

May There Be Enough Wind in Chicago to Blow This Ordinance Amendment Away

August 25, 2011 by [Laurie Nelson](#)



Sure, vacant properties bring to mind decay, blight, vandalism and the like, and Chicago's south and west sides are [plagued](#) (pdf) with vacant properties; but is the answer requiring lenders to shoulder the responsibility (and liability) for the maintenance and upkeep of these properties?

Chicago Mayor Rahm Emanuel [thinks so](#). On July 28, Chicago's City Council passed an [ordinance amendment](#) that would require mortgage holders (and assignees named in RMBS securitizations) to assume liability for the maintenance, security and upkeep of vacant properties, regardless of the delinquency or foreclosure status. The ordinance would define as an "owner" of a vacant building a mortgage holder -- even before the mortgage holder has foreclosed on the property. Unless it is delayed, the ordinance is expected to become effective on September 18, 2011.

Chicago's City Council thinks lenders should be required to remove snow, board windows and doors, mow grass and otherwise incur the costs typical of property owners. Personally, I think (despite tremendous sympathy for the plight of Chicago and numerous other neighborhoods devastated by vacant properties and well aware of the drain on government resources) that a mortgage holder should assume property owner-type responsibilities only AFTER the borrower defaults and the mortgage holder has legal title (through foreclosure or other means).

A mortgage holder doesn't own the property securing its loan. The borrower does. Fundamental to mortgage finance is the idea that the borrower grants a lien on its property to the mortgage holder to secure the obligation to repay the loan. Even a defaulting borrower has legal title to its property and has the legal right of possession, including the responsibility for property upkeep and compliance with applicable laws and regs.

The American Securitization Forum ("ASF"), in its July 26 [letter](#) (pdf) to the Chicago City Council, put forth the argument that the inclusion of such a broad definition of "owner" will have a chilling effect on the willingness of lenders to provide mortgage financing to homeowners in the City of Chicago and will drive up the cost of such lending to residents in Chicago, further

exacerbating the challenging real estate market conditions and the ability of Chicago residents to secure mortgage financing on favorable terms.

Moreover, they noted the practical challenges of a mortgage lender or servicer determining whether a property is “vacant” as defined under the ordinance may be administratively impossible.

And I won’t even discuss whether compliance with the ordinance as amended would conflict with IL wrongful entry or trespass criminal laws.

On August 24, the Wall Street Journal published an [editorial](#) about this “bad idea”.

Some commentators say there is no proof that lenders would increase the costs to borrowers of obtaining loans if these institutions are saddled with the additional costs of maintaining vacant properties. But that math just doesn’t add up.

Stay tuned...