

“Although there are several legal tools lenders can utilize to avoid the pitfalls of foreclosing on properties within the City, the City should recognize and remedy the great inequity their recently enacted ordinance imposes on foreclosing lenders.”

LENDERS BEWARE: THE PITFALLS OF FORECLOSING ON PROPERTY WITHIN THE CITY OF LOS ANGELES

**By: Nicholas G. Hood, Esq. & T. Robert Finlay, Esq., Wright, Finlay & Zak, LLP
May 7, 2013**

Imagine foreclosing on real property only to discover that you may have to pay tens-of-thousands of dollars to vacate the property’s occupants. This has become the reality for many lenders foreclosing on properties within the City of Los Angeles.

In December of 2008, the City of Los Angeles (the “City”) enacted Municipal Code Sections 49.90 through 49.95 in order to prevent “the displacement of tenants,” “the loss of rental units,” and “homelessness[,] nuisances and blight” within the City. These Code sections require lenders, mortgagees and beneficiaries (collectively “lenders”) foreclosing on real property in the City (i.e., real estate owned properties) to evict non-borrower occupants pursuant to the City’s rent control eviction procedures. This is true even if the property is not otherwise subject to rent control.

Unfortunately for lenders, the City’s rent control eviction procedures only provide fourteen (14) “grounds for eviction,” and foreclosure is not one of them. In addition, approximately half of the “grounds for eviction” – known as the no-fault of tenant “grounds” - require the payment of relocation fees to the non-borrower occupants. These relocation fees can be up to \$18,650.00 per unit, regardless of whether the units are legal or not. For example, a single-family home that the prior owner illegally converted into four (4) separate rental units could require the payment of \$18,650.00 per unit, or a total of \$74,600.00, to vacate the property.

Legitimately evicting on a “ground” that does not require the payment of relocation fees (e.g., the occupant is causing a nuisance, conducting illegal drug activity, or refusing the lender’s attempts to access the property) - known as tenant-fault “grounds” – is a lender’s best option to avoid paying relocation fees; however, such grounds often do not exist. In fact, many occupants

know about the potential payment of relocation fees and, as a result, they receive coaching or education on how to avoid tenant-fault evictions.

Fortunately, an occupant's non-payment of rent is one of the few tenant-fault "grounds" for eviction available to lenders. This is because it is very common for occupants not to pay rent following foreclosure. Proceeding with the non-payment of rent "ground" for eviction, however, may be risky.

First, by demanding rent, the lender may waive any right to claim that the occupants are trespassers. Additionally, by accepting an occupant's rent, the lender may create a landlord-tenant relationship with the occupant. If this occurs, then the lender may be obligated to follow all of the City's rent control provisions, not just its eviction procedures, which can be very burdensome.

Second and despite lender's and their agents' investigations and demands, the occupants and the prior owner may refuse to provide information or documents to the lender regarding any oral or written lease agreements for the property. Disappointingly, neither the State of California nor the City imposes any obligations on these occupants or prior owners to provide any lease information or documents to the lender following foreclosure. Thus, lenders must often speculate as to whether the occupants are valid tenants and, if so, how much rent they owe.

As a result, lenders commonly face the dilemma of either (1) paying substantial relocation fees to occupants who have never proven, and are not obligated to prove, their tenancies, or (2) incurring legal fees and/or potential liability for evicting based on tenant-fault "grounds," such as non-payment of rent, even though the lender may have to proceed on speculation and guesses. While some lenders attempt to informally "cash-for-keys" the occupants out of the properties for less than the relocation amount owed, such agreements may be void as a matter of public policy and may expose the lender to further liabilities under the City's rent control ordinance and other laws. Thus, any "cash-for-keys" agreement for less than the cost of relocation may be more trouble than its worth.

Although there are several legal tools lenders can utilize to avoid the pitfalls of foreclosing on properties within the City, the City should recognize and remedy the great inequity their recently enacted ordinance imposes on foreclosing lenders. In fact, the City's currently drafted ordinance

provides an incentive for people to fabricate tenancies and enter into possession of properties after foreclosure to extract substantial relocation fee amounts from unknowing lenders. Consequently, the City should amend their ordinance to allow lenders to avoid paying relocation fees to occupants who refuse to prove their tenancies after written demands. Without such an amendment, the City's goal of protecting valid tenants is undermined. Moreover, until that happens, lenders are left with few viable options.

The content of this website and the articles herein are for general informational purposes only and any unauthorized use is strictly prohibited.