

TENANT IN FORECLOSED PROPERTY

“Protecting Tenants At Foreclosure Act”

If you are a tenant living in a foreclosed property, a new Federal law may require that you get at least **90 (ninety) days notice** before being forced to vacate your rental property. The new law applies to real property (homes, apartments, triplexes, residential hotels, etc.). It does not apply to mobile homes or motel rooms or recreational vehicles.

The word **foreclosure** refers to a public sale that transfers the title to real property from an old owner (who defaulted on the mortgage loan) to a new owner. **Foreclosure occurs on the date of sale.** Before the date of the foreclosure sale, it is common to say that a property is “being foreclosed” or “in foreclosure.” Before the date of the foreclosure sale, the mortgage is “in default” but the property has not yet been foreclosed.

You must be a “bona fide” tenant. That is, you must pay rent for the right to exclusive possession of a place to live (your home, your own room, your apartment, your half of a duplex). The rent you pay must be near fair market value, or your rent is subsidized (sec. 8 voucher, project-based housing, etc.). You must not be closely related to the previous owner (the owner whose property was foreclosed).

If you signed a long-term lease, the new owner (who takes title to the property at the foreclosure sale) may have to let you live in the premises until the end of the lease term, even if that is more than 90 days after the foreclosure sale. The new owner need not give any additional notice telling you that the tenancy ends when the lease expires. If the new owner intends to live in the property then the new owner can give you 90 days advance notice to move even if your lease term is longer.

Some of the words used in this new law are ambiguous. How these words are interpreted by a court will determine your rights. For instance, the law says that a new owner may terminate your tenancy on the date of the foreclosure sale if the new owner gave you written notice at least 90 days before the foreclosure sale. The problem here is that the new owner can't be determined until the sale actually occurs. But it may be possible for a bank or other mortgage company to notify a tenant that the tenancy will be terminated upon foreclosure. If the bank is the only bidder at the foreclosure sale, that notice may be valid. If someone else buys the property, the 90 day notice given by the bank is probably not effective. In the case of a long-term lease, the lease must have been “entered into before the notice of foreclosure” in order to give you more than 90 days to stay following the foreclosure sale. But there is no definition of “notice of foreclosure” written into the law.

Nothing in the new law says that the tenant can stop paying rent; the current owner can evict a tenant for non-payment or nuisance or unlawful activity or subletting or for any of the reasons allowed by law.

This new law became effect May 20, 2009 and is automatically repealed on December 31, 2012. Please call us if you are a tenant in danger of being evicted from your rented home due to foreclosure.

Utah Legal Services, Inc.

New clients call M – F from 9 a.m. until 2 p.m.: (801) 328-8891 in the Salt Lake valley or
1-800-662-4245 elsewhere in Utah.