

Chapter 18

Tenants & Foreclosure

Legal Tactics: Tenants' Rights in Massachusetts
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Tenants, Foreclosure, and Eviction

Tenants' Rights in Massachusetts

Foreclosure is when a bank or other lender (“foreclosing entity”) takes back property because the owner did not repay the loan. The bank usually holds an auction, and the highest bidder becomes the new owner.

Before a Foreclosure

If you think your apartment is in a property that may be foreclosed, protect yourself:

- Keep paying your rent. Pay your rent by check or get a receipt as proof you paid.
- Find or get proof that you paid a security deposit.
- Keep all notices, proof of rent payment, and all communication between you and the owner (landlord) in a safe place.
- If you think you might be able to buy your apartment, take a course for first-time homebuyers.

After a Foreclosure

Your options after a foreclosure depend on your rental agreement, what the new owner wants, and what you want. You could:

Stay and continue renting. Most tenants have this right. **Be careful!** If someone other than a bank asks you for rent, ask for proof that they own or manage your building.

Stay until a court hears your eviction. A new owner may try to evict you quickly to sell the property or rent to someone else. You only need to move out if a court orders you to leave.

Take “cash for keys.” The new owner may offer you money and a written agreement to leave by a certain date. Read the agreement carefully. It may ask you to give up your

security deposit, your right to sue, or other things. You do not have to accept it and may be able to negotiate a better agreement that gives you more money and time to move.

Buy the property. Buying the property may not be easy. But if it is a good price and you can afford it, first-time homebuyer programs and other non-profit loan programs can help.

Whom should I pay rent to?

Pay the old owner until the foreclosure. After the foreclosure, pay the new owner. Pay by check or get receipts. If you don't know where to pay, put rent in a savings account.

Who is the new owner?

The new owner should send tenants a notice that tells them the new owner's name, how to contact the new owner, and where to send the rent. If you do not get a notice, look for one posted in your building's common area.

Can I be locked out?

No. The new owner may not lock you out. They are only allowed to enter your apartment if you give them permission, if it is an emergency, or if they have a court order.

Can a new owner increase rent?

It depends. While your current lease is active, the new owner cannot raise rent without court approval. To raise rent, the owner must take you to court and prove that the rent you pay now is “unreasonable.”

If you have a Section 8 voucher or other subsidy, the new owner cannot increase your rent. Continue paying the same rent and tell your housing program about the foreclosure.

Who is responsible for utilities?

If the old owner paid for your utilities, the new owner must also pay for the same utilities. If a bank is the new owner, it must pay for utilities. The new owner cannot cut off your utilities. In Massachusetts, usually tenants only pay for utilities if they have agreed to do so in writing.

Who is responsible for repairs?

During the foreclosure process, the foreclosed owner (your old landlord) is responsible for the maintenance of your building. After the foreclosure, the new owner is responsible. If repairs are needed, notify the owner that repairs need to be made. Ask in writing (including by email) in case you later need proof that you notified the owner.

What if I paid a security deposit?

If you paid a security deposit to the old owner, you should not lose it. The old owner should transfer it to the new owner. If they do not, the new owner must credit you for the amount you paid and pay interest on your deposit.

Can I be evicted?

If a new owner buys the property after foreclosure, they cannot force you out, lock you out, or shut off your utilities. If the new owner wants to evict you, they must file an eviction case in court and get a court order for eviction. You will have a chance to tell a judge why you should not be evicted.

If the new owner tries to evict you, they must send you a Notice to Quit that asks you to leave in a certain number of days. You do not have to leave by that date.

If you stay past the date in the Notice, the new owner can serve you with a Summary Process Summons and Complaint that tells you there will be a court hearing on the eviction. See **Legal Tactics, Chapter 12: Evictions**.

When can I be evicted?

A Section 8 tenant, tenant at will, or a “Bona Fide Tenant” can usually only be evicted for “just cause” if you:

- Refuse to allow them to inspect, repair, or show property to potential buyers.
- Create a nuisance at the property.
- Use the property for an illegal purpose.
- Refuse to renew your lease.
- Do not pay rent.
- Do not follow your lease.

What is a “Bona Fide Tenant”?

You are a “bona fide” tenant if:

- You moved into your apartment before the foreclosure,
- Your rental agreement was not based on a personal relationship with the previous owner, and
- You are not the old owner’s spouse, parent or child.

What if I have a housing subsidy?

If the foreclosing entity buys the property at foreclosure and you have a housing subsidy, like Section 8 voucher, it has to take over your lease and sign a contract with the agency that administers your subsidy.



For more, scan the QR code to see **Legal Tactics, Chapter 18: Tenants and Foreclosures**
MassLegalHelp.org/LT-Foreclosure

Tenants & Foreclosure

By Amy Anthony

Italicized words are in the Glossary

How Foreclosure Works

In most cases, foreclosures happen when a property owner does not make the required mortgage payments. The owner's bank, or other lender, sells the property to get its money back.

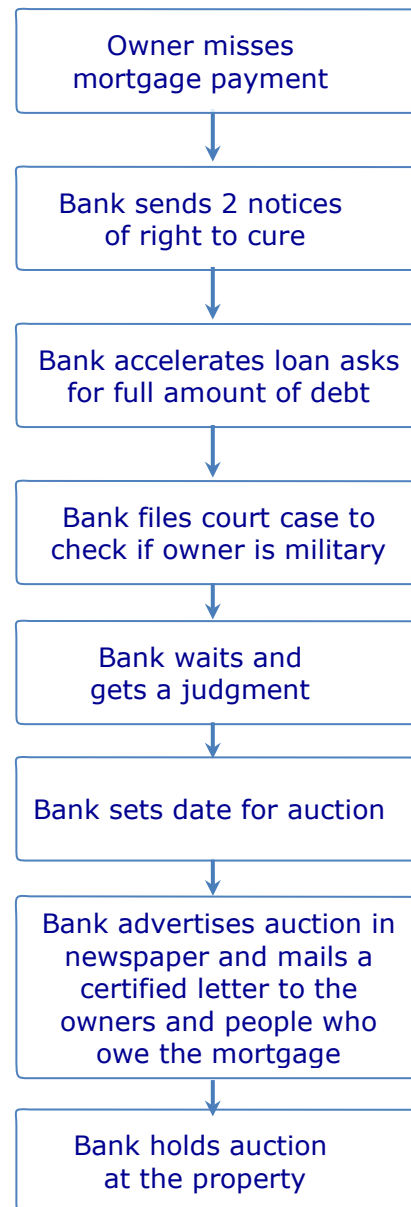
Before a foreclosure sale, the bank must give the owner several notices. This gives the owner a chance to make up the missed payments and avoid foreclosure.

If the owner is in the military, the bank must usually wait at least 9 months until after the owner's military service ends before it forecloses on a mortgage the owner got before they joined the military.¹ Banks usually show they have obeyed this rule by filing a court case.

