

## Foreclosure Process

1. The landlord defaults on payment of mortgage loan payment.
2. A foreclosure action is filed by the bank.
3. The landlord has 20 days to make a defense against the foreclosure filing.
4. Once the 20 days are over and defenses to the foreclosure have been rejected, then a judgment of foreclosure is entered. NOTE: This is not the same thing as appointing a new receiver for the rent!
5. The landlord enters into a "redemption period," where they have the opportunity to try to repay the amount owed to the bank. A redemption period can be 2, 3, 6, or 12 months, depending on the type of foreclosure filed. NOTE: During the redemption period, the landlord still collects rent and is responsible for repairs, etc.
6. Once the redemption period ends, there is a sheriff's sale, where the property is sold to a new owner or (usually) to the bank who sued for foreclosure.
7. Once a property is sold, a hearing is scheduled to confirm the sale.
8. The confirmation of sale hearing takes place and, if the sale is confirmed, results in the "date of confirmation of sale." Title is transferred at the hearing. This is the first day that the 90 day notice could be issued. At that time, the new owner collects rent and is responsible for repairs.

NOTE: Sometimes the court will appoint a "receivership" for the rent. At that time, the tenant should pay the person who is named in the court order. Papers from the bank asking for rent are not the same as papers from the court.

## What should I do if my rental unit is in foreclosure?

### Continue to pay rent.

You still have to pay rent or you could be at risk of eviction for non-payment of rent. Continue to pay rent to your original landlord until you receive written notice of a change in ownership or a receivership order from the foreclosure court that directs you to pay your rent to a receiver appointed in the court proceedings. Whoever receives your rent is responsible for all other duties and responsibilities of the landlord (e.g., maintenance, eviction, etc.).

### Keep written records.

• It's a really good idea to keep evidence of payment of rent (like rent receipts, money order stubs, checking account statements) because sometimes you will be asked to prove that you are a tenant. Receipts (and utility bills) can come in handy to show that you are indeed a tenant and qualify to receive the rights discussed in this brochure.

### Continue to live in your unit.

• If you have a written lease, you do not have to move any sooner than the end of the lease, unless you live in a single family home that the new owner wishes to occupy. If you live in a single family home that the new owner intends to occupy, or have a month-to-month or verbal lease, then you have at least 90 days after receiving written notice from the property's new owner after sale of the property.

### Write a letter to your landlord if:

• You want to move before your lease is up or negotiate a mutual agreement to terminate early. See our "Ending a Lease" brochure if you wish to try to leave before the lease's termination date.

## How can the TRC help?

- **Information.** TRC maintains a toll-free hotline to assist tenants and landlords in figuring out their rights and responsibilities.
- **Next Steps.** TRC helps tenants and landlords analyze their options and create an action plan including deciding what to ask or tell a landlord or tenant, sample letters to send a landlord or tenant, help getting copies of relevant laws and figuring out if a tenant or landlord needs to file a court action.

Don't forget to follow Tenant Resource Center on our [Blog](#), [Facebook](#), and [Twitter](#) accounts for announcements about our annual fundraising events in Madison, and more!

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COMMUNITY SHARES OF WISCONSIN

Special thanks to the **Dane County Bar Association** and **Area Agency on Aging of Dane County (Leck Grant)** for their generous support in updating these materials!

The **Tenant Resource Center** is a non-profit, membership organization dedicated to promoting positive relations between rental housing consumers and providers throughout Wisconsin. By providing information and referrals, education about rental rights and responsibilities, and access to conflict resolution, we empower the community to obtain and maintain quality affordable housing.



TENANT RESOURCE CENTER

# Foreclosure in Rental Units

### MAIN OFFICE

(Located in the Social Justice Center, Suite 102)

1202 Williamson Street, Madison, WI 53703

**Monday – Friday, 9AM-6PM**

Housing Questions: (608) 257-0006

Toll-Free: (877) 238-RENT (7368)

[asktrc@tenantresourcecenter.org](mailto:asktrc@tenantresourcecenter.org)

En Español: (608) 237-8913

Hmoob: (608) 257-0143

Mediation: (608) 257-2799

Business: (608) 257-0143 | Fax: (608) 286-0804

### CAMPUS OFFICE

(Located in the Student Activity Center, 3<sup>rd</sup> Floor)

333 East Campus Mall, Madison, WI 53703

**Hours vary, please check the website!**

Phone: (608) 561-3727

[uw@tenantresourcecenter.org](mailto:uw@tenantresourcecenter.org)

### HOUSING HELP DESK

(Located in the Dane County Job Center, Room 2)

1819 Aberg Avenue, Madison, WI 53704

Monday – Friday, 10AM-2PM

Phone: (608) 242-7406 | Fax: (608) 242-7490

[hhd@tenantresourcecenter.org](mailto:hhd@tenantresourcecenter.org)

Visit us at [tenantresourcecenter.org](http://tenantresourcecenter.org)!

Follow us on [B](#), [f](#) and [t](#)!

If you need an interpreter, materials in alternative formats, or other accommodations, call our administrative line at (608) 257-0143.

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**NOTE:** There have been many changes to tenant's rights in this area since 2009. State laws protecting tenants went into effect on March 6, 2009, but were then revoked June 30, 2011.

The federal Protecting Tenants at Foreclosure Act of 2009 (PTFA) went into effect May 20, 2009 and is slated to expire on December 31, 2014 (extended from December 31, 2012).

