

Client Alert

Current Issues Relevant to Our Clients

September 3, 2013

Senate Bill 56 (735 ILCS 5/9-207.5): New Protections Offered to Illinois Renters

Governor Patrick Quinn recently signed into law Senate Bill 56, which requires those acquiring foreclosed residential property to honor existing leases or give tenants adequate time to make a safe move. Senate Bill 56 will take effect on November 19, 2013.

Types of Property Subject to Senate Bill 56

Senate Bill 56 applies only to residential real estate in foreclosure.

Residential real estate is defined as any real estate which is improved with a single family residence or residential condominium units or a multiple dwelling structure containing single family dwelling units for one or more families living independently of one another, for which a foreclosure action: (1) has commenced and is pending; (2) was pending when the bona fide lease (defined below) was entered into or renewed; or (3) was commenced after the bona fide lease was entered into or renewed. (735 ILCS 5/15-1225 - Residential real estate in foreclosure).

When Senate Bill 56 Applies

Senate Bill 56 states that a “mortgagee, receiver, holder of the certificate of sale, holder of the deed issued pursuant to that certificate” or a purchaser at a Sheriff’s Sale of residential property through a foreclosure may terminate a “bona fide” renter’s lease only after: (1) the expiration of the term of the preexisting bona fide lease; and (2) the expiration of the 90-day period following presentment of written notice to the bona fide renter that the new owner intends to terminate the bona fide renter’s lease.

In the case of a bona fide lease that is for a month-to-month term or week-to-week term, or if the owner acquires the property with the intention of making it their primary home, the new owner may not terminate a bona fide until after the expiration of 90-day period following presentment of written notice to the bona fide renter that the new owner intends to terminate the bona fide renter’s lease.

When a Tenant is Entitled to Protection of the Senate Bill 56

A rental agreement is “bona fide” where: (1) the tenant is not the mortgagor or the child, spouse or parent of the mortgagor; (2) the lease was the result of an arms length transaction; (3) the lease requires a rental payment that is not less than fair market rent for the Property, or the unit’s rent is reduced due to a government subsidy; and (4) either (a) the lease was entered into or renewed prior to the filing of the lis pendens on the property, or (b) the lease was entered into or renewed after the date of the filing of the lis pendens on the property and before the date of the judicial sale, and the term of the lease is for one year or less (735 ILCS 5/15-1224 - Bona fide lease).

Relationship of Senate Bill 56 with the “Protecting Tenants in Foreclosed Rental Property Ordinance”

A Lender should be aware that it is also required to comply with the Protecting Tenants in Foreclosed Rental Property Ordinance (effective September 3, 2013) (the “*Ordinance*”) where the Lender: (1) accepts a deed in lieu of foreclosure on a rental property; (2) enters into a consent judgment on a rental property; or (3) obtains title following the judicial confirmation of a sale of rental property where the Lender was the successful bidder and any special right of redemption has expired.

The Ordinance applies to a Lender until the Lender conveys the property to a third-party purchaser.

If the Ordinance applies to a Lender, the Lender must offer bona fide tenants an option to: (A) renew or extend the previously existing rental agreement with an annual rent increase cap of 2%, and for any 12-month period thereafter, an annual rent increase cap not exceeding 2% of the immediate prior year's annual rental rate; or (B) pay the bona fide tenant a one time "relocation assistance fee" of \$10,600.00 per unit to vacate the premises.

In order to comply with both Senate Bill 56 and the Ordinance, Lenders are advised to immediately serve the required 90-day written notice that the Lender intends to terminate the bona fide renter's lease immediately after the bona fide renter: (1) declines to renew or extend the lease; or (2) the Lender elects to pay the tenant the one-time "relocation assistance fee" of \$10,600.00 (*note*: the Lender owner is not required to pay the "relocation assistance fee" if the tenant declines the offer to renew or extend the lease, or is evicted "for cause").

Notes:

- The bona fide renter's option to renew or extend the lease continues until the Lender sells the property to a third-party purchaser – the Ordinance does not apply to third-party purchasers who acquire title to a residential property following a Sheriff's Sale, while Senate Bill 56 would still apply.
- The Ordinance does not apply to owners who will occupy the property as their primary residence.

For More Information

To discuss any of the topics covered in this client alert, please contact Bryan Jacobson at 312.845.3407, Jim Sullivan at 312.845.3445, or visit us online at chapman.com.

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