

Advice for Idaho Renters:

Foreclosure

If your landlord stops paying a loan on the property that you are renting, the lender, usually a bank, may start the foreclosure process. The lender will become the new owner of the property and try to make you move.

No matter what the new owner tells you, you have certain rights as a tenant, and they have duties as a landlord. However, you may have to do more work to protect your rights if the property you're renting is in foreclosure.

Read this handout to understand:

▶ **What is foreclosure?**

▶ **How will it affect me as a tenant?**

▶ **How can I protect my rights before and after a foreclosure?**

*The advice in this handout is very general and there might be special factors in your case. If you have legal questions, contact an attorney. If you cannot afford an attorney, contact the **Idaho Legal Aid Services** office nearest you using one of the phone numbers on the back of this handout. Also, visit us on the web at: www.idaholegalaid.org*

What is foreclosure?

Foreclosure is the most common way that mortgage **lenders** (like banks) repossess a property if a home owner defaults on a loan. After foreclosure, the homeowner can't pay back the loan to keep the home. Instead, the home is sold at an auction-- often to the lender.

▶ In Idaho, most lenders set up home loans through legal documents called "**trust deeds.**" A trust deed is sometimes called a "mortgage", although it is somewhat different. Under a trust deed, the home buyer deeds her home to a "**trustee,**" usually a bank. The trustee holds the deed to the home, while the home buyer pays off the loan. Under Idaho law, the trustee has "**power of sale**" and can sell the home at a "**trustee's sale**" if the home buyer defaults on the loan (misses one or more loan payments). If the buyer defaults, the lender notifies the trustee and the foreclosure process begins.

▶ The laws governing the "trust deed foreclosure" process are found in **Idaho Code Sections 45-1502 through 45-1515**. When a lender wants to foreclose on a property, the law requires the lender to follow certain steps:

First, the trustee or lender must mail a "**Notice of Default**" to everybody who owns an interest in the property and must also file a notice with the County Recorder. As a tenant, you can file a request with the County Recorder that the trustee or lender mail you a copy of the Notice of Default too.

Second, the trustee or lender must mail a "**Notice of Trustee's Sale**" (stating that the home will be sold at auction) to everybody with an interest in the property, including the tenant.

▶ **After mailing** the Sale Notice, the trustee or lender must try to deliver it to an adult who is living in the home. They must try to deliver the notice to you at least three times over a week or longer period. If they don't find anyone at home each time, they must post the Sale Notice in an obvious place on the property (like the front door). The trustee or lender must also publish the Sale Notice in a newspaper four times over four weeks.

▶ The Trustee's Sale cannot take place **until 120 days after the notice was mailed** and **until at least 30 days after the notice was delivered or posted** on the property and published in the newspaper.

▶ The Trustee's Sale will happen at a title company, lawyer's office or the courthouse steps. The home is sold to the highest bidder who receives a "**Trustee's Deed**" and is the new owner.

▶ Usually, the new owner tries to get tenants out of the house starting ten days after the sale, but you may have a right to stay in the house for 90 days or more.

*Read more inside this handout about the **Protecting Tenants at Foreclosure Act.***

Protect Your Rights BEFORE a Sale

Nowadays, many homes are in foreclosure and tenants have to do extra work to protect themselves.

- Before You Sign a Lease, Do Your Homework!** When you are looking for a rental home, **ask the owner** or property manager whether the home is paid off or still under mortgage. If there is a loan, ask if it is current (paid up). Write down everything you're told, who told you, the date and time, and where you spoke. If you spoke to the person on the phone, write down their phone number.
- Also, visit the County Recorder** (find the address in the phone book or on the internet). Look to see if a **Notice of Default** or other foreclosure document has been filed on the house. Employees at the recorder's office will often help you find these documents.
- After You Sign a Lease, Have it Notarized & File it with the County Recorder.** Smart home buyers always record their deed with the recorder. You should **record your lease too!** To record a document in Idaho, it must be acknowledged by a Notary ("notarized"). You will probably have to attach a form called a **Notary Acknowledgement*** to your lease and ask your landlord or property manager to cooperate. If they refuse, ask them why and write down the whole conversation, including the date, time and place. Once you get the lease notarized, take it to the recorder and pay the recording fee. Potential buyers and banks will then be on notice that you are a tenant.
- File a "Request for Foreclosure Notice" on your rental property.** Anyone can request copies of any Notice of Default or Notice of Trustee's Sale on a given property. Use a **Foreclosure Notice Request Form*** which includes spaces for your name, address, and signature. This form should also be notarized. The recorder's office can help you find the other required information: property location, "instrument number," recording date of the Deed of Trust, and name and address of the trustee. You must mail a copy of your request to the trustee. After you pay a fee, you can file the request with the recorder.
- If you suspect a Foreclosure Sale, make sure everyone knows you are a tenant.** If your landlord is at risk of foreclosure, s/he might try to sell the house you are renting. Make sure that your landlord respects the rules in your lease for entering the property and your right to peace and quiet. If potential buyers or real estate agents start visiting your home, you must make it clear that you are a tenant. Write down the names of anyone who visits your home. Give everyone who visits your rental space a **Notice of Tenancy*** with a copy of your lease attached. If someone is serious about buying the house, mail them a copy of the Notice by certified mail, receipt requested. Write down all the people you notified of your tenancy and when you notified them.
- Keep Paying Rent!** Even if your landlord's property is in foreclosure, your landlord can still have you rapidly evicted if you don't pay your rent in full and on time. However, if your lease term extends past the date of a Trustee's Sale, your landlord may realize that s/he won't be able to honor your lease agreement. If you find out a Trustee's Sale has been scheduled, contact your landlord and **ask for a rent reduction** or **waiver** for the months leading up to the sale. Get any agreement in writing and ask the landlord to sign it.
- Find out if you can buy the home you are renting.** Sometimes you can get a good deal when buying a home that is in foreclosure (especially through a "short sale"). If you have a reliable income, look into this possibility. Talk to your credit union, bank, or city or county home buyer program office to determine if you are eligible for any loans or buyers' programs or call the **Idaho Housing and Finance Association** at 1-800-432-4066.

