



More Red Tape and Costs for Owners of Foreclosed Rental Properties

Ordinance Goes Into Effect This September

By: Ryan M. Holz, Kenneth M. Lodge and David Standa

In June 2013, the Chicago City Council passed the "Keep Chicago Renting" ordinance by a vote of 45-4. The Ordinance goes into effect on September 3, 2013. Parties who obtain title to rental properties via foreclosure after September 3, 2013 (defined as "Owners") will face new regulations, new costs, and new headaches.

- 1) Owners must, within 10 days of taking ownership, register the property with the City's Buildings Commissioner. The registration fee is \$250.
- 2) Within 21 days of taking ownership, Owners must make a good-faith effort to identify all tenants in the property and must notify them, in writing, of their potential right to relocation assistance. The notice must be provided in English, Spanish, Polish, and Chinese and must be mailed (certified mail) or hand-delivered to each tenant and posted on the primary entrance of the residential property.
- 3) The Owner must identify "Qualified Tenants." A "Qualified Tenant" is a tenant with a bona-fide agreement to occupy the property as their personal residence. A rental agreement is bona-fide if it was negotiated in an arms-length transaction and the rent is not substantially below market value.

Upon identification of a Qualified Tenant, an Owner has two options. The first is to offer the Qualified Tenant a renewal or extension of their lease with a rent increase of no more than 2%. The second is to pay the Qualified Tenant a one-time relocation assistance fee of \$10,600 within seven days of the Qualified Tenant vacating the unit. If the Owner chooses the first option and renews or extends the Qualified Tenant's lease, it must continue to offer renewals or extensions (with rent increases of no more than 2% per year) until the Qualified Tenant rejects the offer, the Qualified Tenant is evicted from the unit for cause, the Owner pays the relocation fee, or the Owner sells the property to a "bona fide third-party purchaser."

These new requirements place a significant burden on Owners of foreclosed rental properties. For one, the Ordinance will effectively force most Owners to hire a property manager to immediately take control over a foreclosed property upon the vesting of title. Most Owners (or their REO



departments) simply do not have the manpower, time, or resources to identify and provide notices to all tenants within the 21-day window called for in the Ordinance.

The Ordinance will also have a significant impact on Owners' ability to re-sell rental properties. By requiring indefinite renewals and extensions, the Ordinance makes it virtually impossible to terminate the lease of a paying Qualified Tenant who does not want to leave. Predictably, "bona fide third party purchasers" are going to be more reluctant to purchase such properties. At the very least, they will expect a significant discount. And while Owners can mitigate that problem by providing the one-time relocation assistance fee, \$10,600 is a significant expense. In other words, Owners will pay a substantial cost one way or the other.

All that aside, the most onerous aspect of the Ordinance is the potential penalties for non-compliance. The Ordinance permits tenants to bring a private cause of action against an offending Owner and upon a finding of liability, the tenant will be entitled to actual damages and reasonable attorneys' fees. Moreover, if the Owner fails to offer a Qualified Tenant renewal or relocation assistance, the Qualified Tenant will automatically be entitled to two times the relocation fee, or over \$20,000, in addition to any actual damages.

On top of that, the City of Chicago can impose significant fines on non-compliant Owners. Offending Owners can face fines of between \$500 and \$1,000 for each violation, with each tenant constituting a separate offense and each day constituting a separate offense. It is not hard to imagine such fines adding up quickly on an unfortunate and unsuspecting lender.

In sum, the "Keep Chicago Renting" Ordinance is just the latest volley in the City of Chicago's ongoing feud with area lenders. And while the Ordinance is unlikely to do much to effect its stated purpose of protecting tenants, it will likely accomplish its unstated goal: extracting additional funds from lenders who conduct business in the City of Chicago. Given the overwhelming majority by which the City Council passed the Ordinance, lenders can expect more where this came from.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

Ryan M. Holz | 312-443-0656 | rholz@lockelord.com

Kenneth M. Lodge | 312-443-0478 | klodge@lockelord.com

David Standa | 312-443-1748 | dstanda@lockelord.com