If the judge decides that no one is in the military, the judge will make a *judgment*. The judgment will say the bank is not breaking the law if it forecloses. The bank must file the judgment at the Registry of Deeds, in the county where the property is located.

When the bank forecloses, it usually holds an auction to sell the property. In Massachusetts, the bank does not have to ask a judge in order to hold the auction.² Instead, the bank must follow several steps:

- Set a date for the auction. Advertise the auction in a local newspaper.
- Mail a notice to the property owners and people who owe the mortgage by certified mail.³



- Hire an auctioneer to stand outside the house to sell the property.
- Hold the auction on the property that is being foreclosed.
- Sell the property to the bidder who offers the most money. Often the bank buys the house at the auction and becomes the new owner.
- As a tenant, you have rights when your landlord gets foreclosed, but you need to take action to protect those rights. The new owner may try to evict you, shut off your utilities, keep your security deposit or last month's rent, or say you do not have legal rights after the foreclosure.

Start to protect your rights as soon as you learn your landlord might lose the property to foreclosure.

If you are a former owner of a foreclosed property, your legal rights are not the same as tenants. See: [Rights of Former Homeowners After Foreclosure](http://www.masslegalhelp.org/housing/foreclosures-homeowners) at www.masslegalhelp.org/housing/foreclosures-homeowners.

What to Do First

If you think your rental unit may be foreclosed, protect yourself **right away**:

- Keep paying your rent,
- Find out who to send your rent to,
- Find out who to contact if your unit needs repairs,
- Take a first-time homebuyer's course, if you think you may be able to buy your rental unit.

1. Keep Paying Rent

Paying your rent is good for you.

- It helps the owner pay their mortgage and avoid foreclosure. If there is a foreclosure, a new owner may want to move into your unit or raise the rent.
- It helps you stay in your apartment if there is a foreclosure. If you pay the rent and you are a "*bona fide tenant*" or *tenant at will* with a month-to-month tenancy, you can only be evicted if your new landlord wants to move in or the landlord has "just cause."

What is a “Bona Fide Tenant”?

You are a “bona fide” tenant if:

- You moved into your apartment before the foreclosure,
- Your rental agreement was not based on a personal relationship with the old owner (lawyers call this an arm’s length agreement), and
- You are not the old owner’s spouse, parent or child.⁴

Important! Pay your rent by check or get receipts. If the new owner tries to evict you, you can prove you paid your rent, even if it was to the old owner after the foreclosure.

When to Pay

Your landlord’s foreclosure may put your housing at risk. Pay rent before and after the foreclosure.

Who to Pay

A foreclosure is final after the bank holds the auction and signs a foreclosure deed transferring ownership of the property to a new owner. See **Check Public Records and Auction Notices**. If the foreclosure is not final, pay the same person you paid before. Once the foreclosure is complete, stop paying the old owner. Start paying the new owner. Pay even if the new owner does not ask you to pay. If you do not know who the new owner is, see: **Find Out Who the Owner Is** in this chapter

The new owner should send you a notice that tells you where to send your rent. The new owner should also put a copy of this notice under your door.⁵ If not, send the new owner a letter asking where to send your payment. Keep a copy of the letter for your records.

If the new owner does not respond or does not accept your rent, put your rent money in a separate bank account. This will protect you if the new owner tries to evict you or says you did not pay rent.

If you have the rent money you have power if the new owner tries to evict you. You can:

- Pay the new owner the rent you set aside if the new owner will let you stay;
- Leave if the new owner agrees not to collect the old rent payments; or
- Fight to stay in your unit even if the landlord tries to evict you in court.

What to Pay

If the new owner asks about your rental agreement, like how much rent you pay and if you pay for heat or electricity, answer their questions. Keep paying the same rent amount. The new owner can only raise your rent if they take you to court and proves that the rent you pay now is “unreasonable.”⁶

2. Find Out Who the Owner Is**Before the Foreclosure**

Until the property is sold and the foreclosure is complete, the owner of your rental property is the same as before. Sometimes, the owner can make an agreement with the bank and stop the foreclosure, even as late as the day of the auction.

At the Foreclosure

Anyone can buy the property at the foreclosure auction, including:

- You or another tenant,
- Any other person or company,
- A non-profit community development organization, or
- A bank.

After the Foreclosure

If the foreclosing bank buys the property and becomes the new owner, it will probably sell the property later. They will probably use a real estate broker or lawyer.⁷ The bank’s broker or lawyer may be the only contact you have with the new owner.

After the foreclosure, you need to find out who the new owner is so you can:

- Pay rent,
- Get help with needed repairs or other problems,
- Protect yourself from eviction, and
- Protect your security deposit and if you paid it, last month’s rent.

Ways to Find Out Who the Owner Is

If you were not told who the new owner is, there are several ways to find out:

Notice in the Common Area

The new owner must post their contact information in the common area of your building.⁸ Not all new owners do this, but if the contact information in the common area has changed, that is probably the new owner.

Notice from the Foreclosing Bank

The foreclosing bank must send a notice to all tenants within 30 days of the sale.⁹

Important: Keep all letters the bank sends you together, in a safe place.

Letter from the New Owner

If the foreclosing bank is the new owner, the bank or its lawyer will send you a notice about where to send your rent.¹⁰ **Caution!** If someone other than the bank asks you for rent, ask for proof that they own or manage your building.

Ask the Real Estate Broker or Lawyer

Sometimes the new owner's real estate agent or lawyer will contact you. Ask for proof that they work for the new owner and ask them who the new owner is.

Check Public Records & Auction Notices

Check your County Registry of Deeds online at: www.masslandrecords.com to see if a *Servicemembers Civil Relief Act Petition* or *judgment* has been filed. You can search using the property address. If it has been filed, the foreclosure process was started. Look on the *petition* or *judgment* to find the name of the bank and the bank's lawyers. You can call the lawyer's office to ask about the status of the foreclosure. You can call the bank and ask if there is an auction scheduled or if one has taken place. Also search your County Registry of Deeds online for a *foreclosure deed*.¹¹ If you find one for your address, the property has already been foreclosed, and the foreclosure deed will list the new owner's name.

Important: Not all new owners 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.

Check the records at your town's Tax Assessor's Office

Banks must notify the local tax assessor's office when they sell a property at a foreclosure sale.¹² Some Tax Assessor's Offices let you search for this information online.¹³ Other offices require you to call or go in person.

Contact MERS

They are a private company that tracks mortgage loans nationwide. They will probably know if the bank has hired a *servicer* to manage the foreclosure. Call toll-free: 888-679-6377, or visit: www.mers-servicerid.org/sis

Check Auction Listings

Some auctioneers have websites where they list upcoming and recently completed auctions. Try:

- www.harmonauctions.com
- www.realtytrac.com
- www.re-auctions.com www.baystateauction.com

The bank must also list auctions in print newspapers. Look for a notice in *Banker and Tradesman* and your local newspaper.

Keep all letters and papers that old owners, new owners, and banks send you together in a safe place.

