

Client Alert

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CURRENT ISSUES RELEVANT TO OUR CLIENTS

OCTOBER 10, 2011

Second Proposed Amendment to Chicago Vacant Building Ordinance

As we previously reported, on September 18, 2011, the Chicago City Council amended the Vacant Building Ordinance to include “mortgagees” in the definition of “owners.” The amended Vacant Building Ordinance included mortgagees in the compliance provisions and imposed significant liability for violations. In the months since the passage of the amendment, lenders and various lending organizations have worked with the Aldermen and Mayor to reach a compromise.

On October 5, 2011, a second amendment to the Vacant Building Ordinance was proposed that removed “mortgagees” from the definition of “owners” but set forth various new obligations on mortgagees.

The proposed second amendment to the Vacant Building Ordinance will be voted upon at the November 2, 2011, City Council meeting. Attached for your review is a copy of the proposed second amendment to the Vacant Building Ordinance.

For further details, please call Dianne Rist (312-845-3404) or Jennifer Majewski (312-845-3745).

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Office of the Chicago City
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O2011-8066

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date: 10/5/2011

Sponsor(s): Dowell, Pat (3)
Suarez, Regner Ray (31)
And Others

Type: Ordinance

Title: Amendment of Chapter 13-12 of Municipal Code regarding
vacant buildings

Committee(s) Assignment: Committee on Housing and Real Estate

Dowell/Suarez
Housing**ORDINANCE****BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

SECTION 1. Sections 13-12-125 and 13-12-135 of the Municipal Code of Chicago are hereby amended by deleting the language stricken through and by inserting the language underscored as follows:

13-12-125 Vacant buildings – Owner required to act – Enforcement authority.

(a) (1) The owner of any building that has become vacant shall within 30 days after the building becomes vacant or within 30 days after assuming ownership of the building, whichever is later, file a registration statement for each such building with the department of buildings on forms provided by that department for such purposes. The registration shall remain valid for six months from the date of registration. The owner shall be required to renew the registration for successive six-month periods as long as the building remains vacant and shall pay a registration or renewal fee in the amount prescribed in paragraph (3) of this subsection (a) for each registered building; provided, however, that all eleemosynary, religious, educational, benevolent or charitable associations organized on a not-for-profit basis and all governmental agencies shall be exempt from the payment of the registration fee. The owner shall notify the department of buildings, within 20 days, of any change in the registration information by filing an amended registration statement on a form provided by the department of buildings for such purposes. 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 or owners of the building. Registration of a building in accordance with this section shall be deemed to satisfy the registration requirement set forth in Section 13-10-030 and the notification requirement set forth in Section 13-11-030. After filing a registration statement the building owner shall provide access to the city to conduct an exterior and interior inspection of the building to determine compliance with the municipal code, following reasonable notice, during the period covered by the initial registration or any subsequent renewal.

(Omitted text is unaffected by this ordinance)

(b) The owner of any building that has become vacant, and any person maintaining, operating or collecting rent for any building that has become vacant shall, within 30 days, do the following:

- (1) enclose and secure the building as provided in Section 13-12-135 of this Code;
- (2) post a sign affixed to the building indicating the vacant building registration number and the name, address and telephone number of the owner and the owner's authorized agent for the purpose of service of process. The name, address and telephone number of a person responsible for day-to-day supervision and management of the building, if such person is different from the owner holding title or authorized agent shall be indicated on the sign as well. The sign shall be of a size and placed in such a location so as to be legible from the nearest public street or sidewalk, whichever is nearer;

(Omitted text is unaffected by this ordinance)

(e) For purposes of this section, "vacant" means a building which is lacking habitual presence of human beings who have a legal right to be on the premises, or at which substantially all lawful business or construction operations or residential occupancy has ceased, or which is substantially devoid of content. In determining whether a building is vacant, it is relevant to consider, among other factors, the percentage of the overall square footage of the building or floor to the occupied space, the condition and value of any items in the building and the presence of rental or for sale signs on the property; provided that a residential property shall not be deemed vacant if it has been used as a residence by a person entitled to possession for a period of at least three months within the previous nine months and a person entitled to possession intends to resume residing at the property; and further provided that multi-family residential property containing ten or more dwelling units shall be considered vacant when ninety percent or more of the dwelling units are unoccupied.

