

# TOOLKIT FOR TENANTS LIVING IN FORECLOSED PROPERTIES



Department of the Public Advocate  
Division of Public Interest Advocacy  
240 West State Street  
Trenton, NJ 08625

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# TOOLKIT FOR TENANTS LIVING IN FORECLOSED PROPERTIES

The New Jersey Department of the Public Advocate

## Introduction

As a result of the foreclosure crisis, tens of thousands of New Jersey residential properties have been foreclosed, many of which are tenant occupied. Tenants living in foreclosed properties may face a number of problems. These may be the result of actions by the landlord (before and after he loses the property to foreclosure), the new owner/landlord (the foreclosing lender or a third party), or people working for the owner/landlord (such as real estate agents, asset/property managers, and attorneys).

Fortunately, New Jersey law offers important protections for tenants living in foreclosed properties. **With very few exceptions, New Jersey's tenants have the right to remain in their homes during and after a foreclosure, whether or not they have a written lease.** The new owner takes the property with the tenants in it, and tenants cannot be removed simply because the property has changed hands. Tenants must receive written notices about their rights and responsibilities before and after the foreclosure. The new owner cannot harass or mislead tenants to get them to leave. And foreclosing lenders must maintain the property if the owner has abandoned it.

This toolkit is intended for tenants living in foreclosed properties and those who assist them. It describes common problems that tenants may face and laws that may help address those problems. Laws mentioned can be found at libraries or on many free sources online. A companion guide for lawyers or other practitioners assisting these tenants, [Resource Materials Regarding Tenants in Foreclosed Properties \(Supplement to Toolkit for Tenants Living in Foreclosed Properties\)](#), is also available.

THIS TOOLKIT IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE. TENANTS SHOULD CONSULT AN ATTORNEY FOR LEGAL ADVICE.

## RIGHTS OF TENANTS LIVING IN FORECLOSED PROPERTIES

This section has two parts: the first includes laws that apply to tenants whether or not they live in foreclosed properties and the second includes laws that apply to tenants in foreclosed properties.

Most important for tenants to be aware of is that:

**Tenants cannot be evicted or removed simply because the property where they live has been foreclosed.**

### General Laws

The laws included in this section can apply to tenants whether or not the property in which they live in is foreclosure. New Jersey laws are protective of all tenants. Legal Services of New Jersey provides an overview of many of these laws: <http://www.lsnjlaw.org/english/placeilive/irentmyhome/index.cfm>. The N.J. Department of Community Affairs also publishes a manual with useful information, Truth in Renting ([http://www.state.nj.us/dca/codes/lt/pdf/t\\_i\\_r.pdf](http://www.state.nj.us/dca/codes/lt/pdf/t_i_r.pdf)). Below are descriptions of the laws that the Public Advocate found useful in its work with tenants in foreclosed properties.

- Most tenants are protected by the “Eviction for Just Cause Act,” also known as the Anti-Eviction Act (N.J.S.A. 2A:18-61.1 to -61.16a). Under this law, owners are only allowed to evict tenants for one of the reasons or “grounds” stated in the statute. The law also requires landlords to provide tenants with notice of the reason for eviction before bringing them to court (only nonpayment of rent does not require notice). The end of a lease is not one of the reasons for eviction.
  - Tenants are not covered by the Eviction for Just Cause Act if the building they live in has three or fewer units and the owner lives in one of those units. In these cases, a landlord does not need to provide a reason or the notice required by the law.
  - Tenants in foreclosed properties will be protected by the Eviction for Just Cause Act because a bank or other business is not considered to be an owner-occupant for purposes of this exception. (Aquino v. Pittari, 245 N.J. Super. 585 (1991); 3519-3513 Realty, LLC v. Law, 406 N.J. Super. 423 (2009)).
- Tenants can only be evicted through a court process. This applies to all tenants, including those who are not covered by the Eviction for Just Cause Act. Where a judge orders an eviction, only a court officer (for example, a sheriff’s officer) with a warrant of removal signed by a judge can lawfully evict tenants. (N.J.S.A. 2A: 39-1 and -2; N.J.S.A. 2A:18-57; N.J.S.A. 2A:42-10.16; and related statutes).
- Self-help eviction by the owner or landlord is illegal. The State has made it a disorderly persons offense for any person, after having been warned by a public official, to attempt to evict a tenant in any way except through the courts. Owners are not allowed to threaten tenants, remove their personal property from their homes, lock them out, or shut off utilities in an effort to regain possession. Tenants may call the police if the landlord or any other person enters the premises and attempts to evict them by these means. The police then have a duty to assist the tenants in re-occupying their homes. (N.J.S.A. 2C:33-11.1).
- If a property changes hands, the new owner (not the old owner) is responsible for refunding the tenant’s security deposit when the tenant leaves the property. Many