Your Options After a Foreclosure

Your options after a foreclosure depend on what the new owner wants and does, and what you want.

You could:

- Stay and continue renting,
- Stay until eviction,
- Take “cash for keys,” or
- Buy the property.

Read more to understand these options before you decide what to do.

1. Stay and Continue Renting

a. Bona Fide Tenants

Most *bona fide tenants* in Massachusetts can stay and continue renting after a foreclosure if the foreclosing **bank** or **other mortgage holder** buys the property.¹⁴ If you were renting the property before the foreclosure, **you have the right to stay** even if the new owner wants you to move.

You are a *bona fide tenant* and you can stay if:

- You moved in before the foreclosure,
- Your rental agreement was not based on a personal relationship with the old owner (lawyers call this an arm’s length agreement) and
- You are not the old owner’s spouse, parent or child.¹⁵

Caution! Even *bona fide tenants* have to move out sometimes.

You can stay in your unit and continue renting after the foreclosure unless:

- The foreclosing bank sells the property to someone else;¹⁶
- You do something wrong that gives the owner *just cause* to evict you. See **New Owner Must Have Just Cause to Evict**.

Tenants with Leases – If you are a bona fide tenant with a lease with the former owner, the person or company who buys the property at the foreclosure must honor the remaining term of the lease. The new owner can only terminate your tenancy: 1) at the end of your lease term, or 2) if it enters an agreement to sell the property to a buyer who will use it as their primary residence.¹⁷

Tenants at Will – If you are a *tenant at will* who has a month-to-month tenancy, **you** have the same rights as a *bona fide tenant* if the foreclosing bank buys the property at the auction. You can only be evicted for *just cause* or if the property is sold to someone else. You know you are a *tenant at will* if you do not have a lease and paid rent to the former homeowner on a regular basis. Sometimes you are a tenant at will even if you paid discounted or irregular rent.¹⁸

Important: If a person or real estate investment company buys the property, you have fewer rights than if the bank buys it. The new owner does not need *just cause* to evict you. They can evict you for no reason. But, if you are a tenant, you have tenant's rights and the new owner must take you to court to evict you.

To learn how to fight an eviction, see **Chapter 12: Evictions**.

b. Section 8 Tenants

If you have a Section 8 or other subsidy, you can stay in your unit and pay the same amount of rent after a foreclosure.¹⁹ The new owner must accept payment from you and the housing agency. It is a good idea to let your housing agency know about the foreclosure. The new owner can only evict you for reasons under your lease or for *just cause* if you are also a *bona fide tenant* or *tenant at will*.²⁰

c. Tenants who are NOT “bona fide tenants”

Some people do not have *bona fide tenant* rights. For example, former owners, their immediate family, and people who did not pay rent before the foreclosure are not bona fide tenants. See **What is a “Bona Fide Tenant”?** in this chapter.

If you are **not** a *bona fide tenant* or *tenant at will*, you may have other rights:

Tenant Rights

If you paid rent before the foreclosure, even if you are not a *tenant at will*, you do not have to leave the unit just because of the foreclosure.²¹ If the new owner wants to make you leave, they must ask a court to evict you.²²

Even if you began a tenancy with the former owner *after* the foreclosure, the new owner must ask a court to evict you.²³

Licensee Rights

If you were living at the property before the foreclosure and you had the old owner's permission but did not pay regular rent, you are probably a licensee. Licensees have fewer protections than tenants.²⁴ The new owner must ask a court to evict you if they want you to leave.²⁵

Trespasser Rights

If you moved into the property after the foreclosure without permission from the former owner or the new owner, you are a trespasser. To make you leave, the new owner must go to court for an eviction order or an *Injunction*.²⁶ You get shorter notice and have fewer legal protections than tenants.²⁷

Not a Bona Fide Tenant

If you are not a *bona fide tenant* and you want to stay, ask the new owner to rent to you. Some new owners are happy to have good tenants who already live in the property. They may be willing to rent to you. Others will try to evict you quickly so they can sell the property or rent the apartment to someone else. Either way, you only need to move out if a court orders you to leave.

2. Stay Until Eviction

After a foreclosure, the new owner may give you a *Notice to Quit*. **You do not have to leave.** After you get the Notice to Quit, the new owner will probably file an eviction case in court and ask the court to evict you. You only have to leave if the court orders you to.

If the new owner asks the court to evict you, you can fight the eviction or make an agreement to leave in a certain number of days. Learn how to fight an eviction. See **Chapter 12: Evictions**. Also see **What the New Owner Must do to Evict You**, below.

If you know you want to move, go to court to see if you can make an agreement to leave. An agreement will let you pick a move out date you and your landlord agree on. You may also receive money or “cash for keys” if you agree to move out. See how to make an agreement **Negotiating a Settlement of Your Case (Booklet 11)**. An eviction will be on your public record.

Sometimes tenants stay in their homes for many months after a foreclosure and do not hear from the new owner. If you need help getting repairs made and you do not know what to do see **Repairs After Foreclosure**.

3. Take “Cash for Keys”

Sometimes after a foreclosure, new owners look for less expensive ways to get you to leave than eviction. Some owners send a letter or visit you at home to offer you money to move out quickly. Sometimes their real estate agents will make these offers. They may offer you money if you leave by a certain date. This is called a “cash for keys” offer.

If you do not accept the first “cash for keys” offer, and you decide to fight the eviction, you can usually stay in your home longer than the offer. You may still be able to move out at a later date if you want, and you may get more money.

Warning! Before you accept a cash-for-keys offer, make sure you understand what it means for you. Most cash-for-keys agreements make you give up more than just the keys. They may ask you to sign a paper “giving up all legal claims” against the new owner, including your right to:

- Get your security deposit back,
- Get money for utility shutoffs, or
- Make them responsible for bad conditions or injuries at the property. If you sign a cash-for-keys offer, but change your mind later, you can stay. You only have to leave if a court decides to evict you.

4. Buy the Property

The new owner may put the property up for sale, or you can make an offer, even if it is not for sale. Sometimes the new owner will wait until all tenants move out before they put the property on the market.

If you want to try to buy the property:

- If you or a family member have good credit, you should apply for a home loan. Contact a First-Time Home Buyer Program. They can give you more information and help with your down payment or closing costs.
- If you have a bad credit rating, you may be able to get a loan from a non-profit lender, like BlueHub SUN can buy the property from the bank or the new owner, then sell it to you with a BlueHub SUN loan. You may have to pay a higher interest rate. They also have a rule that if you sell the house later you share the profit with them.

Tip: Buying the property may not be easy. But if it is a good price that you can afford, do not give up!

