

## **IS YOUR LANDLORD IN FORECLOSURE?**

### **Important Information for Tenants**

#### **1. What is foreclosure, and how does it affect tenants?**

Foreclosure is the legal process a lender, such as a bank, uses to repossess a home when the owner does not make payments. If you are a tenant, you probably make monthly rent payments to your landlord, and in turn, your landlord makes mortgage payments to the lender. If your landlord stops making those mortgage payments, the lender may foreclose on your landlord.

#### **2. What happens if I am renting a house or apartment that is in foreclosure?**

In Ohio, foreclosure is a legal process. The lender first must file a foreclosure complaint (lawsuit) in order to legally take a house or apartment away from the landlord (the owner). Filing the foreclosure complaint is only the beginning of the legal process. Your landlord still owns the home or apartment until a court grants a foreclosure judgment and approves the sale of the property through a sheriff's sale.

#### **3. How will I know if a foreclosure has been filed against my landlord?**

Although there is no guarantee, the lender (the plaintiff in the case) should name you as the tenant in the foreclosure complaint. They may refer to you as "Jane or John Doe, unknown tenant or occupant at [your address]," but legally this may not be considered adequate notice to you, and they may need to provide additional notification. If you do get mail addressed this way, be sure to keep it. This information may be helpful if you have questions later, if you want to find out about the progress of the case, or if you need legal advice. You may also receive a copy of the foreclosure judgment, but this is highly unlikely.

#### **4. Can I find out what is happening in the foreclosure case?**

**YES.** Check with your local Clerk of Courts for the County Court of Common Pleas to find out the status of the case. Each of Ohio's 88 counties has a Clerk of Courts, and many Clerks now have case information online. To get information about the Clerk of Courts in your county, go to <http://www.occaohio.com/countylist.aspx?qname=All>. When you contact the Clerk of Courts, keep in mind that a foreclosure is a civil lawsuit and you may need to provide your landlord's name to get information about the case.

#### **5. Can I stop paying rent if a foreclosure lawsuit is filed against my landlord?**

**NO.** Your landlord still owns the property until there is a judgment and sale (see #2). If you stop paying your rent, your landlord could file an eviction action in court for nonpayment of rent. Of course, every situation is different. You may have other practical reasons for deciding to stop paying rent or to move. Ultimately, you may be in the best position to decide whether you should stop paying rent and whether your landlord will take legal action against you.

**6. Can I break my lease if a foreclosure lawsuit is filed against my landlord?**

In most situations the answer is **NO**, unless your lease agreement says otherwise. A foreclosure filing itself does not allow you to break your lease. If you unlawfully break your lease, your landlord could sue you for money damages. If you decide you want to move, you may want to negotiate with your landlord to terminate your lease early. If you reach an agreement, make sure to get the agreement in writing and have it signed by your landlord, yourself and anyone else on the lease.

**7. Is my landlord still required to perform his/her obligations while the property goes through the foreclosure process?**

**YES.** Until the court approves the sale, your landlord must still fulfill all of his/her obligations under the lease and law, just like you must continue to pay rent. For example, your landlord still must make repairs and pay any utilities he/she agreed to pay. The foreclosure filing itself is not an excuse for the landlord to stop performing his/her obligations. If you are having difficulty getting your landlord to fulfill his/her obligations, you may want to seek legal advice by contacting your local legal aid program. To find the legal aid office that serves your county, go to <http://www.ohiolegalservices.org/programs> or call 1-866-LAW-OHIO (1-866-529-6446).

**8. Once the court issues a foreclosure judgment and approves the sale of the property, can my landlord still collect rent from me?**

**NO.** At this point, while you should continue to set aside money for rent, your landlord no longer owns the property and is not entitled to collect rent. As stated above (#3 and #4), you probably won't be notified when this occurs, so check the progress of the case with your local county clerk. Do not take your landlord's word that everything is fine and there is nothing to worry about. Ask the county clerk whether a "Confirmation of Sale" has been filed with the court. The "Confirmation of Sale" is a key document that cuts off all the owner/landlord's rights. If a "Confirmation of Sale" has been filed, continue to set aside rent payment so you can pay the new owner (#11 and #12).

**9. Will I be able to stay in my home or apartment once the foreclosure process is completed?**

**YES,** for at least 90 days. Under a federal law called the Protecting Tenants at Foreclosure Act (PTFA), the new owner of the property generally must keep you as a tenant. Usually, the new owner is the lender (the plaintiff) who buys the property back from the landlord at the sheriff's sale. In effect, the lending company becomes your new landlord (see #14 for additional information).

**10. Who is covered under the Protecting Tenants at Foreclosure Act?**

The PTFA applies to tenants who live in properties that are in foreclosure and transferred to the new owner on or after **May 20, 2009**, the date the law went into effect. Anyone who became a new owner of a property on or after May 20, 2009 as the result of a foreclosure must abide by the law.

**11. Does the new owner (whoever purchased the property at the sheriff's sale) become my new landlord?**

**YES.** The new owner "steps into the shoes" of your old landlord, because the lease survives the foreclosure sale.

### 12. Does this mean I must pay rent to the new owner?

**YES.** The new owner should direct you where to make your rental payment. The payment amount should remain the same.

### 13. Is the new owner also responsible for making repairs?

**YES.** If it is a repair that Ohio law would have required the old owner to make, the new owner is also responsible.

### 14. Can the new owner force me to move out?

It depends. In **all** cases, you should be given at least 90 days' notice before the new owner can make you leave. If the new owner takes over as landlord and you are a "bona fide tenant" (#15) with a "bona fide lease" (#16), then you have the right to stay in your home until the end of your current lease. On the other hand, if the new owner intends to live in the property or later sells the property to someone who wants to live in the property, you must be given at least 90 days advance notice to move out. If you fail to leave voluntarily after proper service of a valid 90-day notice, the new owner can file an eviction action to make you leave.

### 15. What is a "bona fide tenant?"

Under the PTFA, you are **NOT** a bona fide tenant if you are a present homeowner (mortgagor) or the parent, spouse or child of a present homeowner (mortgagor).

### 16. What is a "bona fide lease?"

According to the PTFA, a lease is "bona fide" if it meets the following three requirements:

- a) **The lease or tenancy is an arms-length transaction.** This generally means that the lease was negotiated by unrelated parties looking out for their own interests. For instance, tenants who get a special discount or special terms because they are related to or are friends with the landlord may **not** have a "bona fide" lease.)
- b) **The rent is not substantially lower than fair market rent**, unless rent is reduced due to a local or federal subsidy; **AND**
- c) **The lease was signed before the property title was transferred to the new owner** (i.e., the lease was signed before the new owner purchased the property at the foreclosure sale.)

### 17. Can the court evict me through the foreclosure action?

**NO.** If you are a "bona fide tenant" (#15) with a "bona fide lease agreement" (#16) and the property was transferred to the new owner on or after **May 20, 2009**, then the new owner must provide you with a 90-day notice of eviction. If you fail to move at the end of the 90 days, the new owner must do two things: 1) serve you with a Notice to Leave Premises (a three-day notice) pursuant to Ohio Revised Code §1923.04 and 2) file an eviction action to get a judgment from the court granting the eviction. Under the PTFA, you also may have the right to stay through the end of your lease (#14).

**18. Where can I get more information or legal assistance?**

Your local legal aid program should be able to provide you with more specific information based on your location and the particular facts of your case. In some instances, the program may be able to provide direct legal representation. To find and contact the legal aid program in your area, go to <http://www.ohiolegalservices.org/programs> or call 1-866-LAW-OHIO (1-866-529-6446).

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