

What to Do When Your Landlord is in Foreclosure



LEGAL  **SERVICES**
OF GREATER MIAMI, INC.

Tenants' Rights Unit

WHAT IS A FORECLOSURE?

If your landlord does not pay the mortgage (a loan used to buy property), the lender can file a foreclosure. A foreclosure is a lawsuit filed by a lender when a borrower does not pay the mortgage. In the foreclosure, the lender asks the Court to sell the property to pay off the loan.

WHAT DOES IT MEAN TO BE SERVED?

When the Sheriff or process server gives you the foreclosure papers, you have been served. These papers will include a summons telling you file a response with the court. You were served because you are renting and living in the property. Renting the property as a tenant can make you a party to the lawsuit. The lawsuit may refer to you as “John Doe Tenant” or a similar name.

WHAT DO I DO NOW?

If you are a tenant, you should file a “Notice of Tenancy” with the Court. Use the form included in this brochure. Go to the courthouse and turn in your Notice of Tenancy to the Clerk. Make sure you keep a copy for your records and mail a copy to the attorney for the bank.

WHY DO I NEED TO FILE?

By filing your Notice of Tenancy, the Court and all other parties will know you are living at the property and you should receive copies of all important papers and orders from the case. This way, you will not have to rely on your landlord to know what is going on in the case.

WHAT IF MY LANDLORD TELLS ME ‘NOT TO WORRY ABOUT IT’?

Even if your landlord tells you that they are “working it out with the bank,” you should file your Notice of Tenancy. Make sure that you regularly check with the court to know the status of the case.

In Miami-Dade County, you can check the status of any court case online at: <https://www2.miami-dadeclerk.com/ocs/search.aspx>

What to look for in the online information:

- “Final Judgment.” This means your landlord has lost the case, and a sale will take place soon. A sale date is usually listed in the Final Judgment or on the docket.
- “Sale Date.” The day that the Clerk will sell the property will sell. Sometimes it changes, so check often.
- “Certificate of Title.” This means the sale is final. Your landlord is no longer the owner. It will tell you the name of the new owner.

HOW LONG DOES THE FORECLOSURE LAST?

The foreclosure process can last anywhere from 6 months to 2 years or more. Until the property is sold, your landlord is still the owner. Unless the court orders otherwise, your landlord can collect rent until the property is sold. After the property is sold by the court, the court will issue a “Certificate of Title” giving the property to the buyer.

DO I HAVE TO PAY RENT?

BEFORE the property is sold, your landlord is still the owner. You must pay rent, or the landlord can evict you. AFTER the house is sold at the foreclosure sale, do not pay your old landlord. You should save your rent money to pay the new owner if you want to stay. Make sure you ask for proof of ownership before you pay the new owner. Always get receipts for your rent payments.

WHAT IS THE “PROTECTING TENANTS AT FORECLOSURE ACT (PTFA)?”

The Protecting Tenants at Foreclosure Act (PTFA) enables renters whose homes are in foreclosure to remain in their homes for at least 90 days or for the term of their lease, whichever is greater. After expiring at the end of 2014, Congress permanently reinstated the PTFA beginning June 24, 2018.

WHAT TYPES OF HOUSING DOES PTFA APPLY TO?

PTFA applies to foreclosures on all residential properties including rented single family homes and large multi-family apartment complexes. Tenants are protected as long as they are living in the unit when the court issues the certificate of title.

WHAT IF THE NEW OWNER WANTS ME TO LEAVE?

If you have a written lease...that you entered into before the court issues the “Certificate of Title” to the new owner, you can live at the property through the end of the lease. The only exception is if the new owner wants to live in the property. Then, you must receive a written “Notice to Vacate” giving you 90 days to move out.

If you do not have a lease...the new owner must give you a written 90 day “Notice to Vacate.”

These protections do **not** apply:

- If you are the child, spouse, or parent of the landlord.
- If your rent is substantially less than the fair market rent. But, the protections still apply if you are using a Section 8 voucher to rent the unit.
- If your lease was not an “arms-length” transaction. This would typically be a situation where you know the landlord and he gave you a special deal to rent the unit.

WHAT IF THE NEW OWNER WANTS ME TO STAY?

Sometimes, the new owner will ask you to stay at the property. Make sure that he or she is the new owner before paying any rent or signing a new lease. You can check with the Clerk’s office to see if the foreclosure sale took place, or you can ask the new landlord for proof that the property sold. Ask to see the Certificate of Title. You are not required to sign a new lease with the new owner. Only sign a new lease if you agree with the terms.

WHAT IS A 90 DAY NOTICE TO VACATE?

Florida also passed a law (Fla. Stat. § 83.561) in 2015 that protects tenants in foreclosure, this law only gives tenants 30 days to remain in a home during the foreclosure period. The new landlord must give you a notice which includes this or similar language:

You are hereby notified that your rental agreement is terminated on the date of delivery of this notice, that your occupancy is terminated 90 days following the date of the delivery of this notice, and that I demand possession of the premises on ...(date).... If you do not vacate the premises by that date, I will ask the court for an order allowing me to remove you and your belongings from the premises. You are obligated to pay rent during the 90-day period for any amount that might accrue during that period. Your rent must be delivered to ...(landlord's name and address)....