Protect Your Rights AFTER a Sale

- Know your Rights under the *Protecting Tenants at Foreclosure Act* ("PTFA").** Until 2013, this federal law gives you certain rights as a tenant if your rental property is foreclosed upon. **If your lease has expired** by the time of the Sale, the new owner must let you stay in the home for 90 days after she gives you notice to vacate. **If your lease expires within 90 days** after the Sale, the new owner becomes your landlord and must let you stay in the home until at least 90 days after giving you notice to vacate. Also, if the new landlord wants you to move after 90 days, your lease can only be terminated in a way permitted by the lease and Idaho Landlord Tenant Laws. **If your lease expires more than 90 days** after the Sale, the new owner becomes your new landlord. If the new owner is going to move in, she must let you stay in the home at least 90 days after giving you notice to vacate. If the new owner is not moving in (for example, a bank-owner), it must honor your lease term.
- **If you are in the Section 8 Housing Choice Voucher Program,** the new owner must keep your rental assistance through the program, and cannot terminate your lease just because of the foreclosure.
- **Make sure that the new owner knows your rights under the PTFA.** As soon as you know who the new owner is (the County Recorder can help you find the new owner's name after the Trustee's Sale), send the new owner a letter (you

can use the "**Notice of Tenancy*** form) telling them that you know your rights under the PTFA. Talk to an attorney to know all your rights under the PTFA.

Keep Paying Rent! Even if your landlord's property was sold in a Trustee's Sale, your new landlord can have you rapidly evicted if you don't pay your rent in full and on time. If you need repairs, notify the new owner.

Know about "Cash For Keys" Deals.

Before or after a Trustee's Sale, a bank/lender's agent (a real estate agent or attorney) may try to get you to move out. These people might call you, send you demanding letters, or visit your home. They might try to tell you that you have no choice but to move out immediately. They might tell you things that are different from what an attorney has told you. If the agent realizes that you aren't going to give up easily, they may offer you a "Cash for Keys" deal. The owner may offer a certain amount of money to move out by a certain date and leave the property in good, clean condition. Typically, they will offer you 15 to 45 days to move out in exchange for \$500 to \$5000 or more. In most cases, the agents are able to offer you more money than they offer you at first. **If you want to negotiate a better deal, do your homework!** Figure out how much time and money you will need to move and ask for a deal that will provide you enough of both. Before signing any agreement, make sure you read and understand every word. Ask the agent if you have to sign anything else. Agents often try to demand that you sign other documents at the last minute. Take extra care that you know exactly **when** and **how** you will get the money. Usually, you will not get paid until you move out.

Know about Evictions. Whether or not the new owner offers you a Cash for Keys deal, or gave you proper notice under the PTFA, the owner may try to sue to legally evict you. Defending against eviction, especially after a foreclosure, can be complicated. You will probably want to have an experienced lawyer to help you. After a Foreclosure Sale, if you receive an Eviction Notice, Summons, Complaint, or any other court papers from a Process Server or an attorney's office, **contact a trusted attorney or your local Idaho Legal Aid Services office right away.** If you put off calling a lawyer, it may be too late!

Idaho Legal Aid Services

Local Offices		
Boise	310 N. 5th St.	345-0106
Caldwell	1104 Blaine St.	454-2591
Coeur d'Alene	410 Sherman Ave., #303	667-9559
Idaho Falls	482 Constitutional Way, #101	524-3660
Lewiston	633 Main St., #103	743-1556
Pocatello	150 S. Arthur., #203	233-0079
Twin Falls	475 Polk St., #4	734-7024

Idaho Senior Legal Hotline	1-866-345-0106 <i>(en español 1-866-954-2591)</i>
Idaho Domestic Violence Legal Hotline	1-877-500-2980
TTY (Deaf and Hearing Impaired)	1-800-245-7573
Idaho Rental Assistance & Properties	1-877-428-8844 www.housingidaho.com

Visit www.idaholegalaid.org
to find more free forms and information about landlord / tenant issues.

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