

Florida bill offers more protection for renters who lease property in foreclosure

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Written by Dick Hogan
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Javier Hernandez, subcontractor for Carney Properties, enters the bathroom of a home he is helping to renovate in Cape Coral on Thursday. / Jack Hardman/news-press.com

If it becomes law, a bill in the Florida Legislature could solve a major problem in Southwest Florida: landlords who lease out properties that are about to be taken back in foreclosure.

Some Southwest Florida foreclosure authorities say the legislation (House Bill 69/Senate Bill 516) could help keep renters from being victimized by providing criminal penalties, but that the bill might be difficult to enforce.

Either way, it's common for those who buy foreclosure houses on the courthouse steps to find someone living there, said David Diaz, chief operating officer for Cape Coral-based Carney Properties and Investment Group.

"We buy a tremendous amount of rental homes for our investors and you'd be shocked at how many times we find people living there," he said. "Three to five houses in 10 are occupied when they're purchased."

Landlords sometimes offer a deep discount on the monthly rent in exchange for a hefty security deposit, but "When we buy the house, we don't get the security deposit. It's not held in escrow or something — that money's gone," Diaz said.

Often the tenant gives an account of deception by the landlord, he said. "The tenants say they're getting Fed Exes and process servers saying they're being evicted. Then they'll call the owner and he'll say, 'I've got a loan modification going on' that will clear up the situation."

Jeff Tumbarello of Fort Myers-based Steelbridge Realty said that when his company works as a property manager, the owner is required to sign a statement saying he's current in payments on the house.

But Tumbarello said it's unclear whether a new law would help. "It's a useful tool for the tenant," he said. "But how are you actually going to prove the intent?"

Fort Myers-based attorney Kevin Jursinski, who handles a lot of foreclosure cases, said that even if the state legislation never becomes law, tenants generally are entitled to know if a foreclosure is imminent.

"If a property's in foreclosure, to me that's significant because it changes the tenant's expectancy" that the lease will continue for its full term, he said. "The landlord should disclose the fact that even if the landlord honored it (the lease), there's a third party who could disrupt the tenant."

Jursinski noted that through Dec. 31, 2014, tenants already have some protection from eviction by a new owner under a federal law.

The state legislation raises some interesting questions about the circumstances under which the new law could be used, he said.

"There are a lot of people who rent houses out who don't even own them," he said.

After the new owner takes possession, Jursinski said, "You come in, turn the power on, change the locks and rent it out to someone. 'Just send the money to this P.O. Box.' "

How to check

First, go to the Lee County Property Appraiser's Office website and put your address into the database search engine to find out the legal name of the entity that owns the property:

[leepa.org/Search/PropertySearch.aspx?="](http://leepa.org/Search/PropertySearch.aspx?=)

Next, go to the Lee County Clerk of Court website and put the legal name of the owner in the civil lawsuit database. If it's in foreclosure, you will see a lawsuit by a lender filed against the owner. Click on the lawsuit to see the status of the case: apps.leeclerk.org/Civil_defendant_name_sel.asp.

Finally, if your landlord showed up in the property appraiser's site as owning more than one property, go to this page on the clerk's site to find out which property is involved. Put the owner's name in the search engine and in the field directly below it put LP for document type, then click "search records." (LP stands for lis pendens, the legal phrase for a foreclosure lawsuit). You'll see the legal description of the property in the online document. Compare it to the description on the property appraiser's site if necessary.

In Collier County, follow the same steps on the equivalent web pages:

PROPERTY APPRAISER:

collierappraiser.com/

LAWSUITS: apps.collierclerk.com/public_inquiry/

CLERK'S SITE: apps2.collierclerk.com/CorPublicAccess/