



TENANTS IN FORECLOSED PROPERTIES: WHAT YOU NEED TO KNOW

The National Low Income Housing Coalition estimates that rental properties make up at least 40% of all households affected by foreclosure across the country; in New York the number may be as high as 56%.

Another issue for tenants in foreclosed properties is property maintenance. During the foreclosure process, it can be difficult to determine who is responsible for maintenance of the property.

The current property owner, the tenants, the foreclosing party (usually a bank), and the new owner of a property going through foreclosure all have certain rights and obligations.

BEFORE THE FORECLOSURE ACTION

Pre-Foreclosure Notice

At the start of the foreclosure action, the bank must notify all tenants that the property is the subject of a foreclosure action. Tenants must receive this notice before any post-foreclosure eviction action may be brought in court. The bank must provide its name, address, and telephone number on all notices to tenants.

For buildings with fewer than five rental units, the bank must deliver notice directly to each tenant by certified, first-class mail. For buildings with five or more rental units, the bank may instead post copies of the notice on the outside of each of the building's entrances and exits.

This is an important right. While this doesn't protect you from foreclosure, it does let you know what's going on, and who is involved and enables you to start planning for the future.

Tenants May Be Named in the Foreclosure Action

The bank may name each tenant as a defendant in the foreclosure action. In such cases, the tenant will receive a formal summons and complaint from the county clerk. This filing generally serves as a secondary notice to ensure that all tenants are aware of the foreclosure. Although named as a defendant, the tenant has no legal obligation to appear in court to defend the action.

WHILE THE FORECLOSURE ACTION IS PENDING

Continue to pay your rent. Before ownership is transferred to a new owner tenants remain subject to the requirements of their lease agreements, including payment of rent to the landlord. In some cases, a receiver may be appointed to manage rental payments while the action is pending. If a receiver is appointed, tenants should receive proof of appointment and information on how to submit rental payments to the receiver instead of to the landlord.

During the pending action, the landlord is required to maintain the property as they would in the absence of any foreclosure action.

AFTER A SUCCESSFUL FORECLOSURE ACTION

The foreclosing party must notify all affected tenants of the outcome of the foreclosure judgment. There is typically a lapse between the final foreclosure judgment – which revokes ownership from the landlord – and the foreclosure sale, which completes the sale and transfer of title to a new owner. During this time, the bank has a duty to maintain the property.

AFTER A SALE AND TITLE TRANSFER

After the foreclosure sale is complete and title is transferred to a new owner, the new owner must provide written notice to all tenants providing the new owner's name and address, and advising tenants of the following rights:

Tenants in Rent-Controlled & Rent Stabilized Units: Regardless of the outcome of a foreclosure, tenants in rent-controlled and rent-stabilized units maintain the same rights and obligations as they did under agreements with their previous landlords. The only change is the party to whom they submit their rental payments. The new owner must continue to comply with all laws and regulations that apply to units subject to rent control and rent stabilization.

The only exception to the above is that a new owner can evict a tenant, in only one unit, if the owner intends to occupy that unit as his/her primary residence. In that case, the new owner must provide notice to vacate at least 90 days prior to the effective date of eviction.

Tenants in Section 8 Housing: The rights of tenants in Section 8 housing are almost the same as for rent-controlled and rent stabilized tenants, except that the standard for eviction is "for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause." Change of ownership due to foreclosure is not in itself good cause for eviction so in the absence of other compelling circumstances Section 8 tenants may not be evicted by the new owner. The same exception noted above regarding owner's use as primary residence applies to Section 8 tenants.

Tenants in Non-Regulated Units: Tenants residing in units that are not subject to rent control or rent stabilization may retain occupancy either until the end of their lease term or for 90 days after receipt of the notice from the new owner, whichever is greater.

Tenants in non-regulated units who wish to remain in their apartment should communicate so directly with the new owner, however, the new owner is under no obligation to extend tenant occupancy beyond the expiration of the original lease agreement or beyond 90 days in the absence of a written agreement.

Tenants that do not have a written lease may remain in the unit for 90 days, paying the same rent they had under the previous ownership.

If you are a tenant and feel you are being wrongly evicted you should consult an attorney. If you do not have an attorney, call the [New York State Bar Association's Lawyer Referral Program](#) at (800) 342-3661 to find one. If you do not think you can afford a lawyer, you may qualify for free legal assistance. For more information, you can call the Legal Aid office in your area, visit Law Help at www.lawhelp.org or call our Foreclosure Relief Hot Line at (800) 269-0990 for assistance in locating free legal services in your area.