

Chapter 21

Tenants Facing

Foreclosure

Legal Tactics: Tenants' Rights in Massachusetts
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Tenants Facing Foreclosure

by Esme Caramello and Rafael Mares

Italicized words are in the Glossary

Sometimes landlords stop paying their *mortgages*. As a result banks and other lenders *foreclose* on these properties. In many cases, they become the new property **owners**. If you are a tenant, these new owners might try to convince you that you do not have the same rights as other tenants and that they do not have the same obligations as other landlords. But for the most part, your rights are the same as in any landlord-tenant relationship¹.

This chapter describes the foreclosure process, how to deal with these new owners, and how foreclosure affects your rights and responsibilities as a tenant. In addition, this chapter also contains a small section about the rights of former owners, which are different.

What Is Foreclosure

Foreclosure is a process through which lenders recover or get back the money they loaned after an owner stops paying the *mortgage*. In Massachusetts, foreclosure usually does not involve any court action, with one minor exception, which is explained in the section of this chapter called **How to Get Information about a Foreclosure**.

When a *mortgage* is originally signed, it normally contains a "power of sale" clause that allows the lender to sell the property when the owner does not make the *mortgage* payments. The lender must first give proper notice to the owner of a foreclosure by sale. Then an attorney, as a representative of the lender, usually sets up the sale in the form of an auction. Auctions are advertised in the local newspaper and

conducted by a private auctioneer right outside the property. Often, no one bids high enough at the auction to allow the lender to recover its investment. In this case, the lender will purchase the property and then try to sell it later through a real estate broker.²

The Landlord-Tenant Relationship After Foreclosure

1. Tenancy

In Massachusetts, foreclosure does not automatically *terminate any tenancy*. Regardless of what the bank or another new owner tells you, **you do not have to leave your apartment just because your landlord has lost the property in foreclosure**.³ If you are a *tenant at will*, tenant with a lease, or tenant with a housing subsidy (such as Section 8 and MRVP) your tenancy continues to exist after foreclosure. Tenancies at will and subsidized tenancies continue on the same terms as with the former landlord.⁴ Leases are automatically converted into tenancies at will.⁵

The person or company that purchases the property at the foreclosure auction becomes the new owner and landlord. This frequently is the bank or lender who started the foreclosure. If an agent from the bank, or some other party, tells you that you must leave because of the foreclosure, **do not move out**, unless you already wanted to leave anyway and have somewhere to go.

2. Payment of Rent After Foreclosure

a. Don't Pay the Old Landlord

As a tenant, you are responsible for paying the rent. Until a foreclosure sale, you should continue to pay rent to your old landlord. If you cannot locate your old landlord anymore, hold on to your rent and put it into a separate bank account, if possible.

If there has been a foreclosure sale, do not continue to pay rent to your old landlord. The old owner no longer has the right to collect rent from you. But being in a foreclosed building does not mean that you get to live rent-free. After a foreclosure, the new owner has the right to collect rent from you.

Sometimes, though, the old landlord will try to hide the fact that she has lost the property in foreclosure and will improperly continue collecting rent. If this happened, you could sue the old landlord to get your money back. Whether you sue or not, if you paid rent to the old landlord after the foreclosure sale, you should hold on to any receipts or other proof you have that you made these payments. If the new owner tries to collect rent from you for the months you paid the old landlord, these receipts may help support your claim that the new owner must collect from the old landlord and not from you.

b. Protect Yourself If New Owner Refuses Rent

If a bank or other lender is the new owner, it may decide not to ask you for rent. It may even refuse to accept rent if you offer it. You should still offer to pay rent by sending a letter to the new owner and asking to whom you should pay your rent. You can use the sample rent offer letter at **Form 27**. Make sure to keep a copy of the letter for your records.

You may have to do some research to find out who the new owner is (see section in this chapter called **How to Get Information**

About a Foreclosure). If you cannot figure out who the new owner is, or if the new owner ignores or rejects your offer to pay rent, **save the rent money**. Put it into a separate bank account if possible. Lenders often refuse to accept rent, then bring an eviction case against the tenant and sue the tenant for the back rent. The best way to protect yourself against eviction or ruling by the court that you owe the landlord money is to have the money set aside.

c. Tenants in Condos

If you rent a condominium, you pay rent to the owner of the condo and the owner is probably required to pay a monthly condo fee to the building's condo association. When condo owners are facing foreclosure, they sometimes stop paying the condo fee. If the owner loses the condo in foreclosure, then the condo fee must be paid by the person or company that buys the condo at the foreclosure sale. However, a bank or other lender that buys the condo at the foreclosure sale may also not make the required condo fee payments. If the condo fee is not being paid for the unit you are renting, then the condo association is permitted to collect rent from you until the balance owed by the owner is paid off.⁶ If the condo association asks you for rent, be sure to get a written receipt for any payments you make.