Utilities After a Foreclosure

1. Who Pays Utilities After the Foreclosure

If your old landlord paid for your utilities, then the new owner must pay for the same utilities. If a bank is the new owner, it has to follow the same rule.²⁸ In Massachusetts, usually tenants only pay utilities if they have agreed in writing to do so.²⁹

You only have to pay utilities if:

- **Water** – If your apartment has a separate water meter, you agreed in writing to pay for the water, and the owners filed a certificate complying with the water law.³⁰
- **Heat and hot water** – You and the old owner agreed in writing that you would pay them.³¹
- **Electricity and gas** – Your unit has a separate meter and you agreed in writing that you would pay.³²

For more information about utilities and who should pay for them, see **Chapter 6: Utilities**.

2. What to Do if the Utilities are Shut Off

If a utility the old landlord used to pay gets shut off, or the utility company sends you a notice that they may shut-off service:

- Notify the new owner right away.
- Tell the new owner they must pay the bill and restore service or stop the shut-off.
- Contact the utility company. Ask them to restore the service, or not shut it off. Tell them your building was foreclosed. Give them the new owner's name. Most utility companies will not shut off services if you are in a foreclosed building.
- If the utility company does not help you, call the Department of Telecommunications and Energy (DTE) hotline. DTE will contact the utility company if they have not followed the law.³³

Outside Boston: 800-392-6006

Boston area: 617-305-3531

- You can also ask the court to order the new owner to pay the utility bills.

To learn more about preventing utility shut-offs, see **Chapter 6: Utilities**.

Repairs After Foreclosure

To get repairs made, you can:

- Notify the owner in writing and ask them to make the repairs.³⁴
- Ask your Board of Health to do an inspection and give you a report.
 - After the Board of Health orders the repairs, make the repairs yourself and subtract the cost from your rent.
 - After the Board of Health gives the landlord notice about the problems you can withhold some or all of your rent until repairs are made.
- Withhold rent after you give the landlord notice.
- Ask the Court to order the owner to make the repairs. Ask for a *Temporary Restraining Order* or **TRO**. The court clerk can give you the form. Or you can use **Temporary Restraining Order (Form 15)**.

Make sure you understand your options before you decide what to do.

1. Notify the Owner about the Problems

Notify the owner right away about problems. Notify them by email or mail. Even if you talk to the owner about the problem, put it in writing. You may need proof later. Use **Repair Demand Letter (Form 10)**.

Your letter or email should:

- Be dated,
- List all the problems, and
- Say you want the owner to fix them.

Important! Keep a copy of every letter or email you send the owner. Also keep a record of everything you do to try to fix the problem.

You can also notify the new owner's real estate agent, property manager, or lawyer. The owner must repair problems in your unit and the common areas of your building. They must also take care of snow removal.³⁵

To learn more about repairs, see **Chapter 8: Getting Repairs Made and Housing Code Checklist (Booklet 2)**.

2. Ask Your Board of Health to Do an Inspection

If your situation is serious, like having no heat in the winter, ask the Board of Health to do an emergency inspection. Give them the new owner's name, address, and phone number. If the Board of Health says there is a violation of the *sanitary code*, they give a copy of the report to the owner and order them to make repairs by a certain deadline.³⁶ They should also give you a copy of the report. If they do not, ask for a copy.

Tip: You can find your local Board of Health phone number online or at your town hall.

3. Repair and Deduct or Withhold Rent

If the new owner accepts your rent, but refuses to make repairs ordered by the Board of Health you can either:

- Make the repairs then subtract the cost from your rent,³⁷ or
- Withhold rent until the owner makes the repairs.³⁸

To repair and deduct the cost of repairs from your rent follow these steps:

1. Ask the Board of Health to do an inspection. They should give you and the new owner a copy of the report that lists the problems that need repair. If they do not give you a copy, ask for one.
2. Wait 5 days to see if your landlord begins or contracts to make necessary repairs or 14 days to see if they are 'substantially' complete.
3. Get the repairs done, and keep receipts.
4. Subtract the cost of the repairs from the rent.
5. Send copies of the receipts and your calculations to the owner when the rent is due. You may deduct only a total of 4 month's rent in any 12-month period or the number of months you have lived there if less.³⁹

To withhold some or all of your rent follow these steps:

1. Make sure that the owner has notice of the bad conditions. Call the Board of Health and ask them to do an inspection. They should give the new owner a copy of the report that lists the problems.

2. If the owner refuses to make repairs do not pay the rent. Instead put your rent money in a separate bank account until the repairs are made. This may protect you if the new owner tries to evict you or says you did not pay rent.⁴⁰

Caution! These options are complicated. If you do not do either of them correctly, you may get evicted. Before you decide to use these options, see: **Chapter 8: Getting Repairs Made and Rent Withholding Letter (Form 12)** and **Repair and Deduct Letter (Form 13)**.

4. Get a Court Order

You can ask the court to order the owner to make the repairs. Follow these steps:

- Ask the Board of Health to do an inspection. They should give you and the new owner a copy of the report, which lists the problems that need repair. If they do not give you a copy, ask for one.⁴¹
- If the owner refuses to make repairs after getting this report, take a copy of the report to your local housing or district court. Also take this information with you:
 - The name, address, and phone number for the new owner, or their property manager or real estate agent.
 - If the old owner is fighting to keep your building, you could also include the old owner's information.
- Fill out a court form that asks for a *Temporary Restraining Order* (TRO). The court clerk can give you the form. Or you can use **Temporary Restraining Order (Form 15)**.
- The clerk will ask you to pay a filing fee. If your income is low, you can ask the court to waive the fee. First, you will have to fill out and file the **Affidavit of Indigency Form (Booklet 10)**.

5. Take Photos and Keep Notes

Good documentation will help you get the problems fixed or win your case if you have to go to court.

- Take photos of the problems.
- Keep notes or make a list of each time you tell the owner about the problems.
- Keep copies of any letters or emails about the problems you send.

- Keep the receipts if you have to fix something yourself.
- The best way to document the problems is to call your local Board of Health or Inspectional Services Department, and ask for an inspection.

What the New Owner Must do to Evict You

1. Foreclosing Owner Must Have Just Cause to Evict

If you are a *bona fide tenant*, or a *tenant at will* in a foreclosed property, you can stay in your unit after the foreclosure unless:

- You do something wrong that gives the owner *just cause* to evict you,⁴² or
- The buyer at the foreclosure sells the property to a bona fide third-party purchaser.
- The foreclosing owner has *just cause* to evict you if you:
 - Refused to give the foreclosing owner reasonable access to the unit to inspect, make repairs, or show the property to potential buyers,
 - Created a nuisance or problem at the property,⁴³
 - Allowed the property to be used for an illegal purpose,
 - Refused to renew your lease,⁴⁴
 - Did not pay rent.
- Did not follow your lease or a rule or responsibility. The owner must send you a notice that says what you did wrong. They must give you 30 days to correct the problem. If you correct the problem by the deadline they cannot evict you.⁴⁵
- Even if you do nothing wrong to give the owner *just cause* to evict you, the foreclosing owner can evict you if they enter into a binding sales contract to sell the house.

2. What Steps Must the Owner Take

If a new owner purchases the property after foreclosure, the new owner **cannot** force you out, lock you out, or shut off your utilities.⁴⁶ The new owner **can** ask the court for an eviction order, but that takes time. You will have a chance to tell the judge why you should not be evicted. You can ask the court or a mediator for more time.

