

# **Tenants' rights: Living in foreclosed property**

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If the place you are renting to live in has been foreclosed on, read this to learn your rights.

## **60 Day or 90 Day Notice to Vacate**

If the home you rent was sold at a trustee's sale for foreclosure, certain tenants (called "bona fide tenants") have the right to 90 days' written notice to move under the federal Protecting Tenants at Foreclosure Act (PTFA) ([https://nlihc.org/sites/default/files/2022-03/2022AG\\_6-06\\_Protecting-Tenants-Foreclosure.pdf](https://nlihc.org/sites/default/files/2022-03/2022AG_6-06_Protecting-Tenants-Foreclosure.pdf)).

A "bona fide tenant" is a renter who pays fair market rent and also cannot be in the immediate family (spouse, parent, child, sibling) of the person who was paying the mortgage on the property (the property owner facing foreclosure).

For all tenants, Washington State law, RCW 61.24.146(1) (<https://app.leg.wa.gov/rcw/default.aspx?cite=61.24.146>), also requires new owners who purchase foreclosed property to give any tenants in the

foreclosed property at least 60 days' written notice to vacate.

New owners are not required to extend your lease beyond this 60 or 90 day period, but may decide if they want to continue renting to you or not.

If you do not move out after the 60 days or 90 days expire, the new owner needs to get a court order (called a "writ of restitution") signed by a judge to evict you from the home.

Former homeowners (non renters) who lost their homes in a trustee's sale (foreclosure auction) do not have this protection. They only have 20 days from the date of the trustee's sale to move out.

Read more details about these 60 Day and 90 Day Notices to Vacate below.

**The house I'm renting was sold at a foreclosure sale. Do I have to leave right away?**

No. If you rent your home in Washington State, and the property was sold at a non-judicial foreclosure sale (called a "trustee's sale"), state law protects you from having to move immediately. You can read that law at RCW 61.24.146(1) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=61.24.146>).

Before starting an eviction action against you, the new owner must choose one of these options:

- Give you 90 days' written notice to move (to vacate), if you are a "bona fide tenant" (see details below)

or

- Offer you a new rental agreement or give you 60 days' written notice to vacate, if you are **not** a bona fide tenant

or

- Let you stay in the home until the end of your lease term.

### **When do I get at least 90 days to vacate?**

The federal Protecting Tenants at Foreclosure Act (PTFA) (<https://nlihc.org/resource/congress-permanently-authorizes-protecting-tenants-foreclosure-act>) gives most "bona fide" renters the right to at least 90 days' written notice before having to move after a foreclosure. To be considered a *bona fide* tenant, all of these must be true:

- You must not be the former owner's child, spouse, or parent.
- Your rental agreement must not have been a special deal between friends or family.
- The rental amount must be at fair market rent. If it is lower, it must be due to a government program that makes the rent affordable (that subsidizes the rent).

### **When do I only get 60 days' written notice to vacate?**

If you don't meet the definition of bona fide tenant above, and the new owner doesn't want to offer you a new rental agreement, the new owner must give you written notice giving you at least **60 days** to move out.

### **I'm in the middle of a lease. Can I stay until my lease ends?**

**It depends.** If you are a "bona fide tenant", and the new owner is **not** planning to move into the home, the new owner must let you stay until your

lease ends. This is true for both written and verbal leases.

If the new owner **is** planning to move into the home, you must get at least 90 days' notice before the new owner can evict you. You can read this in the law at [12 USC 5220](https://uscode.house.gov/view.xhtml?req=(title:12%20section:5220%20edition:prelim)).

([https://uscode.house.gov/view.xhtml?req=\(title:12%20section:5220%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:12%20section:5220%20edition:prelim)))

**Example:** You only have a month left on your lease. In this situation, you must get at least 90 days' notice. The 90 days do **not** start until after your lease term ends.

### **What if I am renting month-to-month?**

The new owner must still give you at least 60 days' notice. If you are a *bona fide* tenant, the new owner must give you 90 days' notice before evicting you. The new owner must get a court order (called a "writ of restitution") signed by a judge to evict you.

### **What if I have a Section 8 voucher?**

You have additional protection. You get to keep your Section 8 lease and the new owner must also honor the Housing Assistance Payments (HAP) contract that is part of your Section 8 tenancy.

The new owner cannot charge you additional rent or other payments. If the new owner plans to move in themselves, they can only use the foreclosure sale as the "other good cause" clause of your HAP contract to end your lease. In that case, you must get at least 90 days' written notice.

**I'm renting a room from the homeowner who was foreclosed on. They say I must move out when they do. Is that true?**

If you are unrelated to the owner and were renting at market rates for the room, you have the right to 90 days' notice. Otherwise, you have the right to 60 days' notice as a tenant.

### **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 do not apply even where the former owner remains on the property as a tenant, subtenant, or occupant. You can read the state law about this at [RCW 61.24.146\(3\)](http://apps.leg.wa.gov/rcw/default.aspx?cite=61.24.146) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=61.24.146>).

A former owner must move 20 days after the trustee's sale or face eviction. The former owner is not entitled to a 20-day notice to vacate before the new owner files an eviction court case.

### **What if the notice to vacate I got gives me only 20 days?**

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 in writing that you have this right and that you plan to exercise it. And try to get legal help.

