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City Hall
121 N. LaSalle St.
Room 107
Chicago, IL 60602
www.chicityclerk.com

Legislation Details (With Text)

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Final action: 6/5/2013

Title: Amendment of Municipal Code Title 5 by adding new Chapter 4-14 entitled "Protecting Tenants in Foreclosed Rental Property Ordinance"

Sponsors: Mell, Richard F., Waguespack, Scott, Moreno, Proco Joe, Dowell, Pat, Mitts, Emma, Maldonado, Roberto, Austin, Carrie M., Colón, Rey, Ervin, Jason C., Sposato, Nicholas, Chandler, Michael D., Solis, Daniel, Cullerton, Timothy M., Laurino, Margaret, Zalewski, Michael R., Reilly, Brendan, Arena, John, Pawar, Ameya, Moore, Joseph, Osterman, Harry, Foulkes, Toni, Lane, Lona, Quinn, Marty, Balcer, James, Pope, John, Beale, Anthony, Harris, Michelle A., Sawyer, Roderick T., Hairston, Leslie A., Brookins, Jr., Howard, Burns, William D., Burnett, Jr., Walter, Graham, Deborah L., Reboyras, Ariel, Suarez, Regner Ray, Thompson, JoAnn, Munoz, Ricardo, Fioretti, Bob, 20th Ward Vacancy, Silverstein, Debra L., Thomas, Latasha R.

Indexes: Ch. 25 Dept. of Business Affairs & Consumer Protection, Ch. 14 Protecting Tenants at Foreclosures

Attachments: 1. O2012-5127.pdf, 2. SO2012-5127.pdf

Date	Ver.	Action By	Action	Result
6/5/2013	1	City Council	Passed as Substitute	
5/30/2013	1	Committee on Housing and Real Estate	Recommended to Pass	Pass
5/1/2013	1	Committee on Housing and Real Estate	Held in Committee	Pass
7/25/2012	1	City Council	Referred	

Title:

Committee(s) Assignment:

"Keep Chicago Renting" Ordinance Committee on Housing and Real Estate

SUBSTITUTE ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 2-25-050 of the Municipal Code of Chicago is hereby amended by adding the language underscored and by deleting the language struck through, as follows:

2-25-050 Powers and duties of the department.

(Omitted text is unaffected by this ordinance)

(b) Powers and duties of the commissioner and the department. The powers and duties of the commissioner and department shall be as follows:

(Omitted text is unaffected by this ordinance)

33) To exercise all rights, powers, duties, obligations and responsibilities that relate to the issuance or revocation of permits for the installation or maintenance of collection bins pursuant to Section 7-28

-785t;

34) To administer and enforce chapter 5-14.

SECTION 2. The Municipal Code of Chicago is hereby amended by adding a new Chapter 5-14, as follows:

Chapter 5-14 Protecting Tenants at Foreclosures.

5-14-010 Title, purpose and scope.

This chapter shall be known and may be cited as the "Protecting Tenants in Foreclosed Rental Property Ordinance" and shall be liberally construed and applied to promote its purposes and policies.

In order to protect and promote the health, safety and welfare of its residents and mitigate the damaging effects on our communities of foreclosures, which individually are catastrophic for the families and tenants who lose their homes, and collectively can economically destabilize an otherwise healthy neighborhood, by causing building abandonment, excessive vacancy, declines in property values, and a perception of a neighborhood as being unworthy of investment, it is the purpose of this chapter and the policy of the city to preserve, protect, maintain and improve rental property and prevent occupied buildings from becoming vacant after foreclosures.

Nothing in this ordinance shall affect the obligation to provide notice of termination of a tenancy as required by any applicable law governing actions for possession.

5-14-020 Definitions.

For purposes of this chapter, the following definitions apply:

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"Bona fide third-party purchaser" means any person who, through an arms length transaction, purchases, or is otherwise transferred title to, a foreclosed rental property from an owner. A "bona-fide purchaser" shall not include any person who had a mortgage lien on the foreclosed rental property during the foreclose procedure. A mortgagee shall also include the mortgagee's subsidiary, parent, trustee, nominee, agent or assignee.

