

**NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY**

Without Just Cause:

A 50-State Review of the (Lack of) Rights of Tenants in
Foreclosure

A Report by the

National Law Center on Homelessness & Poverty

&

National Low Income Housing Coalition

February 25, 2009

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ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty (NLCHP) is committed to solutions that address the causes of homelessness, not just its symptoms, and works to address homelessness within the larger context of poverty.

To this end, we employ three main strategies: impact litigation, policy advocacy, and public education. We are a persistent and successful voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. We also produce investigative reports and provide legal and policy support to local organizations.

You are invited to join the network of attorneys, students, advocates, activists, and committed individuals who make up NLCHP's membership network. Our network provides a forum for individuals, non-profits, and corporations to participate and learn more about using the law to advocate for solutions to homelessness. For more information about our organization, membership, and access to publications such as this report, please visit our website at www.nlchp.org.

ABOUT THE NATIONAL LOW INCOME HOUSING COALITION

The National Low Income Housing Coalition is dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes.

The National Low Income Housing Coalition was established in 1974 by Cushing N. Dolbeare, and is a membership organization open to individuals and organizations. Additional information can be found at our website, www.nlihc.org.

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Introduction:

The dramatic rise in loss of home ownership through foreclosures is a direct result of the current mortgage crisis. Although the emergency has been well documented in recent months, less attention has been paid to the plight of tenants living in rental properties adversely affected by the systemic nature of this crisis. Many tenants, even those who may be current in their rent payments and in full compliance with their lease terms, face an increased risk of housing loss as a direct consequence of foreclosure proceedings, collateral consequences of such proceedings or through subsequent possessory actions commenced by new owners.

Renters most often have very different rights and responsibilities in a foreclosure than homeowners. An initial survey of the different state treatments of renters in foreclosure by the National Low Income Housing Coalition (NLIHC) revealed significant differences among states and the need for considerable education on the issue. Few advocates and certainly few tenants are aware of what their local law says about renters caught in a foreclosure. To begin to bridge this information gap, the National Law Center on Homelessness & Poverty (NLCHP), working in collaboration with NLIHC, completed a more thorough survey of the laws of the 50 states and the District of Columbia regarding the rights of tenants living in properties subject to foreclosure. NLCHP recruited WilmerHale to provide pro bono legal assistance to assist in carrying out this work. This overview of the project provides:

- a brief summary of select findings and common themes;
- a review of current state legislative initiatives; and
- an analysis of the federal Emergency Economic Stabilization Act of 2008 and its relevance to renters living in properties subject to foreclosure.

Summary Findings:

Interplay Between State Foreclosure and Eviction Proceedings:

Although the interplay between foreclosure and eviction proceedings varies widely among the states, they generally fall into one of three frameworks. First, several states have an integrated process providing tenants with rights and addressing those rights in the foreclosure proceedings themselves. These states typically require that tenants be given some form of notice prior to the foreclosure proceedings or actually be joined as parties to the proceedings themselves. In the latter case, since they are named in the suit they should be informed of it and its progress as it proceeds. The second framework is one in which the foreclosure and eviction schemes are completely independent of one another. In these states it is unclear at times what the status of the tenancy is following a foreclosure. States using these types of proceedings are among the least tenant-friendly. The third variety is a hybrid of the prior two frameworks. In these states, foreclosure proceedings may address whether tenancy survives the foreclosure (although not necessarily providing tenants with rights in the proceeding), but are less clear regarding the rights of possession after a foreclosure.

Trends and Themes

The state-by-state report details the significant differences in each state's laws regarding foreclosure and eviction procedures. However, some summary findings and common trends can be identified:

- *Requirements for Notice to Tenants:* Seventeen (17) states require that tenants living in rental properties subject to foreclosure be provided with notice of the proceeding or the default by the owner.¹
- *Tenants as Parties to Foreclosure Proceedings:* Twelve (12) states explicitly require that tenants be named as parties to foreclosure proceedings in order for foreclosure to automatically terminate tenancies or otherwise provide the new owner with immediate possessory rights in the property.²
- *Judicial v. Non-Judicial Proceedings:* Thirty-six (36) states permit both judicial and non-judicial foreclosure proceedings.³ The remaining 14 states and the District of Columbia permit foreclosure only through a judicial process.⁴ Judicial foreclosures typically involve the initiation of a formal legal case that can turn into a lengthy proceeding. Non-judicial foreclosures are typically used in situations where mortgages contain a “power of sale” clause allowing a lender to institute a foreclosure (without judicial intervention) following a default. These clauses generally provide that upon a non-payment or other default of the mortgage, the mortgagee may dispose of the property in a more expedited manner after providing the mortgagor with appropriate notice of default and an opportunity to cure. This often occurs after the Sheriff's office is involved and requested to evict the renter. In states that permit both types of proceedings, as a matter of practice it appears to be more common for non-judicial proceedings to be used, as lenders will typically include power of sale clauses in their formal mortgage agreements. Therefore, attention should be paid to the particular terms and conditions in the mortgage agreement that may impact the procedures governing the foreclosure. Moreover, individuals should consult with practitioners regarding local practices. According to local legal aid organizations, despite the fact that both judicial and non-judicial proceedings are

¹ See, e.g., Alaska, California, Colorado, Idaho, Iowa, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nevada, New York, North Carolina, Oregon, Pennsylvania and Washington. Note that a number of states provide for, but do not require, notice to tenants. Typically, failure to notify a tenant or make him a party grants the tenant some additional rights.

² See, e.g., Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Missouri, New York, Ohio, Vermont and Wisconsin.

³ See, e.g., Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

⁴ See, e.g., Connecticut, Delaware, Florida, Indiana, Kansas, Kentucky, Maine, New Jersey, New York, North Carolina, Ohio, Pennsylvania and South Carolina. New Mexico permits non-judicial foreclosure for certain commercial mortgages.

permitted, one or the other may be the dominant proceeding of choice in a particular state.

- *Termination of Tenancy:* In a majority of the states, a renter's tenancy would be automatically terminated following a foreclosure on the property. However, the circumstances that allow tenancy to be terminated vary greatly from state to state. For example, as discussed above, several states indicate that the tenancy is terminated if the tenant was made a party or provided notice to the foreclosure proceeding. Other states have no such requirement or declare that the tenancy will be modified (*e.g.* to become a tenancy-at-will). Therefore, the details set forth in the report should be considered in determining whether tenancy terminates in any particular state. Moreover, according to local practitioners, regardless of the statutory procedures it is often argued by advocates of renters that due process is violated if a tenant is not served with proper notice or made a party to a foreclosure proceeding and therefore the lender should take the property subject to the leasehold interest of the tenant.
- *Tenancy Survives Foreclosure:* In certain states such as New Jersey and the District of Columbia the tenancy survives the foreclosure and is not a valid reason for eviction.

Recent State Legislative Initiatives:

Since 2007, approximately thirteen states have considered or are currently considering legislation to address foreclosure and eviction matters⁵. The majority of these states appear to be concentrating on strengthening regulation of mortgage lenders and brokers and increasing the rights of borrowers in foreclosure proceedings. Some states have instituted new protections for borrowers from predatory or fraudulent "foreclosure rescue" scams. Several states have also recently proposed legislation that includes increased protections for tenants. The purpose of this legislation is to enact or extend notice requirements for renters prior to an impending foreclosure sale or eviction.⁶ There is also a trend in recent and proposed legislation to allow tenants to terminate their leases once they are notified of impending foreclosure or to convert leases to tenancies-at-will.⁷ The strongest potential protection for renters appears to be in bills currently being developed in Massachusetts that would require "just cause" for eviction of tenants on foreclosed properties.

⁵ (See, *e.g.*, Illinois, Indiana, Massachusetts and Nevada)

⁶ For example, Maryland recently enacted a law requiring tenants in foreclosed properties to receive at least 14 days notice by certified mail prior to eviction; Michigan proposed legislation to enact a 30-day notice requirement for tenants before property is put up for auction; Nevada has a pending bill that would require 60 days notice before a long-term tenant is evicted from a foreclosed property; Rhode Island introduced legislation in the beginning of 2008 that would provide at least 60 days notice prior to eviction.

⁷ See, *e.g.*, Georgia, Indiana, Massachusetts, Nevada, and North Carolina.

Recent Federal Legislation and Case Law:

Overview of Emergency Economic Stabilization Act of 2008

On October 3, 2008, President Bush signed into law the Emergency Economic Stabilization Act of 2008 (EESA) that authorized the Secretary of the Treasury to use up to \$700 billion to purchase and dispose of troubled assets owned by certain qualified institutions. The initial version of the EESA proposed by the administration contained few restrictions on the Treasury's ability to use the authorized funds. However, the final bill contains various oversight mechanisms and requires the Treasury to undertake certain foreclosure mitigation efforts in connection with the implementation of the EESA.

Specifically, Section 109(a) of the EESA states that "to the extent the [Treasury] acquires mortgages, mortgage backed securities, and other assets secured by residential real estate, including multifamily housing, the [Treasury] shall implement a plan that seeks to maximize assistance for homeowners . . . and encourage the servicers of the underlying mortgages . . . to take advantage of the HOPE for Homeowners Program . . . or other available programs to minimize foreclosures." Section 109(a) also provides that the Treasury may "use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable foreclosures." Under the Troubled Asset Relief Program (TARP) established by the EESA, the Treasury was granted authority to purchase directly up to \$700 billion in mortgages and other troubled assets owned by financial institutions. However, since passage of the EESA, the Treasury has used funds from TARP to make direct equity investments in certain financial institutions themselves rather than purchase any of their troubled assets. The use of funds in this manner makes it unclear whether the provisions of Section 109(a) can be implemented since the Treasury has not acquired any mortgages, mortgage backed securities, etc.

In addition to homeowner protections, Section 109(b) requires the Treasury to coordinate with other federal entities⁸ that hold troubled assets to (i) "identify opportunities for the acquisition of classes of troubled assets that will improve the ability of the [Treasury] to improve the loan modification and restructuring process" and (ii) "where permissible, to permit bona fide tenants who are current on their rent to remain in their homes under the terms of the lease." To date, there have been no implementing regulations or other statements to provide guidance on these broad statements in the legislation.⁹

Recent Challenges Under EESA

On October 21, 2008, Evelyn Colon, a renter in a multifamily apartment building in Hartford, Connecticut, filed a motion through her attorneys at Greater Hartford Legal Aid, Inc. challenging her eviction from a multi-unit rental property that had been foreclosed upon by Fannie Mae. The

⁸ The federal entities include, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Agency, and the U.S. Department of Housing and Urban Development.

⁹ Section 101(c)(5) of the EESA states that the Treasury may issue "such regulations and other guidance as may be necessary or appropriate to define terms or carry out the authorities or purposes [of the EESA]." Although there have not been published regulations or guidance related to foreclosure matters, the Treasury has released notices and interpretive guidance regarding other provisions of the EESA.

motion argued (i) that Fannie Mae became a federal agency when it came under the conservatorship of the Federal Housing Finance Agency (FHFA), (ii) that the EESA requires the Treasury to coordinate with the FHFA to permit tenants (such as Ms. Colon) to remain in their homes post-foreclosure and (iii) that the burden is on Fannie Mae to allege a good cause for the eviction. The motion seeks to have the eviction action dismissed or, alternatively, that the housing court stay the proceedings until such time as the Treasury (or FHFA) issues appropriate guidance or regulations with regard to the effect of Fannie Mae's conservatorship as it relates to post-foreclosure summary process evictions of tenants. Resolution of this case is still pending.

It is possible that there will be an increase in the number of challenges by bona fide tenants (*i.e.* those in good standing under their leases) under Section 109(a) to eviction proceedings involving Fannie Mae and Freddie Mac (or other entities deemed "Federal Government entities" for purposes of the EESA) that hold mortgages subject to foreclosure. It is unclear whether this challenge could be successfully extended to cases involving financial institutions that are not "Federal Government entities," but have availed themselves of the benefits of the EESA.

Recent policies implemented by Fannie Mae and Freddie Mac with respect to rental foreclosures may also impact the number of court challenges to eviction proceedings. In an exchange of letters with the New Haven Legal Assistance Association, Fannie Mae announced on December 13, 2008 that it would finalize a national policy to allow tenants to remain in their homes even if the property was subject to foreclosure. On January 13, 2009, Fannie Mae announced the implementation of its national Real Estate Owned (REO) Rental Policy to allow renters in Fannie Mae-owned foreclosed properties to remain in their homes or receive transitional financial assistance should they seek new housing.

Frequently asked questions with respect to Fannie Mae's REO Policy can be found at http://www.fanniemae.com/newsreleases/2009/faq/FAQ_national_REO_rental_policy_010709.pdf. On January 30, 2009, Freddie Mac announced it would implement a similar policy. Under its REO Rental Option, Freddie Mac offers leases to current renters on a month-to-month basis at market rents or the rent amount they were paying prior to foreclosure, whichever is less. It should be noted that in addition to these policies allowing renters to stay in foreclosed properties, both Fannie Mae and Freddie Mac extended their previously announced suspension of evictions from Fannie Mae and Freddie Mac-owned single-family properties through February 28, 2009. These policies (as well as recent foreclosure suspensions by certain large lenders, including Citigroup, J.P. Morgan Chase, Wells Fargo and Bank of America) are significant steps to averting homelessness resulting from tenant evictions following foreclosures, and may increase pressure on other private lenders to establish similar programs, and on lawmakers to pass renter relief.

Recommendations:

As the foreclosure crisis continues and intensifies, more and more renters are being evicted—often without notice. Moreover, as documented in this report, in the vast majority of states there is little in the law to protect tenants' legitimate interests. To help stem the rising tide of homelessness nationally, and remedy this injustice, NLCHP and NLIHC recommend that the federal government take immediate action to protect tenants in foreclosures. Federal action is needed to ensure help nationally, and to bring the resources of the federal government to bear to

assist financially strapped states and communities. However, these recommendations are also applicable at the state level.

Fair notice to tenants. Tenants who are current in their rent should not be evicted without notice, as now frequently happens. A minimum of 90 days' notice to tenants should be required.

Preserve existing tenancies. With limited exceptions, bona fide tenancies should be protected through the end of the lease term. Exceptions would include instances where the tenancy is not bona fide, or where the purchaser will use the property as a primary residence. Tenancies should be considered bona fide as long as the tenant is not the mortgagor, the lease was the result of an arms length negotiation, and the lease payment is not substantially less than the fair market rent for the property. Tenants living in federally assisted housing should also be protected. When foreclosed properties have tenants who are being assisted with subsidies under the United States Housing Act of 1937, vacating the property for sale purposes should not be considered good cause for breaking the tenants' existing lease.

Legal assistance. According to reports from around the country, legal aid offices are being overwhelmed with requests for legal assistance from people facing foreclosure and eviction. Few persons who become homeless as a result appear to have had access to any legal assistance that might have helped them avoid the loss of their home. Further, many legal aid lawyers as well as persons facing loss of their homes are unfamiliar with the law or lack the ability to enforce it. Access to legal assistance can make the difference between maintaining and losing housing, and funding for such legal assistance, including training and information on rights, must be increased.

Methodology, Limitations, and Disclaimers

The report sets forth the relevant laws and procedures governing home foreclosures and evictions in the United States and the relevant rights of renters in those processes.¹⁰ The headers in the report were developed to identify data that would be most useful for advocates and practitioners dealing with foreclosure and eviction matters. It should be noted, however, that not all states have well-developed statutes addressing the issues raised by the report – particularly those with respect to tenant matters. Therefore, the applicability of the column headers to a particular state’s laws may vary.

The report is not meant to be a full and complete recitation of the laws related to foreclosures and evictions in a particular state. Further, federal and state laws relevant to these issues are subject to change. We plan to update the report periodically and encourage your comments and corrections to help us do so. However, there may be time lags between changes in the law and updated information in the report. We encourage anyone using the report to consult with local counsel for a more detailed analysis of a particular state’s laws in these areas.

Finally, this information is not offered as legal advice and should not be used as a substitute for seeking professional legal advice. The use of this information does not create an attorney-client relationship.

¹⁰ Although foreclosures and evictions are generally governed under state law, several local governments and municipalities have implemented their own statutes and regulations governing these matters. This report does not address the various laws that may be applicable to foreclosures and evictions at the local level. Moreover, the report discusses below certain recent federal initiatives to address foreclosure and eviction issues.

ALABAMA

Foreclosure Process

Two types of foreclosure:

(1) Non-judicial: Non-judicial foreclosures are available when the mortgage or deed-of-trust grants a power of sale to the mortgagor, the terms of the power of sale control the sale and notice requirements. If the power of sale clause does not provide for notice requirements, notice must be posted in the county where the property is located for 4 consecutive weeks with the sale taking place 30 days after the last notice of sale is posted. Alabama Code Sec. 35-10

If the mortgage does not grant power of sale, a lender may still sell the property without filing a foreclosure lawsuit. Under these conditions, notice must be provided weekly for 4 consecutive weeks, with the sale, in cash, being conducted in front of the courthouse where the property is located.

(2) Judicial foreclosure: Judicial foreclosure is available where the mortgage or deed-of-trust does not provide a power of sale. Lawsuit seeking foreclosure must be filed in circuit court with jurisdiction over the property.

Tenant Rights in Foreclosure Proceedings

No

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes. Although there is little on point other than a case from 1930, *First Nat'l Bank v. Walsh*, 132 So. 44.

Eviction Process

Because tenancy does not survive foreclosure, there is no landlord / tenant relationship. Therefore, the new owner following foreclosure can seek to evict the tenant through an action for ejectment which is governed under the Alabama Rules of Civil Procedure. The timeline for this type of action can depend on the facts and circumstances of the particular case.

Eviction of tenants in non-ejectment actions are governed as follows:

Termination notice must be given at least 10 days prior to termination. Termination notice must be in writing, copy provided to the tenant or with a person above the age of 18 residing on the premises, and if no one is on the premises the notice may be posted on the premises.

Eviction sought in district court in district where property found. Service must comply with Alabama Rule of Civil Procedure Rule 4, however if Sherriff or Process Server is unavailable, service may be had by delivering notice to any person residing on the property or posting a copy of the notice on the door of the premises and by sending a copy of the notice to the defendant by first class mail. Alabama Code Sec. 35-9A-461

Upon receipt of eviction notice from court, tenant has 7 days to file written answer in court. If court rules for landlord, eviction action may be appealed by tenant within 14 days, but will only stay writ of restitution or possession if the tenant continues to pay rent. Such rent payments should be paid to the

court. In addition, if District Court rules against tenant, tenant has right to request jury trial in Circuit Court.

Eviction Timeframe

7 days to file written answer to eviction action.

14 days to file appeal.

Relevant Authorities

Alabama Code Sec. 35-9A-461

Alabama Rules of Civil Procedure Rule 56

Alabama Rules of Appellate Procedure Rule 4

Current Developments

Alabama recently adopted the “Uniform Residential Landlord and Tenant Act (2007)”

Additional Resources

Legal Services Alabama

207 Montgomery St.

Suite 1200

Montgomery, AL 36104

1-866-456-6353

ALASKA

Foreclosure Process

(1) Judicial Foreclosure: A lawsuit is filed in order to obtain a court order to foreclose. After the court declares a foreclosure, the property is auctioned off to the highest bidder. The process follows the rules of equity. While deficiency suits are permitted, the borrower has no right of redemption.

(2) Non-Judicial Foreclosure: Used when a Power of Sale (“POS”) clause is present in either the mortgage or deed of trust. The POS clause may lay out the sale process as long as it meets the minimum protection laws in Alaska. If there is no process specified, the following process will be used (AS 34.20.070):

(i) The trustee must record a notice of default in the Office of the Recorder in the recording district the property is located in no less than 30 days after the default and no less than 90 days/3 months before the sale. (ii) The notice of default must list the name of the borrower, the book and page where the deed is recorded, a description of the property, the borrower’s default, the amount the borrower owes, the trustee’s desire to sell, and the date, time, and place of the sale. (iii) Within 10 days of recording the notice of default, the trustee must mail or personally deliver a copy of the notice of default to the last known address of the borrower, any person whose claim or lien on the property appears of record or is known to the lender or trustee, or any other person actually in possession of or occupying the property. If the trustee chooses to personally deliver the notice, the notice may be delivered up to 20 days after the notice of default is recorded. (iv) The borrower may cure the default and stop the sale up to 5 days before the sale by paying total amount of missed payments plus any attorney’s fees or court costs accrued due to the default. (The lender may not require the total balance of the loan, just the total amount of missed payments.) If the lender has recorded a notice of default two or more times, it is the lender’s prerogative to refuse to accept any money from the borrower and proceed directly to the foreclosure sale. (v) The sale must be held by public auction in front of the courthouse of the superior court in the judicial district where the property is located. The highest and best bidder will win. The lender may bid at the auction. (vi) The borrower has a right to redeem but deficiency suits are not allowed.

Tenant Rights in Foreclosure Proceedings

Tenant (as the person occupying the space) has a right to notice of the default after it has been filed with the Office of the Recorder.

Right to Notice and Timeframe (Y/N)

Yes. The person occupying the property has a right to a copy of the filed Notice of Default. This copy must be served on the occupant within 10 days of recording the default.

Terminate Tenancy (Y/N)

Yes. Owner following sale in foreclosure has right to possession. AS 34.20.090(b)

Eviction Process

The standard eviction process is set forth below. However, see information below “Eviction Timeframe” for additional information regarding evictions in connection with a foreclosure.

(1) Landlord provides Tenant with written notice (a Notice to Quit) of the reason Landlord wishes to evict Tenant. The Notice to Quit must give the tenant time to correct the problem in order to avoid eviction and a deadline for correcting the problem. (Different issues have different time periods.) The notice may be sent by registered or certified mail, delivered to the tenant in person, or left at the premises in cases of absence.

(2) If the Tenant does not cure within the stated time period, Landlord files a Forcible Entry and Detainer lawsuit, also known as a F.E.D. lawsuit, with the court within the judicial district that the property is located. This can be filed immediately after the curing period ends. So, if the tenant had 7 days to pay rent, the lawsuit can be filed on the 8th day.

(3) Tenant is served a copy of Landlord's complaint and a court summons. If Tenant wishes to respond, he must file an Answer within 20 days of receipt of the notice and summons.

(4) The eviction hearing is held within 15 days after the case is filed in court and at least 2 days after the summons is served on the tenant. The eviction hearing only covers eviction, not damages. If the complaint asks for damages, there will either be a damages hearing within 20 days after the complaint is served (this is if the Tenant files and answer) or a default judgment (if the Tenant fails to file an answer.)

(5) If Tenant does not appear, the clerk will sign the Entry of Default and the Default Judgment will be entered.

Eviction Timeframe

Eviction hearing held within 15 days of case filing and at least 2 days after the summons is served on Tenant. Damages hearing, if necessary, 20 days after the complaint is served.

