



FORECLOSURES

On July 8, 2008, Governor Schwarzenegger signed a law to reduce the negative impact of foreclosures on displaced residents, and on communities with high numbers of vacant foreclosed properties. In California, a significant percentage of foreclosed homes are occupied by tenants who pay rent each month, but whose landlords purchased the houses as investments and failed to make mortgage payments. Other homeowners, whose lenders refused to work with the borrower to lower payments or extend deadlines, were forced to move after foreclosure, only to have the houses remain vacant and fall into disrepair. The new law addresses these problems with some emergency provisions which took effect immediately and with other measures which take effect on September 6, 2008.

In a housing market marked by so many foreclosures, not only are homeowners losing their homes, but in many cases, so are the families renting those homes. Because the foreclosure process differs from a voluntary sale of the home, the process raises many questions for tenants currently occupying the property. Following are some of the most common issues faced by tenants during and after a foreclosure.

I am in a month to month rental agreement and my home has gone into foreclosure. How much time do I have to move?

The immediate owner after foreclosure must give 90 days notice to terminate a month-to-month tenancy.

My landlord recently received a Notice of Default. As a tenant, how does this affect my obligation to pay rent and my right to stay in the property?

A Notice of Default is the first step in the foreclosure process and serves to formally notify the homeowner that they are in default of their loan. By law, the homeowner has three months from the date the notice is filed with the recorder's office to cure the default. During this time, the homeowner still holds title to the property and is therefore entitled to continue to collect rent from any tenants in possession of the property. So long as the homeowner has title, he or she may also terminate a month-to-month tenancy without cause and with proper written notice of 30-days to tenants of less than one year, 60-days to tenants of one year or more, and 90-days to tenants participating in the Housing Choice Voucher Program (Section 8). The homeowner generally may not terminate a fixed-term lease without cause.

I am currently in a lease, what are my protections if the home goes into foreclosure?

As of May 20, 2009, under the federal law, if the tenant entered into a lease with the previous owner prior to the notice of foreclosure (Notice of Sale), the immediate owner after foreclosure must allow the tenant to stay until the end of the lease term. However, the immediate owner after foreclosure may terminate the tenant's lease with 90 days notice if the owner subsequently sells the home to a purchaser who will occupy it as a primary residence.

My landlord is currently in default on his loan. I have not been able to contact him in order to pay my rent. What should I do?

So long as the homeowner holds title to the property, the tenant's obligation to pay rent continues. If the tenant cannot contact the homeowner in order to pay the rent, that money should be set aside in the event the tenant receives a 3-Day Notice to Pay Rent or Quit. Failure to pay the rent could lead to the homeowner filing an unlawful detainer action, also known as an eviction, against the tenant.

About a month ago, my landlord received a Notice of Trustee's Sale, and today there was a 3-day Notice to Quit posted on the front door and addressed to my landlord. Now that my landlord has lost his home, how does this affect my right as a tenant to stay in the property?

The law only entitles the homeowner three days to vacate the property once it has been lost through the foreclosure process. Once the bank or subsequent buyer takes title to the property from the previous homeowner, proper notice must also be given to any remaining tenants in order to terminate their tenancy. After foreclosure, tenants are entitled to 90-days written notice, on a month to month tenancy. If the tenants fail to vacate by the end of the notice period, the bank or subsequent buyer must file an unlawful detainer action in order to regain possession of the property. Unless and until the tenancy is terminated, the tenant has an obligation to pay rent to the new owner.

I paid my landlord a security deposit when I moved in, but my landlord has since lost the property through foreclosure. Do I have to pay the new owner another deposit, and what happens to my deposit when I move out?

When the homeowner transfers or loses title to the property, as in a foreclosure, the homeowner must either return the security deposit to the tenant or transfer the deposit to the new owner. In the case of a foreclosure, the new owner could be the bank or a subsequent buyer. Unless the previous homeowner returns the deposit to the tenant, the new owner may not collect another deposit even if they have not received the deposit from the previous homeowner. It is the new owner's responsibility to obtain from the previous homeowner the deposit initially paid by the tenant. The tenant is entitled to the return of their deposit within 21 days of vacating the property, absent any lawful deductions. If the deposit is not returned, the tenant may sue both the previous homeowner and the new owner jointly, as both parties are legally responsible for returning the deposit to the tenant.