"Commissioner" means the commissioner of buildings.

"Cooperative building" means a building or buildings and the tract, lot, or parcel on which the building or buildings are located and fee title to the land and building or buildings is owned by a corporation or other legal entity in which the shareholders or other co-owners each also have a long-term proprietary lease or other long-term arrangement of exclusive possession for a specific unit of occupancy space located within the same building or buildings.

"Dwelling unit," "rental agreement," "rent" and "tenant" have the meaning ascribed to those terms in Section 5-12-030.

"Foreclosed rental property" means:

- 1) (i) a building containing one or more dwelling units that are used as rental units, including a single family house; or (ii) a dwelling unit that is subject to either the Condominium Property Act or the Common Interest Community Association Act that is used as a rental unit;
- 2) for which legal and equitable interests in the building or dwelling unit were terminated by a

foreclosure action pursuant to the Illinois Mortgage Foreclosure Law; and

3) one or more of the rental units are occupied on the date a person becomes the owner.

A "foreclosed rental property" does not include a dwelling unit in a cooperative building.

"Owner" means any person who alone, or jointly or severally with others, is: (1) pursuant to a judicial sale of a foreclosed rental property, the purchaser of the foreclosed rental property after the sale has been confirmed by the court and any special right of redemption has expired; or (2) a mortgagee which has accepted a deed in lieu of foreclosure or consent foreclosure on a foreclosed rental property. "Owner" includes the owner and his agent for the purpose of managing, controlling or collecting rents.

"Principal residence" means a person's primary or chief residence that the tenant actually occupies on a regular basis.

"Qualified tenant" means a person who: (1) is a tenant in a foreclosed rental property on the day that a person becomes the owner of that property; and (2) has a bona fide rental agreement to occupy the rental unit as the tenant's principal residence. For purposes of this definition:

(1) a lease shall be considered bona fide only if:

- i) the mortgagor or the child, spouse, or parent of the mortgagor is not the tenant;
- ii) the lease was a result of an arms-length transaction;

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(iii) the lease requires the receipt of rent that is not substantially less than fair market rent for the property, or the rental unit's rent is reduced or subsidized due to a government subsidy.

(2) "Mortgagor" means: (i) the person whose interest in the real estate was the subject of a mortgage and that person's legal and equitable interests in the real estate was terminated by a foreclosure pursuant to the Mortgage Foreclosure Law, 735 ILCS 5/15-1101; or (ii) any person claiming any legal or equitable interest in the real estate through a mortgagor as a successor. Where a mortgage is executed by a trustee of a land trust, the mortgagor is the trustee and not the beneficiary or beneficiaries.

"Rental unit" means any dwelling unit which is held out for rent to tenants.

5-14-030 Exclusions.

This chapter shall not apply to:

a) an owner of a foreclosed rental property who was the owner prior to the effective date of this chapter;

b) any bona fide third-party purchaser;

c) a person appointed as a receiver and issued, or assigned, a Receiver's Certificate under 65 ILCS 5/11-31-2 or 765 ILCS 605/14.5 who becomes an owner due to the foreclosure on the Receiver's Certificate;

d) an owner who will occupy the rental unit as the person's principal residence;

e) a bona-fide not-for-profit in existence continuously for a period of five years immediately prior to becoming the owner of the rental unit and whose purpose is provide financing for the purchase or rehabilitation of affordable housing.

5-14-040 Notice to Tenants.

(a) (1) No later than 21 days after a person becomes the owner of a foreclosed rental property, the owner shall make a good faith-effort to ascertain the identities and addresses of all tenants of the rental units in the foreclosed rental property and notify, in writing, all known tenants of such rental units that, under certain circumstances, the tenant may be eligible for relocation assistance. The notice shall be given in English, Spanish, Polish and Chinese and be as follows:

"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

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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."

The notice shall 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.

