

TENANTS IN FORECLOSED PROPERTIES -- WHAT YOU NEED TO KNOW

When most people think about those who have lost homes as the result of foreclosure, they think of the many homeowners who have been defendants in foreclosure actions. National data, however, reports that about 40% of those losing housing due to foreclosure have been renters – the tenants who live in multi-family buildings whose owners lose title. There has long been state law providing some protection to those occupants. Since late 2008, however, state protections have been increased and, since May, 2009, new federal protections have been enacted.

Real estate agents are often the people who, on behalf of a foreclosing lender, contact tenants after a foreclosure and attempt to get them to move. It appears, however, that in many cases real estate agents have either been unaware of or ignored the laws that protect renters post-foreclosure. In January, 2010, the Attorney General issued enforcement letters to six real estate companies for practices that violated state or federal law. To follow the law, you need to know what is expected of you under the following acts:

- The federal Protecting Tenants at Foreclosure Act of 2009 (Title VII of Public Law 111-22, effective May 20, 2009, www.nlihc.org/doc/701-704-Public-Law-111-22.pdf), amended by the Dodd-Frank Wall Street Reform and Consumer Protections Act (Sec. 1484 of Title IV of Public Law 111-203). Unless extended, this act will expire on December 31, 2014.
- The Connecticut Just Cause Eviction Act (Gen. Stats. 47a-23c, effective May 7, 1980, www.cga.ct.gov/2009/pub/chap832.htm#Sec47a-23c.htm).
- The Connecticut Cash for Keys Act (Gen. Stats. 47a-20f, effective November 25, 2008, www.cga.ct.gov/2009/pub/chap830.htm#Sec47a-20f.htm);
- The Connecticut Security Deposit Act (Gen. Stats. 47a-21(e), effective October 1, 1979, www.cga.ct.gov/2009/pub/chap831.htm#Sec47a-21.htm);
- The Connecticut Identification of Landlord Act (Gen. Stats. 47a-6, effective January 1, 1977, www.cga.ct.gov/2009/pub/chap830.htm#Sec47a-6.htm).

The important things to know are:

- Under the federal Protecting Tenants at Foreclosure Act (PTFA):
 - At least 90 days to move: Bona fide tenants in occupancy at the time of foreclosure do not have to move for at least 90 days after title passes or until the end of their lease (if they have one), whichever is later.
 - Federal law is now explicit that a tenant can complete any bona fide lease entered into before title to the property is transferred, including a lease entered into while the foreclosure action is pending.
 - There is a narrow exception to the end-of-the-lease rule (but not to the 90-day rule) if a new purchaser wants to move into the specific occupied unit.
 - The only tenants who are not “bona fide” are the mortgagor and his child, parent, or spouse; tenants with leases resulting from non-arms-length transactions; and tenants with substantially sub-market rent (other than

subsidized rents). As a practical matter, in the absence of other information, you should treat all occupants other than the mortgagor and the mortgagor's child, parent, or spouse as protected by PTFA.

- Assumption of Section 8 leases: The immediate successor in interest must assume any Section 8 lease.
- Under state law
 - Protection of seniors and persons with disabilities: Under state law, occupants of buildings with five or more dwelling units who are at least 62 years old or are physically disabled are fully protected against foreclosure of the building and cannot be required to move without cause. Change of ownership, including a change resulting from foreclosure, does not constitute cause. It is improper to issue notices to such protected tenants demanding that they vacate because of the foreclosure.
 - Return of security deposits: The entity that owns the property at the time a tenant vacates (usually the bank after a foreclosure) is liable for the return of the security deposit to the tenant, even though the security deposit was paid to a previous owner and even if it was not transferred to the new owner. It is an unfair trade practice for a real estate agent to tell the tenant that the tenant must reclaim the security deposit from the former landlord.
 - Cash for keys: Cash for keys offers are not required after a foreclosure. If such offer are made, however, they must meet the minimum dollar amounts of Gen. Stats. 47a-20f. Any such offer must be at least the HIGHER of
 - Double the deposit plus interest (this total amount incorporates the return of the security deposit itself);
 - Two months' rent; or
 - \$2,000.Lower offers to induce early vacating are not proper.
 - Notice of the name and address of the property manager: At the time of a change in ownership, the tenant must be given written notice of the name and address of the property manager, i.e., the person in charge of making repairs.
 - Any new owner, including a bank that takes title by foreclosure, is responsible for complying with all duties of landlords under the Landlord-Tenant Act, because those requirements apply to every "owner."
 - Real estate agents managing foreclosed property have the same maintenance responsibility to occupants as do agents managing the property of any other owner.
 - They are also equally responsible to state and municipal agencies that enforce housing, health, building, and similar codes and statutes.

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The Legal Assistance Resource Center of Connecticut, Inc., is part of Connecticut's legal aid programs. Atty. Podolsky has represented low-income renters in Connecticut for more than 30 years. He is also editor of the Legal Services Housing Index and chairperson of the Citizens Advisory Council for Housing Matters, a state advisory board.