpayment, “holding over” after the lease has ended or other violations. Tenants who are receiving Section 8 subsidies, or live in rent-controlled or rent-stabilized apartments, may have additional rights under the law. If you have questions about these types of evictions or your rights, contact Neighborhood Legal Services.