

## Foreclosure and Change of Ownership Nevada Landlord and Tenant Law

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Termination of tenancy by foreclosure occurs when the landlord is unable to either pay his mortgage or a third party forecloses on a lien or judgment. In Nevada, most foreclosures are by a summary proceeding found in Nevada Revised Statutes (NRS) 40.430 to 40.462.

NRS provides a process for evicting tenants when the property has been sold or title has been transferred.

### **NRS 40.255 Removal of person holding over after 3-day notice to quit; circumstances authorizing removal.**

1. Except as provided in subsection 2, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon him, and also upon any subtenant in actual occupation of the premises, pursuant to [NRS 40.280](#), may be removed as prescribed in [NRS 40.290](#) to [40.420](#), inclusive:

(a) Where the property or mobile home has been sold under an execution against him or a person under whom he claims, and the title under the sale has been perfected;

(b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by him or a person under whom he claims, and the title under the sale has been perfected;

(c) Where the property or mobile home has been sold under a power of sale granted by [NRS 107.080](#) to the trustee of a deed of trust executed by such person or a person under whom he claims, and the title under such sale has been perfected; or

(d) Where the property or mobile home has been sold by him or a person under whom he claims, and the title under the sale has been perfected.

2. This section does not apply to the tenant of a mobile home lot in a mobile home park.

(Added to NRS by 1961, 412; A 1969, 263; 1979, 1880)

This means that if the property is sold or foreclosed on, the new owner can give the tenants a 3-day notice to move out. The tenant must move out. There is only one exception and that is discussed below in the “Tenants with a lease” section.

Month-to-month tenants. NRS 40.255 definitely applies to month-to-month tenants. If the month-to-month tenants receive a 3-day notice to move, they must move.

Tenants with a lease. In a foreclosure action if a tenant had a lease prior to the bank loaning money on the property, that tenant may sue in court for injunctive relief requesting that the court stay the eviction based upon his lease priority. The defendants would be the foreclosing entity and the old landlord. This request for injunctive relief is based on the common law that the lease was created prior to the loan/lien. If the



owner/landlord had gotten a loan after the landlord and tenant had entered into a lease agreement, then the lease has precedence over the loan and the new landlord takes possession subject to the tenant's lease. (A loan occurring after the lease could happen if the owner/landlord refinanced the property after the owner and tenant entered into a lease).

Additionally, the tenants have a right to sue the former owner (landlord) for breach of lease and breach of the implied or expressed covenant of peaceful possession/quiet enjoyment.

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