

TENANT PROTECTIONS IN CASE OF FORECLOSURE AGAINST LANDLORD

704.35 Residential rental property in foreclosure. (1) DUTY OF LANDLORD TO PROVIDE NOTICE OF FORECLOSURE. If a foreclosure action has been commenced against residential rental property, during the pendency of the action and before the expiration of the redemption period, the owner of the property shall notify any prospective tenant in writing of all of the following:

- (a) That a foreclosure action has been commenced against the rental property.
- (b) If judgment has been entered, the date on which the redemption period expires.

(2) RENTAL AGREEMENT MUST VERIFY NOTICE OR IS VOIDABLE. Any rental agreement entered into between the property owner and a tenant during the pendency of the foreclosure action and before the expiration of the redemption period shall include a separate written statement, signed by the tenant, that the owner has provided written notice as required under sub. (1). A rental agreement that does not include the statement signed by the tenant is voidable at the option of the tenant.

(3) TENANT PROTECTIONS. The protections under s. 846.35 apply to a residential tenant if a foreclosure action is or has been commenced against the real property containing the dwelling unit occupied by the tenant.

846.35 Protections for tenants in foreclosure actions. (1) NOTICES FROM PLAINTIFF. (a) If residential rental property is the subject of a foreclosure action, the plaintiff shall provide the following notices at the following times to the tenants who are in possession of each rental unit when a notice is given:

1. No later than 5 days after the foreclosure action is filed, notice that the plaintiff has commenced a foreclosure action with respect to the rental property.
2. No later than 5 days after the judgment of foreclosure is entered, notice that the plaintiff has been granted a judgment of foreclosure with respect to the rental property and notice of the date on which the redemption period ends.
3. When the confirmation of sale hearing has been scheduled, notice of the date and time of the hearing.

(b) The notices under par. (a) may be given in any of the following ways:

1. By personal service as provided in s. 801.11 (1).
2. By certified mail with return receipt requested. Notice given under this subdivision is considered completed when it is mailed, unless the envelope enclosing the notice is returned unopened to the plaintiff. All notices mailed under this subdivision shall be mailed in envelopes upon which the plaintiff's, or the plaintiff's attorney's, return address appears, with a request to return to that address.

(c) If a plaintiff fails to provide a notice under par. (a) in accordance with pars. (a) and (b), the court shall award the tenant to whom the notice should have been given \$250 in damages, plus reasonable attorney fees. A tenant may not recover under this paragraph for more than one notice violation.

(2) EXTENDED POSSESSION OF PREMISES; WITHHOLDING LAST MONTH'S RENT.

(a)

Notwithstanding ch. 704, all of the following apply to a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale with respect to the rental property:

1. Subject to subd. 3., the tenant may retain possession of the tenant's rental unit for up to 2 months after the end of the month in which the sale of the property is confirmed.

2. The tenant may withhold rent in an amount equal to the security deposit during the last period the tenant actually retains possession of the rental unit, regardless of whether the tenant retains possession after the sale of the property is confirmed, as authorized under subd. 1.

3. The tenant's right to retain possession of the rental unit expires at the end of the month for which the tenant withholds rent, as authorized under subd. 2.

(b) Subject to par. (a) 2., a tenant who retains possession of the rental unit after the sale of the property is confirmed shall pay rent for the period during which the tenant retains possession at the same rate that applied immediately before the confirmation of the sale of the property.

(3) EXECUTION OF WRIT OF ASSISTANCE OR RESTITUTION. No writ of assistance or writ of restitution for the removal of a tenant whose tenancy is terminated as a result of a foreclosure judgment and sale may be executed before the end of the 2nd month beginning after the month in which the sale of the property is confirmed, unless the tenant has waived in writing the right under sub. (2) (a) 1. to retain possession of the rental unit.

(4) EXCLUSION OF INFORMATION FROM THE CONSOLIDATED COURT AUTOMATION

PROGRAMS. No information in a civil action, including a writ of assistance, writ of restitution, or entry of judgment of eviction, concerning the removal of a tenant from residential rental property may be included in the consolidated court automation programs that are accessible to the public through the circuit court public access Web site if that removal is the result of a mortgage foreclosure of that residential rental property. [3 month delay in effective date for this provision for CCAP to come up with a better alternative]