

# **What To Do When Your Landlord Is In Foreclosure**



**Legal Services of Greater Miami, Inc.**

**Tenants' Rights Project**

**Renters' Education and Advocacy Legal Lines (REAL)**

**<https://sites.google.com/site/reallsgmi>**

**[www.lsgmi.org](http://www.lsgmi.org)**

## **WHAT IS A FORECLOSURE?**

If your landlord does not pay the mortgage, the mortgage company can file a foreclosure. A foreclosure is a lawsuit filed by the mortgage company when the landlord does not pay the mortgage. In the foreclosure, the mortgage company asks the court to sell the property to pay off the mortgage.

## **WHY DID I GET SERVED?**

Being served means either the Sheriff or a process server will hand you a copy of the foreclosure papers. It will have your landlord's name on it. You are served because you are renting the property. Renting the property can make you a party to the action.

## **WHAT DO I DO NOW?**

You should file a "Notice of Tenancy" with the Court as soon as possible. Use the form included in this brochure. Go to the courthouse and turn in your Notice of Tenancy to the Clerk. Make sure you keep a copy for your records and mail a copy to the attorney for the bank.

## **WHY DO I NEED TO FILE?**

By filing your Notice of Tenancy, the Court and all other parties should send you copies of all important events and decisions in the case. You will not have to rely on your landlord to know what is going on in the case.

## **WHAT IF MY LANDLORD TELLS ME...**

Even if your landlord tells you that they are "working it out with the bank," you should file your Notice of Tenancy. Make sure that you regularly check the Court records to check the status of the case.

## **CAN I MOVE OUT?**

If the landlord does not pay the mortgage, and you want to move out, you can send a letter to the landlord explaining that you are ending your rental agreement in 7 days because he did not pay the mortgage. Make sure you keep a copy. You **MUST** move on the 7th day.

## **HOW LONG DOES THE FORECLOSURE LAST?**

The foreclosure process can last anywhere from 6 months to 2 years or more. Until the property is sold, your landlord is still the legal owner. Your landlord can collect rent until the day the property is sold.

## **DO I HAVE TO PAY RENT?**

**BEFORE** the property is sold, your landlord is still the owner. You must pay rent, or you could be evicted. Once the house is sold at the foreclosure sale, you do not need to pay your old landlord. You should save your rent money to pay the new owner. Make sure you ask for proof of ownership before you start paying the new owner.

## **WHAT IF THE NEW OWNER WANTS ME TO LEAVE?**

### **If you have a written lease...**

If you have a written lease entered into before the foreclosure sale, you can live at the property through the end of the lease. But, if the new owner wants to live in the property, you must receive a written 90 day "Notice to Vacate" telling you to move out in 90 days.

### **If you do not have a lease...**

If you do **NOT** have a written lease, the new owner must give you a written 90 day "Notice to Vacate."

## **WHAT IF THE NEW OWNER WANTS ME TO STAY?**

Sometimes, the new owner will ask you if you want to stay at the property. Make sure that he is the new owner before paying any rent or signing a new lease. You can check with the Clerk's office to see if the foreclosure sale took place, or you can ask your previous landlord for proof that the property sold. You are not required to sign a new lease. Only sign a new lease if you agree with the terms.

## **WHAT IF I DON'T LEAVE?**

If you do not leave when the 90 days have expired, the new owner should file an eviction with the Court. This is our interpretation of the law. But, most new owners may go to the foreclosure court and ask for a "writ of possession," which is a 24 hour notice to leave the property. If you receive a hearing on the Motion for Writ of Possession, make sure you go. At the hearing, you should explain to the court that you are a tenant. If you receive a "writ of possession," you can file an "Emergency Motion to Stay the Writ of Possession." You need to hand deliver this to the Clerk's office. If you are low-income, ask the Clerk for an "Affidavit of Indigence" so you do not have to pay the \$50.00 reopening fee.

## **“CASH FOR KEYS”**

Sometimes the new owner, or the bank, will offer you “cash for keys” to leave the property after it sells. They will offer you money to move out. If you decide to do this, you should make sure your agreement is in writing. Get a copy of anything you sign. Read the agreement before you sign it and make sure you understand everything in it.

