

Tenant' Rights: What rights does a tenant have relative to the Association?

The relationship between an owner and their tenant is subject to the contract between them (the lease), the Residential Landlord-Tenant Act¹ and Washington case law, which provide that landlords must allow tenants to have use and enjoyment of the leased premises for the full duration of the lease.² There is no contract between the Association and an owner-landlord's tenant. However, a tenant has several rights against the Association.

What rights does a tenant have if the tenant occupies an Association property and the Association prohibits rentals?

If a tenant occupies a property under a valid lease agreement, even if the Association prohibits rentals, the Association may not be able to force the tenant to vacate the property because the tenant is protected by Washington's Landlord-Tenant laws.³ Some cities, like Seattle, provide even greater protections to tenants. Although courts in other states have held differently,⁴ courts in Washington, a tenant friendly state, are unlikely to do so.

What rights and obligations does a tenant have if an owner is in violation of Association rules or late on assessments?

A tenant is obligated to follow the rules of the community as set forth by the Association, but tenants are not responsible for assessments, even for common amenities that the tenant enjoys. In most cases, only owners will be liable for assessments or late fees. If there is an assessment due or a late fee, the owner-landlord will be responsible for paying it.

There are two exceptions to this rule. First, many Associations' Governing Documents provide for "rent intercept" where the tenant must pay rent directly to the Association if the owner-landlord is delinquent on assessments. If such a provision exists,

the Association can demand rent payments directly from the tenant until the owner-landlord's delinquency is satisfied.

Second, some Associations require tenants to enter an agreement with the Association in which they promise to pay assessments (owing or delinquent). In such cases, the tenant, in addition to the owner-landlord, is responsible for assessment amounts in accordance with the agreement.

For more information on an Association's ability to collect assessments from tenants, see chapter entitled: "Delinquent Owners: Can an Association recover delinquent assessments from a tenant living in a unit?"

Washington courts have not addressed this issue, but tenants probably have the same rights that an owner would have in terms of an Association's obligation to give notice⁵ and an opportunity to be heard⁶ before levying fines or taking action directly against the tenant(s).

If an owner or tenant violates an Association rule, that owner can be fined or penalized in accordance with the Association's Governing Documents.⁷ However, unless the Declaration, CC&Rs, or Bylaws allow it, a tenant cannot be penalized for an owner-landlord's violation.

What rights does a tenant have if an Association forecloses on a property occupied by the tenant?

Under the Protecting Tenants at Foreclosure Act⁸, a tenant's lease survives a foreclosure.⁹ If the purchaser of the property intends to live in the property, the purchaser may force the tenant to vacate before the end of the lease by giving the tenant 90 days' notice.¹⁰ A month-to-month tenant is also entitled to ninety days notice.

Tenants occupying a property an Association has foreclosed on have a right to continue occupying the property until the end of their lease if the tenants pay their rent to the Association.

What rights does a tenant have if an Old Act condo Association terminates utilities?

Many Old Act condo Associations have the right to terminate a unit's utilities if the owner has not paid assessments.^{11 12} An Old Act condo retains this power even if the unit is occupied by a tenant. However, prior to shut off, the Old Act condo must provide the tenant written notice of the shut-off and an opportunity to appeal.¹³

What rights does an Association have for tenant violations of the Governing Documents?

Associations usually do not have a contractual relationship with a tenant who occupies an owner-landlord's property. Associations possess only indirect enforcement power with regard to tenants. Associations have the authority to enforce their Governing Documents against their owners, but they do not have the authority to enforce their Governing Documents against their owners' tenants. The action which can be taken against the owner-landlord depends on the violation and the Governing Documents, but may include notices of the violations, fines and, if the violation involves nonpayment of assessments, potentially imposing a lien on the owner-landlord's property. There is usually no direct action which an Association can take against a tenant, though some Declarations grant the Association the power to evict tenants for repeated violations of the Governing Documents, as the "attorney in fact" of the owner.

¹ RCW 59.18.030(9) (Definitions) provides, in relevant part:

"Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part. . ."

RCW 59.18.030(21) provides:

"A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement."

² *613 Fairview Ave., L.L.C. v. Pong's Corp.*, 2003 Wash. App. LEXIS 74 (2003) (landlord breached the implied covenant of quiet enjoyment by blocking the parking lot with a locked chain).

³ See *613 Fairview Ave*, 2003 Wash. App. LEXIS 74.

⁴ *Preserve at Forrest Crossing Townhome Ass'n v. Devaughn*, 2013 Tenn. App. LEXIS 59 (Tenn. Ct. App. 2013) (court held the Association could prohibit rentals because the owner knew the declaration could be amended to prohibit rentals at the time she purchased the property).

⁵ See chapter entitled: "Notice: What does 'notice' mean?" for more information.

⁶ See chapter entitled: "Fines and Enforcement: What does 'opportunity to be heard' mean?" for more information.

⁷ See RCW 64.34.304(r) (Common expenses — Assessments); RCW 64.38.020(12) (Association powers).

⁸ *Public Law 111-22 Title VII--Protecting Tenants At Foreclosure Act.*

⁹ Public Law 111-22 Title VII Sec. 702.(a) (Effect of Foreclosure on Preexisting Tenancy) provides, in relevant part:

In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(2) the rights of any bona fide tenant—

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1), except that

nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

¹⁰ Public Law 111-22 Title VII Sec. 702.(a) (Effect of Foreclosure on Preexisting Tenancy.) provides:

In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

- (1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice;

¹¹ RCW 64.32.200(1) (Assessments for common expenses — Enforcement of collection — Liens and foreclosures — *Liability of mortgagee or purchaser*) provides, in relevant part:

. . . ten days' notice shall be given the delinquent [unit] owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid . . .

¹² For more information, see chapter entitled: "Delinquent Owners: Can an Association recover delinquent assessments from a tenant living in the unit?"

¹³ **Note:** Because, in this situation, the utilities are provided through common elements, the Association, as provider, should give the tenant written notice of a threatened shut-off and a chance to assume responsibility for future utility bills. However, the Association probably cannot force the tenant to pay the owner-landlord's past due assessments.