



EARLY CARE & EDUCATION LAW PROJECT

FAMILY CHILD CARE TENANTS IN FORECLOSED PROPERTIES

As a family child care provider renting the property in which you conduct your business, you may find yourself caught up in the current mortgage crisis. Living in a property that is going into foreclosure will have a serious impact on your family child care home. As a general matter, once the rental property goes into default, the mortgagee (the lender, usually a bank) can take steps to auction the property off in a foreclosure action, and you could be evicted following the sale of the property. In that case, to continue your child care business, you will most likely have to relocate and apply for a child care license to operate a child care home in the new location. However, in some circumstances detailed below, you will be protected from eviction.

This handout provides basic information, and is not intended to constitute legal advice. Further, as events continue to unfold in this growing economic crisis, the government will likely respond with new rules and regulations, some of which may affect you. For the most up-to-date legal advice, you should contact an attorney who specializes in landlord/tenant law in the State of California. Alternatively, you can contact any one of the organizations listed below under "Resources".

Which steps are involved in a foreclosure?

Foreclosure is a complicated process that can take several months to complete. In California, the mortgagee (the lender) can choose to conduct either a (1) non-judicial foreclosure sale or (2) a judicial foreclosure sale. As a tenant living in a property being foreclosed upon in a judicial foreclosure sale, your lease will not automatically be extinguished (and thus, you may not automatically be evicted) unless the mortgagee (the lender) specifically elects to terminate your lease by naming you in the foreclosure action. However, judicial foreclosure sales take substantially longer to complete and thus, most mortgagees will conduct non-judicial foreclosure sales.

Before the mortgagee (the lender) can auction off the rental property you live in, several steps must always be taken. In addition, the California State Legislature recently enacted Senate Bill 1137 ("SB 1137"), effective as of July 8, 2008, which provides for increased tenant protections and other temporary foreclosure reforms in response to the current subprime mortgage crisis:

Notice of Default: When your property owner falls behind on his or her mortgage payments, the lender must make contact with the property owner in an attempt to avoid foreclosure. However, if those

attempts are unsuccessful, the lender can file a Notice of Default with the county recorder's office, and give notice to the property owner. Under SB 1137, the lender is not allowed to file a Notice of Default until 30 days after the lender has made contact with the property owner. Under the bill, the lender must take specific steps to show that it has exhausted all methods of contact, and has diligently attempted to explore alternatives to foreclosure with the property owner before filing a Notice of Default. Negotiations between the property owner and lender to avoid foreclosure can continue during the three month period that follows after the Notice of Default is filed.

Notice of Sale (auction announcement): Three months after the Notice of Default, the lender schedules an auction of the house by filing a Notice of Sale. Auctions can be postponed by agreement between the property owner and the lender if the property owner takes action to remedy the default and avoid foreclosure.

You will know if your building is going into foreclosure because a Notice of Sale must be posted in a conspicuous place on the property at least 20 days before the sale date. Foreclosure sales are also posted online at www.foreclosurelistings.com

Under SB 1137 the lender must, at the time of the posting, also mail a separate notice to the resident of the property, stating:

"Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have."

Auction Sale: The property is auctioned off at the time and place listed on the Notice of Sale. It is either sold to a third person or, if there are no bids made on the property at auction, the lender takes ownership.

As a tenant, you are unlikely to be able to stop a foreclosure. There are, however, as described below, limited protections for renters of foreclosed residential properties.

If the building I live in receives a notice of foreclosure sale, can I be evicted? What are my rights?

More likely than not, your lease is *junior* to the mortgage or the deed of trust, since most mortgages and deeds of trust are years-long arrangements, and may even predate the construction of the building. Unlike leases that existed prior to the date the deed of trust or mortgage was recorded in the county recorder's office ("senior leases"), *all junior leases are terminated* ("extinguished") in a non-judicial foreclosure sale. Its unlikely that any mortgagee will have agreed to sign a non-disturbance agreement

for your benefit (lenders do not typically agree to such arrangements with residential tenants), but, if you have such an agreement with your landlord's lender, you should contact a lawyer (or any one of the organizations listed under "Resources"), as you may have continuing rights to occupy the property.

