

TENANTS IN FORECLOSED PROPERTIES

Complying with Tenant Protections in Connecticut “Best Practices” for Owners Taking Title after Foreclosure, Mortgage Loan Servicers and their Property Management Agents

This document provides a basic summary of the laws regarding tenants' rights in Connecticut after a foreclosure, as well as recommendations for how owners, mortgage loan servicers, and REO property managers should interact with tenants after a foreclosure.

Above all, foreclosing parties and their agents should strive to allow tenants the opportunity to stay in their homes after a foreclosure. In fact, the federal Protecting Tenants at Foreclosure Act of 2009 requires that existing leases be assumed by successor owners of foreclosed properties. In many cases, the best policy is to diligently work with tenants to offer new or extended leases to avoid needlessly displacing people from their homes and to protect the value of the property.

Summary of Protections for Tenants After Foreclosure

The following laws, statutes, and ordinances are mandatory requirements that foreclosing parties (and their agents, including real estate agents) must observe when interacting with tenants living in foreclosed properties:

1. The Protecting Tenants at Foreclosure Act of 2009, (“PTFA”), Public Law 111-22, (May 20, 2009), as clarified by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (July 21, 2010)

The PTFA is a federal law first enacted in May 2009. It requires that all bona fide tenants in occupancy at the time of transfer of title due to foreclosure may not be required to vacate for at least 90 days after title passes or until the end of their lease, whichever is later. Tenants must receive notice of the foreclosure and their rights to stay before any post-foreclosure eviction may be brought in court. In practice, it has been the attorney representing the post-foreclosure owner of the property who sends this PTFA notice to tenants.

Those who are not bona fide are the mortgagor and his/her child, parent, or spouse; tenants with leases that were not the result of arms-length transactions; and tenants who pay substantially below market rent (other than subsidized rents). In general, owners and agents must treat all occupants other than the mortgagor and the mortgagor's child, parent, or spouse as protected by PTFA, unless there is information that suggests otherwise.

Under the PTFA, a tenant may continue living under a bona fide lease entered into before title to the property is transferred, including leases entered into while the foreclosure action is pending. Thus, any bona fide lease entered into before the date when title automatically transfers to the plaintiff in a strict foreclosure case, or the date when a sale is approved by the court in a foreclosure-by-sale, will be protected under the PTFA.

The PTFA also makes the owner of a foreclosed property subject to the terms of any existing Section 8 lease and the Housing Assistance Payments (“HAP”) Contract between the prior owner and the public housing authority. If a tenant in a foreclosed property is a Section 8 tenant, then the new owner must assume the HAP Contract.

2. The Connecticut Identification of Landlord Law Conn. Gen. Stat. §47a-6

At the time of a change in ownership, the tenant must be given written notice of the name and address of the property manager, i.e. the person in charge of making repairs.

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Summary of Protections for Tenants After Foreclosure (Continued from p. 1)

3. Municipal ordinances requiring registration of rental property Conn. Gen. Stat. §47a-6a, et seq.

Some municipalities in Connecticut have ordinances that require nonresident owners of rental property to maintain the current address of the owner or agent in charge of the property with the municipality. State law also allows municipalities to enact civil fines for failing to comply with these ordinances: up to \$250 for the first offense and up to \$1000 for any subsequent violation. Owners should check with the municipality where the property is located to determine whether such an ordinance exists and how to comply with it.

4. Statutory Maintenance and Repair Requirements, including assumption of utilities in some cases Conn. Gen. Stat. §47a-1, et seq.

Any new owner, including a bank that takes title by foreclosure, is responsible for complying with all the duties of landlords under the landlord-tenant law because those requirements apply to every "owner." Even though a tenant's lease may have expired, the tenant remains entitled to the protection of all state and local laws that protect tenants regardless of whether or not the tenant has a continuing lease. Agents managing foreclosed property have the same maintenance responsibility to occupants as do agents managing the property of any other owner. They are also equally responsible to state and municipal agencies that enforce housing, health, building, and similar codes and statutes. Also, owners must assume liability for utilities if the prior owner paid utilities under a prior rental agreement or when the utilities are not individually-metered for the tenant's exclusive use.

