

## 1. I just found out that the home I rent is in foreclosure. What should I do?

You should first determine the type of foreclosure. There are two types, one with court involvement called a judicial foreclosure, and one without court involvement called a non-judicial foreclosure. In a judicial foreclosure a court case has been filed, and you should receive a court summons. In a non-judicial foreclosure, there has not been a court case filed, and instead of a summons you should receive a written trustee's notice of sale.

Oregon and federal law have some specific protections for most tenants in both judicial and non-judicial foreclosures. Upon receiving a trustee's notice of sale or summons, you should notify the bank or person foreclosing that you are a renter at the property. You should send a copy of your rental agreement to the address listed in the trustee's notice of sale for the trustee or to the attorney listed in the summons. If you do not have a written rental agreement, you can send things such as rent receipts to prove that you are a tenant.

You should also send a copy of sample letter 1 attached to this flyer with your agreement. This will let the bank or person foreclosing know that you have the legal right to live in the home and that they must serve you with a proper notice if they want to end your tenancy (see answer to question 3). Keep a copy of the paperwork you send.

Once the foreclosure sale takes place, proof of your tenancy and a copy of sample letter 1 should also be sent to the new owner.

If you are on a term lease that ends less than 90 days after an expected sale, you should talk with an attorney if possible. You may be able to talk with an attorney through the Legal Aid Foreclosure Help Line at (503) 227-0198 or 1-855-412-8828.

## 2. Do I have to move out immediately?

No, you will not have to move out immediately after receiving a trustee's notice of sale or summons.

In most instances you must be sent a 90-day notice to move out by the new owner after a foreclosure sale. Notices are discussed in the answer to question 3.

In a non-judicial foreclosure, the date of the trustee's foreclosure sale is listed in the written trustee's notice of sale which you should receive at the property.

In a judicial foreclosure, the date of the sheriff's foreclosure sale will be determined after the end of the court case. You should receive written notice of the sheriff's sale date at the property. Many sheriff's foreclosure sale notices are also listed at <https://oregonsheriffssales.org/>

## 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 is sold.

Federal law requires a new owner after a foreclosure sale to give a tenant a 90-day written notice of termination for a month-to-month tenancy. For a term tenancy, such as a 1-year lease, federal law requires that a new owner allow the tenant to stay for the remaining term of their lease, unless the new owner intends to live on the property, in which case they must give the tenant at least 90 days' notice.\*

For example, if you have a 1-year lease and the property is sold 6 months into your lease, the new owner must allow you to remain as a tenant for the remaining 6 months of your lease. However, that new owner can give you a 90-day notice of termination if the new owner intends to move into the home, even if you have 6 months remaining on your lease.

The new owner can only give you a notice to move out 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 contact 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 by the date in the notice, you may request a reasonable accommodation for more time.

Once the notice period is up, the new owner can begin an eviction case 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 talk to an attorney about your rights.*

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

In general, tenants with Section 8 vouchers are treated the same as other tenants in foreclosure.

If you find out that your home is in foreclosure, contact your Housing Authority right away and take any steps necessary to preserve your voucher.

If you have a different kind of subsidized housing, contact your local legal aid office for more advice.

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

You should not be excluded from the property unless and until the new owner files and wins an eviction case against you. You will be served with a summons to appear in court when the owner begins an eviction case.

Unfortunately, there have been some instances where a new owner has convinced a court to remove a tenant as part of the foreclosure case, rather than in an eviction case after a 90-day notice. If the locks have been changed, or the sheriff has indicated you will be removed from the property, and there has been no court order of eviction, contact an attorney right away.

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

The foreclosing bank or new owner may offer you money so you agree to move out by a certain date. They probably want to avoid filing a court case, and the cash may help you find another rental. Before accepting an offer, you should consider the cost of moving and your ability to leave by the proposed date. If

necessary, reject the first offer and ask for more money or more time. The bank or new owner may want to avoid the expense of an eviction case, and may be willing to negotiate with you on the amount they are offering or on the move out date.

If you do agree to an offer, get the agreement in writing and signed by an authorized representative of the bank or new owner. Make sure the agreement clearly states when you will receive the money. If you have questions about taking the 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 do choose to stop paying rent, make sure you are keeping enough money aside to pay your full rent at a later date if necessary.

Your current landlord has the right to collect rent until the trustee's sale (in a non-judicial foreclosure) or sheriff's sale (in a judicial foreclosure) occurs. You may want to talk to the landlord about paying a lower monthly rent amount given their failure to provide you with a secure place to live. 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 larger apartment 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 them 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.

After the trustee's or sheriff's sale, your old landlord will no longer have a right to collect rent from you.

