



LEGAL AID SOCIETY
PURSUING JUSTICE. RESTORING HOPE.

TENANTS AND FORECLOSURE: QUESTIONS AND ANSWERS ABOUT RIGHTS FOR LOUISVILLE RENTERS

The mission of the Legal Aid Society is to pursue justice for people in poverty.

This booklet provides general information about tenants and foreclosure. It is not intended to solve individual legal problems, and cannot substitute for competent legal advice. For legal advice about your own particular situation, consult an attorney or contact the Legal Aid Society at (502) 584-1254.

Introduction

Is your landlord being sued for not paying the mortgage? Is the place you rent being foreclosed on? You don't have to move right away – you have rights. If you live in Louisville, in most cases you can expect to be able to stay in your home for at least six months from the time the foreclosure lawsuit against your landlord is filed. You may even be able to stay longer.

This booklet provides information about the rights of renters living in apartments or houses in foreclosure. It is divided into four parts:

- **Part I. Foreclosure Basics (Page 3)** – This explains what foreclosure means and how foreclosures work in Louisville.
- **Part II. Tenant Rights To Stay (Page 6)** – This explains a new federal law, the Protecting Tenants at Foreclosure Act, which gives renters the right to remain in their home for a certain period of time after foreclosure.
- **Part III. Protecting the Right To Stay (Page 12)** – This section discusses how you can get the information about your landlord's case that you need to protect your rights, how to let the Court know about your situation, dealing with a new owner, and pitfalls to watch out for.
- **Part IV. Rent, Repairs and Utilities (Page 15)** – This discusses who is entitled to collect rent and who is legally responsible for repairs, maintenance and utilities.

I. Foreclosure Basics

Question: The place I rent is going into foreclosure. Does this mean I have to move right away?

Answer: No. You have rights under Kentucky law and under the federal Protecting Tenants At Foreclosure Act. These rights are discussed in detail in Part II, below.

Question: What exactly is “foreclosure”?

Answer: Foreclosure is what happens when someone borrows money, puts up real estate (a house, an apartment building, etc.) as collateral, and does not make required loan payments. The owner of the loan – usually a bank – can then force the property to be taken from the owner and sold to pay off the loan.

Question: How do foreclosures work in Louisville?

Answer: Kentucky is a “judicial foreclosure” state. This means that the bank (or other holder of the loan) must sue the property owner in Court before the property can be taken and sold to pay off the loan. For property in Louisville, the lawsuit is filed in Jefferson Circuit Court.

Question: How long do foreclosures take?

Answer: There are many legal steps involved from the time the lawsuit is filed until the property is sold and ownership legally passes to a new owner. First, the property owner may have a valid defense, in which case the lawsuit will be dismissed and the foreclosure stopped. Even if there is no defense, the case must go through the following basic steps:

- The bank must prove its case.
- The judge must issue orders finding in favor of the bank and allowing the property to be sold at an auction held by the Master Commissioner, a Court official.
- The sale must be advertised.
- The auction must be held, and the property sold.
- The Master Commissioner must submit a report of the sale to the judge in charge of the case.
- The judge must “confirm,” or approve, the sale.
- The purchaser (the new owner) can ask the Court to issue it a deed. Once the deed is issued, legal title to the property passes to the purchaser, who becomes the new owner.

In Louisville, as of June, 2010, in a simple case it was taking about six (6) months from the filing of the foreclosure lawsuit to the time that a deed was issued to the purchaser, who then became the new owner.

Question: How does a tenant find out that his/her home is going into foreclosure?

Answer: The foreclosure lawsuit begins when the bank (or other owner of the loan) files a document called a “Complaint” in Circuit Court. The lawyer for the bank ordinarily has a copy delivered to the tenant at the property, usually addressed to “Unknown Occupant” or “Unknown Tenant.” The Complaint will also usually name “Unknown Occupant” or “Unknown Tenant” as a defendant in the lawsuit.

The Complaint will have a case number, which will allow you to track the progress of the foreclosure in the Circuit Court. You should also use this case number and the other

information in the Complaint to file a Notice of Appearance in the case. See Question 1 in Part III, below, for more about notices of appearance.

Beware, though, that lawyers for banks may not always follow correct procedures and send a copy of the complaint to the tenant – so you may not find out about the foreclosure until it is further along.

II. Tenant Rights To Stay

Question: Can my landlord evict me just because a foreclosure lawsuit has been filed?

Answer: No.

Question: Can I be evicted while the foreclosure case is going on in Court?

