

What You Should Know About Tenants and Foreclosures

When your landlord falls behind on the mortgage payment, the bank can take the property and sell it. This process is called foreclosure. If you are renting a unit that is in foreclosure, you should know the following.

What notices am I entitled to?

Notice of Sale (Pre-Foreclosure)

Your landlord does not have to tell you the home you are renting is in foreclosure. However, before the home is sold, the following "Notice of Sale" must be posted on the property and a copy in English (and Spanish, Chinese, Tagalog, Vietnamese or Korean, if the oral or written rental agreement or lease was negotiated primarily in that language) mailed to you in an envelope addressed to "Resident of property subject to foreclosure sale":

"Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. ***However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction.*** You may wish to contact a lawyer or your legal aid or housing counseling agency to discuss any rights you may have." California Civil Code section 2924.8. ***Emphasis added.*** (Operative 9/6/2008-12/31/2012)

Notice of Eviction (Post-Foreclosure)

If you are the tenant or subtenant and the new owner wants you to move, they must give you at least 60-days written notice. CA Code of Civil Procedure section 1161b. From May, 20, 2009 to December 31, 2014, 90-days written notice is required. The Protecting Tenants at Foreclosure Act, Public Law 111-22, Section 701-703, enacted May 20, 2009, and amended by Public Law 111-203. If you have a fixed-term lease that ***predates the filing of the Notice of Foreclosure and*** extends past the 90-day term, your tenancy will continue until the expiration of the lease. *Ibid.* If you have lived in the property for over two (2) years the notice must also state good cause for your eviction. San Diego Municipal Code, Chap. 9, Art.8, Div, 7, sections 98.0701-98.0760. See <http://docs.sandiego.gov/municode/MuniCodeChapter09/Ch09Art08Division07.pdf>.

Notice may be served in one of three ways: by handing it to you, handing it to another responsible person and mailing you a copy, or posting it on your door and mailing you a copy. If you do not move within 60 or 90 days, the new owner must file an unlawful detainer action to legally evict you.

Can the old or new landlord force me to move?

It is illegal for your landlord to force you to move by cutting off your utilities, removing your belongings or changing the locks. If this happens, call the San Diego Police Department's non-emergency number at (619) 531-2000, and ask for assistance "keeping the peace".

Can my utilities be shut off by the utility company?

If the landlord has fallen behind on paying the mortgage, (s)he may also have failed to pay the utilities. If you share your utility (gas, electricity or water) meter and the utility is in your landlord's name, before the utility company can shut it off for nonpayment, the utility company must give you written notice and allow you to transfer the utilities into your name, provided that you meet the requirements to do so. Public Utilities Code sections 777(a), 777.1(a), 10009(a), and 10009.1(a). Ten (10) days notice is required if your unit has its own meter. Public Utilities Code sections 777(a) and 10009(a). Fifteen (15) days notice is required if you share your meter with another unit. Public Utilities Code sections 777.1(a) and 10009.1(a). The utility company may not condition the transfer on your payment of any part of the past amount due.

If the City certifies that shutting off a utility will create a health problem, then the provider may not shut it off, whether or not you qualify to put the utility in your name. Public Utilities Code sections 777.1(e)(5) and 10009.1(e)(5). To request an inspection by the City of San Diego's Neighborhood Code Compliance Department call (619) 236-5500 or .

Who do I owe rent to?

Until the home is sold, you owe your rent to your landlord, unless you have the right to withhold rent because of serious health and safety defects which your landlord has failed to repair or because you exercised your legal right to "repair and deduct". After the home is sold, you do not owe anymore rent to your landlord. If you have a fixed-term lease that predates the filing of the Notice of Foreclosure and extends past the 90 day notice, you must pay rent to the new owner. Before paying rent to anyone other than your landlord, request a recorded copy of the Trustee's Deed so that you can confirm that the person demanding rent is the new owner. Set your rent aside so that you can be ready to pay it to the new owner, once his or her identity has been confirmed. If the new owner agrees to continue to rent the unit to you and accepts rent from you, (s)he must give you a copy of any written agreement or lease and a written statement about where and how to make your rent payments and give notice to the new owner, within 15 days of the agreement. Civil Code section 1962. **Section 8** - Special rules apply if you receive Section 8. Contact your housing specialist to advise them of the foreclosure and discuss your contract.

Watch out for scams!

During the foreclosure process or after the sale, someone other than the owner may try to collect rent from you. After you receive the "Notice of Sale" do not pay rent to anyone, including your old landlord unless they can prove they are the current owner of the property. The Trustee's Deed will identify the new owner. Within a few days of the sale, you can see or get a copy of this document by visiting the San Diego County Assessor/Recorder's office at 1600 Pacific Highway, Room 103, San Diego, CA 92101.

What will happen to my security deposit?

Your landlord must return your security deposit to you or give you notice that it has been transferred to the new owner, and itemize and document all deductions. Civil Code section 1950.5(h). If this is not done, both the old and new owner are liable to you for your deposit. Civil Code section 1950.5(j).

What does "cash for keys" mean?

In most cases, the new owner is the bank or lender that foreclosed on the property. They may offer you money to move out sooner than the minimum 60 or 90 days. This is referred to as "cash for keys." Before agreeing to an offer, investigate what your moving costs and new rent will be, make sure the person has authority to make the offer, puts it in writing, dates and signs it, and provides you with a copy.

If you need legal assistance

If you live in the City of San Diego, or are undocumented, contact:

Affordable Housing Advocates, Tenants' Rights Project
4305 University Avenue, Suite 110, San Diego, CA 92105
(619) 233-8441, ext. 15

www.affordablehousingadvocates.org

If not, contact: Legal Aid Society of San Diego, 1-866-LEGAL AID (534-2524), www.lasds.org

If you do not qualify for free legal assistance, you may contact:

Tenants Legal Center of San Diego, (858) 571-7100, www.tenantslegalcenter.com
San Diego County Bar Association, LRIS, (800) 464-1529 or (619) 233-8585, www.sdcb.org

Affordable Housing Advocates-Tenants Rights' Project-2011

www.affordablehousingadvocates.org