You must pay rent to the new owner during this time. Make sure you keep receipts. The new owner is not allowed to change the locks or to remove your belongings from the property without first getting an order from the court to do so.

WHAT IF I DON'T LEAVE?

If you do not leave after the 90 days or you do not pay rent after receiving the notice from the new owner, the new owner may file a "Motion for Writ of Possession." In it, the new owner asks the judge to issue a Writ of Possession, or "24 hour notice," telling the Sheriff to remove anyone living in the property. In Miami-Dade County, the court rules require a hearing on the new owner's request to remove a tenant. If you receive notice of a hearing on the "Motion for Writ of Possession," go to the hearing. At the hearing, you should explain to the Court that you are a tenant and ask for more time to move if you need it. Take rent receipts. If you did not get a 90 day notice like the one listed above, tell the judge. If you entered into a new rental agreement with the new owner, tell the judge.

If you receive a "Writ of Possession," and you did not get a hearing, you should file an "Emergency Motion to Stay the Writ of Possession and Request for Hearing" (the "Emergency Motion"). File the Emergency Motion with the Clerk of Courts at the Dade County Courthouse, 73 West Flagler Street, Miami, FL 33130. Also, take a copy of the Emergency Motion to the judge's office. If you do not know who the judge is in your case, ask the clerk when you file the motion.

Important: While your Emergency Motion is pending, the Sheriff can return at any time to execute the Writ of Possession and to remove you, your family, and your belongings from the unit.

"CASH FOR KEYS"

Sometimes the new owner or the bank will offer you "cash for keys" to leave the property. They will offer you money to move out. If you decide to do this, make sure the agreement is in writing. Get a copy of anything you sign. Read the agreement before you sign it and make sure you understand and agree to everything in it.

RECEIVERS

Sometimes, usually in larger apartment buildings, the mortgage company may ask the judge to appoint a receiver. A “receiver” acts as the landlord and collects rent from tenants when a landlord is not paying the mortgage. If a receiver has been appointed, you must pay your rent directly to the receiver. Make sure you verify that there is an order from the court before you pay your rent to the receiver. In many foreclosure cases, a receiver is NOT appointed.

DO I HAVE ANY OTHER RIGHTS?

You might have other claims against the landlord, especially if you are forced to move before the end of your lease. You should consult an attorney before taking any legal action.

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY**

CIVIL DIVISION
CASE NO.: _____

Plaintiff(s),

vs.

Defendant(s).

_____ /

NOTICE OF TENANCY

1. I am a tenant renting the property located at this address:

2. My rent is \$_____ per month and my lease expires on: _____ (date).

3. The following statements are true: (select all that apply)

I am not the child, spouse, or parent of my former landlord who lost the property in the foreclosure;

I do not pay substantially less than fair market rent

I have a Section 8 voucher or some other government subsidy to help pay the rent.

My agreement to rent this property from the former landlord was an "arm's length transaction."

CERTIFICATE OF SERVICE

I CERTIFY that I sent a copy of this Notice on _____ (date) to the attorney for the plaintiff, via First Class U.S. Mail to the following address: _____

_____.

Tenant's Name: _____

Address: _____

Telephone: _____

E-mail: _____

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY**

CIVIL DIVISION
CASE NO.: _____

Plaintiff(s),

vs.

Defendant(s).

_____ /

**EMERGENCY MOTION TO STAY WRIT OF POSSESSION
AND REQUEST FOR HEARING**

I am filing this Emergency Motion to Stay Writ of Possession and Request for Hearing, and in support state:

1. I am a tenant renting the property, which is the subject of this foreclosure, located at: _____
_____.
2. I started living here as a tenant on or about _____.

The following statements are true: (select all that apply)

- I am not the child, spouse, or parent of my former landlord who lost the property in the foreclosure;
- I do not pay substantially less than fair market rent
- I have a Section 8 voucher or some other government subsidy to help pay the rent.
- My agreement to rent this property from the former landlord was an "arm's length transaction."

3. I am asking that the Court stay the Writ of Possession and set a hearing on this matter because (check all that apply):

- I never received a copy of the foreclosure papers except for the Writ of Possession.
- I never received a 90-Day Notice from the new owner.

The 90-Day Notice required by Fla. Stat. § 83.561 does not include the language required by the statute.

The new owner agreed to continue renting the property to me.

Other: _____

4. These are the details of my situation: _____

WHEREFORE, I respectfully request that this Court stay the Writ of Possession and grant a hearing on this matter.

CERTIFICATE OF SERVICE

I CERTIFY that I sent a copy of this Notice on _____ (date) to the attorney for the plaintiff, via First Class U.S. Mail to the following address: _____

_____.

Tenant's Name: _____

Address: _____

Telephone: _____

E-mail: _____



For Office Hours and Locations Contact Us

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