### **Can I make the new owner keep me as a tenant?**

No. It is up to the new owner, not you. But you can always ask the new owner for a new rental agreement if it is in your best interest to do so.

### **What if I got a notice saying I need to send documents to a law firm to qualify for the federal PTFA protections?**

If you are a bona fide tenant, you are entitled to 90 days' notice or to stay until your lease term ends (whichever time is longer), even if you do not send the requested documents to that law firm. You should notify the law firm that you are a "bona fide tenant" under the PTFA, so they know you have the right to extra time in the home.

### **What are my duties during the time I get to stay in the home?**

You must pay rent and honor your other duties under the rental agreement you had before the foreclosure.

### **Neither federal nor state law says if I still owe rent money during a foreclosure. Do I have to keep paying rent after getting a 90-day notice?**

Maybe. Federal law assumes that your obligation to pay rent continues during the 90 days. But the new owner may decide to never ask for or collect the rent.

The rent issue is complicated. If the new owner asks you for rent 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, they still must give you a 90-day notice.

### **Do I have to keep paying rent after getting a 60-day notice?**

If you are not a *bona fide* tenant but still rent the place, and you get a 60-day notice to vacate, the new owner can only evict you if you commit waste or nuisance. You **cannot** be evicted for non-payment of rent. You can read this at RCW 61.24.146(1) (<https://app.leg.wa.gov/rcw/default.aspx?cite=61.24.146>).

If you get a notice to vacate and you choose not to pay rent during the notice period, but you do not move at the end of the 60 or 90 days, the new owner can start an eviction lawsuit against through the “unlawful detainer” process. If this is your situation, get try to get legal help right away.

**What if I want to pay rent, but I don't know who to pay it to?**

Even if the new owner has not told you where to send the rent, they still have a right to collect it. If no one has given you payment information for the new owner, **save your rent money** until you do get that information. You may want to save your rent money separately from where you usually save your money.

**Someone contacted me claiming to be the new owner. Is this the right person to pay rent to?**

**Be careful.** Scammers review publicly available foreclosure information and may contact tenants living in foreclosed properties and demand rent.

**Before** you pay rent to this person, ask them for a copy of their Trustee's Deed as proof of ownership. You can also ask the County Auditor for the name listed as the property's legal owner to make sure the Trustee's Deed is real. A local title insurance company may also be able to give you this information.

**I gave my old landlord a deposit and/or last month's rent. What happens to that money now?**

If your old landlord did not refund your deposit or transfer it to the new owner after the trustee's sale, you can sue the old landlord in small claims court to get your deposit back. Your old landlord is liable to you for up to twice

your deposit amount, plus attorneys' fees.

Even if your old landlord has wrongfully kept your deposit, you may still have to pay the new owner a new deposit **if** you enter into a written rental agreement with the new owner.

**I paid rent to my old landlord through a property management company. 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. The foreclosure ended that contract.

It is possible that the new owner made a contract with your old property manager to continue managing your home. Verify this in writing before paying your old property manager the rent after foreclosure. Remember to get a receipt for any rent payment you make.

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

After the trustee's sale, problems with maintenance, repair, or utility service (if the utilities were your landlord's responsibility) are the new owner's responsibility.

You may be able to keep your utilities on by contacting the utility company and putting the utilities in your name to avoid shut-off, even if the utilities are in your old landlord's name. They will likely require proof of your tenancy at the property. (For example, a rental agreement or rent receipts.) This rule generally applies to public utilities (<https://wa.gov/health-safety/public-utilities>). You can read about this at RCW 35.21.217(5)(a) (<https://app.leg.wa.gov/RCW/default.aspx?cite=35.21.217>).

Even if the utility company is not publicly owned, they may have their own procedures to avoid shutoff. Contact the company to see if you can talk to a supervisor to resolve the problem. Some private, investor-owned utilities are regulated by the Washington Utilities and Transportation Commission (<https://www.utc.wa.gov/FileComplaint>). If your utility service is in threat of disconnection, you may call the Consumer Protection Help Line directly at 1-888-333-WUTC (9882).

**The new owner or the bank that foreclosed offered me a one-time cash payment to move out immediately. Should I take it?**

It is your choice whether to accept a “cash for keys” deal from the new owner.

**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 not true. You should get a 60 Day or 90 Day Notice to Vacate, even if you do not take the money that they offer you.

**Example 2:** A new owner offers to pay you cash that will help you and your family relocate, but you must agree to move out in 2 weeks. This may be in your best interest. You can also try to bargain for more time and/or cash to move.

The new owner will probably not make this cash payment to you upfront, but will only give you the money after move out and following an inspection of the place.

You may want to consider the timing of the payment when deciding if you should accept a cash-for-keys offer. You may ask for some money upfront for

the costs of moving somewhere else and the rest when you move out.

### **What if the new owner changes my locks or gets rid of my belongings?**

If the new owner wants to do these things, the new owner must first go through the eviction process and get a court order giving the new owner the right to force you out of the property. You can contact the sheriff for help if the new owner changes your locks or removes your things without a court order, or try to get legal help.

### **Can I get help moving?**

Maybe. Some agencies in Washington may offer relocation assistance. Call 211 or go to wa211.org (<http://win211.org/>) to learn more.

WashingtonLawHelp.org gives general information. It is not legal advice.

Find organizations that provide free legal help on our Get legal help page.