Answer: You keep all of the same legal rights under Kentucky landlord-tenant law that you would otherwise have even while the foreclosure lawsuit is going through Court. At this stage, you still cannot be evicted just because of the foreclosure. You can be evicted, though, if you do not pay your rent or violate your lease, or if your lease ends before the foreclosure case is complete or you are on a month-to-month lease. However, the landlord must still follow all of the legal procedures and requirements that ordinarily apply to evictions. You should keep paying rent to your current landlord unless the bank or mortgage company notifies you otherwise.

Question: Can I be evicted when the foreclosure case is over and there is a new owner?

Answer: Not for at least 90 days. Your rights to stay change once there is a Court-ordered foreclosure sale and the Court issues a deed to the purchaser. At this point, the federal Protecting Tenants at Foreclosure Act of 2009, or "PTFA," kicks in. Generally speaking, the PTFA gives you the right to stay for at least 90 days after the Court issues a deed passing legal title to the purchaser or until your lease ends, whichever is longer. Please keep reading for important details, including some exceptions, which are discussed below.

Important Note: Congress passed the PTFA as a temporary measure. Unless Congress takes further action, the PTFA and its tenant protections will end on December 31, 2014.

Question: What rights does the PTFA give tenants?

Answer: Under the PTFA, any “bona fide” tenant has the right to stay for at least 90 days after the Court issues a deed giving the new owner legal title to the property. This results because the PTFA requires the purchaser at foreclosure to give all “bona fide” tenants – whether the tenant has a written lease or not – at least 90 days advance notice of the date by which the new owner wants the tenant to vacate the property.

In addition, a “bona fide” tenant with a “bona fide” lease has the right to remain until the lease ends, even if that is more than 90 days. The only exception is if the new owner sells the property to someone who will live there as his or her primary residence. Even then, though, the tenant is entitled to at least 90 days notice of the date by which s/he must vacate the premises.

Question: What makes a tenant or a lease “bona fide” under the PTFA?

Answer: Under the PTFA, a tenant or a lease is “bona fide” only if all three of these conditions are met:

- The tenant is not the person who defaulted on the mortgage loan, or the child, spouse or parent of the person who defaulted.
- The lease or tenancy came about through an arms-length transaction. This means, for example, no “sweetheart” deals.

- The rent is not substantially less than fair market rent for the property, unless the rent is subsidized or reduced under a Federal, State or local program.

Question: Does the PTFA apply to all tenants?

Answer: The 90-day notice requirement applies to anyone who was a “bona fide” tenant before the Court issued the deed giving the new owner legal title to the property. It applies whether or not the tenant has a written lease.

The requirement that “bona fide” tenants be allowed to stay through the end of their lease applies only if the lease, too, is “bona fide” and was entered into before the date that title transferred from the defaulting landlord to the new owner.

Question: How does the PTFA protect tenants with Section 8 vouchers?

Answer: The PTFA protects Section 8 tenants in three ways:

- Tenants with Section 8 vouchers have the same PTFA rights as any other tenant.
- A new owner’s desire to have the property vacant before trying to sell it is not considered “good cause” under the federal law that allows Section 8 tenants to be evicted for “good cause.”
- The new owner after foreclosure has to abide by the Housing Assistance Payment contract made between the Louisville Metro Housing Authority and the owner who defaulted.

However, if the purchaser at foreclosure wants to use the property for his or her own primary residence, s/he can terminate the lease with 90 days notice to the Section 8 tenant.

Question: Does the PTFA require a tenant to leave automatically when the lease ends, or when it has been 90 days since legal title passed to the new owner?

Answer: No. It is up to the new owner to notify the tenant that it wants the tenant to vacate the property, and to give at least 90 days advance notice.

Question: When is the earliest that the PTFA lets a new owner give a 90-day notice to vacate?

Answer: The new owner after foreclosure cannot issue a 90-day notice to vacate until the Court gives the new owner legal title. The Court does this by issuing a document called a "Commissioner's Deed."

It is also important to keep in mind that a bona fide tenant with a bona fide lease has the right to stay until the end of the lease period, even if that is more than 90 days. Thus, if there is a lease with more than 90 days remaining, the new owner after foreclosure cannot set a move-out date earlier than the end of the lease.

Question: How long can a tenant in Louisville expect to be able to stay once the foreclosure lawsuit is filed?

Answer: As explained above, the PTFA clock begins to tick only after the Court issues a Commissioner's Deed to the new owner. Before this can happen, the bank has to file a lawsuit against the defaulting landlord; the bank has to prove its case; the Court has to

issue an order allowing the Master Commissioner to sell the property at auction; the auction has to be advertised; the sale must be held; the Master Commissioner must file a report of the sale with the Court; and the Court must confirm, or approve, the sale. Only then can the Commissioner issue a deed to the new owner. In Louisville, as of June 2010, this chain of events was taking approximately six (6) months.

