

COUNSELING DISPLACED OR AT RISK RENTERS



Housing Action
Illinois

Mark Swartz
March 27, 2012



Lawyers' Committee
for Better Housing

Advocating for Chicago Tenants

LCBH BACKGROUND

- ⌘ The mission of the **Lawyers' Committee for Better Housing (LCBH)** is to increase and preserve safe, affordable, and accessible rental housing and support and advocate for the rights of tenants.
- ⌘ LCBH has been serving Chicago tenants for over 30 years!
- ⌘ LCBH provides advocacy, legal representation, supportive services, education and outreach as a means of empowering tenants and preserving decent affordable housing in Chicago and is the only full-service legal program for tenants in foreclosed buildings.
- ⌘ LCBH has expanded its reach to provide advocacy and education for tenants living in foreclosure across Illinois.



AGENDA

1. 2009 Report, Background and Data
2. 2010 Report, Background and Data
3. 2011 Update and Data
4. Foreclosure Timeline
5. Illegal Notices
6. Federal Law
7. State and Local Laws
 1. Illinois Mortgage Foreclosure Law
 2. Residential Landlord Tenant Ordinance
8. Recent Amendments
9. Sample Notices
10. Questions

BACKGROUND:

A REVIEW OF 2009 AND 2010 LCBH
TENANT IN FORECLOSURE
INTERVENTION DATA

Full reports available at lcbh.org

SCOPE OF PROBLEM: KEY FINDINGS FROM 2009 LCBH REPORT

- ⌘ In 2009, there were foreclosure filings on 6,560 Apartment Buildings in the City of Chicago.
- ⌘ Those buildings contain 20,691 units.



KEY FINDINGS FROM 2009 LCBH REPORT

- ⌘ In 2009 there were at least 4,000 more multi-family building units impacted by foreclosure than single-family and condominium units in the City of Chicago.
- ⌘ The bulk of the rental units in foreclosure were located in low-income, predominantly African American and Hispanic/Latino community areas.



INTERVENTION STRATEGIES

LCBH's Tenants in Foreclosure Intervention Project (TFIP) focuses exclusively on the issues facing tenants living in buildings in foreclosure, providing:

- ⌘ training to community organizations
- ⌘ legal representation and counseling for tenants in foreclosure
- ⌘ an **early warning system** designed to identify, map, and share key pieces of information about recently filed foreclosures in the City of Chicago on multi-unit buildings with our community partners who can then use the information to perform direct outreach with impacted tenants



LCBH'S TENANTS IN FORECLOSURE INTERVENTION PROJECT (TFIP) SAMPLE WEEKLY REPORT



Lawyers' Committee
for Better Housing
Leading Chicago in Better Housing

Tenants in Foreclosure Intervention Project



Based on the available data, there were four new foreclosure filings on apartment buildings in your neighborhood. The filings occurred between 03/15/11 and 03/22/11. According to records from CityNews, these buildings contain approximately 22 units.

One lender filed more than one foreclosure on an apartment building in your neighborhood during this reporting period. CHASE HOME FINANCE LLC filed 2, impacting 8 units.

Tenants in Foreclosure Intervention Project

Address	Zip Code	Defendant Last Name	Defendant First Name	Plaintiff	Case No.	PIN	Filing Date	Units	LCBH Notes
3525 W LEXINGTON ST	60624-4110	HARPER	FARRY D	CHASE HOME FINANCE LLC	11CH0010239	16 14 408 014 0000	03/17/11	2	
2711 W JACKSON BLVD	60612-3623	IRPINO	ROSALIE C	CITIMORTGAGE INC	11CH0010812	16 13 216 021 0000	03/22/11	2	
3158 W JACKSON BLVD	60612-2773	CUEVAS	WILLIAM	CHASE HOME FINANCE LLC	11CH009916	16 13 112 012 0000	03/15/11	6	
3156 W WARREN BLVD	60612-1818	TOWNSEND	ELIZABETH A	BAYVIEW LOAN SERVICING LLC	11CH0010287	16 12 324 019 0000	03/18/11	12	3156-3158 W. Warren
							TOTAL	22	



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2010 LCBH REPORT:

“BANKS AVOID FORECLOSURE
LAWS, UPROOT TENANTS:
A CALL FOR ENFORCEMENT OF
TENANT PROTECTIONS”

Full report is available at lcbh.org

KEY FINDINGS FROM 2010 LCBH REPORT

- ⌘ In 2010, 5,904 Apartment Buildings went into foreclosure within the City of Chicago; these properties contain approximately 17,467 units.
- ⌘ Throughout 2009 and 2010, 12,334 Chicago Apartment Buildings went into foreclosure, affecting approximately 37,726 units—which is equivalent to a community's entire housing stock (for example, the Austin Community Area of Chicago).



KEY FINDINGS FROM 2010 LCBH REPORT

- ⌘ The same Community Areas most impacted by foreclosure in 2009 were again inundated with high rates of Apartment Building foreclosure filings in 2010.
- ⌘ 16 of the 25 Community Areas with the greatest risk to rental housing stability are composed of populations that are less than 5% Caucasian.



COMMUNITY AREA RENTAL HOUSING RISK ASSESSMENT

	Community Area	# of Units in Foreclosure	% of Units in Foreclosure	REO Owned	Racial/Ethnic Makeup	% of Pop. Living Below Poverty Level
1	Englewood	1,266	14.7%	25.9%	98% AA	43.8%
2	New City	1,098	12.2%	30.9%	50% H, 35% AA	35.0%
3	West Englewood	780	13.5%	31.7%	98% AA	32.0%
4	Belmont Cragin	1,182	12.1%	24.7%	65% H, 28% C	11.2%
5	Humboldt Park	1,590	14.3%	19.6%	48% H, 47% AA	31.0%
6	Brighton Park	821	13.5%	27.0%	77% H	17.3%
7	South Shore	2,100	10.7%	24.7%	97% AA	27.0%
8	Chicago Lawn	879	10.6%	29.8%	53% AA, 35% H	19.8%
9	Austin	2,226	11.0%	20.9%	90% AA	24.0%
10	Rogers Park	1,634	7.8%	26.7%	32% C, 30% AA, 28% H	21.0%
11	North Lawndale	1,181	12.9%	17.5%	94% AA	45.0%
12	West Garfield Park	674	13.8%	24.0%	98% AA	36.0%
13	Avondale	925	10.8%	21.2%	62% H, 30% C	17.4%
14	East Garfield Park	817	17.3%	17.4%	97% AA	35.0%
15	South Chicago	862	12.0%	18.4%	68% AA, 27% H	29.7%
16	Chatham	1,119	12.1%	16.3%	98% AA	17.7%
17	Greater Grand Crossing	875	9.6%	19.3%	98% AA	29.0%
18	Auburn Gresham	693	8.0%	25.7%	98% AA	20.6%
19	Gage Park	457	12.0%	24.0%	79% H	19.0%
20	West Pullman	312	9.7%	29.1%	94% AA	22.0%
21	Washington Park	575	14.5%	17.3%	98% AA	52.0%
22	South Lawndale	863	7.0%	19.3%	83% H	26.5%
23	West Lawn	148	9.6%	34.9%	52% H, 43% C	7.4%
24	Hermosa	465	11.6%	20.6%	84% H	17.0%
25	Woodlawn	777	9.3%	18.6%	94% AA	39.0%

