

I am a Tenant Living in a Foreclosed Property. What are My Rights?

Intro

If you rent your home, and it was sold at a non-judicial foreclosure sale (also called a trustee's sale), the new owner must give you 60 days' written notice to vacate before starting an eviction action against you. Additionally, if you are a "bona fide" tenant, the new owner must notify you at least 90 days before evicting you and you may be able to stay until the end of your lease. You must still honor the obligations of your lease or rental agreement during this time.

-
- ❖ This only applies to buildings with four units or fewer. [RCW 61.24.005\(13\)](#).
-

Am I a "bona fide" tenant?

Maybe. To be considered a "bona fide" tenant and entitled to protections under the federal Protecting Tenants at Foreclosure Act (PTFA), all of these must be true:

- 1) You must not be the child, spouse or parent of the former owner.
- 2) The lease or tenancy must have been the result of an "arm's length transaction," not a special deal between friends or family.
- 3) The rental amount must be at fair market rent, not at a discount, or the rent must be lower due to a

government program that subsidizes the rent.

I am a bona fide tenant. How much notice will I get before eviction?

You are entitled to a written notice giving you at least 90 days between the date on the notice to vacate and the date you must move out. [Protecting Tenants at Foreclosure Act of 2009](#).

I am not a bona fide tenant. How much notice will I get before eviction?

Under Washington state law, you are entitled to a written notice giving you at least 60 days between the date on the notice to vacate and the date you need to move out. [RCW 61.24.146\(1\)](#).

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

If you are a bona fide tenant and the new owner is not planning to move into the home, you can stay until your lease ends.

If you are a bona fide tenant and the new owner is planning to move into the home, the new owner must give you at least 90 days' notice before evicting you.

I am a bona fide tenant. I have a lease. It is not in writing. Can I still stay until the end of the lease?

Yes. The federal PTFA does not require that your lease be in writing. The lease could have been a verbal agreement between you and the former owner.

What if I am renting month-to-month?

If you are renting month-to-month, or your tenancy started with a lease that expired and you now rent month-to-month, the new owner must still give you at least 60 days' notice, or 90 days' notice if you are a bona fide tenant, before evicting you.

I am a bona fide tenant. I just got a notice that says I need to send documents to a law firm to qualify for the federal PTFA protections. What should I do?

If you are a bona fide tenant, you are entitled to a 90-day notice or to stay until your lease term ends, even if you do not send the requested documents to the law firm that contacted you. You should notify the law firm that you are a bona fide tenant pursuant to the PTFA so they are aware you are entitled to the additional time in the home.

What if I am on Section 8?

You have the same protections listed above:

- completion of your lease period and/or
- 90 days' notice before eviction

The new owner must also honor the terms of the Housing Assistance Payments (HAP) contract that is part of your Section 8 tenancy.

The new owner cannot use the "other good cause" clause of your HAP contract to end your lease if the "other good cause" is that evicting you will make the property easier to sell.

I am not on Section 8. Another program reduces or subsidizes my rent. Am I protected?

You have the same protections as any other renter, including the right to a 90-day notice.

I live in Seattle. Does the Just Cause Eviction Ordinance protect me?

In Seattle, a landlord can only evict a tenant for the reasons the Ordinance lists. Buying property at a foreclosure sale is not one of those reasons. The Ordinance may protect you.

If you are a tenant living in Seattle and your property is in foreclosure, **get immediate legal advice.** If you have a very low income, call the CLEAR hotline at 1-888-201-1014.

After the foreclosure sale, to whom do I pay rent?

Federal law says to pay rent to the new owner. If no one has given you payment info for the new owner, save the rent money until you find out how to make payment. Even if the new owner has not told you where to send the rent, they still have a right to collect it. If you are a bona fide tenant and you do not pay the rent, federal law still requires the new landlord to give you at least 90 days' notice before eviction.

Under Washington state law, a tenant living in a foreclosed property may get one of these:

- a new rental agreement
- a 60-day notice to vacate

If you enter into a new rental agreement with the new owner, you will pay the new owner rent.

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

Maybe. If you are a bona fide tenant, federal law assumes that your obligation to pay rent continues during the 90 days. BUT the new owner may decide to never demand or collect the rent. They may not even want to enter into a landlord-tenant relationship.

The rent issue is complicated. If the new owner makes a demand for rent and you are a bona fide tenant, and you want to stay for the 90-day period, you should keep paying rent to avoid eviction. If the new owner seeks to evict you for non-payment of rent, the new owner must still give you a 90-day notice.

State law provides for a 60-day notice to vacate. During that period, a new owner may only evict you if you commit waste or nuisance. They **cannot** evict you for non-payment of rent.

You may decide to enter into a new rental agreement with the new owner of the property. In that case, you would keep paying rent, but it would be paid to the new owner.