If the new owner wants to evict you, they must follow these steps:

- **Send you a *Notice to Quit*.** This notice says your *tenancy* is over. It will tell you the number of days before the owner can go to court to evict you.
- **Send you a Summary Process Summons and Complaint.** The Complaint tells you that the owner is asking the court to evict you. The Summons tells you when to come to court and when to file an Answer.
- **File the Summons and Complaint** with the court prior to the Entry date.
- **Send you a notice of the first court event.** This notice tells you when to come to court, where to go, and when to file an Answer.
- **Show up at the court event** on the date in the notice. At the first court event, you and the new owner will go to *mediation*.
- **Court hearing.**

a. Notice to Quit

The first step in the eviction process is a *Notice to Quit*. You do not need to leave when you get a *Notice to Quit*. The new owner must give you the following notice before an eviction:

Reason for eviction	Days before owner takes you to court
If the foreclosure occurred in 2014 or earlier or after June 23, 2018. ⁴⁷	90 days notice.
If you did not pay your rent ⁴⁸	14 days notice
Most other reasons ⁴⁹	1 month notice (if you pay monthly; otherwise the number of days in your regular rental period.)
If you do not pay regular rent ⁵⁰	3 months notice, or, the rental pay period if it is between 30 days and 3 months.

Learn more about eviction notices in **Chapter 12: Evictions – Receiving Proper Notice.**

b. Summons and Complaint

If you do not leave by the deadline in the Notice to Quit, the new owner must serve you with a *Summons and Complaint*. A constable or sheriff must hand this paper to you or to an adult in your home. If the officer cannot hand it to you, they will leave it at your door. They will also mail you a copy.⁵¹

If you receive a *Notice to Quit* or a *Summons and Complaint*, **do not ignore it.** Click here to see a sample **Summons and Complaint (Form 19).**

c. Notice of First Court Event

After filing the Summons and Complaint in court, the new owner will serve you with a notice of the first court event. Read it carefully so you will know:

- Where to go to court,
- When to go to court, and
- The deadline to file an *Answer*.

You must attend all court events. If you miss a court event or arrive late, the court may enter a default against you and then allow the new owner to evict you.

Learn more about summons and complaints in **Chapter 12: Evictions - Receiving Proper Notice**.

d. Answer

The Answer is your first chance to tell the Judge your side of the story. If you want to fight the eviction or just get more time it is very important to file an *Answer*. See **Answer (Booklet 3)**. **You must file and serve the Answer 3 business days before your first court event.**

e. First Court Event

The first court event is a *mediation*. In *mediation*, an independent court employee called a “housing specialist” will meet with you and the new owner to see if you can reach an agreement. If you are not able to reach an agreement with the new owner, the court will schedule your case for a court hearing in front of the judge in two weeks or longer. See **Chapter 12: Evictions - Fighting an Eviction in Court**.

f. Discovery

Discovery is how you get information from the owner about their case against you in court and information to help your case. To learn how to make the new owner give you copies of their proof, see **Chapter 12: Evictions - Fighting an Eviction in Court**.

g. Legal Help

Foreclosure cases are complicated. It is important to try to get legal help when you fill out the Answer and Discovery forms. For information about where to find a lawyer go to: www.MassLegalHelp.org/FindLegalAid.

Some courts have volunteer lawyers who help tenants on “eviction day.” These lawyers offer limited help. Not all courts have volunteer lawyers. Call the court where your case is to see if there are volunteer lawyers available.

h. Court Hearing

If your landlord wants to evict you, they must go to court and give evidence to the judge. The new owner will not automatically win the case. You have a right to a court hearing to fight the eviction.⁵²

If you did not reach an agreement in mediation, your next court event will be a hearing with a judge. What happens at the hearing depends on whether you requested a jury trial in your case.

Jury Demand: Case Management Conference. If you filed an Answer with a Jury Demand, the court hearing will be a Case Management Conference in front of a judge. At this hearing, the court will check in on the status of the case and may set a schedule for trial.

No Jury Demand: Trial. If you did NOT file an Answer with Jury Demand, the court hearing is the trial. At trial, the new owner must prove that they have the right to evict you. You will have the opportunity to present your defenses and counterclaims and any evidence you have. The judge then decides who wins.

i. Defense to Eviction

At the trial, you will be able to present your *defense* - a reason why the landlord cannot evict you. Your defense might be one of these:

- **Foreclosure was not done correctly.** If you show it was not done correctly, the new owner does not have the right to evict you.⁵³
- **Notice was not given correctly.** If you show that the owner did not record the foreclosure deed in the Registry of Deeds,⁵⁴ before they gave you the Notice to Quit, you cannot be evicted. It does not matter if the deed was already signed.⁵⁵
- **The new owner violated your lease or broke a law related to your apartment.**
- **There are problems with your security deposit** like your landlord did not keep it in a separate bank account.⁵⁶
- **There are bad conditions in your rental unit.** If this is your defense, notify the landlord about the bad conditions as soon as possible and offer to pay rent.

To learn more about how to defend your case, see **Chapter 12: Evictions - Fighting an Eviction in Court.**

You Can Stay in Your Place After the Eviction

Even if the court says the owner can evict you, you may be able to postpone or prevent the eviction. But you must act quickly. To learn more, see **Chapter 12: Evictions - Challenging a Court - Ordered Eviction**.

a. If the Court Orders You Out

If the owner wins the eviction case, they will get a paper called an *execution* 10 days after the court enters the judgment. The landlord can use the *execution* to have a sheriff or constable physically remove you and your things from your home.

The constable or sheriff must give you 48 hours' notice before they move you out. Only a constable or sheriff can physically move you out.

b. Getting an Order to Postpone the Move Out

If you need more time to move, ask the court to postpone the date you have to move out. Immediately fill out the form in **Stay (Booklet 9)**.

If you are 60 or older or you have a disability, you may ask for up to 12 months; all other tenants may ask for up to 6 months.⁵⁷ The court will decide how much time to give you. **Note:** The court will usually not allow you to stay longer if it was your own fault you were evicted like you did not follow the terms of your lease.

c. Appealing

If you lose and you still think you should have won your case, you may appeal the court's decision. You must file an appeal within 10 days of the court's decision.⁵⁸ Appeals are very complicated. It is important to try and get a lawyer. See **Directory** for a listing of Legal Assistance resources.

d. Requesting an Order to Stop the 48-Hour Move-Out Notice

If you get a 48-hour notice from a constable and you are not able to move out, you can file a complaint for a *temporary restraining order*. The complaint asks the judge to stop the constable from moving you out. See **Temporary Restraining Order (Form 15)**. You have to pay a filing fee. If you cannot afford the fee, file an **Affidavit of Indigency (Booklet 11)**.

e. If You Cannot Get an Order to Stop or Postpone the Eviction

Only a constable or sheriff can physically move you out. They must give you at least **48 hours** written notice before they make you leave. When the constable

arrives, they will have the *execution* paper. This paper lists the names of the adults to be evicted.