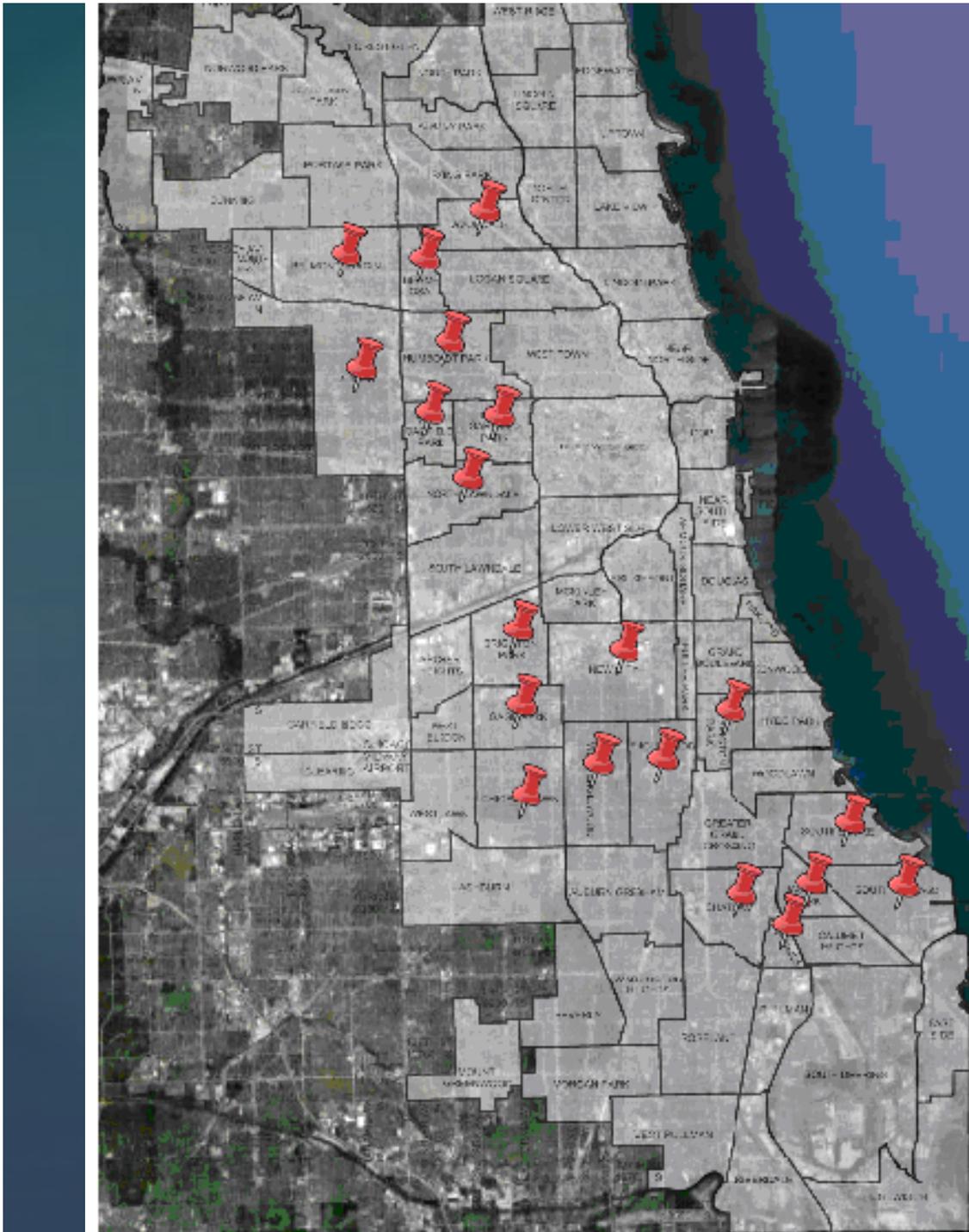
African American (AA)
Caucasian (C)
Hispanic/ Latino (H)

CHICAGO COMMUNITY
AREAS WITH MORE
THAN 10% OF THEIR
RENTAL HOUSING
STOCK IMPACTED BY
FORECLOSURE IN 2009
AND 2010



Community Area	# of Units in Foreclosure 2009+2010	# of Total Rental Units	% of Rental Stock in Foreclosure	Racial/ Ethnic Makeup	% Pop. Living Below Poverty Level
Avalon Park	188	1,058	17.77%	97% AA	8%
East Garfield Park	817	4,717	17.32%	97% AA	35%
Englewood	1,266	8,643	14.65%	98% AA	44%
Humboldt Park	1,590	11,125	14.29%	48% H, 47% AA	31%
West Garfield Park	674	4,873	13.83%	98% AA	36%
West Englewood	780	5,775	13.51%	98% AA	32%
Washington Park	575	4,264	13.48%	98% AA	52%
Brighton Park	821	6,095	13.47%	77% H	17%
North Lawndale	1,181	9,170	12.88%	94% AA	45%
New City	1,098	9,024	12.17%	50% H, 35% AA	35%
Chatham	1,119	9,236	12.12%	98% AA	18%
Belmont Cragin	1,182	9,777	12.09%	65% H, 28% C	11%
Gage Park	457	3,801	12.02%	79% H	19%
South Chicago	862	7,174	12.02%	68% AA, 27% H	30%
Hermosa	465	4,002	11.62%	84% H	17%
Austin	2,226	20,123	11.06%	90% AA	24%
Avondale	925	8,578	10.78%	62% H, 30% C	17%
South Shore	2,100	19,726	10.65%	97% AA	27%
Chicago Lawn	879	8,263	10.64%	53% AA, 35% H	20%
Burnside	34	321	10.59%	97% AA	29%

African American (AA)
Caucasian (C)
Hispanic/Latino (H)



Google Earth map of Chicago Community Areas with more than 10% of their rental housing stock impacted by foreclosure in 2009 and 2010. These communities of color form a virtual “foreclosure belt” across Chicago.