In a non-judicial foreclosure you should receive a written notice after the trustee's foreclosure sale, giving you the new owner's name and contact information. The new owner becomes your new landlord if they: 1) accept rent from you; or 2) sign a new lease with you. The new owner may also become your landlord under state law if they do not give you a termination notice within 30 days of the sale.

If the new owner does not become your new landlord, they will not have to maintain the property. You will not owe rent, but you must move out by the date on the termination notice.

In a judicial foreclosure, the new owner may want to keep you as a tenant, rather than terminate your tenancy as outlined in the answer to question 3. If so, you should receive notice from them about where to pay the rent.

## **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. This will generally be when you receive a summons or notice of trustee's sale. You only have a right to do this before the foreclosure sale.

In order to apply your security deposit or prepaid rent deposit to your monthly rent, you must notify the landlord in writing that you are going to do this. At the end of this flyer is sample letter # 2 that you can send to your landlord when you apply your security deposit or prepaid rent to your monthly rent. You should send a new written notice for each month you use deposits to pay rent.

Once the home is foreclosed upon, you are unlikely to get your deposits back from the old owner. You should apply your deposits to your rent as soon as you know that your rental is facing foreclosure.

Note, however, that if your landlord avoids the foreclosure, you may be required to re-pay your 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 the answer to 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 your housing authority (if you receive Section 8), your county or city building inspector if there is one (for Portland: the Portland Bureau of Buildings Neighborhood Inspection Program ((503) 823-CODE) or an attorney.

## **10. How can I know if the property I'm renting is in foreclosure?**

In non-judicial foreclosures, you should be served with a written "Notice to Residential Tenants" at least 120 days before the proposed foreclosure sale date. This notice is different from a termination notice and must be either personally given to you and/or posted on the property in an obvious place and mailed to the "occupant" at the property. The notice to residential tenants will explain your rights under state law.

Some of the time periods in the notice to residential tenants may be incorrect because federal law has changed (the current termination notice requirements are listed in the response to question 3). If you get a notice to move out from the new owner that gives you less than the amount of time discussed in question 3, call an attorney right away.

In judicial foreclosures, you should receive a court summons. The summons should be personally handed to you or someone else living on the property. The summons may also be mailed and posted at the property.

Records of foreclosures are available to the public. If you think your building may be in foreclosure, but have not received a notice or summons, you can go to the county recording

office and do a search of the public records for the property. You can also look online at sites like [www.foreclosure.com](http://www.foreclosure.com) for foreclosure listings by zip code. For judicial foreclosures, there will be a record of the court case filed against your landlord at the county circuit court.

## **11. Once I move out, do I get my security deposit back?**

In most foreclosure cases, your original landlord is responsible for refunding your security deposit. It might be hard to get your deposit back from your original landlord, so you should use your deposit for rent if possible (see the answer to question 8 and sample letter # 2).

If you applied your security deposit towards rent, then you are not entitled to have your deposit returned to you when you move out. Otherwise, the landlord must return it to you, or give you a list of what damages or expenses they were used for, within 31 days after moving out.

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

Maybe. If you signed a fixed-term lease (like a 1-year lease), and the foreclosure forces you to move during the lease period, you may have claims against the landlord for violating the lease contract.

You may also have claims against the landlord if foreclosure proceedings were underway when they rented to you and they failed to tell you in writing before you signed your lease.

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

## **Resources**

### **Legal Aid Foreclosure Help:**

<http://www.OregonHomeownerSupport.gov>

Toll-Free Statewide: 1-855-412-8828

### **Community Alliance of Tenants:**

<http://www.oregoncat.org>

Renter's Rights Hotline: 503-288-0130

*Sample Letter # 1*

Date: \_\_\_\_\_

Dear \_\_\_\_\_ (Name of Foreclosing Entity/New Owner),

I currently rent the property located at: \_\_\_\_\_.

I received 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.

ORS 86.771 and 86.782 and the federal Protecting Tenants at Foreclosure Act require the new owner of residential rental property through a foreclosure sale to give tenants written notices to vacate. 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, the new owner must allow the tenant to remain through the term of the lease unless the new owner intends to occupy the property. If the new owner intends to occupy the property, the new owner may give the tenant a 90 day notice to vacate, despite the fixed-term lease. These notices cannot be issued until after the foreclosure sale.

Please let me know how you would like me to pay my monthly rent payment after the sale.

Thank you.

Sincerely,

\_\_\_\_\_  
Tenant name

*Sample Letter # 2*

Date: \_\_\_\_\_

Dear \_\_\_\_\_ (Landlord),

I currently rent the property located at: \_\_\_\_\_.  
I received 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. ORS 90.367.

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 \$ \_\_\_\_\_, which is the difference between my security deposit and prepaid paid and my monthly rent obligation, if any.

Thank you.

Sincerely,

\_\_\_\_\_  
Tenant name