3. Utilities

a. Who's Responsible for Paying

Banks or lenders who take over residential buildings after foreclosure frequently do not pay the water bills and other utilities for which they are responsible. If you had a lease with your old landlord, the new owner—even if the new owner is a bank—is responsible for all the utilities your previous landlord was required to pay under your lease. If you were a *tenant at will*, the new owner must pay for all utilities, except those you had agreed to pay in a written agreement with the old landlord. For more information about what utilities are your responsibility, see **Chapter 6: Utilities**.

b. Dealing with a Shut-off

If one of the utilities for which you are not responsible is shut off, or if you receive a notice from a utility company threatening to stop your service, you should notify the bank or other new owner immediately and demand that it take action to prevent the shut-off or restore service.

You should also contact the utility company and request that the service be restored or not be terminated due to the foreclosure. Tell the utility company that your landlord lost the property in foreclosure. Utility companies often will not shut off utilities if they are informed that you are in a foreclosed building.

If the utility company does not agree to prevent the shut-off or restore the service, you can call the consumer hotline at the Department of Telecommunications and Energy (DTE) at 800-392-6006 (outside Boston) or 617-305-3531 (in the Boston area). The consumer hotline is staffed by advocates who are trained to intervene on behalf of consumers when companies do not follow the law.⁷ You can also obtain a court order for the bank or other new owner to pay the utility bills. For more information on preventing utility shut-offs, see **Chapter 6: Utilities**.

4. Repairs

a. Notifying the Owner

If there are bad conditions in your apartment, you should always notify the owner about these problems as soon as possible. You can also notify the owner's real estate agent, property manager, superintendent, or lawyer.

If you know that your landlord is about to lose the building in a foreclosure, but the foreclosure auction has not yet occurred, notify your current landlord. After the auction, notify the new owner (even if it is a bank) because the new owner is now responsible for all repairs in your apartment and the common areas of your building, including snow removal.⁸

Whenever you notify the owner (whether it is the old owner, the new owner, the real estate agent, or the owner's attorney) of any problems, **put it in writing. Also, it is very important to keep a copy.** This is your proof that you notified the owner about problems. For a sample **Repair Letter**, see **Form 9**.

For more information about getting repairs made, see **Chapter 8: Getting Repairs Made** and the **Booklet 2: Housing Code Checklist**.

b. Document the Problems

To document the problems, it is best to call the local Board of Health or Inspectional Services Department to do an inspection. When they do an inspection, they put together a report, which documents the problems.

If you know the name, address, and phone number of the owner or its lawyer or real estate agent, give that information to the inspector so that she can deliver her report to the right party and follow up to ensure that the repairs are promptly made.

If you can, you should also take pictures of the problems. At some later date, you may need to prove these bad conditions existed and pictures will help.

c. Getting Repairs Made

If the situation is very serious (for example, no heat in the winter), you should ask the Board of Health to do an emergency inspection. Then take the inspection report and go to court and request an emergency order called a *temporary restraining order*. This order will instruct the owner or its representative to correct the problem immediately. To do this you need to file a form. See the **Temporary Restraining Order** form (**Form 15**). If you do not know the identity of the new owner, you can take this legal action against the owner's representatives, such as a property manager or real estate agent who is contacting you on behalf of the bank or other new owner.

If the new owner is accepting your rent, you can also withhold some or all of your rent and put it aside in a bank account until the repairs are made. You can also work together with other tenants in the building, form a tenant group, and pool your rent money to make repairs. Use these options only after informing yourself how to do them correctly so that you protect yourself against an eviction. See **Chapter 8: Getting Repairs Made** for more information.

Tenants should also try to contact both a tenant organization or community group to help you organize and a lawyer to help you protect your rights. For a list of local tenant organizations go to: www.masstenants.net. For a list of legal services programs go to: www.MassLegalHelp.org.

Some cities and towns have developed special programs to help tenants and neighbors get buildings repaired or cleaned up after a foreclosure. For example, the City of Worcester encourages tenants and neighbors to report "abandoned" or "troubled" properties to the city by calling its S.A.V.E. hotline at 508-799-8485. (S.A.V.E. means Stabilize, Assist, Value, and Enforce.) The city will then send out a team of fire, police, housing, and public health officials to monitor the property and help ensure that important repairs are made. If you are having trouble getting repairs done or cannot figure out who is responsible for making repairs, you can try contacting your city or town and asking about programs available to help you.