In most cases, then, your existing lease would be completely terminated ('extinguished') by the foreclosure sale, and the new owner could begin the process of eviction by giving you notice to vacate. Under recently enacted SB 1137, tenants and subtenants would then have 60 days to remove themselves from the property that was sold in foreclosure. This means you would ordinarily have 60 days to find alternative housing, during which time you would still be required to make timely rent payments. Note that if SB 1137 is not extended or is repealed, this 60 day period would revert back to a 30 day period.

While the procedure described above would typically apply, foreclosures happening over the next year are subject to special rules, which were put in place to further combat the growing effects of the current mortgage crisis. On December 17, 2008, the Los Angeles City Council enacted the Foreclosure Eviction Ordinance, which provides that banks or lenders who foreclose on or after December 17, 2008 on single-family homes or new multi-family properties (those with a certificate of occupancy after October 1, 1978) in the City of Los Angeles cannot evict a tenant simply because they foreclosed on the property. This means that if the property you are occupying was built in the last 30 years, then the lender cannot evict you simply because it has decided to foreclose on the property. However, this new law *does not* prevent the lender from evicting you for other reasons, such as a breach on your part under your lease (for example, a failure to timely pay rent). It is also important to note that this new law does not apply to (1) foreclosures which were commenced before December 17, 2008 or (2) foreclosures on properties with certificates of occupancy dated prior to October 1, 1978 (like many other buildings in Los Angeles, your building may be more than 30 years old).

When the Foreclosure Eviction Ordinance expires, or if it is sooner repealed by the Los Angeles City Council, the general rules will apply once again (i.e. your lease will be terminated by a foreclosure and you will have anywhere from 30 days to 60 to vacate, depending on whether SB 1137 has been extended or repealed). At this point, the lender may offer you a sum of cash in return for an earlier termination. This type of offer is referred to as a "cash for keys" offer. Wherever possible, you should obtain this agreement in writing, and the lender should agree to release you from all obligations and liabilities under your lease in exchange for the early termination.

If you do not fall within one of the two categories protected by the Foreclosure Eviction Ordinance, or, if you otherwise would, but the ordinance is no longer in effect (i.e. it has expired or is repealed), you may still have broader protections in certain circumstances, and may not have to relocate following a foreclosure sale. These include:

- You entered into your lease before the mortgage that was foreclosed upon was recorded;

- The lender chooses to conduct a judicial foreclosure sale;
- You live in a unit that is a part of a Federal Housing Program (including Section 8);
- You live in a rent controlled unit;
- You live in a community with "just cause" eviction protections.

Lenders often don't know the local laws, or hope that tenants don't, and try to evict the tenant after foreclosure, whether or not they have the right to do so. It is important to know that you may still have the law on your side. In all events, the new owner must go through a formal eviction process, and cannot turn off your utilities, change the locks to your unit, or put you out onto the street.

I live in a rent controlled unit. What are my rights after a foreclosure sale?

Local rent stabilization ordinances can protect a tenant in a controlled unit from eviction after a foreclosure sale of the property. Foreclosure may not be a proper ground for eviction in some jurisdictions that have rent control.

- **Los Angeles:** Foreclosure **IS NOT** a basis for eviction in rent-controlled units. If you don't know if you are in a rent controlled unit in L.A., call – (866) 557-7368 (City of L.A. Housing Department)
- **Santa Monica:** Foreclosure **IS NOT** a basis for eviction in rent-controlled units. If you don't know if you are in a rent controlled unit in Santa Monica, call – (310) 458-8751 (Santa Monica Rent Control Department)
- **Beverly Hills:** Foreclosure **MAY NOT BE** a basis for eviction depending on the nature of the unit you are in. If you don't know if you are in a protected rent controlled unit in Beverly Hills, call – (310) 285-1119 (Beverly Hills Code Enforcement Division)
- **West Hollywood:** foreclosure **MAY NOT BE** a basis for eviction depending on the nature of the unit you are in. If you don't know if you are in a protected rent controlled unit in West Hollywood, call – (323) 848-6450 (West Hollywood Rent Stabilization and Housing Department)

In addition, some jurisdictions have local "just cause" eviction protections, which may not include foreclosure as a "just cause". These can protect a tenant from eviction after foreclosure sale of the property, even if the unit is not subject to rent control. The best way to find out if you're covered by "just cause" provisions of your local law is to call the Rent Control or Rent Stabilization Board in your community, a local tenant's organization or lawyer specializing in tenant's rights.

If I receive a notice of foreclosure, what steps should I take?

