

WHAT IS THE EVICTION PROCESS AFTER A FORECLOSURE SALE?

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EVICTON AFTER FORECLOSURE

What happens after foreclosure? How long can someone stay in the house? What is the eviction process?

NOTICE TO QUIT

After foreclosure, the new owner begins the process of getting possession of the home by serving on the resident a Notice to Quit and a cover sheet with language specified in Code of Civil Procedure section 1161c. The length of notice depends on who occupies the home. The notice lengths are:

3 days:

- The resident was the borrower.

90 days:

- All residents are tenants, subtenants, or their family.

Longer than 90 days:

- Under certain circumstances, the tenant of a foreclosed home can remain in the home for the remaining length of the lease, no matter how long that is. A tenant has that right to stay only when:
 - The lease was entered into before the foreclosure sale.
 - The lease is a bona fide, arms' length lease.
 - The tenant is not the borrower or the child, spouse, or parent of the borrower.
 - The rent is not substantially less than fair market rent (except when the rent is subsidized or reduced by law).
 - The tenant continues to pay the rent specified in the lease.
- However, the tenant cannot stay for the remainder of the lease, if the person who acquired the home at the foreclosure sale will occupy the home as a primary residence. In that case, the tenant can stay a maximum of 90 days.

A post-foreclosure notice is different from the notice used in the common eviction scenario when rent is not paid, which must give an option: pay rent or move out. A post-foreclosure notice contains no such option. With certain possible exceptions in rent control properties, even a rent-paying resident must move out if the new owner wishes. The only question is the length of time the notice provides. The days are calendar, not business days, except that if the last day falls on a weekend or holiday, the period is extended to the next business day.

SERVICE OF NOTICE

The notice may be served any number of ways. It is not necessary that the resident be handed a copy of the notice. It may also be served by (1) posting (i.e. taping) a copy to the door and then mailing a copy to the home or (2) leaving a copy with someone over the age of 18 at the home, then mailing a copy. Those methods may be used so long as the owner first tries to serve the notice personally on the resident at least once.

UNLAWFUL DETAINER LAWSUIT

After the period in the notice has run, the owner may file a lawsuit to evict. The document that begins the lawsuit is called a complaint. The new owner must pay the court a filing fee ranging from \$240 to \$450 (depending on the court) in order to file the complaint. When the complaint is filed, the court will issue a summons, which warns the person being sued (called the “defendant”) that he or she has 5 days after being served with the paperwork in which to file a written response with the court and to mail (“serve”) a copy to the attorney or party who filed the complaint.

SERVICE OF THE LAWSUIT

Service of the lawsuit is similar to service of the notice. Personal delivery must be attempted first. If personal delivery is not possible after a few attempts, the lawsuit may be left with someone over the age of 18 at the home, and then a copy mailed to the home. However, personal delivery must be attempted with reasonable diligence before this method may be used. If no one can be found at the home, the owner can obtain a court order allowing service by posting the paperwork on the home. Serving by means other than personal delivery gives the resident an additional 10 days beyond the normal 5 days

in which to serve the response and file it with the court. It also is a good idea to serve a Claim of Right to Possession along with the lawsuit so that all occupants, even someone not known to the owner and not named as a Defendant, can be evicted.

DEFAULT

If the deadline to respond is missed, the new owner may request that the court enter the default of the resident. The owner may then request a court order that gives the owner the right to evict the resident. The court may also award the owner money damages consisting of the fair rental value of the property from the date of the foreclosure sale, as well as court costs. The owner generally will not be reimbursed for its attorneys' fees.

TRIAL

If the resident files a response with the court by the deadline, the owner then needs to ask the court to set a date when trial will take place. Usually the trial will be within 20 days of the request. At trial, the owner needs to prove that he is the owner of the home, that the resident was served with the notice, and that resident remains in possession of the home. A former borrower has very few available defenses. A genuine tenant may have more defenses.

EVICTION

After the court enters judgment for the new owner, whether by default or after trial, the court clerk issues paperwork that is given to the Sheriff for service on the resident. The Sheriff charges about \$100 to serve the paperwork. That paperwork states that the Sheriff will return in 5 days, at which time the resident must be out or else the sheriff will evict him. Once that period runs, the owner may change the locks. If the resident returns, he risks being arrested for trespassing.

RESIDENTS NOT NAMED AS DEFENDANTS

The court judgment will be against the defendants, and will even include other residents not named as defendants if the owner serves, together with the lawsuit, a Claim of Right to Possession. A non-defendant resident must complete that form and file it with the court in order to participate in the lawsuit and attempt to fight eviction.

PERSONAL BELONGINGS

If the resident leaves furnishings or other belongings in the home, the owner may move them or store them in place, but cannot dispose of them without first giving the resident a notice stating that the items will be thrown out or, if they are worth at least \$700, sold at auction, unless the resident picks them up within 18 days and pays the reasonable cost of their storage.

APPEAL

The resident may appeal from the judgment, but filing the appeal will not stop the eviction unless the court specifically so orders. Also, the resident must pay into the court the fair rental value of the home while the appeal is pending.

ALTERNATIVES

Some owners are willing to pay the resident to move out voluntarily. This is sometimes referred to as “cash for keys.” The amount is not set by law. The owner does not even have to offer anything. Bankruptcy is another alternative. If the resident files bankruptcy, the owner needs to obtain bankruptcy court permission to complete the eviction.

LENGTH OF PROCESS

The eviction process can be a matter of days if the resident and owner reach a cash-for-keys agreement. It can last several months if the court is slow in processing paperwork and the owner is not very diligent. Most of the time it takes 30-60 days.

This is a general overview. Call for an appointment if you would like to initiate an eviction or have your particular situation evaluated for possible defenses.

Lawrence Dreyfuss and Bruce Dannemeyer are associated with The Dreyfuss Firm, a professional law corporation located in Irvine, California. Collectively they have well over 50 years civil litigation experience. They handle cases throughout California in state and federal trial and appeals courts concerning real property transactions and non-

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