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Newly Amended Vacant Building Ordinance Imposes Greater Obligations on Mortgage Lenders

Lenders holding mortgages on vacant property in the City of Chicago should be aware of a potential new obligation. The Chicago City Council recently passed an amendment to its vacant building ordinance that would impose on mortgagees some of the same obligations of the owner. Those obligations include: registering with the City and paying a fee; securing the building against entry; maintaining the grounds, exterior and interior of the building; and insuring the property against personal injury and property damage. Though principally motivated by concerns over vacant residential real estate, the amended ordinance applies to all vacant buildings.

Though modeled on ordinances in other cities such as Los Angeles, Boston and Milwaukee, the amendment imposes greater obligations than other ordinances and creates a potential “double bind” for mortgage lenders. Maintenance and security obligations can only be satisfied if the mortgagee has access to the property. Yet under Illinois law, the mortgagee cannot access the mortgaged premises through self-help, but must seek borrower consent or utilize court process after default.

The ordinance is not scheduled to take effect until September 18, 2011, and some lender trade associations have vowed court action. In the meantime, prudent lenders may wish to prepare for the ordinance by reviewing, invoking or amending borrower maintenance and access obligations; conducting special site visits to check for vacancy; moving quickly after default to have receivers appointed or to be granted possession; and reviewing and enforcing their carve-out guarantees.

If you have any questions about, or need assistance with, any issues arising from the new ordinance, please contact any of the following members of Katten's [Real Estate Litigation Practice](#):

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