

# Getting Through Tough Financial Times

## **Renters Are Overlooked in Foreclosed Property**

### **What are the rights of tenants in property that is being foreclosed?**

Think you are safe, if you are renting or a tenant in property that is being foreclosed? Think again. Renters can be evicted if the property owner forecloses on the property with their lender.

Most renters don't suspect that their landlord is having mortgage troubles until they receive the eviction notice. If a renter is current on their rent payments, they have little recourse but to leave the property.

### **Who Are the Renters?**

There is not just one profile to renters who lose their homes to foreclosure. They could live in single family homes, smaller apartment buildings or condos. They could be in a big city, suburb or a neighborhood. Foreclosed homes are everywhere and they cross all economic levels.

### **Who Are the Defaulting Owners?**

There are several types. Many are owner-occupied. Some are owned by investors and speculators. When regulation was lax, anyone who breathed and could sign their name could get a loan with an adjustable rate and many bought-up rental properties. The owners counted on rising rents and low interest rates to cover their mortgage payments. Caught between the slump in housing values and the rise of their mortgage interest rates, the owners could not sell nor extract enough rent to cover their monthly costs.

### **Who Are the New Landlords?**

When an owner defaults on a mortgage, the mortgage holder - usually a bank either becomes the new owner or sells the property at a public sale. It is also known as Real Estate Owned (REO). If the bank becomes the owner, it may pay a servicing company to handle the property. Service companies are looking at fiscal issues not maintenance of the building.

Many tenants have no idea that their building has been taken at foreclosure. Tenants continue to pay the rent to the former owner, who often pockets the money. The former owner is not inclined to maintain the building they no longer own. The new owners refuse to be landlords, never making repairs or paying utility bills. The bank are stuck with more foreclosed properties they can't sell, they remain non-landlords for some time, making life impossible for their tenants until they are evicted.

### **Renters in Foreclosed Properties Lose Their Leases**

Most renters lose their leases upon the property being foreclosure. The rule in most states is that if the mortgage was recorded before the lease was signed, a foreclosure will wipe out the lease, also known as "first in time, first in right." Most leases only last a year, it's all too common for the mortgage to predate the lease and destroy it upon foreclosure.

Not all lease-holding tenants have to leave immediately, but they join the ranks of month-to-month renters that can be terminated with proper notice usually 30 days. The new owners tend to move quickly to terminate giving little notice.

Tenants, who refuse to leave face an eviction lawsuit, as a tenant, you have no legal defense. The impact of an eviction may be a factor in the tenant finding future housing. No law prevents a future landlord from automatically rejecting tenants with evictions on their record. The tenants are innocent victims of a foreclosing bank.

## **Does It Make Sense to Evict Tenants?**

New owners evict existing tenants, because they feel the vacant property is easier to sell. Common sense suggests otherwise. If a building is full of stable rent-paying tenants it is more valuable than an empty building. Empty buildings are prone to vandalism, deterioration, and no one to monitor the site. Foreclosed buildings property value drops, when entire neighborhoods become a wasteland of foreclosed buildings. It's hard to understand why new owners choose to pay lawyers to start evictions instead of paying a modest fee to a management company to collect rent and manage the property while they wait to sell.

## **“Cash for Keys”**

To encourage tenants to leave quickly and save court costs with eviction, banks offer tenants a cash payout in exchange for their rapid departure. Many tenants think they do not have any choice and take the deal. It doesn't help them much as they join the ranks of newly displaced tenants who are competing to find an affordable new rental.

## **What Can a Foreclosed-Upon Tenant Do?**

Renters who have clauses in their leases - “first in time, first in right” rule, where the lease can be wiped out by a foreclosure if the mortgage was recorded before the lease, will not be able to convince a court to change that rule. But tenants who learn that their new landlord is a bank can at least lessen the financial consequences by suing the former owner.

After signing the lease, the landlord is legally bound to deliver the rental for the entire lease term. In legalese, this duty is known as the “covenant of quiet enjoyment.” A landlord who defaults on a mortgage, which sets in motion the loss of the lease, violates this covenant, and the tenant can sue for the damages it causes.

Small claims court is a perfect place to bring the lawsuit. The tenant can sue for moving and apartment-searching costs, application fees, and the difference, if any, between the new rent for a comparable rental and the rent under the old lease. Usually the former owner is not flush with money, these cases won't demand very much, and the judgment and award will stay on the books for many years. A persistent tenant can probably collect what's owed eventually.

## **Press for Legislative Reforms**

There is a need to protect the innocent tenant who may have to find new housing on a very short notice. Each state handles this issue very uniquely. Some states are looking to require notice to tenants in writing if the building/home is sold in foreclosure sale. Landlords would have to give at least 30 days notice of the impending sale.

Source: Legal Encyclopedia -- [www.nolo.com](http://www.nolo.com)

