

Federal Law Requires 90 Days Notice Prior to Eviction of any Tenant Living in a Foreclosed Property

Introduction

If you rent your home, and your home was sold at a foreclosure sale, federal law requires the new owner to notify you at least 90 days before evicting you. You must still honor the obligations of your lease or rental agreement during this time period.

In addition, Washington State law says the foreclosing party (the bank or trustee that is foreclosing on the rental property you live in) must send you a written notice before your home is sold at foreclosure. This written notice will warn you that your home might be sold 90 days or more after the date of the notice. It will also tell you that the new owner who buys your home at foreclosure must provide you with at least 60 days notice before evicting you.

These are two distinct notice periods. The 90-day foreclosure notice will tell you when your home may be sold at foreclosure. The 60-day eviction notice period begins only after your home is sold at foreclosure.

These are new laws. There are no court decisions yet interpreting either law. This publication will give you general information about these new laws. For your specific situation, you should also talk with a lawyer.

Where can I find these laws?

The federal Protecting Tenants at Foreclosure Act is at [S. 896, Pub. L. No. 111-22, §§ 701-704](#)

The state law, SB 5810, is at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202009/5810.SL.pdf>

How does the federal law affect me if I have a lease?

If the new owner is not going to move into your home, then you can stay until your lease ends.

If the new owner is planning to move into the home, s/he must give you at least 90 days notice before evicting you.

What if I am renting month-to-month?

If you are renting month-to-month, or if you began your tenancy with a lease that has expired and you are now renting month-to-month, the new owner must give you at least 90 days notice before evicting you. In the event of a foreclosure, this Federal law overrides Washington State law, which allows a landlord to terminate a month to month tenancy with just a 20-day notice.

What if I am on Section 8?

If you are a Section 8 tenant, you have the same protections listed above: completion of your lease period and/or 90 days required notice before eviction. Also, the new owner must honor the terms of the housing assistance payments (HAP) contract that established your Section 8 tenancy. The new owner may not use the "other good cause" clause of your HAP contract to terminate your lease if the "other good cause" is that evicting you will make the property easier to sell.

What if I am not on Section 8, but my rent is reduced or subsidized by another program?

If your rent is reduced or subsidized by a federal, state, or local subsidy program, you have the same protections as any other renter, including the right to a 90-day notice.

If I live in Seattle, am I protected by the Just Cause Ordinance?

Maybe. If you pay rent to the new owner and s/he accepts it, then you could be considered a month-to-month tenant, protected by the Seattle Just Cause Ordinance.

In Seattle, no landlord can evict a tenant for any reason other than those listed in the Ordinance. Purchasing property at a foreclosure sale is not listed as one of the reasons why an owner can evict a tenant so the Ordinance may protect you. If you live in Seattle and you are tenant living in a property in foreclosure, get immediate legal advice.

Who do I pay rent to after the foreclosure sale?

Federal law says to pay rent to the new owner. If you have not been given payment information for the new owner, save the rent money until you find out how payment should be made. Even if the new owner has not told you where to send the rent, they still have a right to collect it.

Under state law, a tenant living in a foreclosed property may get either a new rental agreement or a 60-day notice to vacate. If you enter into a new rental agreement with the new owner, then you would pay rent to the new owner. If you get a 60-day notice to vacate, the new landlord may only evict you for waste or nuisance under state law. There is no authority for a new owner

to evict for other reasons such as nonpayment of rent. If you are living in a property that was sold at foreclosure, and you have gotten a 60-day notice to vacate, get seek immediate legal advice about your rights and responsibilities.

Do I have to keep paying rent after I receive my 90-day notice?

Maybe. Federal law assumes that your obligation to pay rent continues during the 90 days. However, the new owner may never demand or collect the rent or even want to enter into a landlord-tenant relationship. If the new owner makes a demand for rent, and you want to stay for the 90-day period, you should continue to pay rent. If you fail to pay rent or to meet other terms of your lease or tenancy, federal law says you may still be evicted pursuant to state law. For more information, read our publication [*Eviction and Your Defense*](#), available at www.washingtonlawhelp.org under the category “Housing.”

