



Project Sentinel

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Unfortunately, renters are often innocent victims of the current mortgage foreclosure crisis.

Here are some important facts that tenants should understand about the impact of the foreclosure process on their rights.

When is the tenant notified that foreclosure is pending?

When a rental property owner becomes more than a month late on mortgage payments, that status is generally called “delinquency”. The property owner is not obligated to disclose his or her delinquency to a new or prospective tenant, and there are no public records indicating delinquency. There are no set time limits on the length of delinquency status.

The first formal step in the foreclosure process is when the owner is served with a Notice of Default. The owner is not obligated to notify a tenant when the Notice of Default is filed and served, but the Notice is a public record that can be researched at the office of the local county recorder. Once the default has been filed, the owner has at least 90 days to bring the mortgage current or negotiate some other “work out” with the lender.

The next step in the foreclosure process is the Trustee Sale, at least 20 days after the initial 90-day default period has expired. The Notice of Trustee Sale must be posted on the property subject to foreclosure, which gives the tenant warning that the sale is impending. The owner loses title to the property at the trustee sale.

Does foreclosure result in eviction for the tenant?

Whether a tenant can be evicted after the trustee sale depends on the type of rental agreement, the type of underlying mortgage, and the jurisdiction where the property is located.

Under a new federal law applicable to properties with 1-4 units, a month-to-month tenancy in a non rent control jurisdiction can be terminated on 90 days written notice, once the trustee sale has been finalized. A tenant with a lease in one of these properties cannot be evicted until the lease ends, unless the new owner intends to occupy the property. In that case, the tenant is

entitled to 90 days notice. This federal law only protects “bona fide” tenants who have documented rental agreements and proof of rent payments, and who are not immediate family members of the prior owner. Tenants not protected under the federal law are still entitled to a 60-day written notice under California law.

In rent control jurisdictions that require “just cause” for evictions, such as San Francisco, a tenant is entitled to assert that trustee sale does not constitute “just cause”, and that the tenant is entitled to remain in the rental.

What options are available to a tenant?

After the sale, the new owner is required to maintain utility service for the property, and take responsibility for adequate repairs and maintenance for the property. The prior owner is required to transfer the tenant’s security deposit to the new owner after the trustee sale or refund it to the tenant. Unfortunately, the old owner has often spent the security deposit to try to cover mortgage payments. Under the applicable law, the new owner after the trustee sale should remain liable for any portion of the security deposit that was not refunded or transferred.

If the property is sold at the trustee sale, the bank or other new owner may agree to continue the rental relationship with the tenant. If so, the tenant should require a new written rental agreement documenting the new rental relationship. There have been cases of unscrupulous persons who no longer own the property, or never owned it, trying to collect rent from unsuspecting tenants. A tenant approached by a person purporting to represent the new owner should always demand written proof of that person’s authority. The identity of the new owner should be a public record that can be checked at the county recorder’s office.

Alternatively, the bank or other new owner may offer you “cash for keys” in exchange for your agreement to vacate voluntarily. Tenants served with a 90-day notice should always try to negotiate a cash for keys agreement.

Tenants should understand that if they stay in the property beyond the 90-day notice period, or after the lease expires, without the written agreement of the new owner, they are subject to being named in an eviction suit, known as an unlawful detainer. Being named in an unlawful detainer will result in a very serious negative entry in their credit report and credit history. Many landlords will not rent to tenants who have been named in an unlawful detainer case.

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