If my tenancy is terminated by my landlord who is in default or by the bank or new buyer after a foreclosure, can I choose to not pay rent and instead allow it to be deducted from my security deposit?

The law allows the owner of the property to deduct rent owed from the security deposit. The law also requires the tenant to pay rent until the notice of termination expires and the tenancy is terminated. Even if the current owner is in default, they are still entitled to collect rent and may issue a 3-Day Notice to Pay Rent or Quit followed by an eviction if the tenant fails to pay. The bank or new buyer is also entitled to collect rent and may do the same if the tenant does not pay. Bottom line, Civil Code 1050.5 entitles the property owner to deduct unpaid rent from the security deposit after the tenant vacates the property. If the tenant withholds rent during the last month of tenancy then that amount would be deducted, in addition to any other legal charges, from the security deposit held by the property owner.

I live in my home and can no longer afford my monthly mortgage payment. Will the current law, help me?

A: The Legislature declared that mortgage loan services have a financial duty to all parties, not just shareholders, and that the money recovered through loan workouts will likely exceed the value recovered through foreclosures. Lenders therefore have a duty to provide a loan modification or workout plan to homeowners to avoid unnecessary foreclosures. If the borrower lives in the home, took out the mortgage in the years from 2003 to 2007, and meets certain other conditions, then effective September 6, 2008, the law requires the lender to notify the homeowner of new rights. Borrowers meeting these conditions are now entitled to a notice offering the chance to meet with lenders and providing a toll-free number for referrals to a HUD-certified housing counseling agency. The lender cannot give a notice of default until 30 days after the first notice is given.

I am a tenant and suspect that my landlord is in default. How would I know if the house goes into foreclosure, and what are my rights if the house is sold?

Beginning on September 6, 2008, whenever a notice of sale is posted and the billing address for a mortgage does not match the property address, a notice must be posted for the tenants. The notice must be in English, Spanish, Chinese, Tagalog, Vietnamese and Korean, and must tell the tenant that foreclosure process has begun and that the property may be sold at auction in 20 days or more. The notice also says that the new owner can either continue to rent to them or give 60 days' written notice before requiring the tenants to move out. The notice also must tell tenants that they can contact a lawyer or legal aid office to discuss their rights. There is a \$100 fine for taking down this notice.

How much time will I have to move if the house is sold at auction? Can the new owner change the locks?

As of May 20, 2009, a bank or other new owner of foreclosed property cannot end an existing rental agreement or tenancy without first giving the tenant 90 days' written notice. The new owner cannot evict the tenants without going through the formal legal eviction process in a court of law. Only the sheriff can physically change the locks.

There are several empty homes in my neighborhood that were foreclosed on last year and are still empty. I am concerned about mosquitoes and increased crime. Are the banks supposed to maintain vacant property after foreclosing on them?

Civil Code 2929.3 went into effect in July 2008 and requires the new owner of vacant foreclosed residential property to maintain the property. Owners must maintain the exterior of the property, take action to prevent trespassers or squatters from remaining on the property, prevent mosquito larvae from growing in standing water, and take action to avoid other public nuisances. Failure to comply within 30 days of a warning from the local government can result in fines of up to \$1000 per day.

Do these new laws replace existing fair housing and other laws that protect residents?

The new law does not take away any rights of tenants and homeowners that they have under existing laws. Specifically, federal and California fair housing laws that protect residents from discrimination from banks and housing providers still apply. Residents with disabilities may be entitled to request reasonable accommodations in rules and policies that may be necessary for them to have equal access to housing. In addition, a homeowner cannot be forced to move without a court order, even after the property is sold at auction. A new owner may give a former homeowner a three-day notice and file an unlawful detainer lawsuit. As with evictions of tenants, only the sheriff has the authority to carry out a court order and change the locks.