



New Jersey Department of Community Affairs Division of Codes and Standards Landlord-Tenant Information Service



FORECLOSURES **TENANT'S RIGHTS**

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Due to the national mortgage crisis many properties are being foreclosed upon in New Jersey. Tenants may receive letters from landlords, realtors or attorneys that appear to be official notices threatening tenants with eviction due to foreclosures. These notices may contain “cash for keys” or “bona fide” cash offers, whereby tenants are offered money to move out of a property in a specific timeframe. Tenants are not required by law to accept these “offers,” and may not be evicted for not accepting them. A landlord must have good grounds under the *New Jersey Eviction Law*, N.J.S.A. 2A:18-61.1 to evict a tenant. Tenants should be aware that they retain their rights under landlord-tenant laws even in properties that are being or have already been foreclosed.

A foreclosure may occur when a landlord defaults on paying his mortgage. In New Jersey the creditor can bring suit for foreclosure against the defaulting borrower (landlord) for delinquency of payments and force a sale of the property to recover money due on a loan.

Federal Foreclosure Law

Recent changes to federal law have strengthened a tenant’s rights in foreclosure proceedings. However, the federal law does not preempt any State or local law that provides longer time periods or other additional protections for tenants. Pursuant to 12 USC § 5220 the *Helping Families Save Their Homes Act of 2009*, P.L. 111-22, Div A, Title VII sec. 702, 123 Stat. 1660, before a tenant can be evicted due to foreclosure, the landlord must provide the tenant with a 90 day notice to quit when the foreclosed property has been purchased by a buyer who wants to personally occupy it as his or her primary residence. However, if a tenant has a lease agreement that goes beyond the 90 days the landlord may not take action to evict the tenant until after the lease expires and the 90 day notice to quit has been given. The 90 day notice may be given 90 days before the lease expires. Month-to-month tenants and two and three-family owner-occupied units are not exempt from the 90 day notice requirements.

New Jersey Foreclosure Fairness Act

Pursuant to the *New Jersey Foreclosure Fairness Act*, N.J.S.A. 2A:50-69, et seq. any person acquiring a foreclosed property containing one or more residential rental units must provide notices to the tenants in English and Spanish, within 10 business days after the sale, letting tenants know that ownership has changed hands and that the tenants are not required to move because of the foreclosure. In buildings with 10 or fewer dwelling units, the new owner must

make a good faith effort to obtain the names of all the tenants occupying the property. Notices must be addressed to tenants by name, unless the new owner is unable to identify the tenant by name, then the owner shall address the notice to “Tenant.” The notice must also be placed on the front door of each tenant’s unit and sent to each tenant via certified and regular mail. (See Attachment A for a copy of the required, “NOTICE TO TENANTS”)

In a residential property containing more than 10 dwelling units, the new owner must provide notice to tenants occupying the property by conspicuously displaying a copy of the “NOTICE TO TENANTS” in a prominent location, such as a common area of the building or other structure on the property. If there is no common area, the notice must be posted in a conspicuous location in each building, such as the walls of the front vestibule or any foyer or hallway near the main entrance of the building. (See Attachment A for a copy of the required, “NOTICE TO TENANTS”)

Notice Requirements to Tenants Prior to the Transfer of Title Due to a Foreclosure Action

Any written or verbal communication, including a summons and complaint, an initial written or verbal communication by a foreclosing creditor, or any communication written or verbal that requests a tenant to vacate the property before the foreclosure or sale of the property, requires the foreclosing creditor to give notice to the tenants as outlined in the New Jersey Court Rules, Appx. XXII-K (2010) entitled “Notice to Residential Tenants of Rights During Foreclosure.” (See Attachment B for a sample of the “Notice to Residential Tenants of Rights During Foreclosure.”)

Notice Requirements to Tenants After the Transfer of Title Due to a Foreclosure Action

When making a bona fide monetary offer to induce tenants to move, the new owner must provide a separate and different notice from the notice required to be given by a foreclosing creditor. The new owner must provide a copy of the “NOTICE TO TENANTS” (Attachment A) and give it with the initial and final written or verbal offer to the tenant.

