

Foreclosure Process

1. The landlord defaults on payment of mortgage loan payment.
2. A foreclosure action is filed by the bank.
 - The tenant must receive notice that a foreclosure action has been filed no later than 5 days after filing.
3. The landlord has 20 days to make a defense against the foreclosure filing.
4. Once the 20 days are over and defenses to the foreclosure have been rejected, then a judgment of foreclosure is entered.
 - The tenant must receive notice of the foreclosure judgment within 5 days after it was entered, and a note about when the “redemption period” will end.
5. The landlord enters into a “redemption period,” where they have the opportunity to try to repay the amount owed to the bank. A redemption period can be 2, 3, 6 or 12 months, depending on the type of foreclosure filed.
4. Once the redemption period ends, there is a sheriff’s sale, where the property is sold to a new owner or (usually) to the bank who sued for foreclosure.
5. Once a property is sold, a hearing is scheduled to confirm the sale.
 - The tenant must receive notice of the date and time the confirmation of sale hearing has been scheduled.
6. The confirmation of sale hearing takes place, and if the sale is confirmed, results in the “date of confirmation of sale.” Title is transferred at hearing. This is the first day that the 90 day notice could be issued.

This program is funded by:



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The **Tenant Resource Center** is a non-profit, membership organization dedicated to promoting positive relations between rental housing consumers and providers throughout Wisconsin. By providing information and referrals, education about rental rights and responsibilities, and access to conflict resolution, we empower the community to obtain and maintain quality affordable housing.

What should I do if my rental unit is in foreclosure?

Continue to pay rent

- You still have to pay rent or you could be at risk of eviction for non-payment of rent. Continue to pay rent to your original landlord until you receive written notice of change of ownership. After the judgment is entered, the foreclosing entity (usually the bank with whom your landlord had a mortgage) will likely request that you send future rent payments to them. The bank, now the owner of the unit(s), is now responsible for all other duties and responsibilities of the landlord (e.g., rent collection, maintenance, eviction, etc.).

Continue to live in your unit

- If you have a written lease, you do not have to move any sooner than the end of the lease, unless you live in a single family home that the new owner wishes to occupy. If you live in a single family home that the new owner intends to occupy, have a month-to-month or verbal lease, then you have at least 90 days after receiving written notice from the property’s new owner after sale of the property.

Write a letter to your landlord if:

- You want to move before your lease is up or negotiate a mutual agreement to terminate early. See our brochure on Ending a Lease if you wish to try and leave before the lease’s termination date.
- You are going to use your security deposit as the last month’s rent.

Be sure to keep a copy all letters for your records along with all of the documents you receive regarding foreclosure actions on your unit.

Sue in Small Claims Court

If the bank fails to provide the required foreclosure process notices at the proper intervals, you may sue the bank in small claims court. To do so, fill out a simple “summons and complaint” form in Small Claims Court and pay a filing fee and service charges. The bank may choose not to contest your case or may settle with you out of court. The court can award \$250 to the tenant, plus court costs and reasonable attorney fees (Wis. Stat. 846.359(1)(c)).

Foreclosure Assistance for Rental Units



Tenant Resource Center

1202 Williamson St., Suite 102
Madison, WI 53703

9:00 a.m.–6:00 p.m., Monday – Friday

Rental Rights (608) 257-0006

Toll-free outside Dane County

(877) 238-RENT (7368)

Office/TTY (608) 257-0143

Mediation (608) 257-2799

asktrc@tenantresourcecenter.org

www.tenantresourcecenter.org

Milwaukee Office

230 W. Wells

Milwaukee, WI 53203

Rental Rights: (414) 431-7337

Business Line: (414) 431-7338

Housing Help Desk

Dane County Job Center, 1819 Aberg Ave

(608) 242-7406, 8:00 a.m.–4:30 p.m.

Si Ud. necesita servicios en español, llame al (877)238-7368.

If you need an interpreter, materials in alternate formats, or other accommodations to access our services, call our office at (608) 257-0143.

No part of this brochure should be regarded as legal advice or considered a replacement of a landlord’s or tenant’s responsibility to be familiar with the law. If you need legal assistance, seek the services of a Wisconsin housing attorney.

Recent changes to state and federal law give tenants more rights when the landlord is involved in a foreclosure action. Changes to the state law described in this brochure went into effect on March 6, 2009.