tenants are told that they have to get their security deposit from the old owner; this is not true. (N.J.S.A. 46:8-20 and -21).

- At the end of a lease term (for example, a one-year lease), the landlord cannot evict a tenant covered under the Eviction for Just Cause Act except for one of the identified reasons. If the landlord and tenant do not sign another lease, the lease will continue on a month-to-month basis. (N.J.S.A. 46:8-10).
- A tenant has some protections against utility (electric, gas, water, and wastewater) shut-offs by a private utility company when a landlord is responsible for paying the bills and fails to do so. A utility company that is aware that tenants are living in such a property must offer them continued service and bill them directly unless the utility can show that such billing is not feasible. The utility cannot require tenants to pay the past-due bill of any other person, including the landlord, in order to continue utility service. Tenants may be charged only for service going forward. (N.J.A.C. 14:3-3A.6).
- While this regulation does not apply to municipally-owned utilities, municipalities should not turn off water at properties where tenants are living, especially where the tenants are not responsible for paying the water bill. We have provided municipalities with water departments a memorandum of law explaining why they should not turn off the water.
- Tenants can use a portion of their rent money to continue utility service that is threatened to be shut off due to the landlord's failure to pay the utility bill. (N.J.S.A. 2A:18-61.1(a) and Marini v. Ireland, 56 N.J. 130 (1970)).
- Tenants are protected by these laws whether or not they have a written lease.

## Laws for Tenants in Foreclosed Properties

- The New Jersey Supreme Court has made clear that foreclosure alone is NOT grounds for eviction in New Jersey. In Chase Manhattan Bank v. Josephson (135 N.J. 209 (1994)), the Court stated that when a lender or other buyer takes a property through foreclosure, the residential tenants come with it. The new owner becomes the landlord and must abide by all the laws related to owning property. This rule applies whether or not the tenant has a written lease.
- In November 2009, the New Jersey Administrative Office of the Courts adopted a rule that requires a foreclosing lender to give residential tenants written notice of their rights (<http://www.judiciary.state.nj.us/rules/app12k.pdf>) or else the foreclosure cannot be completed. The sheriff must also post the notice on the property.
- In February 2010, a law went into effect, the Foreclosure Fairness Act (P.L. 2009, c. 296), that requires buyers of foreclosed properties to provide written notice in English and Spanish to tenants within 10 days after they take ownership. ([http://www.state.nj.us/dca/codes/misc/pdf/notice\\_to\\_tenants\\_foreclosure.pdf](http://www.state.nj.us/dca/codes/misc/pdf/notice_to_tenants_foreclosure.pdf))

The notice provides similar information to the court notice but has some additional information, including where and to whom tenants should pay their rent. In buildings with 10 or fewer units, new owners must provide the notice to each tenant; in buildings with more than 10 units, they must post the notice in a common area. New owners must also provide tenants with the notice when and if they or their agents try to persuade tenants to move out voluntarily (such as offering them a cash-for-keys agreement). The law allows tenants to sue new owners or their agents for either triple damages or \$2000 per violation of the law (plus attorney's fees and costs) if they (1) fail to provide the required notice or (2) use illegal means to pressure tenants to leave, such as misrepresenting tenants' rights, harassing tenants (shutting off utilities, failing to maintain the property), implying that tenants have to accept offers to leave, or increasing rents beyond what is legally allowed.

Sometimes landlords abandon their property after it goes into foreclosure, leaving tenants with no one to address poor housing conditions, such as a leaking roof or lack of utility service. The new law gives municipalities the power to hold foreclosing lenders responsible for code violations if the landlord is absent and the property is not being maintained.

- A federal law passed in May 2009, "Protecting Tenants at Foreclosure Act of 2009" (P.L. 111-22). Because it is less protective than NJ law, New Jersey laws continue to be followed.