Bona Fide Offer

The foreclosing agency, including a bank, creditor, or a new landlord may make a written bona fide (good faith) monetary offer requesting that the tenant vacate the property, without “good cause.” An acceptance of the offer by the tenant must be in writing and include an acknowledgement of the date of the receipt of the offer, and an understanding that the tenant had a five-day review period to accept or reject the offer presented.

However, it is important to note that the acceptance of a bona fide monetary offer is voluntary. The tenant shall not be pressured by anyone, including the person making the offer to accept any offer to vacate the property. Pressure tactics include but are not limited to:

- 1) Mischaracterizing or misrepresenting the rights of the tenant under the law;
- 2) Implying the tenant is obligated to accept the offer;
- 3) Implying that there will be consequences against the tenant for failing to accept the offer;
- 4) Harassment, including but not limited to discontinuance of utilities, failure to maintain common areas or facilities, or any other failure to maintain the premises in a habitable condition; and
- 5) An increase in rent in excess of any rent control or rent leveling ordinance, or if the property is not subject to rent control, an unreasonable or unconscionable rent increase.

If a landlord imposes an unconscionable or unreasonable rent increase on a tenant in an attempt to get the tenant to move, the tenant should contact the local rent control board in the city or town where the property is located to file a complaint. If the rental unit is not controlled by rent leveling, then the tenant must dispute the unreasonable increase by going to court. See our *Rent Increase Bulletin* for information on unconscionable rent increases.

Notice to Municipality

A creditor serving a summons and complaint to foreclose on a residential property must, within 10 days of serving the summons and complaint, notify the municipal clerk of the municipality in which the property is located with a copy of the notice at the same time it is served on the owner. The municipal clerk shall forward a copy of the notice to the public officer, or other local officials responsible for enforcing property maintenance or public nuisance codes. (N.J.S.A. 46:10B-51)

If the owner of a residential property vacates or abandons any property on which foreclosure proceeding has been initiated, but not yet conveyed, and the property is found to be a nuisance or in violation of any applicable State or local codes, the local public officer, municipal clerk, or other authorized municipal official shall notify the creditor. The creditor will have the responsibility to fix the nuisance or correct the violations. (N.J.S.A. 46:10B-51)

Self-Help Evictions or Lockouts

A landlord may not attempt a self-help eviction or lockout. Self-help evictions occur when the landlord or someone acting on the landlord's behalf enters into the dwelling unit without the permission of the tenant and without a judgment from the Court and forces the tenant to move, by removing the tenant's personal property from the premises or shutting off utilities in an attempt to force the tenant to move. A lockout occurs when the landlord padlocks the door or changes the locks while tenants are not home and then refuses to allow them back into the premises. Self-help evictions and lockouts are illegal in New Jersey.

If the landlord shuts off the utilities voluntarily or if the utilities are discontinued due to non-payment, the tenant may contact the electric, gas, or water and wastewater public utilities company and have the utilities placed in the tenant's name for continued service to be billed to the tenant, if a landlord-tenant relationship can be determined. This can usually be accomplished by providing a copy of the lease agreement. See the regulations for public utilities at N.J.A.C. 14:3-3A.6. If the landlord was responsible for the payment of those utilities, the tenant may deduct the utility costs paid by the tenant from the rent. The tenant may not be evicted for nonpayment of rent if the tenant used the unpaid portion of the rent to continue utility services to the rental premises after receiving notice that the services were in danger of being discontinued or were discontinued.

If a landlord performs an illegal lockout, the tenant should call the police immediately. Under the *New Jersey Criminal Code*, N.J.S.A. 2C:33:11, if the landlord refuses to allow the tenant back into the premises after the police have warned the landlord about the illegal procedure, the landlord may be charged with a disorderly person's offense. "It shall be the duty of the (police) officer to prevent the landlord or any other person from obstructing or hindering the reentry and reoccupancy of the dwelling by the displaced occupant." The landlord must take a tenant to court before he can be evicted. Only a judge can order a legal eviction. If the tenant does not show up to court on the hearing date the tenant may be evicted by default.