Shortly thereafter, the Protecting Tenants at Foreclosure Act of 2009 (PTFA) went into effect May 20, 2009, and gives even more protections to tenants until December 31, 2012 when the law expires.

Because these laws are new, we suggest you talk to a housing counselor to determine which laws might apply to your individual situation, at 1-877-238-7368.

Landlord Duty to Disclose Foreclosure to All Tenants

If a landlord knows that a foreclosure has begun on the property, s/he must disclose to the prospective tenant: a) the fact that a foreclosure action has been filed, and b) the date on which the redemption period expires. If the landlord fails to make these disclosures, the tenant can break the lease without further consequences (Wis. Stats. 704.35(1)). The tenant should notify the landlord in writing of his or her intention to end the lease.

In addition, when the bank forecloses on a property, the bank now also has the duty to inform the tenants in the building. The bank has to notify the tenants as follows (Wis Stats 846.35(1)):

- That a foreclosure has been filed, within 5 days of filing the court case.
- That the court has entered a judgment for foreclosure, within 5 days of the judgment being entered.
- Notice of the date and time of the hearing when the confirmation of sale hearing has been scheduled.

If the bank fails to disclose the above information, the court can award \$250 to the tenant that should have received notice, plus reasonable attorney fees (Wis. Stats. 846.35(1)(c)).

Landlord Duty to Disclose Foreclosure to New Tenants

If a lease is signed during the time that foreclosure action is pending and before the redemption period expires, the lease must contain a separate written statement which says that the landlord has provided the information identified. If this statement isn't included in the lease, the lease is voidable by the tenant, at the tenant's option at any time. If the lease is voided, the tenant has no further responsibility for the lease (Wis. Stat. 704.35(2)).

How long can I stay in the unit?

It depends.

- If you have a written lease that expires on a certain date, and it is not a single family home that the new owner intends to occupy, then you can stay until the end of your lease. For example, if you live in a single family home that the new owner intends to rent out, or a duplex, or apartment complex, and have a year long lease, then you can stay until the end of your lease. (PTFA Sec. 702 (a)(2)(A))

- If you have:

- a month to month lease, or
- a verbal lease, or
- you live in a single family home that the new owner intends to occupy,

Then you can stay at least 90 days after the date of confirmation of sale. (PTFA Sec. 702 (a)(2))

Do I still have to pay rent?

Yes. Even though the property is in foreclosure proceedings, tenants must pay rent if they remain in possession (Wis. Stat. 846.35(2)(b)). The sheriff may not remove a tenant as a result of the foreclosure action unless:

- The tenant agrees to end the lease early, or
- The tenant is evicted due to non-payment of rent or a violation of the lease.

Can I use my Security Deposit for last month's rent?

Yes. Contrary to law regulating security deposits in other rental situations, the tenant **can** use his/her security deposit for last month's rent payment. If, for example, the tenant uses his/her security deposit for August's rent, s/he needs to move out by the end of August. The deposit can only be used by the tenant for the LAST month's rent (Wis. Stat. 846.35(2)(a)).

What happens after Sheriff's Sale or a Short-sale?

The original owner (or bank after foreclosure) *may* sell the unit(s) to a new owner. The bank must notify tenants of the date of the of the hearing to confirm the sale (i.e., Sheriff's Sale) (Wis Stats 846.35(1)(a)(3)). The new owner, who now has the duties and responsibilities of landlord, must notify you within 10 days of the name and address to which rent payments should be addressed. (Wis. Stat. ATCP 134.04(1)(b))

Will I have an "eviction record"?

No. State law says that no eviction that is a result of a foreclosure shall be entered into the State of Wisconsin on-line court record system, commonly known as CCAP. (Wis. Stat. 846.35(4))

How can the TRC help?

- **Information.** TRC maintains a toll-free hotline to assist tenants and landlords in figuring out their rights and responsibilities.
- **Next Steps.** TRC helps tenants and landlords analyze their options and create an action plan including deciding what to ask or tell a landlord or tenant, sample letters to send a landlord or tenant, help getting copies of relevant laws and figuring out if a tenant or landlord needs to file a court action.
- **Financial Assistance.** TRC has limited financial assistance available for tenants who are losing their housing due to foreclosure actions. TRC can help with up to approximately \$500 per household, adjusted for household size, urgency of eviction, the county you live in and income of the tenant. (Call the TRC to see if you qualify.)