

LENDER LIABILITY COMPLIANCE ALERT

6/18/13

Chicago Ordinance Imposes New Requirements on Owners of Foreclosed Rental Properties

On May 29, 2013, The Municipal Code of Chicago added Chapter 5-14, "Protecting Tenants in Foreclosed Rental Property Ordinance." The Ordinance requires certain owners of rental properties, post foreclosure, to subsidize the relocation of current tenants if the owners are unwilling or unable to give the tenants the option to extend their lease. Rental owners subject to this new legislation ("Owners") are:

- Owners, by way of a judicial sale of a foreclosed property who have been confirmed by the court and for whose right of redemption has expired; and
- A mortgagee that accepts a deed-in-lieu of foreclosure or enters into a consent foreclosure on the property.

The Ordinance does not apply to:

- An owner of a foreclosed property who became the owner before the Ordinance took effect;
- A person who purchased the property through an arm's-length transaction;
- A person appointed as a receiver and assigned a Receiver's Certificate;
- An owner who will occupy the rental unit as his primary residence; and
- A bona-fide not-for-profit in existence for at least five years before purchasing the rental property with the purpose of providing financing for the purchase of affordable housing.

Chapter 5-14-040 requires Owners to notify all tenants in writing that under certain circumstances the tenant may be eligible for relocation assistance. The notice must be in English, Spanish, Polish and Chinese and include the following information:

"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 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."

Chapter 5-14's relocation assistance requirement applies only to "Qualified Tenants," whom the Code defines as a person who:

- Is a tenant on the day that the new owner takes possession after the foreclosure; and
- Who has a lease that is the result of an arms-length transaction with a fair market price and who is not the child, spouse or parent of the mortgagor.

The Chicago commissioner of buildings and the commissioner of business affairs and consumer protection may adopt rules and regulations for effective administration of this Ordinance. The owner of a foreclosed rental property must register the property with the commissioner within 10 days after the foreclosure sale. Additionally, if the commissioner requests any follow-up documents, the owner has 10 business days to produce the material.

The tenant rights included in the Ordinance are non-waivable and any violation of this Chapter will result in a \$500-\$1,000 fine. Each failure to comply with the ordinance, with respect to a different tenant, and each day that the violation exists will constitute a separate offense. A tenant may bring a private cause of action that can result in the collection of damages and reasonable attorney's fees in addition to any other remedy a court sees fit.

Given how recently the Ordinance was promulgated, we have yet to see how the City will enforce this Chapter of the Code. However, both large and small banking institutions will be subject to the Ordinance as mortgagees. Therefore, we recommend that all banks begin to review their internal policies and procedures for both foreclosures and REO properties. Compliance with the Ordinance will likely require institutions to implement new guidelines to avoid non-compliance.

Please contact the following Roetzel attorneys for further information:

Mark D. Belongia
312.582.1605 | mbelongia@ralaw.com

Benjamin P. Shapiro
312.582.1604 | bshapiro@ralaw.com