Question: Can a tenant ever stay beyond the length of time set out in the PTFA?

Answer: Yes. The time frames set out in the PTFA are only a legal minimum. Tenants can always try to reach an agreement with the new owner to stay on.

In addition, if any kind of federal or state rent subsidy is involved, any legal requirements regarding that particular program would still apply. Finally, if the facts of a particular situation are such that Kentucky law would allow the tenant to remain longer, the Kentucky law would still apply.

Question: What happens if a tenant does not move out at the end of the PTFA time or notice period, and the owner wants the tenant out?

Answer: It is against the law for the owner to lock out the tenant, or put the tenant's possessions on the street. Rather, the owner must follow the usual eviction procedures by filing an eviction case in District Court, with notice to the tenant. After the tenant has an opportunity to appear in Court, the judge can sign an eviction order. The owner can then get a "writ of possession" from the District Court and make arrangements with the sheriff's department to remove the tenant's belongings from the premises if the tenant has not vacated the property by a certain date.

District Court, which is the Court for evictions in Kentucky, is different from Circuit Court, where the foreclosure case takes place. It is possible that some owners may attempt to get

a writ of possession from the Circuit Court, circumventing the usual eviction procedures and their tenant protections.

Question: What happens if my landlord sells the property after he is sued, but before there is a foreclosure sale?

Answer: If the landlord finds a buyer and sells the property before there is a Court-ordered foreclosure sale, the buyer has to honor your lease. Even if you do not have a written lease, the buyer must still comply with all of the Kentucky laws that ordinarily apply to landlord-tenant relationships.

III. Protecting the Right to Stay

Question: How can I keep up-to-date on what is happening in my landlord's foreclosure case?

Answer: When you find out that a foreclosure lawsuit has been filed in Court, you should immediately file a Notice of Appearance with the Circuit Court, and send a copy to the lawyer for the bank that is foreclosing. The bank's lawyer should send you copies of any papers it files with the Court after that, and the Court clerk and the Commissioner should send you copies of any notices or orders or documents they issue.

The Notice of Appearance should state that you are a tenant in the property being foreclosed on, and that you intend to assert your rights under the Protecting Tenants at Foreclosure Act. The "Appendix" at the end of this booklet explains how to file a Notice of Appearance, and includes a form you can use to create one.

Question: How will I know when the foreclosure sale is going to take place?

Answer: The sale will be held by the Master Commissioner. If you filed a Notice of Appearance, you should get copies of the motion the bank's lawyer files asking for a sale date, the notice that a sale will be held, the Commissioner's report to the Court filed after the sale, and the new owner's motion for a deed. In addition, a notice that the property is going to be sold at auction, with the date, will be posted on the building itself before the sale is held.

You can also use the Commissioner's website to research whether a sale date has been set and, if a sale has been held, who bought the property. The website is www.jcomm.org.

Question: How can I find out who the new owner is after the foreclosure sale?

Answer: Under Kentucky law, a new landlord in Louisville must give you the names and addresses of the owner and whoever will be managing the premises. This does not always happen in foreclosure, though, or may not happen right away. If you have the Court case number for the foreclosure case, you can find out who bought the property by going to the Commissioner's website, www.jcomm.org.

Question: Should I contact the new owner?

Answer: In some cases the new owner – or its agents – may not know that the property is occupied by a tenant (or may not care). If you want to stay, it is usually wise to contact the new owner, explain that you are living there, have a lease (if this is the case), and want to stay.

Question: What if the new owner wants me to leave before my PTFA time is up?

Answer: As long as you are current on your rent and are not violating your lease, it is unlawful for the new owner to force you to leave during the time the PTFA entitles you to stay.

Question: What if the new owner offers me money to move out early?

Answer: Make sure that any such "cash for keys" offer really is a good deal for you. Make sure, for example, that you have an affordable, safe, stable place to move to; that your moving expenses are paid for; and that the cash offer is enough for you to pay for the security deposit and first and last month's rent at the new place, and to otherwise compensate you for your trouble.

Question: What should I do if my rights under the PTFA are being violated, or if I get notices from the new owner that I don't understand?

Answer: Contact the Legal Aid Society at (502) 584-1254.

IV. Rent, Repairs and Utilities

Question: Does a tenant still have to pay rent if a foreclosure lawsuit has been filed?

Answer: Yes. The landlord remains the owner and has the right to collect rent until the foreclosure case ends and legal title is transferred to a new owner after the Court-ordered sale. This happens when the Court issues a Commissioner's Deed to the new owner (see above). Once title is transferred, rent is owed to the new owner.