If you are a tenant who is being wrongly evicted you should consult an attorney for legal assistance. If you can't afford an attorney, you may contact Legal Services of New Jersey to see if you qualify for free or reduced costs for legal services, call 1 888-576-5529. If a residential tenant receives a letter during a foreclosure proceeding or after a foreclosure from a licensed real estate agent in violation of the *New Jersey Eviction Law* or the *New Jersey Foreclosure Fairness Act*, the tenant may contact the New Jersey Real Estate Commission at (609) 292-7272 to file a complaint against the real estate agent. See our *Grounds for an Eviction Bulletin* for good causes for an eviction and notice requirements.

Penalties

Landlords or their agents, or employees who violate the *New Jersey Foreclosure Fairness Act* with respect to the tenant notice requirements or the treatment of tenants shall be subject to triple damages, or at the sole discretion of the victimized tenant, damages in the amount of \$2,000, plus attorney's fees and costs.

NOTICE TO TENANTS

THE FORMER OWNER OF _____
(insert property address) HAS LOST THE PROPERTY AS A RESULT OF A
FORECLOSURE. FROM THE TIME YOU RECEIVE THIS AND UNTIL
FURTHER NOTICE, YOU SHOULD PAY RENT TO

(insert name and address of person to whom rent is due) PLEASE SEND RENT
BY _____(insert method of transmission) ON THE
_____ (insert day) OF EACH MONTH.

WITH LIMITED EXCEPTIONS, THE NEW JERSEY ANTI-EVICTION
ACT, N.J.S.A.2A:18-61.1 ET SEQ., PROTECTS YOUR RIGHT TO REMAIN
IN YOUR HOME. FORECLOSURE ALONE IS NOT GROUNDS FOR
EVICTION OF A TENANT. YOU ARE PROTECTED BY THIS LAW EVEN
IF YOU DO NOT HAVE A WRITTEN LEASE.

THE NEW OWNER CANNOT EVICT YOU WITHOUT "GOOD CAUSE,"
AS DETERMINED BY A COURT. EXAMPLES OF "GOOD CAUSE" ARE
FAILURE TO PAY RENT, WILLFULLY DAMAGING THE PREMISES, OR
PERSONAL OCCUPANCY BY THE NEW OWNER OF THE HOUSE OR
APARTMENT THAT YOU NOW LIVE IN.

A RESIDENTIAL TENANT IN NEW JERSEY CAN BE EVICTED ONLY
THROUGH A COURT PROCESS. ONLY A COURT OFFICER WITH A
COURT ORDER MAY REMOVE YOU FROM THE PREMISES, AND ONLY
AFTER YOU HAVE BEEN GIVEN THE OPPORTUNITY TO DEFEND
YOURSELF IN COURT.

INDIVIDUALS CAN BE SUBJECT TO BOTH CIVIL AND CRIMINAL PENALTIES FOR TRYING TO FORCE YOU TO LEAVE YOUR HOME IN ANY OTHER MANNER, INCLUDING SHUTTING OFF UTILITIES OR OTHER VITAL SERVICE OR FAILING TO MAINTAIN THE PREMISES. YOU MAY, HOWEVER, ACCEPT FINANCIAL COMPENSATION FOR LEAVING VOLUNTARILY IF THE NEW OWNER OFFERS SUCH COMPENSATION.

IF SOMEONE IS PRESSURING YOU TO LEAVE, CONSULT WITH AN ATTORNEY.

AVISO A INQUILINOS

EL ANTERIOR DUEÑO DE _____
(incluir la dirección de la propiedad) HA PERDIDO DICHA PROPIEDAD
COMO RESULTADO DE UNA EJECUCIÓN HIPOTECARIA (*FORECLOSURE*
EN INGLÉS). A PARTIR DE LA FECHA EN QUE USTED RECIBA ESTE
AVISO Y HASTA NUEVO AVISO, USTED DEBE PAGAR LA RENTA A

(incluir el nombre y la dirección de la persona que recibirá el pago de la renta).
POR FAVOR ENVÍE LA RENTA POR _____ (incluir método de
pago) EL DÍA _____ (incluir día) DE CADA MES.

