

## 7. For month-to-month tenancies, what are the rules for termination after the foreclosure sale?

After the confirmation of the foreclosure sale, the month-to-month tenancy continues until either the landlord or the tenant terminates the tenancy.

The landlord may terminate the tenancy only by providing the tenant with a 90-day notice of termination, unless the termination is for a tenant violation (for example, nonpayment of rent). For information on the rules for terminating a month-to-month tenancy for a tenant violation, contact the Cleveland Tenants Organization at 216.432.0609.

The tenant may terminate the tenancy by providing the landlord with a 30-day notice of termination.

## 8. What is the procedure for evicting a tenant after the foreclosure sale?

The foreclosure court generally cannot issue an eviction against the tenant, even if the tenant is a party to the foreclosure action, because the foreclosure sale does not end the tenancy.

The new owner may evict the tenant only after the tenancy is terminated (see items 6 and 7, above), and only by filing an eviction action. For information on the tenant's rights in the eviction action and on available assistance, contact the Cleveland Tenants Organization at 216.432.0609.

## 9. How does a tenant recover a security deposit after the foreclosure sale, when the tenant paid the security deposit to the former landlord?

When a rental agreement is terminated after a foreclosure sale (see items 6 and 7, above), and the tenant paid a security deposit to the former landlord, the security deposit claim generally is against the former landlord, not the new owner.

The former landlord is required to return the security deposit (with a written list of any deductions), within thirty days after the termination of the rental agreement.

Tenants often file security deposit claims in small claims court. For this filing, the tenant must provide the court with the former landlord's address.

The security deposit claim is for the amount wrongfully withheld and, if the tenant gave a forwarding address to the former landlord, for double the amount wrongfully withheld.

**For more information on any of these matters, contact the Cleveland Tenants Organization at 216.432.0609.**

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To speak with  
an Information  
Specialist at the  
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Organization, call  
216.432.0609

### **Remember:**

*The law often changes and each case is different. This brochure contains general information for tenants living in a property facing foreclosure and not specific legal advice. For legal advice, contact a lawyer.*

*If you have a communications limitation, contact either the Cleveland Tenants Organization or the Legal Aid Society of Cleveland through the Ohio Relay Service at 1.800.750.0750. Interpretation services are also available for non-English speakers.*

# Tenants Residing In A Property In Foreclosure

*What you need to know!*

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an Information  
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Cleveland Tenants  
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216.432.0609

A PUBLICATION IN PARTNERSHIP BETWEEN  
the Legal Aid Society of Cleveland & the  
Cleveland Tenants Organization

## 1. What is a foreclosure action?

When a bank or mortgage company lends money, it places a mortgage on the property of the borrower. If the borrower fails to make payments due on the loan, the lender (bank or mortgage company) files a foreclosure action with the court to obtain:

- a money judgment against the borrower,
- a sale of the property on which the mortgage was placed, and
- a payment of the money judgment from the money paid to purchase the foreclosed property.

## 2. What is the process in a foreclosure action?

The primary steps, in their order of occurrence, are:

**Complaint:** The lender files a Complaint with the court.

- The Complaint contains the names of the parties in the case, and the claims.
- The parties against whom the case is filed are the defendants. They are the borrower and other persons/entities with an interest in the property.

**Service:** The court serves the defendants with a copy of the Complaint and a Summons (which contains information concerning the case).

**Answer:** A defendant may file an Answer, which is a written response to the Complaint. In the Answer, the defendant admits or denies the statements in the Complaint and states defenses.

**Decision:** The court will make a decision in the case.

**Foreclosure Sale:** When a court decision is for the lender, the next steps are:

- Sale of the property at a foreclosure sale.
- Court's confirmation of the foreclosure sale.
- Sheriff's enforcement of a writ of possession to remove persons and personal property from the foreclosed property.

## 3. Does a rental agreement at the property continue during the foreclosure action?

**Tenancy:** After the foreclosure filing (and before the confirmation of the foreclosure sale), the rental agreement remains the same as before the foreclosure filing.

- The term (length) of the tenancy is the same as before the filing.
- The rights and duties of the landlord and tenant are the same as before the filing.

**Rent:** The tenant still has a legal duty to pay the rent to the landlord.

- A tenant's failure to pay the rent may permit the landlord to evict the tenant.
- Tenants in these circumstances often decide whether to pay rent based on whether the foreclosure prompts the tenant to move and the rent money is needed to move.

**Rent Deposit:** A foreclosure filing, alone, might not be a basis for rent depositing. But, if the landlord fails to maintain the property after the foreclosure filing, rent depositing is permissible.

### **Property Repairs and Utility Payments:**

The landlord is required to maintain the property after the foreclosure filing. If the rental agreement requires the landlord to make utility payments, the landlord is required to make those payments after the foreclosure filing.

- If a landlord violates these requirements, the tenant may rent deposit.
- For information on rent depositing and other tenant remedies for a landlord's violation of these requirements, contact the Cleveland Tenants Organization at 216.432.0609.

## 4. Does a rental agreement at the property continue after the foreclosure sale?

Yes. After the confirmation of the foreclosure sale, any residential rental agreement at the property continues. This includes any voucher (section 8) lease. The tenant continues to be a tenant at the property. The person or entity (for example, bank) that purchased the property at the foreclosure sale – the new owner – becomes the landlord.

There are two exceptions to this rule.

First, the rental agreement does not continue after the foreclosure sale if the confirmation of the foreclosure sale occurred before May 20, 2009.

Second, the rental agreement does not continue after the foreclosure sale if:

- the tenant is the child, spouse, or parent of the former landlord (mortgagor), **or**
- a close relationship between the tenant and former landlord improperly influenced the terms of the rental agreement – it was not an “arms-length transaction,” **or**
- the rent is substantially less than the fair market rent (and this is not due to a federal, state, or local rent subsidy).

## 5. To whom does the tenant pay the rent after the foreclosure sale?

After the confirmation of the foreclosure sale, the tenant is required to pay the rent to the new owner (not the former landlord). Until the new owner provides the tenant with rent payment instructions, a reasonable approach for the tenant is to hold the rent money for later payment.

If a tenant is uncertain whether the person requesting the rent payments is the new owner, the tenant may request proof of ownership – for example, a copy of the deed issued in the foreclosure action.

## 6. For leases, what are the rules for termination after the foreclosure sale?

After the confirmation of the foreclosure sale, the lease continues until the end of the lease term, unless the landlord terminates the lease for a tenant violation (for example, nonpayment of rent).

There are two exceptions to this rule:

- First, if the lease term ends in less than 90 days after the confirmation of the foreclosure sale, as long as the tenant resides at the property, the lease continues until the new owner provides the tenant with a 90-day notice of termination (or terminates the lease for a tenant violation).
- Second, the new owner may terminate the lease, in order to use the property as the new owner's personal residence, by providing the tenant with a 90-day notice of termination.

For information on the rules for terminating a lease for a tenant violation, contact the Cleveland Tenants Organization at 216.432.0609.