Brief Overview of the Foreclosure Process

After the owner of a property falls behind on his mortgage payments, the lender may decide to foreclose on the property. Foreclosure is a process with many steps. In New Jersey, that requires the lender to sue the owner to get its money back. Generally, in New Jersey, this takes approximately nine months. However, because of the current foreclosure crisis, this process currently takes about two years. (Legal Services of New Jersey has an overview of this process: <http://www.lsnjlaw.org/english/placeilive/iownmyhome/foreclosure/foreclosureguide/index.cfm>)

- The lender sends the property owner a “Notice of Intent to Foreclose.” (This has to happen at least 30 days before the lender sues the owner.)
- The lender files a foreclosure complaint with the Office of Foreclosure (part of the Superior Court) against the property owner and serves (provides a copy) to the owner.

*If the lender serves a tenant with the complaint in a foreclosure action, under the new law it must also provide the tenant with the notice outlined in the court rule.*

- At this point, the owner can file an answer to the lender’s complaint.
- The case may go before the court depending on how the owner responds to the lender’s complaint.
- If the owner fails to answer or respond to the complaint, the lender will ask for an entry of default, which would mean the lender would win the case because the owner did not respond.
- If the owner does not oppose the request for a default, the lender will ask for the entry of final judgment of foreclosure.

*Prior to asking for the final judgment, the lender must send tenants living in the property the notice required under the new court rule.*

- If the court issues a final judgment of foreclosure, it will also issue a writ of execution. The writ of execution will order the county sheriff to sell the house and remove the owner if he or she is living in the house. (Tenants cannot be removed.)
- Before the sale, the sheriff will notify the owner of the sale.

*The sheriff must also post a notice of tenants’ rights on the property under the new court rule.*

**Prior to the sheriff sale, the tenant must continue to pay the owner. If the tenant cannot find the owner, the tenant should save the rent money. Nonpayment of rent is a reason for eviction.**

- After the sheriff sale and redemption period (10 days during which the owner can pay off all the money and regain possession of the house), the buyer at the sheriff sale is now the owner of the house, and also the landlord. The buyer must follow all of the laws that apply to landlords.

*Within 10 days of taking title to the property, the new owner must notify the tenants of their rights and where to send the rent, according to the new law, Foreclosure Fairness Act.*

## Attempts to Remove Tenants in Foreclosed Properties

Tenants face a host of problems when living in foreclosed properties. These may be the result of actions by the landlord (before and after the property is lost to foreclosure), the new owner/landlord (the foreclosing lender or a third party), or people working for the new owner/landlord, such as real estate agents, asset/property managers, and attorneys.

***Owners or Those Working for Them*** Owners and the people or companies who work for them may attempt many things that are inconsistent with the laws we mentioned, including:

- Telling tenants or sending notices, letters, or flyers that mislead tenants into believing that they have to leave their homes because of a foreclosure
- Repeatedly calling or showing up at tenants' homes in an effort to get them to leave
- Telling tenants they should leave because the new owner will not take care of the property
- Refusing or failing to keep the property in a decent, safe, and habitable condition
- Refusing or failing to say where the rent should be paid, while sometimes also threatening eviction proceedings for nonpayment of rent
- Attempting to collect rents they are not allowed to collect (that is, new owners trying to collect rent from before they owned the property)
- Failing to pay utility bills, putting tenants at risk of shut-offs of heat, electricity, and water.

In addition to the laws we have discussed, there are laws that are particular to those who work for new owners, such as real estate licensees and attorneys.

Real estate licensees violate the regulations that govern them if they draft or send letters or notices that state or imply that a tenant is subject to eviction solely because of a foreclosure. (N.J.A.C. 11:5-6.1(r)).

Attorneys are subject to the Rules of Professional Conduct, which may be violated if attorneys “knowingly (1) make a false statement of material fact or law to a third person; or (2) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.” R.P.C. 4.1(a).

