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## When Your Landlord Loses The Building: Mortgage Foreclosure and Contract for Deed Cancellation

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### What happens if my landlord's mortgage is foreclosed?

You will get a copy of a notice that your landlord's mortgage is being foreclosed. It sets a date for a sheriff's sale of the property, and other important dates in the foreclosure process. This notice also tells you about agencies and services that can give you information, answer questions, and help during this time. In many cases, you don't have to move out until about 9 months after the sheriff's sale. Usually the bank that loaned the money for the building gets the building at the sheriff's sale.

In a typical foreclosure, the landlord has 6 months after the sheriff's sale to pay off the mortgage. This is called the "*redemption period*." During that time you can still live there and the landlord can still collect rent. Unless the bank (or other new owner) tells you to pay rent to them, you should still pay it to the landlord. If you don't, you can be evicted.



The landlord might ask to delay the sheriff's sale for 5 months. This is called a "*postponement period*." If the landlord can pay the missed payments and catch up on the mortgage, the sale can be cancelled. During the postponement period, you can still live there and the landlord can still collect rent. If the sheriff's sale is postponed, they let you know the new date for the sale when they set it.

If the landlord doesn't catch up on the mortgage by the new sheriff's sale date, then the redemption period is shortened to 5 weeks.

### What happens if my landlord's contract for deed is cancelled?

In a contract for deed, your landlord makes payment to the person who is selling the building. That person is called the "*seller*" or "*vendor*." Cancellation of a contract for deed is **much** faster than a mortgage foreclosure. It usually takes just 60 days.

You don't always have to move out when a contract for deed is cancelled. Sometimes the seller will rent to you. Contact the seller right away to try to work out an agreement. Make sure the agreement is in writing, and signed by both you and the seller.

## Does a landlord have to tell a new tenant about foreclosure or contract cancellation?

Before the landlord can have a new tenant sign a lease or take any rent or security deposit, the landlord must give **written notice** that:

- **the property is in foreclosure** - if the sheriff's sale has already been scheduled, OR
- **the contract for deed is being cancelled** - if the landlord got a notice of contract cancellation.

The landlord must also tell the new tenant when the redemption period or contract cancellation period ends. If the landlord does not give this written notice, you can sue for a \$500 civil penalty. The lease with a new tenant can only go until the end of the redemption period or the end of the contract cancellation period.



But, there is a special exception. A landlord can enter into a lease that goes past the end of the redemption period or contract cancellation period if **ALL** of the following are true:

- The bank, or new owner, agrees to let the landlord enter into a lease that is at least a year long. AND
- The lease does not require the tenant to pre-pay any rent for time periods after the redemption or cancellation period ends.

If your lease falls within this special exception then your landlord doesn't have to give you the written notice described above.

## How much notice will I get to move out if the property is in foreclosure?

### Term Lease:

If you have a lease for a set length of time (called a term lease) and it started before the redemption period ends, your lease continues with the new owner as the landlord if you are a "bona fide" tenant. **This is true even if the new owner is a bank and not a person.** As long as you follow the lease, you can stay until the end of your lease.

You are a "bona fide" tenant if **ALL** of the following are true:

- The person whose mortgage is being foreclosed on is not you, your child, your spouse, or your mother or father.
- Your lease was an "arm's-length" transaction. This means a transaction where both sides act in their own best interests and there isn't any close relationship.
- Your rent is not far less than fair market rent for the property (unless your rent is subsidized through Section 8 or another housing subsidy).

**BUT**, if the new owner sells the property to someone who buys it to live in (as their primary residence) they can end your lease early. They **must** give you a 90-day notice of termination of your lease.

**Month-to-month Lease:**

If you have a month-to-month lease, your lease continues with the new owner as the landlord. The new owner is usually the bank. As long as you follow the lease, your lease continues until the new owner gives you a 90-day notice of termination of your lease. Even if you do not have a written lease, you are entitled to the 90-day notice. You may also choose to end the month-to-month lease by giving the new owner a proper written notice.

**How much notice will I get to move out if the landlord's contract for deed is cancelled?**

As a tenant, you may not get a notice of cancellation of contract for deed. You might not find out until the seller sends you a notice to move out. The seller must give you at least 12 months' notice to move out.

**What happens if I don't move out?**

The bank, or other new owner, can file a court case to evict you.

See our fact sheet, [H-26 Evictions](#).

**Do I have to keep paying rent?**

Yes, you have to keep paying rent to your landlord during the foreclosure, even after the sheriff's Sale. But the landlord can't collect rent after the end of the redemption period.

After the redemption period is over, the bank, or other new owner, can ask you to pay them rent for the rest of your lease and during the 90-day notice period. If they ask you to, you must pay or they could file an eviction against you. If they don't ask for rent, you don't have to pay it. Many banks don't ask for rent during the 90 day notice period.