Question: Who is responsible for repairs and maintenance once a foreclosure lawsuit has been filed?

Answer: The landlord remains legally responsible until the foreclosure case ends and legal title is transferred to a new owner. Once title transfers, the new owner is responsible.

It can be difficult or impossible to get a landlord in foreclosure to make repairs or maintain the building. New owners after foreclosure – often a distant bank – may also violate their legal obligations. Tenants, neighbors or community groups concerned about the condition of a property that is in foreclosure or has already been foreclosed upon can call 311, and report the property to the Louisville Metro Department of Inspections, Permits and Licenses (IPL). IPL can inspect the property, cite the offending owner and take other steps to enforce the housing code. Tenants should be aware, though, that if the conditions are bad enough IPL may order them to move out.

In addition, tenants might consult an attorney to see whether the “repair and deduct” option sometimes allowed under the Uniform Residential Landlord Tenant Act might be a solution and, if so, how to use it lawfully. Section 8 tenants should report such problems to their caseworker at Louisville Metro Housing Authority.

Question: Can the new owner after foreclosure cut off or stop paying for utilities?

Answer: When title transfers, the new owner takes on the same responsibility for utilities that the former landlord had under your lease. In addition, if the new owner/landlord intentionally reduces or interrupts your heat, running water, hot water, electricity or gas, you may have a legal case for damages and other remedies. If this happens, consult an attorney.

APPENDIX

How To File A Notice of Appearance

As discussed above in Part III – Protecting the Right to Stay, filing a Notice of Appearance will help you keep informed about your landlord’s foreclosure case. It will also alert the Court that you plan to exercise your rights. The Notice of Appearance needs to be filed with the Clerk of the Circuit Court and mailed to the lawyer for the bank that filed the foreclosure lawsuit.

On the following pages of this booklet you will find (1) a blank two-page form you can use to create a Notice of Appearance and (2) a sample form with instructions written on it. The sample comes first.

You must complete both pages of the form – the one that says “Notice of Pro Se Appearance” on the top, and the one that says “Certificate of Service For Notice of Pro Se Appearance.” File the original with the Court and mail a copy to the bank’s attorney. Keep a copy for yourself.

In Louisville/Jefferson County, file your forms here:

Office of Jefferson Circuit Court Clerk (Civil)
Hall of Justice
700 West Jefferson Street, 3rd Floor, Room 309
Louisville, KY 40202

SAMPLE, INSTRUCTIONS IN ITALICS

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION _____ *[Division number on Complaint]*
CASE NO. _____ *[Case number on Complaint]*

PLAINTIFF(S)

[Name of bank/company that filed the foreclosure lawsuit]

v.

NOTICE OF PRO SE APPEARANCE

DEFENDANT(S)

_____,
[Name of person(s) being sued]

**** ** * * ***

Now comes the undersigned, _____ *[Your Name]* _____, and, stating as follows, hereby requests that all pleadings and orders be copied and/or forwarded to me in the above-style action.

1. I am a tenant in the real property that is the subject of this proceeding.
2. I intend to exercise my rights under the federal Protecting Tenants At Foreclosure Act as amended, including my rights under that law to continue my tenancy during these proceedings and after title passes to a new owner, as set out in 12 U.S.C. §5220 note.

Respectfully submitted,

[Your signature here] _____
Pro Se

[Print your name here] _____

[Your mailing address] _____

[City/State/Zip Code] _____

[Your telephone number] _____

SAMPLE, INSTRUCTIONS IN ITALICS

[Note: This must be completed and stapled to your Notice of Pro Se Appearance. You can find the name and address of the attorney for the plaintiff (the bank or company that filed the foreclosure lawsuit) at the end of the Complaint, but before the attachments.]

CERTIFICATE OF SERVICE FOR NOTICE OF PRO SE APPEARANCE

I hereby certify that on this day, *[insert date mailed]* I mailed a true and correct copy of the foregoing document, via U.S. Mail, postage prepaid, to:

[Complete name/address of the attorney for plaintiff]

_____	_____
_____	_____
_____	_____
_____	_____

[Your signature here]

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
DIVISION _____
CASE NO. _____

PLAINTIFF(S)

v.

NOTICE OF PRO SE APPEARANCE

DEFENDANT(S)

** ** *

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Respectfully submitted,

Pro Se

CERTIFICATE OF SERVICE FOR NOTICE OF PRO SE APPEARANCE

I hereby certify that on this day, _____, I mailed a true and correct copy of the foregoing document, via U.S. Mail, postage prepaid, to:

Signature