

Tenants and Foreclosure

Foreclosure usually occurs when homeowners can't keep up with their mortgage payments, and the lender, usually a bank, takes legal action to sell the property to get back the money that is owed. The lender may foreclose on the property owner without telling the tenants. Tenants are not mentioned in the case title (Bank v. Landlord), so it can be hard to find out about the foreclosure unless the landlord tells them. The property may be sold to the bank or a new buyer, such as an individual or a company.

The foreclosure process focuses on the property owner, not the tenants, but it can still cause confusion for tenants. As noted, they may not be told that a foreclosure has been filed, and even if they are, it can be unclear who to pay rent to or who is responsible for repairs. This uncertainty can make it challenging for tenants to keep stable housing. To help protect tenants in these situations, the federal Protecting Tenants at Foreclosure Act (PTFA) provides certain rights, including the right to stay in the property for a set time after the foreclosure. Despite its name, the PTFA protections don't take effect until after the foreclosure has gone through.

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How do I figure out if the rental property I live in is going through a foreclosure?

- All mortgage foreclosures in Wisconsin are court cases and court cases can be found on [Wisconsin Circuit Court Access](#). The case should show up under the name of the property owner. If you aren't sure of the property owner's name, look up the legal title holder on your city assessor's website.
- Call your county Register of Deeds
- Most county sheriffs keep a list of upcoming sheriff's sales on their websites.

What happens during the foreclosure?

Foreclosing on real estate takes some time. The owner has a right to dispute the case or bring the payments current, and then will have a “redemption” period before the lender can hold a sheriff’s sale at the county sheriff’s office. It will normally be at least four to six months between filing the foreclosure and holding the sale.

The successful bidder at the sheriff’s sale becomes the owner of the property when the court confirms the sale at a hearing after the sale. Information about who bought the property (many times the bank buys it) and the confirmation sale hearing should show up in the case record on Wisconsin Circuit Court Access.

Once the sheriff’s sale is confirmed, the new owner should notify tenants within ten business days, including where/how to send rent payments and who to contact regarding repairs. Until the sale is confirmed, repair requests and rent should be sent to the original owner/landlord unless tenants are told otherwise (e.g. a “receiver” may be appointed to collect rents).

What rights does the PTFA provide after the foreclosure?

In most situations, the PTFA requires the new owner after a foreclosure to either (a) provide the tenants with 90 days’ notice before terminating the tenancy, or (b) honor a tenant’s existing lease if the lease term extends beyond the 90-day notice period. If the property is purchased by someone who will occupy the property, then that purchaser can terminate the tenancy with 90 days’ notice even when the tenant has a lease that extends beyond 90 days after the notice period. The tenant needs to be a bona fide tenant.

Note: PTFA protections do not apply to a tenant if:

- The tenant or their spouse, parent, or child is listed on the mortgage
- The rental agreement was not an arms length transaction (could have certain special terms that look unfair)
- The tenant pays substantially “below fair market” rent (unless the rent is reduced due to subsidy or other reason)

Tenants who have Section 8 housing choice vouchers have additional protections allowing them to keep their Section 8 housing choice voucher lease. The new owner must respect the lease and rent requirements in effect when they get title and must assume the housing assistance payment contract associated with the lease. The transfer of ownership due to foreclosure cannot be considered “good cause” for termination of the Section 8 housing choice voucher lease. HUD issued a notice to public housing agencies urging them to be proactive during the foreclosure process to make sure tenant rights under the PTFA were enforced.

What to do if your rented home is foreclosed

Tenants should continue paying rent to the original property owner/manager until they get notified that there is a new owner/manager, or a receiver is appointed. If you cannot locate the owner/manager, you can check the city or county property records to get an address, or even send a letter to the court to let them know you are a tenant, are trying to pay rent, and may set up an account to keep the rent until you are notified about who to pay. If you stop paying rent you can be evicted, even during a foreclosure.

What should I do if the sheriff shows up but I haven't received any notices?

After a foreclosure, the new owner can ask the judge for a ‘writ of assistance’ to remove the previous owner if they refuse to leave. This is different from a ‘writ of restitution’, which is required to remove tenants after a judgment of eviction. The judge in the foreclosure case, along with the sheriff who arrives with the ‘writ of assistance’, might not realize there are any tenants living at the property. The sheriff might show up with the ‘writ of assistance’ assuming you are the former owner. If this happens, you should explain that you are a tenant, have not received notice and they must get an eviction writ to remove you, and call an attorney ASAP.

What happens to my security deposit after a foreclosure?

The new owner must follow the laws about returning security deposits even if they failed to collect this money from the old owner.

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