

Lending woes can also hurt tenants

By Roger Franklin

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Q I rented a home in 2004. In 2006, my landlord refinanced the home. In 2008, the lender foreclosed on the property. What rights do I have as a tenant? What about my security deposit?

A You may be forced to vacate your rented home because of your former landlord's imprudent borrowing. When your landlord defaults on mortgage payments and suffers foreclosure, the ultimate purchaser, which is usually a bank, may evict both your former landlord and you.

If this happens, the tenant must be given a written 30-day notice to quit. A law will soon increase that to 60 days. Unfortunately, you must look to your former landlord for the return of your security deposit. If your former landlord lost the home through foreclosure, he may not have the means to return your deposit. However, if your lease was signed before your landlord borrowed the money, you may have a defense to eviction. That you were living in the house constitutes notice to the lender, even if your lease was not recorded. That means if the property is sold at a trustee's sale, the new owner takes over your lease. Unfortunately, if you are in possession on a month-to-month tenancy, the new owner can still give you notice to vacate.

In this instance, you may look to the new owner for the return of your security deposit. California law provides that a landlord must give you 30 days' notice to terminate a month-to-month tenancy. However, if you've lived there for at least one year, then your landlord must give you at least 60 days' notice. You, on the other hand, may terminate your month-to-month tenancy on written notice at least as long as your periodic term - generally 30 days.

However, there is still the chance that you may be protected from eviction if the property is covered by rent control because most rent-control ordinances state the exclusive grounds for eviction. A 30- or 60-day notice for termination of your tenancy may not be allowed in such circumstances because a "good faith" reason for eviction is usually mandatory in rent-control jurisdictions like Los Angeles, Santa Monica and West Hollywood. The lender, as your new landlord, has to abide by the same local control ordinance as your former landlord did.

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