If you get a notice to vacate and you choose not to pay rent during the notice period, but do not move at the end of the 60 or 90 days, the new owner could sue you and force your eviction through the unlawful detainer process. If this is your situation, get legal

advice right away. If you have a very low income, call the CLEAR hotline at 1-888-201-1014.

Is the person claiming to be the new owner entitled to collect rent?

Scammers review publicly available foreclosure info and may contact tenants living in foreclosed properties and demand rent.

Before paying rent to someone claiming to be the new owner, make sure it is the actual legal owner and entitled to the rent. Ask the new owner for a copy of the Trustee's Deed as proof of ownership. Contact the County Auditor. Make sure the Trustee's Deed is real. Contact info 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 give you the information.

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

If the old 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. RCW 59.18.270. You can sue the old landlord in small claims court to get your deposit back.

Northwest Justice Project (NJP)'s video called [Where is My Security Deposit](#) and publication called [Can I Get My Security Deposit Back](#), available at www.washingtonlawhelp.org, have more info. (You can call the CLEAR hotline at 1-888-201-1014 to ask for the publication.)

-
- ❖ Even if the old landlord has wrongfully kept your deposit, you may still have to pay the new owner a new deposit anyway.
-

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

No. The property management company had a contract with your old landlord. That contract ended with the foreclosure.

Your old property manager might have contacted the new owner and gotten a new contract to continue managing your home. Verify this before paying your old property manager rent after foreclosure.

My home needs repairs, or my utilities were shut off because the old landlord did not pay the bill. Whom do I contact?

The new owner becomes the landlord for all purposes after the foreclosure sale. Problems with maintenance, repair, or utility service (if the utilities were the landlord's responsibility) are the new owner's responsibility. [Tenants: What to do if Your Unit Needs Repairs](#) has more info.

You may be able to keep your utilities on by contacting the utility company and directly paying something to avoid shut-off, even if the utilities are in the old owner's name.

-
- ❖ **WARNING:** If the utilities are not in your name, be cautious about putting them in your name. Ask the utility company if it could make you liable for any balance or amount that may accrue after you move out.
-

The new owner or foreclosing lender offered me a one-time cash payment to move out immediately. Should I take it?

It is your choice. Be aware of your right to 60 or 90 days in the home before eviction.

Example 1: A new owner tells you that you can either take the cash and leave now OR be evicted with less than 60 or 90 days' notice. This is untrue. You may have legal remedies against the new owner.

Example 2: A new owner offers to pay you an amount of cash that will help you and your family relocate, but you must to agree to move out in two weeks. Taking a cash payment and moving may be in your best interest. You may want to bargain for an acceptable amount of time and cash to move.

-
- ❖ The cash payment, often called cash-for-keys, is paid after you move out and following an inspection, not upfront. You may want to consider the timing of the payment when deciding whether to accept a cash-for-keys offer.
-

The foreclosure sale happened. I got a notice to vacate in 20 days. What are my rights?

No matter what that notice says, you have an absolute right to 60 days' notice, or 90 days' notice if you are a bona fide tenant. If you want to stay in your home for the full 60 or 90 days, let the new owner know you have this right and plan to exercise it. You must honor your obligations to pay rent and other duties pursuant to the agreement before the foreclosure. If the new owner refuses to follow the law, get legal help. If you have a very low income, call the CLEAR hotline at 1-888-201-1014.

The new owner does not have to but may want to enter into a new rental agreement with you. You should only if it is in your best interest to do so.

Can I just move out?

Yes. You do not have to stay after the foreclosure sale. You should remove all your belongings and valuables, so the new owner does not take or destroy them.

Does this law also protect former homeowners?

No. These protections are only for tenants, and NOT the owner who lost the home in foreclosure or an occupant who is not a tenant. These protections are not available

even if the former owner remains on the property as a tenant, subtenant, or occupant. [RCW 61.24.146\(3\)](#).

A former owner

- Must move 20 days after the foreclosure sale or face eviction.
- Is not entitled to post-sale notice of the eviction before an unlawful detainer action (eviction court case).

What if my landlord changes my locks or gets rid of my belongings?

The landlord cannot simply change the locks or remove your things. The landlord must first ask for and get a writ of restitution from a judge. The sheriff must conduct the eviction. Call the police if your landlord changes your locks or removes your things. If you have a very low income, you can also call the CLEAR hotline at 1-888-201-1014 for legal help.

Where can I read the law?

The state law is at [RCW 61.24.146](#). ([RCW](#) stands for [Revised Code of Washington](#), our state law.)

Can I get help moving?

Some agencies in Washington may be able to provide relocation assistance. Call 211 or go to <http://win211.org/> for more info.

This publication was a joint effort of the Northwest Justice Project and Columbia Legal Services.

This publication provides general information concerning your rights and duties. It is not intended to replace specific legal advice.

This information is correct as of August 2018.

© 2018 Columbia Legal Services — 1-888-201-1014

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)