Evictions After Foreclosure

1. Only a Court Can Evict You

After foreclosure, banks or lenders who take over residential buildings often attempt to evict the tenants based on the unfounded belief that it will be easier to sell the building without occupants in it. Many hire local real estate

agents to try to intimidate the tenants and force them out of their apartments. But no matter what type of tenancy you have, it is illegal for the bank to treat you as a trespasser or try to force you out of your home by locking you out or shutting off your utilities.⁹ Tenants in foreclosed properties have the same rights as tenants in other buildings. **Only a court can evict you!**

2. "Cash for Keys" Offers

Many banks will try to avoid the time and expense of a formal eviction and will instead try to pressure tenants to leave. In most cases, a real estate agent hired by the bank will try to intimidate tenants or take shortcuts in the hope that the tenants do not know their rights and will just leave.

Typically, the agent offers the tenants a small sum of money (usually \$500-\$1,500) to move out quickly. They imply that this is an official "cash-for-keys" program and that if the tenant does not accept this offer right away, she will have to move out without compensation. This is not true. Tenants who defend themselves against eviction in court often are able to stay in their homes—or move out later when they are in a better position to do so, and with more money.

But, despite the name, most cash-for-keys offers go far beyond giving up the keys. These offers require tenants to give up all their legal claims against the new owner, including their right to return of their security deposit or *damages* for utility shutoffs or bad conditions. Some offers even contain clauses that make the tenant legally responsible for any problems or injuries that occur at the property. In legal terms these are called *liability waivers* or *indemnifications*.

If you do decide to accept a cash-for-keys offer, make sure you read and understand any written agreement before you sign it. If, after you sign a cash-for-keys agreement, your situation changes and you cannot, or do not want to, move out, you do not have to leave on the date to which you agreed. While you probably will not get the

money you were offered, and although you may have agreed to give up certain legal claims, the new owner still cannot evict you without going through court.

3. Defending Yourself in Court

If the bank cannot persuade a tenant to leave, it might begin a formal eviction. In order to legally evict a tenant after a foreclosure, the new owner, like any landlord, must follow specific procedures.

First, it must notify you that it is ending or *terminating your tenancy* by sending you a written notice called a *notice to quit*. If your tenancy is not subsidized, this notice must give you at least one rental period's notice of the termination and must terminate your tenancy on a day that rent is due. More complicated requirements apply for Section 8 and other subsidized tenancies. For more information on notices to quit, see the section **Receiving Proper Notice in Chapter 13: Evictions**.

After the notice period is over, the new owner must serve you with a court *complaint* for eviction and then go to court and present evidence. The new owner will not necessarily win the eviction case against you. After a foreclosure, you are still a legal occupant of the property. As a legal occupant you have a right to present a *defense* to a *no-fault* or non-payment of rent eviction. If the new owner has violated the lease in any significant way or violated any other law related to the tenancy, you could win your eviction case.

Many tenants have a defense to eviction after foreclosure as a result of the bad conditions in their home (see **Repairs** section above) or due to the improper treatment of their security deposit (see **Getting Your Security Deposit Back After Foreclosure** below).¹⁰ To support your defense, it is important to have notified the new owner about the bad conditions and offer to pay rent as soon as possible. For more information on defenses to eviction, see the

section **Important Legal Defenses and Counterclaims** in **Chapter 13**.

For a bank or other entity to be able to evict a tenant after a foreclosure, it has to prove that it actually is the owner of the property.

Frequently, the bank that acquired a building has not yet filed a *foreclosure deed* in the *Registry of Deeds*, or even signed that document, by the time it starts the eviction case. If the bank cannot prove that it owns the property with a signed foreclosure deed, you should ask for the eviction case to be dismissed by filing a *motion* with the court. If the property you live in is registered land,¹¹ rather than recorded land, you can get the case dismissed if the foreclosure deed was never registered in the Registry of Deeds, even if it has already been signed.¹²

You may also be able to avoid or postpone an eviction if the new owner has used the wrong name on the notice to quit or the court complaint. Often, the new owner after a foreclosure will try to start an eviction case without even learning the names of the tenants who live at the property. Instead, it will send the notice to quit or the complaint to the former owner or to other people it thinks might live at the property.

If you receive a notice to quit or a court complaint that does not have your name on it, **do not ignore it**. Even though the new owner has made a mistake and you are entitled to a *defense* in an eviction case, you must take certain steps to make this mistake known to the court. After the owner files the eviction case in court, you should file a motion asking the court to dismiss it. You should explain in your motion that the notice to quit or the court complaint, or both, did not have your name on it. The court may require you to *intervene* in, or join, the case in order to bring this motion because technically you are not part of the case.

