

The Rights of Tenants in the Foreclosure Process

WHAT IS FORECLOSURE?

When the loan borrower (homeowner) falls behind on their monthly mortgage payments, the lender (a bank like Wells Fargo) can force a sale of the property to pay off the mortgage. This process can be done without going to court.

HOW DO I KNOW IF THE HOME I'M RENTING IS IN FORECLOSURE?

If the homeowner falls behind on their mortgage payments, the bank can record a Notice of Default on the property. This starts the foreclosure process. If the homeowner cannot pay off the amount listed in the Notice of Default, a Notice of Trustee Sale is posted on the property and served to the tenants living in the unit. This notice will state that the foreclosure sale will occur in 20 days. Tenants can also contact the Santa Clara County Recorder's office to find out if the home they rent is in foreclosure.

DO I PAY RENT?

At any stage of the foreclosure process, tenants must pay rent to the current homeowner to maintain their tenant rights. The new homeowner must provide written notice to existing tenants of the change to ownership within 15 days of becoming the new homeowner. This notice should contain information on how to pay rent.

WHAT ARE MY RIGHTS DURING THE FORECLOSURE PROCESS?

At the minimum, tenants have the following rights:

- The right to habitable housing during and after foreclosure.
- The right to return of their security deposit after they vacate the home.
- The right to be free from harassment and improper entries into the home.
- The right to stay in the home until the legal termination of their tenancy by written notice.

AFTER THE HOUSE IS SOLD AT A FORECLOSURE SALE, DO I HAVE TO MOVE OUT?

Generally, the new homeowner that buys the house at the foreclosure sale must honor the existing lease. However, if the new homeowner does not want to have tenants, the new homeowner can terminate their tenancy. With some exceptions, tenants with long-term leases have the right to stay through the end of their lease term. Tenants with a month-to-month tenancy at the time the property is sold, generally have the right to a 90-day notice to vacate.

CAN THE NEW OWNER LOCK ME OUT ONCE MY NOTICE EXPIRES?

No, once a written notice to vacate has expired, the new homeowner must serve a Summons and Complaint to begin the Unlawful Detainer (court eviction) process.

IF I MOVE OUT BEFORE MY NOTICE EXPIRES, CAN I GET MY SECURITY DEPOSIT BACK?

Yes, if the previous homeowner did not return the tenant's security deposit before the foreclosure sale, the new homeowner must return the security deposit to the tenant. The tenant should name both homeowners in any small claims case to recover the deposit.

WHAT IF I AM OFFERED CASH TO LEAVE?

A "Cash for Keys" agreement is when lenders or homeowners offer tenants money to move out of the home in a short time period so that they can quickly sell or use the property. For some tenants, the money can help them move quickly, or to put a security deposit down on another housing unit. However, a tenant should consider whether they can move within the time frame given, and if there are other terms to the agreement. If the tenant accepts, they should make sure the agreement is in writing, and when possible, consult an attorney.

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