



Housing Rights ADVOCATE

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The Austin Tenants' Council

Foreclosure – What's a Tenant to Do?

Even though the real estate market in the Austin area remains relatively strong, Central Texas homeowners are not immune from the rash of foreclosures occurring across the country. The 78664 ZIP code in Round Rock and the 78660 ZIP code in Pflugerville have had enough foreclosures, 248 and 166 respectively, to make Money Magazine's list of foreclosure hot spots.

For tenants, foreclosure can be a bewildering process that involves the former owner, the lien holder, a new landlord, and possibly even the federal government. Here are answers to some of the most common questions asked about foreclosures.

What happens to a lease if a landlord is foreclosed on?

A foreclosure terminates the existing landlord-tenant relationship and lease contract. The only exception is Section 8 leases which may remain in force. Seek legal assistance in this situation.

How much time does the lien holder have to give the tenant to move out?

The tenant must receive at least 30 days' written notice to vacate after foreclosure, providing the tenant has timely paid the rent during the month of foreclosure.

What happens if the tenant pays rent to the current landlord and then receives written notification of a foreclosure?

A tenant is protected by law if the tenant pays rent to the old landlord prior to notification of the foreclosure. Until the purchaser gives the tenant written notice that the property was bought and a name

and address where to send payments, the tenant is not responsible for rental payments to the new landlord.

Is court action necessary in order for a property to be foreclosed on?

No. Typically, a 21-day notice will be sent to the mortgagor stating that the loan is in default and the property will be subject to foreclosure sale on the first Tuesday of the following month. If the landlord does not cure the default, the property will be sold.

How can a tenant obtain proof that a landlord has been foreclosed upon?

The tenant should send a letter to the current management company asking whether a foreclosure sale has occurred. The letter should give the management company seven days from the date it received the letter to respond. A tenant can also visit the county courthouse and review the listings of current foreclosures.


Who is responsible for the security deposit after a foreclosure, and how does the tenant get it back?

The former landlord is responsible for the refund of the security deposit to the tenant. Typically, the tenant receives written verification of the foreclosure from the former owner, the management company, or the lien holder. As soon as this verification is received, the tenant should send a demand letter to the former landlord giving 10 days from the date the letter is received to return the security deposit. Sending this letter by certified mail, return receipt requested is recommended. The security deposit law

Fair Housing Complaint Quickly Resolved

For nearly five months, Michelle Gonzalez, a Hispanic woman, lived at Warren House on Town Lake Circle without any problems. The trouble began after the property manager, who is white, noticed Ms. Gonzalez with her black boyfriend. In front of witnesses including the police, the manager made several racial slurs against Ms. Gonzalez and her boyfriend. She presented Ms. Gonzalez with a notice giving her five days to move from the complex and then refused to accept her rent when she tried to pay. Later, the manager won an eviction against Ms. Gonzalez after she missed the court hearing.

With the assistance of Nekesha Phoenix and Robert Hood, ATC Fair Housing Program staff, Ms. Gonzalez filed a HUD 903 fair housing complaint in July 2007. The City of Austin Equal Employment/Fair Housing Office investigated the complaint and quickly negotiated a conciliation agreement between the two parties. In the August 2007 agreement, the apartment complex consented to undo the eviction against Ms. Gonzalez, who had already moved to a new home, and give her a neutral reference. "The Fair Housing Program is awesome," Ms. Gonzalez says. "It really helped me out."

If you believe you have experienced housing discrimination, please call the ATC Fair Housing Program at 512-474-1961. 

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Foreclosure

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does not provide a time period for refund of a deposit following a foreclosure, but it is assumed to be 30 days.

Does the former landlord have the right to withhold any part of the security deposit after foreclosure?

No. This is the former owner of the property and not someone who holds the title to the premises. The former landlord does not have the right to walk through the property prior to returning deposit. Therefore, the former landlord has no right to claim damages to the property and has no right to withhold any part of the deposit.

What happens if the landlord fails to return the deposit?

The tenant can file a suit in small claims court to recover the security deposit. The tenant may also be able to file criminal charges for theft or fraud against the landlord. The tenant should call the county attorney to see if criminal action is an option.

When is a new lease agreement created, and what choices does the tenant have in establishing one?

After foreclosure occurs, the new landlord is not obligated to honor any contract the former landlord had with the tenant. The same is true for the tenant. The new landlord may choose to honor the existing agreement the tenant had with the previous landlord. However, a new lease must

be signed that clearly recognizes the terms of the old contract.