The constable **cannot** evict you:

- If you live at the property and you are over 18 but your name is not on the court papers or the *execution* paper.⁵⁹
- If your name is not on the court papers or the execution, the officer cannot evict your family either.⁶⁰ Show the officer your ID and proof of your address. Explain that your name is not on the court papers and they must not evict you.
- But if you get a subsidy to help pay the rent, not every adult needs to be listed on the execution. Only the *head of household* who signed the rental contract needs to be on the execution.

To learn more about all of the above, see **Chapter 12: Evictions - Challenging a Court-Ordered Eviction**.

How to Get Your Security Deposit Back After Foreclosure

You do not lose your security deposit just because the property was foreclosed. The old owner should transfer your security deposit to the new owner at the foreclosure sale. If the old owner does not transfer it, you can still get your deposit back.

In most cases, the new owner is responsible for your security deposit even if the old owner did not transfer the deposit.⁶¹

a. Old owner has security deposit

If the old owner has your security deposit, they are probably having money problems, so do these things right away:

- Send them a demand letter. See **Security Deposit Demand Letter (Form 5)**.
- If the old owner does not return your deposit, you may have to sue them in court. See **Chapter 3: Security Deposits and Last Month's Rent**.

b. New owner has security deposit

Usually, it is easier to get your deposit back from the new owner than the old owner. If the old owner gave the new owner your security deposit, the new owner must notify you within 45 days that they have it. The security deposit must be held in a separate account that earns interest.⁶²

Note: The new owner usually owes you the security deposit even if they did not get it from the old owner. The new owner can choose to pay you the deposit amount or to give you free rent for the amount of time the security deposit would have paid for.⁶³ If the old owner did not transfer the security deposit, you could get it from them instead. You can only get it back once.

- **Exception:** Some banks do not have to repay you if the old owner did not give them the deposit.⁶⁴

If the new owner refuses to give you your security deposit, send them a demand letter. See **Security Deposit Demand Letter (Form 5)**. If they still do not return your deposit, you may have to sue them in court. See **Chapter 3: Security Deposits and Last Month's Rent**.

If the old owner or new owner does not give you your deposit back, you can sue them for **3 times** the amount owed.⁶⁵

To learn more about required foreclosure notices and the foreclosure process, see our publication, **Foreclosure for Homeowners** at MassegalHelp.org/housing/foreclosures-homeowners.

c. Last Month's Rent

After a foreclosure, you do not lose your prepayment of last month's rent or the interest on it. Like your security deposit, the old owner must give the money to the new owner.⁶⁶ The new owner has **45 days** to send you a notice saying that they have your last month's rent and security deposit. If the old owner did not give the new owner your last month's rent then you can get your money from either of them.

Exception: If the bank that foreclosed is the new owner, you may not be able to get your last month's rent back from them if the old owner did not transfer it.⁶⁷

To get the money from the old owner, write a letter to demand they return your last month's rent, plus interest. The old owner **must** return your last month's rent plus interest unless they transferred it to the new owner and you were sent notice.⁶⁸

If you gave the old owner last month's rent, do not pay the new owner last month's rent. They cannot make you pay it again.⁶⁹

If you paid the old owner last month's rent, send a letter to the new owner that says:

You already paid the previous owner, and the old owner was required to transfer all security deposits, payments for last month's rent, and interest on each to the new owner.⁷⁰

To learn more about your right to get your deposit, last month's rent, and interest, see **Chapter 3: Security Deposits and Last Month's Rent - New Owners**.

Organizations that Help Tenants with Foreclosure

In Massachusetts, many cities have “bank tenant associations” (BTAs). BTAs help tenants living in foreclosed buildings and homeowners facing foreclosure. BTAs:

- Hold meetings where you can learn more about your rights.
- Hold meetings where you can find out how to protect yourself against banks or investors who do not follow the law.
- Organize protests and rallies to protect members who are in trouble. You do not have to participate to get their help.
- Sometimes bring lawyers to meetings to give you legal advice.
- May offer to send someone to negotiate with your owner to help you get repairs made or make your rent more affordable.

To find a BTA near you, call City Life: 617-524-3541.

Endnotes

1. [50 U.S.C.A. § 3953](#). This is called a Servicemembers Civil Relief Act petition. An amendment passed in 2012 established that the wait period is 1 year. This was extended to be effective until December, 31, 2017. On January 1, 2018, this time period reverts to 9 months. Pub. L. 112–154, title VII, §710(d)(3), Aug. 6, 2012, 126 Stat. 1208 , as amended by Pub. L. 113–286, §2(2), Dec. 18, 2014, 128 Stat. 3093 ; Pub. L. 114–142, §2(2), Mar. 31, 2016, 130 Stat. 326, provided that: "Effective January 1, 2018, the provisions of subsections (b) and (c) of section 303 of the Servicemembers Civil Relief Act (50 U.S.C. App. 533) [now 50 U.S.C. 3953], as in effect on July 29, 2008, are hereby revived."
2. When banks foreclose without going to court they use the "power of sale." To use the power of sale, banks must follow all the terms of the mortgage and obey state foreclosure laws.
3. [G.L. c. 244, § 14](#).
4. [G.L. c. 186A, §1](#).
5. [G.L. c. 186A, §3](#).
6. [G.L. c. 186A, §5](#).
7. 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 their original loan. 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 list and sell the property after foreclosure.
8. [G.L. c. 186A, §3](#); [105 C.M.R. §410.481](#).
9. [G.L. c. 244, §15A](#).
10. [G.L. c. 186A, §3](#).
11. www.masslandrecords.com
12. [G.L. c. 244, §15A](#).
13. For Boston, at www.cityofboston.gov/assessing/search/; for Springfield, at www3.springfield-ma.gov/finance/assessors/; for Worcester, at www.worcesterma.gov/e-services/search-public-records/property-values.
14. A mortgage lender may be the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).
15. [G.L. c. 186A, §1](#). Even if you are a family member of the former homeowner, you may still be able to stay if you are a *tenant at will*.
16. [G.L. c. 186A, §2](#). A foreclosing owner can evict a tenant if a binding purchase and sale agreement has been executed with a bona fide third party purchaser.

