

KNOW YOUR RIGHTS

WHAT TENANTS NEED TO KNOW WHEN THE OWNER FACES FORECLOSURE

In New York State, a lender must start a legal action in Supreme Court and get a court order to foreclose against an owner who has not paid the mortgage. The owner is legally allowed to collect rents and make leases until the foreclosure ends in an auction, when the building is either sold to a new owner or retained by the lender.

1. Do tenants get notified if the landlord is facing loss of the property through foreclosure?

Not always. The foreclosing lender is supposed to name all the occupants in the building to let them know of the foreclosure, but often uses only fictional names “John Doe and Jane Doe”.

2. What can tenants do to find out more if they become aware of a foreclosure?

Besides asking the owner, if a tenant thinks that an owner may be in foreclosure, the tenant can find out more information by visiting the clerk’s office in the Supreme Court in the county where the

property is located. The public can also get information from the Office of Court Administration website (<http://www.courts.state.ny.us/admin/oca>) for cases in active status, but not all case information is available. Generally, a foreclosure action takes six months or more from the filing of the case to the auction.

3. What do tenants do about rent payments during the foreclosure action?

Rent payments continue to go to the owner unless the Supreme Court appoints someone to be a Receiver to collect the rent during the foreclosure. If a receiver is appointed, tenants should get a legal notice called a “Notice to Attorn” that will tell them the court has ordered payment to the receiver. Tenants should not turn their rent over to anyone other than the owner unless they have written proof that they are required to do so.

4. What about services and utilities included in rent payments?

The owner is legally responsible to continue to provide heat, hot water and electricity and to make repairs throughout the foreclosure until the auction is held.. Tenants can sue the owner in an HP action in Housing Court to get repairs and essential services. The judge may allow the tenant to name the foreclosing lender as a party also, because of its interest in the property.

5. Do tenants have to move?

Most tenants without leases in effect are asked to move at some point either

during or after a foreclosure action.

■ If you are in a rent regulated apartment (rent controlled or a building with six or more units) you do not have to move either during or after foreclosure. Your tenancy survives the foreclosure and the new owner has to let you stay as a tenant.

■ If the owner is trying to sell the property instead of being foreclosed, the owner may file an eviction proceeding (called a “holdover” proceeding) in the Housing Court. In this situation, the owner must serve the tenant with a 30 day notice to terminate the tenancy, then with a notice of petition and petition to Housing Court. Once in court, the tenant may negotiate a settlement or have the court decide how much time they need to move, up to six months, and whether “use and occupancy” (rent payment equivalent) is required.

■ If the bank wants to evict the tenant as part of the foreclosure, the tenant must be named in the foreclosure and must be served with a request (motion) to the Supreme Court for an Order of Possession (sometimes called a Writ of Assistance). If the Court grants the lender’s motion, the Sheriff can evict the tenant. There may be reasons to oppose the lender’s request (motion), for example, if the tenant had no notice or there is a lease in effect. More often, the lender will wait until the foreclosure action is over and bring an eviction (holdover) proceeding in Housing Court (see below).

6. Tenants have the right to 90 days' notice after a foreclosure auction.

After a foreclosure sale, federal law requires the bank or new owner to give a tenant a written 90 day notice before bringing an eviction proceeding in Housing Court. Tenants with leases still in effect, including Section 8 tenants, can stay for the balance of their leases unless the new owner is going to live in the property. The new law does not affect the rights of rent stabilized tenants, who do not have to move at all.

7. Eviction proceedings following a foreclosure auction.

In a holdover eviction proceeding after a foreclosure, the papers must include the 90 day notice and a certified copy of the new deed must be attached or the case can be dismissed. Tenants may also ask the judge for up to six months to move out.

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ANY LEGAL PAPERS!**

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