## **RECEIVERS**

Sometimes, in multi-family buildings, the mortgage company may ask for a receiver. A “receiver” collects rent from tenants when the landlords are in foreclosure. You must pay your rent directly to the Receiver. Make sure you verify that there is an Order from the Court before you pay your rent to the Receiver.

## **SECTION 8**

If you are a Section 8 participant, and the condo or house you are renting is sold at a foreclosure sale, you should know that you can stay until the end of your lease, and the new owner can start receiving payment from the Housing Authority.

## **DO I HAVE ANY OTHER RIGHTS?**

You might have other claims against the landlord. You should consult an attorney before taking any legal action.

## **FANNIE MAE LOANS**

You may have additional rights if one of the loans on the property you are renting has a loan through “Fannie Mae.” Fannie Mae’s policy is to rent the property to the tenants for at least 12 months after it is sold, and to provide tenants relocation assistance. You should receive a “know your rights” flyer from the agent assigned to your property.

To check if the property has a Fannie Mae loan, go to: <http://www.fanniemae.com/loanlookup/>

## **HOW TO DO I FIND OUT IF MY LANDLORD IS IN FORECLOSURE?**

You can check the status of the foreclosure case online, by looking at the “docket,” or by calling the Court Foreclosure Office at **(305) 375-5943**.

STEP 1:

- Go to the Miami-Dade Property Appraiser’s website at [http://www.miamidade.gov/pa/property\\_search.asp](http://www.miamidade.gov/pa/property_search.asp).
- Click on the “Property Search” link on the right bar. Once at the Property Search site, click on “Begin Search.”
- Type in your property address in order to get the owner’s name.

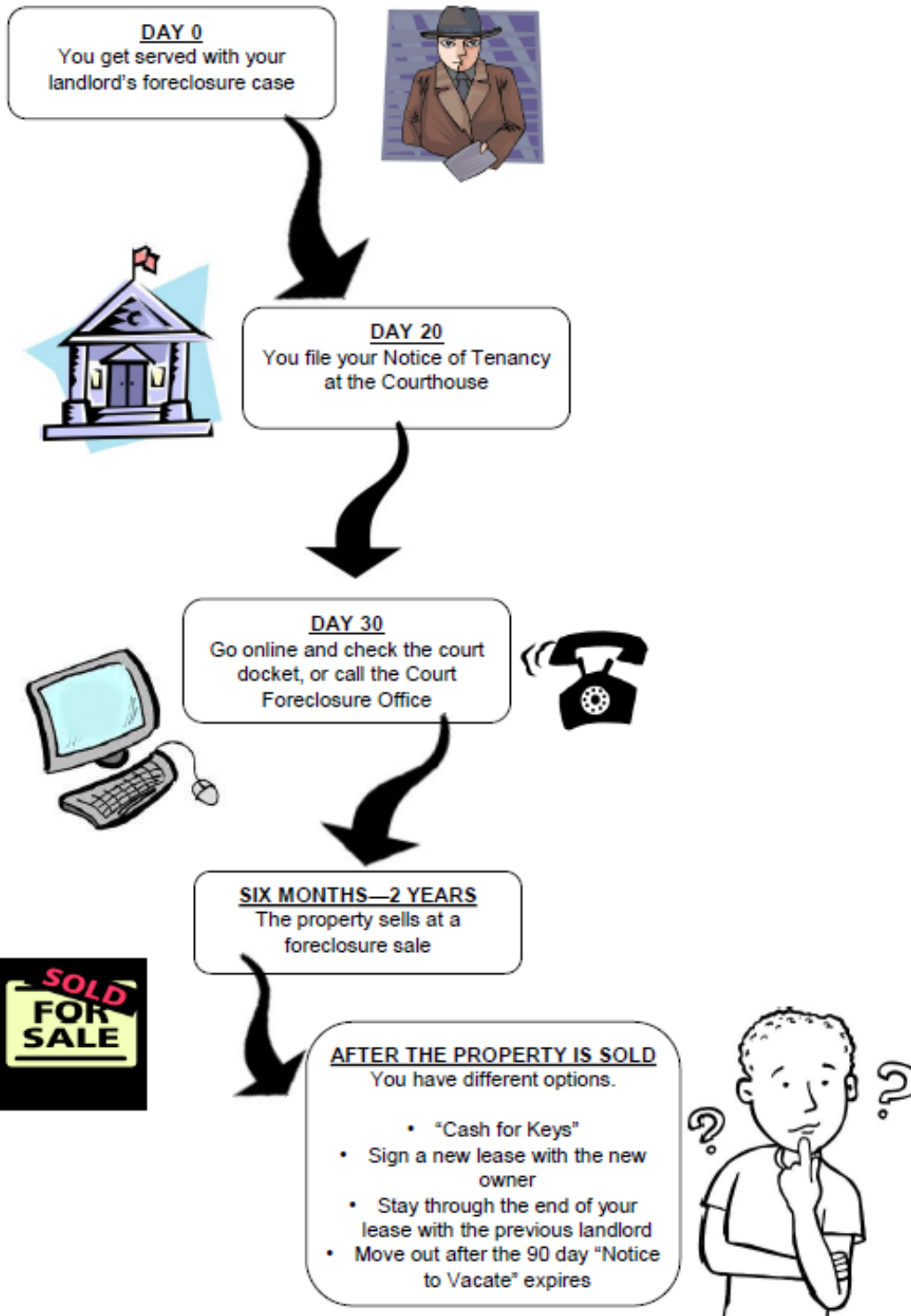
STEP 2:

