

Decoding the Real Estate Market ***Your Rights As A Tenant In A Foreclosure Property***

When real estate values were skyrocketing in the early 2000's, many investors leapt into the rental home market. They financed purchases with risky negative amortization adjustable loans, they leveraged other properties, including their own homes, and they used expensive "hard" money from private lenders. Any method they could to get in with the least money down.

Some property owners took advantage of the rising market values to refinance existing rental properties and took cash out of those properties. Many used the cash to buy more properties and other just pocketed the largesse for personal use.

These landlords felt protected since the cost of home ownership was getting out of reach for many people, they could raise rents to match their new loan obligations. If that failed, they figured that they could quickly sell the property for a profit. Most people seemed convinced that the property values would never go down and simply continue up, up, up.

Then came the perfect storm of option, short-term and adjustable rate mortgages coming due or adjusting too high, coupled with the dramatic drop in property values and the inability to refinance, and the glut of rental properties. These factors sunk the ship of these investors. Government bail-out programs and lender based loan adjustment programs did not apply to investor owners.

The result was numerous tenants being displaced by foreclosure. There were no rules and lenders dealt with tenants in a willy-nilly fashion, ignoring some for months – years and evicting others immediately. California and Federal laws have been enacted to provide protection for tenants of foreclosed properties. Since Tehama County is not a rent control or "just cause" area, this article will not address those special circumstances and just cover the basic California law, which is more strict than the Federal law.

Here is the California law in a simple summary. Since laws are never *simple*, if you find yourself in this situation you can contact the California Department of Consumer Affairs (800) 952-5210 or via E-mail: dca@dca.ca.gov for more information:

- The law requires that the Notice of Default be sent to the physical address of the property, as well as to the mailing address of the owner. This gives the tenants actual notice of the default.
- The landlord has 3 months to *cure* the default by paying all money in arrears.
- If the landlord does not pay the back money or work out a deal with the lender within 3 months, the property will be put up for a Trustee Sale.
- Once the property is sold at auction or goes back to the lender, you can expect to be served with a 90-days' Notice to Quit (move and give up possession) or to the end of your lease if your lease expires more than 90 days after the date you receive notice from the lender.
- Continue to pay rent during the Notice of Default period. The landlord still owns the property and you are obligated to pay the rent. It does not matter that the landlord is not paying the mortgage. Your contract is with the landlord to pay rent for living in the property.
- Follow the progress of the sale carefully. You should be aware of who owns the property after the sale. Before paying anyone rent, contact the County Recorder and find out who owns the property.
- Be aware of scam artists who go to foreclosed properties, claiming to be the agent for the lender, and demanding the rent. Advise anyone who calls or comes to your door to send you a statement in writing and check out the address for legitimacy before mailing your check.
- Pay by check if at all possible, never pay in cash and insist on a receipt if paying by money order. Remember that money orders are like cash and it can be hard to prove whom you paid if a problem arises.

The federal law provides that "leases survive foreclosure". This means that the lender or other new owner, as successor in interest, does have to return your security deposit. If the lender or new owner demands rent for the 90-day notice period, the lender or new owner must return your security deposit. However, if the lender or new owner doesn't require that you pay rent, you have recovered your security deposit in rent savings. If you move before the Trustee Sale, get your deposit from your landlord.

Sometimes a lender or new owner will offer a tenant "cash for keys" in return for moving out sooner than the 90 days or end of the lease. Tenants are not required to accept this offer and you may negotiate with the owner. Consider this option carefully as you may not be able to find a new place to live within the time allotted. Some cash for keys offers give as little as 10 days. Be sure to get any cash for keys agreement in writing.

Understanding your rights and responsibilities as a tenant in a foreclosure situation will help you get through and move on with fewer problems.