



Foreclosure Checklist

Last updated 4/02/25

IS THE DEFENDANT THE FORECLOSED HOMEOWNER OR A TENANT?	
	<p><u>Is the Defendant the Foreclosed Homeowner?</u></p> <p>A foreclosed homeowner’s options in an eviction proceeding are limited. To the extent defendant has the ability to litigate equitable mortgage and other claims and defenses in alternate civil proceedings, it may not do so in the eviction action; only if the eviction action presents the only forum for litigating these claims would it be appropriate for the housing court to entertain them. <i>See Fraser v. Fraser</i>, 642 N.W.2d 34 (Minn. Ct. App., 2002).</p>
	<p>Practice pointers – Foreclosed Homeowner</p> <ul style="list-style-type: none"> • The defendant may bring an action asserting its claims/defenses in District Court and seek a stay of the eviction proceeding in the District Court proceeding. The defendant would need to hire their own counsel. We can refer them to Minnesota Lawyer Referral: https://www.mnlawyerreferral.org. Telephone: 612-752-6699. • The Housing Court will not issue a stay on the assertion at the Initial Appearance Calendar that defendant intends to file the District Court action. The defendant may <i>attempt</i> to request a continuance, or alternatively a trial date, in order to bring a case in District Court, however, there would need to be good cause to do so, and the request may be denied, thereby leaving defendant with a 7-day order to vacate. <i>See</i> Rule 610 (“The court may grant a request by any party for time to prepare a response to any motion for good cause shown by the requesting party or by agreement of the parties.”)
	<p>Defenses Available – Foreclosed Homeowner</p> <p>Defendant still may raise defenses that could only be raised in Housing Court.</p>
	<p>Was the eviction notice properly served e.g., personal service, mail, or posting?</p>
	<p>Was the defendant evicted before the expiration of Minnesota’s six-month redemption period following a sheriff’s sale?</p>
	<p>Settlement recommendation – Foreclosed Homeowner</p> <p>The Plaintiff is oftentimes willing to provide the Defendant with additional time (beyond 7 days) to vacate, and usually agrees to confidentiality and expungement. If defendant asserts legal and equitable defenses to the foreclosure, preserve those claims in the settlement agreement (<i>i.e.</i> “this agreement is not intended to waive or limit Defendant’s legal or equitable claims”).</p>



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	<p><u>Is the Defendant a Tenant?</u> (<i>see</i> Minn. Stat. § 504B.285, subd. 1a.)</p> <p>Occasionally, the landlord will be leasing the home to other occupants. Usually, the occupants will not be identified in the Complaint, and will be listed as “John and Jane Doe” defendants.</p>
	<p>90 Days’ Written Notice Must Be Provided</p> <p>Case must be dismissed if plaintiff failed to attach to the complaint a pre-filing notice that complies with Minn. Stat. § 504B.321, subd. 3(5) (“if alleging a violation of section 504B.285, subdivision 1, attach a copy of any notice to vacate or notice to quit[.]”).</p>
	<p>(1) Was defendant a tenant during the redemption period under a lease of any duration?</p>
	<p>(2) Did the lease begin after the date the mortgage was executed, but prior to the expiration of the time for redemption?</p>
	<p>If both answers are “yes,” then:</p> <ul style="list-style-type: none"> • The immediate successor in interest must provide at least 90 days’ written notice to vacate, (i) given no sooner than the expiration of the redemption period, and (ii) effective no sooner than 90 days from the expiration of the redemption period. • The tenant must still pay rent and abide by the terms of the lease during this time.
	<p>Does the Tenant Have a Bona Fide Lease That Extends More Than 90 Days Beyond the Date the Redemption Period Expires?</p>
	<p>If all the following are all true, the tenant can stay until the end of the lease term:</p>
	<ul style="list-style-type: none"> • The tenant is not a child, spouse, or parent of the mortgagor.
	<ul style="list-style-type: none"> • The lease resulted from an arms-length transaction.
	<ul style="list-style-type: none"> • The rent is not substantially less than fair market rent
	<ul style="list-style-type: none"> • There is no new owner who will occupy the property as a primary residence.