- Once you have identified the owner of the property, go to the Miami-Dade Clerk of Court website at [www.miamidadeclerk.com](http://www.miamidadeclerk.com).
- Go to the County Recorder’s Official Record Search link (URL <http://www2.miami-dadeclerk.com/public-records/Search.aspx>).
- Enter the owner’s name into the appropriate field. Select “Lis Pendens” in the document type field. Click search.
- Open the PDF of the document to see the lis pendens for your property. Note the case number for future reference.
- If you find a lis pendens that matches the legal description of the property, then you know that at some point the mortgaging entity initiated a foreclosure. However, this may not mean that the property is still in foreclosure (which is why you must continue to STEP 3).

STEP 3:

- Go to the Clerk of Courts website again and search the civil/probate docket at <http://www2.miamidadeclerk.com/Civil/Search.aspx>. Enter the case number from the lis pendens or the owner’s name in the appropriate field. Click on the word “Docket” to get the latest update on your landlord’s foreclosure case.
- What to look for:
  - “Final Judgment.” This means your landlord has lost the case, and a sale will take place soon.
  - “Sale Date,” or “Notice of Sale.” This is the day that the property will sell. Sometimes it changes, so check often.
  - “Certificate of Title.” This means the sale is final. Your landlord is no longer the owner.

# FORECLOSURE TIMELINE





## **Legal Services of Greater Miami, Inc.**

### **Main Office**

3000 Biscayne Boulevard, Suite 500  
Miami, FL 33137  
Telephone: (305) 576-0080  
TTD: (305) 573-1578

### **South Dade**

11285 SW 211 Street, Suite 302  
Miami, Florida 33189  
Telephone: (305) 576-0080  
TTD: (305) 573-1578

### **Monroe County**

Telephone: (877) 715-7464  
TTD: (877) 715-7461

***Passionately Committed to Equal Justice***

These materials were prepared by Legal Services of Greater Miami, Inc. and may not be reproduced or disseminated without prior written authorization from LSGMI.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY

CIVIL DIVISION

Case No. \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,

vs.

\_\_\_\_\_,  
Defendant(s).

\_\_\_\_\_ /

**NOTICE OF TENANCY**

I am a tenant renting the property, which is the subject of this foreclosure, located at:

\_\_\_\_\_  
\_\_\_\_\_

I have a rental agreement with the Defendant(s), \_\_\_\_\_ dated \_\_\_\_\_  
\_\_\_\_\_. My lease ends on \_\_\_\_\_. This case is governed by the Protecting Tenants in  
Foreclosure Act ("PTFA"). I would like to be notified of \_any hearings or judgments entered in the case.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY

CIVIL DIVISION

Case No. \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,

vs.

\_\_\_\_\_,  
Defendant(s).  
\_\_\_\_\_ /

**EMERGENCY MOTION TO STAY WRIT OF POSSESSION**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I sent a true and correct copy of this Emergency Motion to Stay Writ of Possession to \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone