



## Mortgage Industry Bulletin

### Chicago Ordinance Targets Lender Liability

August 1, 2011 — Saddled with thousands of empty homes in legal limbo, Chicago City Council last week passed a new city law (1) that would hold banks and other financial companies accountable for problems caused by abandoned homes as the “owner.” Financial groups, including the federal regulator for Fannie Mae and Freddie Mac, responded by casting a shadow on the legality and constitutionality of the legislation.

“With this ordinance, Chicago is leading the way in protecting residents, neighborhoods and communities from the devastating impact of foreclosures,” said Mayor Rahm Emanuel. “I am proud of this strong piece of legislation requiring banks to be good neighbors and maintain the foreclosed-upon properties.”

Unanimously approved by Chicago City Council, it is the law for now. Legal experts lined up quickly to challenge the new ordinance that applies to homes even before the foreclosure is complete. Lenders, or their assignee (agent or servicer), would be required to maintain a vacant property if the homeowner abandons it while the “owner” is trying to collect payments or waiting for the courts to complete the foreclosure.

Changing the definition of a property “owner” to include an entity that holds a mortgage on the property, the ordinance requires lenders to provide maintenance that could include making repairs, boarding up entrances and windows, cutting grass, shoveling snow and removing rubbish. In addition, city officials are on record supporting proposed state legislation that would allow local governments to fine mortgage holders for code violations that could run as high as \$1,000 per day for each property.

Industry representatives indicated that they would realize a greater risk and possible increased liability in holding notes on properties for which they might at some point be responsible. Going on record in a letter to Mayor Emanuel, the Federal Housing Finance Agency (FHFA), the regulator for Fannie Mae and Freddie Mac, said the new law would unintentionally harm homeowners, including those trying to avoid foreclosure, as the increased costs imposed would be a significant burden to lenders.

Numerous mortgage-related groups have issued a warning about the legality of the new law. One possible legal issue is the departure from previously accepted rules that the property owner is responsible and obligated to maintain a property. Without legal title to a property, other groups strongly objected to the proposition that a lender can or should be considered an owner and would be required to perform ownership duties by virtue of having a mortgage lien to secure the lender’s security interest.

(1) A link is provided below to Amendment of Chapter 13-112 of Chicago Municipal code concerning vacant buildings

<http://www.americansecuritization.com/uploadedFiles/SO2011-5547.pdf>

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