Please note the following:

The Landlord and Tenant Act: What it Means to You booklet mentions notice given to renters after foreclosure. The booklet states that while Alaska law is not completely clear, it appears that the renter is entitled to at least reasonable notice prior to eviction once the new property owner completes the foreclosure process. Because the majority of the notice requirements in the Alaska Landlord and Tenant Act are 7 days, the author of the booklet suggests that the renter is entitled to at least 7 days notice prior to the new owner commencing eviction proceedings. (Citing the *Winn* case and AS 34.20.090(b))

Relevant Authorities

Alaska Uniform Residential Landlord and Tenant Act (AS 34.03.010 - AS 34.03.360)

Winn v. Mannhalter, 708 P.2d 444 (Alaska 1985)

Alaska Statue covering F.E.D. suits (AS 09.45.070 - AS 09.45.160)

Current Developments

N/A

Additional Resources

The Landlord and Tenant Act: What it Means to You.

(<http://www.commerce.state.ak.us/occ/pub/landlord.pdf>)

Eviction Booklet on the Alaska Court System home page - Please note that the booklet states that it does not cover the eviction process after a foreclosure. However, the process laid out appears to be pretty standard. (www.state.ak.us/courts/civ-720.htm)

Alaska Legal Services (www.alaskalawhelp.org)

ARIZONA

Foreclosure Process

(1) Judicial Foreclosure: This process involves filing a lawsuit to obtain a court order to foreclosure and is used when no power of sale is present in the mortgage or deed of trust. After a court declares a foreclosure, the home is available to the highest bidder. Judicial foreclosures are not common.

(2) Non-Judicial Foreclosure: This process is used when a power of sale clause exists in the mortgage/deed of trust. A power of sale clause pre-authorizes the sale of the property to pay off the loan in the event of a default by the homeowner. The existence of a power-of-sale clause in a deed of trust/mortgage allows the lender to sell the property or execute sale through a trustee.

Tenant Rights in Foreclosure Proceedings

No

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes.

Eviction Process

A sale in foreclosure provides the new owner with rights to immediate possession and new owner can obtain an action for forcible detainer following notice. Advocacy organizations in AZ advised that typically tenants receive no notice and may be subject to immediate eviction by the new owner following foreclosure. A.R.S. § 12-1173.01

However, A.R.S. § 12-1173.01(B) states that an action for forcible detainer will not affect the rights of persons in possession under a lease or other possessory right which is superior to the interest sold, forfeited or executed upon (e.g. if the tenant's lease chronologically preceded the mortgage).

The following eviction procedure is separate from foreclosure.

Under Arizona Landlord Tenant Law, the eviction process varies based on the reasons for the eviction. Where there is a material noncompliance with the agreement by the tenant, the landlord may deliver a written notice that the rental agreement will terminate in not less than 10 days if the breach is not remedied within 10 days.

If the tenant's noncompliance materially affects health and safety, the landlord must notify the tenant of the intent to terminate the rental agreement in not less than 5 days if the breach is not cured within 5 days.

If tenant fails to pay rent when due, and such failure is not remedied within 5 days of written notice of failure from the landlord, the landlord may terminate the agreement by filing a special detainer pursuant to A.R.S. § 33-1377. The landlord may recover all reasonable damages resulting from tenant's non compliance including cost of dwelling unit occupancy, court fees and reasonable attorney's fees.

Eviction Timeframe

See information under “Eviction Process.”

Relevant Authorities

Ariz. Rev. Stat. § 12-1173.01
A.R.S. § 12-1173.01(B)
A.R.S. § 12-1171
A.R.S. § 33-1321(D), (E), and (G)
A.R.S. § 33-1368
A.R.S. § 33-1377
A.R.S. § 33-727
A.R.S. § 33-742
A.R.S. § 33-743
A.R.S. § 33-748

Current Developments

House Bill 2733: The Arizona House of Representatives recently considered House Bill 2733 which substantially increased the notice requirements to tenants in foreclosure actions. Among many things, the Bill would have required: (a) landlords to inform tenants of possible foreclosure within 30 days of notice, and (b) court clerks to inform tenants of filings of summons and complaints and notices of sale within 30 days of receipt. The Bill was not passed.

Additional Resources

Arizona State Legislature (www.azleg.gov)
Arizona Tenants Advocates (www.arizonatenants.com)

ARKANSAS

Foreclosure Process

Non-judicial foreclosures are governed by a “power of sale” clause included in the mortgage. A notice of default and intent to sell must be recorded in the county in which the property is located at least 60 days before the sale and mailed within 30 days of the recording (certified mail) to the mortgagor, any successor or lien holder of record or of whom the mortgagee has actual notice (and those recorded as requesting notices. The notice must also be published (1) in a county or statewide newspaper once a week for 4 consecutive weeks prior to the sale (with the last notice no more than 10 days before the sale), (2) at the county courthouse, and (3) on the internet. An affidavit of these publications must be recorded on or before the sale. The notice must include the names of the parties, a legal description of the property (and street address), the book/page number of the recorded mortgage, the default for which the foreclosure is being made, a notice and warning of the intention to sell and the time and date of the sale.

An appraisal of the property must be completed prior to the sale. The sale may be held at the property or in front of the county courthouse. Bids less than 2/3 of the total indebtedness will not be accepted- the property may be offered for sale again within 12 months to the highest bidder. The sale may be postponed; if by more than 30 days, a new notice must be mailed. Generally, the purchaser must pay at the time of the sale and is entitled to immediate possession of the property. At any time within 12 months of the sale, the Mortgagee can also seek a judgment for the portion of the outstanding debt (including interest, costs, attorneys fees) that exceeds the greater of the sale proceeds or fair market value of the property. In the absence of such a clause, judicial foreclosure may be sought (in which case the borrower may have a right to redemption of the property on full payment of the owed funds). [Note Arkansas has certain statutory protections restricting foreclosures against members of the Arkansas National Guard.]

Tenant Rights in Foreclosure Proceedings

None. A valid foreclosure allows the purchaser immediate possession.

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes

Eviction Process

For private (and non-Section 8) housing: Any non-payment of rent is grounds for eviction. There are civil and a criminal eviction processes. **CRIMINAL** (refusal to vacate): If a Tenant fails to pay rent when due, the Tenant forfeits the right to occupy the premises. The Landlord may give written notice to the Tenant to vacate the premises, after which the Tenant has 10 days to vacate the premises or be charged with a misdemeanor and summoned to court. Upon conviction, the Tenant may be fined \$25 per day for each day the Tenant fails to vacate the premises.

Civil (unlawful detainer): A Landlord may terminate the lease for noncompliance. The Landlord (or Tenant) may also terminate the lease at any time, with notice as provided in the lease or equal to the rental period (1 month if month-to-month, etc.) If the noncompliance is failure to pay rent when due, after 5

days the Landlord may terminate the lease. The nonpayment is considered legal notice to the Tenant, so no written notice is required. If the noncompliance is not failure to pay rent, the Landlord must provide written notice to the Tenant (a) specifying the acts of noncompliance, and (b) stating that the lease will terminate no less than 14 days from the date of the notice if the breach is not remedied. If the noncompliance is not cured, the lease terminates. The Landlord may file an affidavit of eviction and have a court issue an order requiring the Tenant to vacate or show cause otherwise within 10 days after service of the order. If the Tenant fails to appear, the court will issue a writ of eviction and the county sheriff will evict the Tenant, serving a notice providing 24 hours for the Tenant to leave voluntarily.

Eviction Timeframe

15 – 25 days

Relevant Authorities

Statutory Foreclosure: (AR 18-50-101); Criminal Eviction: (AR 18-50-101, etc). Civil Evictions: Arkansas Residential Landlord -Tenant Action of 2007 (AR 18-17-701)

Current Developments

None

Additional Resources

Arkansas Legal Services Programs

Center for Arkansas Legal Services
303 W. Capitol, Suite 200
Little Rock, AR 72201
(501) 376-3423
fax (501) 376-3664

Legal Aid of Arkansas
714 South Main Street
Jonesboro, AR 72401
(870) 972-9224
fax (870) 910-5562

Arkansas Legal Service Partnership (includes fact sheets on evictions and foreclosure) -
<http://www.arlegalservices.org>.

CALIFORNIA

Foreclosure Process

For mortgages made between January 1, 2003 to December 31, 2007 on owner occupied residences, the lender must contact the borrower in person or by telephone to assess the borrower's financial situation and explore options to avoid foreclosure. The lender must then wait 30 days before initiating foreclosure. A Notice of Trustee Sale then must be: (1) recorded in the county where the property is located at least 14 days prior to the sale; (2) mailed by certified, return receipt requested, to the borrower at least 20 days prior to the sale; (3) posted on the property at least 20 days prior to the sale; and (4) posted in 1 public place in the county where the property is located. The Notice of Trustee Sale must contain the time and location of the sale, the property address, the trustee's name, address and phone number and a statement that the property will be sold at auction. In the event the mortgage contains a "power of sale" clause, the property may be sold without court action in a non-judicial proceeding. In the absence of such a clause, judicial foreclosure may be used.

Tenant Rights in Foreclosure Proceedings

California leases are subordinate to foreclosures; a valid foreclosure terminates all interests in the real estate junior to the mortgage being foreclosed. However, tenants must receive 60 days written notice to vacate a property once it is foreclosed.

Right to Notice and Timeframe (Y/N)

Yes. 60 day vacate notice.

Terminate Tenancy (Y/N)

Yes. If the tenant's lease is not superior to the lien on the property, the lease can be terminated by the purchaser in the foreclosure sale.

Eviction Process

Where there has been a foreclosure, the lease is automatically terminated and the tenant must be given 60 days written notice to quit the premises. Written notice may be given in person at the tenant's home or place of business, or may be given to a responsible person at the tenant's home or place of business along with sending a copy of the notice in the mail to the tenant's home or business address. Additionally, if the above cannot be performed, notice may be given by affixing a copy of the notice in a prominent place on the property, along with delivering a copy to the person residing there and also sending a copy through the mail to the tenant. For evictions generally, not in the context of foreclosures, evictions must be for cause (except in the case where illegal activity has occurred on the premises). 30-day notice for eviction must contain a statement of the cause for eviction and notifying the tenant of their right to a hearing with the eviction court. Notice and delivery requirements are the same for eviction after a foreclosure.

Eviction Timeframe

60 days following vacate notice

Relevant Authorities

Senate Bill 1137; California Civil Code 1116a, 1116b, 2924; Sumitomo Bank v. Davis, 4 Cal. App. 4th 1306, 1314, 6 Cal. Rptr. 2d 381 (Call. Ct. App. 1992).

Current Developments

On Sept. 25, 2008, Gov. Schwarzenegger vetoed Assembly Bill 1830 which would have strengthened the regulatory framework for mortgage lenders and brokers. A potential Special Session in November may produce additional bills regarding foreclosures.

Additional Resources

California's Consumer Home Mortgage website (www.yourhome.ca.gov);
The California office of the Center for Responsible Lending (www.responsiblelending.org/crlcalifornia).

COLORADO

Foreclosure Process

The lender must mail a notice to the borrower containing information about counseling resources 30 days before filing a Notice of Election and Demand (NED) with the public trustee and 30 days after default. The NED is recorded within 10 days following receipt. A Combined Notice is mailed within 20 days of recording the NED and again 45 to 60 days before the sale date, and is published for 4 weeks. The lender must file a motion under Rule 120 for a court order authorizing the sale and deliver the order and submit a bid to the public trustee by noon on the second business day prior to the sale date. The sale date for residential property is 110 to 125 days from the recording of the NED, and 215 to 230 days from the recording for agricultural property. If the foreclosure was filed before 1/1/08, the borrower has a right to redeem for 75 days after the sale. If the foreclosure was filed after 1/1/08, the borrower does not have a right to redemption, though junior lien holders can redeem the property. The borrower may file a notice of intent to cure within 15 days prior to the sale date, and has until noon the day before the sale to pay the cure amount. While most foreclosures are nonjudicial and conducted by the public trustee, there is also a judicial process of foreclosure. A lender can file a lawsuit to obtain a court order to foreclose and the foreclosure sale is conducted by the sheriff.

Tenant Rights in Foreclosure Proceedings

A tenant has the right to cure and the right to redeem if the lease was recorded prior to the recording of the NED, through which the tenant can pay off the mortgage and obtain title to the property. The tenant may file a notice of intent to cure within 15 days prior to the sale date, and has until noon the day before the sale to pay the cure amount. If the NED was filed prior to Jan. 1, 2008, the tenant must file an intent to redeem at least 15 days prior to the end of the borrower 75 day redemption period. If the NED was filed after Jan. 1, 2008, the tenant must file an intent to redeem within 7 days after the sale. Also, any interested party may file a response to the Rule 120 motion to dispute the existence of a default no later than 5 days prior to the hearing date.

Right to Notice and Timeframe (Y/N)

Yes. In a non-judicial foreclosure, the public trustee must mail a Combined Notice to tenants 45 to 60 days prior to the date of sale. In a judicial foreclosure, the sheriff must mail a Combined Notice to tenants 16 to 30 days after the lender delivers to the sheriff the mailing list and the decree of foreclosure directing the sheriff to sell the property.

Terminate Tenancy (Y/N)

Yes. If the mortgage was recorded before the lease was signed and no junior lien holder have redeemed, the lease can be terminated by the purchaser in the foreclosure sale.

Eviction Process

Junior lien holder of record at the time the NED is recorded have the right to redeem following the foreclosure sale by filing a notice of intent to redeem no later than 8 business days after the sale. The most senior lien holder has the right to redeem the property 15 to 19 business days after the sale. Each subsequent lien holder has an additional 5 business days. If no junior lien holder files a notice of intent to redeem, title passes at the close of business on the 8th business day after the sale and the tenant is in "unlawful detention" of the property once demand has been made by the purchaser. Tenants must be given written notice 3 days before an eviction hearing.

Eviction Timeframe

Purchaser must give 3 days written notice before initiating an eviction hearing. At the time of judgment, a court may enter an order for immediate possession by the purchaser. The court may issue a writ of restitution directing the sheriff to physically remove the tenant from the property 48 hours after the judgment is entered.

Relevant Authorities

House Bill 1157; House Bill 1402; Colorado Revised Statutes § 38-38-101, et seq., § 13-40-101, et seq.

Current Developments

The 2007 legislature passed HB 1157, which made changes to the foreclosure process effective as of January 1, 2008, including the elimination of the borrower's redemption period and the lengthening of the cure period. The 2008 legislature passed HB 1402, which directs lenders to send borrowers written notice 30 days before a foreclosure is filed, as well as information about counseling resources.

Additional Resources

Colorado Housing Counseling Coalition (<http://www.housingcounseling.com/>); The Colorado office of the Department of Housing and Urban Development (<http://www.hud.gov/local/co/homeownership/foreclosure.cfm>); Colorado Division of Housing (<http://www.dola.state.co.us/cdh/index.html>)

CONNECTICUT

Foreclosure Process

The judicial foreclosure process in Connecticut is carried out by either strict foreclosure or a foreclosure by sale. A complaint for foreclosure will name the debtor and possibly any tenants as parties to the foreclosure and will be served on the debtor or tenant at least 12 days before the complaint is filed with the court. A Lender will name and serve a tenant with a foreclosure complaint to avoid having to use summary process to evict the tenant (see information under “Eviction Timeframe” header). Debtor has 15 days from the date marked on summons, the “law date” to answer the complaint (or 25 days if unemployed) or file a motion for foreclosure for sale. A debtor chooses a foreclosure by sale if he has equity in excess of the debt being foreclosed. The court date for foreclosure cases is typically around 75 days after a complaint is served. In the case of a strict foreclosure, there is no sale, the debtor is given a law date by which he must pay off the debt or lose his interest in the property. If neither debtor nor other lienholders pay the debt, title automatically transfers to the lender on the “vesting date” which takes place approximately 150 days after the complaint is served. In a judgment of foreclosure by sale, the court establishes the date of the sale, usually 60-90 days from the date the court makes its initial ruling. On the sale date, an attorney appointed by the court auctions off the property to the highest bidder. The money from the auction first goes to pay for the costs of setting up the auction, then to the lender and any other liens on the property. Then, if any money is left over, it goes to the debtor. Within 2 weeks after the sale, the court decides whether to approve the sale. Until approved, the homeowner can redeem by paying the amount of the debt. If the sale is approved the winning bidder usually has 30 days to pay the balance of the winning bid.

Tenant Rights in Foreclosure Proceedings

A tenant may be named as a party in a foreclosure lawsuit. If tenant is named as a party he is subject to the same foreclosure process as that of the owner of the property. If tenant has not been named in the foreclosure action, a marshal should not be able to eject tenant but a lender can use summary process laws to evict tenant after lender takes title through foreclosure. If tenant is named in foreclosure action and a foreclosure judgment is entered, tenant must vacate the property by the law date or by the sale date. If tenant has not left by this time marshal will eject the tenant. CT law protects elderly and disabled tenants and their family members who live in buildings or complexes with 5 or more units from being evicted without cause. If tenant lives in Section 8 housing, tenants lease may not automatically terminate if property is foreclosed. Tenants who receive state welfare may be eligible for emergency housing benefits.

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes. Provided however that Section 8 leases may survive foreclosure. (See information under “Tenant Rights in Foreclosure Proceedings” header.)

Eviction Process

A tenant is subject to the same foreclosure process and timeframe as that of the owner of the property (see information contained under “Foreclosure Process” header) and if named as a party to the foreclosure must file an appearance form within 2 days after the return date on the complaint. If the tenant has not

vacated the property by the vesting date or the date of sale of the property, the court will allow the lender to have a marshal remove tenant from property. A marshal gives tenant an “execution for ejectment” which may require that tenant vacate the property within 24 hours. On the date and time specified in the execution for ejectment, the marshal will come with movers. The movers will remove tenants belongings from property and place them in storage. Tenant has 15 days to claim his belongings.

Eviction Timeframe

A tenant is subject to the same timeframe as that of the owner of the property (see information contained under “Foreclosure Process” header), however if a tenant is not named as a party to the foreclosure, the time within which the tenant must vacate the premises may take longer than the average timeframe (approximately 210 days) since a lender must wait to take title to the property and then use summary process laws to evict tenant.

Relevant Authorities

Tappin v. Homecomings Financial Network, Inc., 265 Conn. 741 (Conn. 2003); First Federal Bank, FSB v. Whitney Development Corp., 237 Conn. 679; Conn. Gen. Stats. § 47a-23c, Bristol Savings Bank v. Savinelli, CV-95-0377478-S, 1996 Conn. Super Lexis 742 (Conn. Super. Ct. Mar. 21, 1996); Webster Bank v. Occhipinti, No. CV-970059147S, 1998 WL 846105 (Conn. Sup. Ct. Nov. 20, 1998).

Current Developments

On October 21, 2008, Evelyn Colon, a renter in a multifamily apartment building in Hartford, Connecticut, filed a Motion To Dismiss Or In The Alternative Motion For Stay Of Proceedings in Federal National Mortgage Assoc. v. Jane Doe I (Superior Court/Housing Session, J.D. of Hartford, Docket No. HDSP 149558) through her attorneys at Greater Hartford Legal Aid Inc., challenging her eviction from a multi-unit rental property that had been foreclosed upon by Fannie Mae. The motion argued (i) that Fannie Mae became a federal agency when it came under the conservatorship of the Federal Housing Finance Agency (the “FHFA”), (ii) the EESA requires the Treasury to coordinate with the FHFA to permit tenants (such as Ms. Colon) to remain in their homes post-foreclosure and (iii) that the burden is on Fannie Mae to allege a good cause for the eviction. The motion seeks to have the eviction action dismissed or, in the alternative, that the housing court stay the proceedings until such time as the Treasury (or FHFA) issues appropriate guidance or regulations with regard to the effect of Fannie Mae’s conservatorship as it relates to post-foreclosure summary process evictions of tenants.

Attorneys for Fannie Mae have requested an extension of time to respond to the motion. Therefore, resolution of this case is not expected until sometime at the end of January 2009

Separately, Fannie Mae publicly announced (based on pressure from New Haven Legal Assistance) it agreed to provide leases for renters with good payment records so they can remain in their homes as their landlords go through foreclosure. The national policy change affects dozens of tenants in the state and about 5,000 nationwide.

Additional Resources

IS YOUR LANDLORD GOING THROUGH FORECLOSURE? What a Tenant Needs to Know (http://www.larcc.org/pamphlets/housing/is_landlord_foreclosing.PDF);

Connecticut Law About Foreclosure (<http://www.jud.ct.gov/lawlib/law/foreclosure.htm>)

DELAWARE

Foreclosure Process

After a mortgagee becomes 3 - 4 payments past due, it is referred to an attorney and a complaint, known as a Writ of Scire Facias, must be filed within 30 days. Within 20 days of the filing, the mortgagor must appear in court to state why the foreclosure should not proceed. If the mortgagor loses the foreclosure action or if a default judgment is entered, the sale date must be set within the next 3 months. Notice of the sale of the foreclosed property must be provided to the mortgagor at least 10 days prior to the sale.

Tenant Rights in Foreclosure Proceedings

Leases subordinate to the mortgage terminate at the time of the sale of the foreclosed property. Tenants do not have the right to be named as a party to foreclosure proceedings, but they must be notified of the filing of a foreclosure lawsuit through certified mail within 10 days.

Right to Notice and Timeframe (Y/N)

Yes. Within 10 days of filing a foreclosure lawsuit, the lender must send by certified mail a copy of the complaint and a Notice to Lien Holders and Tenants of Filing of Action to anyone with an interest in the property, including tenants. No additional notice to tenants is required during the foreclosure process.

Terminate Tenancy (Y/N)

Yes. If the lease is subordinate to the mortgage, the lease is terminated upon sale of the foreclosed property.

Eviction Process

The creditor or buyer can bring an action for summary possession 5 days after the sale of the foreclosed property. After the complaint is filed, personal service of the notice of hearing and the complaint must occur at least 5 days and not more than 30 days before the complaint is to be heard. If service cannot be made in this manner, it can be made by leaving a copy of the notice and complaint with a person of suitable age residing in the rental unit or, after a reasonable effort, by posting a copy of the notice and complaint in a prominent place on the rental property and by sending an additional copy of each document to the tenant through either certified or 1st class mail.

Eviction Timeframe

24 hours, once tenant is given notice by the sheriff of the county that the court has issued a writ of possession in favor of the creditor or buyer. Notice can only be given between sunrise and sunset, Monday through Friday.

Relevant Authorities

10 Del. C. § 5601; 25 Del. C. §§ 5702-5717; First Nat. Bank of Chicago v. Boates, 2000 WL 1211213 (Del. Super. Ct. 2000); De. R. Super. Ct. R.C.P. 4(f)(4).

Current Developments

None

Additional Resources

State of Delaware Foreclosure Information website (<http://portal.delaware.gov/foreclosureinfo>).

DISTRICT OF COLUMBIA

Foreclosure Process

In the District of Columbia, lenders generally use a standard form “deed of trust” (*i.e.* a mortgage agreement) that typically includes a power of sale clause to specify the time, place and terms of the sale of property upon a default. This would be a non-judicial process. If the standard deed of trust form is used, the notice will including the following information: (1) statement of the default (*i.e.* failure to pay) and (2) a 30-day period to cure the default.

If the default is not cured by the end of the cure period, the lender can “accelerate” payment on the loan. This is usually accomplished through another notice sent by the lender to inform the owner that unless full payment is made, the property will be foreclosed upon.

