

FAQ for Tenants in Foreclosed Properties & Their Attorneys

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- 1. How much notice must a California tenant living in a foreclosed property receive before the new owner files an unlawful detainer (eviction) lawsuit?**

Answer: Usually at least 90 days.

CCP §1161b(a) provides that the new owner of a foreclosed property must give “a tenant or subtenant in possession” of the property 90 days’ notice before initiating eviction proceedings . This provision protects tenants even if they are renting from a family member or paying below-market rent. It also applies even if the property changes hands multiple times after the foreclosure and the evicting owner is not the “immediate successor in interest” who purchased the property at the foreclosure sale. The only exception to the 90-day notice requirement under CCP §1161b is for a tenant living in the property with the former homeowner – *i.e.*, a boarder renting a room (for more on boarders, see Question 2 below).

If a tenant has a lease with a term that extends beyond 90 days from the date the new owner gives notice, in most cases, the tenant may not be evicted until the end of the lease term. CCP §1161b(b). However, even when a tenant has a fixed-term lease, the new owner only needs to provide a 90-day notice if one of the following applies:

- (1) The new owner will occupy the property as her primary residence;

(2) The tenant named on the lease is the foreclosed-on owner-borrower or the child, spouse, or parent of the foreclosed-on owner-borrower;

(3) The lease was not the result of an arms' length transaction; or

(4) The lease sets a rent that is substantially less than fair market rent for the property (except when rent is reduced or subsidized due to a federal, state, or local subsidy or law).

If the new owner proceeds with an unlawful detainer before the expiration of a fixed-term lease, she has the burden of proving that the lease falls into one of the three categories above.

In “just cause” jurisdictions, tenants have a complete defense to any eviction action based on foreclosure. Just cause ordinances restrict evictions to those based on an enumerated list of reasons for eviction, such as nuisance or nonpayment of rent. Foreclosure is not a just cause for eviction in these jurisdictions, so a tenant in such a jurisdiction may not be evicted simply because his landlord lost the property in foreclosure.

2. How much notice must tenants living in a foreclosed property with the former homeowner receive?

Answer: Usually 30 days

California’s unlawful detainer statute does not provide special protections to tenants in foreclosed properties if they live in the property with the former homeowner. CCP §1161b(d). These tenants are not entitled to 90 days’ notice

under §1161b(a). Instead, they are subject to CCP §1161a(c), which entitles them to notice “at least as long as the term of the hiring itself but not exceeding 30 days.” Since California tenancies are usually month-to-month, most tenants in this situation will be entitled to 30 days’ notice.

3. How much notice must an adult child renting from a parent who has lost the property to foreclosure receive?

Answer: It depends on whether the parent also lives in the home.

CCP §1161b(a) requires that nearly all tenants in foreclosed properties receive a 90-day notice before eviction commences, regardless of any relationship between the tenant and former owner. The only exception is for tenants who live in the property with the former owner. A child renting from her parent would therefore qualify for the 90-day notice as long as the parent does not live in the property. If the parent is living in the property, the child (tenant) may only be entitled to 30 days’ notice before eviction pursuant to CCP §1161a(c), as discussed in the response to Question 2 above.

4. How much notice is required to evict a tenant after a short sale?

Answer: Either 30 or 60 days.

In a short sale, the lender agrees to let the homeowner sell the property for less than the amount owed on the loan. A short sale is not a foreclosure, so the special rules in CCP §1161b that apply to tenants in foreclosed properties do not apply to tenants in properties transferred through a short sale. Instead, standard eviction timelines apply. Under CC §1946.1, the new owner must provide a 60-day notice if

the tenant has lived in the property for longer than 12 months, and a 30-day notice if the tenancy lasted less than one year. Tenants with fixed-term leases may remain until the end of the lease term.

5. Does a private investor who buys residential property at a foreclosure sale have to comply with HBOR requirements before evicting tenants?

Answer: Yes

California's CCP 1161b applies to post-foreclosure owners regardless of whether they are banks, individuals, private investors or other entities. In addition, as noted above, these requirements are not limited to "immediate successors in interest" after a foreclosure. Even if a property is resold after a trustee's sale, the subsequent owner must still comply with CCP 1161b. For example, if a home is foreclosed on and Wells Fargo acquires the home at the trustee sale and then sells the home to a private investor, that investor must comply with CCP 1161b before evicting any tenants, even though they did not acquire the home directly through foreclosure.

The type of purchaser only matters if the purchaser is a natural person who seeks to use the property as his or her primary residence. In that case, tenants are only entitled to a 90-day notice before eviction even if they have a longer fixed-term lease.

6. How do unnamed tenants join an unlawful detainer case to prevent eviction?

Answer: File a claim of right to possession form either pre-judgment or post-judgment, depending on the circumstances.