2010 LCBH REPORT: CHALLENGES FACED BY TENANTS IN FORECLOSURE

- ⌘ Widespread misunderstanding of rights and responsibilities of tenants in foreclosure, particularly when there is no legal representation.
- ⌘ The length of the foreclosure process, in which owner may have effectively abandoned the property but lenders refuse to take responsibility for maintain the rental units, leads to disinvestment.



2010 LCBH REPORT: CHALLENGES FACED BY TENANTS IN FORECLOSURE

- ⌘ Lenders and brokers managing bank-owned properties frequently make coercive “cash for keys” offers that tenants are effectively forced to accept due to poor living conditions.
- ⌘ Often multiple entities claim ownership to a building/unit and make different demands and/or set different deadlines.



2010 LCBH REPORT: CHALLENGES FACED BY TENANTS IN FORECLOSURE

- ⌘ Successors-in-interest typically refuse to acknowledge tenants' tenancies, refuse to make any repairs to the property, and refuse to address utility issues.
- ⌘ Successors-in-interest, and their attorneys, willfully ignore the laws passed to protect tenants in foreclosure.
- ⌘ False, misleading, and threatening notices are designed to scare tenants to move.



OTHER TRENDS: FORECLOSURE AND CONDOMINIUMS

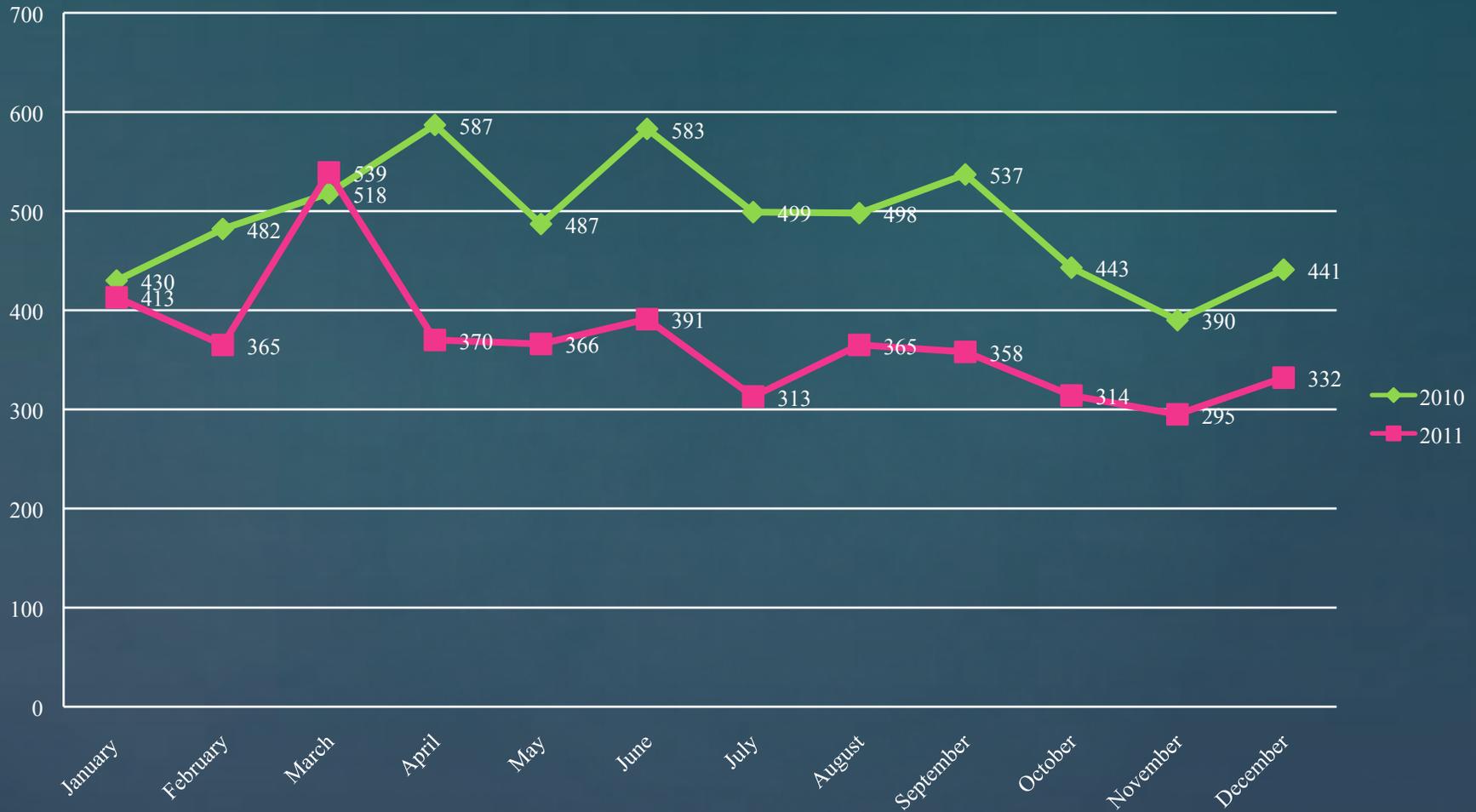
- ⌘ The Woodstock Institute reports that new foreclosure filings on condominiums in Chicago grew by 38% from the first half of 2009 to the first half of 2010.
- ⌘ Woodstock also found that in 2009 condo foreclosure filings made up 24% of all foreclosure filings in Chicago.
- ⌘ Many of these condos are rented to tenants.



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PRELIMINARY DATA: 2011 # OF FILINGS BY MONTH



SCOPE OF PROBLEM: KEY FINDINGS FROM 2011 LCBH REPORT

- ⌘ In 2011, there were foreclosure filings on 4,825 Apartment Buildings in the City of Chicago.
- ⌘ Those buildings contain 13,814 units.
- ⌘ On average, 92 Apartment Buildings went into foreclosure per week in 2011.



