

1. I just found out my building is in foreclosure, what should I do?

The first thing to do when you get notice that your home is in foreclosure is to send a copy of your lease agreement or month to month rental agreement to the bank or person foreclosing on the home. If you do not have a written agreement with your landlord, you can send things such as rent receipts, to prove that you are a tenant. You should also send a copy of the sample letter #1 attached to this flyer with your agreement. Keep a copy of the paperwork you send to the foreclosing entity. This will let the foreclosing entity know that you have the legal right to live at the home and require them to serve you with the notices discussed in #3.

2. Do I have to move out immediately?

No. Before you are required to move out, you will be sent a notice to move out by either your landlord or the person or business that buys the home at foreclosure.

3. What does a foreclosure mean to me as a tenant?

Many renters will be forced to move out of their home after the landlord is foreclosed upon. If you have a Section 8 voucher, also see the answer to #4. Your rights depend on when the landlord obtained the loan that is being foreclosed upon.

- **If you signed your lease/rental agreement before the loan was entered into...**

If your lease/rental agreement was signed before the landlord obtained the loan that is being foreclosed upon, the new owner must follow the terms of the lease/rental agreement you signed. If you have a month to month agreement, the new owners must give you 90 days notice to move out of the home. If you have a lease, the new owner is required to allow you to live at the residence until your lease expires.

The new owner does not have to renew the lease once it expires.

- **If you signed your lease/rental agreement after the loan was entered into...**

If the loan was signed before you entered into your lease/rental agreement with your landlord, a foreclosure on that loan will erase your lease/rental agreement. For the majority of foreclosures, after the sale, the new owner is entitled to possession of the property ten days after the foreclosure sale. Any person still living at the property after that date becomes a "holdover tenant."

If you are on a month to month rental agreement, the new owner is required to give you a 90 day notice to move out.

If you have a lease, the owner must allow you to stay in your home until your lease expires. Regardless of when your lease expires, if the new owner wants to move into the home as their primary residence, the new owner can give you a 90 day notice to move.

The new owner can only give you a notice to move out once they become the owner of the home. You should do your best to move out by the date in the notice. If you are unable to move out, you should call the new owner to see if they will give you more time to move out. If you have a disability that makes it difficult for you to move out, you may request a reasonable accommodation for more time to move out.

Once the notice period is up, the new owner can begin an eviction court action to force you to move out.

** If your home was foreclosed upon before May 20, 2009, the purchaser of your home might be able to give you less time to move out. Talk to a lawyer for more information on what type of notice you are entitled to.*

4. I have a Section 8 voucher. How will a foreclosure affect me?

Tenants with Section 8 vouchers who are under a fixed term lease are protected by "good cause" eviction statutes. This means landlords can only evict Section 8 tenants if the tenant has failed to pay the rent or violated some other important term of the lease or other law. This protection applies to your new landlord (usually a bank)

after a foreclosure sale. After the first year of living somewhere, Section 8 tenants often become month to month tenants. If you have a Section 8 voucher and have a month to month rental agreement, the new owner can give you a 90 day notice as described in #3. If you find out that your home is in foreclosure, contact the Housing Authority right away.

If you have a different kind of subsidized housing, contact your Legal Aid office for more advice.

5. Can the locks be changed, preventing me from getting my belongings?

No. The new owner may only evict you through the eviction court process. If the locks have been changed and you can't get into your building, contact Legal Aid right away.

6. I've been contacted by a lender offering me money to move. Should I take it?

The lender may offer you money so you agree to move out by a certain date. The lender probably wants to avoid having to go through an eviction action in court. If you do not have a lease, you will likely have to move out of the property with a 90 days notice and the cash may help you find another rental. You should consider the cost of moving, and if necessary, reject the bank's first offer and ask for more money. The bank wants to avoid the expense of an eviction proceeding, and may be willing to negotiate with you on the amount they are offering.

If you do agree to an offer from the bank, get the agreement in writing and signed by an authorized bank representative. Make sure the agreement clearly states when you will receive the money. Do not hand over the keys until you have been paid. If you have questions about taking the bank's offer, contact an attorney.

7. Who do I pay rent to if my rental home is in foreclosure?

Even though your landlord might not be paying their mortgage, you still have an obligation to pay rent until you move out. If you stop paying

rent altogether, you could be evicted for failure to pay rent.

If you become aware that your home is in foreclosure, you can apply any security deposit or prepaid rent towards your monthly rent payments. If you do this, you must notify the landlord in writing that you are going to do this. Attached to this flyer is sample letter #2 that you can send to your landlord when you pay the amount of your rent minus your security deposit and/or prepaid rent.

You may also want to talk to the landlord about paying a lower monthly rent amount given the landlord's failure to provide you with a secure place to live (called "covenant of quiet enjoyment"). If the landlord agrees to accept a lower rent, make sure you get the agreement in writing and signed by your landlord.

In some loan agreements (usually for multi-unit buildings), the owner of the property gives the lender the right to collect rent from the tenants if the landlord misses mortgage payments. In these cases, the lender can send a notice to the tenants or post a notice on the property telling the tenants to send rent directly to the lender. If you receive a notice like this from a lender, call the lender to confirm where you should send rent, then follow the instructions the lender provides. You should also call your landlord to let them know that you received a notice from the lender instructing you to pay rent directly to the lender. Make sure you get rent receipts when you pay rent to the lender.

