



"CASH FOR KEYS" – INFORMATION FOR CONSUMERS AND DRE LICENSEES

The challenge to successfully market REO properties has given rise to a growing practice known as "cash for keys". The Department of Real Estate ("DRE") has been receiving questions and complaints from consumers about "cash for keys" solicitations. This article is intended to provide some guidance for consumers and licensees when involved in a "Cash for Keys" program to minimize any misunderstandings or violations of the law.

"Cash for Keys" Programs

When a lender takes a home back as a result of a foreclosure action, it becomes responsible for that property. The longer the lender has to wait to sell the property and the more money it has to spend to repair damage to and/or to maintain the property, the greater will be its ultimate loss. The consequences of foreclosure and the looming legal eviction action affects the prior resident owner/occupant of the foreclosed property and/or the tenant(s) living in the property (hereinafter such occupants and/or tenants are referred to in the singular as "tenant" and in the plural as "tenants") the same way – they must, unless there is an existing landlord-tenant rental or lease agreement that survives the foreclosure by law, or a written agreement with the new owner/lender to maintain or modify the tenancy, vacate the property in a relatively short period of time.

If the lender can make a deal with a tenant to pay for the tenant's security and utility deposits, moving expenses, and maybe even temporary living expenses, and perhaps a bonus for a quick moving date, it would be in the lender's interest to do so to avoid the inevitable minimum 3 to 6 month delay associated with formal legal eviction proceedings. In the many circumstances, the lender would most certainly prefer that the tenant agree to vacate the property within a certain number of days, leave the property in "broom-swept condition", remove all debris from the interior and the yard, leave all fixtures and landscaping intact, and turn over the keys and garage door openers.

Practical Application of "Cash for Keys"

Generally, the amount offered to tenants varies and is usually negotiable. Anecdotal reports from those who have had experience with "cash for keys" programs report that \$500 is generally the minimum and \$5,000 the maximum amount offered to tenants for their keys.

The amount an owner is willing to pay for a tenant's keys depends on several factors, including the value and physical condition of the property, and the plan(s) the lender has for the property. Other factors include the amount of time the tenant needs to move out.



Laws Protecting Tenants' Rights With Respect to Foreclosed Properties

As recently as early 2008, in the absence of a written lease agreement requiring greater notice, California law required that an owner provide only a 30-day notice to a tenant to vacate the property for any reason (other than the failure to pay rent, which required a 3-day notice). However, recent legislation has changed the rules.

Signed as an urgency measure in 2008, [Senate Bill 1137](#) gives tenants at least 60 days after a foreclosure before they can be asked to vacate the property. The provisions of SB 1137 are due to sunset (be repealed) on January 1, 2013. To review a copy of the bill and get more details, please visit www.leginfo.ca.gov.

Federal legislation was enacted effective May 20, 2009, requiring property owners who have taken a residential property by foreclosure, to give their tenants at least a 90 day notice to vacate the property before beginning the eviction process. That federal law is applicable nation wide, and it is known as "Protecting Tenants At Foreclosure Act". The law is found at Title 7 US Code Section 701 ("the Act"). See <http://thomas.loc.gov>.

The Act provides that if a tenant is renting under a lease entered into before the notice of foreclosure was communicated to the tenant, the tenant may remain in the property until the lease ends, unless the owner sells the property to a purchaser who will occupy the property as his primary residence. In that case, the owner may properly give the tenant a 90-day notice to vacate.

While the Act provides greater protection to tenants than State law, local law may provide even more protection. If a particular property is subject to local "rent control" or "housing assistance" laws, or so-called "just cause for eviction" ordinances, those laws may provide even greater protection than the Act itself. As an example, even the Act itself provides that the owner of a residential property which is subject to a "housing assistance contract", and who has a lease with a tenant in that property, is subject to any additional protections in the housing assistance contract (this typically applies to "Section 8" properties).

Finally, with the signing of SB 1149, tenants must be told of their rights when the property they occupy is foreclosed. Senate Bill 1149 requires that tenants who are living in foreclosed homes be given notice of their rights and responsibilities under these state and federal laws by requiring a cover sheet be attached to any eviction notice that is served within one year of a foreclosure sale. The cover sheet must delineate the laws and rights a tenant may have in cases where the property he or she occupies is foreclosed upon. The bill also seeks to help protect tenants who would otherwise have a negative mark on their rental history by prohibiting the release of court records in a foreclosure-related eviction unless the plaintiff landlord prevails. For more information, please visit www.leginfo.ca.gov.



What Tenants and Resident Owners Can Do to Protect Themselves

Tenants and resident owners of foreclosed properties must take a significant amount of personal responsibility in this matter. They should become acquainted with Federal and State law concerning foreclosures and tenant evictions, and also with local laws which apply to their particular situation. For example, in the City of Los Angeles, beginning December 17, 2008, tenants who are current in their rent payments can not be evicted because of a foreclosure. Many cities in California, including Santa Monica, West Hollywood, Beverly Hills, Oakland, and Berkeley, are subject to local "rent control" and/or "just cause for eviction" ordinances, which may provide even greater protections. Without a working knowledge of applicable local law, a tenant is at a distinct disadvantage.

