



# LEGAL BRIEF

## FORECLOSURE ON RENTAL PROPERTY

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### **INTRODUCTION**

A landlord is allowed to rent a home in foreclosure proceedings as long as the landlord discloses the foreclosure to the tenant. Because a foreclosure can affect the terms of the lease, tenants should investigate whether a home they are looking to rent is in foreclosure proceedings.

### **FORECLOSURE RECORDS SEARCH**

If you rent property you suspect may go into foreclosure, there are resources you may use to verify the foreclosure. One of those resources includes the Clark County Assessor website located at <http://www.clarkcountynv.gov/Depts/assessor/Pages/default.aspx>. Once on the website, click “Property Record Search,” which allows you to search by parcel number, owner name, or address. From this website, you can get information on the property, including the exact address and parcel number. You will need this information when you go to the Clark County recorder website at <http://www.clarkcountynv.gov/Depts/recorder/Pages/default.aspx>. This website will give you detailed information regarding the property, including any actions pending against it. For more information, contact the Recorder’s Office at (702) 455-4336.

### **FREQUENTLY ASKED QUESTIONS**

Below are common questions and answers on the law. This information can also be found at the Clark County Civil Law Self-Help Center website: <http://www.civillawselfhelpcenter.org/self-help/evictions-housing/eviction-issues-related-to-foreclosure/91-find-out-if-a-property-is-in-foreclosure>.

- **Can the person, bank or other institution who buys the building at foreclosure make me leave right away?**
  - No. Generally, the new owner needs to end your tenancy by giving you a notice to leave of at least 60-days, but it can be less depending on the type of lease (i.e. week-to-week). If you have an unexpired lease, you may be able to stay until the end of the lease.
- **What can I do if the new owner says I have to leave in less than 60 days?**
  - You can send a letter telling the new owner about the law—specifically, NRS 40.255(2). Be sure to keep a copy of the letter you send and send it certified mail

with a return receipt. You must also offer to pay the new owner your rent and be willing to abide by the terms of the lease.

- **What can I do if the new owner serves me with a notice to leave within 3 days?**
  - You should contact a lawyer immediately. Refer to the Legal Brief on Lawyer Referral Services for further information on how to contact a lawyer. If you are unable to contact a lawyer, call the new owner immediately. Tell the new owner about the law and say that you are entitled to at least proper notice under NRS 40.255(2) (generally, sixty days).
- **What happens if I don't pay the new owner rent or violate other terms of my lease?**
  - If you are late with your rent, the new owner can send you a notice giving you 5 days to pay, move, or file an affidavit with justice court explaining that that you have a legal excuse not to pay. If you violate other terms of your lease, the new owner can send you a notice stating that you either “cure” the breach of the lease or move within 5 days. If you don't cure and have not moved within 5 days, then the new owner can send you a notice giving you 5 days to move or file an affidavit with justice court explaining that that you have a legal excuse not to move.
- **What if I have a lease that has more than 60 days left?**
  - The new owner has the rights, obligations, and liabilities of the previous owner or landlord pursuant to NRS Chapter 118A under the lease agreement which the previous landlord entered into. *See* NRS 40.255(3)(a).
- **What must the 60 day notice say?**
  - NRS 40.255(4) has the following notice requirements for “residential (4 units or less) foreclosures” of dwellings rented by the month or longer:
    - The notice must give the contact information for the person to whom rent should be paid;
    - The notice must state that the rental agreement with the previous owner or landlord continues in effect through the notice period, and
    - The notice must state that failure to pay rent or comply with any other term of the agreement or applicable law constitutes a breach of the rental agreement and may result in eviction proceedings.
- **What if I do not want to stay 60 days or for the remainder of my lease?**
  - Under NRS 40.255(8)(a), for “residential (4 units or less) foreclosures” of dwellings rented by the month or longer, tenants may vacate at any time during the notice period without penalty. No record of eviction may be entered if you vacate within the notice period.
  - In any case, you may be able to negotiate to see what the new owner might offer if you agree to move early. Many banks which foreclose may offer you a “cash for keys” option.

- **What if I wish to continue renting the dwelling?**
  - You may be able to negotiate to see what the new owner might offer you a new lease or agree that you can remain longer than 60 days.
- **When should I first be informed that my dwelling is in foreclosure?**
  - NRS 107.087 requires for “residential (4 units or less) foreclosures” that once the lender serves the owner (your landlord) with a “notice of default and election to sell,” that you get written notice which allows you to break the lease and move at any time. This notice should come no less than 15 days prior to the date of sale. That notice must also describe your rights and responsibilities under Nevada eviction procedures. The notice must be both posted on the property and mailed to you.
- **What can I do if the new owner serves me with a summons and complaint asking a court to evict me without giving me notice?**
  - You should contact a lawyer immediately. Refer to the Legal Brief on Lawyer Referral Services for further information on how to contact a lawyer.
  - If you unable to contact a lawyer, go to the Clerk of the court on the summons and complaint immediately. File an answer with the court that says the new owner failed to give the notice required by NRS 40.255(2). You may obtain a form answer with instructions from the Clark County court.
- **What can I do if a sheriff or constable arrives at my door to evict me?**
  - Tell the sheriff or constable if you did *not* receive any eviction notices or you were not served with a summons and complaint. Ask for time to go to court to get the order evicting you “set aside.”
  - You should contact a lawyer immediately. Refer to the Legal Brief on Lawyer Referral Services for further information on how to contact a lawyer.
  - If you unable to contact a lawyer, go to the Clerk of the court on the eviction order immediately. Say that you want to file an emergency motion to vacate the eviction order.
- **What happens to my security deposit?**
  - The previous owner is required by NRS 118A.244 to either (a) return your security deposit or (b) transfer it to the new owner.
- **What can happen if I do not leave by the end of the notice period?**
  - If you do not leave voluntarily or enter into an agreement which allows you to stay, the new owner may evict you at the end of the notice period (60 days or the expiration of the lease). To evict you the new owner must serve you with a summons and complaint.

### **SERVICE MEMBER CIVIL RELIEF ACT (SCRA)**

SCRA is also a resource; however, SCRA provides only limited protection to service members from foreclosure. The SCRA, Section 301, states that a landlord or anyone else with

paramount title (i.e. banks) cannot evict service members from their private residences without a valid court order. A court order will only be issued if the service member is served notice and had an opportunity to respond. After being served a notice of eviction, a service member may file an application with the court to delay the execution of the eviction for a period of approximately 90 days. This protection is limited to residential leases where the monthly rent does not exceed \$3,217.81 for 2014 (adjusted annually based on the Consumer Price Index).

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE NELLIS AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**