4. Staying in Your Home After the Eviction Case

Even if the eviction case is over and the lender or other new owner has won, the owner cannot physically evict you from your home if you are not a named party in the eviction case. After a landlord wins an eviction case, it receives a document called an *execution* from the court. The execution lists the names of the individuals who can be evicted under the judgment.

If you were a tenant at will or a tenant with an unsubsidized lease before the foreclosure, then the execution must list all adult members of your household. If one of the adults in your household is not named on the execution, then it cannot be used to evict your family.¹³ If you have a subsidized tenancy, then only the *head of household* who signed the lease must be listed on the execution.

Whether you have a subsidized or unsubsidized tenancy, you can ask the court to stop the eviction by requesting a *temporary restraining order* to prevent the owner from using the eviction judgment against you. To do this you need to file a **Temporary Restraining Order** form (see **Form 15**). If a sheriff or constable comes to evict you before you have had time to get a temporary restraining order, and you were not named in the eviction case, you should try to prove to him that you are a lawful tenant and that you are not the person named in the court judgment. Show him copies of any lease or other rental agreement you had with your old landlord, utility bills, a driver's license, mail, and any other documents that show your identity and your address. Ask him not to use the court judgment against you since you were not involved in the case.

Even if you lose your eviction case, you can ask the court for more time to move. Massachusetts law allows the court to postpone the eviction of tenants (whether after foreclosure or not) by issuing a *stay of execution* of the court judgment (see the section called **Postponing the Eviction** in **Chapter 13: Evictions**). This

stay of execution is available as long as the eviction is not the result of the tenant violating the lease. How long you can stay is a matter for the court to decide. Disabled and elderly tenants (60 years of age or older) may ask for up to 12 months and all other tenants may ask for a stay of up to six months. So even if the new owner wins in court, you may be able to get significantly more time to move than the time period banks usually give as part of their cash-for-keys offers.¹⁴

Getting Your Security Deposit Back After Foreclosure

You do not lose your right to get your security deposit back just because a bank or other lender has foreclosed on your landlord's property. The old landlord is obligated to transfer your security deposit to the person or entity that purchases the property at the foreclosure sale. If she does this, the new owner becomes fully responsible for the security deposit and must notify you within 45 days that it has the deposit and is holding it in a separate interest-bearing account.

After a foreclosure, however, the old landlord usually does not transfer the security deposit to the new owner. This does not mean you have lost your deposit. If your old landlord does not properly transfer your deposit, you can recover it from either the old landlord or the new owner.¹⁵

1. Recovering Your Security Deposit from the Former Landlord

To recover your security deposit from your old landlord, you should send her a demand letter and then, if still necessary, take her to court (see **Form 5 Security Deposit Demand Letter** in **Chapter 3: Security Deposits and Last Month's Rent**). You should begin this process right away because after a foreclosure, your old landlord may be difficult to locate. Even if you

can locate your old landlord, it may be difficult to collect the security deposit from her. A landlord who has just lost her property in foreclosure is almost certainly having serious financial problems and may even have spent your security deposit, although that is against the law. This can make it difficult, if not impossible, to recover the security deposit from her, even with a court order.

2. Recovering Your Security Deposit from the New Owner

The bank or other new owner is likely to have the funds to return your security deposit and may be easier to find than your old landlord. For this reason, you may want to try to recover your security deposit from the bank.

New owners after foreclosure are responsible for your security deposit unless they are a bank chartered by the Commonwealth of Massachusetts or the United States and foreclosed on the property.¹⁶ In many cases, the new owner after a foreclosure is actually a group of investors who have formed a *trust* and hired a bank to be the *trustee* responsible for managing the foreclosure. In these cases, it should not matter whether the bank is chartered because the trust itself is not chartered. In other words, if an investment trust owns your property, it should be responsible for your security deposit regardless of who the trustee is. Even if the new owner is a chartered bank, if it purchased the property at the auction, it should be responsible for your security deposit, because the security deposit law excuses only lenders who are foreclosing on a property, not lenders who purchase a property at the auction.¹⁷

If the new owner refuses to acknowledge possession of or refuses to return your security deposit, you can send it a demand letter as you would with any landlord (see **Form 5: Security Deposit Demand Letter**). If the new owner still does not return your deposit, you can take it to court. If your security deposit, plus any interest you are owed, is less than \$2,000, then

you can file a small claims case. If your security deposit plus interest is more than \$2,000, you should file a regular civil case. In most cases, though, you will be better off bringing your security deposit claim against the new owner as a *counterclaim* if the new owner files an eviction case against you. If you raise a security deposit claim in an eviction case, it can also serve as a *defense* against the eviction and prevent your eviction.