After failure to pay all amounts owed under the deed of trust, the lender has the power to sell the property without initiating a judicial proceeding.

Lender must send another notice to owner by registered mail, return receipt requested, with a copy to the DC Recorder of Deeds. The notice must be sent at least 30 days before the actual sale of the home, and must be provided after any of the earlier notices that may be provided for in the standard form deed of trust. However, depending upon the type of form deed of trust used, this notice may be the only written notice the lender provides to the owner.

Tenant Rights in Foreclosure Proceedings

None

Right to Notice and Timeframe (Y/N)

Tenants have no rights to notice in foreclosure.

Terminate Tenancy (Y/N)

No

Eviction Process

Foreclosure is not a valid reason for eviction. Eviction of tenants in the District of Columbia cannot occur, notwithstanding the expiration of a lease, if the tenant continues to pay rent, except under the following circumstances, (D.C. Code § 42-3505.01 (2001)):

Violation of the lease

Owner wishes to use property for personal use or sell the property

Owner wishes to make substantial renovations – tenant has right to rerent following completion of renovations.

Property is to be replaced with new construction (non-rental) or demolished.

Tenant notices must state the following: (1) statement that property is registered, (2) reason for eviction and the deadline, (3) statement of tenant's rights for relocation assistance and (4) provide the address and phone number for the Rental Accommodation and Conversion Division.

Eviction Timeframe

Timelines vary depending upon reason for eviction.

Violation of Lease Agreement – 30 days (cure period)

Substantial Rehabilitation of Property – 120 days

Landlord's Immediate/Personal Use – 90 days

Discontinuance of Use as Rental Property – 180 days

Demolition of Property – 180 days

Unsafe Renovations or Alterations – 120 days

Relevant Authorities

Administrator of Veterans Affairs v. Valentine, 490 A.2d 1165 (D.C. 1985) (tenants of the former owner of a foreclosed property cannot be evicted if in good standing and have all of the rights of a tenant under the laws of the District of Columbia)

Mendes v. Johnson, 389 A.2d 781 (D.C. 1978) (Landlords are required to file a complaint in the Landlord and Tenant Branch of D.C. Superior Court in order to lawfully evict tenants)

Current Developments

None

Additional Resources

Rental Accommodations and Conversion Division
941 North Capitol Street, N.E. (202.442.4610)

The Office of Tenant Advocate
941 North Capitol Street, NE
Suite 9500
Washington, DC 20002
(202) 442-8359

Landlord Tenant Resource Center
Landlord Tenant Court Building (Building B)
510 4th Street, N.W., Room #115

D.C. Law Students In Court
806 7th Street, N.W., Suite 300
202.638.4798

FLORIDA

Foreclosure Process

Judicial foreclosures only; non-judicial foreclosures are not permitted in Florida. All mortgages are foreclosed in equity. The court will sever, for separate trial, all counterclaims against the foreclosing lender. A lender may sue to obtain a deficiency judgment.

The court order of foreclosure will specify how and when the foreclosure sale must take place. Usually, the foreclosure sale will take place not less than 20 days or more than 35 days after the date of the order. Although, if a lender or lender's attorney agrees to delay the sale, the sale may be held more than 35 days after the date of the order. Generally, notice of the sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, published in the county where the sale is to be held. Generally, the second publication shall be at least 5 days before the sale.

After the sale, the clerk will enter a certificate of sale, which triggers the period of time during which objections to the sale may be made. This is to assure all parties and bidders that there were no irregularities at the auction, collusive bidding, etc. *YEMC Constr. & Dev., Inc. v. Inter Ser, U.S.A., Inc.*, 884 So. 2d 446, 449 (Fla. Dist. Ct. App. 2004).

If no objections to the sale are filed within 10 days after the clerk files the certificate of sale, the clerk will file a certificate of title. Equitable right of redemption ends upon issuance of the certificate of title (or at another time specified by the courts, but this rarely happens).

See *Riley v. Grissett*, 556 So. 2d 473, 475 (Fla. Dist. Ct. App. 1990).

Once the certificate of title has been issued, the clerk will issue a writ of possession for execution by the sheriff.

Tenant Rights in Foreclosure Proceedings

A tenant's right to possession of the property shall not be cut off unless the tenant is made a party to the foreclosure action. *Dundee Naval Stores Co. v. McDowell*, 61 So. 108 (Fla. 1913). But cf. *Riley v. Grissett*, 556 So. 2d 473, 476 (Fla. Dist. Ct. App. 1990) (leasee estopped from asserting an interest in property following a foreclosure action to which leasee was not made a party; leasee had actual notice of proceedings and failed to disclose its interest in the property before the foreclosure sale); Fla. Stat. § 695.01(1) (2008) (unrecorded leases for a term longer than one year will not be good in law or equity against subsequent purchasers).

Right to Notice and Timeframe (Y/N)

No, no specific right to notice other than the right to be made a party to the foreclosure action. For statutes governing service of process and *lis pendens* see Fla. Stat. § 48.23 (2008); Fla. Stat. § 48.031 (2008); and Fla. Stat. § 48.183 (2008).

Terminate Tenancy (Y/N)

Yes, if the tenant is made a party to the foreclosure action. If the tenant is not made a party to the action, his interest in the property cannot be terminated.

Eviction Process

A landlord may terminate a rental agreement if a tenant materially fails to comply with a tenant's statutory obligations, material provisions of a rental agreement, or reasonable rules and regulations. A landlord is required to give a tenant notice of the noncompliance if it is of a type that the tenant should be given an opportunity to cure. Upon delivery of notice, the tenant shall have 7 days to cure the noncompliance. If the noncompliance is of a type that the tenant should not be given an opportunity to cure, such as the intentional destruction or misuse of the landlord's or other tenants' property or continued unreasonable disturbance, the landlord may terminate the rental agreement. The tenant will have 7 days from the date that notice of the noncompliance is delivered to vacate the premises.

If a landlord terminates a rental agreement, and the tenant does not vacate the premises, the landlord must file a civil action to determine the right of possession.

If a landlord obtains a favorable judgment, the clerk will issue a writ of execution to put the landlord in possession of the premises. The sheriff will execute the writ after the eviction notice has been conspicuously posted on the premises for at least 24 hours.

Eviction Timeframe

A tenant will have a minimum of 10 days between the foreclosure sale and the time the new owner obtains a certificate of title and a writ of possession. Once a sheriff has posted an eviction notice on the premises, a tenant must vacate within 24 hours. If, however, a tenant was not made a party to the foreclosure proceedings or had no actual knowledge of the foreclosure proceedings prior to receiving the eviction notice, a tenant may file an affidavit with the sheriff pursuant to Fla. R. Civ. P. 1.580(b) to stay execution of the writ of possession. Otherwise, a tenant may seek to delay the eviction by filing a motion to extend sheriff's execution, pursuant to Fla. R. Civ. P. 1.550.

Relevant Authorities

Statutes

Fla. Stat. § 45.031 (2008)
Fla. Stat. § 45.0315 (2008)
Fla. Stat. § 48.23 (2008)
Fla. Stat. § 48.031 (2008)
Fla. Stat. § 48.183 (2008)
Fla. Stat. § 83.62 (2008)
Fla. Stat. § 702.01 (2008)
Fla. Stat. § 702.03 (2008)
Fla. Stat. § 702.035 (2008); Fla. Stat. § 702.07 (2008)

Rules of Civil Procedure

Fla. R. Civ. P. 1.580
Fla. R. Civ. P. 1.550

Case Law

Dundee Naval Stores Co. v. McDowell, 61 So. 108 (Fla. 1913).

Riley v. Grissett, 556 So. 2d 473 (Fla. Dist. Ct. App. 1990).

Commercial Laundries of West Florida, Inc. v. Tiffany Square Investors Ltd. P'ship., 605 So. 2d 116 (Fla. Dist. Ct. App. 1992).

Burns v. Bankamerica Nat'l Trust Co., 719 So. 2d 999 (Fla. Dist. Ct. App. 1998).

YEMC Constr. & Dev. Inc. v. Inter Ser U.S.A., Inc., 884 So. 2d 446 (Fla. Dist. Ct. App. 2004).

Current Developments

On October 1, 2008, the Foreclosure Rescue Fraud Prevention Act of 2008 went into effect, which provides a mechanism to ensure that mortgagors are properly informed about their rights before signing a contract with a foreclosure rescue entity.

Additional Resources

Florida Department of Community Affairs, Division of Housing and Community Development
(www.floridacommunitydevelopment.org)

GEORGIA

Foreclosure Process

Georgia has both judicial and non-judicial proceedings. Non-judicial proceedings are the most common, where the mortgage or deed of trust has a “power of sale” clause, which allows the lender to start the foreclosure process simply by scheduling a foreclosure sale. The debtor, not the tenant, must receive written notice at least 30 days prior to the proposed foreclosure. Additionally, the lender must publish the foreclosure notice, in a paper of general circulation in the relevant county, once a week for 4 weeks immediately preceding the foreclosure sale. (In Georgia, foreclosure sales are held on the first Tuesday of every month.)

If the mortgage lacks a “power of sale” clause, a judicial proceeding commences when the lender files a petition with the court. The court grants a rule for payment, which is published twice a month for 2 months or served on the debtor at least 30 days before the money is due to be paid into court.

Tenant Rights in Foreclosure Proceedings

Tenants have no rights in foreclosure proceedings, judicial or non-judicial.

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

No. A foreclosure does not affirmatively terminate the tenancy. However, the rights of the renter are affected by a foreclosure. Where the lease was entered into after the mortgage was acquired, the lessee becomes a tenant at sufferance, and the new owner can choose to keep, modify, or terminate the lease. Where the lease was entered into before the mortgage was acquired, the “rights of the lessee are superior to those of a subsequent lienholder.” Trust Co. Bank v. Atlanta Speedshop. In the latter case, the lessee becomes a tenant at will, and the new owner is required to give 60 days notice to terminate the lease. Ga. Code Ann. § 44-7-7 (2008).

Eviction Process

Eviction starts with a demand for possession. If that fails, an affidavit is made before the court. A summons is then granted, issued, and served requiring the tenant to answer within 7 days of actual service. *If the tenant answers*, a “trial of the issues” is had. The tenant may not challenge the validity of the foreclosure proceeding here. If the judgment is against the tenant, the court issues a writ of possession effective 7 days after the date the judgment is entered. Appeals may be filed within 7 days of the date such judgment is entered. After notice of appeal, the trial judge has 15 days to supplement the record with findings of fact and conclusions of law. The tenant remains in possession pending the final outcome as long as rent is paid to the registry of the court.

If the tenant fails to answer, the court issues a writ of possession and renders a default verdict and judgment for the plaintiff. (If the tenant was not personally served, the court will make only a default judgment for possession but not for money owed, until the tenant answers or otherwise makes an appearance.)

Eviction Timeframe

30 days, plus time in court, assuming (a) the trial is held one week from the filing of the answer; (b) the tenant appeals an adverse judgment; and (c) the trial judge takes the entire 15 days allotted to him to supplement the record for appeal. If both the trial and appeal were held without delay, and the trial judge wasted no time supplementing the record, the timeframe could shrink to 15 days, plus time in court, the same as if no appeal were filed. If the tenant fails to answer the summons, the timeframe shortens to 8 days.

Relevant Authorities

Ga. Code Ann. § 44-7-50 to -56 (2008); Trust Co. Bank v. Atlanta Speedshop, 208 Ga. App. 867 (Ga. Ct. App. 1993); Raiford v. Dept. of Transp., 206 Ga. App. 114 (Ga. Ct. App. 1992).

Current Developments

A bill that would afford tenants caught in foreclosure to be deemed tenants at will (60 days notice of termination required from owner), as opposed to tenants at sufferance, was last with the House Second Readers on February 27, 2008.

Additional Resources

The Georgia Department of Community Affairs (DCA), which oversees housing issues, contracted with the Georgia Legal Services Program to offer a Landlord-Tenant Hotline: 404-463-1596 (metro Atlanta) or 800-369-4706 (toll-free within Georgia).

(http://consumer.georgia.gov/00/article/0,2086,5426814_5684686_39004304,00.html);

LegalAid-GA's Webpage about evictions, how to answer an eviction warrant, and how to file an appeal:

([http://www.legalaid-](http://www.legalaid-ga.org/GA/StateChannelResults.cfm/County/%20/City/%20/demoMode/%3D%201/Language/1/State/GA/TextOnly/N/ZipCode/%20/LoggedIn/0/iSubTopicID/2/iProblemCodeID1690099/sTopicName/%20/iTopicID/450/iChannelid/54/bAllState/0)

[ga.org/GA/StateChannelResults.cfm/County/%20/City/%20/demoMode/%3D%201/Language/1/State/GA/TextOnly/N/ZipCode/%20/LoggedIn/0/iSubTopicID/2/iProblemCodeID1690099/sTopicName/%20/iTopicID/450/iChannelid/54/bAllState/0](http://www.legalaid-ga.org/GA/StateChannelResults.cfm/County/%20/City/%20/demoMode/%3D%201/Language/1/State/GA/TextOnly/N/ZipCode/%20/LoggedIn/0/iSubTopicID/2/iProblemCodeID1690099/sTopicName/%20/iTopicID/450/iChannelid/54/bAllState/0)).

HAWAII

Foreclosure Process

Judicial process: The judicial process of foreclosure, which involves filing a lawsuit to obtain a court order to foreclose, is used when no power of sale is present in the mortgage or deed of trust. Generally, after the court declares a foreclosure, the property will be auctioned off to the highest bidder.

Non-judicial process: Non-judicial process of foreclosure is used when a power of sale clause exists in a mortgage or deed of trust. A “power of sale” clause is the clause in a deed of trust or mortgage, in which the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event of their default. In deeds of trust or mortgages where a power of sale exists, the power given to the lender to sell the property may be executed by the lender or their representative, typically referred to as the trustee.

Up until 3 days before the sale, the borrower may cure the default and stop the sale by paying the lien debt, costs and reasonable attorney’s fees, unless otherwise agreed to between the lender and the borrower.

There are no rights of redemption.

Tenant Rights in Foreclosure Proceedings

N/A

Right to Notice and Timeframe (Y/N)

If the deed of trust or mortgage contains a power of sale clause and specifies the time, place and terms of sale, then the specified procedure must be followed. Otherwise, the non-judicial power of sale foreclosure is carried out as follows:

The notice of intent to foreclose must be published once a week for 3 successive weeks, the last publication to be not less than 14 days before the day of sale, in a newspaper having a general circulation in the county in which the mortgaged property is located.

Copies of the notice must be mailed or delivered to the mortgagor, the borrower, any prior or junior creditors, the state director of taxation and any other person entitled to receive notice. Additionally, the notice must be posted on the premises not less than 21 days before the day of sale.

Up until 3 days before the sale, the borrower may cure the default and stop the sale by paying the lien debt, costs and reasonable attorney’s fees, unless otherwise agreed to between the lender and the borrower.

The sale, which may be held no earlier than 14 days after the last ad is published, is to be made at auction to the highest bidder.

Any sale, in which notice has been given, may be postponed from time to time by public announcement made by the lender or their representative.

Terminate Tenancy (Y/N)

Yes

Eviction Process

The landlord must give the tenant written notice no less than 45 days before the anticipated termination date. The tenant may vacate the unit at any time within the last 45 day period and is responsible for payment of prorated rent for the period that the premises are occupied and for notifying the landlord of the day of vacating.

Eviction Timeframe

See information contained under “Eviction Process” header.

Relevant Authorities

Chapter 667, Part II, Hawaii Revised Statutes

Current Developments

N/A

Additional Resources

Legal Aid Society of Hawaii - MAUI OFFICE

2287 Main Street

Wailuku, HI 96793-1655

Telephone: (808) 244-3731

Fax: (808) 244-5856

IDAHO

Foreclosure Process

In Idaho, most lenders secure repayment of a loan by means of a trust deed, *see* Idaho Code Ann. § 45-1502, and foreclosure on a trust deed usually occurs by means of a non-judicial sale, *see id.* § 45-1503(1). Idaho law permits foreclosure by non-judicial sale if (1) the trust deed, any assignment of the trust deed, and any appointment of a successor trustee are recorded in the mortgage records of the county where the property is located; (2) the borrower has defaulted on the loan secured by the trust deed; and (3) a notice of default has been filed with the county recorder and mailed by registered or certified mail to any person requesting such notice or who owns an interest in the property. *Id.* §§ 45-1505, -1511. After notice of default has been recorded, and at least 120 days before the sale, notice of the sale must be provided to the grantor of the trust deed (usually the borrower), and several other parties—often including the tenant. *Id.* § 45-1506(2); *see also id.* § 45-1506(4) (listing the required contents of the notice). At least 30 days before the sale, notice must also be served on “an adult occupant” of the property, posted “in a conspicuous place” on the property, and published in a newspaper of general circulation in the county. *Id.* § 45-1506(5)-(6).

Tenant Rights in Foreclosure Proceedings

Beyond notice, tenants appear to have very few rights in foreclosure proceedings.

Right to Notice and Timeframe (Y/N)

Depends. The tenant may be entitled to notice under 2 separate provisions of Idaho law. First, the tenant may be entitled to notice as the “successor in interest” of the grantor of the trust deed. After notice of default has been recorded, and at least 120 days before the sale, notice of the sale must be provided to “[a]ny successor in interest of the grantor (including, but not limited to, a grantee, transferee or lessee) whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.” Idaho Code Ann. § 45-1506(2)(b). Thus, if the lender has “actual notice” of the tenant’s interest, the tenant is entitled to notice at least 120 before the sale. Second, the tenant may be entitled to notice as “an adult occupant” of the property. At least 3 good faith attempts must be made, at least 30 days before the sale, to serve notice of the sale upon “an adult occupant of the real property in the manner in which a summons is served.” *Id.* § 45-1506(5). Also, “[a]t the time of each such attempt, a copy of the notice of sale shall be posted in a conspicuous place on the real property . . .” *Id.* If “personal service is made upon an adult occupant and a copy of the notice is posted, then no further attempt at personal service and no further posting [is] required.” *Id.* Also, “if the adult occupant personally served is a person to whom the notice of sale was required to be mailed (and was mailed) . . . , then no posting of the notice of sale [is] required.” *Id.* Even if the tenant does not receive notice as required by statute, the sale is valid as to the tenant if he or she had “actual knowledge of the sale.” *Id.* § 45-1508.

Terminate Tenancy (Y/N)

Yes. The purchaser is entitled to possession of the property on the tenth day following the sale, and a tenant remaining on the property becomes a “tenant[] at sufferance,” who may be subjected to expedited eviction proceedings. Idaho Code Ann. § 45-1506(11).

Eviction Process

The purchaser of the property must bring an action against the tenant for possession. Idaho Code Ann. § 6-310. The court must schedule a trial within 12 days from the filing of the complaint, and the tenant must be served with the summons, complaint, and trial setting at least 5 days before the date of the trial. *Id.* § 6-310(5). No additional notice is required, *see id.* § 6-310(4), and the court may not grant a continuance of greater than 2 days unless the tenant provides “good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if judgment is rendered against the [tenant],” *id.* § 6-311. “[T]he action shall be tried by the court without a jury,” and “[i]f the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the [tenant] and in favor of the [purchaser], for restitution of the premises and the costs and disbursements of the action.” *Id.* § 6-311A.

Eviction Timeframe

5 to 12 days after notice of the eviction proceedings.

Relevant Authorities

Idaho Code Ann. §§ 45-1502 to -1515 (describing trust deeds and the foreclosure process); Idaho Code Ann. §§ 6-310 to -311A (describing the eviction process); *Fed. Home Loan Mortgage Corp. v. Appel*, 137 P.3d 429, 433 n.1 (Idaho 2006) (“The procedures to foreclose on trust deeds outside of the judicial process provide the express-lane alternative to foreclosure in the judicial system and strip borrowers of protections embedded in a judicial foreclosure. As our Court of Appeals has correctly observed, strict compliance with the notice provisions is required.”); *Roos v. Belcher*, 321 P.2d 210, 211-213 (Idaho 1958).

Current Developments

Idaho recently passed a Consumer Protection Foreclosure Act, Idaho Code Ann. §§ 45-1601 to -1605, to help protect consumers against foreclosure rescue scams.

Additional Resources

Idaho Legal Aid Services, Inc. (www.idaholegalaid.org, (208) 345-0106); Idaho Department of Finance (<http://finance.idaho.gov/Mortgage/ForeclosureResources.aspx>)

ILLINOIS

Foreclosure Process

In a “deed in lieu of foreclosure” the lender may accept a deed from the borrower in lieu of foreclosure, subject to any lease. See 735 Ill. Comp. Stat. Ann. 5/15-1401 (West 2008). In a “consent foreclosure” where the tenant is named individually, the lender may take the property free of the lease. See 735 Ill. Comp. Stat. Ann. 5/15-1402(a) (West 2008). Where a tenant is not named individually in a “consent foreclosure,” the lender may take the property subject to the lease, subject to a filing of a supplemental petition. See 735 Ill. Comp. Stat. Ann. 5/15-1501(a) (West 2008); see also Applegate Apartments Ltd. P’ship v. Commercial Coin Laundry Sys., 657 N.E.2d 1172, 1176-77 (Ill. App. Ct. 1995). In a “judicial foreclosure,” the lender initiates the process by filing a complaint and serving a summons upon the borrower and other interested parties. 735 Ill. Comp. Stat. Ann. 5/15-1504 (West 2008). The lender is required to send a notice to the borrower (and any tenant not named in the foreclosure) at least 30 days before the court’s judgment of foreclosure. 735 Ill. Comp. Stat. Ann. 5/15-1502(c)(2) (West 2008). If the court finds in favor of the lender, after expiration of any reinstatement or redemption period, the property is sold at a judicial sale. 735 Ill. Comp. Stat. Ann. 5/15-1507(a)-(b) (West 2008). The notice of sale should be published in the legal and real estate sections of a local newspaper once a week for 3 weeks – the first such notice not to be published more than 45 days prior to sale and the last notice should be published a minimum of 7 days before the sale. 735 Ill. Comp. Stat. Ann. 5/15-1507(c)(2) (West 2008). After a confirmation of sale, an order of possession is entered in favor of the purchaser. 735 Ill. Comp. Stat. Ann. 5/15-1508 (West 2008).

Tenant Rights in Foreclosure Proceedings

A tenant is not a necessary party to a foreclosure proceeding. 735 Ill. Comp. Stat. Ann. 5/15-1501 (West 2008); see also Applegate Apartments Ltd. P’ship v. Commercial Coin Laundry Sys., 657 N.E.2d 1172, 1176. (Ill. App. Ct. 1995). Where a tenant is not made a party to the proceeding, the property may be taken subject to the lease. See 735 Ill. Comp. Stat. Ann. 5/15-1502(c) (West 2008).

Right to Notice and Timeframe (Y/N)

No. Notice of the foreclosure is not required where tenant’s interest will not terminate with the foreclosure. If termination is sought by lender, tenant can be named as a party to the foreclosure or the lender or purchaser can file a supplemental petition to obtain an order of possession against the tenant. See 735 Ill. Comp. Stat. Ann. 5/15-1502(c) (West 2008); see also 735 Ill. Comp. Stat. Ann. 5/15-1701(d) and (h) (West 2008).

