



TENANTS RIGHTS IN FORECLOSURE

RESOURCE GUIDE

Brought to you by:



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Tenants rights in Foreclosure

TOOL KIT

Brief Overview of the Issue

While landlord-tenant law varies by state, it is still very important to understand your rights, particularly when it comes to properties in Foreclosure.

What is a Resource Guide?

Just as a construction worker has a container to house all of the tools that they need for their building project; such is the case for this document. We intend to arm readers with the tools necessary to not only understand the issue, but to be able to use the resources made available to take action. That is, to help further the discussion by engaging in advocacy oriented next steps.

It serves to be a beginner's "HOW TO" guide of sorts. The information is purposely kept concise and general so that it is easily comprehensible and applicable to its diverse readership.

How is this Resource Guide helpful?

This resource guide is created to serve as a reference mainly for renters who are in foreclosed properties. However the information in this resource guide can also serve as a preliminary organizing and educational tool for those interested in this topic.

This resource guide provides an overview of problems and barriers tenants may face and laws and resources available to assist them in addressing those problems. Resources, in addition to this resource guide, are available and are hyperlinked in the text.

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Rights of Tenants in Foreclosure

Protecting Tenants in Foreclosure Act

In 2009, President Obama signed into law the **Protecting Tenants in Foreclosure Act** Pub. L. No. 111-22, § 702 (2009), which includes new provisions to protect tenants who are living in foreclosed buildings. The Protecting Tenants in Foreclosure Act states that:

- With limited exceptions, tenants with leases must be permitted to occupy the property until the end of their lease terms.
- If the new owner plans to live in the property as his or her primary home, tenants must receive at least 90 days notice prior to eviction.
- The person or entity (including a bank) who becomes the new owner of the residential rental property, as a result of a foreclosure, must continue to honor and be bound by both the Section 8 voucher lease and the Housing Assistance Payments (HAP) contract that existed with the original landlord.

States may have laws which offer more protection for tenants living in foreclosed properties than the Protecting Tenants in Foreclosure Act. HUD provides an overview of tenant laws in each [state](#).

Additional Rights for Tenants in Foreclosure

- Most tenants are protected by the “Eviction for Just Cause” Act which requires landlords to provide tenants with the reason for eviction.
 - The “Eviction for Just Cause Act” does not apply to tenants who live in a building with three or less units and the owner lives in one of those units.
- Tenants can only be evicted through a court process. If the judge orders the eviction, only a representative of the court with a warrant of removal signed by the court can evict tenants.
- If the owner of the property changes, the new owner is responsible for refunding the tenant’s security deposit when the tenant leaves the property.
- A tenant has some protections to prevent utility companies from shutting off electricity, gas and/or water if the landlord is not paying the bills.
 - If a utility company is aware that a tenant is living in a foreclosed property, the utility company must continue to offer service to the tenant and bill them directly.
 - A tenant is not responsible for paying the past due bill for the landlord.
 - The tenant can use a portion of their rent money to continue utility service that is threatening to be shut off due to the landlord’s missed payments.

Attempts to Remove Tenants from Properties due to Foreclosure

Tenants may face significant challenges while living in a foreclosed property. Problems may arise due to the actions by the current landlord, new landlord, real estate agent, debt collectors, attorneys, etc. It is important that tenants be aware of what constitutes inappropriate conduct or what actions are inconsistent with tenant protection laws.

Owners or those who work on behalf of owners cannot do the following:

- Tell tenants or send notices, letters, or flyers to tenants saying that they have to leave their homes because of a foreclosure
- Repeatedly call or show up at tenants' homes in an effort to get them to leave
- Tell tenants they should leave because the new owner will not take care of the property
- Refuse or fail to keep the property in a decent, safe, and habitable condition
- Refuse or fail to say where the rent should be paid, while sometimes also threatening eviction proceedings for nonpayment of rent
- Attempt to collect rents they are not allowed to collect (that is, new owners trying to collect rent from before they owned the property)
- Refuse to pay utility bills, putting tenants at risk of shut-offs of heat, electricity, and water.

Real estate agents and attorneys are bound to professional ethics codes which they breach if they send notices to tenants pursuing eviction on the grounds of foreclosure. In addition, real estate agents and attorneys could be in violation of the Consumer Fraud Act.

According to the **Fair Debt Collection Protection Act**, the first communication (either oral or written) must inform the tenant that the attorney is trying to collect a debt and that any information obtained will be used for that purpose (all other communication must include a disclosure that it is from a debt collector). Within 5 days of that first communication, the attorney must give the tenant written notice outlining the tenant's rights in the debt collection process (that is, the right to verify and dispute the debt) and state the amount of rent owed.

Court sheriffs sometimes misunderstand the writs of execution, particularly when it says that "all occupied persons should leave the premises" thinking that tenants also need to vacate the premises. Owners have to leave the property; but, tenants are not obligated to do so.

Source: Toolkit for Tenants Living in Foreclosed Properties

Assistance for Tenants who Landlord (or Those Who Work for Them) Pursues Eviction due to Foreclosure

Below are organizations and contacts that can assist tenants in addressing the attempts by the owner (or those who work for them) who are pursuing eviction due to foreclosure.

General Assistance

[National Law Housing Project](#)

614 Grand Ave
Suite 320
Oakland, CA 95610
Phone: (510) 251 – 9400
Fax: (510) 451 - 2300
nhlp@nhlp.org

[National Low Income Housing Association](#)

727 15th Street NW
6th Floor
Washington, D.C. 20005
Phone: (202) 662-1530
Fax: (202) 393-1973

Real Estate Agents

To file a complaint against a real estate licensee (who often serves as the property or asset manager) contact your [state's](#) Real Estate Commission.

Attorneys

Contact the attorney's [disciplinary agency](#) to find out where to file a complaint against an attorney and to request an Attorney Grievance Form.

Court Sheriffs

If a court sheriff is trying to evict a tenant unlawfully, contact the court sheriff immediately. If necessary, the court sheriff can direct tenants to an appropriate court to resolve the matter.

Utilities

If the utilities are shut off the tenant should contact the landlord. After this first step, the tenant should contact the utility company to have the utilities put in their name. If these attempts are unsuccessful, tenants can contact their states Board of Utilities.

Resources

There are several resources available to assist tenants living in foreclosed properties, including:

[Sample Notice for Tenants to be used by Successors in Interest](#)

[Section 8 Letter for Tenant to Send to New Owner](#)

[Letter from Un-Section 8 tenant to Landlord](#)

[Sample Notice for Section 8 Voucher that a PHA Could Send](#)

[Sample Letter to Send to Judges who Handle Landlord Tenant Cases](#)

[HUD Notice on Tenant Protection Provisions](#)

[Protecting Tenants in Foreclosure Act, Pub. L. No. 111-22, § 702 \(2009\)](#)

Legal Resources

The contents of this toolkit are not a substitution for legal counsel. Do not hesitate to contact a lawyer for legal assistance in your area. Below are a couple of national organizations tenants may also want to contact.

National Law Housing Project

614 Grand Ave
Suite 320
Oakland, CA 95610
Phone: (510) 251 – 9400
Fax: (510) 451 - 2300
nhlp@nhlp.org

National Low Income Housing Association

727 15th Street NW
6th Floor
Washington, D.C. 20005
Phone: (202) 662-1530
Fax: (202) 393-1976

Some tenants reserve the right to sue a landlord in Small Claims Court for failing to honor the term of the lease. If state law permits the ability to sue, below are some of the fees that tenants may be able to recover:

- Moving companies and rental trucks
- Expenses incurred to find a new home
- Loss of security deposit
- Difference between present rent and new rent