

Foreclosures leave renters in the lurch

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Thursday, February 7, 2008

At first, Adriana Diharce ignored the envelope taped to her front door because it wasn't addressed to her. Then she saw the words "trustee sale," so she opened it. The letter said the modest, ranch-style Hayward house rented by Diharce and her husband would be sold at a foreclosure auction.

When Diharce called the phone number on the letter last month, a representative told her the house was slated for auction on Feb. 8 - Friday - and said the couple and their two young children would have to vacate almost immediately after that. Diharce called her landlady, but her phone had been disconnected.

"The landlady owes us our deposit, and we cannot locate her," said Diharce, 29, who is expecting a third child in March. "I am so upset. As a tenant, we have no rights, no deposit and nowhere to go."

Her situation is not unusual. As the mortgage crisis claims more homes - more than 11,000 Bay Area residences were repossessed by lenders last year - an increasing number of tenants are facing rapid evictions by banks eager to partially recoup their losses by selling the properties. In November, a Chronicle analysis of Bay Area foreclosures showed that about one-fifth had nonresident owners. Presumably many of those investor-owners rented out their properties to produce income.

Foreclosure-related evictions of renters show how fallout from the mortgage meltdown can spread even to people who don't own houses.

"We pay our rent on time every month; we figured everything would be all right," said Jesse Vasquez, Diharce's husband.

Tenants' rights in such situations are minimal. If they live in a city with rent control, they are covered by its eviction regulations. Hayward, where Diharce and Vasquez live, does not have rent control for single-family residences.

Otherwise, renters are subject to state law, which generally requires 30 days notice. A foreclosure usually invalidates an existing lease, legal experts said.

Late last month, the state Senate narrowly defeated a bill sponsored by Sen. Don Perata, D-Oakland, that would have required banks to give 60 days notice to tenants in foreclosed properties. It also would have required lenders to provide homeowners with four months notice before mortgage payments increase by 10 percent or more.

Legislation pending at the federal level also would require lenders to give more notice to tenants in foreclosed properties.

"For folks who have been paying their rent on a regular basis, to simply be evicted without cause because the owner has been unable to maintain their mortgage payment is a real problem," said Paul Leonard, director of the California office in Oakland for the Center for Responsible Lending. "In an already flagging market, the idea that foreclosures displace renters without adequate notice creates a level of upheaval and distress that could be mitigated with more reasonable notice provisions."

Nobody tracks how many tenants have faced foreclosure evictions, but anecdotal evidence suggests the number is high.

"We see it all the time," said Elaine Brooks-Cox, housing counselor supervisor at Pacific Community Services, a Pittsburg nonprofit that helps consumers with housing issues. "It's becoming a very common problem now. Most of the time, the renters are not aware the property is in foreclosure until after the trustee sale or right before the trustee sale when the notice is actually placed on the property that the auction is going to happen."

In Oakland, the city attorney's office "hears a ton of anecdotes" about foreclosure-related renter evictions, said Alex Nguyen, director of the Neighborhood Law Corps. "We hear (lenders) send out brokers first being nice and saying we'll give you some cash if you're out in 10 days. When people don't go for it, then they threaten them and tell them they will get evicted."

Nguyen said the city attorney's office is currently writing up protocols for banks to govern how they must treat renters in foreclosed Oakland properties. It will send the provisions to banks and make them available to renters.

"We're trying to protect people from having their lives just blatantly disrupted," he said. "They have a right not to be harassed and bullied by so-called agents of these banks."

Because Oakland has rent control, "generally speaking (tenants) have a right not to be evicted for no cause," he said.

Frances Harris, a landlord-tenant counselor at Oakland nonprofit Sentinel Fair Housing, said she's seen lenders and their property managers do end runs around Oakland's just-cause eviction rule to force tenants in foreclosures to move.

"An agent has gone out and said the tenants don't need to pay rent. Several months later, they get a 'three-day notice to pay or quit' for \$6,000 and the tenant leaves at that point," she said.

Foreclosing banks often don't know about local rent-control laws, she said. "It seems like it's a paper mill of 30-day notices without finding out what the ordinance is, if there is one."

Lenders or their agents often offer home occupants "cash for keys" - an up-front payment to move out by a certain date.

Nguyen said tenants should not necessarily take the first offer.

"We tell tenants they need to be thoughtful about what is the true cost of moving. It isn't going to be \$1,000. It's definitely (more than) one month's rent when you think of what the new rental will cost - moving costs, a new security deposit ..."

Ken Carlson, an Idyllwild (Riverside County) attorney specializing in tenants' rights who maintains a Web site at www.CalTenantLaw.com, said there are several strategies tenants can pursue to extend their occupancy of a foreclosed house.

First, if there were any mistakes in serving the 30-day notice, they can appeal it. Such notices must be in writing; must be served on the tenant either in person or by mailing plus posting to the front door; and cannot be issued until the lender has recorded a trustee deed certifying that it has repossessed the house.

"Tenants are often told by the real estate agent or the bank that if they're not out after 30 days, the police will come and arrest them," he said. "That's not true at all."

If the tenant does not move out after 30 days, the lender must file for unlawful detainer (the formal name for eviction) and get a judge's permission to proceed with an eviction, he said.

"If the tenant has still not found a place to live, he can contest the (unlawful detainer action). It's possible by fighting unlawful detainer for a tenant to get another two or three months. For a tenant surprised by a foreclosure eviction, that additional time can often mean the difference between homelessness for the family and a smooth transition."

Carlson said tenants who agree to "cash for keys" should make sure to get that agreement in writing signed by an authorized bank representative, because he's aware of cases where the tenants moved out and got stiffed on the agreed-upon payment.

The bank that forecloses is obligated to repay any security deposits, Carlson said, but doesn't always follow through.

As for Diharce's security deposit, because it is equivalent to one month's rent, she said an attorney advised her to withhold the February rent and let the deposit cover it.

Diharce is wistful about the house her family has lived in since August 2006.

"We love it; it has just the right layout for the kids," she said. "My mom lives five minutes away and she does day care for our kids." Jesus is a year and a half old, Dalilah, 4.

Diharce, a human resources coordinator for a medical office, and Vasquez, who does electric motor repairs, have been saving to buy a house and would love to stay in their current home until that happens. Moving to a rental and then to a purchased home would be disruptive, she said.

"Especially with children and another one on the way, it makes it more of a big deal to move," she said. "If push comes to shove, we might have to rent" temporarily.

Meanwhile, they are trying to speed up their home-buying process but have not yet begun to pack. Despite what the customer representative said on the phone, the

couple know they are entitled to at least 30 days written notice - which they have not yet received.

"This is stress I don't need," Diharce said.

Where renters can seek help

Resources for people facing foreclosure-related eviction:

-- California tenants' rights: links.sfgate.com/ZCIU

-- A free foreclosure workshop in Oakland on Saturday includes information on renters' rights. 9 a.m. to 12:30 p.m. at Faith Presbyterian Church, 430 49th St. (at Webster St.), (510) 653-9752 to register. Sponsor: Housing and Economic Rights Advocates (www.heraca.org)

-- Renters can consult a local housing counseling agency approved by HUD. See list at links.sfgate.com/ZMW, (800) 569-4287

-- You can check your city's rent control ordinance. Information is generally on city Web sites, listed under "housing," "city attorney" or "city services."

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This article appeared on page A - 1 of the San Francisco Chronicle