

How Mortgage Foreclosure Affects Tenants

Information provided by the Michigan Tenant Counseling Program

My landlord is going through mortgage foreclosure, how does this affect me as a tenant?

Often when tenants find out that their landlord is being foreclosed on they are confused and unsure of their rights. This is one developing area of the law, but there are some general guidelines that you can follow. The good news is that the foreclosure process takes some time, often as long as six months. You should have adequate time to find a new home before the process is completed.

What is mortgage foreclosure and how does it work?

When a tenant fails to pay rent on their home, the landlord can start eviction proceedings to regain possession of their property. Likewise, when a landlord fails to make their mortgage payments, the bank or mortgage company can start the foreclosure process to gain ownership of the property and satisfy the landlord's debt.

Almost all mortgages are foreclosed by advertisement. The mortgage contains a power of sale clause that allows the lender to foreclose using this method. After the landlord has failed to make their mortgage payments for 2-3 months, the lender will begin the foreclosure process which takes about six weeks. The lender will schedule a Sheriff's Sale and must publish notice of the foreclosure for four consecutive weeks in a local legal newspaper. At the Sheriff's Sale your landlord's home will be auctioned to the highest bidder, which is typically the bank that holds the loan. After the home is sold, your landlord is entitled to a redemption period during which they may still buy back their home. This period is usually about six months. Only after the redemption period has ended is the property transferred to the new owner.

How will I know if my landlord is being foreclosed on?

Your landlord is not required to notify you of the situation. However, you may receive mail regarding the situation addressed to “Occupant.” According to Michigan law the mortgage company must post a notice on the property within 15 days of advertising the foreclosure sale. This is **not** a move-out date! Remember, the foreclosure process takes about six weeks and is followed by a redemption period of about six months. Your landlord can reclaim their home at any time during this process. Only after the redemption period has ended does your landlord cease to be the property owner.

What happens to my lease when my landlord is in foreclosure?

Your lease is valid until the redemption period has ended. Once the redemption period ends, the new owner (usually a bank) is not obligated to honor the terms of a lease.

When do I have to move?

You do not need to move until after the redemption period has ended. At this point, your lease is no longer valid and your legal status changes to what is called a “tenancy at sufferance” or “holdover tenancy.” This means that you entered into possession of your home legally, but your legal right to possession has ended as a result of the completed foreclosure.

The law in this area is still unsettled, but many believe that holdover tenants have the right to receive a 30-day notice before eviction proceedings can begin. If you are served with an eviction notice, you have a month to find a new place to live before the new owner begins court proceedings to evict.

Should you decide not to move after the end of the 30-day notice and the new owner files for an eviction; you will receive a “Summons” and “Complaint” ordering you to court. Because of your legal status as a “holdover tenant” it is likely that the new owner will receive a default judgment for possession in their favor.

Your landlord may ask you to move earlier, or you may decide that you would like to move before the end of the redemption period. In this case, you should be able to leave without suffering any penalty since your landlord has defaulted on the lease agreement. If your landlord requests that you move out, it is your right to ask for a reasonable amount of time to find a new home. If you make the decision to leave, be sure to give your landlord reasonable notice of your intent to move.

Do I still need to pay rent during the redemption period?

Technically, your landlord still owns the property during this time and is therefore entitled to the rent. Often, a landlord that is losing their property will not always be concerned about the rent. If you decide not to pay, you should make sure to keep the necessary money until after you move, as your landlord could still bring an eviction case for non-payment of rent. Should you decide to stay past the redemption period, you will probably not need to pay rent for that time. Still, it is a good idea to reserve that money until after you have moved out.

Am I still entitled to the return of my security deposit?

Yes. The foreclosure may invalidate your lease before the end of the original fixed term. However, Michigan security deposit law still applies in this situation.