A tenancy can be also established with the new landlord through a verbal agreement or implicitly by payment and acceptance of rent. The tenant should not feel obligated to sign a new contract unless the agreement is satisfactory.

How much notice must be given to the landlord before the tenant moves out?

If a tenant has not established a new tenancy with the new landlord through the payment of rent or by a written agreement, then the tenant can leave, at any time, without giving any notice. If a tenant has established a landlord-tenant relationship through the payment of rent, but has not yet signed a new lease agreement with the new landlord, the tenant must give written notice to terminate this tenancy. The notice period should be based on the frequency of rental payments, for example if the tenant pays once a month, then a 30-day notice must be given.

What claim does the new landlord have for damages to the property?

Unless the new landlord can produce a copy of the move-in inventory, witnesses, or some other proof, the new landlord has no claim to any damages, except for those which occur after the new owner acquired title. Normal wear and tear cannot be assessed to a tenant under any circumstances. 🏠

Going Condo Crazy!

For apartment dwellers in Austin, receiving a notice that your complex is being converted to condominiums seems almost inevitable these days. While little can slow down this redevelopment freight train, you still have rights under your lease contract. Here are a few tips to remember:

- Review your lease to make sure that the owner is abiding by the terms of the current contract. When a landlord sells a property, the new owner is bound by the terms and conditions of the existing lease. For example, a new owner cannot ask a tenant to move or raise the rent before the term of the existing contract has expired.

- If you want to move before your lease expires, try to negotiate with the landlord to obtain a release from the contract and a full return of your security deposit. If the complex is going to be remodeled or demolished, ask the landlord for a written statement detailing whether or not you have to clean the unit to get a refund of your deposit.

- You have the right to a safe environment while construction is taking place at the property. For example, construction materials should not be left scattered around the public areas. City of Austin ordinances state that construction may take place on residential streets between 7:00 a.m. and 7:00 p.m. on weekdays and between 7:00 a.m. and 9:00 p.m. on weekends. If you have questions about construction issues, contact the City of Austin Building Inspection Department at 974-1855.

- Document, document, document! Any problems or concerns that you have about the conversion of the apartments to condos should be put in writing to the landlord. Any notices from the landlord to you should also be in writing.

If you need more information about a tenant-landlord issue, call the ATC Telephone Counseling Line at 474-1961. 🏠

Support Needed for Housing Trust Fund Bill

Because of a lack of 2.8 million affordable rental units in this country, 71 percent of extremely low-income renter households spend more than half of their incomes for housing. Contact your member of Congress (visit congress.org to find out who represents you), and ask him or her to support the National Housing Trust Fund bill (H.R. 2895). The goal of the trust fund is to construct, rehabilitate, and preserve 1.5 million units of affordable housing over the next 10 years. 🏠

Ejecución hipotecaria ¿Qué hace el inquilino?

Aunque el mercado de bienes raíces en el área de Austin permanece relativamente sólido, los propietarios de Texas centro no son inmunes a la ola de reventas por hipotecas impagas que se está dando en todo el país. Para los inquilinos, la reventa por deuda hipotecaria puede ser un proceso desconcertante que involucra al propietario anterior, el portador del derecho a la propiedad, un nuevo propietario y hasta, posiblemente, el gobierno federal. Aquí hay respuestas a las preguntas más comunes sobre ejecución de hipotecas:

¿Qué pasa con un contrato de renta si se le ejecuta la propiedad al dueño?

La ejecución da por terminada la relación y el contrato de renta existentes entre dueño e inquilino. La única excepción es la renta de Sección 8, que podría continuar. Solicite asesoría legal si se encuentra en esta situación.

¿Cuánto tiempo le tiene que dar el portador del derecho a la propiedad al inquilino para mudarse?

El inquilino debe recibir aviso escrito por lo menos 30 días antes de tener que dejar el lugar, siempre y cuando el inquilino pague la renta puntualmente durante el mes de la ejecución de hipoteca.

¿Quién es responsable del depósito de seguridad después de una ejecución de hipoteca?

El previo dueño es responsable del reembolso del depósito de seguridad al inquilino. Normalmente, el inquilino recibe verificación escrita sobre la ejecución de hipoteca de parte del previo dueño, la compañía administradora o el portador del derecho a la propiedad. Tan pronto como se recibe esta verificación, el inquilino debe enviar una carta de demanda al previo dueño, dándole 10 días desde que recibe la carta para devolver el depósito de seguridad.