2) If the owner ascertains the identity of a tenant more than 21 days after becoming the owner, the owner shall provide the notice within 7 days of ascertaining the identity of the tenant.

3) The written notice required by this section shall be served by:

- A) delivering a copy of the notice to the known tenant;
- B) leaving a copy of the notice with some person of the age of 13 years or older who is residing in 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.

b) In addition to the notice required in subsection (a), no later than 21 days after a person becomes the owner of a foreclosed rental property, the owner shall post a written notice on the primary entrance of each foreclosed rental property which sets forth the disclosures in subsection (a).

c) Any owner who fails to comply with this section shall not collect rent due and owing from any known tenant, until the owner has served the notices required by this section.

5-14-050 Tenant relocation assistance.

(a) The owner of a foreclosed rental property shall pay a one-time relocation assistance fee of \$10,600 to a qualified tenant unless the owner offers such tenant the option to renew or extend the tenant's current rental agreement with an annual rental rate that: (1) for the first twelve months of the renewed or extended

lease, does not exceed 102% of the qualified tenant's current annual rental rate; and (2) for any twelve-month period thereafter, does not exceed 102% of the immediate prior year's annual rental rate.

Provided that if a rental unit is occupied by two or more qualified tenants, the owner's total liability to all the qualified tenants of the rental unit shall be no more than if the rental unit was occupied by one qualified tenant.

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b) The owner shall pay the relocation fee to the qualified tenant no later than 7 days after the day of complete vacation of the rental unit by the qualified tenant. The relocation fee shall be paid by certified or cashier's check payable to the qualified tenant.

c) The relocation fee shall be in addition to any damage, deposit or other compensation or refund to which the qualified tenant is otherwise entitled.

d) The owner may deduct from the relocation fee all rent due and payable for the rental unit occupied by the qualified tenant prior to the date on which the rental unit is vacated, unless such rent has been validly withheld or deducted pursuant to state, federal or local law. The owner shall not retain all or any part of the relocation fee for the payment of any other amount, including without limitation, for any damage to the premises or for any other violation or breach of a rental agreement.

- (e) The owner shall not be liable to pay the relocation fee to any qualified tenant:
- 1) who does not enter into a rental agreement after being offered a renewal or extension of the tenant's rental agreement with a rent in an amount that complies with subsection (a); or
 - 2) against whom the owner has obtained a judgment for possession of the rental unit.

f) In addition to any other fine or penalty provided, if an owner fails to comply with this section, the qualified tenant shall be awarded damages in an amount equal to two times the relocation assistance fee. This subsection does not preclude the qualified tenant from recovering other damages to which he may be entitled under this chapter.

g) The owner shall comply with this section until the foreclosed rental property is sold or otherwise transferred to a bona fide third-party purchaser.

h) Nothing in this section shall be construed as prohibiting an owner from exercising any right to evict a tenant for cause. If a qualified tenant is evicted for cause, the owner shall not be liable for any relocation assistance provided under this section.

5-14-060 Registration of foreclosed rental property.

(a) No later than 10 days after becoming the owner of a foreclosed rental property, the owner shall register such property with the commissioner.

The registration shall be in a form and manner prescribed by the commissioner and shall contain the following information:

- 1) name, address and telephone number of the owner;
- 2) address of the foreclosed rental property;

3) if more than one rental unit is located in the foreclosed rental property, the number of rental units in the property, and whether each rental unit was occupied

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by a known tenant at the time the person became the owner. If occupied by a known tenant, the name and address of each known tenant;

4) if the foreclosed rental property consists of only one rental unit, the name of the known tenant at the time the person became the owner;

5) name, address and telephone number of the owner's agent for the purpose of managing, controlling or collecting rents and any other person not an owner who is controlling such property, if any;

6) name, address and telephone number of a natural person 21 years of age or older, designated by the owner as the authorized agent for receiving notices of code violations and for receiving process, in any court proceeding or administrative enforcement proceeding, on behalf of such owner in connection with the enforcement of this Code. This person must maintain an office or actually reside, in Cook County, Illinois. An owner who is a natural person and who meets the requirements of this subsection as to location of residence or office may designate himself as agent;

7) an affidavit signed by the owner which lists, by rental unit, all the qualified tenants at the time person became the owner; and

8) any other pertinent information reasonably required by the commissioner.

