



Column: Tenants: Don't be scammed into a quick move

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An untold but urgent story arising from the foreclosure mess is the unfair harm befalling tenants in foreclosed buildings. Most banks and lenders are carrying out a policy of closing their rental properties after foreclosure. Thousands of tenants, many longtime and model residents, are being involuntarily displaced from their homes. The distress of community disruption is pronounced, with tenants being forced to move block-by-block, family-by-family from neighborhoods concentrated with foreclosures.

What makes this bad situation much worse is that some lenders and their real estate brokers are using harsh scare tactics to force tenants to leave immediately. A typical scenario starts after the foreclosure auction when a resident comes home to find a letter announcing the foreclosure and demanding that the tenant vacate immediately. The letter will threaten imminent "forcible eviction," "sheriff lockout," and charges for storage, court costs and attorney fees. The letter will end with an offer of a small cash payment in exchange for a quick move. These so-called "cash-for-keys" offers are so low that the payment will not even cover the cost of a mover.

The second step in the move out scam take place when the lender's agent knocks on the door. The eviction threat is repeated face-to-face. The cash-for-keys inducement is then presented as the only option. Feeling helpless, the result is that thousands of tenants are scared into moving into transient arrangements with family or friends or into apartments that are not suitable for the long term. In the process residents sign away their legal rights while being stampeded from their homes.

Tenants need to know their legal rights to make the best decision for themselves and their families. Massachusetts law provides that all tenancies continue after foreclosure. No tenant needs to move just because their building was foreclosed. No legal occupant has to move just because the bank or lender tells them to. Only a judge can evict tenants in Massachusetts.

The bank or lender must follow formal legal procedures. The starting point is for the owner to give the tenant a full months' written notice to vacate. After the full month has passed, the only action that the bank or lender can take is to file a summary process eviction case in court. Tenants have the right to challenge the eviction by presenting defenses and can demand a jury trial. Valid defenses to post-foreclosure evictions include defective notices, wrong-listed parties, bad conditions, and landlord interference with services to the apartment. Subsidized Section 8 tenants have additional defenses under their leases.

Tenants can also bring counterclaims against the new owner and seek damage awards for bad conditions, security deposit violations, unfair and deceptive practices, as well infliction of emotional distress. Some tenants have received damage awards of more than \$20,000.

Post-foreclosure tenants can protect themselves by paying rent to the new owner. Paying the rent will prevent the landlord from bringing an eviction case because of non-payment. If the new owner refuses the rent, tenants should mail a letter by certified mail that documents their offer to pay. If still refused, it is recommended that tenants put the rent money in a separate bank account so that it is available in the future. Tenants should also consider calling Inspectional Services for a code inspection if bad conditions exist in their building. It against the law for an owner to retaliate against a tenant for seeking a code inspection.

The court process provides tenants with additional protections. Massachusetts law allows tenants in "no-cause" cases to ask the court for a stay of up to six months even when they lose their case. A stay gives tenants time to find a good place to live. If a household member is elderly or disabled, courts can issue stays up to 12 months. No-cause means the tenant has done nothing wrong to justify the eviction. Almost all foreclosure evictions are no-cause.

Unless a tenant is certain that they have a good apartment to move to and are prepared for the move, they should probably refuse a cash-for-keys offer. Going to court instead of making a quick move is usually in the tenant's best interest. Legal service attorneys are in the Housing Court to assist low-income tenants. The Housing Court has mediators to help any party discuss their case and structure settlements. The general experience for tenants who go to court is that the banks usually offer more money and time for the family to find a place to live. If tenants have good defenses or valid counterclaims, these can be used to negotiate better deals or even new leases at the existing homes. Tenants should not fear the court house.

Interested tenants are invited to attend a post-foreclosure workshop on the issue at 6 p.m. on Feb. 17, being hosted by Lawrence Community Works and Neighborhood Legal Services at LCW, 166-168 Newbury St., Lawrence.

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