

Real Estate Update

Real Estate Group

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Illinois Mortgage Foreclosure Law Amended to Protect Occupants of Foreclosed Dwelling Units

Introduction

A recent amendment to the Illinois Mortgage Foreclosure Law (IMFL)¹ creates new protections for occupants of dwelling units² that are in foreclosure. Lenders and receivers should be familiar with the new laws – which go into effect on October 29, 2009 – in order to preserve their rights to collect rent or terminate an occupant's lease for nonpayment of rent. Although the amendments do not specifically mention whether they are applicable to foreclosures that are pending as of October 29, 2009, it is advisable to proceed as if the amendments are applicable to all foreclosures, whether new or pending.

Summary

- Receivers or mortgagees-in-possession must notify renters of their appointment within 21 days of such appointment.
- Failure to provide such notice prevents the receiver or mortgagee-in-possession from collecting rent or terminating a lease for non-payment of rent.
- Purchasers at foreclosure sales are also required to provide notice to tenants before collecting rent or terminating a lease for non-payment of rent.
- Receivers or mortgagees-in-possession are prohibited from increasing rent without the permission of the court.

Notice Before Sale

Under the new provisions, within 21 days after an order is entered appointing a receiver or after a lender is placed in possession, the receiver or mortgagee-in-possession must "make a good faith effort to ascertain the identities and addresses of all occupants of dwelling units of the property." Within the same 21-day period, the receiver or mortgagee-in-possession must notify the occupants in writing that the receiver or mortgagee-in-possession has been appointed. Such notice must be delivered to the occupant of each dwelling unit personally, by leaving the notice with a person at least 13 years of age residing at the residence, or by first class mail. If a receiver or lender learns of an occupant after the 21-day period, they have 7 additional days to comply with the notice provisions described above. Only after such notice is served may the receiver or lender collect rent or terminate the lease for nonpayment of rent, if otherwise authorized to do so.

Notice After Sale

The amendment also modifies the post-foreclosure sale notice requirements in the IMFL. The new provisions are essentially the same as those outlined above, requiring instead that the purchaser in the foreclosure sale give notice to the occupants of dwelling units conveyed in the foreclosure sale. The 21-day notice period begins upon the date a court enters an order confirming the foreclosure sale. Also, if the lender was a mortgagee-in-possession prior to the foreclosure sale, and the same lender is the purchaser at the

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sale, then the lender is exempt from this notice provision so long as it complied with the pre-sale notice provisions.

The foreclosure sale purchaser is prohibited from collecting rent under or terminating leases for nonpayment of rent that it may otherwise be entitled to terminate until such time as the above-described notice has been given to the occupants pursuant to the amended IMFL.

Payments Protected

Under the amended IMFL, if an occupant has made payment for the current rent period to an entity authorized to collect such rent, then the occupant is not responsible for payment of the same rent to the receiver or new owner after a foreclosure sale for that period.

Rent Increase

Under the amended IMFL, receivers or mortgagees-in-possession may not increase the rent above that which the tenant had been paying prior to the appointment of such receiver or mortgagee-in-possession, unless they successfully petition the court for such an increase. The amendments do not make exceptions for rental increases that were contemplated in the original lease agreement entered into with the occupants.

Conclusion

To prevent unnecessary delay in collecting from tenants on property in foreclosure, receivers and lenders should be familiar with the amendments to the IMFL discussed herein, and should not hesitate to seek counsel.

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¹ Public Act 096-0111 is available at <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=096-0111>

² Under the amendment, a "dwelling unit" is "a room or suite of rooms providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life."

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