Fast evictions adding to pain of Phoenix home foreclosures

by Catherine Reagor - Mar. 7, 2010 12:00 AM
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Homes that fall into foreclosure in Phoenix are sold at a public auction. The highest bidder becomes the new owner. The former owner then has to move out.

Departing owners have five days under Arizona law to vacate the property. But in the overheated foreclosure market that has come in the wake of the metropolitan Phoenix housing crash, some people are being told to get out the same day their house is sold at auction.

In some cases, people aren't allowed back into their house to collect their belongings. In others, people leave the house for a few hours, and the new owner changes the locks.

Facing aggressive foreclosure buyers who want to resell homes quickly, struggling homeowners often don't know their rights.

And some homeowners still in the process of seeking a loan modification with their lenders can be shocked to learn their home has been sold at a foreclosure auction when the new owner arrives to kick them out.

Phoenix-area foreclosures aren't expected to drop significantly anytime soon. Last month, about 940 homes were bought at Valley foreclosure auctions, five times the number sold at auction a year ago. And one reason more homes are going to auction is because lenders are dropping prices so they don't have to take homes back, evict homeowners and fix houses up to resell.

Since last August, the number of foreclosure homes purchased at auction by investors has been at record-high levels. More investors are aggressively bidding on the lowest-priced foreclosure homes, which means more pressure on departing homeowners to get out fast.

Many homeowners want to be out of the house before it's sold at a foreclosure auction. But in the Phoenix-area, auction schedules are increasingly unpredictable because of mistakes and sudden postponements made by lenders grappling with large foreclosure backlogs.

The sale of a given home at a foreclosure auction can be postponed several times. Many homeowners now expect delays and are often not prepared when their home sells and the new owner wants them out quickly.

Sudden evictions

Fred Winston was working with his lender on a loan modification when the Chandler house he had owned for 18 years was sold at a foreclosure auction last November.

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"I had given my lender all the financial documents and been told not to worry about losing my home when someone knocked at my door," he said. "Some guy told me he owned my house and I had to get out that afternoon. I slammed the door in his face."

Winston is retired and has cancer. Medical bills drained his finances, he fell behind on his mortgage payments and his home headed toward foreclosure. Winston said his lender told him a loan modification was pending and the foreclosure auction had been postponed. Winston owed $300,000. His home sold at auction for $103,000.

When the man appeared at the door and told him to get out, Winston demanded proof of the foreclosure sale and wouldn't leave his house until he saw it. The new buyer returned with the paperwork later that day. Since it was a Friday, Winston was able to negotiate a few days to pack his belongings and move out.

"No one told me what my rights were," he said, "and if I wouldn't have stood up to those people, I think they would have moved me out that day."

Real-estate agent Brett Barry had a neighbor who lost his north Phoenix home to foreclosure last fall. People from the group that purchased the home at the foreclosure auction showed up at the house right after the sale.

Barry said the couple in the house had a daughter and grandchildren living with them. They were kicked out and had to hire movers and find a hotel all in one day. The buyers, likely concerned the couple might damage something or take the home's appliances, refused to let the pair back inside the home to get their belongings. So
during the two days the movers took to pack up the house, the couple could only watch from the sidewalk while the buyers stood nearby.

Rick Lott of Chandler suffered three heart attacks in less than two years. He lost his job. Medical bills mounted. And he fell behind on mortgage payments. He landed a new, lower-paying job and has tried several times to work out a loan modification with his lender. But so far he hasn't succeeded.

His home was scheduled to sell at a foreclosure auction in mid-February. Lott planned to go to the auction and ask whoever bought it for more time for his family to pack and move.

On the day the auction was scheduled, Lott left his two adult sons at his home to make sure no one tried to change the locks or move his family's belongings before he returned.

"A real-estate agent told me my house was bound to sell at auction," Lott said, "and I should be ready to be evicted the day it sold."
Less than two hours before the scheduled auction, Lott found out his home wouldn't go on the block that day. He told his sons they could leave.

But he stayed at home in case the postponement was a mistake, his home did sell and someone tried to kick him out. Lott is now hoping he won't have to repeat the stressful scenario in April when the foreclosure auction on his home is now scheduled.

**Legal process**

The foreclosure-auction process is regulated by Arizona law, but no state or county agency monitors the auctions or the initial eviction efforts by new owners.

"Few people understand the state's foreclosure laws," said Jay Butler, director of realty studies at Arizona State University. "A homeowner trying to figure out a loan modification and how to pay their utility bills or find another job isn't going to have time to figure the laws before they get an eviction knock at their door."

Arizona Revised Statutes 12-1171 through 12-1183 are the state's laws for the foreclosure-eviction process.

Michelle Lind, general counsel for the Arizona Association of Realtors, explained how the state's eviction laws work.

"The buyer of a foreclosure home has to give the home's former owner notice to move out," she said. "If after five days the former owner doesn't move out, the new owner can file with the courts for a forcible eviction."

A foreclosure home's new owner can file for a forcible eviction in a local municipal court.

If the court grants the eviction request, then the Maricopa County Sheriff's Office sends a constable to the home to make the former owner leave. In 2009, the Sheriff's Office was involved in 1,416 forcible evictions, compared with 280 in 2007.

The whole foreclosure auction process is overloaded. Foreclosure cancellations and revocations filed with the Maricopa County Recorder's Office by lenders are at an all-time high. A cancellation is filed by a lender to stop a foreclosure against a borrower before the home is sold at auction. A revocation can be filed by a lender to repeal or nullify an illegal or invalid foreclosure sale.

If homeowners believe they are losing their home illegally, they can hire an attorney and fight the sale and the eviction.

**Little wiggle room**

Many new buyers taking over recently purchased foreclosure homes know they can't legally evict the former owners for five days. And some new buyers don't want angry people trashing a home, so they might offer more time to move out.
Anyone who is told to leave a home after a foreclosure auction should ask for proof of purchase. But beyond having a window of time to move, there is not much a homeowner can negotiate once the home is sold at a foreclosure auction. The goal is really about making the process less painful.

"Homeowners are scared, and they don't understand the law. They are listening to bullies at their door telling them they have to be out now," said real-estate attorney Diane Drain. "But if a homeowner can prepare and leave with some dignity, it will help them recover from a foreclosure faster."

Homeowners may be able to get more than five days to leave.

Lenders have been offering homeowners facing foreclosure money for cooperation. The program, endorsed by the federal government's housing plan, is known as cash for keys. Homeowners are typically offered $1,000 or more if they don't strip or vandalize a home after losing it to foreclosure.

There are also instances of new buyers offering former owners cash to move out quickly and leave behind appliances and other fixtures.

Some new buyers may rent the house to the former owners to give them more time to find another place.

Arizona legislation was recently introduced to allow lower-income homeowners to stay in the house after foreclosure and rent it from the new owner.

John Smith is president of the Mesa-based non-profit Housing Our Communities, which helps homeowners facing foreclosure. Smith said, "If people have time to find a decent place to move and can negotiate some help from whoever bought their home, it's going to make the experience better for everyone involved."

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