~~(f) For purposes of this section and section 13-12-135, notwithstanding any other provision of this Code to the contrary, "owner" means any person who alone, jointly or severally with others:~~

- ~~(1) has legal title to the property; or~~
- ~~(2) is a trust beneficiary or trustee who holds a deed of trust on the property; or~~
- ~~(3) is a mortgagee who holds a mortgage on the property; or~~
- ~~(4) is an assignee of any person referred to in paragraphs (1) through (3) of this subsection (f).~~

~~It is the intent of the City Council that if any provision or application of this subsection (f) is found to be invalid, the entire subsection will be deemed to be invalid.~~

13-12-135 Minimum requirements for vacant buildings.

For purposes of this section the terms term "vacant" and "owner" shall be defined as provided in section 13-12-125. In addition to any other applicable code requirements each vacant building must be kept in compliance with the following requirements for as long as the building remains vacant:

(a) Lot maintenance standards – the lot the building stands on, and the surrounding public way shall be maintained as follows:

- (1) all grass and weeds on the premises including abutting sidewalks, gutters and alleys shall be kept below ten (10) inches in height, and all dead or broken trees, tree limbs or shrubbery shall be cut and removed from the premises;

(Omitted text is unaffected by this ordinance)

SECTION 2. Chapter 13-12 of the Municipal Code of Chicago is hereby amended by inserting new Sections 13-12-126, 13-12-127 and 13-12-128 as follows:

13-12-126 Vacant buildings – Mortgagee required to act – Enforcement authority.

(a) (1) The mortgagee of any residential building that has become vacant and which is not registered pursuant to this section or Section 13-12-125(a) of this Code shall, within the later of 30 days after the building becomes vacant and unregistered or 60 days after a default, file a registration statement with the department of buildings on forms provided by that department for such purposes and pay a registration fee of \$500.00. The registration shall remain valid for six months from the date of registration. The mortgagee shall be required to renew the registration every six months as long as the building remains vacant. There shall be

no fee for such renewal. The mortgagee shall notify the department of buildings within 20 days of any change in the registration information by filing an amended registration statement on a form provided by the department of buildings for such purposes. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted under this section by the city against the mortgagee with respect to the registered building.

(2) In addition to other information required by the commissioner of buildings, the registration statement shall include the name, street address and telephone number of a natural person, 21 years of age or older, or business entity registered with the Illinois Secretary of State designated by the mortgagee as an authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such mortgagee in connection with enforcement of this section. This person or business entity must maintain an office in Cook County, Illinois, or must actually reside in Cook County, Illinois. A mortgagee meeting these criteria may designate itself as agent. By designating an authorized agent under the provisions of this subsection a mortgagee consents to receive any and all notices of violations of this section concerning the registered building and all process in any court proceeding or administrative enforcement proceeding brought to enforce this section with respect to the registered building by service of the notice or process on the authorized agent. Any mortgagee who has designated an authorized agent under the provisions of this subsection shall be deemed to consent to the continuation of the agent's designation for the purposes of this subsection until the mortgagee notifies the department of buildings of a change of authorized agent or until the mortgagee files a new registration statement. The city shall notify the designated agent of all violations and enforcement proceedings brought under this section.

(b) The mortgagee of any residential building that has become vacant and which is not registered pursuant to Section 13-12-125(a) of this Code shall, within the later of 30 days after the building becomes vacant and unregistered or 60 days after a default:

(1) secure the building's doors and windows so that all such building openings are closed and secured, using secure doors, windows without broken or cracked panes, commercial-quality metal security panels, filled with like-kind material as the surrounding wall, or boarded with plywood installed and secured in accordance with rules and regulations issued by the commissioner of buildings. At least one building entrance shall be accessible from the exterior and secured with a door that is locked to allow access only to authorized persons. If two or more exit doors exist, a minimum of two exit doors shall be available to exit from the interior of the building, with at least one exit door available per 150 linear feet of horizontal travel at ground-floor level;

(2) maintain all grass and weeds on the residential real estate premises, below 10 inches in height and cut and remove all dead or broken trees, tree limbs or shrubbery;

(3) clear or remove snow from the walkway leading to the main entry door, and any public sidewalk adjoining the lot;

(4) abate the accumulation of debris, trash and litter that does not constitute personal property on any portion of the exterior lot of the building;

(5) reasonably maintain fences and gates;

(6) reasonably maintain the structural integrity of stairs and steps that lead to the main entrance of the building;

(7) winterize the building, which shall mean cleaning all toilets and completely draining all plumbing and heating systems.