FINDINGS: 7 COMMUNITY AREAS HAD OVER 150 BUILDING FORECLOSURES FILED

2011

COMMUNITY AREA	# OF FILINGS
Austin	298
Humboldt Park	224
New City	202
Belmont Cragin	193
North Lawndale	183
South Lawndale	183
Logan Square	181
West Town	146
Englewood	140
Brighton Park	128



FINDINGS: 10 COMMUNITY AREAS HAD MORE THAN 400 UNITS IMPACTED

COMMUNITY AREA	TOTAL UNITS
Austin	914
Englewood	726
Humboldt Park	620
South Shore	609
North Lawndale	512
Logan Square	455
Near North Side	451
West Town	435
Chatham	432
New City	418



COMMUNITY AREAS WITH AT LEAST 120 APARTMENT BUILDING FILINGS

TOTAL NUMBER OF APARTMENT BUILDING FORECLOSURE FILINGS BY COMMUNITY AREA

2010

COMMUNITY AREA	# OF FILINGS
Austin	370
Humboldt Park	284
Belmont Cragin	256
Logan Square	253
New City	246
South Lawndale	231
Englewood	218
North Lawndale	203

2011

COMMUNITY AREA	# OF FILINGS
Austin	298
Humboldt Park	224
New City	202
Belmont Cragin	193
North Lawndale	183
South Lawndale	183
Logan Square	181
West Town	146
Englewood	140
Brighton Park	128



COMMUNITY AREAS WITH MORE THAN 400 APARTMENT UNITS AFFECTED

TOTAL NUMBER OF APARTMENT UNITS IN FORECLOSURE BY COMMUNITY AREA

2010

COMMUNITY AREA	TOTAL UNITS
Rogers Park	1,082
Austin	961
South Shore	745
Humboldt Park	678
Logan Square	612
North Lawndale	608
Englewood	558
Belmont Cragin	540
New City	510

2011

COMMUNITY AREA	TOTAL UNITS
Austin	914
Englewood	726
Humboldt Park	620
South Shore	608
North Lawndale	512
Logan Square	455
Near North Side	451
West Town	435
Chatham	432



INTERVENTION: TENANTS IN FORECLOSURE BROCHURE AND TENANTS IN FORECLOSURE 14TH FLOOR INFORMATION DESK

- ⌘ Educates tenants as to their rights when confronted with false, misleading, or threatening notices or demands.
- ⌘ Level the playing field when tenants have to negotiate “cash for keys” deals with banks.
- ⌘ Provides Illinois Tenants in Foreclosure brochure and other self help handouts.



If you are renting an apartment, house or condo that is in foreclosure, you have the right to:

- ✓ Know if your building is in foreclosure.
- ✓ Live in a safe apartment with utilities.
- ✓ Stay until your lease ends.
- ✓ 90 days' notice if you are asked to move.
- ✓ Be notified if your landlord or building's management changes.
- ✓ Get your eviction court record sealed (made confidential).
- ✓ Recover your security deposit.

WHICH LAWS PROTECT TENANTS?

Tenants are covered by the federal Protecting Tenants at Foreclosure Act of 2009 along with state and city laws as well. In Chicago, the Residential Landlord Tenant Ordinance covers many tenants and offers special protections. Other towns, like Evanston or Oak Park, have special ordinances and resources for tenants. Check with your City or Village to learn if it has a local landlord tenant ordinance or has passed any special laws to protect tenants in foreclosure.

This brochure is intended to give only basic information about tenant's rights and responsibilities. To learn more go to www.regionalhopi.org/help.



This brochure is a summary of general issues facing tenants in foreclosure and may not address your specific situation. This brochure does not replace the advice or representation of an attorney. Because of this and because of unanticipated changes in the law, Lawyers' Committee for Better Housing or the person, institution or agency who gave you this brochure makes no claims as to whether the use of this brochure will achieve the results you desire and disclaims any responsibility for the consequences of any action taken in reliance upon the information in this brochure.

GET HELP

Contact your county's courthouse or local bar association for help finding an attorney. A number of law schools, bar associations and nonprofit organizations across Illinois offer pro bono legal advice and representation for those who are unable to afford legal services. You can also find legal information and help for Illinois residents at www.illinoislegalaidonline.org.

In Chicago and Cook County, a number of organizations work to protect tenant's rights and provide resources:

LEGAL ASSISTANCE IN CHICAGO AND COOK COUNTY SUBURBS:

Lawyers' Committee for Better Housing
(312) 784-3507
www.lcbh.org

Legal Assistance Foundation of Metropolitan Chicago
(312) 341-1070
www.lafchicago.org

OTHER COOK COUNTY RESOURCES:

Metropolitan Tenants Organization
(773) 292-4988
www.tenants-rights.org

Regional Home Ownership Preservation Initiative
www.regionalhopi.org/help

This brochure and the Tenants in Foreclosure Intervention project are funded in part by a generous grant from The Chicago Community Trust.



Tenants in Foreclosure Intervention Project

Foreclosure doesn't mean
"Get out now."

YOU HAVE RIGHTS.



WHAT IS FORECLOSURE?

If you are renting an apartment, house or condo that is in foreclosure, this means a Court has sent a legal notice to the owner of your unit. The notice says that the owner has not paid the mortgage, and must appear in Court to resolve the issue with his or her lender (bank). The process to resolve this can take several months to a year or more. Sometimes, the bank and the owner reach an agreement and your landlord continues to own the property. In other cases, the Court appoints a Receiver (a new manager) or allows the bank to sell the property.

During this process your responsibilities do not change. For instance: **YOU MUST CONTINUE PAYING RENT**, as failure to pay rent may be grounds for eviction. But you also have additional rights, and resources to help you understand what is happening to your apartment and what your options are.

STEPS TO FIND OUT IF YOUR BUILDING IS IN FORECLOSURE

If you have questions or concerns about your apartment being in foreclosure, talk to your landlord. You can also do research on your own to find out about the status of your apartment.

You can confirm if your building is in foreclosure at your county's Recorder of Deeds office (or in some cases on the Recorder's website). If a foreclosure is pending (suit pending) notice is recorded on the property, it will show the court case number.

Once you know the foreclosure case number, you can look up the case at your county's Circuit Court (or in some cases on the Court's website).

In Cook County if you know the foreclosure case number:

- Go to www.cookcountyclerkofcourt.org.
- Follow the Link for "Online Case Info" and click "Full Electronic Docket Search".
- Select "Chancery" division and enter the foreclosure case number.

DURING THE FORECLOSURE PROCESS...