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17. Protecting Tenants at Foreclosure Act. Title VII of Public Law 111–22 section 702; Economic Growth Act, section 304, Pub. L. 115-174. Section 304 titled “Restoration of the Protecting Tenants at Foreclosure Act of 2009” and codified at 12 USC 5220 note.
18. [Ducker v. Ducker](#), 1997 Mass. App. Div. 147 (Northern District, September 22, 1997)(Court finds that payment of taxes, water, and sewer and utility bills is sufficient consideration to support creation of tenancy at will and 90 days’ notice was required prior to eviction.) See also *FNMA v. Duarte*, 84 Mass. App. Ct. 1136 (2014) (In a Rule 1:28 decision, the court noted that a tenancy at will requires consideration and the consent of both parties, and although consideration usually takes the form of rent, any consideration that would support a contract is sufficient. Affidavits and exhibits submitted by Ms. Duarte and her mother created a triable issue as to whether their “arrangement” was an oral agreement to create a tenancy at will and was supported by adequate consideration, and if there was a tenancy at will, whether the notice to quit was adequate.)
19. [G.L. c 186 §13A](#).
20. [G.L. c 186 §13A](#).
21. *Wells Fargo Bank v. Roberto*, Northeast Housing Court, No. 12-SP-2836 (Kerman, J., October 23, 2013) (Daughter of former mortgagor had a written lease with the former owner prior to the foreclosure. The notice to quit informed them they had 90 days to vacate "if you are a tenant," but the new owner commenced summary process prior to the expiration of 90 days. The Judge dismissed the case based upon this.) See also *FNMA v. Rodriguez*, Northeast Housing Court, No. 13-SP-3622 (Kerman, J., April 23, 2014) (At least a 30 day notice to quit was required for sister of former mortgagor who paid rent prior to the foreclosure pursuant to G.L. c 183, §§[12](#) & [13](#).)
22. The use of injunctions as a substitute for summary process is frowned upon, because summary process is considered an adequate remedy at law. See *Slavin v. Lewis*, 101 Mass.App.Ct. 1110 (unpublished opinion 2022) (Homeowner moved out and sought a preliminary injunction to remove former romantic partner from the home. Court noted that “while the question remains whether summary process is the exclusive remedy available or whether Slavin may alternatively seek to remove Lewis by means of a trespass action and an injunction [. . .] there is a strong argument that summary process is indeed the exclusive remedy available) (citing [General Laws c. 184, § 18](#), provides that “[n]o person shall attempt to recover possession of land or tenements in any manner other than through an action brought pursuant to [the summary process statute] or such other proceedings authorized by law.” *Attorney General v. Dime Savings Bank*, 413 Mass. 284, (1992) (barring foreclosing bank from evicting former owners or tenants of former owners by injunction for trespass). See also *Serreze v. YWCA of Western Massachusetts, Inc.*, 30 Mass. App. Ct. 639, (1991) (Although a classic tenancy relationship did not exist, the court found a breach of quiet enjoyment under G.L. c. 186, §14 after a self-help eviction as the plaintiffs, as "occupants" of "residential premises," qualify for its protections and remedies). In some cases, though, even if summary process is required, an owner may be able to get injunctive relief where there is an immediate danger that needs to be addressed pending the outcome of the eviction. *New Bedford Housing Authority v. Olan*, 435 Mass. 364, (2001) (while public housing tenant is entitled to request jury trial where tenancy is annulled under [G.L. c. 139, §19](#), preliminary injunctive relief prior to trial is possible if there is ongoing violence or drug activity in unit).
23. *Federal Nat'l Mortgage Ass'n v. Gordon*, 91 Mass. App. Ct. 527, 90 N.E.3d 661 (2017) (Tenant entered into lease with former owner after the bank both foreclosed and commenced a summary process action against the former owner. Fannie Mae attempted
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- to remove the tenant through a trespass action. The court held that tenant was entitled to summary process where they entered with permission from the former homeowner who had actual possession of the property.)
24. Licensees are not allowed to raise certain defenses in court. *Spencer v. Reynolds*, Boston Housing Court, 12-SP-1987 (Muirhead, J., June 27, 2012) (Defendant moved into property at owner's invitation, but relationship deteriorated. Court finds that defendant was a licensee and not a tenant and finds license properly revoked. No [G.L. c. 239, §8A](#) rights to defense or counterclaim for licensee. As occupant, defendant can bring claims for breach of warranty and habitability, but would have to be pursued separately.)
25. Owner cannot evict person lawfully in occupancy except through summary process under [G.L. c. 239](#) or other appropriate civil process. [G.L. c. 184, §18](#). See *Federal Nat'l Mortgage Ass'n v. Gordon*, 91 Mass. App. Ct. 527, 90 N.E.3d 661 (2017) in Note 24. See also *Beacon Park Associates v. Corbett*, Mass. App. Ct. (unreported), No. 96-J-693 (Lawrence, J., October 25, 1996) (single justice opinion authorizing injunction to exclude occupant who was licensee) See, *Schachtel v. Hassan*, Boston Housing Court, 08-CV-974 (Muirhead, J., December 18 2008) (Court finds that defendant allowed plaintiff to occupy premises and he had key and was free to come and go. No evidence to support claim Plaintiff paid rent. Court finds that it was plaintiff's burden to show that he paid rent, and absent such proof, he was a licensee; licensee entitled to reasonable notice of revocation of license, and if licensee then fails to vacate, licensor can only obtain relief through court. Court enters judgment for plaintiff and permanent injunction against removing him from premises without due process; owner is free to utilize summary process.) The criminal trespass statute, [G.L. c. 266, §120](#), which allows arrest of persons not lawfully on property, does not apply if the person was an authorized occupant at some point prior to a claim of trespass.
26. Housing Courts allow the use of civil injunctions to declare that someone is a trespasser or licensee without right to occupy. See *Beacon Park Associates* in previous note (single justice opinion authorizing injunction to exclude occupant who was a terminated licensee.) Seeking such an injunction avoids illegal self-help (and possible damages for doing that). However, if there is a colorable claim of a tenancy, courts will usually deny an injunction. See *Federal Nat'l Mortgage Ass'n v. Gordon* in Note 24.
27. *U.S. Bank National Assn. v. Adekunle & Anjorin*, Boston Housing Court, 12-SP-3433 (and related civil action) (Winik, F.J., April 13, 2014) (Court authorizes changing of locks without further notice and holds that any personal property remaining in the property is deemed abandoned.)
28. The definition of "owner" in the Massachusetts State Sanitary Code is: "Owner means every person who alone or severally with others: (1) has legal title to any dwelling, dwelling unit...." [105 C.M.R. §410.020](#). It is the owner who must supply the occupant with heat, hot water, electricity and gas unless the occupant agrees in writing. [105 C.M.R. §§410.180, 410.190, 410.200, 410.201, 410.354, 410.355](#).
29. [105 C.M.R. §§410.180, 410.190, 410.200, 410.201, 410.355](#). If no such written agreement exists, the owner is legally responsible for the cost of heat and hot water even if the tenant orally agrees to pay for them. *Young v. Patukonis*, [24 Mass. App. Ct. 907 \(1987\)](#). See also [105 C.M.R. §410.354](#) (Property owner must pay for electric and gas bills unless there are separate meters and a written agreement saying tenant must pay).
30. Landlords may bill tenants separately for water if all of the following requirements are met:
- Landlord has installed submeters that measure actual water used in your apartment;
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- Landlord has installed low-flow fixtures;
 - Your tenancy started on or after March 16, 2005
 - Previous tenant was not forced out;
 - There is a written rental agreement that spells out water bill arrangements; and
 - Landlord has filed proper certification.²

If the landlord has failed to follow any one of the above requirements, they cannot bill you directly for water. [105 C.M.R. §410.354 \(D\)](#).

