

Florida Renter's Guide to Foreclosure¹

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Introduction

Foreclosure is not merely an issue that affects homeowners. In fact, landlords can be subject to foreclosure if they fall behind. The legal process is much the same from a landlord's point of view. Yet in many instances, this person is not facing the loss of shelter. If a landlord should face foreclosure, what happens to the household who is renting the property?

First, foreclosure is defined as the legal process that a lender uses to repossess a house. The lender asks a judge for an order that the house be sold at public auction. This forces all residents to relocate. This entire process usually takes about four to six months. Knowing your rights as a renter is important if you find yourself in a foreclosure situation. Knowing what comes ahead could prevent you from having a financial and/or a housing crisis.

What should I do, now that my landlord is facing foreclosure?

Your landlord's lender, usually a bank, takes possession of the house or sells the home in a public auction. Sometimes this happens even before the foreclosure is finalized. The first thing a bank usually

does is start the process of evicting any tenants and emptying the house so that the house can be turned around and sold as quickly as possible. During this time, the new owners of the property usually do not make repairs or pay the utility bills so that any remaining occupants are "persuaded" to leave.

Until recently, the lease that you signed with your landlord would have ended with the foreclosure. However, the federal Protecting Tenants at Foreclosure Act of 2009 (S. 896) changed the law to protect renters' interests (inclusive of Section 8 tenants) during a foreclosure process. This new law protects renters in one of two ways:

1. Renters with no lease or a month-to-month lease (often referred to as tenancy at will) must be given at least 90 days notice before they are required to vacate the property.
2. If the tenant has a lease lasting longer than a month, the renter is permitted to remain in the home for the duration of the lease. Only after their lease expires can the eviction proceed. There is an exception made for buyers of the foreclosed property who intend to live in the home. For these cases, only 90-days notice must be given before breaking the lease.

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Note: If the state law provides better protection for renters, then the state law overrides the federal Protecting Tenants at Foreclosure Act of 2009.

If you are thinking of moving out early, one option to consider is "cash for keys." With cash for keys, the new property owner pays you to leave the property before the end of your lease. If you leave the rental clean and in good condition, you can receive anywhere from \$250 to \$2,500. This sum usually depends on the value of the house, what items you agree to leave behind, and the new owner.

What should I do about my previous landlord?

You should begin by asking your previous landlord what to expect. You should also ask about the possibility of recovering deposits as early as possible. After the landlord and the tenant sign the lease, they have a legally binding document. The landlord is legally bound to deliver the rental during the lease, which was violated when the property went into foreclosure. Because of this, the tenant can sue this landlord for moving and house-searching costs, application fees, and any differences in rent incurred by having to move. Also, beware of unscrupulous landlords who continue to collect their tenant's rent payments, even after they are no longer the legal owners of the property. If this happens, you may want to explore your options with filing a small claims case in court. Keep in mind that your original property owner is probably hard-pressed for money right now and that awards for cases like these are usually relatively small. However, with a little time and effort, you could eventually get all that is owed to you.

Conclusion

Foreclosure can be an extremely disruptive process, but being prepared with the knowledge of what to expect can help you manage it and minimize any potential hazards. If you have any further questions, visit HUD's Web site pages for renting and foreclosures:

- <http://www.hud.gov/renting/index.cfm>

- <http://www.hud.gov/foreclosure/index.cfm>

References & Resources

Housing and Urban Development (HUD). (Online). <http://www.hud.gov>

KLF. A Florida Tenant's Guide to Foreclosure. (Online). <http://www.klglaw.com/homepage-content/home/a-florida-tenants-guide-to-foreclosure.html>

Martin, K. (19 July 2008) Foreclosure Brings Blues to Renter (Online). *Hernando Today: A Publication of the Tampa Tribune*. <http://www2.hernandotoday.com/content/2008/jul/19/ha-foreclosure-brings-blues-to-renter/>

National Low Income Housing Coalition. (n.d.) Special Topic: Renters in Foreclosure. (Online). <http://www.nlihc.org/template/page.cfm?id=159>

Portman, J. (2009). Renters in Foreclosure: What Are Their Rights? (Online). <http://www.nolo.com/article.cfm/objectId/B8CE60DC-0D00-4E6B-8DC71AF1165C89EA/catID/7E846209-6969-42D1-8B1617C517D8E62E/213/317/ART/>

Protecting Tenants at Foreclosure Act of 2009. Pub. Law No. 111-22, § 702-704 (2009). Government Printing Office (Online). <http://www.gpo.gov/fdsys/pkg/PLAW-111publ22/pdf/PLAW-111publ22.pdf>