YOU HAVE A RIGHT TO LIVE IN A SAFE APARTMENT WITH UTILITIES

During the foreclosure process, your landlord is responsible for the maintenance of your apartment. If a new owner buys your apartment or the Court appoints a Receiver (a new manager), the new landlord will be responsible for maintenance and any other terms of the lease, including utilities.

If your building is not maintained and becomes unsafe, or the building's utilities are shut off, talk with your landlord. If that is not possible or doesn't fix the problem, call the Building Department of your city or village. In Chicago you can call 311.

YOU CAN STAY UNTIL YOUR LEASE ENDS

Protect yourself against illegal lockouts. If anyone other than a sheriff orders you to move out, or if your building is boarded up or utilities (heat, electricity, or water) are turned off without a court order, call 911 and file a police report.

YOU MUST BE GIVEN 90 DAYS' NOTICE IF YOU ARE ASKED TO MOVE

Beware of letters and notices posted on your building saying that you must move out immediately. After the foreclosure ends, a new landlord or owner who wants you to move must give you a 90-day notice. All tenants have this right, including month-to-month tenants. Tenants with leases should be able stay until the end of their lease.

A new owner (sometimes a bank) may offer to pay you to leave early. You are free to accept that offer BUT beware of offers that ask you to:

- Leave your home too quickly.
- Move out and hand over your keys (cash for keys) before you are paid.
- Wait until every tenant moves out of the building before you are paid.

YOUR RESPONSIBILITY: PAYING RENT

During foreclosure, you must continue to pay rent to your landlord. If a new owner buys your apartment or management changes, you are supposed to be notified of these changes in writing. If an eviction was filed against you for not paying rent, but you were never notified that there was a new landlord to pay, you may have a defense against the eviction.

AFTER FORECLOSURE...

YOU MUST BE NOTIFIED IF YOUR LANDLORD CHANGES

You have a right to be notified in writing if your landlord changes. In some cases, a new owner will buy the building or your apartment, becoming your new landlord. In other cases, a Receiver (a court-appointed manager) will be put in charge of the building.

If an eviction was filed against you for not paying rent, but you were never notified that there was a new landlord to pay, you may have a defense against the eviction.

YOU HAVE A RIGHT TO SEAL YOUR RECORD

If the court orders you to be evicted because the building is being foreclosed—not because you did anything wrong—the court record can be sealed (made confidential) to protect your credit rating and your ability to rent in the future.

YOU HAVE A RIGHT TO RECOVER YOUR SECURITY DEPOSIT

Your old landlord should return your security deposit if the foreclosure makes you move or after they lose the building. The foreclosure court may also order the landlord to transfer your security deposit to a new owner. If the deposit is transferred, the new owner, including a bank, becomes responsible for the security deposit and should notify you within 21 days that they now have it. In Chicago, the new owner of the property, such as a bank, is always responsible for your security deposit.

Tenants in Foreclosure Intervention Project Your Rights After Foreclosure

Notice Requirements

- You have the right to receive written notice if ownership or management of your building changes due to foreclosure
- This notice should contain the contact information for the person or party responsible for the maintenance of your building
- A new owner, manager, or receiver who does not provide this notice may NOT collect rent from tenants or evict tenants for non-payment of rent
- If you are being evicted due to non-payment of rent, but did not receive the notice of change in ownership or know whom to pay rent to, you may have a defense against the eviction (Illinois Mortgage Foreclosure Law: 735 ILCS 5/15-1508.5(d)(1); 735 ILCS 5/15-1508(f)(5)(i); 735 ILCS 5/15-1513(a-5)(5)(i))

Your Lease

- If you have a lease that was entered into before the foreclosure ended (when the judicial sale was confirmed by the foreclosure court), your lease must be honored by the new owner (even a bank) or manager
- Exclusion: A new owner who wishes to move into your unit may terminate your lease with 90 Days' Notice
- If you currently have a lease that was not honored by the new owner, you may have a defense against the eviction (Protecting Tenants at Foreclosure Act of 2009)
- If you do not have a lease, or are a month-to-month tenant, you have the right to receive a 90 Day Notice before being required to leave your home
- If you are being evicted due to the foreclosure, and not non-payment of rent or violation of lease terms, and you did NOT receive a 90 Day Notice, you may have a defense against the eviction (Protecting Tenants at Foreclosure Act of 2009)

Security Deposits

- In Chicago, typically, the person or entity who purchased your property through a foreclosure sale (including a bank) is jointly responsible, along with your former landlord, for the return of your security deposit (Residential Landlord and Tenant Ordinance (RLTO) Section 5-12-030(h); 5-12-040(c))

Sealed Records

- If you are evicted due to foreclosure, and not non-payment of rent or violation of lease terms, you have the right to have your court record sealed (made confidential) (Illinois Mortgage Foreclosure Law: 735 ILCS 5/15-1504(h)(5))
- This will protect your credit rating and your ability to rent in the future

This form is meant to provide a brief summary of your rights. Only an attorney can provide you with complete legal advice. It is best to seek legal advice or representation before your court hearing. Lawyers' Committee for Better Housing's foreclosure counseling line is (312) 784-3507 and we are located at 100 W. Monroe, 18th Floor, Chicago, IL 60602.

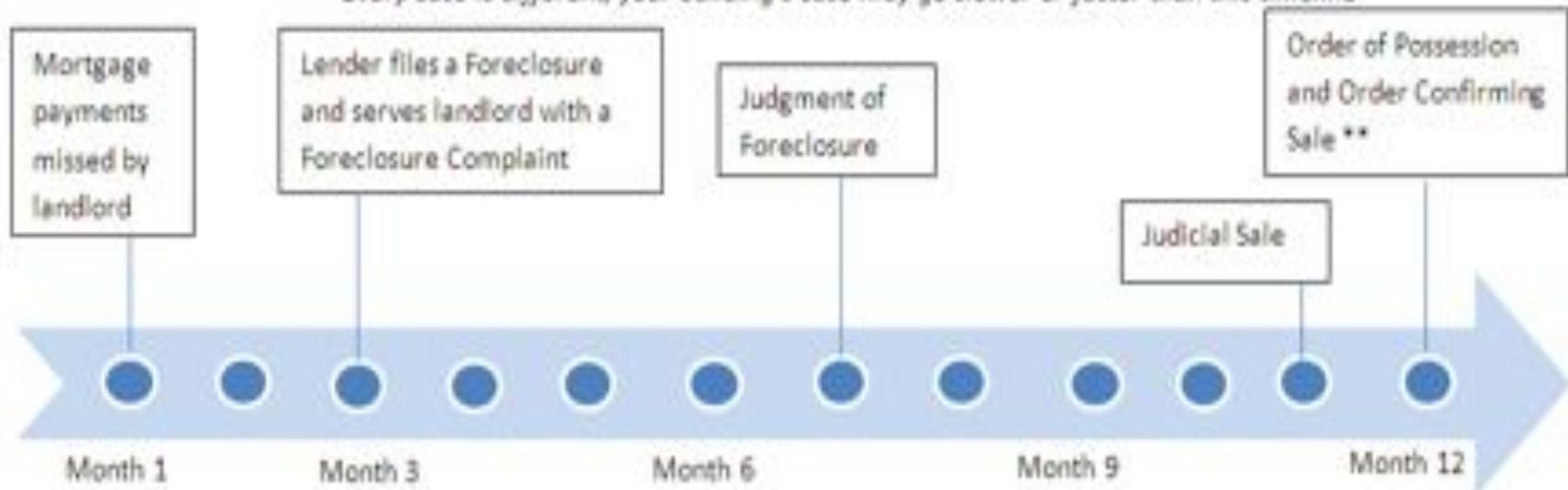
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FORECLOSURE TIMELINE

