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Promoting affordable housing to ensure healthy and stable communities.

PROTECTING TENANTS AT FORECLOSURE ACT FACT SHEET

On May 20, 2009, a new federal law took effect, which provides protections for renters living in foreclosed residential properties (Public Law 111-22; Title VII- Protecting Tenants at Foreclosure Act). The Act is part of the *Helping Families Save their Homes Act of 2009*. It provides residents with at least 90-days in order to vacate. The act applies to every residential lease in the country.

One of the Utah law requirements when a property will be sold by the trustee through the foreclosure process is that a notice of foreclosure sale has to be posted in some conspicuous place on the property at least 20 days before the date the sale is scheduled (57-1-25). The notice for foreclosure sale is not an eviction notice. Prior to the new federal law, Utah did not address specifically these types of evictions. A lease was voided once the property was sold through foreclosure. On May 11, 2010, a new Utah law will take effect that will require the public notice of trustee's sale to state clearly what the protections under the federal law are and that the renter needs to continue to pay rent.

***This information is provided for educational purposes only. Please do not take this as legal advice.
It is for your benefit to know your rights and responsibilities.***

The new federal law requires the following:

- Provide bona fide tenants with 90 days notice prior to eviction.
- Allow bona fide tenants with leases to occupy the property until the end of the lease term except the lease can be terminated on 90 days notice if the unit is sold to a purchaser who will occupy the property.
- The notice applies to term leases and to month-to-month oral/written leases.
- The successor in interest (generally the purchaser) has to honor the lease agreement they took over.
- The successor in interest has to continue to honor the contract with the Housing Authorities for the Section 8 rental voucher recipients.
- Both renter and successor in interest have to respect the lease agreement, and the rules and regulations of the property.

If you are a renter living in a home that IS IN the foreclosure process:

- If you suspect that the property owner/landlord might be undergoing foreclosure, you can call the county recorder's office anytime to see if a notice of default was recorded.
- Please have in mind that between the notice of default and the actual foreclosure sale, the homeowner can get up to date on the mortgage payments and saved his or her home.
- At least 20-days before the foreclosure sale, a public notice of trustee's sale (public notice of property to be sold at auction) will be issued; effective **May 11, 2010** the public notice:

- ❖ Has to state that as a renter you are given certain protections under the federal law; the notice has to enumerate the different time lines ;
- ❖ You must continue to pay rent;
- ❖ The new owner or representative will contact you after the property is sold with directions to where to pay rent;
- ❖ If you will continue to live on the property after the provided protections, you may be evicted right away and charged with unlawful detainer.
- **As a renter you must continue to pay your rent and respect the lease agreement; the property owner retains his or her right as a landlord until the point where the home is sold at foreclosure.**

If you are a renter living in a home that WAS sold at foreclosure:

- In most cases, the home will be bought by a bank, or it goes back to the bank that owns the mortgage. Walking into a branch probably will not get you to the responsible party in the bank. You need to make an effort to find out who is their legal counsel or the realtor. Ways to find out who represents the bank:
 - ❖ The county recorder office can tell you who is the responsible party that filed the notice of default and the notice of trustee's sale ;
 - ❖ The county assessor's office can tell you who is the owner of the property ;
 - ❖ If the names listed are of businesses, you can contact the Utah Division of Corporation and Commercial Code at (801) 530-4849 or (877) 526-3994 Toll-Free for Utah residents during the hours of 7am-6pm, Monday – Thursday.
- You must receive an actual eviction notice if the property was sold at foreclosure and the new owner wants you to evacuate the premises. **Notice of trustee's sale (foreclosure sale) doesn't constitute an eviction notice.**
- Even if you have a month-to-month oral agreement with the property owner, you must receive a 90-days notice.
- If you receive a notice of foreclosure sale or eviction notice due to foreclosure, contact the responsible party immediately to ensure where to send the rent. We recommend that you send a notarized registered letter and keep a copy for yourself. We recommend to state that you want to continue to pay rent and you will set aside the funds. Any bank will guide you on how to open an escrow account.
- You should also provide them with a copy of the original lease. If there is no lease, provide them with copies of your checks or money orders of the previous rent payments.
- Click here <http://www.nlihc.org/doc/Ltr-from-non-Sec-8-tenants-to-LL.pdf> to download the notice you should give to the property owner or to whomever (bank or attorneys/trustees) sends you the foreclosure sale notice so they will know what kind of proper notice you must receive as a renter.
- If you are a Section 8 rental voucher recipient, click here <http://www.nlihc.org/doc/Ltr-from-8-Tenant-to-LL.pdf> to download the notice you should give to the property owner or to whomever (bank or attorneys/trustees) sends the foreclosure sale notice. You also should contact the housing authority that pays for your voucher. Click here <http://utahnahro.org/advocacy-resources/housing-authorities/> to see a list of housing authorities in Utah.
- If you are a Section 8 rental voucher recipient, keep constant communication with your housing authority. They are your best resource to help with issues arising living in properties undergoing foreclosure.
- If you receive an improper eviction notice or if you think your renter's rights are not respected you can hire an attorney, try to find a pro-bono one, OR you can file yourself a

claim at the Small Claims Court. For a list of Utah's courts, please click here <http://www.utcourts.gov/directory/> .

- Based on your income, you may qualify for free legal services through Utah Legal Services <http://utahlegalservices.org/> . You can also download different documents related to landlord/renter issues, including how you can respond to an eviction notice by yourself <http://www.utahlegalservices.org/public/flyers#Housing> .
- If your rent checks return, you do not know where to send the payment, or you cannot make contact with any responsible party of the property, you should open a saving account or an escrow account and deposit the rent money. The account should be assigned specifically for rent payments. Remember, if you don't pay your rent or if you will not have available immediately past due rents, you can be evicted in 3-days.
- If you pay your utilities directly to the owner, you should check with Rocky Mountain Power <http://www.rockymountainpower.net/redirect.html> and Questar Gas. <http://www.questargas.com/forms/feedback/feedback.php> to make sure utilities won't be cut-off just because the property owner doesn't care anymore about paying the bills. You should try to get the utilities on your name.
- You may qualify for payment assistance for your utilities. Please contact Utah's State Energy Assistance & Lifeline (SEAL) <http://housing.utah.gov/seal/index.html> .
- You should also contact your local municipality to find out who is the water provider for the property. You want to avoid the water being shut off for non-payment. It is very important to contact the water provider right after you know the home was sold at foreclosure. Although the water company might not accept payment from you because you are the renter, contacting them in time will give them acceptable time to track down the new owner.

National Housing Law Project <http://nhlp.org/node/763> created the information that advocates are using to spread the word about the new law.

More information, letters to judges, letters to renters and from renters to property owners can be accessed on the **National Low Income Housing Coalition** <http://nlihc.org/template/page.cfm?id=227> Web site.

For more information on Utah's landlord/tenant law, please visit **Utah Legal Services** Web site <http://www.utahlegalservices.org/public/self-help-webpages/utah-renters-handbook>

For more information on foreclosure, please visit **Utah Foreclosure Prevention** Web site <http://utahforeclosureprevention.com/index.html>

For more information, please contact:

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