If you chose to stop paying rent, make sure you are keeping enough money aside to pay your rent at a later date if necessary.

8. Who is responsible for repairs if the rental property is in foreclosure?

Even though the rental property is in foreclosure, the owner of the property is still responsible for its upkeep until the property has been sold and ownership has changed. You should continue to direct maintenance requests to your landlord. If you are paying rent to the lender (see question #7), then you should also direct your requests for repairs to the lender.

If the landlord or lender refuses to make repairs, you may want to call the Portland Bureau of

Buildings Neighborhood Inspection Program ((503) 823-CODE) or Legal Aid.

9. How can I know if the property I'm renting is in foreclosure?

Oregon law requires the foreclosing entity to serve you with a notice of pending foreclosure at least 120 days before the proposed foreclosure date. This notice must be either personally given to you or will be posted on the property in an obvious place and a copy will be addressed to the "Occupant" and mailed to the property.

The notice of pending foreclosure served on you by the foreclosing entity will explain the notice rights you have under state law. Since state law gives you shorter notice periods than federal law, it is important for you to know that you might be legally entitled to more time to move out than described in this notice. If you get a notice to move out from the new owner at the foreclosure sale that gives you less than the amount of time explained in #2, call an attorney right away.

Records of foreclosures are available to the public. If you suspect your building may be in foreclosure, you can go to the county Assessor's office, and do a search of the public records for the property. You can also look online at sites like www.foreclosure.com for foreclosure listings by zip code, if you have strong suspicions your landlord is in foreclosure.

9. Once I move out, do I get my security deposit back?

Even if the property you lived at was foreclosed upon, you are entitled to get back your security deposit within 31 days of moving out. If you had paid any rent to the new owners of the property, then you should receive your security deposit from the new owners. However, if you never paid rent to the new owners, the old owner is responsible for refunding your security deposit. If any of the security deposit is being kept to repair damage to the property, you must be sent an accounting of the damage within 31 days of moving out.

If you paid a security deposit or prepaid rent and learn your building is in foreclosure, you should apply that money towards your monthly rent. You have to provide your landlord with written

notice of your intent to do this. (see sample letter #2). If you applied your security deposit towards rent, then you are entitled to have your security deposit returned to you when you move out.

10. Do I have any claims against my old landlord?

Maybe. If you signed a fixed term lease, the landlord was legally bound to deliver the premises for the entire lease term. Since the foreclosure of the landlord's mortgage terminates the lease, the landlord has violated their duty to provide you with the property for the entire lease term. Even if you have a month to month rental agreement, you might have a claim for the landlord not providing you with a secure place to live (called "covenant of quiet enjoyment").

You may also have claims against your landlord if the landlord knew about the default of the mortgage when they signed a lease/rental agreement with you and failed to tell you that the home was in foreclosure.

Talk to a lawyer to see if you have a claim against your landlord. You might be able to sue your landlord for moving and apartment searching costs, application fees, and the difference, if any, between the new rent for a comparable rental and the rent under the old lease.

Resources

Legal Aid Services of Oregon:

<http://www.oregonlawhelp.org>

Oregon City Regional Office: 503-655-2518

Multnomah County Office: 503-224-4086

Multnomah County Housing Hotline (Tuesdays and Thursdays 1-3): 503-295-2237

Community Alliance of Tenants:

<http://www.oregoncat.org>

Renter's Rights Hotline: 503-288-0130

Nolo Press Information on Foreclosures & Renter's Rights

<http://www.nolo.com> – Click on "Property" then "Foreclosure"

Sample Letter #1

Date: _____

Dear _____ (Name of Foreclosing Entity),

I currently rent the property located at: _____.

I was given notice that my home is in foreclosure. I have enclosed a copy of my rental agreement, lease agreement or evidence of my tenancy at the property you are foreclosing on.

The Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702 - 703 (2009), that became law on May 20, 2009, applies to state foreclosure and eviction proceedings. This federal law requires a person or entity who acquires ownership of residential rental property through foreclosure to give tenants certain written notices to vacate before moving to evict the tenant. A new owner can only terminate a tenancy by giving a tenant who has a month to month rental agreement at least 90 days notice of termination. If the tenant has a year-long lease, this federal law requires the new owner to honor the lease and allow the tenant to stay in the home until the expiration of their lease. If the new owner who takes title at foreclosure wants to occupy the premises as his or her personal residence, the new owner may terminate the lease only after giving the tenant at least 90 days notice of such termination. These notices cannot be issued until after the foreclosure/trust deed sale.

Thank you.

Sincerely,

Tenant name

Sample Letter #2

Date: _____

Dear _____ (Landlord),

I currently rent the property located at: _____.
I was given notice that my home is in foreclosure.

When I moved in, I paid a total of \$ _____ in security deposits and/or prepaid rent. My monthly rent is \$ _____. Oregon State Law allows me to apply my security deposit and prepaid rent to my monthly rent once I learn that my home is in foreclosure. (SB 952, ORS 86.765).

With this letter, I am notifying you that I am applying \$ _____ of my security deposit and/or prepaid rent towards my monthly rent obligation this month. Enclosed is my rent check in the amount of \$ _____.

Thank you.

Sincerely,

Tenant name