Tenants and resident owners should make sure that any "cash for keys" offer is coming from the new owner of the property, which is often a lender or a government sponsored mortgage investor, such as Fannie Mae or Freddie Mac. Tenants and resident owners should insist on verifying the identification and authority of the person making the "cash for keys" offer. They must insist on receiving a written "cash for keys" agreement, and carefully read and understand that agreement. They should have a trusted and competent attorney, real estate licensee, family member or friend review the agreement and provide counsel concerning its duties and obligations.

Before signing the agreement, a resident owner should call his or her lender directly to confirm the authority of the person making the "cash for keys" offer. A tenant must be especially careful. The tenant should call his or her landlord and ask about the foreclosure and the identity and contact information for the new owner. It would not be unusual for the landlord to tell the tenant to continue to make rent payments directly to the landlord. That should not be done if the landlord is no longer the owner of the property. And finally, a tenant or resident owner should never hand the keys over unless the money is delivered. Cash is best. If paid by check, the tenant or resident owner should make certain the check is good and/or clears. If the keys are handed over, and the owner fails to pay the money, or if the owner's check bounces, the written agreement should be sufficient to allow the tenant to prevail in a small claims action against the owner. But obtaining a judgment is far easier than collecting it. Without a written agreement, the chances of obtaining a judgment are substantially reduced.

A Real Estate License is Required Unless the "Cash For Keys" Services are Only Ministerial

There is no way to generalize and declare that a real estate license is, or is not, required to provide "cash for keys" services. The particular facts of each transaction will determine the answer to the question as to whether a license is required.

If a person is soliciting a tenant to enter into a cash for keys arrangement on behalf of an owner and/or lender or servicer, negotiating the terms of the transaction with a tenant, or soliciting and/or negotiating with an owner, lender or servicer with respect to



such a transaction(s), Section 10131 of the California Business and Professions Code requires that the person engaged in those activities be a real estate broker or a real estate salesperson acting under the supervision of a broker.

On the other hand, if the person is simply acting in a ministerial fashion and just handing the tenant a check and collecting the keys in return for the payment, that arguably falls outside of licensed activity.

Responsibility of Real Estate Licensees Who Engage in "Cash For Keys" Transactions

A licensee who solicits a "cash for keys" deal should identify him or herself to the resident owner or tenant when requested to, and provide his or her DRE license number. A consumer may look on the DRE website (www.dre.ca.gov) and, on the "Home" tab, under the heading "Consumers", click on "License Status Check" to verify that person's license status. Under that same heading, there is also a link to "How to File a Complaint". One who has been solicited by a DRE licensee is encouraged to file a complaint with DRE if the solicitor has not acted fairly and honestly in the "cash for keys" transaction, or if the solicitor has engaged in any other unlawful conduct.

It should go without saying that California real estate brokers or salespersons who engage in "cash for keys" negotiations with tenants must be aware of the federal, State and local laws relating to foreclosed properties, and the tenants' rights with respect to their tenancies or leasehold interests. The old saying "ignorance of the law is no excuse" really does apply in this context.

It should also go without saying that DRE licensees who solicit a resident owner or tenant to accept a "cash for keys" proposal must act fairly and honestly with respect to the transaction. Dishonest behavior, misrepresentations, harassment, failures to disclose material information to a resident owner or tenant, including failing to advise the resident owner or tenant of his or her rights with respect to eviction (that the licensee has knowledge of) as a result of foreclosure, or negligence, could possibly lead to license disciplinary action. A licensee who unlawfully hires unlicensed persons to "solicit" cash for keys deals, or to negotiate the terms of the transactions, can also be liable for the dishonesty, misrepresentations, and/or negligence of his or her unlicensed agents.

Conclusion

A fair and equitable cash for keys agreement will mutually benefit both the new owner of the property and the resident former owner or tenant residing in the property.

For tenants, resident owners, and Department of Real Estate licensees, knowledge of the law concerning this subject is power – power to avoid problems that are just looking for place to happen.

For resident owners and tenants in foreclosed properties, your only real safety lies in your



taking the responsibility to protect yourself. Get the agreement and all other communications in writing. Have someone you trust look the written documents over. Make sure the solicitor is authorized to act for the real owner of the property. And do not give up the keys before you get the cash.

Additional Resources: The Office of the California Attorney General issued a News Release on June 28, 2010, entitled "Brown Investigates Whether Tenants' Rights Are Violated in Foreclosures". You may wish to consult that Release for more information. If you are a tenant or resident owner and believe your rights have been violated, you can contact the California Attorney General at www.ag.ca.gov, and/or the California Department of Real Estate at www.dre.ca.gov.