

IMPACT OF TRUSTEE SALES AND NOTICE OF TRUSTEE SALE

A property can be sold at a Trustee Sale if the previous owner fails to keep the mortgage payments current for a period of at least 180 days. What steps are necessary to remove people from the home after the Trustee's Sale.

OCCUPANT IS PREVIOUS HOMEOWNER: The easiest scenario involves a situation where the previous owner of the home fails to vacate the property after the Trustee's Sale. ARS §12-1173.01 states that if the previous owner refuses to vacate the property within five days after they have received a written demand for possession of the property, they are guilty of forcible detainer. This statute does not require the new owner to give the previous owner a written notice prior to filing the eviction (although most Plaintiffs do issue a Five Day Notice to Vacate). The new owner is entitled to the fair market rental value for all rent found to be due through the next rental period. See ARS 12-1178(A).

OCCUPANT CLAIMS TO BE A RENTER: For people who are residing in the home after the trustee's sale was completed, there has to be a determination whether they have any right to maintain occupancy of the home and under what terms.

On May 20, 2009, President Obama signed into law a mortgage rescue bill that included the above referenced Act. In short, any foreclosure of a federally-related mortgage loan or any residential real property foreclosed on after May 20, 2009 is impacted by this Act. The major change to existing Arizona law is that arguably any successor in interest to such property shall assume the interest in the property subject to the existing bona fide lease. If that lease was entered into by anyone other than the mortgagor or the child/spouse/parent of the mortgagor, that lease was entered into before the Trustee Sale, the lease was the result of an arm's length transaction, and the lease requires rent substantially the same as the fair market rent, then that tenant shall have the right to continue to reside in the unit under the same terms and condition of the lease. The tenant must pay rent, permit access pursuant to ARS 33-1343, etc. If they do not, the new owner has all rights and remedies under the lease and Arizona statute.

There is one major exception: In the event that the new owner wants to occupy that unit as their primary residence, the owner must give the tenant a 90 day written notice of termination of the existing lease. If there is no written lease or if the tenancy is month to month, the new owner must give the tenant a 90 day written notice of termination of the tenancy, not the normal 30 day notice.

Section 8 leases are subject to this law. However, short sales are not.

In summary, the tenant has no rights under this Act until and unless there is proof of the following: home is foreclosed on, the loan was a federally related loan, the lease was in place before the Trustee Sale, the lease was an arms-length transaction for at least market rent to someone who is not the owner's child, spouse or parent. Simply receiving notice of a pending foreclosure does not trigger this Act.

NEW OWNER'S RIGHTS AND RESPONSIBILITIES:

- a) New Owner is fair market rental value of the home, and all other rights under the Residential Landlord Tenant Act including right to inspect (Access). Tenant must supply copy of the lease, proof that they are bona fide tenants (utility bills, mail, etc), statement that they are not related to the mortgagor, proof that rent is current and that the tenant is not in breach.
- b) If a demand for the payment of the alleged rent within 5 days was given and the tenant failed to pay those funds (including any late fees that would be owed under the alleged lease), the Owner is entitled to an eviction and a money judgment.
- c) New owner is now responsible for repairs but claims against a prior owner do not automatically impute to new owner.
- d) New Owner can terminate the lease with a 90 day notice for a tenant without a lease or a lease terminable at will under state law, or if the new owner is going to occupy the home.

PROPERTY MANAGER/AGENT RESPONSIBILITIES:

- a) If a property manager discovers that a property has gone into foreclosure (i.e.: a Trustee Sale is scheduled), they should contact the owner in writing and determine what the owner intends to do.
- b) If the owner intends to let the Sale go through, the property manager should assure the tenants that the agent will provide the new owner with proof that the tenants are bona fide tenants and have federal protection under the PTFA as long as the tenant keeps the rent current.
- c) During the month that the sale is set to take place, the agent should hold the rent through the date of the sale (notifying both the landlord and the tenant of this fact) to see if the sale goes through. Once it goes through, the agent should contact the new owner in writing and notify them that the occupants are bona fide tenants and protected by PTFA. A suggested form is available at www.doctorevictor.com. In the letter, the agent should send a copy of the lease, ledger, and let them know that the agent is holding the rent money and the security deposit and will forward the proper funds to the new owner upon confirmation of who is entitled to those funds.
- d) The agent will need to send the prorated rent up to the date of the sale to the previous owner and close out that account and send the deposit and the prorated rent since the date of the sale to the new owner.
- e) It is ok for the agent to help the current landlord and tenant attempt to reach a settlement and terminate the lease early as long as the agreement is in writing, deals with the security deposit issue, mutually terminates the lease upon a specific date and is signed by all parties.

NOTICE FROM THE MANAGEMENT COMPANY FOR THE PREVIOUS OWNER
TO THE NEW OWNER OF THIS PROPERTY

TO: _____

Please be advised that we are the management company for the previous owner (_____) of the real property located at _____, _____ Arizona _____. We have received notice that you are the new owner of the premises pursuant to a Trustee Sale on _____, 2011.

PURSUANT TO S.896, TITLE VII OF THE PROTECTING TENANTS AT FORECLOSURE ACT, you are hereby notified that the foreclosed loan was a federally backed loan and that this unit is occupied by a tenant with a bonafide lease pursuant to the above referenced law. Enclosed is a copy of the lease. Pursuant to the above referenced law, you have taken ownership of this unit subject to this lease and are bound by the terms. We are holding the prorated rent paid by the tenant for the month of _____, 20__ because the previous owner is entitled to _____ days of that rent and you are entitled to _____ days of that rent. Additionally, we are holding deposits in the amount of \$_____ as stated in the lease agreement. We will forward those sums to you once you provide us with an address and acknowledgment that you have received this notice and the lease agreement. Additionally, any proof of payment of the rent or move-in check list is also available for your records upon your written request.

Obviously our management of the property has ceased as of the date of the Trustee Sale. If you would like to hire our company to manage this property for you, please notify us in writing and send a copy to your tenants immediately.

Furthermore, **PURSUANT TO S.896, TITLE VII OF THE PROTECTING TENANTS AT FORECLOSURE ACT** if you are the new owner and you desire to reside in the home as your primary residence, please notify the tenant pursuant to the above referenced statute and provide the tenant with a written ninety day notice to vacate the home.

Dated: _____

By: _____

Our Information:

Phone: _____

Fax: _____

Email: _____

() **Hand Delivered this date:** _____ A copy of this document also sent to the tenant :

(hand-delivered: _____)

() **Certified Mail this date:** _____ (certified mail: _____)