

Community Alliance of Tenants – Tenant Education

Information is for general information purposes only, and is not a substitute for the advice of an attorney.

Tenant's Rights in Foreclosure



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 that they must serve you with the notices discussed in #3 and #7.

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 and the home has new owners. 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. If your lease expires in less than 90 days, then the new owner must give you 90 days notice to move. 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, meaning after they have purchased the home at the foreclosure sale. You should do your best to move out by the date in the notice. If you are unable to move out before the notice expires, 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 lease/rental agreement was signed before the landlord obtained the loan that is being foreclosed upon, your rights might be different. You should take to an attorney about your rights.

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 that the new owner must honor your lease and the Housing Assistance Payments (HAP) contract. A new owner can only terminate the lease and HAP contract by giving you at least 90 days notice of termination prior to the end of the lease. 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. Your locks cannot be changed until the new owner obtains a court order of eviction from the court. You will be served with a summons to appear in court when the owner begins an eviction action. If the locks have been changed and there has been no court order of eviction, 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 might have to move out of the property with 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.

You should pay your rent to your landlord until the foreclosure sale. After the sale, you should receive a written notice that the sale took place and giving you the new owner's name and contact information. If the new owner accepts rent from you, signs a new lease with you or does not otherwise notify you within 30 days of the sale that you must move out, the new owner becomes the landlord and must maintain the property. Otherwise, you do not owe rent and you must move out by the date the owner specifies in a notice to you.

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, 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. Can I apply my security deposit or last month's rent towards this month's rent now that I know my home is in foreclosure?

Yes. You can apply any security deposit and/or prepaid rent towards your monthly rent payments once you become aware that your home is in foreclosure. 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.

Once the home is foreclosed upon, you are unlikely to get your security deposit and/or prepaid rent back from the old owner. You should apply this money to your rent as soon as you know that your home is facing foreclosure.

If your landlord avoids the foreclosure, you may be required to re-pay your security deposit. The landlord must provide you with written evidence from the foreclosing entity that the unit is no longer in foreclosure and the landlord must allow you two months to re-pay the deposit.

9. 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 ownership of the property 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.

10. 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. If you get a notice to move out from the new owner that gives you less than the amount of time discussed 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.

11. 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. 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 not entitled to have your security deposit returned to you when you move out.

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

Maybe. If you signed a fixed term lease and the home was foreclosed upon during the term of your lease, the landlord might have violated their duty to provide 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> 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 upon.

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, along with Oregon state law (ORS 86.745 and 86.755), 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 to vacate. If the tenant has a fixed term lease, these federal and state laws require the new owner to honor the lease and allow the tenant to stay in the home until the expiration of their lease. If the lease expires in less than 90 days, the new owner is required to give the tenant 90 days notice to vacate. If the new owner who takes title through a 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 to vacate. These notices cannot be issued until after the foreclosure/trust deed sale and title has transferred. Please let me know how you would like me to pay my monthly rent payment once title transfers.

Thank you.

Sincerely,

_____ Tenant name

Sample Letter #2

Dear _____ (Landlord),

I currently rent the property 5

Date: _____ 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. 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. (ORS 90.367).

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

Thank you.

Sincerely,

_____ Tenant name