Sample Foreclosure Timeline by Month

Every case is different; your building's case may go slower or faster than this timeline



****Unless a receiver is appointed or other manager by the court, your landlord is responsible for the building and collecting rent until the Order of Possession and Order Confirming Sale**

STUDY BREAK: Q1

1. When does a landlord/owner lose the right to collect rent from a tenant?
 - A. When a receiver is appointed to manage the building.
 - B. At the Judgment of Foreclosure
 - C. At the Judicial Sale.
 - D. At the Order of Possession and Order Confirming Sale.
 - E. Both A and D are correct.



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ILLEGAL NOTICES

**EVERYONE HAS TO VACATE
THE BUILDING WITHIN ONE
WEEK OR YOU WILL BE
EVICTED!**

ILLEGAL NOTICES

"ATTENTION"

This property has been
foreclosed on by the bank.

"FLOYD"
PLEASE CALL "[REDACTED]"

for more information, and
to participate in the CASH
FOR KEYS PROGRAM. THE

BANK HAS STARTED EVICTION
PROCESSES. PLEASE CALL

IMMEDIATELY. "D E A D"

ILLEGAL NOTICES

TO ALL TENANTS AT [REDACTED] TH ST

THIS PROPERTY HAS BEEN TAKEN OVER BY THE BANK. THE **PROPERTY IS NOW IN EVICTION.** WE NEED YOU TO PLEASE CONTACT LEON AT (312) [REDACTED] SO THAT YOU CAN MAKE ARRANGEMENTS TO LEAVE THE PREMISIS. THANK YOU FOR YOUR COOPERATION IN ADVANCE.

ENCLOSURE

[REDACTED] REALTY, CO

ILLEGAL NOTICES

PLEASE LEAVE
Will Be Boarded up
and TRASHed out
Shortly
Questions
708 - [REDACTED]

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FEDERAL LAW

Protecting Tenants at Foreclosure Act (PTFA)



SEC. 701. SHORT TITLE.

This title may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'.

SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.

(a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, ~~as of the date of such notice of foreclosure--~~

- (A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or
- (B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1).

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) Bona Fide Lease or Tenancy- For purposes of this section, a lease or tenancy shall be considered bona fide only if--

- (1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;
- (2) the lease or tenancy was the result of an arms-length transaction; and
- (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) Definition- For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602). ~~For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.~~

GENERAL IMPACT OF PTFA

- ⌘ Foreclosure does not extinguish tenancy.
- ⌘ Successor-in-interest to a foreclosed property must provide preexisting tenants with at least 90-days notice before tenants must vacate the property (Sec. 702 (a)(1)).



GENERAL IMPACT OF PTFA

- ⌘ If tenant has a bona fide lease or tenancy, then tenant is entitled to remain in the property for duration of lease (Sec. 702(2)(A)).
 - ⌘ Bona fide lease or tenancy does not necessitate a written lease
- ⌘ However, if the successor-in-interest plans to use the property as a primary residence, then he may terminate a tenancy with the provision of at least 90-days notice, regardless of whether a tenant has a bona fide lease or tenancy (Sec. 702(2)(A)).



PROTECTED TENANTS

⌘ Bona Fide Lease or Tenancy (Sec. 702 (b)).

⌘ A lease is considered bona fide only if:

- ⌘ The mortgagor or the child, spouse or parent of the mortgagor under the contract is not the tenant;
- ⌘ The lease or tenancy was the result of an arms-length transaction; and
- ⌘ The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or Local subsidy



PTFA AMENDMENT/ CLARIFICATION

- ⌘ Clarified and extended on July 21, 2010.
- ⌘ Extends PTFA through the end of 2014:
 - ⌘ Clarifies that any lease or tenancy created prior to the change of title as a result of foreclosure is protected by PTFA.
 - ⌘ “Clarifies” that this is what PTFA always meant



PTFA AND SECTION 8 TENANCIES

- ⌘ Section 8 tenants are entitled to at least 90-days notice before they must vacate a foreclosed property (Sec. 703(1)).
- ⌘ If the tenant has a lease or tenancy that is greater than 90-days, it must be honored unless the successor in interest will use the property as a primary residence (Sec. 703(1)(i)).



NOTICE REQUIREMENTS UNDER PTFA

- ⌘ PTFA does not specify the type of notice required.
- ⌘ Instead, successors-in-interest must look to State and local law for guidance.
- ⌘ Notice can only be given after title has been transferred.



RESPONSIBILITIES OF LANDLORDS AND TENANTS UNDER PTFA

- ⌘ PTFA protects tenants in good standing.
 - ⌘ Tenants must continue to pay rent.
 - ⌘ PTFA does not bar eviction “for cause.”
- ⌘ Successor-in-Interest has the responsibilities of the landlord as defined by the lease or by law.



STUDY BREAK: Q2

1. A Bona Fide lease includes any of the following, so long as they are entered into prior to confirmation of sale:
 - A. A lease that the landlord/owner entered into with the landlord/owner's sister.
 - B. A lease that was oral, not written.
 - C. A lease where a Section 8 Housing Choice Voucher paid for 80% of rent.
 - D. A lease that extends for 3 years.
 - E. All of the above are correct.



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STATE AND LOCAL LAWS THAT IMPACT TENANTS IN FORECLOSURE

⌘ Illinois Mortgage Foreclosure Law

- ⌘ Recent Tenant Amendments passed July 31, 2009 and went into effect October 29, 2009.

