

Your Foreclosure Is Completed But There Are Tenants In The Property. Now What?

By Lucas B. Rocklin, Esq.

A foreclosure action in Connecticut is completed, most notably, when title to the property that is being foreclosed passes to the new owner. This event alone, however, often does not give the new owner the right to immediately remove tenants who remain in the foreclosed property. Ejecting tenants post foreclosure can add significant delay and expense, and be a requirement for reselling the property. It is therefore essential that mortgage holders understand how to remove tenants who remain in the property after the foreclosure is completed.

Procedure to Remove Tenants Post Foreclosure

The procedure for removing tenants is fact specific to each tenant's circumstance, and involves the understanding and interplay of numerous Connecticut Statutes. The first step for the new owner is to determine who is in the property, if this is not already known. For each person, the new owner should obtain: (a) their name, (b) their relationship to the prior mortgagor, (c) whether they had a lease to occupy the property, and (d) the terms of the lease. The answer to these questions determines the procedure, timing and cost to remove each tenant.

Removal of Tenants Through the Foreclosure Court (Conn. Gen. Stat. § 49-22)

If the occupants in the property were defendants in the foreclosure action, the new owner can remove them through an ejectment order issued by the foreclosure court per Conn. Gen. Stat. § 49-22. For example, if the mortgagor remains in the property after the foreclosure is completed, and was a defendant in the foreclosure action, the new owner can remove the mortgagor through an ejectment order from the foreclosure court.

Removal of Tenants Through the Housing Court (Conn. Gen. Stat. § 47a-27)

If the occupants in the property were not defendants in the foreclosure action, the new owner will need to file a separate eviction action to remove the occupants under Conn. Gen. Stat. § 47a-27. For example, if

the mortgagor remains in the property after the foreclosure is completed, but was not a defendant in the foreclosure action, the new owner will need to file a separate eviction action to remove the mortgagor.

Removal of “Bona Fide” Tenants (Conn. Gen. Stat. §§ 49-22, 47a-23)

Connecticut law makes it more difficult for new owners after foreclosure to remove “bona fide tenants” as defined under Conn. Gen. Stat. §§ 49-31p and 47a-20e.

A tenancy or lease is “bona fide” under § 49-31p if: (1) the tenant is not the mortgagor or the child, spouse or parent of the mortgagor, (2) the tenancy or lease was the result of an arms-length transaction, and (3) the tenancy or lease requires rental payments not substantially less than fair market value for the property, unless the rent is reduced due to a federal or state subsidy.

A tenancy is “bona fide” under § 47a-20e if: (1) the tenant is not the mortgagor or previous owner of the property, and (2) the tenancy was the result of an arms-length transaction.

If the occupants in the property are “bona fide tenants” under § 49-31p, the new owner must provide them with at least 90 days’ notice prior to (i) removing the tenants through a foreclosure court issued ejectment order per § 49-22 or (ii) commencing an eviction action. Additionally, if the occupants have a “bona fide lease” to occupy the property that has more than 90 days left in the term following the foreclosure, the new owner cannot (i) remove the tenants through a foreclosure court issued ejectment order or (ii) commence an eviction action, until the end of the lease term unless the new owner will occupy the property as their primary residence. In this case, the new owner does not need to let the tenant stay until the end of the lease term and can (i) remove the tenants through a foreclosure court issued ejectment order or (ii) commence an eviction action, after giving the tenant 90 days’ advance notice.

If the occupants in the property are “bona fide tenants” under § 47a-20e, the new owner must wait thirty days after the foreclosure is completed prior to (i) removing the tenants through a foreclosure court issued ejectment order per § 49-22 or (ii) commencing an eviction action. Additionally, if the “bona fide tenants” under § 47a-20e had entered into a written lease to occupy the property more than sixty days before the foreclosure was started, the new owner must wait until the earlier of sixty days after the foreclosure is completed or the lease expiration date, prior to (i) removing the tenants through a foreclosure court issued ejectment order or (ii) commencing an eviction action.

Exceptions to the Above Procedures

There are two notable exceptions to the above procedures that apply regardless of whether the occupants are “bona fide” under §§ 47a-20e or 49-31p, or were defendants in the foreclosure.

First, occupants in buildings with five or more units who are 62 years or older, blind or physically disabled cannot be removed without “good cause” under Conn. Gen. Stat. § 47a-23c, and a change in property ownership due to foreclosure does not constitute “good cause.” New owners who seek to remove occupants who fall into this protected class must establish a “good cause” basis for removal under § 47a-23c (one example is nonpayment of rent).

Second, new owners can offer money to occupants in foreclosed properties in attempt to persuade them to move voluntarily, provided the offer is the greater of: (a) double the security deposit plus interest (this incorporates the return of the security deposit), (b) two months’ rent, or (c) \$2,000. This is known as “cash for keys” and is permitted under Conn. Gen. Stat. § 47a-20f.

When Removing Tenants After Foreclosure is Necessary

Removing tenants post foreclosure can add significant delay and expense and is often a requirement for reselling the property. It is therefore essential that mortgage holders understand the procedure and their options for removing occupants after the foreclosure is completed.



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