Many lenders will attempt to evict tenants in violation of rent control and just cause eviction ordinances, or other temporary foreclosure relief reforms. Tenants who receive an eviction notice because the building is entering into foreclosure need to know that a foreclosure or sale of the building is *not currently* a lawful reason to evict tenants under the Los Angeles Municipal Code.

Contact the Lender or Loan Servicer: Tenants should make every effort to contact the financial institution handling the foreclosure and inquire about how to make the rent payments, to ensure that the tenant remains in compliance under its lease. This means sending a letter to the lender or the loan servicer, the address for which you'll find on the Notice of Sale, informing them that you reside at the property as a tenant and providing your contact information. If the Notice of Sale includes a telephone number for the lender or the loan servicer, call and ask for the name of the person handling the property, and address the letter to him or her. Keep copies of all correspondence with the lender or loan servicer, and, where possible, obtain a proof of mailing.

Make Timely Rental Payments: Tenants are required, and should continue, to make timely rent payments pursuant to their leases. Tenants who are uncertain of who the legal landlord is, even after taking the steps described above to contact the lender or loan servicer, should save their rent and be prepared to pay upon proper notice.

Contact a Lawyer Immediately Upon Receipt of Court Eviction Papers: If you receive court eviction papers, or other correspondence relating to an unlawful detainer action, see a lawyer promptly. Time is of the essence in foreclosure actions. In certain instances (for example, receipt of a Summons and Complaint), the tenant has only a few calendar days (5, to be exact) to respond.

I want to continue my child care business. What steps should I be taking?

The first step will be to find a suitable new location in which to live and operate your family child care home. You do not need the consent of a landlord to operate a family child care in the rental property, and you do not need to disclose to prospective landlords that you intend to operate a day care at the new rental property. However, if your sole income is from your child care operations, you probably will have to disclose your profession and income on the application form. This can make it more difficult to find a place considering that many landlords are hesitant or even opposed to having a day care operated in their property. Public Counsel's brochure titled "Family Child Care Provider: Know Your Rights as Tenants" can answer some of your questions. You will need to notify your landlord 30 days before you start operating a family child care home and may use Form LIC 9151 for that purpose.

The next step is for you to submit an application for transfer of child care license to the Community Care Licensing Divisions of the Department of Social Services. To start the re-licensing process, you complete and submit Form LIC 279A ('License Application for Family Child Care Homes') and the supplemental

Forms described in Form LIC 279A, and mail them to CCLD with the applicable fee. These Forms can be accessed online at <http://www.dss.cahwnet.gov/cdssweb/PG166.htm#lic> or by contacting your local Licensing Agency. You do not need to attend a new orientation and can use your certificate of attendance from your original license application. Please note that your application will be returned to you for correction or completion if is not complete, and this can slow the process down considerably. Therefore it is important to review and fill out the application form carefully.

Once your complete application is received by CCLD, a CCLD Analyst will review your file and contact you for a site visit. How quickly you will be contacted will depend on the workload of the Analyst assigned to your case. By the time you receive the site visit you need to have moved completely to the new location, and be ready to start operating. At or following the site visit, the Analyst can suggest changes or corrections to meet licensing requirements, which you will have to complete promptly lest your application be denied. CCLD strives to complete the licensing process within 90 days of receipt of a complete license. After the site visit it is advisable to follow-up with the Analyst or a Supervisor (e.g., on a weekly basis) to make sure your license is processed and not delayed.

In any event, you need to be aware that the time period before obtaining your license for the new location will have to be bridged with alternative income.

Resources

- Tenants Together: www.tenantstogether.org
- Foreclosure in California: <http://www.foreclosureinfo.ca.org>
- Bet Tzedek – (323) 939-0506
- Neighborhood Legal Services of Los Angeles County – (800) 433-6251
- Legal Aid Foundation of Los Angeles, Eviction Defense Center – (213) 487-7609
- Los Angeles Center for Law and Justice – (323) 980-3500
- Community Legal Services (Legal Aid of Compton)– (800) 638-6194
- Eviction Defense Network – (213) 385-8112
- Public Counsel Law Center – (213) 385-2977

This document was prepared by Public Counsel's Early Care & Education Law Project and seeks to briefly summarize an issue that is particular to family child care providers. This document is not all-inclusive and is not intended to provide any individual or entity with specific legal advice. Receiving this document does not create any lawyer-client relationship. For questions or comments, please call the ECE Law Project Intake line at 213/ 385 2977 ext. 300