

**MARTHA CROOG, LLC
CONNECTICUT LEGISLATIVE SUMMARY—
SB1200- TENANT RELIEF AFTER
MORTGAGE FORECLOSURE**

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On November 24, 2008, in a Special Session, the Connecticut General Assembly enacted SB 1200, which is effective upon passage, and which the Governor signed into law on November 25, 2008.

§ 6 – PROTECTIONS FOR TENANTS AFFECTED BY FORECLOSURE

The Right to Possession

The foreclosing mortgagee usually demands possession in its complaint. The court will enter judgment on the foreclosure complaint. The right to possession is established differently depending on the form of judgment - foreclosure by sale or strict foreclosure.

Foreclosure by Sale

Under the new Standing Orders for Foreclosure By Sale, which became effective on 12/1/08, the committee must file a motion for possession of the property on behalf of the successful bidder. If the mortgagee is the successful bidder, it may also file a motion for possession, and will include the request for possession in its motion for supplemental judgment, as well.

Strict Foreclosure

Under the Connecticut Practice Book, a foreclosing mortgagee is entitled to possession as part of the judgment of strict foreclosure, such possession to take effect once all the law days have run and title to the property has become absolute in the mortgagee.

The Ejectment Remedy

Connecticut statutory law provides that if the trial court finds that the foreclosing mortgagee is entitled to possession, it may sign an execution of ejectment. The execution is only enforceable against all persons who were named defendants in the foreclosure. The execution of ejectment is issued by the trial court where the mortgage foreclosure was pending. Once the execution has been issued by the court, the ejectment may occur within 24 hours from the date the marshal notifies the town that it has been scheduled. A motion for a stay of the ejectment may be filed by either the mortgagor or a tenant in the court where

the foreclosure was tried. Historically, the duration of a stay of an ejectment is far briefer than the stay afforded in an eviction, and is typically not more than 30 days.

As to mortgagors in a strict foreclosure, the execution of ejectment is enforceable as soon as title becomes absolute in the mortgagee. **As to mortgagors in foreclosure by sale**, the execution of ejectment is enforceable once the court approves the sale, and the appeal period (21 days after the court approves the sale) has run.

Summary Process Remedy / Eviction

Occupants who were not named defendants in the foreclosure must be evicted in a summary process action in housing court, rather than the trial court where the foreclosure was tried. These tenants are generally evicted on the ground that the right or privilege they had to reside on the premises was terminated by the foreclosure. In a strict foreclosure, the right or privilege to occupy is terminated once title to the property becomes absolute in the mortgagee; in a foreclosure by sale it is terminated once the court approves the sale and the appeal period has run. However, under SB1200, a mortgagee or its successor in interest may not always enforce its right to possession as soon as a tenant's right or privilege to occupy is terminated, if it bases its eviction on the termination of the right or privilege to occupy. It should be noted, however, that the summary process laws provide other bases for a judgment of eviction, such as nonpayment of rent or various types of nuisance or misconduct, as discussed later, which are exempt from the stays otherwise afforded under SB1200.

In contrast to ejectments, summary process actions typically last between sixty and 120 days, and are often contested. Contested evictions are customarily settled by a court approved stipulation. SB1200 adds between 30-60 additional days to the duration of an eviction.

What SB1200 DOES

In a strict foreclosure, the Increases the length of time certain tenants may continue to occupy the property as to which the mortgage has been foreclosed--- regardless whether the enforcement of the right to possession is by ejectment or eviction. The length of the increased occupancy term depends on (1) whether the tenant had a written or oral lease, and (2) when the lease was entered into.

If the tenant had a written lease that was in effect more than 60 days prior to the start of the foreclosure, an eviction may not be commenced for 60 days after the mortgagee obtains absolute title to the property OR until the lease expires, whichever occurs first.

If the tenant had a written lease that was dated less than 60 days before the foreclosure was filed, or if the tenant had an oral agreement, the eviction may not be commenced for 30 days from the date the mortgagee obtains absolute title to the property.

Permits the commencement of an eviction against any tenant (1) if the tenant produces a written lease and the written lease is expired, (2) nonpayment of rent, (3) lapse of time, (4) breach of rental agreement, (5) nuisance, (6) serious nuisance, including use or allowing the property to be sued for an illegal activity, such as the sale of drugs, (7) conviction of prostitution or gambling, (8) compliance with statutory duties, such as municipal building, housing or fire codes, or (9) occupying the dwelling when he or she never had a right or privilege to do so.

What SB1200 DOES NOT DO

Does not apply to mortgagors or property owners. Ejectments against mortgagors and property owners and non-arm's length occupants may proceed without regard to the New Law.

Does not apply if the mortgagee brings the action on grounds other than that the right or privilege to occupy terminated.

Does not apply to persons who did not lease the property from the mortgagor in an "arm's length transaction". This presumably covers guests, friends and relatives and all other persons who occupy without a written or oral lease.

§ 7 – CASH INCENTIVES FOR TENANTS TO VACATE

SB 1200 circumscribes the financial terms of "cash for keys" agreements offered by mortgagees and their successors in interest. The minimum incentive that may be offered is based on whether there is "evidence" of the amount or value of the security deposit the tenant paid at the time the lease was entered into. If there is "evidence", the money "or other valuable consideration" offered by the mortgagee or its successor in interest must be (1) in addition to the security deposit and interest owed to the tenant upon the termination of the occupancy and (2) must be at least equal in amount or value to the security deposit plus interest. If there is no evidence, the incentive must be equal to two months' rent or \$2,000, whichever is greater.

The bill prohibits mortgagees, or their successors in interest from conditioning the delivery of financial incentives on the waiver of any right or

remedy the tenant may have against them, except that they may require that the tenant waive the right to file to recover a security deposit plus interest.

The law requires landlords and their successors in interest to return their tenants' security deposits plus interest within 30 days after their lease terminates. If a tenant is under age 62, the maximum security deposit cannot exceed two months' rent. If the tenant is over age 62, the maximum security deposit cannot exceed one month's rent. The current interest rate on security deposits is 1 ½%.