Terminate Tenancy (Y/N)

No. If a tenant is named as a party to the foreclosure or is given notice as a nonrecord claimant or “unknown owner,” the foreclosure terminates the tenancy only if so provided in the order of possession 735 Ill. Comp. Stat. Ann. 5/15-1506(i) (West 2008).

Eviction Process

After the conclusion of a judicial sale, if a tenant was personally named and the tenant’s interest is terminated, the award of possession to the purchaser is effective 30 days after entry of the confirmation of sale with no further notice required. 735 Ill. Comp. Stat. Ann. 5/15-1508(g) (West 2008). If a tenant is not named as a party to the foreclosure individually, but is named as an “unknown owner” or nonrecord claimant, the lender may file a supplemental petition against the tenant until 30 days after entry of the

confirmation of sale. Where a tenant is not named as a party to the foreclosure, individually or generically, a lender nonetheless may file a supplemental petition during the pendency of the foreclosure and up to 90 days after the confirmation of sale. A hearing relating to the supplemental petition shall be no less than 21 days from the date of service of the notice. 735 Ill. Comp. Stat. Ann. 5/15-1701(h) (West 2008). Where tenant is current on rent, or where timely written notice of to whom and where the rent is to be paid has not been provided to tenant, or where tenant has made good-faith efforts to make rental payments to keep current, any order of possession must allow the tenant to retain possession of the property for the lesser of (i) 120 days following the notice of the hearing on the supplemental petition, or (ii) the remainder of the tenant's lease. Id. If a supplemental petition is not filed as outlined above, the purchaser may not file a forcible entry and detainer action under the Forcible Entry and Detainer Act, 735 Ill. Comp. Stat. Act. 5, Art. 9 (2008), against a tenant until 90 days after a notice of intent to file such action has been properly served on the tenant. Id.

Eviction Timeframe

Termination of possession is effective 30 days after the confirmation of sale, if tenant is named individually as a party to the foreclosure. 735 Ill. Comp. Stat. Ann. 5/15-1508(g) (West 2008). If the tenant is given timely notice and hearing pursuant to a supplemental petition and tenant has paid rent timely, tenant is entitled to remain on the premises for the lesser of 120 days after the notice of hearing or the remaining duration of the lease. If tenant has not paid rent timely, the purchaser may seek to evict the tenant under the Forcible Entry and Detainer Act, 735 Ill. Comp. Stat. Act. 5, Art. 9 (2008). If a supplemental petition is not filed as outlined above, the purchaser may not file a forcible entry and detainer action against a tenant until 90 days after a notice of intent to file such action has been properly served on the tenant. 735 Ill. Comp. Stat. Ann. 5/15-1701(h).

Relevant Authorities

735 Ill. Comp. Stat. Act. 5, Art. 15 (2008); Applegate Apartments Ltd. P'ship v. Commercial Coin Laundry Sys., 657 N.E.2d 1172 (Ill. App. Ct. 1995); see also 735 Ill. Comp. Stat. Act. 5, Art. 9 (2008).

Current Developments

The Illinois Senate has proposed a bill that would place a moratorium on all foreclosure complaints until Jan. 1, 2010 on residential real estate property if the property is a single family residence or a residential condominium and if the borrower is paying the current interest and the current required reserve or escrow payments for real estate taxes and insurance. No action on the bill has been taken since Feb. 2008. H.B.2131, 95th Gen. Assem., Reg. Sess. (II. 2008).

Additional Resources

Illinois Legal Advocates
<http://www.illinoislegaladvocate.org/>

INDIANA

Foreclosure Process

The filing of a foreclosure action starts a 3 month pre-foreclosure waiting period for occupied real estate. At the completion of the 3 month period, the foreclosing party may file for judgment and an order of judgment will be issued to the sheriff. Upon receiving the judgment, the sheriff will sell the property after a 30 day publication period. During the publication period, the sale must be advertised in a newspaper for at least 3 successive weeks. The sheriff will also serve a copy of the notice to the owner and any tenants of the property upon the first publication.

Indiana has no non-judicial foreclosure process.

Tenant Rights in Foreclosure Proceedings

Post-mortgage tenancies are terminated by foreclosure only if tenant is named a party to the foreclosure action.

Right to Notice and Timeframe (Y/N)

Yes. Tenant must be notified and joined to the initial foreclosure action in order to terminate the tenancy at foreclosure.

If the tenant is not given notice and joined to the foreclosure action, the buyer at the foreclosure sale takes the property subject to the lease.

From beginning to end, the foreclosure process will take at least 120 days.

Terminate Tenancy (Y/N)

Yes. If the tenant has been named as a party in the foreclosure action.

If the lease has priority over the mortgage under the recording act (unlikely), the foreclosure does not terminate the tenancy in any event.

Eviction Process

Foreclosures properly naming the tenant in the action will immediately cut off the right of the lessee at the time of the foreclosure sale.

Eviction then proceeds according to normal eviction processes in Indiana. The eviction action is filed and a clerk issues an order to appear and show cause why the landlord should not be put in possession. A hearing is then conducted no earlier than 5 days after the order is issued (or 48 hours if the property is in danger of being destroyed). At the hearing, the court decides who is entitled to possession and gives an order of possession to the sheriff if the landlord is entitled to possession. Upon issuance of the order of possession, a tenant can be removed at any time after 48 hours following the hearing. After removal of the occupants, the court may make a final determination and hear questions related to damages owed to the landlord.

Eviction Timeframe

Foreclosures properly naming the tenant in the action will immediately cut off the right of the lessee at the time of the foreclosure sale.

Eviction then proceeds according to normal eviction processes in Indiana. The eviction action is filed and a clerk issues an order to appear and show cause why the landlord should not be put in possession. A hearing is then conducted no earlier than 5 days after the order is issued (or 48 hours if the property is in danger of being destroyed). At the hearing, the court decides who is entitled to possession and gives an order of possession to the sheriff if the landlord is entitled to possession. Upon issuance of the order of possession, a tenant can be removed at any time after 48 hours following the hearing. After removal of the occupants, the court may make a final determination and hear questions related to damages owed to the landlord.

Relevant Authorities

Ind. Code §§ 32-29-7-1 to -14, 32-30-3-1 to -4 (2008)

Como, Inc. v. Carson Square, Inc., 648 N.E.2d 1247 (Ind. Ct. App. 1995), *aff'd by an equally divided court* 689 N.E.2d 725 (Ind. 1997)

Current Developments

On January 8, 2008, S.B. 186 was introduced in the state senate requiring giving notice to tenants of their rights and giving tenants the right to terminate during the foreclosure period. This bill was referred to committee and has not returned to the full senate for a vote.

Additional Resources

Indiana Foreclosure Prevention Network (<http://www.877gethope.org/> or 877-get-hope)

IOWA

Foreclosure Process

Iowa law provides for judicial and non-judicial foreclosure procedures.

(1) Judicial foreclosure: (a) lender must give a default and right to cure notice to borrower before filing a judicial foreclosure complaint unless a similar notice was give within the past year; (b) the borrower has a right to cure the default within 30 days from date of notice; (c) if default is not cured foreclosure action can be brought in the county of the property; (d) lender may request a foreclosure without the right for redemption upon giving notice to borrower; (e) borrower has 21 days to respond to a petition for foreclosure to get a hearing; (f) if borrower fails to respond within 21 days lender must give notice to borrower that a default judgment without a hearing will be granted by the court unless the borrower files a response within 10 days; (g) upon a foreclosure judgment the sale of the property would occur promptly after judgment unless borrower files a written demand to delay the sale; (h) if a demand for delay of sale is made sale will be held within 2 months if property is not occupied by borrower, within 12 months if occupied by borrower or within 6 months if occupied by borrower and lender includes a waiver of deficiency judgment; (i) lender must give notice to borrower of its waiver of deficiency judgment and the shortening of the redemption period; and

(2) Voluntary non-judicial foreclosure: (a) mortgagor and mortgagee may enter into a written voluntary foreclosure agreement; (b) mortgagor will convey the property to mortgagee and mortgagee will waive any right to deficiency; (c) mortgagee can have immediate access to the property; (d) a joint filing of the joint foreclosure proceeding election must be filed with the county recorder; (e) mortgagee must send a certified mail notice of the election to all junior lien holders with a 30 days right of exercising redemption. Iowa Code § 654.18

Tenant Rights in Foreclosure Proceedings

Iowa law requires notice to persons in possession of real property (*i.e.* tenants) prior to completion of sale of the property in foreclosure. Case law requires tenants to be part of the proceeding for the foreclosure process to terminate their rights pursuant to lease terms.

Right to Notice and Timeframe (Y/N)

Yes. Iowa law requires notice to persons in possession of real property (*i.e.* tenants) IF the foreclosure proceeding began while the tenant was leasing the property. If a person became a tenant AFTER the foreclosure was initiated, under concept of *lis pendens*, the tenant is deemed to have notice and there is no requirement for separate notice.

Terminate Tenancy (Y/N)

Yes. If tenant was served with notice in the foreclosure proceeding. If no notice provided or tenant was not made a party in the foreclosure, Iowa Legal Aid has argued that the new owner in the foreclosure takes the property subject to the lease and tenancy is not terminated.

Eviction Process

If the tenant is made a party or provided notice in the foreclosure proceeding, the new owner of the property will be issued an immediate writ of possession that will allow the owner to evict the tenant in the time specified (typically 3 days)

In the event the tenant is not made a party, or provided notice to, the foreclosure proceeding, it is typically argued that the lease/tenancy survives and that eviction must take place through the following separate eviction process.

(1) Landlord must give a 30 days notice of termination of lease from the date rent is due; (2) if tenant does not leave property Landlord can file a “Forcible Entry and Detainer” complaint; (3) tenant must get at least 3 days prior notice of eviction hearing; (4) upon judgment for landlord sheriff may evict tenant at any time.

Eviction Timeframe

30 days written notice of termination and 3 days notice of eviction hearing.

Relevant Authorities

(a) Iowa Code Ann § 654 (foreclosure provisions, including 654.18 on voluntary nonjudicial foreclosures); (b) Iowa Code Ann § 562A (landlord tenant provisions); (c) Iowa Code Ann § 648 (“Forcible Entry and Detainer” provision); (d) Iowa Code Ann § 575.1 (notice requirements for claims of lien); (e) Miller v. Laing, 236 NW 378 (1931) (foreclosure decree evicts tenant who was a party to suit)

Current Developments

Iowa Legal Aid is currently challenging tenant notice procedures that allow notice to be made through certified mail. Iowa Legal Aid has noted that often certified mail does not get to the intended recipients. It has argued this procedure violates due process and equal protection.

Additional Resources

Iowa Legal Aid provides summaries of the state’s Eviction and foreclosure laws at : <http://www.iowalegalaid.org/IA/index.cfm>. A staff attorney at Iowa Legal Aid noted the following: (a) judicial foreclosure: if landlord makes a demand for delay of sale, sale will be suspended for 2 months; (b) in a voluntary foreclosure it is Iowa Legal Aid’s position that tenants are entitled to the same 1 month notice given to junior lien holders; (c) tenant must be made a party to the proceeding for the lease to be terminated; and (d) if tenant does not leave property upon the end of the periods listed above mortgagee may file an eviction complaint.

KANSAS

Foreclosure Process

Kansas requires judicial foreclosure. When a borrower defaults, mortgagee files suit to foreclose the mortgage. Personal service is required. Defendant has 20 days to file an answer with the court. If the court finds in favor of the lender, judgment is entered in the amount of the debt and the borrower has 10 days to pay the amount due before an order is issued for the sale of the property. Before the sale, the sheriff must publish a notice of the sale in a newspaper once per week for 3 consecutive weeks. The sale must take place between 7 and 14 days after the last publication. A debtor has 12 months to redeem the property if more than one-third of the principal balance of the loan has been paid (3 months if not). If the debtor's right of redemption expires and the property has not been redeemed, the property is transferred to the purchaser. During the redemption period, the debtor may remain in possession of the property, but is liable for damage done to the property during the period. The right to redeem may be waived in certain cases.

Tenant Rights in Foreclosure Proceedings

Under case law, if a mortgagee knows or should know that a property is held by a lessee, a foreclosure proceeding will have no effect on the lease unless the tenant is joined as a party to the proceeding. However, case law holds that if a tenant leases a property after a foreclosure action has been filed by the mortgagee, the tenant is charged with notice, has no property rights against the mortgagee and becomes a tenant at will after the mortgage is foreclosed.

Right to Notice and Timeframe (Y/N)

Yes. Foreclosure is effective against a tenant only if tenant is joined as a party to the proceeding.

If the tenant is not named in the foreclosure suit, the tenant's leasehold interest in the property continues unaffected by the foreclosure action. If joined as a party, personal service is required under Kan. Stat. Ann. 60-2401(a). Tenancy at will can be terminated on 30 days written notice. Tenancy year to year can be terminated on 30 days written notice (given before the end of the year).

The Kansas Annotated Statutes provide that for both tenancy at will and tenancy year-to-year, 30 days written notice is required for either party to terminate. In the case of a tenancy from year-to-year, the statute says the notice must be given to the tenant "prior to the expiration of the year." The provision for tenancy at will also provides that if rent is reserved payable at intervals of less than 30 days, the notice period need not be greater than the interval between payments. Further, there is an exception allowing persons in military service to terminate a tenancy at will on not more than 15 days written notice when required due to military orders.

Terminate Tenancy (Y/N)

No. Foreclosure of a prior mortgage does not terminate a tenancy unless the tenant is joined as a party to the foreclosure proceeding.

Accordingly, the tenant can continue to occupy the property during the remaining term of the lease, even if the property is sold by the sheriff. In the *Citizens Bank* case, the tenants refused to vacate the property and won on a motion for summary judgment in the lower court when the buyer tried to force them to leave. The Court of Appeals upheld the lower court's decision because the tenants were not made a party to the foreclosure proceeding.

Eviction Process

Landlord generally is not required to state a reason for eviction. However, government subsidized housing may impose a “good cause” requirement forcing landlord to state a reason. Retaliatory evictions are illegal. After notice is given, landlord must file suit in the local court to evict the tenant. There is no specific process for tenants affected by a foreclosure.

Eviction Timeframe

In the case of an eviction for failure to pay rent, landlord must give tenant 3 days notice to pay up or vacate premises. Notice must be given at least 3 days before landlord files suit for rent and possession. Some public housing follow a policy of 10 - 14 days notice for a rent-based eviction. In all other cases, landlord must give tenant 30 days notice to vacate. If court judgment is in favor of landlord, and tenant does not appeal within 5 days, court may issue writ of restitution. Sheriff’s Office has 10 calendar days from the date of the writ of restitution to complete the eviction. Sheriff’s Office may notify tenant of the date on which the court order will be carried out, but is not required to do so. For tenants affected by foreclosure, see information above related to foreclosures.

Relevant Authorities

Eviction proceedings governed by Kan. Stat. Ann. 61-3801 through 3808. Landlord-tenant laws are at Kan. Stat. Ann. 58-2501 through 25,127. Foreclosure proceedings governed by civil procedure laws, including Kan. Stat. Ann. 60-1001 through 6010, 60-2401 through 2420. Effect of foreclosure on lease governed by *Citizens Bank & Trust v. Brothers Construction & Manufacturing, Inc.*, 18 Kan. App. 2d 704, 859 P.2d 394 (Kan. Ct. App. 1993), citing *Wheat v. Brown*, 3 Kan. App. 431, 43 Pac. 807 (1896). Regarding tenant entering into lease after foreclosure action is filed, see *Federal Land Bank v. Plamann*, 784 P.2d 390 (Kan. Ct. App. 1989).

Current Developments

In September 2007, the Kansas Attorney General announced the formation of a task force to investigate the causes of the increasing number of home foreclosures in Kansas and develop recommendations on how to stem the tide. Task force has sponsored advertisements aimed at educating consumers about avoiding or dealing with foreclosures. No legislative proposals to date.

Additional Resources

Foreclosure process in Kansas is outlined in Jason Zager, Comment, *The Kansas Foreclosure Process: Adapting the System to the Changing Real Estate Finance Market*, 53 Kan. L. Rev. 1281 (2005). Eviction process is described at <http://www.rentlaw.com/eviction/kseviction.htm>. The Kansas Tenants Handbook is available at <http://www.hcci-ks.org/THB.pdf>, published by Housing & Credit Counseling Inc. (“HCCI”) of Topeka, KS. HCCI is a non-profit organization that provides landlord-tenant services, among other things, and its website is at <http://www.hcci-ks.org/home.htm>. Kansas Legal Services is located at <http://www.kansaslegalservices.org/Home/PublicWeb>.

KENTUCKY

Foreclosure Process

Only judicial foreclosure available. Suit must be filed in circuit court in the district where the property is located. Complaint must be served on borrower who then has 21 days to respond. If Borrower fails to respond or is found in default, a judgment is declared by court and notice of sale issued. Foreclosure sale only permitted pursuant to court order. Lender may not take possession of property until court confirms foreclosure sale. Sale occurs at least 1 month after court rules against borrower. Foreclosure sale usually requires 3 consecutive weeks notice, prior to the sale, in a newspaper containing date, location, and terms of sale. Sale date can only be changed by court order.

Tenant Rights in Foreclosure Proceedings

None. From commencement of foreclosure proceedings, landlord must pay all rent monies received from tenant to lender.

Right to Notice and Timeframe (Y/N)

Renter has no right to notice of foreclosure proceedings. Typically, renter's notice is sheriff's notice to evict giving 30 days to vacate property. Borrower has 20 days notice to respond from notice of Pending *Lis Pendens* action (this is a public notice that the property is subject to a pending legal proceeding). Uncontested foreclosure takes approximately 150 days

Terminate Tenancy (Y/N)

Yes

Eviction Process

Varies by reason for eviction. Landlord must give 7 days written notice of intent to evict for non-payment of rent, or 14 days written notice of intent to evict for other non-compliance with lease. Acceptance of rent by landlord following notice of termination may (if evicting for violation of any lease provision) or may not waive eviction process. Notice of eviction hearing is required at least 3 days prior to hearing. Appeal of outcome may be filed within 7 days after the finding.

Eviction Timeframe

30 days following notification

Relevant Authorities

Castleman v. Belt, 1841 WL 2945 (Ky. Ct. App 1841); KRS 383.200

Current Developments

None

Additional Resources

Tenants' rights in foreclosure vary from county to county. Please contact any of Appalachian Research and Defense Fund, Inc., Kentucky Legal Aid, Legal Aid of the Bluegrass, or the Legal Aid Society depending on renter's geographic location. Generally, the organization helps renters still in possession of premises. Once renter vacates premises, any aforementioned legal aid organization cannot be of assistance. See also Kentucky landlord Tenant Guide.

LOUISIANA

Foreclosure Process

Two alternatives: (1) ordinary process, where the lender must sue the borrower in court and obtain an order to foreclose, and (2) executory process, where the mortgage document contains “confession of judgment” executed by the borrower that permits the issue of an immediate judgment against the borrower in the event of default. After court proceedings (in the case of ordinary process) or authentication of the confession of judgment (in the case of executory process), the court issues an order to foreclose, issues a demand for payment of the delinquent amount and gives the borrower 3 days to cure the default. If the borrower fails to do so, the court then issues a writ of seizure and sale. The sale must be advertised for 30 days, and then the property may be sold at auction. The lender may sue for any deficiency balance, and the borrower has no right of redemption.

Tenant Rights in Foreclosure Proceedings

After seizure of property, the sheriff must serve written notice of the seizure on occupants of seized premises. Failure to serve this notice will not invalidate the sheriff’s sale, but it will prevent the purchaser from being able to automatically obtain a writ of possession directing the sheriff to put the purchaser in possession of the property, and the purchaser will instead have to commence eviction proceedings.

Right to Notice and Timeframe (Y/N)

See information under “Tenant Rights in Foreclosure Proceedings.”. There is no specific timeframe requirement for this notice.

Terminate Tenancy (Y/N)

Yes. If the lease is recorded after the mortgage is recorded. If the lease is recorded before the mortgage, the lease survives. Unrecorded leases are not binding on acquirers of the leased property unless explicitly assumed. Tenants who are evicted prior to the expiration of their lease due to a sale of the leased property may sue their former landlord for damages.

Eviction Process

The landlord must send a written notice to vacate, which must describe the grounds for eviction and allow the tenant at least 5 days from delivery of the notice to vacate the property. If a tenant does not comply with the notice to vacate, eviction proceedings can be commenced by a rule for possession of premises, which requires the tenant to show cause why he should not be ordered to deliver the premises to the landlord. The rule must state the grounds for eviction and can be heard by the court no earlier than the third day after service of the rule on the tenant. Trial of the rule is a summary proceeding. Judgment must be rendered immediately after trial of the rule, and notice of judgment must be given to defendant. An eviction judgment is executed by applying for a warrant for possession if the tenant does not leave the premises within 24 hours after the written judgment is signed. Appeals (including an appeal bond) must be filed within 24 hours after the judgment is executed.

Eviction Timeframe

As few as 10 days.

Relevant Authorities

P.J.'s Army Surplus & Co., Inc. v. G.D. & G., 635 So. 2d 1271 and La. Code Civ. Proc. Art. 2372 and 2376 (effect of foreclosure on leases); R.S. 10:9-629 (foreclosure); La. Code Civ. Proc. Art. 2293 (notice to occupants of seized premises); R.S. 13:4346 (writ of possession); La. Civ. Code Art. 2668, et seq. (leases generally); R.S. 9:2721 (recording act); La. Civ. Code Art. 2712 (unrecorded leases); La. Code Civ. Proc. Art. 4701, et seq. (eviction).

Current Developments

None

Additional Resources

http://law.loyno.edu/probono/clinic/manual/LAmanual_tenant.pdf; <http://www.lawhelp.org/LA/>; www.foreclosures.com; http://www.foreclosure.com/statelaw_LA.html

MAINE

Foreclosure Process

In 2007, Maine repealed laws that permitted foreclosure of mortgage on real property by possession and sale of the property, *i.e.*, strict foreclosure. ME. REV. STAT. ANN. TIT. 14, ch. 713 [Miscellaneous Provisions Relating to Foreclosure of Real Property Mortgages], subchs. 4 [Action for Possession] and 6 [Foreclosure Proceedings by Civil Action] sets forth the judicial process that must be followed to obtain foreclosure. Foreclosure is by the filing of a civil action against all parties in interest. Service of process on all parties in interest must be in accordance with the Maine Rules of Civil Procedure. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined.

Tenant Rights in Foreclosure Proceedings

Parties in interest include lessees pursuant to recorded leases or memoranda thereof. Such a lessee, as a party in interest, must be joined in the foreclosure action. ME. REV. STAT. ANN. TIT. 14, § 6321. In addition, any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of the recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after the completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as party in interest at any time prior to the entry of judgment. *Id.*

Right to Notice and Timeframe (Y/N)

Yes. A civil action is commenced by: (1) service of a summons and complaint, or (2) filing a complaint with the court. If the first method is used, the complaint must be filed within 20 days after completion of service, and if the second method is used, the return of service shall be filed with the court within 90 days after the filing of the complaint. The action may be dismissed on motion and notice if the complaint or return of service is not filed in a timely fashion. ME. R. CIV. P. 3 and 80A.