⌘ Chicago Residential Landlord and Tenant Ordinance (“RLTO”)

- ⌘ Amended October 8, 2008 to require Landlord Notice to Tenants of Foreclosure.
- ⌘ Amended May 12, 2010 to remove lienholder exemption to Security Deposit requirements.



ILLINOIS MORTGAGE FORECLOSURE LAW

- ⌘ Broader Protections than Federal PTFA.
- ⌘ 735 ILCS 5/15-1701(h)(4) amended throughout to replace “tenant” with “occupant”, providing rights to lawful occupants that the PTFA does not.



ILLINOIS MORTGAGE FORECLOSURE LAW

⌘ Change in Management Notice:

⌘ A receiver or the purchaser of the foreclosed property must —within 21 days— serve occupants and advise them that control of the property has changed hands and provide information as to whom to contact for repairs. 735 ILCS 5/15-1704(f); 735 ILCS 5/15-1508.5



DEFENSES TO EVICTION

⌘ A receiver or purchaser who fails to provide notice advising tenants that control of the property has changed hands and providing information as to whom to contact for repairs **may not collect any rent or terminate an occupants tenancy for non-payment of rent**, until providing said notice. 735 ILCS 5/15-1704(f)(5)(i); 735 ILCS 5/15-1508.5(d)(i)



ILLINOIS MORTGAGE FORECLOSURE LAW

⌘ Because a foreclosure does not automatically extinguish a leasehold interest in a property, a tenancy may be terminated in one of two ways:

1. Forcible Entry and Detainer Action

2. Supplemental Petition in Foreclosure Matter



SUPPLEMENTAL PETITION (FORECLOSURE COURT)

- ⌘ Filed in foreclosure court.
- ⌘ May be filed “at any time during the pendency of the foreclosure and up to 90 days after the date of the order confirming the sale.” 735 ILCS 5/15-1701(h)(1)
- ⌘ Supplemental petition must name “each such occupant against whom possession is sought and state the facts upon which the claim for relief is premised.” 735 ILCS 5/15-1701(h)(1)
- ⌘ Rarely used, since an order of possession entered by the eviction court can be against “unknown occupants”



SUPPLEMENTAL PETITION (FORECLOSURE COURT)

- ⌘ Special rules apply when a tenant is current in his rent or has made a good faith effort to be. 735 ILCS 5/15-1701(h)(4)
- ⌘ In such situations, the occupant is allowed to retain possession of the property until either:
 - ⌘ 120 days following proper service of supplemental petition; or
 - ⌘ Through the duration of the lease, whichever is shorter
 - ⌘ provided that any order shall allow the occupant to remain in possession for at least 30 days from date of the order



FORCIBLE ENTRY AND DETAINER (EVICTION)

⌘ No [lender] ... or purchaser who fails to file a supplemental petition under this subsection during the pendency of a mortgage foreclosure shall file a forcible entry and detainer action against an occupant of the mortgaged real estate until **90 days after a notice of intent to file such action** has been properly served upon the occupant. 735 ILCS 5/15-1701 (h)(4)



FORCIBLE ENTRY AND DETAINDER (EVICTION)

- ⌘ All Traditional Defenses Apply

- ⌘ All notices must:

 - ⌘ Describe the premises and identify the correct apartment.

 - ⌘ Provide that the lease will terminate at some future date

 - ⌘ time period does not begin to run until notice is served properly.



FORCIBLE ENTRY AND DETAINER (EVICTION)

- ⌘ May not be able to post 90 day notice. Figueroa v. Deacon, 935 NE 2d 1080 - Ill: Appellate Court, 1st Dist., 3rd Div. 2010
- ⌘ “[Posting] did not comply with the statutory methods of service for a tenant who is in actual possession of the premises, and thus was improper. As such, we must conclude, as the court did in Carter, that Kathryn's due process rights were violated and the court had no jurisdiction.”



DETAINER (EVICTION): IS THE PLAINTIFF A RECEIVER?

- ⌘ Review Order Appointing Receiver to determine if Receiver is authorized to hire counsel without leave of court.
- ⌘ If Receiver's actions are unauthorized, or otherwise has unclean hands, intervene in the foreclosure action.
- ⌘ If action is based on unpaid rent, has Receiver provided proper notices pursuant to 735 ILCS 5/15-1704(f)(5)?



FORCIBLE ENTRY AND DRAINER (EVICTION): IS THE PLAINTIFF A SUCCESSOR-IN-INTEREST?

- ⌘ Research Title: is the Plaintiff entitled to possession?
- ⌘ Was Plaintiff on title when Notice was served?
- ⌘ If action is based on unpaid rent, has Plaintiff provided proper notices pursuant to 735 ILCS 5/15-1508.5?



SEALING OF THE RECORD

⌘ The court records relating to a supplemental petition for possession filed under this subsection (h)...or relating to a forcible entry and detainer action brought against a tenant ... shall be ordered sealed and shall not be disclosed to any person. 735 ILCS 5/15-1701(h)(5)



STUDY BREAK: Q3

1. When can a new owner (successor landlord) of a foreclosed unit file an eviction action against an occupant?
 - A. 90 days after the new owner takes title.
 - B. When the tenant does not pay the new owner rent.
 - C. When the new owner demands rent and the tenant does not pay the new owner.
 - D. When the new owner demands rent and the tenant does not pay the new owner within 5 days after being served a 5-day notice demanding rent.
 - E. When the new owner provides notice of change of management under IMFL 1508.5, and then demands rent and the tenant does not pay the new owner within 5 days after being served a 5-day notice demanding rent.



CHICAGO RESIDENTIAL LANDLORD AND TENANT ORDINANCE (RLTO)



RLTO: WHO IS COVERED?

- ⌘ The Chicago Residential Landlord Tenant Ordinance (“**RLTO**”) covers all non-owner-occupied buildings and all buildings with more than 6 units.
- ⌘ This includes Rental Condos.