5. The Connecticut Cash for Keys Law Conn. Gen. Stat. §47a-20f, as amended by Section 3 of Public Act 10-181 (June 2010)

Offering money to tenants to persuade them to move after a foreclosure (i.e. "cash for keys") is not required by state law. But if such an offer is made, it must meet the minimum dollar amounts of Conn. Gen. Stat. §47a-20f. Any cash for keys offer must be at least the GREATEST of:

- Double the total of the security deposit and unpaid interest (this total amount incorporates the return of the security deposit and interest that would have to be returned upon vacating.);
- Two months' rent; or
- \$2,000.

Lower offers to induce early vacating are illegal under this law.

6. The Connecticut Security Deposit Act Conn. Gen. Stat. §47a-21(e)

The entity that owns the property at the time a tenant moves out (usually the bank after a foreclosure) is liable for the return of the security deposit to the tenant, even if the security deposit that had been paid to a previous owner was never transferred to the new owner. It is untrue, and therefore may be an unfair trade practice, for an owner or estate agent to tell the tenant that the tenant must reclaim the security deposit from the former landlord. The Security Deposit Act also contains a number of provisions that, among other things, specify when a security deposit must be returned, the amount of interest to be paid on security deposits, the requirements for escrow of a security deposit, and what penalties exist for violating the Act.

7. The Connecticut Just Cause Eviction Law Conn. Gen. Stat. §47a-23c

Under state law, occupants of buildings with five or more dwelling units who are at least 62 years old or are physically disabled are protected against foreclosure of the building and cannot be required to move without "cause". Change of ownership, including a change resulting from foreclosure, does not constitute cause. Owners and agents may not issue notices to such protected tenants demanding that they vacate because of the foreclosure.

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BEST PRACTICES

The following is a list of suggested practices for owners, mortgage servicers, and other agents and entities that manage a foreclosed property with tenants. These practices may not be specifically required by law, but following them will likely protect owners and agents from actual violations of tenants' legal protections. Above all, using common sense, treating tenants like valued customers, and taking care and consideration can help protect the homes and lives of vulnerable families.

Initiating contact: When owners or agents initiate contact with any occupant of a foreclosed property, they must not threaten them in order to force them to respond quickly. For example, it is improper to leave a notice at a property asserting that it is assumed that a property is vacant if no one responds to the letter. Similarly, a notice may not state or imply that an eviction will begin imminently when the law in fact contains a 90-day waiting period. Such actions may be construed as false and deceptive commercial practices, which violate the Connecticut Unfair Trade Practices Act. Such violations could result in judicial or administrative enforcement actions against the owner, servicer and agents and could risk the loss of the license to do business.

Written documentation: It is very important that all offers, notices, or requests that are provided to or received from tenants are accompanied with written verification. Retain copies of anything left with a tenant. For example, there should be written documentation that an agent asked a tenant if there is a security deposit and for how much, and there should be a signed writing from the tenant acknowledging the inquiry. Consider providing tenants with a "tenant information checklist." There is a sample checklist appended to this document, along with other sample notices that can be provided to tenants.

Without written documentation, it will be difficult to demonstrate compliance with the law. The State of Connecticut takes tenant rights very seriously, and failure to demonstrate strict compliance with statutory requirements could result in judicial or administrative enforcement actions.

Get the names of all occupants: The owner or agent must conduct due diligence to determine the names of all adults living in foreclosed property, whether an occupant has a current lease or not. This will ensure that adequate legal notices are provided to all tenants. Mailings addressed to "occupant" (even if sent by certified mail) are not likely to provide the adequate notice required by the law. In general, it is best to use both certified and regular mail addressed to an individual resident when you provide any legal notice to tenants, including any PTFA notice. Be sure to ask for a return receipt.

Use plain language: Written agreements or notices given to tenants that explain or affect their rights should use plain language that can be understood by anyone with less than a high school education. Written materials should also accommodate non-English speaking tenants wherever possible. Again, consider using the appended sample notices when communicating with tenants.

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BEST PRACTICES (Continued from p. 3)

Section 8 tenants: If the tenants of foreclosed property are Section 8 tenants, the owner or agent should find out which public housing authority administers the tenant's subsidy and identify the name of the Section 8 worker for the tenant. Under the PTFA, the property owner must assume the lease and HAP contract and will need to contact both the housing authority and the Section 8 worker.