Terminate Tenancy (Y/N)

Nothing specific with respect to a change of ownership resulting from a foreclosure. However, the sale of the residence by a landlord terminates the renter's tenancy if the renter does not have a written lease. However, the new owner must allow the renter to continue to live in the residence during the period for which the renter has paid rent. If the renter has a written lease, the renter generally may stay until the lease expires. When the title passes to the new owner, a renter without a lease becomes a tenant at sufferance. The new owner may serve a tenant at sufferance with notice to quit within 7 days after the title passes, but if the new owner does not serve such notice within 7 days, the renter becomes a tenant at will and is entitled to a 30-day notice to quit.

Eviction Process

A landlord may evict a tenant at will without giving a reason for the eviction, but the landlord or an agent must give the renter a written notice to quit in person. A tenant may be able to stop an eviction if the renter can prove that the proposed eviction is the result of retaliation or unlawful discrimination. If the tenant does not move out by the end of the notice to quit period, then the landlord may file a civil action and a law enforcement employee will serve the tenant with a summons and complaint anytime after the notice period ends. The summons will specify the time and place of the court hearing, but it must be served at least 7 days before the court hearing. If the court enters a default judgment or finds for the landlord and if no appeal is filed in the interim, the landlord may obtain a writ of possession from the

court seven days after the judgment is entered. The landlord may request a law enforcement officer to serve the tenant with the writ of possession, and the tenant must move out of the residence shortly after the service of the writ. If the renter does not move out in the time allotted, then the renter becomes a trespasser and the police may remove the renter by force and place possessions in storage at the renter's expense.

Eviction Timeframe

The notice to quit period of time: typically 30 days, but in some cases, just 7 days (*e.g.*, the tenant has seriously damaged the residence; the tenant has been a nuisance to others; the tenant has made the residence uninhabitable; the tenant has changed the locks and has refused to give the landlord a duplicate key; or the tenant is 7 days or more behind in rent). The summons must give the tenant at will at least 7 days before the court hearing. If the tenant loses in court and does not appeal, the tenant will have 7 more days to move. If the tenant does not move within this 7-day period, then the tenant will have only 48 hours to leave

Relevant Authorities

See citations listed above and sources listed below.

Current Developments

None

Additional Resources

(1) MAINE ATTORNEY GENERAL'S CONSUMER LAW GUIDE (2007): Chs. 14 (Consumer Rights When You Rent An Apartment) and 16 (Attorney General's Model Landlord-Tenant Lease); (2) Maine State Housing Authority, MAINE RENTAL HOUSING GUIDE (May 2008); (3) Pine Tree Legal Assistance, THE RIGHTS OF TENANTS IN MAINE (December 2007); and (4) Pine Tree Legal Assistance, WHAT CAN I DO IF MY LANDLORD IS TRYING TO EVICT ME? (August 2005).

MARYLAND

Foreclosure Process

Lenders may initiate a sale on a defaulted mortgage with court approval but without a judicial hearing in 2 ways: (1) an *assent to decree*, due to a provision in the original loan documents agreeing to sell the property upon a specified default; or (2) a *non-judicial foreclosure, due to a 'power of sale'* clause in the mortgage permitting the sale of the property to recoup defaulted payments requiring lenders, first, to file an order to docket with the court. Without either mortgage provision pre-authorizing a sale, lenders cannot commence a foreclosure action before seeking a *judicial foreclosure proceeding*, in which a complaint is filed against the borrower and a decree of sale is granted by the court after determining that a default has occurred. The court will fix the amount of the debt, interest, and costs then due; and provide a reasonable time within which payment may be made. The court may order that if payment is not made within the time fixed in the order, the property is then sold as part of a publicly noticed sale.

On April 4, 2008, Maryland enacted more stringent foreclosure laws, specifically requiring lenders to provide a "notice of intent" to foreclose at least 45 days before filing a foreclosure action in court, which itself required lenders to wait at least 90 days after the loan default. In addition, differing from prior laws, lenders now must personally serve borrowers with court papers once the foreclosure action is filed. If personal service efforts fail at least twice, there is an exception for posting the documents on the property and mailing them by certified mail. Once service is made, lenders must wait an additional 45 days before selling your home at auction and publish a notice of sale in a newspaper 3 times before the sale takes place. Borrowers have the "right to redeem," their property up until 1 business day before the sale by paying all overdue payments, late fees, and foreclosure court fees in many cases.

Tenant Rights in Foreclosure Proceedings

The Maryland Code provides that the purchaser at a mortgage foreclosure sale has the same rights and remedies against the tenants as the original landlord, and the tenants have the same rights and remedies against the purchaser as they had against their original landlord on the day the mortgage was recorded. (Maryland Code, Real Property, Section 7-106) Therefore, once the foreclosure process is complete, the new owner essentially inherits the tenancy but is not obligated to allow the tenants to remain in the property, even if the tenant has time before lease expiration. If the new owner does not choose to continue the tenancy, the tenants still have rights against the original landlord. As long as the tenant resided at the property prior to foreclosure, he/she retains the "right to possession" and the lease remains until the foreclosure is final. The courts have held that where the tenancy began after the foreclosed property's new mortgage was recorded, the tenant has no right of possession against the purchaser at the foreclosure sale.

Right to Notice and Timeframe (Y/N)

Yes. Beginning August 11, 2008, tenants in foreclosed-on homes must get at least 14 days notice -- by certified mail and first-class mail -- before eviction, advising them of the date of the lockout and the consequences of their failure to remove their personal property. The notice must also be posted on the property at least 7 days prior to the lockout date. Otherwise, typical notice requirements remain. State law requires 30 days for at-will, month-to-month, and indefinite term tenants, waived if a non-payment case, and 90 days prior to the end of the lease for yearly leases. Baltimore City requires the landlord to give at least 60 days' written notice before the end of the year, month, or week.

Maryland Code, Real Property Sec. 8-208 (a) (5) and Sec. 8-501

Terminate Tenancy (Y/N)

No. There is no obligation to move during foreclosure proceedings. However, due to the uncertainty of the survival of the tenancy under new ownership, many tenants choose to move as quickly as possible.

Eviction Process

In Maryland, a purchaser at a foreclosure sale can initiate eviction prior to ratification. See *G.E. Capital Mortgage Services, Inc. v. Samuel W. Edwards, Jr.*, 144 Md. App. 449; 798 A.2d 1187 (2002). Although typically scheduled at least 7 days later, residents of a foreclosed home can be evicted as soon as the foreclosure is filed with the court. To evict, a Motion for Judgment of Possession is filed and served on the former borrowers. After service is effected, an Affidavit of Service is filed with the court and an Order for Judgment of Possession is sent to the judge for consideration after 30 days. Once the Order for Judgment of Possession is granted, a Writ of Possession is filed with the court and forwarded to the sheriff for execution, to be scheduled for eviction upon the sheriff's calendar. To evict a tenant in possession, the purchaser should request the court to issue a Writ of Possession. The tenant must be served with notice of the purchaser's motion for the Writ and must be given time to respond. This ensures at the least that tenant will know that he may be required to leave. However, if the purchaser accepts rent from the tenant, a tenancy is established and the tenant is now entitled to proper notice to vacate.

Eviction Timeframe

Once the foreclosure is approved and eviction is legally allowed, the renter may have to vacate immediately.

Customarily, in all the Maryland counties, with the exception of Prince George's County, the eviction process may take 90 days. In Prince George's County, the eviction may take 4 - 5 months to complete if the court requires a hearing date for the Show Cause Order.

Relevant Authorities

Foreclosure Process Reform Bill - SB 216/HB 365 (amending Real Property Article § 7-105 and adding §§ 3-104.1, 7-105.1- 7-105.8)

Effective as to all Foreclosure Filings for Residential Real Property from April 4, 2008

Maryland Rules, Title 14 (Sales of Property), Chapter 200 (Foreclosure of lien instruments).

Current Developments

On April 3rd, 2008, in an effort to decrease the foreclosure occurrences in Maryland, Governor Martin O'Malley signed emergency legislation enacting a new notice requirement for borrowers and the associated 45 day stay. On November 6th, 2008, Governor O'Malley announced that Maryland had reached agreements with six mortgage servicing companies (HSBC, Ocwen, GMAC ResCap, Litton Loan Servicing, AmeriNational Community Services and Citi) to create a streamlined and transparent loss mitigation process for distressed Maryland homeowners. The agreements follow a five-point framework that will provide Maryland homeowners direct access to servicers through Maryland's Foreclosure Prevention Assistance Network. By signing the agreements, the servicers have pledged to abide by a predetermined timeline for loss mitigation that will ensure homeowners have an answer within 75 days

from the time they submit a loss mitigation package. The agreements also ensure that generally during that time, the lender will halt foreclosure actions and penalties will not accrue.

Additional Resources

www.oag.state.md.us/Consumer/foreclose.htm

www.mdhope.org

MASSACHUSETTS

Foreclosure Process

Non-judicial foreclosure or foreclosure by sale is available if the mortgage includes a power of sale, as most do. Non-judicial foreclosure requires 90 days' prior written notice of intent to foreclose, 90 days to cure the payment default, notice of sale mailed at least 14 days prior to the sale and publication of notice of sale for three consecutive weeks, beginning at least 21 days prior to the sale. In a judicial foreclosure or foreclosure by action or entry, the mortgagee brings an action for possession, which involves the filing of a complaint and service of process.

Tenant Rights in Foreclosure Proceedings

N/A

Right to Notice and Timeframe (Y/N)

Yes. 30 days after sale or possession by mortgagee.

Terminate Tenancy (Y/N)

No

Eviction Process

All tenancies at will (month-to-month) survive foreclosure. Written notice is required (generally 30 days) to determine tenancies at will. Upon foreclosure, leasehold tenancies become tenancies at will, other than leasehold tenancies of tenants whose rent is subsidized under state or federal law whose leases are not affected by foreclosure.

Eviction Timeframe

30 days' notice (or length of rental period if longer than 1 month, not to exceed 3 months).

Relevant Authorities

M.G.L. Ch. 186, §§12, 13, 13A; Ch. 244, §§1, 3, 5, 14, 15A, 35A

Current Developments

Various bills introduced in the state legislature, including H.B. 4734, which would require "just cause" for eviction of tenants in foreclosed properties.

Additional Resources

N/A

MICHIGAN

Foreclosure Process

In Michigan, lenders may foreclose via either judicial or non-judicial foreclosure. Non-judicial foreclosure is used when a “power of sale” clause exists in a mortgage, where the borrower pre-authorizes the sale of the property to pay off the balance of the loan. Sometimes details of “power of sale” clauses are laid out in the mortgage, but if not, then a general notice of sale must be published once a week for 4 weeks in a newspaper of general circulation in the county where the property is located. The notice must also be posted on the property at least 15 days after the first notice of sale is published. The sale must be made at auction to the highest bidder.

Tenant Rights in Foreclosure Proceedings

Tenant can remain in property during 6 month redemption period following foreclosure sale.

Right to Notice and Timeframe (Y/N)

No. But sheriff must post notice within 15 days of notice of sale via foreclosure; foreclosure process takes about 6 weeks. No requirement for landlord to inform tenant that property is in foreclosure.

Terminate Tenancy (Y/N)

No - foreclosure does not result in immediate termination of tenancy. The lease is valid until the redemption period (6 months) has ended. After the end of the redemption period, the lease is no longer valid and the tenancy relationship changes to a “tenancy at sufferance” or “holdover tenancy” which means that the tenant is in possession of the property legally, but the legal right of possession has ended as a result of the completed foreclosure. The website for the Michigan Tenant Counseling Program (see below) states that the law in this area is still unsettled, but many believe that holdover tenants have the right to receive a 30-day notice before eviction proceedings can begin. If a tenant is served with an eviction notice, he has a month to find a new place to live before the new owner begins court proceedings to evict. Should a tenant decide not to move after the end of the 30-day notice and the new owner files for an eviction; the tenant will receive a “Summons” and “Complaint” ordering him to court. Because of the tenant’s legal status as a “holdover tenant” it is likely that the new owner will receive a default judgment for possession in their favor.

Eviction Process

Notice must be provided, “Notice to Quit / Termination of Tenancy”, giving tenant 30 days to vacate. Tenant is then entitled to a hearing; if tenant does not vacate at end of 30 days, tenant must be served with summons and complaint. If the landlord prevails at the hearing, then the tenant must move within 10 days. If the tenant does not move, a writ of restitution can be issued, which provides for immediate physical eviction (no notice).

Eviction Timeframe

4-6 weeks from date tenant receives Notice to Quit to day sheriff physical evicts tenants.

Relevant Authorities

Bill pending in house re: acceleration of mortgage payments in foreclosure
(<http://www.legislature.mi.gov/documents/2007-2008/billintroduced/House/htm/2007-HIB-5340.htm>)

Current Developments

In Genesee County, Sheriff imposed 2-week moratorium on evictions at foreclosed rental properties (Oct 17 08); Oakland and Macomb County Sheriffs also initiated probe into eviction practices the same week. House Bill 5532 was introduced in December 2007 requiring landlords to notify tenants at least 30 days before property is put up for auction, but proposal has stalled in committee. Bill proposed by Sen. Clark, D-Detroit, would stop all mortgage foreclosures and evictions for 2 years. See also House Bill 6236 and 6215

([http://www.legislature.mi.gov/\(S\(srh11nrwsfqob2ft020w3145\)\)/mileg.aspx?page=getobject&objectname=2008-HB-6236&query=on](http://www.legislature.mi.gov/(S(srh11nrwsfqob2ft020w3145))/mileg.aspx?page=getobject&objectname=2008-HB-6236&query=on))

Additional Resources

<http://www.michiganlegalaid.org/>; <http://www.legislature.mi.gov/>

<http://www.michigantenants.org/foreclosure> (website for the Michigan Tenant Counseling Program - MTCP is a non-profit organization committed to informing tenants about the laws and ordinances that govern the landlord/tenant relationship)

MINNESOTA

Foreclosure Process

Non-judicial foreclosure (foreclosure by advertisement) may occur only if the loan documents include a power of sale clause, no lawsuit to collect the mortgage is already in progress, and the mortgage and any assignments have been recorded or registered. The lender must: (1) record a notice of pendency in the county where the property resides before, but not more than 6 months before, publishing a notice of sale; (2) publish a notice of sale at least 6 weeks before the sale; (3) serve the occupant with the notice of sale, as well as a foreclosure advice notice and homestead notice, if applicable, at least 4 weeks before the sale; (4) mail a copy of the notice of sale to each person who recorded a request for notice 14 days before the sale; and (5) record a power of attorney, if any, before the sale.

For the borrower's principal place of residency, the lender must provide information about foreclosure prevention services and forward the borrower's information to an authorized foreclosure prevention agency before recording the notice of pendency, and send the foreclosure advice notice every 60 days and with all communications. The property will be sold by the sheriff of the county in which the property is located at a public auction during which the sheriff must read an itemized statement, filed by the lender, of the amounts due. The highest bidder will receive a certificate of sale, but can not possess the property until after the redemption period, which is 6 months usually (several limited exceptions include, 12 months for most agricultural land, 12 months where the borrower has paid 1/3 of the principal, 5 weeks for abandoned residential property smaller than 5 units, and 2 months if the lender and borrower enter a certain written agreement).

During the redemption period, the borrower possesses the property with the right to redeem by paying the winning bid and court costs, and the lender must record the certificate of sale and an affidavit detailing expenses. Generally, a judicial foreclosure (foreclosure by action) is governed by the same requirements as civil actions. The lender serves a summons and complaint to the borrower and occupants, as well as a homestead notice, if applicable. The borrower files an answer (or a default judgment is entered), and following a hearing, the court may order a sheriff's sale and issue a deficiency judgment (a judgment for the money still owed if the bank eventually sells the property at a loss). The sheriff will report the sale to the court, and the court must grant an order confirming the sale or order a resale. If the sale is confirmed, the redemption period begins and the sheriff will execute a certificate of sale that must be recorded within 20 days of the confirmation.

Tenant Rights in Foreclosure Proceedings

The lease does not terminate during the redemption period, so the tenant must comply with the lease and continue paying rent to the landlord or a court appointed receiver. If a tenant moves into a rental unit during a redemption period, the landlord must inform the tenant of the pending foreclosure by written notice that includes the date the redemption period ends.

The term of leases entered into during the redemption period can only be: (1) the lesser of no more than 2 months or the time remaining in the redemption period, or (2) a fixed term that does not extend beyond the redemption period unless the mortgage delinquency is cured or a receiver is appointed. Or the borrower may enter into leases of at least 1 year and will not be required to provide notice of the foreclosure if the auction winner agrees to honor the new leases.

The tenant must receive the security deposit within 3 weeks of moving, provided the tenant has not breached the lease. The original landlord remains liable for the deposit, unless within 60 days of his successor's possession, he returns the deposit to the tenant or transfers the deposit to the successor,

discloses to the tenant the successor and the amount transferred, gives the tenant 20 days to object to the amount, and provides the tenant with a stamped envelope to send an objection. The tenant may not withhold the last month's rent.

Right to Notice and Timeframe (Y/N)

Yes. Notices of sale and foreclosure advice at least 4 weeks before the sale; 2 month vacate notice no sooner than 1 month after end of redemption period provided tenant pays rent and abides by lease, or 2 month vacate notice no later than end of redemption period if notice states that tenant will not be held liable for breach by leaving premises.

The notice may be given during the redemption period so long as the notice is at least 2 months and the notice period ends no earlier than the end of the redemption period.

Terminate Tenancy (Y/N)

Yes

Eviction Process

The new landlord may evict the tenant when the redemption period expires. The landlord may not take possession himself and must file a complaint in district court. The tenant must be served with the complaint and a summons, and the hearing must take place within 7 to 14 days after the summons. Either party may request a trial by jury, and the tenant must answer the complaint at the court appearance. If the decision is for the landlord, the court will enter judgment and issue a writ of recovery of premises and an order to vacate. If the tenant is found in the county, an officer will demand that the tenant vacate within 24 hours and then may forcibly remove the tenant and the tenant's property. If the tenant is not found in the county, the officer will enter the premises and remove the tenant's belongings. If the tenant shows eviction will cause substantial hardship, the court may allow the tenant up to 7 days to move.

Eviction Timeframe

2 months to leave voluntarily following vacate notice after redemption period ends; hearing 7-14 days after summons served; 24 hours to vacate after notice of writ and order to vacate.

Relevant Authorities

Minn. Stat. ss 504B, 580, 582

Current Developments

None

Additional Resources

N/A

MISSISSIPPI

Foreclosure Process

Foreclosure can occur via judicial and non-judicial means. Judicial foreclosure is commenced by filing a lawsuit in the Chancery Court and is used when there is no “power of sale” in the mortgage or deed of trust. Non-judicial foreclosure is used when there is a “power of sale” clause in the mortgage or deed of trust. In either case, property must be sold according to the following process: (1) the sale must take place in the county where the land is situated; (2) the sale must be advertised for 3 consecutive weeks preceding the sale in a newspaper published in the county, or, if none is so published, in some paper having a general circulation in that county; (3) notice of the sale must be posted at the courthouse of the county where the land is situated; and (4) such advertisement and notice must disclose the name of the original mortgagor(s) in the deed of trust or other contract.

Tenant Rights in Foreclosure Proceedings

N/A

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes. If mortgage recorded first.

Eviction Process

First, the landlord must provide notice. For leases signed before 7/1/91, 2 month’s notice must be given for a year-to-year lease, 1 month’s notice must be given for a half-year or quarter-year lease, and 1 week’s notice must be given for a month-to-month or week-to-week lease. For leases signed after 7/1/91, 30 days notice must be given for a month-to-month lease, and 7 days notice must be given for a week-to-week lease (leases without definite terms are presumed to be week-to-week where weekly rent is paid, and month-to-month in all other cases). Second, the landlord must file an affidavit with the county court to remove the tenant. Third, the court shall issue a summons directing the tenant to quit the premises or show cause before the court on a day to be named not less than 3 nor more than 5 days from the date of the summons why possession of the premises should not be delivered to the landlord. Fourth, if sufficient cause is not shown, the court shall issue a removal warrant.

Eviction Timeframe

See information included in “Eviction Process.”

Relevant Authorities

Miss. Code Ann § 89-1-55 (foreclosure sale process); Miss. Code Ann § 89-8-1 et seq. (Residential Landlord and Tenant Act) (applies to leases entered into after 7/1/91); Miss. Code Ann § 89-7-1 (prior landlord/tenant act, governs leases entered into before 7/1/91 and eviction proceedings)

Current Developments

N/A

Additional Resources

Mississippi Department of Banking and Consumer Finance (www.dbcf.state.ms.us); Mississippi Legal Services (www.mslegalservices.org)

MISSOURI

Foreclosure Process

Judicial Foreclosure - Mortgagee of real estate or person holding security interest in personal estate, including leasehold interest, may file a petition in court against the mortgagor or debtor and tenants or occupiers when the debt or damages amount to \$50 or more. The matter shall proceed as with other civil actions.

Non-Judicial Foreclosure - Permitted when the mortgage of real property or security interest in personal property contains a “power of sale” clause in the document. Notice must be given for sales of real estate pursuant to a “power of sale” clause executed after August 28, 1989, not less than 20 days of such sale in the county where the land is located. The notice shall state the date and book and page of the record of such mortgages or deeds of trust, the grantors, the time, terms and place of the sale and a description of the property to be sold. The notice shall be made by advertisement for at least 20 times and continue to the day of the sale in a daily newspaper in counties having cities with populations of 50,000 or more. In all other counties, notice shall be published in a weekly newspaper for 4 consecutive issues with the last insertion to be not more than 1 week prior to the day of the sale. If there is no newspaper published in such county or city, notice shall be published in the nearest newspaper in the state.

Tenant Rights in Foreclosure Proceedings

No specific rights available for tenants.

Right to Notice and Timeframe (Y/N)

No; no specific rights of notice for tenants. Owners of property under “power of sale” foreclosure are entitled to the notice described under the header “Foreclosure Process – Non-Judicial Foreclosure.” Required notices for Judicial Foreclosures are those set forth in the rules of civil procedure.

Terminate Tenancy (Y/N)

Yes. The leasor becomes a tenant at will with at most a month to month tenancy if not requested to vacate.

Eviction Process

If after a mortgage or deed of trust has been foreclosed upon and the person received written notice of a demand to vacate and refuses to vacate, the person is guilty of unlawful detainer.

Eviction Timeframe

The new owner of the property shall file a complaint in court and the clerk will issue a summons. The court date shall be not more than 21 business days from the date the summons is issued. The tenant must vacate the property immediately when judgment is final.

Relevant Authorities

Mo. Ann. Stat. § 443.190; Mo. Ann. Stat. § 443.290; Mo. Ann. Stat. § 443.310; Mo. Ann. Stat. § 443.320; Roosevelt Hotel Corp. v. Williams, 56 S.W.2d 801 (1933); Kage v. 1795 Dunn Road, Inc. 428 S.W.2d 735 (1968); Mo. Ann. Stat. § 534.030; Mo. Ann. Stat. § 534.070; Mo. Ann. Stat. § 534.345.

