

# **A New Federal Law Requires 90 Days Notice Prior to Eviction of any Tenant Living in a Foreclosed Property**

## **Introduction**

If you rent your home, and your home was sold at a foreclosure sale after May 20, 2009, a new federal law, The Protecting Tenants at Foreclosure Act of 2009, requires the new owner to notify you at least 90 days before evicting you. You must still comply with the obligations of your lease or rental agreement during this time period.

In addition to the new federal law, a new Washington State law, effective July 26, 2009, requires the foreclosing party (the bank or trustee that is foreclosing on the rental property you live in) to send you a written notice before your home is sold at foreclosure. This written notice will warn you that your home might be sold 90 days or more after the date of the notice. It will also tell you that the new owner who buys your home at foreclosure is required to provide you with at least 60 days notice before evicting you. These are two distinct notice periods: the 90-day foreclosure notice will tell you when your home may be sold at foreclosure; the 60-day eviction notice period may not begin until after your home is sold at foreclosure.

Even after this new state law goes into effect, and you receive notification of your right to a 60-day notice to vacate under that new state law, new owners will still be required to provide renters with a 90 day notice prior to eviction, because of the federal law.

These are new laws and there are no court decisions yet interpreting either law. This document is meant to give you general information about these new laws. For your specific circumstance, you should review this document, and then consult a lawyer about specific questions pertaining to your rights under the new federal and state laws protecting tenants living in foreclosed properties.

## **How does the new federal law affect me if I have a lease?**

If the new owner is not going to move into your home then you can stay until your lease ends.

If the new owner is planning to move into the home, he or she must give you at least 90-days notice prior to evicting you.

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

If you are renting month to month, or if you began your tenancy with a lease that has expired and you are now renting month to month, the new owner is required to provide you with at least 90 days notice before evicting you. In the circumstance of a foreclosure, this Federal law overrides Washington State law, which allows a landlord to terminate a month to month tenancy with just a 20-day notice.

## **What if I am on Section 8?**

If you're a Section 8 tenant, you receive the same protections listed above: completion of your lease period and/or 90 days required notice prior to eviction. Also, the new owner must honor the terms of the housing assistance payments (HAP) contract that established your Section 8 tenancy. The new owner may not use the "other good cause" clause of your HAP contract to terminate your lease if the "other good cause" is that evicting you will make the property easier to sell.

## **What if I am not on Section 8, but my rent is reduced or subsidized by another program?**

If your rent is reduced or subsidized by a federal, state, or local subsidy program, you receive the same protections as any other renter, including the right to a 90 day notice.

## **If I live in Seattle am I protected by the Just Cause Ordinance?**

Possibly. If you pay rent to the new owner and he or she accepts it, then you could be considered a month-to-month tenant, protected by the Seattle Just Cause Ordinance. In Seattle, no landlord can evict a tenant for any reason other than those listed in the Ordinance. Purchasing property at a foreclosure sale is not listed as one of the reasons why an owner can evict a tenant so the Ordinance may protect you. If you live in Seattle and you are tenant living in a property in foreclosure, you should seek immediate legal advice.

## **Who do I pay rent to after the foreclosure sale?**

Under the new federal law, you should pay rent to the new owner. If you have not been provided with payment information for the new owner, you should save the rent money until you find out how payment should be made. Don't assume that, just because the new owner hasn't told you where to send the rent, they don't have a right to collect it.

After July 26<sup>th</sup>, when the new state law becomes effective, a tenant living in a foreclosed property may receive either a new rental agreement or a 60-day notice to vacate. If you enter into a new rental agreement with the new owner, then you would pay rent to the new owner. If you receive a 60 day notice to vacate, you may only be evicted for waste or nuisance under the new state statute. There is no authority for a new owner to evict for other reasons such as nonpayment of rent. If you are living in a property that has been sold at foreclosure after July 26<sup>th</sup>, and have received a 60-day notice to vacate, you should seek immediate legal advice about your rights and responsibilities.

## **Am I required to keep paying rent after I receive my 90 days notice?**

It depends. The new federal law assumes that the obligation to pay rent continues during the 90 days. However, the new owner may never demand or collect the rent or even want to enter into a landlord tenant relationship. If a demand for rent is made, and you want to stay for the 90 day period, you should continue to pay rent. If you fail to pay rent or to meet other terms of your lease or tenancy, the federal law says you may still be evicted pursuant to state law. For more information, read our publication *Eviction and Your Defense*, available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) under the category "Housing."

After the new state law goes into effect on July 26, 2009, the rent issue becomes more complicated. The new state law provides for a 60-day notice to vacate. During that period, a new owner may only evict the tenant if the tenant commits waste or nuisance — but NOT for non-payment of rent. You may voluntarily enter into a new rental agreement with the new owner of the foreclosed property, or you may take advantage of your right to 90 days notice under the new federal law. In either of those cases, you would have a legal obligation to continue paying rent.