(8) maintain and secure the exterior of the building;

(9) post a sign affixed to the building indicating: the vacant building registration number and the name, address and telephone number of the mortgagee and the mortgagee's authorized agent for the purpose of service of process. The name, address and telephone number of a person responsible for day-to-day supervision and management of the building, if such person is different from the mortgagee or authorized agent shall be indicated on the sign as well. The sign shall be no smaller than 8.5 inches by 11 inches and placed in such a location so as to be visible from the nearest public street or sidewalk, whichever is nearer; and

(10) maintain the building in a secure and closed condition and maintain the sign until the building is reoccupied or demolished with all permits required by this Code. If during the registration period and following the initial boarding and securing of the property in compliance with this section the department of buildings notifies the mortgagee in writing that the property was found open or it has been judicially or administratively found to be open, in each case on two separate occasions at least 30 days apart then the building shall thereafter be secured only with commercial-quality metal security panels or a method deemed equivalent by the commissioner of buildings.

(c) Any person who violates any provision of this section or of the rules and regulations issued hereunder shall be fined not less than \$500.00 and not more than \$1,000.00 for each offense. Every day that a violation continues shall constitute a separate and distinct offense. The following shall be affirmative defenses under Section 13-12-126 and Section 13-12-127:

(1) That at the time of the violation the building was occupied by any number of persons lawfully or unlawfully;

(2) That the owner or another mortgagee has registered the building pursuant to Section 13-12-125 or Section 13-12-126 as applicable and such registration is current;

(3) That the mortgagee is barred from doing any action required by this section by an automatic stay pursuant to a bankruptcy proceeding, provided that the mortgagee tenders evidence including the bankruptcy case number; and

(4) That the mortgagee has cured all violations within 30 days of receiving written notice of such violations. Notice sent by U.S. mail, shall be deemed received seven days after mailing. An affidavit shall be conclusive proof of mailing.

(5) That at the time of the violation, the mortgage was not in default;

(6) That at the time of the violation, the mortgagee was not the owner of record of the first mortgage lien on the real estate;

(7) That a receiver has been appointed for the property by a court of competent jurisdiction.

(8) That in a foreclosure of the property, the owner or mortgagor is taking any of the following acts:

- (A) filing any pleading which asserts claims against the mortgagee or defenses;
- (B) filing any motion which asserts defenses or claims against the mortgagee;
- (C) filing any discovery for response by the mortgagee; or
- (D) filing a request for mediation.

(d) The commissioner of buildings may issue rules and regulations for the administration of this section.

(e) For purposes of this section, the following terms shall be defined as set forth below:

(1) "Default" shall mean, with respect to a residential building containing four or fewer dwelling units, when the mortgagor is 60 days past due on the mortgagor's obligation to make a scheduled payment under a mortgage or a mortgage note. With respect to all other residential buildings, "default" shall mean when the mortgagor is 90 days past due on the mortgagor's obligation to make a scheduled payment under a mortgage or a mortgage note.

(2) "Mortgage" shall mean any consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation. The term includes, without limitation: (A) mortgages securing reverse mortgage loans; (B) mortgages securing revolving credit loans; (C) every deed conveying real estate, although an absolute conveyance in its terms, which shall have been intended only as a security in the nature of a mortgage; and (D) equitable mortgages.

(3) "Mortgagee" shall mean (A) the holder of an indebtedness or obligee of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder (B) any person claiming through a mortgagee as successor and (C) any person identified as such in a recorded document which has not been released, assigned, or superseded of record.