Current Developments

N/A

Additional Resources

N/A

MONTANA

Foreclosure Process

Lenders may foreclose on deeds of trusts or mortgages in default using either a judicial or non-judicial foreclosure process. In judicial foreclosure, the court will issue a decree of the amount owed and allow a brief period for the borrower to cure the default. If the borrower does not cure the default, a notice of sale is issued by the court.

In non-judicial foreclosure, a power of sale clause is included in the loan document that authorizes the lender, in the event of the borrower's default, to sell the property and recover the loan balance. The non-judicial foreclosure procedure is carried out as follows: (1) The notice of sale must be published weekly for 3 consecutive weeks in a local newspaper of general circulation and mailed by registered or certified mail at least 120 days before the sale to the borrower at the last known address, and posted on the property at least 20 days before the sale; (2) In addition to borrower, lender, and trustee information, the notice must contain a legal description of the property, the nature of the default, and the book and page on which the deed is recorded; (3) The sale will be a public auction conducted by the trustee at the courthouse of the county in which the property is located, and must take place between 9 AM and 4 PM. The sale may be postponed for up to 15 days by posting a notice of postponement at the time and place the sale was originally scheduled; and (4) No deficiency judgment is available and no redemption period is allowed.

Tenant Rights in Foreclosure Proceedings

N/A

Right to Notice and Timeframe (Y/N)

Yes. Real estate sold under a power of sale, except in a trust indenture as defined in the Small Tract Financing Act of Montana (estates in real property not more than 40 acres), must be served personally at least 30 days before the date fixed for such sale upon the occupant.

Terminate Tenancy (Y/N)

The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, are tenants at will.

Eviction Process

If a landlord wishes to remove a tenant from a rental unit, the steps the landlord can take are limited to terminating the rental agreement, asking the tenant to leave, and taking the tenant to court to get an eviction order. Before the landlord can bring an "action for possession" (a legal claim for the tenant's removal from the rental unit), the landlord must first terminate the rental agreement. The landlord can terminate the rental agreement in the following ways: (1) On 3 days, after notifying the tenant in writing: (a) if rent is unpaid when due. If the rent is paid within the 3 days then the notice is void; (b) the tenant has physically destroyed, defaced, damaged, impaired or removed any part of the premises; (c) the tenant is keeping an "unauthorized pet" (one not allowed by the rental agreement) on the premises; and (d) there are unauthorized people (people other than are on the contract, or that the landlord has not authorized) residing in the rental; (2) On 14 days after notifying the tenant in writing if there has been a non-

compliance with the terms of the rental agreement; or (3) On 30 days (in the case of a month-to-month agreement) after notifying the tenant in writing that she/he wishes to terminate the agreement.

Eviction Timeframe

The tenant has the number of days written in the notice provided by the landlord depending upon the violation. If the tenant chooses not to leave within that time period, the landlord may file an action for possession. If the tenant has a defense to the termination of the rental agreement, they may choose to go to court. However, if the judge determines that there was no good faith reason by the tenant, then the tenant may have to pay the attorney fees and the treble damages or 3 times the rent. The law does not provide how long the judge must give a tenant to move after a decision is made.

Relevant Authorities

Mont. Code Ann. §§ 71-1-222; 71-1-224; 70-24-422; 70-24-429; 71-1-319

Current Developments

N/A

Additional Resources

Montana Legal Services Association
Main Administrative Office
616 Helena Avenue, Suite 100
Helena, MT 59601
(406) 442-9830

NEBRASKA

Foreclosure Process

Nebraska allows for judicial and non-judicial foreclosures. (1) Non-judicial Foreclosure: (a) the mortgage trust instrument must have a Power of Sale provision; (b) notice of default and notice of sale must be registered with register of deeds; (c) within 10 days of filing trustee must send certified mail notice of default to each person who is a party to the Trust; (d) within 20 days of sale trustee must send notice of sale; (e) trustee must advertise notice of sale and (f) borrower may cure default by bringing the loan current within 1 month of the filing of the default notice. (2) Judicial Foreclosure: (a) a complaint is filed in court along with lis pendens (a document recorded with register of deed notifying the public that the property is under foreclosure); (b) upon a decree of sale defendant can request a stay for 9 months; (c) sale is conducted by Sheriff; (d) upon sale to highest bidder lender must give a sale notice 10 days before confirmation of sale by the court; and (e) borrower may cure default by making the loan current and paying certain fees prior to confirmation of the sale by the court.

Tenant Rights in Foreclosure Proceedings

None

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes. Under case law, a lessee of real-estate cannot acquire any greater interest in a property than that held by the landlord and such lessee takes subject to all claims of title enforceable against the lessor. *Schrunk v. Andres*, 221 Minn. 465, 22 N. W.2d 548 (1946); *Kleven v. Brunner*, 429 N.W.2d 384, 387 (1988).

Eviction Process

(1) Landlord gives a 3 or 30 days notice to quit to tenant; (2) Landlord files a complaint; (2) a summons will be issued attaching a copy of the complaint and stating cause of action, time and place of trial and answer date; (3) summons must be served within 3 days (excluding non-judicial days); (4) trial must be held not less than 10 and no more than 14 days after the issuance of summons; and (5) if judgment is rendered against defendant the court will issue a writ of restitution directing the sheriff to restore possession to plaintiff within 10 days of issuance of the writ.

Eviction Timeframe

(1) A 3 or 30 day notice to quit (which may be served by sheriff's office); (2) Summons for complaint must be served within 3 days of issuance; (3) trial will be held no less than 10 days and no more than 14 days after summons is issued; and (4) upon judgment for plaintiff and issuance of a writ of restitution, sheriff must evict tenant within 10 days.

Relevant Authorities

(1) Non-judicial foreclosure: Neb. Rev. St. §§ 76-1001 - 76-1018; (2) Judicial foreclosure: Neb. Rev. Stat. §§ 25-531 - 533, Neb. Rev. Stat. §§ 25-1506, 25-1529, 25-1530, 25-1531; (3) Eviction process: Neb.

Rev. Stat. §§ 76-1441 - 1446; and (4) Right of Tenant: *Schrunk v. Andres*, 221 Minn. 465, 22 N.W.2d 548 (1946); *Kleven v. Brunner*, 429 N.W.2d 384, 387 (1988).

Current Developments

N/A

Additional Resources

Nebraska Legal Aide Handbook on tenant rights is available at <www.nebls.com/landlord_tenant.htm>

NEVADA

Foreclosure Process

Nonjudicial foreclosure: (1) A notice of default and an election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of both are mailed by registered or certified mail to the person who holds the title of record. (2) Borrower has 35 days from the date the notice is filed to cure the default. (3) After 3 months from filing of the notice and before the property is sold, the trustee must (a) provide notice to the borrower, (b) publish notice for 20 days in 3 public places, (c) post a copy of the notice 3 times, once each week for 3 consecutive weeks in a newspaper of general circulation in the county where the property is located.

Tenant Rights in Foreclosure Proceedings

None

Right to Notice and Timeframe (Y/N)

No; however, if the tenant records in the county recorder's office a request for notice of default and sale with the parcel number affixed, the tenant will be mailed notice of the default and sale within 10 days after it is mailed to the property owner. (NRS 107.090)

Terminate Tenancy (Y/N)

Yes

Eviction Process

(1) After title to the property in the foreclosure sale has been perfected, a 3 day notice to quit can be either (a) served personally upon the tenant in the presence of a witness, (b) left with a person of suitable age and discretion and mailed to the tenant, or (c) posted on the property, delivered to someone residing there and mailed to the tenant. (2) If the tenant does not vacate, the new owner must use the formal eviction process contained in Nevada Revised Statutes 40.290-40.420. The process begins with the new owner serving a summons and complaint to the tenant. (3) The tenant has 20 days to answer unless the new owner shortens the timeframe by filing an ex parte motion to shorten the time to not less than 10 days.

Eviction Timeframe

The trial can be held as early as 20 days after the expiration of the 3 day notice to quit is served. If the new owner applies for a temporary writ of restitution, a show cause hearing can be held 11 calendar days after service of the summons and complaint. If the new owner shows extraordinary circumstances, the show cause hearing can be held earlier than 11 calendar days after service of the summons and complaint.

Relevant Authorities

Nevada Revised Statutes, Chapter 14, Chapter 40.255-420, Chapter 107 and Chapter 118A

Current Developments

Proposed bills for the 2009 legislation would require landlords to tell potential tenants if the rental property is subject to a notice of default. Homeowners would be required to post a notice of default and a notice of sale on the property during the foreclosure process. Proposed bills would allow tenants to break leases on homes with a notice of sale issued, as well as require 60 days' notice before a long-term tenant is evicted from a foreclosure property.

Additional Resources

Nevada Legal Services
(702) 386-0404
www.nlslaw.net

Tenant hotline
(702) 383-6095

NEW HAMPSHIRE

Foreclosure Process

Both judicial foreclosure and non-judicial foreclosure are allowed in NH.

Judicial Foreclosure: Three ways: (1) mortgagee files lawsuit and has possession for 1 year, (2) peaceable entry (1 year) with subsequent publication for 3 successive weeks with publication to be 6 months before the right to redeem would be lost, or (3) mortgagee is already in possession but must publish a notice for 3 successive weeks stating that after a certain day (not more than 4 weeks after the last day of the publication of the notice) foreclosure is intended.

Non-Judicial Foreclosure [Foreclosure of Power of Sale Mortgage]: As this is non-judicial, there are strict notice provisions. Notice of the sale shall be published once a week for 3 successive weeks in the town paper, and the first publication shall not be less than 20 days before the date of the same. A copy of the notice shall be served upon the mortgagor at least 25 days before the sale (anyone holding a recorded interest).

Tenant Rights in Foreclosure Proceedings

Many articles have said that New Hampshire is among a handful of states where new owners cannot evict lease-holding tenants unless the tenants fail to pay rent or violate the lease, but I do not see this in the statute and it seems to contradict the statute cited under the header "Terminate Tenancy"

<http://www.nolo.com/article.cfm/ObjectID/B8CE60DC-0D00-4E6B-8DC71AF1165C89EA/catID/7E846209-6969-42D1-8B1617C517D8E62E/213/317/ART>

Right to Notice and Timeframe (Y/N)

See information under the header "Foreclosure Process." The mortgagee is legally entitled to notice, not the tenant, but under most foreclosure methods there must be notice published.

Terminate Tenancy (Y/N)

Yes. The owner, lessor, or purchaser at a mortgage foreclosure sale may recover possession from a lessee, occupant... or other person in possession, holding it without right, after notice in writing to quit (see eviction notice) NH RSA 540:12

Eviction Process

A landlord must send a written notice to the tenant to legally evict. The notice to quit/leave must state with specificity the reason for the eviction. The eviction notice may be served by any person and may be served to the tenant or at his last place of abode. In NH, tenants can be evicted for almost any reason. Five "good cause" reasons for eviction include (1) failure to pay rent; (2) substantial damage; (3) behavior affecting health/safety of others; (4) lease violation or (5) other good cause. "Other good cause" may include legitimate business reasons of the landlord (see information contained under "Current Developments" header).

Eviction Timeframe

30 days

Relevant Authorities

NH RSA 540 (Eviction); NH RSA 479 (Foreclosure)

Current Developments

Proposed legislation [HB 1333] to address ambiguities in how evictions take place following a foreclosure sale was vetoed by Governor Lynch 7/11/2008. NH RSA 540:2 would have been amended so that the lessor, owner **or purchaser at a mortgage foreclosure sale**...may terminate any tenancy by giving to the tenant or occupant a notice in writing to quit the premises in accordance with RSA 540:3 and 540:5. Also, the definition of “other good cause” for eviction would be amended to state: other good cause, **including the same of the property at a mortgage foreclosure sale.** [amended language in bold]

Additional Resources

N/A

NEW JERSEY

Foreclosure Process

A foreclosure may only occur by judicial process. The mortgagee must provide a residential mortgage debtor with at least 30 days prior notice of its intention to commence a foreclosure action. N.J. Stat. § 2A:50-56. The debtor has the right to cure the default up until the entry of final judgment. N.J. Stat. § 2A:50-57. If the default is not cured, the mortgagee must file for foreclosure. N.J. Stat. § 2A:50-2. In an uncontested action, the mortgagee must provide at least 14 days prior notice of intent to file for final judgment to the debtor. N.J. Stat. § 2A:50-58. If the debtor responds indicating a likelihood of curing the default, the mortgagee must wait at least 46 days to file for final judgment. *Id.* Then, the mortgagee must obtain a writ of execution for sale of the mortgaged property. N.J. Stat. § 2A:50-36. For residential mortgages, the sheriff must schedule a sale within 120 days of receiving the writ of execution. N.J. Stat. § 2A:50-64. The mortgagee must notify every party to the foreclosure action of the sale at least 10 days prior to the sale date. N.J. Ct. R. 4:65.

Tenant Rights in Foreclosure Proceedings

Tenants do not have a right to be named in foreclosure proceedings.

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

No

Eviction Process

Under the Anti-Eviction Act, a tenant may not be evicted by the landlord's successor under an order for possession except upon a court order establishing good cause or other limited exceptions. N.J. Stat. § 2A:18-61.3(b); *Chase Manhattan Bank v. Josephson*, 638 A.2d 1301, 1314 (N.J. 1994) (finding that the Anti-Eviction Act applies to foreclosing mortgagees). The grounds for good cause, which are statutorily defined, include, but are not limited to, failure to pay rent, willful destruction of the premises, and breach of the lease agreement. N.J. Stat. § 2A:18-61.1. Unless the eviction is for nonpayment of rent, the landlord must deliver a written notice to quit either personally to the tenant, to the tenant's usual place of abode, or by certified mail prior to instituting the eviction action. N.J. Stat. § 2A:18-61.2. The notice must include the cause of the eviction. *Id.* Owner-occupied premises with no more than 2 rental units are exempted from the good cause requirement; however, the landlord must still follow the judicial process for eviction.

Eviction Timeframe

Prior to instituting an eviction action, a landlord must give a tenant between 3 days and 3 years notice, depending on the basis for the eviction, of its intention to initiate an eviction proceeding. N.J. Stat. § 2A:18-61.2. The tenant must be served with a warrant for removal if the judge enters an order of eviction. N.J. Stat. § 2A:42-10.16. Once the tenant receives the warrant, he has 3 days to move out, excluding weekends and legal holidays. *Id.* If the tenant does not move or does not contest the warrant and obtain a stay from the judge, the constable may evict the tenant at the end of the 3 days. *Id.*

Relevant Authorities

- Evictions: N.J. Stat. § 2A:18-61.1-.12; N.J. Stat. § 2A:42-10.16; Chase Manhattan Bank v. Josephson, 638 A.2d 1301 (N.J. 1994)
- Foreclosures: N.J. Stat. § 2A:50-2; N.J. Stat. § 2A:50-36-37; N.J. Stat. § 2A:50-56-58; N.J. Stat. § 2A:50-64; N.J. Ct. R. 4:65; American-Italian Bldg. & Loan Ass'n of Elizabeth, N.J. v. Liotta, 189 A. 118 (N.J. 1937)

Current Developments

N/A

Additional Resources

- *Tenant's Rights in New Jersey*,
www.lsnjlaw.org/english/placeilive/irentmyhome/tenantsrights/index.cfm
- New Jersey Housing Resource Center, www.nj.gov/njhrc/
- New Jersey Law Network, www.njlawnet.com/property.html
- New Jersey Division of Housing, www.nj.gov/dca/dh/

NEW MEXICO

Foreclosure Process

A judicial proceeding is required except for those mortgages which fall under the Deeds Trust Act, which governs certain commercial mortgages. At the time a foreclosure complaint is filed, the lender must also file a written public notice that the property is being foreclosed upon. Property may not be sold until 30 days following a foreclosure judgment. During this time, the owner may avoid the sale by making the necessary payment, including accrued interest and costs of suit. Notice of the sale must be published in a newspaper for 4 weeks preceding the sale, and must include a description of the property and the date, hour and conditions of sale.

Tenant Rights in Foreclosure Proceedings

No

Right to Notice and Timeframe (Y/N)

No. Although the tenant may benefit from the general notice rights afforded to the public, there are no specific rights of notice for tenants.

Terminate Tenancy (Y/N)

Yes. Foreclosure actions terminate all possessory claims junior to the senior lien.

Eviction Process

In order to evict a tenant, a landlord may file an eviction action in court after he or she provides the applicable notice of termination: (1) In cases of material noncompliance by the resident of a rental agreement (except for failure to pay rent), the landlord must provide notice in two steps: (i) The owner must deliver written notice to the resident specifying the noncompliant acts or omissions and stating that the lease will terminate upon a date not less than 7 days after receipt if the breach is not remedied; (ii) if, within 6 months of the initial breach, there is a second material breach by the resident, the owner shall deliver a second written notice to the resident again specifying the noncompliant acts or omissions and stating that the rental agreement will terminate upon a date not less than 7 days after receipt of the notice. (2) In cases where the resident fails to pay rent when due, the owner must provide written notice of nonpayment and his/her intention to terminate the rental agreement if rent remains unpaid. The resident must pay within 3 days or the owner may terminate the rental agreement and take ownership of the unit. (3) In cases where the resident knowingly commits a substantial violation of the law, the owner must provide written notice of the violation and that the rental agreement will terminate upon a date not less than 3 days upon receipt.

Eviction Timeframe

Written notice of material noncompliance with lease must be given within 30 days of breach and landlord must provide two 7 day notices of noncompliance within a six-month period. After written notice of nonpayment of rent and intention to terminate lease, tenant has 3 days to pay in full. If resident commits a substantial violation of the law, 3 days notice is given before termination of the rental agreement.

Relevant Authorities

N.M.S.A. § 47-8-33; N.M.S.A. § 47-8-40

Current Developments

None

Additional Resources

New Mexico Legal Aid (<http://www.nmlegalaid.org>, (505) 243-7871); *New Mexico Fair Housing Center* ((505) 842-5640); *Law Access New Mexico* (<http://www.lawhelp.org/Program/3577>, 1-800-340-9771)

NEW YORK

Foreclosure Process

Judicial foreclosure is the most common procedure. The typical stages in a foreclosure case are as follows: (1) collection procedures, (2) acceleration, (3) summons, complaint, and lis pendens, (4) default or answer, (5) order to appoint referee to compute (if default) or motion for summary judgment, or trial, if contested by submission of answer, (6) referee's computation (ex parte if on default); hearing if contested, (7) judgment of foreclosure and sale, (8) sale, (9) closing (if purchased by outside bidder).

The foreclosure proceedings leading up to the court ruling usually take 7-9 months. The sale is usually scheduled at least 4 months after the court ruling. The notice of sale must be published in a general circulation newspaper once a week for at least 4 weeks prior to the sale.

Tenant Rights in Foreclosure Proceedings

A tenant who was not made a party, cannot be dispossessed by the purchaser at the foreclosure sale. If not made a party, the tenant's interest is not affected by the judgment of foreclosure and the owner takes title subject to any rights, title or interest which the tenant is able to establish. Even if the tenant has no legitimate interest in the property, the owner cannot evict the tenant without commencing an eviction action or a summary holdover proceeding.

Right to Notice and Timeframe (Y/N)

Yes. Tenant must be made a party to proceeding.

Terminate Tenancy (Y/N)

Yes

Eviction Process

When the purchaser at the foreclosure sale is denied possession, the purchaser may seek a writ of assistance pursuant to Real Property Actions and Proceedings Law (R.P.A.P.L.) section 221, whereby the court orders a sheriff to put the purchaser in possession. Under R.P.A.P.L. § 735, personal service is achieved by either in hand delivery, or service upon a person of suitable age and discretion or by conspicuous affixation followed by mailing. Additional requirements include a 10-day notice to quit and the deed to be exhibited.

Eviction Timeframe

4 to 6 business days after Notice of Eviction is given.

Relevant Authorities

Green Point Sav. Bank v. Defour, 618 N.Y.S.2d 169 (N.Y. Sup. Ct. 1994)

Current Developments

N/A

Additional Resources

Bergman On New York Mortgage Foreclosures; Warren's Weed New York Real Property; New York State Real Property Actions And Proceedings Law

NORTH CAROLINA

Foreclosure Process

- (1) Notice of hearing served 10 days prior to the date of the hearing.
- (2) Hearing to determine whether foreclosure is allowed (10 days to appeal adverse judgment).
- (3) Notice of sale is mailed to the borrower, published weekly in a newspaper for 2 successive weeks, with the last publication not less than 10 days before the date of sale, and posted in a designated public place at least 20 days before the date of sale.
- (4) Bids may be filed with the clerk 10 days following the sale. (See below for subprime loans.)

Tenant Rights in Foreclosure Proceedings

No

Right to Notice and Timeframe (Y/N)

If the property contains less than 15 rental units, notice of sale must be mailed to the occupant at the address of the property to be sold at least 20 days prior to the date of sale.

Terminate Tenancy (Y/N)

Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, after receiving notice of the sale, may terminate the rental agreement upon 10 days' written notice to the landlord. (N.C. Gen. Stat. Section 45.21-16A(b))

Eviction Process

The purchaser must give the tenant 10 days' notice (or 30 days' notice if the property contains 15 or more rental units) to vacate prior to being granted an order of possession. If the tenant does not move within the allotted time, an order for possession can be issued for the sheriff to execute a writ for possession. (N.C. Gen. Stat. 45-21.29(5))

Eviction Timeframe

The sheriff must execute the writ within 7 days of receipt. The sheriff must give the tenant notice of the approximate time the writ will be executed. (N.C. Gen. Stat. 42-36.2)

Relevant Authorities

North Carolina General Statute, Chapter 45, Article 11 and Article 21-29 and Chapter 42, Article 36.2

Current Developments

In July 2007, the General Assembly of North Carolina enacted the "Emergency Program to Reduce Home Foreclosures" which established a new Article 11 within Chapter 45 of the General Statutes.

Additional Resources

Legal Aid of North Carolina, 224 South Dawson Street, Raleigh, NC 27601, (919) 856-2564

North Carolina Lawyer Referral Service (a non-profit public service project of the N.C. Bar Association),
(800) 662-7660

NORTH DAKOTA

Foreclosure Process

At least 30 days and not more than 90 days prior to initiating a foreclosure proceeding, the lender must send written notice to the owner describing the real estate, the date and amount of the mortgage, the amount due to cure the default, and that a foreclosure proceeding will be initiated in 30 days if not paid. The notice may be served by mail or personally. If the mortgage is held by the state and contains a power of sale clause, the mortgage may be foreclosed by advertisement. All other mortgages must be foreclosed by judicial action. Public notice of the sale must be advertised in the county's newspaper once a week for 3 successive weeks with the last publication at least 10 days before the sale. The debtor has the right to redeem within 60 days after the sale, during which time the debtor is entitled to the possession, rents, use and benefit of the property sold.

Tenant Rights in Foreclosure Proceedings

No. Only individuals with a properly recorded interest in the property at the time the foreclosure proceeding is initiated need to be named as parties.

Right to Notice and Timeframe (Y/N)

No. Only the title owner of record must be served with notice of the foreclosure proceeding.