In addition, attorneys are subject to the federal Fair Debt Collection Protection Act. This law, which requires debt collectors to provide certain information to people who they are trying to collect money from, applies to attorneys when they are trying to collect rent from tenants. Under this law, the first communication (either oral or written) must inform the tenant that the attorney is trying to collect a debt and that any information obtained will be used for that purpose (all other communication must include a disclosure that it is from a debt collector). Within 5 days of that first communication, the attorney must give the tenant written notice outlining the tenant's rights in the debt collection process (that is, the right to verify and dispute the debt) and state the amount of rent owed. The attorney can't misrepresent the amount of rent or attempt to collect rent not legally due. There are exceptions to these requirements where the communication is in the form of a court document. (15 U.S.C. § 1692 -1692p).

In addition, it is possible that real estate licensees and attorneys as well as others could be liable under the Consumer Fraud Act if they try to remove tenants from properties because of a foreclosure. (N.J.S.A. 56:8-2).

**Courts and Sheriffs** In addition to owners and those who work for them, the courts and sheriff officers sometimes mistakenly target protected tenants during the foreclosure process. The writs of execution and final foreclosure judgments are drafted by the attorneys for the lenders. The attorneys sometimes use language in court papers that cause problems because it seems to cover tenants (for example, “and any and all persons occupying said premises”). Other times attorneys specifically name tenants and certify (swear to the court) that those tenants are not covered by the Anti-Eviction Act. This is especially problematic because tenants often do not have the opportunity to demonstrate that they are in fact legitimate tenants until after the removal has already been ordered by the court and scheduled by the sheriff.

If a court order specifically names a tenant to be removed, the sheriff must evict that person. Sometimes, however, sheriffs read the language in the order and believe that they must evict everyone. Also, some notices that sheriffs create and post on property include language, such as “occupants” instead of “owners,” that appears to include tenants. The Attorney General distributed a memo to sheriffs regarding the rights of tenants living in foreclosed properties.

### How to Deal with Attempts to Remove Tenants

#### *General Assistance*

- Legal Services of New Jersey: (888) LSNJ-LAW ((888) 576-5529))
- New Jersey Tenants Organization: (201) 342-3775
- Rutgers Law School-Newark Urban Legal Clinic: (973) 353-5576

#### *Real Estate Licensees/Property or Asset Managers*

The Real Estate Commission in the Department of Banking & Insurance investigates claims of unethical conduct by real estate licensees. To file a complaint against a real estate licensee (who often serves as the property or asset manager) contact the Real Estate Commission at DOBI:

Website: <http://www.state.nj.us/dobi/consumer.htm#realestateassist>  
Phone: 609-292-7272 or Consumer Hotline: 1-800-446-7467  
Mail: NJDOBI, P.O. Box 471, Trenton, NJ 08625-0471

#### *Attorneys*

Complaints must be filed with the District Ethics Committee Secretary in the district (there are 17 in NJ) where the offending attorney has his or her main office. A directory of the District Ethics Committees is available at [http://www.judiciary.state.nj.us/oe/atty\\_disc/ethics\\_secretaries.htm](http://www.judiciary.state.nj.us/oe/atty_disc/ethics_secretaries.htm). The Attorney Grievance Form is available at <http://www.judiciary.state.nj.us/oe/grievancefrm.pdf>. The individual can also call the ethics hotline at 1-800-406-8594. The caller must provide the zip code of the offending attorney’s main office and will then be referred to the appropriate District Ethics Committee to request the form.

### *Courts and Sheriffs*

If there are court documents or sheriff's notices that include your name, you should contact the court or the sheriff office **IMMEDIATELY** and explain that you are a tenant and believe you have the right to stay. Sheriff's officers are or should be aware of the right of tenants to remain in their homes. Sheriff's officers can also direct tenants to the appropriate court if that is necessary.

### *Utilities*

If a tenant's utility service is shut off because of a landlord's failure to pay the bill, the first step should be a phone call to the landlord. If the landlord cannot be reached, the tenant should contact the utility company to work out a payment arrangement going forward. If the utility is a private utility and it does not respond, then the tenants can contact the Board of Public Utilities at (800) 624-0241.

### *Property Maintenance*

If there are questions regarding property maintenance and the landlord is not responding, tenants should reach out to their municipality. Municipal code enforcement officials have the legal power to go after owners and foreclosing lenders when there are maintenance problems at the property.

**REMEMBER, IF YOU ARE A TENANT AND THE PROPERTY YOU LIVE IN  
IS INVOLVED IN FORECLOSURE, YOU HAVE RIGHTS.**