31. [105 C.M.R. §§410.180, 410.190, 410.200, 410.201, 410.355](#). If no such written agreement exists, the landlord is legally responsible for the cost of heat and hot water even if the tenant agrees to pay for them. *Young v. Patukonis*, 24 Mass. App. Ct. 907 (1987). See also [105 C.M.R. §410.354](#) (Property owner must pay for electric and gas bills unless there are separate meters and a written agreement saying tenant must pay.).
32. [105 C.M.R. §410.354](#).
33. See [220 C.M.R. §25.04 for the process utility companies must follow before terminating services to a tenant](#).
34. 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 section 3 in the definition of "owner," in [105 C.M.R. §410.020](#).
35. [105 C.M.R. §410.452](#).
36. [105 C.M.R. §§410.830, 410.833](#).
37. [G.L. c. 111, §127L](#). See also [940 C.M.R. §3.17\(1\)\(h\)](#).
38. [G.L. c. 239, §8A](#).
39. [G.L. c. 111, §127L](#).
40. [G.L. c. 239, §8A](#).
41. [105 C.M.R. §410.833](#).
42. [G.L. c. 186A, §1](#), the definition of "Just cause."
43. [G.L. c. 139, §19](#).
44. [G.L. c. 186, §13A](#).
45. [G.L. c. 186A, §4\(a\)\(ii\)](#) requiring a foreclosing owner to give a tenant 30 days written notice to cure a material violation of an obligation or covenant of the tenancy or occupancy. See [G.L. c. 186A, §4\(b\)](#) outlining when the notice is necessary.
46. [G.L. c. 186, §14](#); [105 C.M.R. §§410.180, 410.190, 410.200, 410.201, 410.355](#).
47. The Protecting Tenants at Foreclosure Act was enacted in 2009 and expired on December 31, 2014, and subsequently made permanent on June 23, 2018. Title VII of Public Law 111–22 section 702; Economic Growth Act, section 304, Pub. L. 115-174.

Section 304 titled “Restoration of the Protecting Tenants at Foreclosure Act of 2009” and codified at 12 USC 5220 note. The law protects tenants of properties where the tenancy was initiated before the “notice of foreclosure,” and says that the successor takes title to the property subject to the rights of the bona fide tenant. Notice of foreclosure is defined in section 702(c) as “the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.” As long as title passed when the Act was in effect – 2014 or earlier and after June 23, 2018 – the successor takes title subject to the tenant’s rights; the tenant got the rights at the time title transferred.

48. [G.L. c. 186, §§11 and 12.](#)
49. [G.L., c. 186, §12.](#)
50. [G.L. c. 186, §12](#) provides that for termination of a tenancy at will an owner is required to give a lawful occupant a three month notice to vacate the premises unless the owner establishes that rent was payable at periods of less than three months, in which case the greater of a “30 day” or rental pay period notice is sufficient. [Ducker v. Ducker, 1997 Mass. App Div. 147](#) (Northern District, September 22, 1997)(Court finds that payment of taxes, water, and sewer and utility bills is sufficient consideration to support creation of tenancy at will and 90 days notice was required prior to eviction.)
51. [G.L. c. 223, §31; U.S.P.R. 2\(b\).](#)
52. [G.L. c. 239, §8A.](#)
53. See, e.g., [Bank of New York, trustee v KC Bailey, 460 Mass. 327 \(2011\).](#)
54. To determine whether a property is registered land, contact your local Registry of Deeds or go to <http://www.masslandrecords.com>. Land that is not registered is called "recorded land."
55. [Bank of New York, trustee v KC Bailey, 460 Mass. 327 \(2011\).](#)
56. [G.L. c. 186, § 15B.](#)
57. [G.L. c. 239, §9.](#)
58. [G.L. c. 239, §5; U.S.P.R. 12.](#)
59. A person entitled to live at a property cannot be removed without due process of law. U.S. Const. amend. V and Mass. Const. Art. XII and XV. “An eviction action is personal and cannot be sustained against ‘John Doe’ or ‘all others.’ Each tenant at the property must be identified by name on both the notice to quit and the summary process summons and complaint.” [Barros v. Jiminez](#), (Boston Housing Court no. 09H84-SP-1255 (Muirhead, J., April 29, 2009).)
60. See e.g., [Santana v. Brooks](#), Boston Housing Court, 05-SP-00541 (Pierce, J., Apr. 14, 2005) (holding the landlord had to bring one case against both members of a couple who were both lessees for purposes of judicial economy.)
61. [G.L. c. 186, §15B\(5\), \(6\)\(d\), \(7\).](#) See below for an exception to this rule that applies to certain banks.
62. [G.L. c. 186, §§15B\(5\).](#)
63. [G.L. c. 186, §15B\(5\).](#)

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64. Every new owner has to repay your security deposit, whether or not the old owner transferred it to them, except for a bank that foreclosed on the property that is chartered by the Commonwealth of Massachusetts or chartered by the United States. [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."); *Flewelling v. Brookline Savings Bank*, Boston Housing Court, 92-SC-00211 (Smith, J., May 4, 1993).

Whether a purchaser from a foreclosing exempt bank is liable for a security deposit or assumes the exemption of the foreclosing bank is the subject of a housing court dispute. See *Mall Apartments Realty Trust v. Hernandez*, Hampden Housing Court, 91-SC-1865 (Abrashkin, J., Mar. 16, 1992) where the court held that security deposit law did not insulate a purchaser at foreclosure sale from an exempt bank from liability for deposits; see also *Cruz v. Cabrera*, Northeast Housing Court, 92-SC-00074 (Sept. 25, 1992), where court found buyer at foreclosure sale liable to tenants for the return of security deposit and awarded tenant treble damages plus court costs (credited against unpaid rent); but see *Deutsche Bank National Trust Co. v. Cole & Via*, Boston Housing Court (Winik, J., Dec. 13, 2013)(Finding that the statutory language exempting foreclosing banks from liability under G.L. c. 186, §15B also exempts successors from liability.).

If the owner is Fannie Mae or Freddie Mac you can argue this exemption does not apply to them because they did not actually foreclose. Usually they are assigned the bid to take ownership after the foreclosure sale so they are not the "foreclosing mortgagee."

65. [G.L. c. 186, § 15B\(7\)](#). See *Castenholz v. Caira*, 21 Mass. App. Ct. 758, 764 (1986).
66. [G.L. c. 186, §15B\(7A\)](#).
67. [G.L. c. 186, §15B\(7A\)](#). See note above for how this rule that applies to certain banks.
68. [G.L. c. 186, § 15B \(7A\)](#).
69. [G.L. c 186 s 15B\(7A\)](#).
70. [G.L. c. 186, § 15B\(7A\)](#).