The rent issue is complicated. State law provides for a 60-day notice to vacate. During that period, a new owner may only evict the tenant if the tenant commits waste or nuisance — but NOT for non-payment of rent. You may decide to enter into a new rental agreement with the new owner of the foreclosed property, or you may take advantage of your right to 90 days notice under federal law. In either of those cases, you would have to keep paying rent.

Additionally, if you get a 60-day notice to vacate under state law, you choose not to pay rent during the 60-day notice period, but do not move at the end of the 60 days, the new owner could sue you and force your eviction through the unlawful detainer process. Get immediate legal advice if you are in this situation.

How do I know if the person claiming to be the new owner of my home is actually entitled to collect rent?

Scammers may get in touch with tenants living in foreclosed properties and demand rent. Before you pay rent to a person who claims to be the new owner, you should make sure that the person is the actual legal owner of the home and is entitled to collect the rent. First, ask for a copy of the Trustee’s Deed from the new owner as proof of ownership. Then contact the County Auditor to make sure that the Trustee’s Deed is legitimate and not a forgery. Contact information for County Auditors in Washington State is at <http://publicrecords.onlinesearches.com/Washington-Land-Records-and-Deeds.htm>. A local title insurance company may also be able to provide you with that information.

I paid my old landlord a deposit and/or last month’s rent. What happens to that money after foreclosure?

If the foreclosed-upon landlord did not refund your deposit or transfer it to a new owner after the sale, the old landlord is liable to you for up to twice the amount of your deposit, plus attorneys’ fees. Be aware, however, that you may owe rent or a deposit to the new owner, regardless of whether the old landlord has wrongfully retained those funds.

Before the foreclosure, I was paying rent to a property management company that worked for my old landlord. If I keep paying them, will they just send the rent to the new owner?

No. The property management company had a contract with your old landlord. That contract ended when your home was foreclosed on. Your old property manager may have contacted the new owner and established a new contract to continue managing your home, but you should confirm this before paying rent to your old property manager after a foreclosure.

Who do I contact if my home needs repairs or if my utilities are shut off because the old landlord did not pay the bill?

The new owner after the foreclosure becomes the landlord for all purposes under federal law. Problems with maintenance, repair, or utility service (assuming that the landlord was obligated to pay utilities) are the obligation of the new owner. For more information, read our publication [Tenants’ Repair Remedies](#).

The new owner or foreclosing lender has offered me a one-time cash payment to vacate my home immediately. Should I take it?

This is up to you. Whatever you decide, be aware that under federal law, the new owner or foreclosing lender must give you 90 days notice prior to evicting you. If, for example, a new owner tells you that you have a choice between taking the cash and leaving now or being evicted with less than 90 days notice, you may have legal remedies against the new owner because this is untrue. However, if taking a

cash payment and leaving your home is in your interest, you may wish to bargain for an acceptable amount of time and cash to move.

The foreclosure sale happened. I just got a notice to vacate in 60 days. What are my rights?

Regardless of that notice, you have an absolute right to 90 days notice to vacate pursuant to federal law. If you want to stay in your home for the full 90 days, let the new owner know that you have this right and intend to assert it. You will also have to honor your obligations to pay rent and other duties pursuant to the agreement before the foreclosure. If the new owner refuses to comply with federal law, get legal assistance.

If you do not wish to assert your right to a 90-day notice before vacating, you can comply with the 60-day notice by vacating in 60 days. State law says that, during those 60 days, the new owner can evict you for only waste or nuisance. This means that, during the state-mandated 60-day notice period, you cannot be evicted for failing to pay rent.

The new owner may wish to enter into a new rental agreement with you under state law. The new owner does not have to do so. You should only enter into a new rental agreement if it is in your interest to do so.

Finally, you can simply move out. You do not have to stay in the property after the foreclosure sale. You should, however, remove all of your belongings and valuables when you move, so that they are not taken or destroyed by the new owner.

Who is not protected under the law?

These protections are only available if the tenant is NOT the previous owner of the property whose interest was foreclosed (your former landlord), or the child, spouse, or parent of the previous owner; if the lease or tenancy was the result of an "arm's length transaction" (not a special deal between friends or family); and if the lease or tenancy requires the payment of rent that is not substantially less than the fair market value for the property, unless the rent is reduced by a federal, state, or local subsidy.

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