

Client Alert

Current Issues Relevant to Our Clients

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Protecting Tenants in Foreclosed Rental Property Ordinance: What Lenders Need to Know

In an attempt to mitigate damages to tenants and communities as a result of foreclosures, improve rental property and prevent occupied properties from becoming vacant after foreclosures, the City of Chicago has promulgated the Protecting Tenants in Foreclosed Property Ordinance (the "Ordinance"), effective September 3, 2013. Lenders are advised to familiarize themselves with the Ordinance's strict requirements in order to avoid the severe monetary penalties authorized by the Ordinance for non-compliance.

Types of Property Subject to the Ordinance

The Ordinance applies to any type of judicially foreclosed Property in which one or more of the rental units are occupied, including: a condominium unit, a multi-unit building, a single-family home (that was being used as a rental property pursuant to a written or oral rental agreement).

The Ordinance does not apply to units located in a cooperative building.

When the Ordinance Applies

The Ordinance is applicable to any person who alone, or jointly or severally with others (for the purposes of this article, we will assume it is a Lender): (1) accepts a deed in lieu of foreclosure on a rental property; (2) enters into a consent judgment on a rental property; or (3) obtains title following the judicial confirmation of a sale of rental property where the Lender was the successful bidder and any special right of redemption has expired. Simply stated, the Ordinance applies where a Lender becomes the owner of the foreclosed Property (5-14-020 - Definitions).

When a Tenant is Entitled to Protection of the Ordinance

A person who is (1) a tenant in a foreclosed rental property on the day the Lender becomes the owner and (2) has bona fide rental agreement to occupy the Property as a principal residence is entitled to protection of the Ordinance (5-14-020 - Definitions).

A rental agreement is "bona fide" where: (1) the tenant is not the mortgagor or the child, spouse or parent of the mortgagor; (2) the lease was the result of an arms length transaction; and (3) the lease requires a rental payment that is not less than fair market rent for the Property, or the unit's rent is reduced due to a government subsidy (5-14-020 - Definitions).

The Ordinance does not apply to: (A) Lender-Owner of a foreclosed Property who was the owner prior to the effective date of the Ordinance; (B) third-party purchasers; (C) a court appointed receiver who takes title after foreclosing on a Receiver's Certificate; (D) an owner who will occupy the rental unit as their primary residence; and (E) a bona-fide not-for-profit corporation (in existence for a period of five years immediately prior to becoming owner of the rental unit) whose purpose is to provide financing for affordable housing. (5-14-030 - Exclusions).

What the Ordinance Requires of an Applicable Lender

(1) If the Ordinance applies to a Lender-Owner, the Lender-Owner must either:

(A) offer the bona fide tenant an option to renew or extend the previously existing rental agreement with an annual rent increase cap of 2%, and for any 12-month period thereafter, an annual rent increase cap not exceeding 2% of the immediate prior year's annual rental rate; or

(B) pay a tenant a one time "relocation assistance fee" of \$10,600.00 per unit to vacate the premises (5-14-050 – Tenant relocation assistance).

Notes:

- The relocation assistance fee must be paid to the tenant no later than seven days after the day of complete vacation of the rental unit by the tenant.
- The Lender-Owner may deduct from the relocation assistance fee all rent due and payable for the rental unit occupied by the tenant prior to the date on which the rental unit is vacated.
- The option to renew or extend the lease continues until the Lender-Owner sells the Property to a third-party purchaser.
- The Lender-Owner is not required to pay the tenant the “relocation assistance fee” if the tenant declines the offer to renew or extend the lease, or is evicted “for cause.”
- If the Lender-Owner fails to comply with this section, the tenant shall be awarded damages in an amount equal to two times the relocation assistance fee, in addition to any other fine or penalty provided in the ordinance.

(2) The Lender-Owner must also register the Property with the Chicago Buildings Commissioner (in a form prescribed by the Commissioner) within 10 days of acquiring title and pay the applicable \$250.00 fee (5-14-060 - Registration of foreclosed rental property)

Notes:

- The registration must include, among other things, the name, address and telephone number of the Lender-Owner’s designated agent for the purpose of receiving notices of building code violations concerning the Property and service of process for court proceedings related to building code violations.
- If there are any changes to the information or status of the Property, the Lender-Owner must notify the city within 10 days.
- If the Property becomes vacant, the Lender-Owner must file a vacant property registration.

Lender’s Requirement to Provide Notice to Tenant(s) (5-14-040 - Notice to Tenants)

Within 21 days of acquiring title to the Property, the Lender-Owner must:

(1) make a “good faith effort” to determine the identities and addresses of all tenants at the Property;

(2) serve a prescribed written notice (see below) to the tenants of their rights under the Ordinance in English.

Spanish, Polish and Chinese (the “Notice”). The Notice must also include the name, address and telephone number of the owner, property manager or owner’s agent who is responsible for the foreclosed rental Property. If the Lender-Owner ascertains the identify of a tenant more than 21 days after becoming the owner, the owner must provide the tenant with the Notice within 7 days;

- Service of the Notice is effective by: (A) delivering a copy of the notice to the tenant; (B) leaving a copy of the Notice with a person 13 years or older residing at the tenant’s rental unit; or (C) sending a copy of the Notice by first class or certified mail, return receipt requested, to each known tenant, addressed to the tenant.

(3) post the Notice on the primary entrance of each foreclosed rental Property.

Note: Lender-Owner may not collect rent due and owing from any known tenant until the Notice has been served as required.

Notice in English:

NOTICE TO TENANT

Please be advised that _____ has taken title and is now the owner of the property commonly known as _____. The property management company is _____, who can be contacted at:

Address: _____
Telephone Number: _____

“THIS IS NOT A NOTICE TO VACATE THE PREMISES. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any right that you may have.

Pursuant to the City of Chicago’s Protecting Tenants in Foreclosed Rental Property Ordinance, if you are a qualified tenant you may be eligible for relocation assistance in the amount of \$10,600 unless the owner offers you the option to renew or extend your current written or oral rental agreement with an annual rent that: (1) for the first twelve months, does not exceed 102% of your current annual rent; and (2) for any twelve-month period thereafter, does not exceed 102% of the immediate prior twelve-month period’s annual rent. The option to renew or extend your lease shall continue until the property is sold to a bona fide third-party purchaser.

If you are eligible as a qualified tenant and the owner fails to pay you the relocation assistance that is due, you may bring a private cause of action in a court of competent jurisdiction seeking compliance with the Protecting

Tenants in Foreclosure Rental Property Ordinance, Chapter 5-14 of the Municipal Code of Chicago, and the prevailing plaintiff shall be entitled to recover, in addition to any other remedy available, his damages and reasonable attorney's fees."

Lender Liability for Violating the Ordinance

(1) The Ordinance creates a private cause of action for a tenant to seek compliance with the Notice requirements and the Tenant Relocation Assistance provisions of the Ordinance – a prevailing tenant may be awarded two times the relocation assistance fee and reasonable attorneys' fees. (5-14-070 - Rights, obligations and remedies);

(2) If a Lender-Owner is found guilty of violating the ordinance, the city may fine the Lender-Owner \$500.00 to \$1,000.00 a day per violation. (5-14-100 - Violation – Penalties – Liability).

Notes:

- Each day that a violation exists shall constitute a separate and distinct offense.
- Officers and directors of the Lender-Owner shall be jointly and severally liable for all fines, costs, fees and penalties imposed under the Ordinance.

For More Information

To discuss any of the topics covered in this client alert, please contact Bryan Jacobson at 312.845.3407, Jim Sullivan at 312.845.3445, or visit us online at chapman.com.

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