For more information about security deposits, see **Chapter 3: Security Deposits and Last Month's Rent**.

Last Month's Rent

If you paid the last month's rent at the beginning of your tenancy, foreclosure should not prevent you from getting credit for that payment at the end of your tenancy. Like a security deposit, a last month's rent deposit must be passed from owner to owner in most cases.¹⁸ Under some circumstances described in the previous section, a chartered bank may not be covered by this requirement, but in many cases it is. If your landlord or former landlord did not pay you the required yearly interest on your last month's rent or give you a rent credit for this interest, this can also be a valuable legal *defense* in an eviction case brought by the bank. For more information about enforcing your right to get rent credit and interest on your last month's rent deposit, see **Chapter 3: Security Deposits and Last Month's Rent**.

How to Get Information About a Foreclosure

A landlord may or may not tell her tenant that she is losing the property in foreclosure. If your landlord does not share information about her financial trouble, you may not know that a foreclosure is likely, or even that one has already taken place. There are a number of ways to get more information about your building and who owns it.

1. Look for Emergency Contact Information

You can start by looking for the owner's contact information in the common area of your building. The new owner is required to post this information so that you know who to call for repairs.¹⁹ Unfortunately, lenders who buy buildings at foreclosure sales rarely follow this rule.

2. Notice from the Lender

After a foreclosure sale, you may receive a written notice from the lender. A lender that forecloses on a property is required to inform all tenants of this within 30 days.²⁰ Therefore, you may receive a letter from a bank or one of its representatives, such as a lawyer or real estate agent, telling you who is the new owner of the property where you live and providing you with contact information. Frequently, tenants do not receive these notices because the lenders do not send them or because they are sent to the wrong person or address. You should make sure to hold on to all correspondence you receive from the lender.

3. Ask the Real Estate Broker or Lawyer

Sometimes the new owner's real estate agent or lawyer will contact you in person or over the phone. If you ask this person who the new owner of your apartment is, she might tell you.

4. Check the Property Records

If you suspect your landlord may have lost the property in foreclosure but have not been contacted by the new owner, you can do some research on your own. Lenders are required to notify the local tax assessor's office when they take possession of a property through foreclosure.²¹ You can check to see if the tax assessor's office received such a notice from the lender by looking up the address of your

building in your local office. Some tax assessors' offices allow their records to be searched online.²²

You can also check the property records at the local Registry of Deeds, which are available online by county.²³ If a foreclosure is in process, you will probably find a "Servicemembers Civil Relief Act" application or judgment in the file. Under federal law, a foreclosure sale is not valid if it happens during, or within 90 days after, an owner's military service.²⁴

To ensure that lenders do not violate this law, Massachusetts law requires them to file a Servicemembers Civil Relief Act petition in Land Court before conducting a foreclosure sale. Once the Land Court rules on the petition, it issues a *judgment*. The lender is required to file that judgment at the Registry of Deeds. A Servicemembers Civil Relief Act petition would tell you two things. First, it tells you that the lender is in the process of foreclosing on the property you rent, although it does not tell you whether or not the bank actually went or will go through with the foreclosure. Second, it gives you the names of the lender and its lawyers.

The Registry of Deeds file might also contain a *foreclosure deed*. If there is a foreclosure deed in the file, the property has been foreclosed upon and the foreclosure sale is complete. The foreclosure deed also gives you the names of the new owner and its lawyers. But the new owners do not always record the foreclosure deed right away. The foreclosure sale may be complete even if you cannot find the foreclosure deed at the Registry of Deeds. If you find a Servicemembers Civil Relief Act judgment but no foreclosure deed, you could call the lender or the lender's lawyers to ask about the status of the property.

5. Auction Listings

You can also check lists of foreclosure auctions. Some auctioneers have websites on which they list upcoming and recently completed auctions (such as www.harmonauctions.net, www.re-auctions.com, www.baystateauction.com), but

you may want to run a general search for the address on a search engine like Google. Auctions are also listed in printed publications such as *Banker and Tradesman* and your local newspaper.

6. Companies That Mortgage Lenders Hire

Mortgage lenders often hire specialized companies, called "servicers," to administer their mortgages on a day-to-day basis and to manage the foreclosure process. The servicer may be managing the sale of the property and any court cases related to the building, including eviction cases. In most cases, you can find the servicer who is associated with your apartment by calling the toll-free hotline run by MERS, a private company that works with mortgage lenders and servicers, at 888- 679-6377. You can also look up your address in MERS' online database (www.mers-servicerid.org/sis/).

