

“Your home is your castle, learn how to protect it!”

BURNS AND BURNS, P.C. IS AN AV RATED LAW FIRM THAT REPRESENTS MULTI-GENERATIONAL FAMILIES AND BUSINESS OWNERS WITH THEIR ASSET PROTECTION, REAL ESTATE, AND ESTATE PLANNING NEEDS.

90 Day Notice Requirement for Tenants of Foreclosed Residential Properties

Thanks to a recent Arizona Court of Appeals decision (*Bank of New York v. De Meo*, 607 Ariz. Adv. Rep. 33 (App. 2011)), tenants who are the victim of their residential rental property being foreclosed on are now the recipients of added Federal protections. Specifically, the 90 day written notice to vacate requirement found in the Protecting Tenants at Foreclosure Act (the “Act”), now applies to tenants whether their bona-fide written rental agreement had expired prior to the trustee’s sale date or not. Under the Act, it was originally believed that only those tenants whose residential rental property was foreclosed on during the term of their rental agreement were entitled to the 90 day notice protections. However, the ruling in *Bank of New York v. De Meo* makes it clear that this 90 day notice provision also applies to tenants legally residing in their residential rental property even after their written rental agreement had expired.

In this case, De Meo, the tenant, had entered into a bona-fide lease agreement which ultimately expired. Following the expiration of the lease, De Meo lawfully remained in the property, becoming a month-to-month tenant. During the time De Meo was residing in the rental property as a month-to-month tenant, the rental property was foreclosed on by the Bank of New York. After the trustee’s sale was completed, the Bank of New York sent De Meo a five day notice to vacate the property. De Meo successfully challenged the Bank of New York’s eviction attempts by arguing that the Bank had failed to provide a 90 day notice

as required under the Act. Although the Court noted that a tenant without a lease (e.g. a month-to-month tenant) is entitled to the same 90 day notice requirement as a tenant with a written bona-fide lease, the facts in this case reveal that De Meo had executed a valid lease agreement before becoming a month-to-month tenant.

If you are a tenant currently leasing a residential rental property, without a bona-fide lease agreement and are desirous of helping ensure your rights under the Act are protected, you should consider executing a written lease agreement. For more information on how to protect your rights, please contact BURNS AND BURNS PC.

About the Author

Scott F. Burns, Esq.

Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

For Additional Information

www.B-BLAW.com

Material presented herein are for informational purposes only and are not intended to constitute legal advice, to be a legal opinion or create an attorney client relationship for the reader or any specific person. Estate and Tax planning is fact specific and requires consultation with a tax or legal advisor before undertaking any course of action.

BURNS AND BURNS, P.C.

Asset Protection, Estate Planning, and Real Estate Law

www.B-BLAW.com – Phone: 602.264.3227 Fax: 602.274.0103

Page 1 of 1