Centre for Public cplea Legal Education Alberta

LAWS FOR LANDLORDS AND TENANTS IN ALBERTA

Foreclosure for Tenants



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Foreclosure for Tenants

This publication is meant to provide information on foreclosures for tenants.

Foreclosure is a legal process for a mortgagee (a lender, usually a bank) to sell, or take ownership of, a property when the mortgagor (the property owner/landlord) defaults on the mortgage. Each mortgage is different, but common acts of default include:

- failing to pay mortgage payments
- allowing significant damage to occur to the property
- failing to insure the property
- failing to pay taxes or condominium fees on the property

The time a foreclosure takes depends on the situation. The entire foreclosure process can take from three months to a year or more.

Does a tenant have any rights in the process?

Usually not. The people with the strongest rights in the process are those "registered on title"—this is usually the mortgagee (such as a bank). When a landlord buys a property by borrowing money from a bank, the bank will register a mortgage on the property title. This gives the bank the right to foreclose against the property if the landlord does not pay them what is owed.

Sometimes, there may be more than one mortgage registered on title. These debts are listed on title in the order that they occur. This means that if the house is sold and the "first" debt is fully paid, leaving some money left over, the second debt that is listed can now be paid, and so on.

A residential tenancy agreement is usually not listed on title, and if it is, it will almost always be listed after a mortgage. As a result, the tenant's rights come after the rights of those who have their interests registered on title. In fact, there is no obligation for a landlord to inform tenants of the foreclosure. As a result, it is very rare that a tenant can do anything to preserve their rental arrangement.

Can the tenant find out if the property they are renting is being foreclosed on?

Maybe. Some signs that a landlord is having financial problems are:

- the property is not maintained
- utilities are shut off
- no contact or lack of response from the landlord

If a tenant thinks that the landlord is in financial trouble, then the tenant can:

- talk to the landlord
- run a search at the Court of King's Bench to find out if a lawsuit has been started against the landlord

> **Tip:** There is a fee for this service. The tenant will need to know the name of the owner of the property, and this information can be found in the lease or the Notice of Landlord.

- conduct a title search on the property

> **Tip:** Some lawyers register a "Certificate of Lis Pendens" (which means a certificate of a pending lawsuit) on the title to the property when there is dispute involving land. An Alberta Registry Agent can conduct this search for a fee.

None of these methods guarantee that the tenant will find out about a foreclosure. The tenant might not find out until they are served with a court order, requiring them to move out of the property.

Will the tenant have to move out?

It depends on what stage of the foreclosure process the property is in, and what the landlord and bank decide to do. If the landlord works something out with the bank, or brings the mortgage current, then the landlord remains the owner of the property. If the property is sold through the foreclosure process, the new owner will become the landlord.

More commonly, a tenant will need to vacate the property. Whether the bank becomes the legal owner, or the property is sold to another person during the foreclosure process, the bank or new owner will usually have the right to possess the property within 30 days from when the tenant is served with a Court Order requiring them to move.

If a tenant is served with a Court Order, then the tenant should contact the lawyer whose contact information is on the front of the Order and ask for clarification on when they have to move. They can also ask the lawyer for more time to move, but the lawyer may not agree to that request.

Tip: The notice periods under the *Residential Tenancies Act* do not apply if a Justice or Master of the Court of King's Bench issues an Order in the foreclosure requiring that the property be vacant.

Does the tenant still have to leave if it's winter and cold outside?

Yes, the tenant must leave if the Court issues an Order. The weather or temperature outside does not matter. If the tenant does not move, then the new owner can force them to leave through a Civil Enforcement Agency (bailiff).

How can a tenant be informed about a foreclosure process?

Usually the tenant will not know about the foreclosure until it is too late to be involved in the court process at all. If a tenant discovers that the rental property is in foreclosure before a final Order is made, they can file a Notice of Address for Service with the Clerk at the Court of King's Bench. The tenant can then serve a copy of this Notice on the Plaintiff 's lawyer (the bank's lawyer).

Tip: Tenants can see Form 48 of the Alberta Rules of Court (the Rules) for an example of what the Notice of Address for Service looks like. The Rules are available online at the Alberta King's Printer website: **alberta.ca/alberta-kings-printer**

The Notice tells the bank that the tenant wants to know about all the formal steps, such as court applications, that occur during the foreclosure process. Once the Notice has been served, the bank must serve the tenant with documents from the foreclosure action. This Notice only lets the tenant know when an application is occurring.

What happens to the security deposit?

The landlord must deliver the security deposit to the tenant, minus any deductions made for damages or unpaid rent, within 10 days of the tenant giving up possession of the unit. Landlords going through a foreclosure are still responsible for returning the tenant's security deposit.

If the property is purchased by a third party, and the tenancy is not terminated by a Court Order, then the purchaser becomes the new landlord. New landlords are responsible for security deposits, even if they did not receive an amount for the security deposit from the former landlord.

If a landlord does not deliver the security deposit, an estimate, or statement of account within 10 days of the tenant giving up possession of the unit, the tenant can write a demand letter.

For a sample of a demand letter, go to: **www.landlordandtenant.org**



Contacts: Information, Advice and Assistance

Government and Court Services

Alberta Court of Justice (Civil)
albertacourts.ca/cj/home

Court of King's Bench
albertacourts.ca/kb/home

Court and Justice Services (CJS)
CJS is a group of programs and services offered by the Government of Alberta in collaboration with the courts of Alberta.
1-855-738-4747

Legal Advice

Law Society of Alberta Lawyer Directory
Allows people to search for a specific lawyer or find a lawyer who can provide help with a legal issue based on a variety of search criteria.
www.lawsociety.ab.ca/public/findalawyer/

Court Based Legal Advice Programs

If you are living in Edmonton or Calgary, Civil Claims Duty Counsel or the King's Bench Court Assistance Program operating out of the Edmonton Law Courts and Calgary Courts Centre are available. Volunteer lawyers through these programs provide free legal advice and information on court procedures on certain days of the week.

Edmonton

Civil Claims Duty Counsel at Alberta Court of Justice
www.pbla.ca/get-legal-help/civil-claims-duty-counsel/

King's Bench Court Assistance Program
www.pbla.ca/get-legal-help/kings-bench-court-assistance-program/

Calgary

Civil Claims Duty Counsel at Alberta Court of Justice
www.pbla.ca/get-legal-help/civil-claims-duty-counsel/

King's Bench Court Assistance Program
www.pbla.ca/get-legal-help/kings-bench-court-assistance-program/

Legal Clinics

Clinics provide legal information and advice. Legal advice may be free of charge to tenants who meet a clinic's income guidelines.

Calgary Legal Guidance
403-234-9266
www.clg.ab.ca

Central Alberta Community Legal Clinic
Legal clinics in Central Alberta. Call for hours and eligibility.
Central Alberta: 403-314-9129
Fort McMurray: 587-674-2282
Lloydminster: 587-789-0727
Medicine Hat: 403-712-1021
www.communitylegalclinic.net

Edmonton Community Legal Centre
780-702-1725
www.eclc.ca

Grande Prairie Legal Guidance
780-882-0036
www.eclc.ca/grande-prairie-clinic

Lethbridge Legal Guidance
403-380-6338
www.lethbridgelegalguidance.ca

Student Legal Services of Edmonton
780-492-2226
www.slsedmonton.com

Student Legal Assistance (Calgary)
403-220-6637
www.slacalgary.com/

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