The owner shall make available within 10 business days all information requested by the commissioner.

By designating an authorized agent under the provisions of this section the owner is consenting to receive any and all notices of code violations concerning the property and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the property by service of the notice or process on the authorized agent. Any owner who has designated an authorized agent under this section shall be deemed to consent to the continuation of the agent's designation for the purposes of this section until the owner notifies the commissioner of a change of authorized agent or until a change in information pursuant to subsection (c). Any owner who fails to register under this section shall further be deemed to consent to receive, by posting at the foreclosed rental property, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the property.

b) At the time of filing the registration the owner shall pay a registration fee of \$250.00 for each foreclosed rental property registered.

c) If any other change in any information required under this section occurs at any time, the owner shall file with the commissioner a statement indicating the nature and effective date of the change within ten days after the change takes effect.

d) If the foreclosed rental property is sold or otherwise transferred to a bona fide third-party purchaser, the owner shall, within 10 days of such sale or transfer, notify the commissioner in writing in a form and manner prescribed by the commissioner.

e) The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the city against the owner.

f) In the event that the foreclosed rental property becomes vacant after registration pursuant to this section, the owner shall comply with the vacant building registration requirements of chapter 13-12, if applicable.

5-14-070 Rights, obligations and remedies.

(a) A tenant may bring a private cause of action in a court of competent jurisdiction seeking compliance with sections 5-14-040 and 5-14-050 and the prevailing plaintiff shall be entitled to recover, in addition to any other remedy available, his damages and reasonable attorney's fees; provided, however, that only the department of buildings may enforce section 5-14-060.

The rights, obligations and remedies set forth in this chapter shall be cumulative and in addition to any others available at law or in equity.

5-14-080 Waiver of rights in rental agreements-prohibited.

No rental agreement offered or entered into by an owner after the effective date of this chapter for a rental unit located in a foreclosed rental property may provide that a tenant agrees to waive or forego the rights and remedies provided under this chapter and any such provision included in a rental agreement is unenforceable.

5-14-090 Administration and enforcement of chapter.

The commissioner and the commissioner of business affairs and consumer protection shall administer this chapter and may adopt rules and regulations for the effective administration of this chapter. The commissioner and the commissioner of business affairs and consumer protection shall consult and cooperate with each other in the implementation, administration and enforcement of the provisions of this chapter.

The commissioner or the commissioner of business affairs or consumer protection shall enforce any provision of this chapter by instituting an action with the department of administrative hearings or by the corporation counsel through an injunction or any other suit, action or proceeding at law or in equity in a court of competent jurisdiction.

Any information, receipt, notice, or other document required under this chapter shall be open for inspection and review by the commissioner at any reasonable time.

5-14-100 Violation - Penalties - Liability.

Unless otherwise provided, any person found guilty of violating this chapter, or any rule or regulation promulgated hereunder, shall be fined not less than \$500.00 nor more than \$1,000.00. Each failure to comply with this chapter with respect to each person shall be considered a separate offense. Each day that a violation exists shall constitute a separate and distinct offense.

With regard to any violation of this chapter by a corporation, all officers and directors thereof who may be responsible for any violation of this chapter shall, except as otherwise specifically prohibited or negated by law, be liable as provided in Section 1-4-090(e) of this code for all fines, costs, fees and penalties imposed on a corporation pursuant to this chapter.

Liability for violations of this chapter shall be joint and several.

SECTION 3. Nothing in this ordinance shall be construed to impair any contract executed prior to the effective date of this ordinance. Nothing in this ordinance shall be construed as requiring the rental or continued rental of a dwelling unit subject to the Condominium Act or Common Interest Community Association Act in contravention of the governing association's declaration, by-laws, rules and regulations or other governing documents.

SECTION 4. This ordinance takes effect 90 days after its passage and publication.