Se recomienda mandar la carta certificada y requerir recibo de entrega. La ley sobre depósitos de seguridad no establece un período de tiempo para el reembolso de un depósito después de una ejecución hipotecaria, pero se asume que es de 30 días.


¿Tiene el previo dueño derecho a re-tener parte del depósito de seguridad después de una ejecución hipotecaria?

No. Este es el previo dueño de la propiedad y no el portador del derecho a la propiedad. El ex dueño no tiene derecho a entrar a la propiedad antes de devolver el depósito. Por lo tanto, el ex dueño no tiene derecho a reclamar daños a la propiedad ni tiene derecho a quedarse con parte del depósito.

¿Cuándo se redacta un nuevo contrato de renta, y qué opciones tiene el inquilino?

Después de una ejecución de hipoteca, el nuevo dueño no está obligado a respetar el contrato que tenía el ex dueño con el inquilino. Lo mismo ocurre con el inquilino. El nuevo dueño puede elegir respetar el contrato que tenía el inquilino con el previo dueño. Sin embargo, debe firmarse un nuevo contrato de alquiler que reconozca claramente los términos del viejo contrato. El inquilino no debe sentirse obligado a firmar un nuevo contrato a menos que le sea satisfactorio.


¿Qué reclamo puede hacer el nuevo dueño por daños a la propiedad?

A menos que el nuevo dueño pueda presentar una copia del inventario inicial, testigos o alguna otra prueba, el nuevo dueño no puede reclamar daños, excepto aquellos que ocurren a partir de cuando el dueño adquiere su título. No se puede responsabilizar al inquilino del desgaste normal de la propiedad, bajo ninguna circunstancia. 

Reclamo de vivienda justa resuelto

Michelle González, una mujer hispana, vivió casi cinco meses en Warren House, en Town Lake Circle, sin inconvenientes. El problema empezó cuando la administradora de la propiedad, que es blanca, vio a la Srta. González con su novio, de raza negra. Ante la presencia de testigos, incluyendo la policía, la administradora hizo varios comentarios racistas contra González y su novio. Ella le presentó un aviso a la Srta. González, dándole cinco días para abandonar el complejo, y se negó a aceptar la renta cuando ésta trató de pagarle. Más tarde, la administradora consiguió el desalojo de la Srta. González cuando ésta no pudo acudir a la cita judicial.

Con la ayuda de Nekesha Phoenix y Robert Hood, personal del Programa Vivienda Justa de ATC, la Srta. González presentó un reclamo HUD 903 de vivienda justa en julio del 2007. La Oficina de Igualdad en el Empleo/Vivienda Justa de la Ciudad de Austin investigó la queja y negoció rápidamente un acuerdo conciliatorio entre las dos partes. En este acuerdo de agosto 2007, el complejo de apartamentos aceptó cancelar el desalojo contra la Srta. González, quien ya se había mudado a otra vivienda, dándole una referencia neutral. “El Programa Vivienda Justa es extraordinario”, dice la Srta. González, “realmente me ayudó mucho.”

Si usted cree que ha sido víctima de discriminación en la vivienda, llame al Programa Vivienda Justa de ATC al 512-474-1961. 



Folletos considerando información útil para inquilinos ahora disponible en línea. Visítenos en www.housing-rights.org.



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This service is certified as a lawyer referral service as required by the State Bar of Texas under Article 320d, Revised Statutes.

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The Austin Tenants' Council, as a sub-recipient of the City of Austin, is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modification and equal access to communications will be provided upon request. Please call 512-474-1961 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

Programs and Services/Programas y Servicios

FAIR HOUSING VIVIENDA JUSTA

FAIR HOUSING PROGRAM / PROGRAMA DE VIVIENDA JUSTA — This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under State and Federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 474-7007.

TENANT-LANDLORD INQUILINO-PROPIETARIO

TELEPHONE COUNSELING / CONSEJOS POR TELEFONO — Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 474-1961.

IN-HOUSE COUNSELING / CONSEJOS EN LA OFICINA — Counseling information and materials are provided to clients in need of more in-depth assistance. Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 474-7007.

CRISIS INTERVENTION / INTERVENCION CRISIS — Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. Consejeros median en nombre del inquilino a resolver una emergencia que amenass su vivienda. Call / llame al 474-1961.

RENTAL REPAIR ASSISTANCE / AYUDA CON REPARACIONES EN SU VIVIENDA — The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 474-7007.

LEASE FORMS / CONTRATOS — ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 474-7007.

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