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Ousted SW Fla. renters 'forgotten victims'

If owner faces foreclosure, the tenant faces eviction

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The tidal wave of foreclosures in Southwest Florida is hitting people other than homeowners who can no longer afford their upside-down mortgage payments in an upside-down economy.

Tenants who faithfully pay their rent are being evicted — because the residence they live in was foreclosed upon and they didn't know it.

The renters are stunned when a sheriff's deputy knocks on their door with a notice to leave in 24 hours or face removal.

"That's kind of bloody. That's really nasty," said Charlie Green, Lee County Clerk of Court. "Here they have the house rented, only to find the person has never been paying mortgage money."

The Clerk of Court's office tracks foreclosures and evictions of tenants, but doesn't have the computer software to track tenants who pay their rent and are evicted because of the landlord's foreclosure, he said.

Green said he does know 13 percent to 15 percent of all foreclosed properties have someone living in them when the final foreclosure judgment is given. It isn't known how many are rent-paying tenants who are forced out.

A check of monthly evictions compiled over the last two years shows that there was an average of 354 evictions per month in 2007 and an average of 329 per month in 2008.

Evictions began rising in March 2007, when the total jumped nearly 32 percent from 264 the previous month to 339. They spiked in June 2008 at 464.

In July 2008, the total fell nearly 38 percent to 287 evictions, and a downward trend began.

The trend continues slowly and steadily today, with an average of 238 evictions per month for the first two months of 2009.

Why did evictions reach their peak in June 2008 and begin dropping?

"I think fewer people are renting and I think a lot of people who were renters left," Green said.

It's the same reason traffic counts and crime statistics are falling, he said.

"I think a good portion of our working-class folks left," Green said.

"It's a major issue," said state Sen. Dave Aronberg, who has filed a bill to protect the tenants. "I've heard it from several constituents.

"I think that renters have been the forgotten victims in this foreclosure crisis. There is more focus on the homeowner and lending institutions, but no focus on the renter who, through no fault of his own, has a stain on their credit report when they are evicted."

They also face the immediate trauma of pulling their belongings together, finding a new place to live and moving at once, or risk being homeless.

That's what happened to Louis and Janet Lawrence of Cape Coral.

Four months after moving into their rented house, Louis, while in Orlando on business, received a frantic call from his wife. They had two days to move because the mortgage company wanted them out.

"Nobody had told us the house had been in foreclosure," Louis Lawrence, 76, said.

The agency they had rented the house from said it had no idea the home was in foreclosure.

The loan company turned down Lawrence's plea to give him 30 days to find another house. He tried the legal system, but the eviction was within the law, he was told.

The rental agency found him another house, and he hired a moving company for the quick move.

"All I was asking for was 30 days," he said. "I would have moved myself and saved the \$1,800."

Aronberg's bill would require a landlord to notify tenants within a specified time that a foreclosure proceeding has been started.

The bill would then authorize the tenant to terminate the rental agreement. The landlord would be subject to a civil penalty of \$1,000, Aronberg said.

Two similar bills have been filed by other state legislators, Aronberg said, indicating the problem is statewide.

Cheryl Averill, president of Attorneys Subpoena Service in Fort Myers, said her company serves the majority of mortgage foreclosures in town.

"I can tell you that a lot of owners have very little regard for their tenants," she said.

"The tenants finding they are going into foreclosure are infuriated and thinking, 'If I'm paying my rent, what in the world are you doing with the money I'm sending you?'"

When a bank files a foreclosure action, it serves the tenants occupying the property as well as the owners of the property, said her husband, Ernie Averill, a certified process server.

It could take as little as two months to more than a year for the foreclosure to be finalized, depending on how quickly the cases move through the court, he said.

In the meantime, if the property becomes vacant and the owner moves new tenants in, those tenants don't get served again, Averill said.

So those tenants have no idea the property is in foreclosure until the sheriff knocks at the door.

The tenants are required to receive a notice to vacate in 24 hours, but it actually is one business day,

said Larry King, spokesman for the Lee County Sheriff's Office. The weekend doesn't count.

Those tenants who have several months before the foreclosure is final are also in a tough situation, said Kevin Jursinski, an attorney who specializes in business and real estate law in Fort Myers and Naples.

"If he pays the landlord he is still going to lose possession of the premises," Jursinski said.

The tenant will also have a claim against the landlord for the last month's rent and moving costs, which he is never going to collect, Jursinski said.

The tenant could try to withhold the rent. But then the landlord can file an eviction suit against the tenant, he said.

One option is for the tenant to go to a judge and say, "I have the rent. I don't want to pay it to the landlord. He is in foreclosure. Put it in the court registry and you decide what to do with it," Jursinski said.