Rights of Former Homeowners After Foreclosure

Previous property owners sometimes remain in their homes after foreclosure. If you owned your home but have lost it in foreclosure, you should be aware of the rights and responsibilities you now have with respect to the new owner. Although you may face similar problems as tenants do, your legal rights are not the same.

Banks routinely seek to evict former owners after foreclosure. To evict a former homeowner, a new owner must follow specific procedures. The new owner must serve a notice and go to court. Since a previous homeowner who remains in the property after foreclosure is considered a *tenant at sufferance*, she is entitled only to a notice that her right to possession has terminated by operation of law.²⁵ In this context, lenders usually use a 72-hour notice, which has been found sufficient.²⁶ The new

owner must then file a *summary process* case, in which the old owner can defend herself.

Tenants at sufferance have the same rights as other tenants to defend against eviction by bringing certain *claims* against the owner.²⁷ A former homeowner, as a tenant at sufferance, may therefore have a *defense* to eviction if, for example, bad conditions arose in the home after the foreclosure and they cannot be traced back to the former homeowner's own actions during the time when he owned the property.²⁸ Former homeowners may also win an eviction case if they did not receive reasonable notice before the case was filed, or if the bank's court complaint is defective (see **Chapter 13: Evictions**). In most cases, a former homeowner cannot raise questions about the validity of the loan or the foreclosure in an eviction case.

However, if you filed for bankruptcy, your eviction case cannot go forward without the permission of the Bankruptcy Court.²⁹ You should alert the court in which your eviction case is pending that you have filed for bankruptcy. The bank would then have to file a motion in the bankruptcy case to get permission to move forward with the eviction. Only if the motion is allowed can it go forward with the eviction case. You may challenge the foreclosure in your bankruptcy case.³⁰

Because former homeowners have only limited defenses to eviction, you may not be able to win an eviction case brought by the new owner after you have lost your home in foreclosure. If you would like to continue to fight to stay in your home, you should try to connect with a community organization. For a list of such organizations, see the **Directory**, or go to www.masstenants.net. You can also ask the judge in your eviction case to postpone the eviction and give you more time to move.³¹ To do this, you must fill out the **Stay of Execution** form (see **Booklet 8**). For more information on getting a *stay of execution*, see the section in **Chapter 13** called **Delaying the Eviction**.

Organizing

For any person facing a foreclosure, joining together with a group of people in similar circumstances can be the key to influencing what happens. If you are a tenant or owner in a property that is facing foreclosure, it is likely that others, either in your building, your neighborhood, or your town, are in situations similar to yours—that is, living in a property that is in the process of being or has been foreclosed. In addition to taking all the steps to protect yourself discussed in this chapter, you may be able to strengthen your position if you join forces with other tenants.

In some towns and cities, groups of residents in foreclosed properties—both tenants and former owners—meet together regularly as "bank tenant associations" to compare stories and to jointly develop strategies to protect their members. Some have already achieved significant victories. For example:

- In 2007, the tenants of a foreclosed rooming house in Roxbury, working together, made calls and sent letters both to the bank that had taken over their home

and to public officials, complaining that utilities had been shut off and that the bank was threatening to evict them. Under pressure from the tenants and public officials, the bank got the utilities restored, repaired numerous poor conditions, and agreed not to evict the tenants. Instead, the bank marketed the property for sale with the tenants "in place."

- In 2008, a former homeowner in Dorchester staved off eviction—even after the bank that had foreclosed on her home had obtained a court judgment and was on the verge of moving her out. A bank tenant association that she had joined threatened to "blockade" her home to prevent the constable hired by the bank from evicting her. The publicity generated by the threatened blockade caused the bank to back off from the planned eviction.

A variety of other successful tactics that can best be used by tenants working together in an organized group are set out in **Chapter 10: Getting Organized**. That chapter also includes information on how you can set up a tenant association if none exists already in your building, your town, or your neighborhood.