Provide information about who is in charge of property repairs: The owner or agent should provide information in writing to tenants describing who may be contacted for property repairs and maintenance, including emergency repairs. The notice should provide a name, address, and telephone number of the person in charge of the property. Tenants' telephone calls or other requests for assistance regarding maintenance issues should be returned or answered promptly.

Assure tenants that the new owner is responsible for returning any security deposit: The owner or agent should affirmatively tell tenants that the new owner is responsible for returning any security deposit that the tenant paid when the property is vacated. The owner may not refuse to return a security deposit just because it never obtained the money from the prior owner. The owner or agent should not deceive or confuse tenants into believing that they must pursue the former owner to get their security deposit rather than requesting the security from the new owner. If a tenant is planning to move, then it is the tenant's obligation to provide a forwarding address to send the security deposit to them after the move. However, owners or agents should remind tenants to provide such a written forwarding address.

This document was produced by the Legal Assistance Resource Center of Connecticut in cooperation with Connecticut Legal Services, Greater Hartford Legal Aid, New Haven Legal Assistance Association, and Statewide Legal Services.

The information in this document is based on laws in Connecticut as of 04/2011. We hope that the information is helpful. It is not intended as legal advice for an individual situation.

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SAMPLE LETTER ATTEMPTING TO CONTACT TENANT(S)

[Date]

Tenant

1st floor

123 Everywhere Street

Anytown, CT 45678

To any renter who may live here,

I am writing to let you know that the property where you live has been foreclosed and is now owned by NEW OWNER. My name is PROPERTY MANAGER and I have been hired to manage this property. [NEW OWNER] has told me to contact you to explain what [NEW OWNER]'s plans for this building are. It is possible that we may ask you to move in the future.

You may have the right to stay in your home for 90 days or longer. Depending on your situation, you may not have to move at all. For example, if your building or complex has five or more apartments and you are elderly or disabled, you may have additional rights to stay in your apartment. However, you should talk to a lawyer NOW to see what your rights are.

If you cannot afford a lawyer, you may be eligible for free legal services from a nonprofit legal services program. You can call Statewide Legal Services at 1-800-453-3320 to try to get help.

I am planning to return to the property on [date] and [time] in order to speak with you. I would like to discuss [the possibility of paying you to leave your apartment OR offering you a new lease to stay in your apartment]. I also need to know whether you currently have a written lease, and whether you receive Section 8 assistance and, if so, who your Section 8 worker is.

If you are living in this building, please call me as soon as you can. My phone number is: [555-555-5555]. You can also write to me at:

PROPERTY MANAGER
78910 Anywhere Street
Anytown, CT 06789

Again, please contact me as soon as possible.

Respectfully yours,

PROPERTY MANAGER

SAMPLE "TENANT INFORMATION CHECKLIST"

Name of tenant: _____

Address: _____

Phone number: _____

Do you have a lease? (circle one) Yes / No

If you have a lease, please provide a copy of it or describe its terms, including the dates through which your lease runs.

Did you pay a security deposit? (circle one) Yes / No

If so, how much is your security deposit? \$_____

If you paid a security deposit, when did you pay it? _____

Do you have receipts for the security deposit? (circle one) Yes / No

Did you ever receive interest on your security deposit? (circle one) Yes / No

If so, when? _____

How many people live in your apartment? _____

What are their names and ages? _____ Age: _____
_____ Age: _____
_____ Age: _____
_____ Age: _____

Does anyone living here have a physical disability? (circle one) Yes / No

Is anyone living here 62 years of age or older? (circle one) Yes / No

Do you receive Section 8 rental assistance? (circle one) Yes / No

If applicable, who is your Section 8 worker? Name: _____
Phone number: _____
Housing Authority: _____

I understand that in signing this document, I am not giving up any rights that I may have as a tenant under state or federal law. This document is only to provide evidence of the questions that I was asked about my tenancy and the information that I gave in response.

TENANT: Signature: _____
Print Name: _____
Date: _____

If you have any questions about this document, you should contact an attorney. If you cannot afford a lawyer, you may be eligible for free legal services from a nonprofit legal services program. Call Statewide Legal Services at 1-800-453-3320 to try to get help.