(4) "Mortgagor" shall mean (A) the person whose interest in the real estate is the subject of the mortgage and (B) any person claiming through a mortgagor as successor. Where a mortgage is executed by a trustee of a land trust, the mortgagor is the trustee and not the beneficiary or beneficiaries.

(5) "Vacant" shall mean any real estate improved with a complete structure containing one or more dwelling units or an incomplete structure if the real estate is zoned for residential development, where the structure is empty or otherwise uninhabited by persons and the structure or lot is in need of maintenance, repair or securing, and with respect to which one or more of the following conditions exist:

- (1) all lawful business or construction operations have ceased for 6 months;
- (2) it has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by either the building commissioner, president of the board of health, the fire commissioner or the superintendent of police pursuant to 13-12-120 or by an order issued by court of competent jurisdiction;
- (3) no construction or legal repairs have commenced for 6 months;
- (4) the doors or windows are smashed through, broken, unhinged, removed or continuously unlocked;
- (5) law enforcement officials have received at least one report of trespassers or vandalism or other illegal acts being committed at the property in the last 6 months;
- (6) gas, electrical or water services to the entire premises have been terminated.

A property shall not be considered vacant if: (i) there is an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations and legislation; (ii) there is a building occupied on a seasonal basis, but otherwise secure; (iii) there is a secure building on which there are bona fide rental or sale signs; or (iv) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute; or (v) there is otherwise a building that is secure and in substantial compliance with all applicable ordinances.

(f) If a building is registered under paragraph (a) of this section, only the registered mortgagee shall be liable under this section during the registration period. Nothing in this section shall bar the concurrent enforcement of any provision of this Code against the owner or owners of a property.

(g) To the extent permitted by law, a mortgagee's acts or omissions required by this section shall not subject the mortgagee to civil or criminal liability unless the act or omission constitutes gross negligence or willful, wanton, or intentional misconduct. This provision shall not waive the requirement to obtain permits or licenses for performing certain work required under this section, as otherwise required by this Code, or the penalties provided for failure to do so.

13-12-127 Mortgagee to inspect real estate.

(a) For purposes of this section the terms "default," "mortgage," "mortgagee," "mortgagor," and "vacant" shall be defined as provided in Section 13-12-126(e).

(b) Beginning 45 days after a default, a mortgagee shall determine, on a monthly basis, if the building on the real estate subject to its mortgage is vacant. Such determination may be made by communication with the mortgagor, a visual inspection of the real estate, or other means reasonably calculated to determine if the building is vacant.

(c) This section shall not require a mortgagee to perform any action which it is barred from doing by an automatic stay pursuant to a bankruptcy proceeding.

(d) To the extent permitted by law, a mortgagee's acts or omissions required by this section shall not subject the mortgagee to civil or criminal liability unless the act or omission constitutes gross negligence or willful, wanton, or intentional misconduct.

13-12-128 Termination.

(a) For purposes of this section the terms "mortgage," "mortgagee," and "vacant" shall be defined as provided in Section 13-12-126(e).

(b) Upon the occurrence of any of the following, the requirements of Sections 13-12-126 and 13-12-127 shall terminate with respect to a mortgagee:

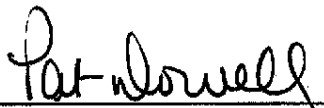
- (1) recorded assignment of the mortgagee's mortgage;
- (2) recorded satisfaction or release of the mortgagee's mortgage;

(c) Upon the occurrence of any of the following, the requirements of Sections 13-12-126 and 13-12-127 shall terminate with respect to a building:


- (1) recorded conveyance of title to the underlying real estate, pursuant to foreclosure proceedings or otherwise;
- (2) the building ceases to be vacant; or
- (3) the building is demolished with all permits required by this Code.

(d) Within 20 days of termination pursuant to this section, a mortgagee shall notify the department of buildings on a form provided by the department of buildings for such purpose.

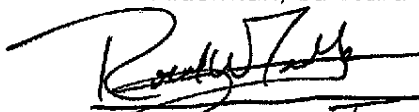
SECTION 3. This ordinance takes effect 10 days after its passage and publication.



 Pat Dowell
 Alderman, 3d Ward



 Ray Suarez
 Alderman, 31st Ward



 Robert W. Fioretti - 2nd ward