Endnotes

1. If you are a former owner of a foreclosed property, your legal rights are not the same. Please see the final section of this chapter: **Rights of Former Homeowners After Foreclosure**.
2. Mortgages are often bought and sold, so the holder of the mortgage at the time of the foreclosure sale may not be the same company that gave your landlord her original loan. In recent years, many mortgages have been packaged into "investment vehicles" and sold to groups of investors. These investors often form a trust and hire a bank as the trustee of the trust. The trustee usually works with one or more "servicers," companies that collect payments and manage the foreclosure process. It may be hard for you to identify the servicer who is managing the apartment you rent, even though the servicer is often the company that is making decisions about what will happen to the building and the people who live in it. The lenders also usually work with real estate agents who are responsible for selling the property after foreclosure. Often, a tenant's only contact with the lender or servicer is through this real estate agent or a lawyer representing the lender.
3. For foreclosure sales that took place prior to November 29, 2007, the law was less clear, but has since been clarified by Chapter 206 of the Acts of 2007, Sections 8 and 9 (approved November 29, 2007), which amended G.L. 186, §§13, §13A. Before the law was changed, there were different opinions as to whether all tenancies at will or only some survived foreclosure. Some cases held that all tenancies at will survived foreclosure. *Deutsche Bank Trust Company v. Baxter*, Boston Housing Court, 06-SP-01673 (Edwards, J., July 26, 2006); *Vo v. Pierre*, Boston Housing Court, 00-SP-01687 (Chaplin, J., May 25, 2000); *Citicorp Mortgage v. Gates*, Boston Housing Court, 96-SP-06324 (Daher, C.J., October 14, 1997); *First NH Mortgage Corp. v. Garcia*, Hampden Housing Court, 91-SP-1708 (Abrashkin, J., August 2, 1991). Other cases held that a foreclosure automatically terminated a tenancy at will, although a "reasonable notice" or "waiting period notice" of 30 days was still required. *Deutsche Bank National Trust Company v. Zayas*, Boston Housing Court, 07-SP-00812 (Muirhead, J., May 3, 2007); *Federal National Home Loan Corporation v. Cameau*, Boston Housing Court, 98-SP-02864 (Winik, J., July 17, 1998). If a tenancy at will started prior to the execution of the mortgage, the judges in the minority may hold that it survives foreclosure. *Federal National Home Loan Corporation v. Cameau*, Boston Housing Court, 98-SP-02864 (Winik, J., July 17, 1998) (dicta). In terms of tenancies with leases, leases survived foreclosure if the tenancy started before the mortgage was signed. *Gorin v. Stroum*, 288 Mass. 6, 11 (1934). If the tenancy started after the mortgage was signed the tenancy was automatically terminated. *Eagle International Paper Co. v. Priscilla Co.*, 281 Mass. 22, 29 (1932), *Eagle Mortgage Corp. v. Matthews*, Boston Housing Court, 28886 (Daher, C.J., December 11, 1990). Cases were clear, however, that all federally-subsidized tenancies still survived foreclosure. *German v. Federal Home Mortgage Corp.* [IV], 899 F. Supp. 1155, 1162-1165 (S.D.N.Y. 1995); *G.E. Capital Mortgage Service v. Dillard*, Northeast Housing Court, 96-SP-02565 (Kerman, J., May 23, 1997); *Federal Home Mortgage Corp. v. Surzhukov*, Hampden Housing Court, 95-SP-1487 (Abrashkin, J., August 9, 1995 and January 22, 1996); *EMC Mortgage Corp. v. Smith*, Boston Housing Court, 95-SP-04794 (Winik, J., January 4, 1996); *Federal Home Loan Mortgage Corp. v. Hobbs*, Boston Housing Court, 95-SP-04475 (Winik, J., December 18, 1995); *Bank for Savings v. Rea*, Boston Housing Court, 91-SP-01561 (Smith, J., August 12, 1991).
4. G.L. c. 186, §13, as amended by Chapter 206 of the Acts of 2007, Section 8 (approved November 29), 2007, which added to the last sentence the following bolded words: "A tenancy at will of property occupied for dwelling purposes shall not be terminated by operation of law . . . **or by foreclosure**"; G.L. c. 186, §13A, as amended by Chapter 206 of the Acts of 2007, Section 9 (approved November 29, 2007), which states: "Foreclosure shall not affect the tenancy agreement of a tenant whose rental payment is subsidized under state or federal law."
5. G.L. c. 186, §13A, as amended by Chapter 206 of the Acts of 2007, Section 9 (approved November 29, 2007), which states: "Upon a foreclosure of residential real property pursuant to chapter 244, a tenant, occupying a dwelling unit under an unexpired term for years or a lease for a definite term in effect at the time of the foreclosure by sale, shall be deemed a tenant at will."
6. G.L. c. 183A, §6.
7. 220 C.M.R. §25.04.
8. During the period between the foreclosure auction and the execution of the foreclosure deed, the "mortgagee-in-possession," i.e., the lender that conducted the foreclosure sale, is responsible for repairs. See definition of "owner" in 105 C.M.R. §410.020.
9. G.L. c. 186, §14; *Attorney General v. Dime Savings Bank of New York*, 413 Mass. 284, 291 (1992). Several court decisions have upheld this principle: *Eagle Mortgage v. Matthews*, Boston Housing Court, 92-CV-28886 (Daher, C.J., December 11,

1990); *Garden Management Co. v. Greene*, Suffolk Superior Court, 92-0050-B (King, J., January 23, 1992); *Boston Rent Equity Bd., Massachusetts Tenants Org. and City Life v. Dime Savings Bank*, Boston Housing Court, 92-CV-00185 (Daher, C.J., April 7, 1992).