Some banks ask for rent but shouldn't because they don't have the necessary rental license that local laws say they should or are not following other local laws. If you are not sure call your legal aid office.

After a contract for deed has been cancelled, the seller can ask you to pay them rent for the notice period. If they ask you for rent, you have to pay. If they do not ask you to, then you do not have to pay rent.



Some cities require landlords to have rental licenses to collect rent. Check with your city hall to see if your landlord is required to have a license, and if your landlord has one.

### **What happens to my security deposit?**

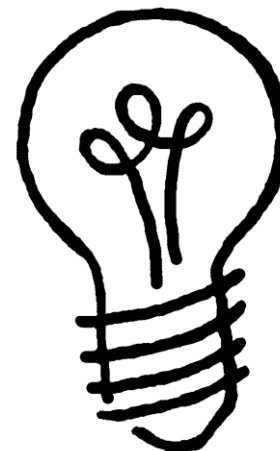
You can withhold your rent and use your security deposit to pay rent for the last month of the redemption period in a foreclosure or the last month of a contract for deed cancellation.

If it is too late to withhold rent for the last month, your old landlord has 60 days from the date they lost the property to return your deposit or tell you they are giving the deposit to the new owner. See our fact sheet [H-29 Security Deposits](#).

### **What happens if utilities are shut off?**

Check your lease. If you are supposed to pay the utilities under your lease, keep paying them. If you have a shared utility meter, see our fact sheet, [H-8 Shared Utility Meters](#).

If the utility bill is in your landlord's name, try to contact the landlord and get them to pay the utility bills. If that does not work, you can contact the utility company and arrange to pay only for the current month's charges. If you do this, you are not responsible for the landlord's unpaid bills or late fees.



If you live in a 1-4 family building, you have the option to take over the gas and electric accounts in your name. You will NOT be responsible to put down a deposit or pay any late charges or fees that belong to the landlord. You need to send your landlord a copy of the receipt showing the amount you paid, then you can take that amount out of your next month's rent.

Another option is to file a rent escrow or emergency relief case against your landlord. Ask a judge to make your landlord pay the bill or cancel your lease. There is more information on all of these options in our fact sheet, [H-18 Utility Shutoffs When the Landlord Owes the Bill](#).

The bank is sometimes interested in making sure that the property does not fall apart during the redemption period, since they are the new owner. If the building doesn't have heat, water, electricity, or other important utilities, you may be able to get the bank to pay the utility service.

Try contacting the lawyer listed on the mortgage foreclosure notice and tell them about the problem. If you paid to get the utilities turned back on, or to avoid a shut-off, make sure you send a copy of the receipt showing that you paid. You can deduct that amount from your rent.

You may also file an Emergency Tenant Remedy Action against the bank, or other new owner, once the redemption period is over. See our fact sheet [H-18 Utility Shut-Offs When the Landlord Owes the Bill](#).

### **What if I'm on the Section 8 program?**

Section 8 Programs may have policies that affect your tenancy when a landlord goes into foreclosure. Contact your Section 8 office when you get a foreclosure notice and ask for instructions.

You should not move out before the end of your lease without getting permission in writing from your Section 8 office. You could lose your Section 8 if you move early or without telling them.

If you have a Section 8 lease, it is treated the same as term leases and month-to-month leases which are explained above. The new owner must honor your existing lease. After a foreclosure sale, the housing assistance payments (HAP) contract continues, and the new owner needs to follow the terms of the HAP contract. The new owner can't end your Section 8 lease because it might help them sell the property. The new owner can give you a 90-day notice to move BUT only if they are planning to live in the home.

You may get special waiting list preferences to get Section 8 if you lose your housing because of a foreclosure. Tell the Section 8 or public housing program in writing about a foreclosure if you are on a waitlist.

### **What if I find out I have an eviction on my record?**

If you find out you have an eviction on your record from a time you lived in a home in foreclosure or deed cancellation you may be able to have it expunged. This means removed from your record.

Expungement can be hard to get, but if you moved out before the eviction papers were served or did not get proper written Notice to Vacate, you may have the right to expungement. See our fact sheet [H-27 Expunging Evictions](#). If you need help contact your local legal aid office.

### **Where can I get more information?**

Hennepin County: Mid-Minnesota Legal Aid – Minneapolis Office: 612-334-5970

Ramsey, Washington, Dakota, Carver and Scott counties:

Southern Minnesota Regional Legal Services: 651-222-4731

Anoka County: Judicare of Anoka County: 763-783-4970

Southern rural counties: 1-888-575-2954

Everywhere else in Minnesota contact HOME Line: 612-728-5767 or 1-866-866-3546



To find other fact sheets, including any mentioned above, go to [www.lawhelpmn.org/LASMfactsheets](http://www.lawhelpmn.org/LASMfactsheets)

To find your local legal aid office by county go to [www.lawhelpmn.org/resource/legal-aid-offices](http://www.lawhelpmn.org/resource/legal-aid-offices)

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

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