Banks routinely serve unlawful detainers that name only the former homeowner as defendant, leaving tenants to learn about the eviction for the first time when the sheriff arrives to lock them out. Under prior law, when a bank alleged that it had served a Prejudgment Claim of Right to Possession form on all occupants of the property, it triggered a 10-day deadline for any unnamed tenants to join by completing and filing the form with the court. CCP § 415.46 eliminated this 10-day deadline for tenants and subtenants in foreclosed properties. Under current law, these tenants may join in the unlawful detainer case to defend their rights in court at any time before judgment is entered by filing a Prejudgment Claim of Right to Possession form (CP10.5) and either paying a filing fee or obtaining a fee waiver. If judgment has already been entered but the tenant has not yet been locked out, the tenant may petition to join the case by completing a Claim of Right to Possession and Notice of Hearing form (CP10) with the sheriff.

In the post-judgment scenario, the tenant will need to complete and have the sheriff sign three copies of the form, one to be filed with the court, one to be file-stamped and kept by the tenant, and one for the sheriff. Within two days after the sheriff signs the claim form, the tenant must file it with the court and either pay a filing fee or obtain a fee waiver. The court will hold a hearing to determine whether the tenant may enter the case, with claims subject to denial if the court determines that the claimant is an invitee, licensee, guest, or trespasser. CCP § 1174.3.

Tenants should bring copies of their lease or rental agreement, and evidence of rent payments to the hearing.

7. Does the tenant have to post rent to obtain a hearing after filing a claim of right to possession?

Answer: No.

Under CCP § 1174.3 a tenant who files a post-judgment Claim of Right to Possession and Notice of Hearing has the option to deliver a deposit of fifteen days' rent at the time of filing the form, but this rent deposit is not required. If the tenant delivers the deposit, the hearing will be set for between five and fifteen days after the date the claim was filed. *Id.* If the tenant chooses not to deliver the deposit, the hearing will be set for five days after the filing date. *Id.*

If the tenant does deposit money with the court and the court determines that the tenant's Claim of Right to Possession is valid, the court will return the deposit and order that the Unlawful Detainer Summons and Complaint be amended to include the tenant. CCP § 1174.3. If the court determines that the tenant's Claim of Right to Possession is invalid or the tenant fails to appear at the hearing, the court will return any deposit paid by the tenant, less any prorated amount for each day that enforcement of the judgment was delayed by the tenant's Claim of Right to Possession. *Id.* The prorated amount will be paid to the landlord and the court will order the sheriff to enforce the original writ of possession, as amended to include the tenant, and remove the tenant from the property within five days. *Id.*

In practice, courts often schedule these hearings for five days out whether or not the tenant delivers a rent deposit to the court. Therefore, a tenant filing one of

these claims who delivers a rent deposit risks losing some or all of the deposit without gaining any real benefit.

8. If a tenant is trying to recover her security deposit, should she demand it from her original landlord or the new owner?

Answer: Both

The new owner must return the tenant's deposit if the prior owner did not return it before foreclosure. CC §1950.5(j). The prior owner and the new owner are jointly and severally liable for any amount of the security deposit that was not legally withheld. *Id.*

9. Do tenants need to pay rent during the 90-day notice period?

Answer: Yes

Under CCP §1161b, the new owner takes over the original rental agreement and takes on the "rights and obligations" of the lease, which include the right to collect rent. New owners also owe duties to tenants. In addition to maintaining the property and providing security and any other services required under the rental agreement (such as paying for utilities), new owners are required to provide tenants with a detailed notice informing tenants of the new ownership and explaining where to pay rent. CC §1962. New owners of foreclosed properties are prohibited from evicting tenants for nonpayment of any rent that accrues before they provide the tenants with this required notice. However, the tenant still owes this back rent to the new owner and could be sued for it, so tenants are advised to put aside rent money after a foreclosure regardless of whether they receive a prompt notice from the new owner.

10. Do tenants without written rental agreements get any post-foreclosure protections?

Answer: Yes, most are entitled to 90 days' notice regardless of whether there is a written rental agreement.

CCP 1161b does not include any requirement that a tenant have a written lease to be entitled to a 90-day notice before eviction.

11. What should I do if I lose a UD hearing or trial, the law was on my side, and there was no court reporter to record what happened?

Answer: Appeal or file a writ.

Even without a court reporter, which is the case for most unlawful detainer proceedings, tenants still have the right to file a writ to challenge an adverse ruling or file an appeal to challenge a judgment or final order.

For more information on any of these issues, or if you receive a ruling that is contrary to law, please contact the Western Center for Law and Poverty (www.wclp.org), the National Housing Law Project (www.nhlp.org) and/or Tenants Together (www.tenantstogether.org) for assistance.