10. G.L. c. 239, §8A.
11. Land registration is a separate system of recording documents in the Registry of Deeds. A parcel of land becomes registered if it went through a process that makes sure that ownership can never again be disputed. Usually, land becomes registered after a property dispute that was resolved by the Land Court. To determine whether a property is registered land, contact your local Registry of Deeds or go to www.masslandrecords.com. Land that is not registered is called "recorded land."
12. G.L. c. 185, §57 ("[N]o deed, mortgage or other voluntary instrument . . . purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties . . . (as) the act of registration only shall be the operative act to convey or affect the land . . ."); see also G.L. c. 185, §67 (all interests which otherwise deal with the mortgage shall be registered and "shall take effect upon the title only from the time of registration").
13. *Santana v. Brooks*, Boston Housing Court, 05-SP-00541 (Pierce, J., April 14, 2005).
14. G.L. c. 239, §9.
15. G.L. c. 186, §15B(5).
16. G.L. c. 186, §15B(5) ("The liability imposed by this paragraph shall not apply . . . to a foreclosing mortgagee or a mortgagee in possession which is a *financial institution chartered by the commonwealth or the United States*") (emphasis added).
17. *Flewelling v. Brookline Savings Bank*, Boston Housing Court, 92-SC-00211 (Smith, J., May 4, 1993); *Mall Apartments Realty Trust v. Hernandez*, Hampden Housing Court, 91-SC-1865 (Abrashkin, J., March 16, 1992); G.L. c. 186, §15B(5) ("The liability imposed by this paragraph shall not apply . . . to a *foreclosing mortgagee or a mortgagee in possession* which is a financial institution chartered by the commonwealth or the United States") (emphasis added).
18. G.L. c. 186, §15B(7A).
19. 105 C.M.R. §410.481.
20. G.L. c. 244, §15A.
21. G.L. c. 244, §15A.
22. For Boston, at www.cityofboston.gov/assessing/search/; for Springfield, at www.springfieldcityhall.com/finance/assr-search.0.html; for Worcester, at www.ci.worcester.ma.us/aso/value_search.htm.
23. For Norfolk County, at www.norfolkdeeds.org; for Plymouth County, at www.regdeeds.co.plymouth.ma.us; and at www.masslandrecords.com for all other counties in Massachusetts.
24. 50 U.S. Code Appendix §§501-596.
25. *Mizner v. Munroe*, 76 Mass. 290, 293 (1858); *Rising v. Standard*, 17 Mass. 282, 287 (1821).
26. *Accredited Home Lenders, Inc. v. Corbin*, Boston Housing Court, 06-SP-06151 (Edwards, J., February 21, 2007) (72-hour notice sufficient); *Hart-Houston v. Bailey*, Boston Housing Court, 07-SP-02646 (Muirhead, J., September 14, 2007) (7-day notice sufficient).
27. G.L. c. 239, §8A; *Hodge v. Klug*, 33 Mass. App. Ct. 746, 753-55 (1992).
28. But see, *Mirza v. Silva*, Boston Housing Court, 98-SP-05492 (Daher, C.J., February 3, 1999) (G.L. c. 239, §8A does not apply to former owners when bad conditions already existed at time of foreclosure).

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29. 11 U.S.C. §362 (a)(3) ("a [bankruptcy petition] . . . operates as a stay . . . of . . . any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate"). This stay is not available if you have filed for bankruptcy unsuccessfully twice before over the past year. 11 U.S.C. §362 (c)(4)(A).
 30. See, e.g., *In re Sima Schwartz a/k/a Sima M. Schwartz*, U.S. Bankruptcy Court, District of Massachusetts, 06-42476-JBR, Memorandum on Decision on Motion for Relief (Rosenthal, J., April 19, 2007).
 31. G. L. c. 239, §9; see also *Rothman v. Lane*, District Court, Dorchester, 93-CV-0436 (Anderson, J., June 9, 1993). The courts also have the general power to issue orders that are "equitable," or fair, and can use this power to give a former homeowner more time to move.