Terminate Tenancy (Y/N)

Yes. A foreclosing purchaser may evict a tenant who stays in possession of the property after the time for redemption has expired.

Eviction Process

A landlord may evict a tenant who stays in possession of the property after the time for redemption has expired. Additionally, a landlord may evict a tenant for non-payment of rent, violating a material term of the lease, or disturbing other tenants peaceful enjoyment of the premises. In order to evict, the tenant must be served a written Notice of Intention to Evict 3 days prior to instituting the eviction proceedings. The sheriff may post the Notice of Intention to Evict conspicuously at the rented premises, if the tenant cannot be found. Then, the purchaser must serve the tenant with a summons, which indicates the date and time of the court hearing. The summons must be served between 3 and 15 days before the hearing. If an eviction is ordered, the plaintiff must vacate the premises immediately unless substantial hardship is found, in which case, the court may stay the order for up to 5 days.

Eviction Timeframe

A tenant must receive 3 days notice prior to instituting an eviction proceeding; then, 3 to 15 days between receipt of the summons and the eviction hearing. Once an eviction is ordered, the tenant must vacate immediately unless a hardship is found.

Relevant Authorities

- N.D. Cent. Code § 28-23-04; N.D. Cent. Code § 28-24-11; N.D. Cent. Code § 32-19-18 et seq.; N.D. Cent. Code § 33-06-01 et seq.; N.D. Cent. Code § 35-22-01
- Farm Credit Bank of St. Paul v. Martinson, 478 N.W.2d 810 (N.D. 1991)

Current Developments

None

Additional Resources

- Legal Services of North Dakota, www.legalassist.org/tree/housing/housing.html

OHIO

Foreclosure Process

Ohio allows only judicial foreclosures. The foreclosure process includes: (1) lender files a foreclosure suite along with a Lis Pendens (public filing recorded with recorder of deeds); (2) complaint is served by certified mail or personally by process server; (3) borrower must file an answer within 28 days of notice; (4) court issues an order of sale; (5) 3 weeks local newspaper notice of foreclosure sale is given by Sherriff; (6) Sherriff sales property to the highest bidder; (7) sale must be confirmed by court; (8) upon confirmation, sale of deed is given to the winning bidder; and (9) borrower has a right of redemption at any point prior to the court's confirmation.

Tenant Rights in Foreclosure Proceedings

Tenants do not have a right to be included as a party in a foreclosure proceeding. If a tenant is named in a foreclosure proceeding and tenant receives a copy of the complaint the court may evict the tenant at the proceeding. If tenant is not named or served with complaint a separate eviction action is required.

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes. Lease is subordinate to a mortgage and may be terminated after foreclosure.

Eviction Process

Ohio requires a 3 days "notice to leave premises" by the landlord to tenant before filing a complaint. If the tenant does not relinquish property, the landlord may file an eviction complaint. The complaint must be served on the tenant 7 days prior to the court date by both certified mail and personal delivery. If the court rules in favor of the landlord, it will issue a writ of execution which will be enforced by the Sherriff within 10 days of receipt to restore possession of the premises to the landlord.

Eviction Timeframe

(1) 3 days notice to leave premises; (2) service of complaint at least 7 days prior to court date; and (3) writ of execution will be enforced to evict tenant within 10 days of issuance.

Relevant Authorities

(1) *Davis v. Boyajian*, 229 N.E.2d 116 (1967) (holding lease is subordinate to a mortgage but foreclosure action may not terminate right of lessee without making lessee parties to the suit); (2) Foreclosure provisions: Ohio Rev. Code Ann. § 2329; and (3) Eviction procedures: Ohio Rev. Code Ann. § 1923.

Current Developments

Ohio amended its foreclosure rules effective September 11, 2008 but none of the new provisions affect tenant rights. There was a bill introduced on October 7, 2008 (Ohio Renter's Protection Act - H.B. 626, 122nd Gen. Assem., (Oh. 2008)). The bill if passed will require: (1) landlords to notify tenants if the property is in a foreclosure proceeding; (2) landlords and creditors must give tenants 30 days notice if a

sheriff's sale date is set; (3) all rental agreements convert into a month-to-month lease upon confirmation of sale by the court; and (4) if the lease was signed after the foreclosure proceeding and notice of sale was not given to the tenant, the new owner must give tenant a written offer to honor the current rental agreement (if tenant does not accept offer, rental agreement becomes month-to-month).

Additional Resources

A publication from the Ohio Attorney General and Department of commerce on Landlord in foreclosure is available at: <<http://www.com.ohio.gov/SavetheDream/docs/RentalsAndForeclosure.pdf>>

OKLAHOMA

Foreclosure Process

Both judicial and non-judicial foreclosure available. Non-judicial and requires notice of intention to foreclose by power of sale (mortgage must contain power of sale clause). Lender must send borrower a written notice of intent to foreclose by power of sale. This gives borrower 35 days to cure default and reinstate mortgage. If borrower in default for 3 times in past 24 month period, no addition notice required. A copy of the notice of sale must be published at least 4 consecutive weeks in a newspaper of general circulation in county which property is located with notice published not less than 30 days before proposed sale. Notice of sale must be personally served not less than 30 days prior to date of sale and must be recorded within 10 days of passing of the 35 days cure notice period. Sale must take place on day and time in notice as part of public sale but can be postponed if at least 10 days notice is provided by original recipient of notice of default. A designated attorney acts as representative of lender to sell (typically auction). Lenders can also go to court in a judicial foreclosure where court issues a final judgment of foreclosure. Property is sold as part of publicly noticed sale. Complaint and lis pendens (which is a public notice that property is subject to a legal proceeding) filed. See Title 46

Based on discussions with Oklahoma practitioners, we understand that judicial foreclosures represent the vast majority of foreclosure proceedings. In those situations, the rules of civil procedure apply (Title 12-686, *et. seq.*).

Tenant Rights in Foreclosure Proceedings

None. In order for a tenant to assert any rights under an existing lease, the tenant would need to file an action to intervene in a judicial proceeding.

Right to Notice and Timeframe (Y/N)

Yes; we understand that a “John Doe” notice is supposed to be served upon any person in possession of the property subject to a judicial foreclosure.

Terminate Tenancy (Y/N)

Yes. Following a judicial foreclosure, the new owner would receive an “execution order” that would provide the new owner (i.e., bank) with immediate possession rights that trump the existing lease. We understand from Legal Aid, that a tenant would need to intervene in a judicial proceeding in order to assert any lease rights. If successful, a lease could survive a foreclosure sale.

Eviction Process

Varies by reason for eviction. If lease has specified termination date, least cannot be ended unless tenant fails to pay rent or fails to cure an obligation under the lease after receiving notice. If rent is not paid, landlord can give a written demand for payment in 5 days. Landlord can immediately sue for eviction after the expiration of the 5 day notice. This process applies in the standard landlord/tenant context. However, following a judicial foreclosure proceeding, the new owner (i.e., bank) would likely be granted execution order providing immediate possession rights.

Eviction Timeframe

30 days following notification if month-to-month tenancy or tenancy at will. 7 days following notification if tenancy is less than month-to-month. This process applies in the standard landlord/tenant context. If an execution order provides immediate possession, eviction could occur immediately.

Relevant Authorities

Titles 12 (Judicial Foreclosure) 41 and 46 (non-Judicial Foreclosure) Chapter 3 of Oklahoma Statutes.

Current Developments

None

Additional Resources

Legal Aid Services of Oklahoma (phone numbers vary by geographic region). www.legalaidok.org

OREGON

Foreclosure Process

In a trust deed foreclosure, trustees are required to provide homeowners with a “notice of home loss danger” at the same time or before the required 120-day notification that the property will be sold in foreclosure. Trust deed foreclosures can be either judicial or non-judicial foreclosures. In a judicial foreclosure, the homeowner has a right of redemption for 180 days after the foreclosure sale of the property to buy back the property from the purchaser the amount equal to the auction price plus interest and the amount of any other payment the purchaser made, like taxes and maintenance. In a non-judicial foreclosure, or an “advertisement and sale,” notice of sale is sent to the homeowner after 60 to 90 days delinquency, which includes information regarding the lender, the loan, the property, the total amount owed, the reason for foreclosure, the date, time and place of the sale, the homeowner’s right under state law to stop the foreclosure process by bringing the loan current, including paying expenses incurred by the lender during the foreclosure process, no later than 5 days before the foreclosure sale of the house. At least 20 days before the foreclosure sale of the property, the trustee must publicize for the last time the date, time, and location of the sale/auction in a local paper where the property is located.

Tenant Rights in Foreclosure Proceedings

N/A

Right to Notice and Timeframe (Y/N)

Yes. Notice must be served no earlier than 30 days before the date first set for the foreclosure sale.

Terminate Tenancy (Y/N)

Yes - In both judicial and non-judicial foreclosures, any person occupying the dwelling after the foreclosure sale is treated as a tenant at sufferance and subject to eviction after a 30-day written notice through the normal summary eviction process (notice and right to a hearing, usually within 14 days depending on the county). The notice must be served no earlier than 30 days before the date first set for the foreclosure sale.

Eviction Process

Eviction is generally for cause, except where there is a month-to-month lease in which case the landlord may give a 30-day notice for eviction without cause. Eviction for cause must also be given a 30-day written notice that the landlord has filed eviction proceedings with the court. The first appearance in court will be held 7 days after the tenant is sent a copy of the summons and complaint. If the tenant loses their case and does not move out by the date determined by the judge, the landlord can get an order directing the sheriff to enforce the court’s judgment by posting notice at the dwelling informing the tenant to move within 4 days.

Eviction Timeframe

30-day written notice of eviction must be given for both for-cause and not-for-cause evictions.

Relevant Authorities

Oregon Revised Statutes 86.755(5); 86.735; 86.740; 90.392; 90.394; House Bill 3630; Home Owners Loan Corp. v. Blanchard, 129 P.2d 286 (Or. 1942)

Current Developments

The Mortgage Rescue Fraud Protection Act became effective June 9, 2008, and requires trustees to provide homeowners a “notice of home loss danger” before foreclosure proceedings and other information regarding state and federal resources for homeowners. It also includes provisions to protect homeowners from predatory foreclosure practices/scams.

Additional Resources

Oregon State Bar Association (www.osbar.org/public); Oregon Department of Consumer and Business Services (egov.oregon.gov/DCBS); Oregon Division of Finance and Corporate Securities (www.dfcs.oregon.gov/ml/foreclosure.html)

PENNSYLVANIA

Foreclosure Process

Lender must send notice of intent to foreclose before instituting any foreclosure proceedings. If borrower does not cure default within 30 days, the lender may file a suit and seek an order of sale. Plaintiff must then obtain a writ of execution, which will be delivered to the sheriff. Sheriff must give 30 days notice before the property is sold. Foreclosure by judicial action is the only method of foreclosure.

Tenant Rights in Foreclosure Proceedings

Tenants are entitled to notice of sale pursuant to §42 P.S. 3129.1 if mortgagor has knowledge of them.

Right to Notice and Timeframe (Y/N)

Yes. As to sale - 30 days.

Terminate Tenancy (Y/N)

Yes. Unless lease predates mortgage. 68 P.S. § 342.

Eviction Process

Notice to quit may be filed (1) upon termination of term of the tenant, (2) upon forfeiture of the lease for breach of its conditions, or (3) upon the failure of the tenant, upon demand, to satisfy any rent reserved and due. Landlord may file case for eviction upon 10 days notice if eviction is for nonpayment of rent; if eviction is for any other reason, notice period is 15 days for leases 1 year or less and 30 days for leases longer than 1 year. If tenant has not moved from the premises within the notice period, landlord may file complaint and tenant is required to respond within 7 to 10 days from date of summons. If judgment is granted, writ of possession may be issued after fifth day after judgment. Writ may be executed on 11th day following service upon tenant. In case based solely on nonpayment of rent, tenant may at any time before writ is executed render the writ to no effect by paying the rent in arrears and costs. Note special rules for mobile homes and evictions based on drug use.

Eviction Timeframe

From initial notice, quickest time to eviction would be approximately 35 to 55 days.

Relevant Authorities

Foreclosure: 41 P.S. §§ 401-408; 42 P.S. 1141-1150; 42 P.S. 3180-3183; 3129.1-3129.3. **Eviction:** 68 P.S. §§ 250.501-.504; 342.

Current Developments

N/A

Additional Resources

For list of state agencies providing assistance with housing issues see http://tenant.net/Other_Areas/Penn/harris/pawhere.html

RHODE ISLAND

Foreclosure Process

Foreclosure can occur by judicial and non-judicial means. Non-judicial foreclosure may be used when there is a “power of sale” clause in the mortgage or deed of trust. Where the mortgage agreement provides for notice of sale to be published in a newspaper at least once a week for 3 successive weeks before the sale, the first publication shall be at least 21 days before the sale including the day of the first publication, and the third publication shall be no fewer than 7 days before the sale and no more than 14 days before the sale. The sale may take place no more than 14 days from the date on which the third notice is published including the day of the third publication. No notice shall be valid unless it appears by affidavit that the mortgagor has been sent notice of the time and place of sale by certified mail RRR at least 20 days, for mortgagors other than individual consumer mortgagors, and at least 30 days, for individual consumer mortgagors, before the first publication (including the day of mailing in the computation).

Tenant Rights in Foreclosure Proceedings

None

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

No; however, the tenancy relationship changes to a tenancy at sufferance.

Eviction Process

The landlord may file an eviction action on the first day following the foreclosure. The summons shall specify that the tenant has 20 days from the date of service in which to answer the complaint. If the tenant fails to answer within that time period, he or she will be defaulted. The landlord may seek damages in an amount up to 3 months’ rent or 3 times the amount of actual damages, whichever is greater, if the tenant remains in possession willfully and not in good faith. Note: Rhode Island’s commercial leasing statute provides that tenants at sufferance “shall quit upon notice in writing from the landlord at the day named therein.” It is not clear if this rule would apply to residential tenants.

Eviction Timeframe

See information contained in the header “Eviction Process.”

Relevant Authorities

RI Gen. Laws Sec. 34-27-1 (mortgagee may file lawsuit to foreclose); RI Gen. Laws Sec. 34-27-4 (foreclosure notice requirements); RI Gen. Laws Sec. 34-18-38 (eviction process); RI Gen. Laws Sec. 34-18.1-2 (notice for tenants at sufferance under commercial leases); Noorigan v. Greenfield, 52 R.I. 33 (RI 1931) (foreclosure creates tenancy at sufferance).

Current Developments

On January 22, 2008, the Rhode Island Senate introduced a bill (S 2110) that would require mortgagees to provide tenants with notice of the foreclosure and the date, time and place of the sale (among other things). Failure of notice would not invalidate the foreclosure. In addition, mortgagors' successors in interest would be required to continue providing essential services such as heat, water and electricity and also would be required to provide at least 60 days' notice of eviction. On April 1, 2008, the Senate Judiciary Committee recommended the bill be held for further study.

Additional Resources

Rhode Island Housing (www.rhodeislandhousing.org); HUD approved counseling services in Rhode Island (www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=RI).

SOUTH CAROLINA

Foreclosure Process

South Carolina uses a judicial foreclosure process. To begin the process, a lender must file a notice of pendency (lis pendens) against the homeowner with the clerk of the county in which the property is located. If the debt is not satisfied within the time specified by the court, the lender may file a Notice of Foreclosure. The lender must personally serve the homeowner with the Notice of Foreclosure. The court then gives the homeowner an additional amount of time to pay the debt. If the homeowner does not pay the debt, the court can then render the judgment against the borrower and at the same time enter an order of sale of the property. Once the sale is scheduled, a Notice of Sale must be sent to the owner. The Notice of Sale states the date, location, and other details of the sale. The Notice must also be posted at the county courthouse and published in a local newspaper once a week for 3 weeks up to the sale. Once the sale occurs, the owner has 30 days to get an appraisal for the property. If the appraisal is higher than the amount that the property sold for at the auction, the appraisal value will be substituted for the high bid amount. The borrower remains personally liable for any amount still owed after the foreclosure sale.

Tenant Rights in Foreclosure Proceedings

None

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

No specific guidance on this point in the statute

Eviction Process

South Carolina does not specifically outline tenant's rights in a foreclosure proceeding. In general, a landlord may bring an action against a tenant by applying to a magistrate in the following situations: (1) when a tenant fails to pay rent when it is due, (2) when the term of the tenancy or occupancy has ended, and (3) when the terms or conditions of the rental agreement have been violated. A landlord must first deliver notice to the tenant that an eviction has been sought (this is called a Rule to Show Cause). The Rule to Show Cause will contain information regarding the case. A tenant will have 10 days to answer the charges the landlord has made against the tenant, and a hearing will be set to adjudicate the case. In the event the tenant loses the case before the magistrate, a Writ of Ejectment will be issued within 5 days of the hearing that sets forth the date the tenant must vacate or else be removed by the sheriff.

Eviction Timeframe

See information contained in the header "Eviction Process" for details on timeframe. Because a hearing is required to effect an eviction, the timeframe is likely to vary from case to case.

Relevant Authorities

South Carolina Code of Laws Section 15-11-10: Lis Pendens Actions, Section 29-3-650: Foreclosure, Section 29-3-660 Deficiency Judgment, Section 27-40: Residential Landlord & Tenant Act, Section 27-37-10: Grounds for Ejectment of Tenant

Current Developments

N/A

Additional Resources

South Carolina Legislature Online: <http://www.scstatehouse.net/>

SOUTH DAKOTA

Foreclosure Process

South Dakota allows both judicial and non-judicial foreclosures. When a judicial foreclosure process is utilized, the property cannot be sold until a foreclosure order is obtained from the court. If at any time before the sale, the borrower pays the principal and interest owed (plus costs), the foreclosure proceedings will be stayed until subsequent default. Non-judicial foreclosure is available for mortgages containing “power of sale” clauses allowing the property to be foreclosed upon default of the mortgage conditions. A notice that a mortgage will be foreclosed must be published at least once per week for 4 successive weeks in a newspaper of the county where the property is situated. The notice must contain a description of the property, the amount claimed due, the time and place of sale, and other information concerning the mortgaged property.

Tenant Rights in Foreclosure Proceedings

None identified

Right to Notice and Timeframe (Y/N)

No. Although the tenant may benefit from the general notice rights afforded to the public, there are no specific rights of notice for tenants.

Terminate Tenancy (Y/N)

Unknown, but a landlord may be able to bring an eviction action against tenant after foreclosure sale (see “Eviction Process” header).

Eviction Process

A landlord may bring an action of forcible entry and detainer to evict a tenant who: (1) holds over after the termination of his or her lease, (2) fails to pay rent for 3 days after it is due, (3) commits wastes upon the leased premises, or (4) fails to perform any act, which under the terms of the lease operates to terminate the same. An action of forcible entry and detainer may also be brought against a party who continues in possession of a mortgaged property that was sold if the redemption period has expired and the deed of ownership has been executed and delivered. 3 days notice to quit must be served upon tenant and returned (in the same manner a summons is served and returned) before any action of forcible entry and detainer may be instituted. On the second attempt to serve notice upon the tenant (at least 6 hours after the previous attempt), the notice may be posted on the property, delivered to the person residing at the property, and also sent by first class mail addressed to the tenant at the property. An execution for possession must be served in the daytime.

Eviction Timeframe

An action of forcible entry and detainer may not be brought without providing 3 days notice to the tenant.

Relevant Authorities

S.D.C.L. § 21-16-1 et seq.

Current Developments

None identified

Additional Resources

East River Legal Services (<http://www.selinuluc.com/helpSD/Erls/Erls/>, (605) 336-9230); Dakota Plains Legal Services (<http://www.dpls.org/>)

TENNESSEE

Foreclosure Process

Tennessee lenders typically foreclose through the non-judicial foreclosure process, although judicial foreclosure is also permitted. A “power of sale” clause will appear in the mortgage or deed of trust, pre-authorizing the sale in the event of default and specifying the time, place and terms of sale. Upon default, the process is as follows: (1) Notice of sale must be published at least 3 different times in a newspaper in the county where the sale is to be made, with the publication appearing at least 20 days prior to the sale. If no newspaper is published in the county where the sale is to be made, the notice of sale must be posted at least 30 days in advance of the sale in at least 5 public places in the county. At least 1 of these notices must be placed at the courthouse door and another in the neighborhood of the property itself. (2) Notice of sale must be sent to the borrower, registered or certified mail with return receipt request, at least 20 days prior to the date of the sale. (3) The notice must contain the names of the parties, description of the land, time and place of sale and existence of any liens. (4) The sale must be held between the hours of 10:00 am and 4:00 pm for cash to the highest bidder. (5) The successful bidder will receive a certificate of sale and may be entitled to receive a deed once the borrower’s right of redemption has expired (2 years unless the right of redemption was waived in the mortgage or deed of trust).

Tenant Rights in Foreclosure Proceedings

Generally, a lease will be terminated upon foreclosure. In Tennessee, a lease is subordinate to a pre-recorded mortgage or deed of trust.

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes. A lease will be terminated upon foreclosure, if it is subordinate to a mortgage or deed of trust.

Eviction Process

Where a foreclosure has terminated a lease, the owner must provide the tenant with written notice to vacate the premises in 30 days. If the tenant fails to vacate, the owner may commence an action for unlawful detainer to regain possession. The process is as follows: (1) A summons (stating unlawful detainer and requiring the tenant to present himself in court to answer) must be served and a notice to quit the premises is unnecessary. (2) The summons may be sent certified mail, return receipt requested, to the tenant or served personally upon any adult in possession of the premises. If served personally, a notification must be given that the proceeding shall not commence in less than 6 days from the date of service. In some circumstances the requirement of personal service can be dispensed with and the summons can be posted on the front door or other front portion of the premises within 15 days of the date the tenant is required to appear and present a defense. (3) The tenant has 10 days to appeal the finding.

Eviction Timeframe

30 days following written notice to vacate.

15 days but not less than 6 days. The hearing will commence 15 days from the date of service, but not less than 6 days if served in person.

10 days to appeal.

Relevant Authorities

Tennessee Code 66-28-512(b and c), 29-18-104, 112-113, 117 and 128

Current Developments

N/A

Additional Resources

State of Tennessee
www.tennessee.gov

Tennessee Alliance For Legal Services
www.tennlegalaid.com

TEXAS

Foreclosure Process

Texas recognizes and will specifically enforce a deed of trust providing for nonjudicial foreclosure, which is the primary method of foreclosure in Texas. Nonjudicial process: (1) Borrower is given written notice of default by certified mail and 20 days to cure the loan (2) If not cured, notice of the foreclosure sale is given at least 21 days before the sale (3) Foreclosure sales take place on the first Tuesday of each month (between 10 a.m. and 4 p.m. (Section 51.002 of the Texas Property Code).

Tenant Rights in Foreclosure Proceedings

None

Right to Notice and Timeframe (Y/N)

No. Before a foreclosure sale, a foreclosing lienholder may give written notice to a tenant stating that foreclosure notice has been given to the landlord or property owner and specifying the date of the foreclosure. (Section 24.005(b) of the Texas Property Code.)