Because these laws are evolving rapidly, we suggest you talk to a housing counselor to determine which laws might apply to your individual situation.

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## Landlord Duty to Disclose Foreclosure to Tenants

Landlords are no longer required by state law to provide written disclosure to tenants if the rental property is subject to foreclosure. If a lease is in effect during a foreclosure, or is signed during a foreclosure process, the lease is likely valid and must be honored by the owner and the tenant unless there is fraud or deception on the part of the landlord regarding the property's foreclosure status.

In order to best enforce your rights, you should ask potential landlords if a foreclosure has been initiated against the property and receive a written response to that question, if possible.

## Do these laws apply to me?

The Protecting Tenants at Foreclosure Act (PTFA) does not apply to everyone. The laws in this brochure will not apply to you if:

- You are the person whose name is on the mortgage, or the child, spouse, or parent of the person whose name is on the mortgage.
- The lease or tenancy was not the result of an "arms-length" transaction (if the tenant and landlord had a relationship prior to signing the lease).
- The lease or tenancy requires the receipt of rent that is substantially less than fair market rent for the property.

If you are any of the above, talk to a housing counselor before taking action based on these laws.

## How long can I stay in the unit?

It depends. If you have a written lease that expires on a certain date, and it is not a single family home that the new owner intends to occupy, then you can stay until the end of your lease. For example, if you have a year-long lease in a multi-unit building, or in single family home that the new owner intends to rent out (not live in), then you can stay until the end of your lease (PTFA Sec. 702 (a)(2)(A)).

If you have:

- a month-to-month lease, or
  - a verbal lease, or
  - you live in a single family home that the new owner intends to occupy,
- then you can stay at least 90 days after the date of confirmation of sale (PTFA Sec. 702 (a)(2)).

## Do I still have to pay rent?

Yes. Even though the property is in foreclosure proceedings, tenants must pay rent if they remain in possession. A tenant's responsibility to pay rent is not legally related to the landlord's responsibility to pay his/her mortgage, so a tenant may be held responsible for non-payment of rent even while a landlord is failing to pay his/her mortgage. A landlord can't force a tenant to leave the home unless the landlord successfully evicts a tenant, so the sheriff may not remove a tenant as a result of the foreclosure action unless:

- The tenant agrees to end the lease early, or
- The tenant is evicted due to non-payment of rent or a violation of the lease.

## Can I use my Security Deposit for last month's rent?

No. Security deposits are not normally used to pay for the last month's rent, and there is no exception in foreclosure situations. If you wish to use your security deposit as your last month's rent, the safest way to do so is to make a written agreement with the landlord agreeing to apply your security deposit to your last month's rent. If you withhold your last month's rent without a written agreement, assuming that the landlord will apply the security deposit to the last month's rent, the landlord can take eviction action against you.

## Do I pay my rent to the landlord or to the bank?

You should pay your rent to the legal owner of the property (as listed with the City Assessor) unless the court has appointed "receivership" to someone else. Sometimes the bank will try to collect rent from the tenant after there has been an order for foreclosure. They may claim they have been awarded the "assignment of leases and rents" under their mortgage contract with the landlord. This is not the same thing as a receivership appointed by the court! In foreclosure, the mortgage agreement (which is between the bank and the landlord) is in dispute and will be settled by a judge. Until that time, it has no impact on the tenant's agreement to pay rent to the landlord. Pay rent to the landlord until you hear from a judge, or until the landlord says (in writing) to pay the bank instead.

If the bank and the landlord disagree about who should collect the rent, write a letter to everyone (including the judge who is in charge of the foreclosure case) telling them where you'll be paying your rent, and why. Include copies any documents (such as an order for receivership) and keep a copy for yourself.

As a last resort, if you still cannot decide where to pay your rent, open a separate savings (or "escrow") account and make regular deposits of the full amount on the date rent is due. Write a letter to everyone involved (including the judge who is in charge of the case) informing them that you are putting your rent in escrow. Be prepared to pay the full amount to the appropriate person(s) as soon as the issue is resolved.

## Will I have an "eviction record"?

Maybe. If you are evicted because you have not paid your rent, or otherwise haven't followed the terms of your lease, then you will have an eviction record. However, you won't have an eviction record if the only issue is that the property is in foreclosure.

## What happens after Sheriff's Sale or a Short-sale?

The original owner (or the bank after foreclosure) may sell the unit(s) to a new owner. The new owner, who then has the duties and responsibilities of a landlord, must notify you within 10 days of the name and address to which rent payments should be addressed (Wis. Stat. 704.09(3) and ATCP 134.04(1)(b)).

## Help! The sheriff is kicking me out and I have received no notices! Why is this happening?

Occasionally the court doesn't know that tenants are living in the foreclosed property, and/or the landlord doesn't give the tenant proper notice that they must vacate. The sheriff may show up at the tenant's door with an "order for a writ of assistance" instructing them to leave. This is not the same thing as a "writ of restitution" in an eviction! A "writ of assistance" assumes that the occupant is the legal owner. The sheriff is just following orders from the court, and it can be hard to prove you are a tenant whose foreclosure rights have been violated.

## What do I do?

Contact Legal Action of Wisconsin or a Tenant Resource Center housing counselor immediately. Explain that you are a tenant in foreclosure who has been served a writ of assistance by the sheriff. Ask for the letter you will need to send to the court, the landlord, the bank, and the sheriff.

**Legal Action of Wisconsin: 800-362-3904**