Additionally, if you receive a 60 day notice to vacate under the new state law, choose not to pay rent during the 60 day notice period, but do not move at the end of the 60 days, the new owner could sue you and force your eviction through the unlawful detainer process. You should seek immediate legal advice if you are in this situation.

### **How do I know if the person claiming to be the new owner of my home is actually entitled to collect rent?**

There is a possibility that scammers will be contacting tenants living in foreclosed properties and demanding rent. Before you pay rent to a person who claims to be the new owner, you should confirm that the person is the actual legal owner of the home and is entitled to collect the rent. First, ask for a copy of the Trustee's Deed from the new owner as proof of ownership. Then contact the County Auditor to make sure that the Trustee's Deed is legitimate and not a forgery. Contact information for County Auditors in Washington State may be found at <http://publicrecords.onlinesearches.com/Washington-Land-Records-and-Deeds.htm>. A local title insurance company may also be able to provide you with that information.

### **I paid my old landlord a deposit and/or last month's rent. What happens to that money after foreclosure?**

Under the law, your old landlord should transfer those funds to the new owner. If he or she fails to do so, you may have a claim in small claims court. See our publications *Recovering Your Security Deposit* and *Small Claims Court in Washington State*, both available at <http://www.washingtonlawhelp.org>. Be aware, however, that you may owe rent or a deposit to the new owner, regardless of whether the old landlord has wrongfully retained those funds.

**Before the foreclosure, I was paying rent to a property management company that worked for my old landlord. If I keep paying them, will they just send the rent to the new owner?**

No. The property management company had a contract with your old landlord. That contract ended when your home was foreclosed on.

Your old property manager may have contacted the new owner and established a new contract to continue managing your home, but you should confirm this before paying rent to your old property manager after a foreclosure.

**Who do I contact if my home needs repairs or if my utilities are shut off because the old landlord didn't pay the bill?**

The new owner after the foreclosure becomes the landlord for all purposes pursuant to the new federal law. Problems with maintenance or repair, as well as utility service (assuming that the landlord was obligated to pay utilities) are the obligation of the new owner. For more information, read our publication *Repair Remedies*, available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

**The new owner or foreclosing lender has approached me and offered me a one-time cash payment to vacate my home immediately. Should I take it?**

This is entirely your decision. Whatever you decide, you should be aware that under the new federal law, the new owner or foreclosing lender is required to give you 90 days notice prior to evicting you. If, for example, a new owner tells you that you have a choice between taking the cash and leaving now or being evicted with less than 90 days notice, you may have legal remedies against the new owner because this is untrue. However, if taking a cash payment and leaving your home is in your interest, you may wish to bargain for an acceptable amount of time and cash to move.

**The foreclosure sale happened after July 26, 2009, and I just received a notice to vacate in 60 days, what are my rights?**

Regardless of that notice, you have an absolute right to 90 days notice to vacate pursuant to the federal law as explained earlier. If you want to stay in your home for the full 90 days, you should let the new owner know that you have this right and intend to assert it. You will also have to comply with your obligations to pay rent and other duties pursuant to the agreement prior to the foreclosure. If the new owner refuses to comply with federal law, you should seek legal assistance.

If you do not wish to assert your right to a 90 day notice before vacating, you can comply with the 60 day notice by vacating in 60 days. The new state law says that, during those 60 days, the

new owner can evict you for only waste or nuisance. This means that, during the state-mandated 60-day notice period, you can't be evicted for failing to pay rent.

The new owner may wish to enter into a new rental agreement with you under the new state law. The new owner is not required to do so. You should only enter into a new rental agreement if it is in your interest to do so, weighing your other options under these new laws.

Finally, you can simply move out. You have no obligation to remain in the property after the foreclosure sale. You should, however, remove all of your belongings and valuables when you move, so that they are not taken or destroyed by the new owner.

### **Who is not protected under the federal Protecting Tenants at Foreclosure Act of 2009?**

These protections are only available if the tenant is NOT the previous owner of the property whose interest was foreclosed (your former landlord), or the child, spouse, or parent of the previous owner; if the lease or tenancy was the result of an "arm's length transaction" (not a special deal between friends or family); and if the lease or tenancy requires the payment of rent that is not substantially less than the fair market value for the property, unless the rent is reduced by a federal, state, or local subsidy.

### **Where can I find these new laws?**

The federal Protecting Tenants at Foreclosure Act can be found at [S. 896, Pub. L. No. 111-22, §§ 701-704](#)

The new state law, SB 5810, can be found at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202009/5810.SL.pdf>