Terminate Tenancy (Y/N)

Yes. If the tenant's lease is not superior to the lien on the property, the lease can be terminated by the purchaser in the foreclosure sale.

Eviction Process

If the tenant timely pays rent and is not otherwise in default under the lease after the foreclosure, the purchaser in the foreclosure sale must give the tenant at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to have timely paid the rent if during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that the foreclosure sale is scheduled or pays the rent for that month to the foreclosing lienholder or the purchaser at the foreclosure sale no later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. If the tenant fails to vacate the premises, the purchaser can initiate a forcible detainer suit. (Section 24.005(b) of the Texas Property Code)

Eviction Timeframe

(1) 30 days notice to vacate (if not in default under the lease). (2) Service of citation 6 days before the eviction hearing. (3) 5 days to appeal an adverse judgment. (4) A writ of possession may not be issued before the 6th day after the judgment (unless a possession bond is filed). (5) If the writ is acquired by a default judgment, the court must send the tenant a written copy of the judgment no later than 48 hours after entry of the judgment. (6) An officer must post written warning of the writ on the front door not sooner than 24 hours before execution of the writ (Section 24.0061 of the Texas Property Code).

Relevant Authorities

Statutes addressing eviction are found in the Texas Property Code, Chapter 24, Sections 24.001 through 24.011. Rules 738 through 755 of the Texas Rules of Civil Procedure parallel the sections in Chapter 24 of the Texas Property Code.

Current Developments

None

Additional Resources

Texas Tenants' Union

4228 Main Street

Dallas, TX 75226

Telephone: 214.823.2733

Texas Low Income Housing Information Service

508 Powell Street

Austin, TX 78703

Telephone: 512.477.8910

UTAH

Foreclosure Process

There are two types of foreclosures in Utah. A non-judicial foreclosure process is used when the debt is secured by a deed of trust. Under the non-judicial process, the trustee must file a notice of default in the local county at least 3 months prior to the sale. Once the 3 months have elapsed, the trustee must give notice of sale by: (1) publication in a local newspaper once a week for 3 consecutive weeks with the last publication at least 10 days prior to the sale, and (2) posting on the property and at the local county recorder at least 20 days prior to the sale.

When the debt is secured by a mortgage, a judicial foreclosure process must be used. The beneficiary under a deed of trust may also elect to have a judicial proceeding. Under judicial foreclosure, the judgment debtor, his assigns, or the person in possession at time of sale, is entitled to possession during the redemption period.

Tenant Rights in Foreclosure Proceedings

Under the judicial foreclosure, only individuals with a properly recorded interest in the property at the time the foreclosure proceeding is initiated need to be named as parties. Under the non-judicial process, the notice of default and notice of sale provide constructive notice to the world of the mortgagee's intent to sell the property.

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes. If the mortgage existed at the time the lease was made, the tenancy is terminated by a foreclosure sale.

Eviction Process

In a for-cause eviction, the landlord must give the tenant 3 days notice prior to instituting an eviction proceeding. In a no-cause eviction under a month-to-month lease, the landlord must give 15 days notice prior to the end of the month. A Notice to Quit may be served (1) personally, (2) by certified mail, (3) by leaving a copy with a person of suitable age at the residence and mailing a copy, or (4) by posting a copy at the residence. If the tenant does not comply with the notice, the landlord must bring an eviction action. A default judgment is entered against the tenant if he does not respond to the summons within 3 days. If a default judgment is entered or the tenant otherwise loses, an Order of Restitution will be entered, which requires the tenant to vacate the premises within 3 business days. If the landlord files a possession bond anytime after filing a complaint, the tenant must respond within 3 days by either complying with a stated remedy or demanding a hearing. A hearing must be held within 3 days of the demand.

Eviction Timeframe

The tenant must receive between 3 and 15 days notice prior to the initiation of an eviction proceeding. Once an Order of Restitution is entered by the judge, the tenant has 3 business days to vacate the premises before a sheriff will take action to remove the tenant.

Relevant Authorities

Utah Code § 57-1-19 - 36; Utah Code § 78B-6-901 et seq.; Utah Code § 78B-6-801 et seq.; Consolidated Realty Group v. Sizzling Platter, Inc., 930 P.2d 268 (Utah 1997)

Current Developments

There are no current developments.

Additional Resources

Utah Legal Services' Renters Handbook: <http://www.andjusticeforall.org/uls/flyers/RH052803.htm>

VERMONT

Foreclosure Process

In Vermont, mortgages may be foreclosed by strict foreclosure: A mortgage conveys legal title to the mortgagee at the time the mortgage is granted; once a condition of the mortgage is broken, the mortgagee becomes the absolute owner of the property and is entitled to immediate possession. However, in order to institute a strict foreclosure, a suit must first be filed and a writ of possession must be issued by a court. Where the premises are occupied by a residential tenant, the writ must be served on the tenant, who must be given at least 30 days to vacate. Under 12 V.S.A. § 4531, mortgages may also be foreclosed by a judicial foreclosure sale, even if the mortgage does not contain a sale provision. Additionally, mortgages that do contain a power of sale provision may be foreclosed using either a judicial or non-judicial process. For judicial foreclosures, if a complaint has been filed and either party requests a sale, the court may enter a judgment of foreclosure ordering the property to be sold. However, no sale of either the owner's principal residence (if it is a dwelling house of 2 units or less) or farmland may take place within 7 months of service of the foreclosure complaint. For non-judicial foreclosures, the mortgagee may exercise the power of sale without first commencing a foreclosure action so long as the notice and sale conditions mandated by 12 V.S.A. § 4532 and 12 V.S.A. § 4533a are met. For example, the mortgagee must send the mortgagor notice of intention to foreclosure at least 30 days prior to publication of a notice of sale and a notice of sale must be served on the mortgagor at least 60 days before the sale. Non-judicial foreclosures may not be instituted for either the owner's principal residence (if it is a dwelling house of 2 units or less) or farmland.

Tenant Rights in Foreclosure Proceedings

Under 12 V.S.A. § 4523, if a mortgaged property is subject to a residential agreement, the plaintiff shall join as a party defendant tenants of the mortgaged property as of the date the complaint is recorded. Service on the tenant via first class mail at the address specified in the lease is sufficient. The summons and complaint served must contain the following notice: "The property in which you live is being foreclosed upon. You are named as a defendant in the foreclosure because your right to remain on the premises may end when the foreclosure is completed. You must notify the court of your name and address in order to be kept informed of the status of the foreclosure." Further, upon receipt of the complaint, the landlord-owner must notify each tenant that the premises are the subject of a pending foreclosure action and that the tenant may be required to vacate upon 30 days notice. However, the statute specifies that the landlord-owner's failure to provide such notice shall not invalidate the foreclosure action

Right to Notice and Timeframe (Y/N)

Yes. Plaintiff shall join tenant as a party defendant to its foreclosure action. If plaintiff obtains foreclosure judgment, tenant shall have 30 days to vacate the premises.

Terminate Tenancy (Y/N)

Yes. If tenant is named as a party defendant in foreclosure action.

Eviction Process

In order to evict a tenant, a landlord may file an eviction action in court after he or she provides the applicable notice of termination: (1) To evict for material breach of a rental agreement, the landlord must provide actual notice to the tenant that the lease will terminate no earlier than 30 days notice; (2) to evict

for criminal activity, the landlord must provide 14 days notice; (3) to evict for nonpayment of rent, the landlord must provide 14 days notice. An eviction action for nonpayment of rent will be discontinued if the tenant pays into court all rent due through the end of the current period, including interest and the costs of the suit. The eviction proceeding must be commenced no later than 60 days from the termination date set forth in the notice, or the notice will be deemed insufficient to support a judgment for eviction. If the court finds in favor of the landlord, a writ of possession shall be issued at the time of judgment. A sheriff shall serve the tenant with the judgment and a writ of possession notifying the tenant that the landlord will obtain possession of the premises no sooner than 10 days after the writ is served.

Eviction Timeframe

To evict for nonpayment of rent, the landlord must provide actual notice to the tenant that the lease will terminate no earlier than 14 days following the notice; to evict for material breach of a rental agreement, the landlord must provide 30 days notice; to evict for criminal activity, the landlord must provide 14 days notice. If landlord obtains an eviction judgment, the tenant shall have 10 days to vacate (from the time he or she is served with the judgment and writ of possession).

Relevant Authorities

9 V.S.A. § 4467; 12 V.S.A. § 4761 et seq.; 12 V.S.A. § 4523

Current Developments

None identified

Additional Resources

Vermont Human Rights Commission (<http://www.hrc.state.vt.us>, 800-416-2010); Vermont Legal Aid (<http://www.vtlegalaid.org>, 800-889-2047)

VIRGINIA

Foreclosure Process

Judicial Foreclosure: (Used when there is no Power of Sale (“POS”) clause present in the mortgage or the deed of trust).

- (1) A lawsuit is filed to obtain a court order to foreclose.
- (2) If the court finds a foreclosure, the property is auctioned off to the highest bidder.
- (3) The borrower has 240 days from the date of sale to redeem. In order to redeem, the borrower must pay the price the property was sold for plus 6% interest.

Non-Judicial Foreclosure: (Used when a POS clause is present in either the mortgage or deed of trust).

The clause may or may not list certain criteria like the terms of the sale, but Virginia Statute contains the additional requirements that must be met in addition to any criteria listed in the clause.

- (1) In addition to any advertising requirements in the POS clause, the ads must be published no less than once a day for 3 days. If the POS clause does not require advertising, then ads must be run once a week for 4 successive weeks. (If near a city, an ad published on 5 different day is sufficient.)
- (2) A copy of the advertisement or a notice containing the same information must be mailed to the borrower at least 14 days before the foreclosure sale.
- (3) The ad must include i) anything required by the deed of trust. ii) the time, place, and terms of the sale, and iii) the name of the trustee and the address/phone number of a contact person who is able to answer questions about the sale.
- (4) The borrower may cure the default and stop the sale at any time before the sale by paying the lien debt, cost, and any reasonable attorney fees.
- (5) The foreclosure sale must be held no earlier than 8 days after the first ad is published and no later than 30 days after the last ad is published.
- (6) Any person other than the trustee may bid at the sale and the property will go to the highest bidder.

Tenant Rights in Foreclosure Proceedings

None

Right to Notice and Timeframe (Y/N)

No

Terminate Tenancy (Y/N)

Yes

Eviction Process

Eviction Process due to noncompliance with the rental agreement.

(1) Landlord must serve written notice on the tenant stating the acts or omissions that constitute a breach of the rental agreement. If the breach is not remediable, the notice must also state that the rental agreement will terminate on a date not less than 30 days after receipt of the notice. If the breach is remediable, the notice must state that the rental agreement will terminate on a date not less than 30 days after receipt of the notice IF the breach is not remedied within 21 days.

(2) Landlord files a Summons for Unlawful Detainer in the General District Court. The summons must also be served on the tenant. This action allows the Landlord to ask for possession of the premises, unpaid rent, late fees, attorney's fees, and costs associated with the lease.

(3) If the tenant fails to appear, the court will grant immediate possession to the Landlord by providing an Order of Possession. The Landlord may then immediately file a Writ of Possession.

(4) If the Tenant appears in court but loses at trial, the judgment in favor of the Landlord will become final after 10 days unless the tenant appeals. Landlord may file the Writ of Possession after the 10 day period.

(5) After the Writ is filed, the Sheriff will serve the Tenant with a copy of the filed Writ of Possession. This notice provides Tenant with 72 hours advance notice of the eviction date and time. The eviction must be carried out within 30 days or the Writ will expire.

Eviction Timeframe

Eviction process starts after 30 days notice of breach and failure to cure breach after 21 days if the breach could be cured.

Relevant Authorities

The Virginia Residential Landlord and Tenant Act (Please note that this act does not automatically cover landlords who own and rent out 10 or fewer [4 or fewer in Fairfax and Arlington] single-family rental homes UNLESS coverage under VRLTA is accepted in the lease) VA 55-248.2 - 55.248.40

Current Developments

Additional Resources

Fairfax County's Consumer Affairs
(703) 222-8435
12000 Government Parkway, Suite 433,
Fairfax, VA
8 a.m. and 4:30 p.m.

Virginia Office of Consumer Affairs
1-800-552-9963

Legal Services of Northern Virginia (Loudoun County)
(703) 777-7450

District Court Judge's Benchbook (2008 Edition) (covers Unlawful Entry and Detainer action process)
<http://www.courts.state.va.us/ed/resources/dcbench/cover.pdf>

The VRLTA Handbook
(http://www.dhcd.virginia.gov/HomelessnesstoHomeownership/PDFs/Landlord_Tenant_Handbook.pdf)

WASHINGTON

Foreclosure Process

Both judicial and non-judicial procedures are available.

The judicial process of foreclosure is used when no power of sale is present in the mortgage or deed of trust. Generally, after the court declares a foreclosure, the property will be auctioned off to the highest bidder. For in-court foreclosure proceedings, once a lender files suit against a borrower, the minimum time to a court ruling is 30 days. This time is extended to 60 days for out-of-state borrowers, in order to provide ample time to respond. If the court rules in favor of the lender, the property is sold to recover the amount owed to the lender. A sheriff's sale occurs usually 6-8 weeks following court's ruling.

The non-judicial process of foreclosure is used when a power of sale clause exists in a mortgage or deed of trust. A "power of sale" clause is the clause in a deed of trust or mortgage, in which the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event of their default. Before starting a foreclosure out of court, the lender mails a notice of default to the borrower and either posts the notice at the property or delivers the notice to the borrower in person. RCW 61.24.030.

Tenant Rights in Foreclosure Proceedings

The purchaser at the nonjudicial sale can possess the property on the 20th day following the sale, as against anyone having an interest junior to the deed of trust, including occupants and tenants, who were given notice. RCW 61.24.060.

At least ninety days before the sale, the trustee shall cause a notice of sale to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property. RCW 61.24.040.

Right to Notice and Timeframe (Y/N)

Yes. About 90 days before the sale. RCW 61.24.040.

Terminate Tenancy (Y/N)

Yes

Eviction Process

Generally, a legal eviction process involves:

- Notice. Before evicting a tenant, the landlord must serve eviction notices.
- Filing of a lawsuit. If the tenant fails to move out, a lawsuit must be filed to evict the tenant.
- Entitlement to a court hearing. If the tenant disputes the reasons for the eviction, the tenant is entitled to a court hearing.
- Sheriff's involvement. If the tenant loses the court hearing, the sheriff would then be ordered to physically evict a tenant and remove the property in the unit. Only the sheriff can physically remove a

tenant who does not comply with an eviction notice and only after an unlawful detainer lawsuit has been filed.

A court has held that a formal notice to quit is not required for an unlawful detainer action following a trustee's sale upon foreclosure on the property. *Savings Bank of Puget Sound v. Mink*, 49 Wn. App. 204, 741 P.2d 1043 (1987); RCW 59.12.030(a).

Eviction Timeframe

Tenant has twenty days before owner can initiate eviction proceedings. Summary proceedings under RCW 59.12 may commence after the 20th day after sale. The tenant must be made a party under the eviction proceedings. The owner must file and serve a summons for unlawful detainer, complaint, motion for order to show cause, and an order to show cause requiring tenant to appear and show cause why a writ should not be issued.

Relevant Authorities

Revised code of Washington, Title 61.
Savings Bank of Puget Sound v. Mink, 49 Wn. App. 204, 741 P.2d 1043 (1987);
Peoples Nat'l Bank v. Ostrander, 491 P.2d 1058 (1971).

Current Developments

None

Additional Resources

N/A

WEST VIRGINIA

Foreclosure Process

In West Virginia, lenders may foreclose on deeds of trusts or mortgages in default using either a judicial or non-judicial foreclosure process.

The judicial process of foreclosure, which involves filing a lawsuit to obtain a court order to foreclose, is used when no power of sale is present in the mortgage or deed of trust. Generally, after the court declares a foreclosure, the property will be auctioned off to the highest bidder.

The non-judicial process of foreclosure is used when a power of sale clause exists in a mortgage or deed of trust. A “power of sale” clause is the clause in a deed of trust or mortgage, in which the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event of their default. In deeds of trust or mortgages where a power of sale exists, the power given to the lender to sell the property may be executed by the lender or their representative, typically referred to as the trustee. If the deed of trust or mortgage contains a power of sale clause and specifies the time, place and terms of sale, then the specified procedure must be followed. Otherwise, the non-judicial power of sale foreclosure is carried out as follows:

The notice of sale must be posted on the front door of the courthouse for the county in which the property to be sold is located, and 3 other public places, one of which must be the property itself, at least 20 days prior to sale. The notice must also be served upon the borrower and subordinate lien holders at least 20 days prior to the foreclosure sale.

Additionally, the notice must be published as a Class III legal advertisement in the county where the property is located once a week for 4 weeks.

Notice must contain the time and place of the foreclosure sale, the names of the parties to the deed, the date of the deed, recording information, a property description and the terms of the sale.

The sale must be held at the time and place stated in the foreclosure notice and completed by public auction to the highest bidder. Unless the deed specifies the terms of sale, the buyer must pay 1/3 of the bid amount in cash at the sale.

Deficiency actions are generally not permitted in West Virginia and there are no rights of redemption.

Tenant Rights in Foreclosure Proceedings

Rental agreements run with the landlord, not the property so a new landlord/bank can evict tenants unless the new owner obtains an attornment letter whereby the tenant agrees to recognize, and pay rent to, the new owner as a permissible successor to the lease.

Right to Notice and Timeframe (Y/N)

Landlords must provide 1 full rental period notice in advance before the end of the preceding period. For instance, if the rental period is monthly, the landlord must notify the tenant before the new monthly rental period begins in order to request that the tenant leave by the end of the month.

Terminate Tenancy (Y/N)

Yes

Eviction Process

The landlord must send notice to the tenant outlining his lease violations and explain why the tenant must vacate the premises by a specific date or sooner. The landlord must obtain a court order in either circuit court or magistrate court. The landlord must prove that tenancy has been properly terminated in order to obtain a court order granting possession of the property. The tenant has the right to appear in court with representation to present evidence in his defense. If an order of possession is obtained, the sheriff's office will assist in enforcing the order, if necessary. If the tenant appeals the order of possession, the tenant can remain in the rental premises while the appeal is pending, unless the lease is over for reasons that have nothing to do with the lawsuit.

Eviction Timeframe

Relevant Authorities

Statutes:

West Virginia Code Chapter 37, Article 6 Landlord Tenant

West Virginia Code Chapter 38, Article 1, Vendor's Liens and Deeds of Trust

West Virginia Code 55-3A-3(g)

West Virginia Code 59 Legal Advertisements

Current Developments

In September 2008, RealtyTrac ranked West Virginia 49th out of 50 states when it came to the frequency of foreclosures.

Additional Resources

Mountain State Justice (304)-344-3144

WISCONSIN

Foreclosure Process

The judicial process of foreclosure involves the lender filing a lawsuit to obtain a court order to foreclose. The foreclosure sale is then held 1 year from the date of the order unless the lender waives his right to a deficiency judgment, in which case the sale may be held in six months, or in 2 months if the property is abandoned. The sale may be held sooner by consent. The non-judicial foreclosure process is used if a power of sale clause is included in the mortgage or deed of trust. If the procedure for the sale is specified then it must be followed. If not, the process is as follows: (1) The foreclosure notice must be recorded, served upon the borrower and then published weekly for 6 consecutive weeks. If the borrower cannot be found, the notice must be posted conspicuously on the property and served on any occupant. (2) The sale must be held at the time and place specified in the notice. The winning bidder will receive a certificate of purchase. Postponement is allowed. (3) The borrower has 12 months to redeem the property if the lender does not apply for court confirmation of sale. If the lender does apply and states his intention to sue for any deficiency balance, he may then sue for a judgment. Otherwise, deficiency suits are not allowed.

Tenant Rights in Foreclosure Proceedings

Tenant has to be named in foreclosure proceedings and joined as party for the tenancy to be terminated. If the tenant is not named as a party, the tenant's right to possession continues.

Right to Notice and Timeframe (Y/N)

The filing of a notice of lis pendens is constructive notice to a tenant of the foreclosure action.

Terminate Tenancy (Y/N)

Tenancy terminated by foreclosure if tenant named as party to foreclosure action. Opportunity to terminate tenancy is lost if not completed during the foreclosure action.

Eviction Process

A tenant must be given a 5, 14 or 30 day written eviction notice depending on the length of the lease. The notice must be given to the tenant or someone in the tenant's family over the age of 14. If notice cannot be given in such a manner, a copy of the notice can be posted in a conspicuous place on the property with a copy mailed to the tenant's last known address, or the notice can be sent by registered mail. A tenant can only be evicted by a court order. The lender must obtain a writ of restitution issued by a judge and provide the sheriff with the writ. The sheriff will then come within 10 days to remove the tenant. Usually the sheriff will post a 24-hour notice before removing the tenant. The sheriff will give the tenant between 24 hours and 1 week to move out. If the tenant refuses to leave, the sheriff will forcibly evict the tenant.

Eviction Timeframe

The eviction timeframe is approximately 30 days.

Relevant Authorities

Wisconsin Statutes § 846, et seq., § 704, et seq., § 708.02; Zimmermann v. Walgreen Co., 215 Wis. 491, 496, 255 N.W. 534, 537 (Wis. Ct. App.1934); Housing Partnership Corp. v. Miller, 218 Wis.2d 830, 581 N.W.2d 593 (Wis. Ct. App. 1998)

Current Developments

A.B. 568 and S.B. 298 were introduced in November 2007 and would have regulated foreclosure reconveyances and foreclosure consultants. However, they failed to pass pursuant to Senate Joint Resolution 1 on March 21, 2008.

Additional Resources

Housing and Urban Development in Wisconsin (<http://www.hud.gov/local/index.cfm?state=wi>); Tenant Resource Center (http://www.tenantresourcecenter.org/housing_counseling/); Wisconsin Housing and Economic Development Authority (<http://www.wheda.com/>)

WYOMING

Foreclosure Process

In Wyoming, foreclosure may be via judicial or non-judicial foreclosure (non-judicial foreclosures are more common). Written notice of the intent to foreclose on a property must be delivered to the borrower at least 10 days prior to the first publication of notice of sale. Foreclosure sales all take place at public auction, with the property going to the highest bidder. All sales take place at the front door of the courthouse in the county where the property is located. Anyone (including the lender) may bid. Borrower has 3 months after the date of sale to redeem the property, provided they pay the purchase price at auction plus 10% interest.

Tenant Rights in Foreclosure Proceedings

Not addressed.

Right to Notice and Timeframe (Y/N)

Yes. 10 days

Terminate Tenancy (Y/N)

Not addressed

Eviction Process

The party desiring to commence an action for forcible entry or detainer must notify the adverse party to leave the premises involved. The notice shall be served at least 3 days before commencing the action, by leaving a written copy with the defendant or at his usual place of abode or business if he cannot be found.

Eviction Timeframe

3 days

Relevant Authorities

Wyoming S 1-21-1211; Owner's remedies; eviction

Current Developments

Wyoming S 1-21-1211; Owner's remedies; eviction

Additional Resources

<http://michie.lexisnexis.com/wyoming/lpext.dll?f=templates&fn=main-h.htm>