

# Renters Education and Advocacy Legal Lines (REAL)

The House I am Renting is Being Foreclosed



Legal Services of Greater Miami, Inc.  
[www.lsgmi.org](http://www.lsgmi.org)  
[www.real-lsgmi.com](http://www.real-lsgmi.com)

### **What Is A Foreclosure?**

- If your landlord does not pay his mortgage, the mortgage company may file a foreclosure.
- A foreclosure is a lawsuit filed by the mortgage company when the landlord does not pay the mortgage. In the foreclosure, the mortgage company asks the court to sell the property to pay off the mortgage.

### **I Am Only A Tenant - Why Am I Being Served?**

- If a foreclosure is filed against your landlord, as a tenant living in the property, you will usually be served with the foreclosure lawsuit. Being served means either the Sheriff or a process server will hand you a copy of the lawsuit.
- As a tenant, you are a party to the foreclosure lawsuit, but the foreclosure complaint will refer to you as the "unknown tenant" or "John/Jane Doe."

### **What Should I Do If I Am Served With Notice of A Foreclosure Against My Landlord?**

- Even though you do not own the property, you should file an Answer to the foreclosure. For more information about how to do this, see LSGMI's "How to File an Answer to a Lawsuit" brochure. In the Answer explain that:
  - \* You live in the property
  - \* You rent the property.
  - \* If you have a lease, say this in your Answer
  - \* State the date your lease expires
  - \* Attach a copy of the lease to the Answer
- If you file an Answer, it will tell the judge and the mortgage company that a tenant is living in the property.
- You will also be notified if any hearings are scheduled in the case. If you do not file an Answer, you may not receive any notices about the foreclosure lawsuit, and you will not know what is happening in the case.
- If the landlord did not pay the mortgage and you want to move out, you can send a letter to the landlord explaining that you are ending your rental agreement in 7 days because she did not pay the mortgage.
- You may also have other claims against the landlord, but you should consult an attorney before you take any legal action.

### **Do I Have Any Special Rights If I Once Owned the Property where I am Living?**

- If you are living in a home that you used to own **and** you have the option to repurchase the property, it is important that you write this in the Answer.
- You should also talk to your own attorney because the law in this situation is complicated.

### **What Should I Do If My Landlord Tells Me She Plans to Stop The Foreclosure?**

- If you receive a foreclosure complaint, you should contact your landlord to find out what she intends to do about the foreclosure.
- Sometimes, after a foreclosure is filed, the owner pays the mortgage company enough money to stop the foreclosure or files bankruptcy. If the landlord does this, the foreclosure should stop or be dismissed.
- Even if your landlord tells you she will stop the foreclosure, you should still file an Answer in the foreclosure lawsuit.

### **What Should I Do If My Landlord Tells Me She Cannot Stop the Foreclosure?**

- If your landlord tells you that they are not going to be able to stop the foreclosure, or if you cannot find your landlord, you should file an Answer in the foreclosure and begin looking for a new place to live.
- Legally, you must continue to pay rent to your landlord during the foreclosure process.
- If your landlord is not accepting your rent, you should save your rent in case an eviction case is filed against you.

### **What Happens if the Mortgage is Foreclosed?**

- If your landlord does not stop the foreclosure, the Court will enter a final judgment of foreclosure against the landlord.
- The Court will schedule a foreclosure sale. Once the property is sold at the foreclosure sale, there will be a new owner.

### **Can the New Owner Force Me To Move?**

- On May 20, 2009, President Obama signed the Protecting Tenants in Foreclosure Act. This changed the law regarding tenants in foreclosure. As with any new law, there are some questions about what the new law means. This brochure is based on our reading of the new law and could change once judges rule on the new law.
- If your lease has expired or you don't have a lease, the new owner must give you 90 days written Notice to Vacate.
- If you have a lease, the new owner must allow you to stay until the end of the lease before you can be evicted. Even if you have a lease, the landlord can make you move sooner if the landlord wants to live in the property. But, he must still give you a 90 day Notice to Vacate.
- If the Notice to Vacate expires and you have not moved out, we believe the new owner must file an eviction to have you removed, just as any other landlord would do.
- Even though we interpret the new law to require the owner to file a separate eviction action, there are no decisions on this yet. Therefore, the new owner may ask the foreclosure judge for a Writ of Possession without filing an eviction. The Writ of Possession is an order telling the Sheriff to remove you and your belongings from the property.
- If you are still living in the property and the new owner schedules a hearing asking for a Writ of Possession, it is very important that you attend the hearing so you can tell the Judge that you are a tenant living in the property and the new owner must file an eviction case.

### **After the Property is Sold to A New Owner, Must I Pay Rent to the Old Landlord**

- After the property is sold at the foreclosure sale, you do not need to pay rent to the old landlord.
- After the foreclosure, under the Protecting Tenants in Foreclosure Act, the new owner steps into the role of the old owner, so you will have to pay rent to the new owner. It is very important that you ask for proof of ownership.
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### **What Should I Do If the New Owner Asks Me If I Want To Stay?**

- Sometimes, the new owner will ask you if you want to keep living in the property. If you cannot reach an agreement, the new owner cannot force you out by changing the locks or turning off the utilities. Call the police if the new owner tries to force you out this way! Also, see our brochure titled 'What to Do if Your Landlord Locks You Out or Turns Off Your Utilities.'
- You should ask for proof that he is the new owner before you pay him any rent. This proof could be your previous landlord writing a letter to inform you of the new owner, you could check the Property Records at the County Clerk's Office, or if you have serious doubts, you could call the police for advice.

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