RLTO: NOTICE OF FORECLOSURE

- ⌘ Within 7-days of being served a foreclosure complaint, an owner or landlord must disclose the foreclosure action in writing to the tenant. (Sec. 5-12-095(a))
- ⌘ An owner or landlord must disclose, in writing, that a s/he is named in a foreclosure. (Sec. 5-12-095(a))



RLTO: NOTICE OF FORECLOSURE

⌘ The written disclosure must state:

“This is not a notice to vacate the premise. This notice does not mean ownership of the building has changed. All tenants are still responsible for payment of rent and other obligations under the rental agreement. The owner or landlord is still responsible for their obligations under the rental agreement. You shall receive additional notice if there is a change in owner.” (Sec. 5-12-095(a))



LANDLORDS UNDER THE RLTO

- ⌘ “Landlord” means the owner, agent, lessor or sublessor, or the successor in interest of any of them, of a dwelling unit or the building of which it is part. RLTO, Sec. 5-12-030(b).
- ⌘ This may include servicers, management companies, and banks.



LIENHOLDERS UNDER THE RLTO

- ⌘ “Successor landlord” means any person who follows a landlord in ownership or control of a dwelling unit or the building of which it is part, and shall include a lienholder who takes ownership or control either by contract, operation of law or a court order. RLTO, Sec. 5-12-030(i).
- ⌘ Lienholder exemption removed from Security Deposit obligations.



RLTO: SECURITY DEPOSITS

- ⌘ A successor in interest to a foreclosed property is jointly and severally liable for the return of a tenant's security deposit .(Sec. 5-12-080(e))
- ⌘ Under the RLTO, it does not matter whether the original owner/landlord transferred the security deposit to the successor in interest; the successor in interest is still liable.



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RECENT AMENDMENTS TO STATE LAW



HB1574: SECURITY DEPOSITS

- ⌘ Passed into law August 26, 2011.
- ⌘ 735 ILCS 5/15-1508: With respect to mortgaged real estate containing 5 or more dwelling units, the order confirming the sale shall also provide that (i) the mortgagor shall transfer to the purchaser the security deposits.



HB1574: SECURITY DEPOSITS

- ⌘ Passed into law August 26, 2011.
- ⌘ 765 ILCS 710/1.2 (Security Deposit Return Act): When a lessor transfers actual possession of a security deposit received from a lessee...the holder or purchaser shall be liable to a lessee for the transferred security deposit.
- ⌘ Notice required within 21 days.



FORCIBLE ENTRY AND DETAINER (EVICTION): GENERAL SEALING

- ⌘ Discretionary sealing of court file. The court may order that a court file in a FEDA be placed under seal if the court finds that the plaintiff's action is sufficient without a basis in fact or law, which may include a lack of jurisdiction, that placing the court file under seal is clearly in the interests of justice, and that those interests are not outweighed by the public's interest in knowing about the record. (735 ILCS 5/9-121(b))



STUDY BREAK: Q4

1. Which of these tenants entitled to ask the court to seal their eviction record?
 - A. A tenant whose landlord filed an eviction action for non-payment of rent before providing the tenant with a full 5 days to cure (pay rent).
 - B. A tenant in foreclosure who failed to move out within 90 days after being served a “90 day notice of intent to file a forcible entry and detainer action”.
 - C. A tenant in foreclosure who has had an Order of Possession entered against him or her in eviction court.
 - D. All of the above.
 - E. None of the above.



STUDY BREAK: Q5

1. Which of the following statements about Security Deposits is absolutely false?
 - A. Under the Chicago RLTO, a successor landlord is responsible for tenants' security deposits, even if the former owner never transferred it to the new owner.
 - B. Under the Chicago RLTO, the purchaser of foreclosed property is responsible for tenants' security deposits, even if the former owner never transferred it to the new owner.
 - C. Under Illinois Law, the purchaser of foreclosed property containing 5 or more dwelling units is responsible for tenants' security deposits, even if the former owner never transferred it to the new owner.
 - D. Under the PTFA, the immediate successor-in-interest to foreclosed property is responsible for tenants' security deposit if it is a term of a bona fide lease, even if the former owner never transferred it to the new owner.
 - E. None of the above.



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SAMPLE NOTICES

{ For Discussion



NOTICE TO OCCUPANTS
PURSUANT TO 735 ILCS 5/15-1508.5

Property Address: [REDACTED] Chicago, IL 60632

Purchaser at Foreclosure Sale or Holder of Deed:
[REDACTED]

Pursuant to 735 ILCS 5/15-1508.5, you are hereby informed that the mortgaged real estate at which this dwelling unit is located is the subject of a foreclosure action and that control of the mortgaged real estate has changed.

The holder or purchaser has acquired the mortgaged real estate pursuant to the following Mortgage Foreclosure Case:

IN THE CIRCUIT COURT OF Cook COUNTY
NAME OF ACTION : Foreclosure
CASE NUMBER : [REDACTED]

For Concerns about the Mortgaged Real Estate or to Request Repairs you may contact:

[REDACTED]

THIS IS NOT A NOTICE TO VACATE THE PREMISES.

Law Offices
[REDACTED]

Facsimile
[REDACTED]

PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, YOU ARE ADVISED THAT THIS LAW FIRM IS DEEMED TO BE A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

July 27, 2010

NOTICE OF TERMINATION OF TENANCY, INTENT TO FILE FORCIBLE ENTRY AND DETAINER ACTION, AND DEMAND FOR POSSESSION

To: [REDACTED]

NOTICE OF TERMINATION OF TENANCY AND INTENT TO FILE FORCIBLE ENTRY AND DETAINER ACTION

You are hereby notified that the Property known as [REDACTED] Chicago, Illinois 60632, has been foreclosed and is now owned by [REDACTED].

Pursuant to the Protecting Tenants at Foreclosure Act of 2009, you are hereby notified that [REDACTED] as Owner and Landlord, has elected to terminate your tenancy of the property now occupied by you, and located at [REDACTED] Chicago, Illinois 60632, together with all improvements and appurtenances. The termination of your tenancy will take effect ninety (90) days after this Notice to Terminate Tenancy is properly served upon you. At that time, you are notified, and hereby required, to quit the premises and deliver possession of the same to [REDACTED] Landlord.

You are further notified that the Owner of the Property is hereby notifying you pursuant to 735 ILCS 5/15-1701 that the Owner and/or its Agent intends to file a Forcible Entry and Detainer Action seeking possession only of the aforementioned property, against you and all Unknown Occupants ninety (90) days after this Notice of Intent to File Forcible Entry and Detainer Action is served upon you.

DEMAND FOR POSSESSION

[REDACTED] hereby demands possession of the property located [REDACTED] Chicago, Illinois 60632, ninety (90) days from the date you are properly served with this Notice of Termination of Tenancy and Notice of Intent to File Forcible Entry and Detainer Action.

Sincerely,

[REDACTED] Esq.
[REDACTED]

cc: [REDACTED]

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