CON ALGUNAS EXCEPCIONES, LA LEY ANTIDESALOJO DE NEW
JERSEY (N.J.S.A.2A:18-61.1 ET SEQ.) PROTEGE SU DERECHO A
PERMANECER DONDE VIVE. LA EJECUCIÓN HIPOTECARIA POR SÍ
SOLA NO JUSTIFICA EL DESALOJO DE INQUILINOS. USTED ESTÁ
PROTEGIDO POR ESTA LEY, INCLUSO AUNQUE NO TENGA UN
CONTRATO DE RENTA POR ESCRITO.

EL NUEVO PROPIETARIO NO PUEDE DESALOJARLO SIN UNA
“RAZÓN VÁLIDA” DETERMINADA POR UNA CORTE. EJEMPLOS DE
UNA “RAZÓN VÁLIDA” SON FALTA DE PAGO DE LA RENTA, DAÑO
INTENCIONAL A LA PROPIEDAD, O QUE EL NUEVO DUEÑO VAYA A
OCUPAR LA CASA O APARTAMENTO DONDE USTED VIVE.

UN INQUILINO RESIDENCIAL EN NEW JERSEY SÓLO PUEDE SER
DESALOJADO A TRAVÉS DE UN PROCESO JUDICIAL. SÓLO UN OFICIAL
DE LA CORTE CON UNA ORDEN JUDICIAL PUEDE DESALOJARLO DE
SU RESIDENCIA, PERO SÓLO DESPUÉS DE QUE USTED TENGA LA
OPORTUNIDAD DE DEFENDERSE EN LA CORTE.

QUIEN TRATE DE CUALQUIER OTRA MANERA DE FORZARLO A DESALOJAR SU VIVIENDA, YA SEA CORTANDO LOS SERVICIOS BÁSICOS O DEJANDO DE MANTENER LA PROPIEDAD, PUEDE SER SUJETO A CASTIGOS CIVILES Y PENALES. SIN EMBARGO, SI EL NUEVO DUEÑO LE OFRECE COMPENSACIÓN ECONÓMICA PARA QUE USTED SALGA DE LA VIVIENDA POR SU PROPIA VOLUNTAD, USTED PUEDE ACEPTARLA. SI ALGUIEN LO ESTÁ PRESIONANDO PARA QUE SE VAYA, CONSULTE CON UN ABOGADO.

**NOTICE TO RESIDENTIAL TENANTS OF RIGHTS DURING
FORECLOSURE**

A FORECLOSURE ACTION HAS BEEN FILED CONCERNING

(insert address of property) AND THE OWNERSHIP OF THE PROPERTY
MAY CHANGE AS A RESULT.

UNTIL OWNERSHIP OF THE PROPERTY CHANGES OR YOU ARE
OTHEWISE INFORMED BY THE COURT OR THE MORTGAGE HOLDER,
YOU SHOULD CONTINUE TO PAY RENT TO THE LANDLORD OR TO A
RENT RECEIVER, IF ONE IS APPOINTED BY THE COURT. YOU
SHOULD KEEP RECEIPTS OR CANCELLED CHECKS OF YOUR RENT
PAYMENTS. IF YOU ARE NOT SURE HOW OR WHERE TO PAY RENT,
SAVE YOUR RENT MONEY SO THAT YOU WILL HAVE IT WHEN THE
OWNER DEMANDS IT. NONPAYMENT OF RENT IS GROUNDS FOR
EVICTION.

FORECLOSURE ALONE IS GENERALLY NOT GROUNDS TO
REMOVE A BONA FIDE RESIDENTIAL TENANT. TENANTS WHO
WANT TO STAY IN THEIR HOMES CAN BE REMOVED ONLY
THROUGH A COURT PROCESS. WITH LIMITED EXCEPTIONS, THE
NEW JERSEY “ANTI-EVICTION ACT” PROTECTS **RESIDENTIAL
TENANTS’ RIGHTS** TO REMAIN IN THEIR HOME. THIS LAW
INCLUDES PROTECTION FOR TENANTS WHO DO NOT HAVE
WRITTEN LEASES.

IT IS UNLAWFUL FOR ANYONE TO TRY TO FORCE YOU TO
LEAVE YOUR HOME OUTSIDE THE COURT PROCESS, INCLUDING BY
SHUTTING OFF UTILITIES OR FAILING TO MAINTAIN THE PREMISES.