



Illinois Court Rules Chicago Post-Foreclosure Eviction Protection Ordinance Unconstitutional

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REO DEPARTMENTS and other industry participants preparing for the resumption of residential foreclosure sales in Illinois¹ may have one less compliance headache to deal with after an Illinois appellate court ruled that a controversial Chicago ordinance—Chicago’s Protecting Tenants in Foreclosed Rental Properties ordinance, commonly known as the Keep Chicago Renting Ordinance (“KCRO”) ²—is unconstitutional.³

THE DECISION

On April 30, 2021, the First District Appellate Court held that the KCRO is unconstitutional because the Illinois Rent Control Preemption Act (“RCPA”)⁴ preempts it. Long detested by servicers and REO investors because of its stringent requirements and the draconian

consequences of non-compliance, the most notorious provision of the KCRO obligates a foreclosing owner to pay a relocation fee in the amount of \$10,600.00 to tenants, unless the owner offers an option to renew or extend the current written or oral lease at an annual rent that does not exceed 102% of the current annual

1 Foreclosure sales of residential properties in Illinois are stayed through July 31, 2021. See 735 ILCS 5/15-1513.

2 Chicago Municipal Code § 5-14-010, et seq.

3 *Rivera v. Bank of New York Mellon*, 2021 IL App (1st) 192188.

4 50 ILCS 825/1, et seq.



The REO industry should postpone any celebrations—at least temporarily—because the tenant filed a petition for rehearing that is still pending consideration by the Appellate Court. The petition alternatively asks that the appellate court certify the preemption question for consideration by the Illinois Supreme Court, so it seems that the fight over this issue is far from over.

rent.⁵ And, a tenant who does not receive the notice required under the ordinance and an offer of relocation assistance or lease renewal may sue the new owner for statutory damages in the amount of \$21,200.00, plus attorney fees and costs.⁶ Not only are the requirements of KCRO burdensome, costly, and vague, but the potential risks associated with non-compliance are punishing.

Faced with precisely such a claim, a foreclosing owner challenged the constitutionality of the KCRO on the grounds that the ordinance regulates and controls the amount of rent a landlord may charge for residential property in contravention of the RCPA.⁷ The trial court agreed but held that the offending provision could be severed from the ordinance while leaving the remainder of the KCRO intact, awarding the tenant \$21,200.00 in statutory damages and \$98,420.00 in attorney's fees.⁸ In its review of the trial court's decision, the appellate court agreed that the RCPA expressly preempts the rent limitation imposed under the KCRO. The appellate court then examined whether that provision could be severed from the ordinance without destroying the underlying objective "to preserve, protect, maintain and improve rental property and prevent occupied buildings from becoming vacant after foreclosures."⁹ Ultimately, the court answered that question in the negative, finding that if the KCRO's rent control provision were removed, then owners of foreclosed properties could simply circumvent the purpose of the KCRO by offering ten-

ants a lease with prohibitively high rent.¹⁰ The appellate court found that Chicago would not have enacted the KCRO without including the offending provision, making the provision inseverable from the KCRO and rendering the entire ordinance unconstitutional.

WHAT IT MEANS

The REO industry should postpone any celebrations—at least temporarily—because the tenant filed a petition for rehearing that is still pending consideration by the Appellate Court. The petition alternatively asks that the appellate court certify the preemption question for consideration by the Illinois Supreme Court, so it seems that the fight over this issue is far from over. Investors and their agents are strongly encouraged to continue following the KCRO's rigid requirements until such a determination is made. But as Illinois prepares to open its doors to foreclosure sales, an important decision looms in the First District Appellate Court—and possibly the Illinois Supreme Court—and the potential impact of this case may be far-reaching when dealing with tenants of foreclosed residential properties in Chicago. Given the current widespread practice of newly foreclosed property owners opting to pay the relocation assistance rather than being saddled with a forced tenancy relationship, the prospect of no longer adding \$10,600.00 to the carrying costs of REO properties in Chicago makes this litigation one worth following! **a**

⁵ Chicago Municipal Code § 5-14-050.

⁶ *Id.*

⁷ *Rivera*, 2021 IL App (1st) 192188 at ¶ 12.

⁸ *Id.* at ¶¶ 10; 17.

⁹ *Id.* at ¶¶ 26-29.

¹⁰ *Id.* at ¶ 29.