

BEING A TENANT IN A FORECLOSED PROPERTY

A new law signed by Governor Patrick in 2010 provides protections to tenants in properties undergoing a mortgage foreclosure. Under prior law, your rights as a tenant in a foreclosed property were ambiguous at best, and you could be evicted easily with little time opportunity to find a new home, pack, and move in an orderly way. Now, as a tenant, you have protections against precipitous evictions and outrageous rent claims.

Under the new law, a tenant can only be evicted either (a) for "just cause" or (b) because the property has been sold, with an executed and binding purchase and sale agreement, with a bona fide third party to purchase the property from the foreclosing owner. Just cause is defined as any one of the following:

- (1) you have failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified you in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid;
- (2) you have materially violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and have failed to cure the violation within 30 days after receiving written notice of the violation from the foreclosing owner;
- (3) you are committing a nuisance in the unit, are permitting a nuisance to exist in the unit, are causing substantial damage to the unit or are creating a substantial interference with the quiet enjoyment of other occupants;
- (4) you are using or permitting the unit to be used for any illegal purpose;
- (5) You, having had a written bona fide lease or other rental agreement which terminated, on or after August 10, 2010, have refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal of the agreement for a another term of the same duration and in terms that are not inconsistent with this law;
- (6) You have refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee.

Within 30 days of the foreclosure, the foreclosing owner is required to post in a prominent location in the building the names, addresses, and telephone numbers and telephone contact information of the foreclosing owner, the building manager or other representative of the foreclosing owner responsible for managing the building, and stating the address to which rent and use and occupancy charges should be sent. The requirement is satisfied if the notice is posted in a prominent location in the building, mailed first-class mail to each unit, and slid under the door of each unit.

A foreclosing owner cannot evict any tenant for actions that constitute just cause unless, along with the foregoing notice, a written notice has been delivered to each tenant disclosing the tenant's right to a court hearing prior to eviction. A foreclosing owner also cannot evict a tenant for any of the just cause grounds until the foregoing notice is posted and delivered. A foreclosing owner cannot evict a tenant for grounds (1), (2), or (5) listed above until 30 days after the foregoing notice has been posted and delivered.

You should still pay rent or use and occupancy for the housing accommodation. As soon as the notice is posted as to where the rent should be sent, you should tender rent to that address, at the same rate that you were paying before. A foreclosing owner who disagrees with the amount you pay may bring a claim in district or superior court or housing court to claim that the amount is unreasonable and asking the court to set a new use and occupancy rate. A bona fide lease between you and the owner who was foreclosed upon or proof of rental payment to the foreclosed-upon owner is presumed reasonable.

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