WHEN YOUR LANDLORD LOSES THE BUILDING:
MORTGAGE FORECLOSURE AND CONTRACT FOR DEED CANCELLATION

Your rights as a tenant after May 20, 2009.

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 will also tell you about agencies and services which can give you information, answer questions, and help during this time. In many cases, you do not 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 date of 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 tells you to pay them the rent, you should still pay it to the landlord. If you don't, you can be evicted.

Another thing that can happen is that the landlord can 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. You will be informed of the new date if the sheriff's sale is postponed. If the landlord does not catch up on the mortgage by the new sheriff's sale date, 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 do not 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.

CAN THE LANDLORD HAVE ME SIGN A LEASE DURING FORECLOSURE OR CONTRACT FOR DEED CANCELLATION?

Before the landlord can have you sign a lease or take any rent or security deposit from you, the landlord must give you written notice that the property is in foreclosure, and tell you how long you will be able to stay there. In some cities, such as Minneapolis and St. Paul, it is a crime if the landlord does not tell current or future tenants that the property is in foreclosure.

If a contract for deed is in the cancellation period, the landlord does **not** have to give you notice.

The lease cannot go longer than the end of the redemption period or contract for deed cancellation period.

HOW MUCH NOTICE WILL I GET TO MOVE OUT?

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. 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.

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. 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 of at least one full rental period.

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 can file a court case to evict you. See our fact sheet, *H-26 Evictions*.

DO I HAVE TO KEEP PAYING RENT WHEN THE PROPERTY IS IN FORECLOSURE OR THE CONTRACT FOR DEED HAS BEEN CANCELLED?

Yes, you must continue to pay rent to your landlord during the foreclosure, even after the Sheriff's Sale. But the landlord cannot collect rent after the end of the redemption period.

After the redemption period is over, the bank 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. If they do not ask you to, then you do not have to pay rent.

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.

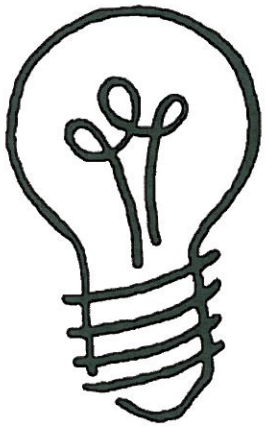
Some cities require landlords to have rental licenses to collect rent. Check with your city hall to see if your landlord is required to have a license, and if your landlord has one.

Withholding the last months rent is allowed for the last month of a foreclosure or contract for deed cancellation.

WHAT HAPPENS IF UTILITIES ARE SHUT OFF?

Check your lease. If you are required to pay the utilities under your lease, you should continue to pay for those utilities. If you have a shared utility meter, see out fact sheet, *H-8 Shared Utility Meters*.

If the utility bill is in your landlord's name, you should first try to contact the landlord and get them to pay the utility bills. If that does not work, you can also 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.



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

A third option is to file a rent escrow or emergency relief cases against your landlord, and 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, and once they become the new owner. If the building lacks heat, water or electricity, or other important utilities, you may be able to get the bank to pay the utility service. You may also file an Emergency Tenant Remedy Action against the bank as the new owner. See our fact sheet on *H-18 Utility Shut-Offs When the Landlord Owes the Bill*. Try contacting the attorney listed on the mortgage foreclosure notice and tell them about the problem. If you have paid to get the utilities turned back on, or to avoid a shut-off notice, make sure you send a copy of the receipt that you paid, and you can deduct that amount paid from your rent.

WHAT IF I AM 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 the redemption period without getting permission in writing from your Section 8 office. You could lose your Section 8 if you move early or without telling them.

You may get special waiting list preferences to get Section 8 if you lose your housing against your will because of a foreclosure. Tell the Section 8 Program in writing about a foreclosure if you are waiting to get Section 8.

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 cannot terminate your Section 8 lease because it might help them sell the property. The new owner can give you a 90-day notice to move only if they are planning to live in the home.

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.

IF you moved out before the end of the redemption period or contract for deed cancellation period, **or** did not get a written Notice to Vacate, you have the right to have the eviction expunged. 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: Legal Aid Society of Minneapolis: 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 Legal Aid Society materials, including the fact sheets mentioned in this document, go to www.lawhelpmn.org/LASMfactsheets.

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