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

### What happens if my landlord's mortgage is foreclosed?
You 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. It also has 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.

### Can I still live there?
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 after a postponement, 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 takes just 60 days or 120 days. The amount of time depends on who is selling the landlord the home.

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.




If you are a new tenant, the landlord has to tell you, in writing, when the redemption period or contract cancellation period ends. If the landlord doesn't give this written notice, you can sue for a $500 civil penalty. Your lease 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 these things 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 doesn't say that you have to pre-pay any rent for time periods after the redemption or cancellation period ends.

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

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

**Term Lease:**
If you have a lease for a set length of time this is called a term lease. If your lease started before the redemption period ends, it 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 these things 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 don't have a written lease, they still must give you a 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 do 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 2 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, *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. They shouldn't do this if they don't have the necessary rental license that local laws require. Or they are not following other local laws. If you are not sure call your legal aid office at 1-877-696-6529.

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 don't ask you to, then you don't have to pay rent.

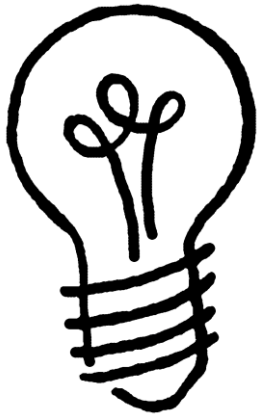
Some cities require landlords to have rental licenses to collect rent. Check with your city hall to see if your landlord has to have a license. Also check IF your landlord has one.

## What happens to my security deposit?

Your landlord has to give your security deposit to you or the new owner of the property. This has to be done within 60 days of when the landlord loses the property or within 21 days after you move out, whichever is sooner.

The new owner should send you a notice of the amount of the security deposit your landlord transferred to them. If you don't agree with the amount, you have 20 days to send the new owner a written letter saying you don't agree. After 20 days you lose the right to disagree.

See our fact sheet *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, *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 doesn't 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 choice to take over the gas and electric accounts in your name. You are NOT responsible for putting down a deposit or paying any late charges or fees that belong to the landlord. 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 thing you can do 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, *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 *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.

Don't 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, the laws for renters living in foreclosure or under a contract for deed cancellations are the same as the other leases talked about in the sections above. The new owner must honor your existing lease. A foreclosure sale doesn't stop your separate housing assistance payments (HAP). Your contract with your Section 8 office keeps going. The new owner needs to follow the terms of the HAP contract. The new owner can't end your Section 8 lease unless it is a reason allowed for in the Section 8 rules. They 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. The Court has to expunge your record if you didn't get the notices talked about in this fact sheet before your landlord filed the eviction case.

There are many situations that the law says you can ask for an expungement. For example: 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. You can also try to make a deal for expungement with the new owner who took over the lease. See our fact sheet *Expunging Evictions*. If you need help, contact your local legal aid office at 1-877-696-6529.

## Where can I get more information or help?

Call your local legal aid office at 1-877-696-6529.

Contact HOME Line: 612-728-5767 or 1-866-866-3546 / https://homelinemn.org/

Look for other programs that may help at www.lawhelpmn.org/providers-and-clinics.

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