

BANKS, COURTS, AND BUREAUCRATS: APARTMENT FORECLOSURES AND COERCIVE EVICTIONS IN CHICAGO

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Abstract

Since 2009, over 50,000 rental units in Chicago have gone into foreclosure, predominantly in low-income, minority neighborhoods. Despite paying rent and following the terms of their lease, tenants in foreclosed buildings are often forced out of their homes. Banks that take over foreclosed apartments often attempt to vacate residents through coercive methods such as turning off utilities, neglecting maintenance, and giving tenants misleading information. The paper examines the rights of tenants during the foreclosure process, and the challenges that government officials, social service agencies, and community activist groups face in responding to coercive eviction practices.

According to the Chicago-based Lawyers' Committee for Better Housing (LCBH 2012) over 50,000 rental units—approximately 9 percent of Chicago's housing stock—have gone into foreclosure since 2009, predominantly in low-income, minority neighborhoods such as Austin and Englewood. Despite paying rent and following the terms of their lease, tenants in foreclosed buildings are often forced out of their homes (Johnson 2010). Banks that take over foreclosed apartment buildings generally attempt to vacate residents as quickly as possible, with the objectives of avoiding property management costs and making buildings easier to sell. This occurs despite the fact that many foreclosed buildings are never purchased and fall into disrepair (Johnson 2010; LCBH 2012). To empty the buildings of residents, banks often engage in what LCBH calls “constructive eviction,” a broadly defined set of extralegal practices meant to coerce tenants into moving out. Though legislation exists to protect tenants' rights during the foreclosure process, lack of access to low-cost legal assistance often causes these laws to go unenforced (LCBH 2012).

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This paper outlines tenants' legal rights during the foreclosure process and examines common tactics used by landlords and banks in Chicago to circumvent these protections. Next, it examines the social costs resulting from the increase in apartment foreclosures. Finally, it explores how community groups and Cook County government officials shape policy implementation, and how resource shortages limit the extent to which local government officials and private citizens can enforce tenant protections during the foreclosure process.

TENANT LEGAL PROTECTIONS AND COMMON ABUSES

The federal Protecting Tenants at Foreclosure Act and the Illinois Mortgage Foreclosure Law both specify that tenants must be allowed at least ninety days or the remainder of time on their lease (whichever is longer) before the new owner can have them evicted from a foreclosed property (LCBH 2012). Additionally, Chicago's Residential Landlord Tenant Ordinance (RLTO) states that the new landlord is obligated to inherit the prior owner's responsibilities until the time the building is vacated. These responsibilities include maintaining the building to basic standards of livability and ensuring that security deposits are returned. Furthermore, the RLTO stipulates that the new landlord is required to inform clients in writing that the building has switched owners, and must give the name of a person or party in charge of maintenance and rent collection. Without this notice, it is illegal for new landlords to accept rent or evict tenants (LCBH 2010).

When banks foreclose on a property, however, they have tended to hire real estate agents to manage the process of vacating and selling the building. These agents engage in the use of “constructive eviction” which involves denying a tenant the right of possession through “illegal lockouts, board-ups, and lack of utility maintenance” and can also include “misleading, harassing, or threatening communication” to pressure a tenant into vacating the building (LCBH 2010, 5). Because tenants are generally unaware of their rights and do not have the resources to protect themselves, coercive threats often become reality. According to legal scholar Creola Johnson (2010), the vast majority of tenants in foreclosed buildings do not receive their security deposits, and many individuals are forced to leave before ninety days due to uninhabitable living conditions.

Constructive evictions often occur in conjunction with “cash for keys” offers from the agents hired by banks (LCBH 2010). These deals involve tenants forfeiting their security deposits and the right to stay in the building in exchange for a cash payment. However, many tenants accept low payments because they are not aware of their rights and are afraid they will be evicted with no form of compensation (Shah 2011). These agreements

allow the new property owners to vacate buildings in a way that absolves them of liability (LCBH 2010).

The cost to tenants can be very high. Many struggle to afford a new residence (Johnson 2010; LCBH 2010), and barriers to gaining new housing—such as a felony convictions, mental illness, or a previous eviction—can put displaced tenants at high risk for homelessness (Patricia Fron, personal communication, March 12, 2012). Furthermore, rental foreclosures also impose significant costs on local governments. Social service agencies have been forced to expand caseloads to accommodate individuals who need assistance with locating housing. Foreclosed buildings that become abandoned are associated with higher crime rates and decreased investment in communities, which lowers tax revenues and forces local governments to expend reduced resources on policing and criminal justice (Johnson 2010).

ADMINISTRATIVE DISCRETION AND THE IMPLEMENTATION OF POLICY

Various theorists have examined the role that administrative discretion plays in the implementation of policy. Political scientist Evelyn Brodtkin (1990) argues that policy outcomes are often shaped by the interpretation, priorities, and values of government officials who exercise discretion when implementing legislative mandates and allocating resources. When implementation involves coordination between multiple actors or agencies, the conflicting priorities among stakeholders may forestall policy dictates from being realized (Pressman and Wildavsky 1984). As the following example illustrates, Cook County Sheriff Tom Dart demonstrated the discretionary power of administrative officials by temporarily refusing to enforce court-ordered evictions.

If the judge orders an eviction, it is the responsibility of the Sheriff's Office to enforce the ruling and remove the tenant. Yet in the time immediately following the 2008 financial crisis, Illinois banks filed a large volume of inaccurate eviction claims, which made it difficult for local courts to adequately assess the legitimacy of individual cases (Podmolick 2010). When enforcing possession orders, Sheriff Dart found that banks often filed evictions against people without following the proper legal protocol. In many instances, tenants had never been informed that the building had switched owners, or that the new landlord had filed for eviction against them (Summers 2009).

Given the frequency of unscrupulous practices and the additional workload imposed upon the Sheriff's Office, Sheriff Dart placed a temporary moratorium on all foreclosure evictions (Summers, 2009).

Pressman and Wildavsky (1984) argue that the discretion of government officials can be used as a form of patronage to strengthen influence and garner support. In this instance, Sheriff Dart's moratorium functioned to not only block implementation of court orders he opposed, but also as a tool to gain favor with constituents and shape a positive image of the Sheriff's Office. According to Dart, the moratorium created an "outpouring of gratitude" from Cook County residents (Summers 2009).

Dart's actions also function as an example of Brodtkin's (1990) argument that discretion by government administrators can be used to advance social policy goals that would be difficult to achieve in a legislative environment. To justify his refusal to implement judicial orders, Dart accused banks of acting unethically and irresponsibly, and stated that following through with eviction orders on their behalf was a drain on already limited government resources. Asserting his position, Dart argued that banks "want taxpayers to fund their investigative work for them. We're not going to do their jobs for them anymore. We're just not going to evict innocent tenants" (Stephey 2008). This contention was adopted by protest groups such as Occupy Chicago and the Chicago Anti-Eviction Campaign, which use Sheriff Dart's statements as justification for their call to end all evictions from foreclosed properties until legislation is passed that creates stronger tenant protections (Chicago Anti-Eviction Campaign 2012).

BEYOND EVICTION COURT

Despite a considerable increase in the number of people displaced from their homes due to apartment foreclosures, eviction filings in Chicago have steadily decreased since 2007, with 2010 having the lowest number of evictions in ten years (LCBH 2010). LCBH (2010) theorizes that banks have chosen to avoid the lengthy and expensive process of evicting tenants through the court system. This allows the banks to shift legal costs onto tenants because the burden falls on renters to prove that the bank has illegally shut off utilities or refused to return a security deposit. Given the discrepancy in access to legal resources between low-income tenants and banks, residents facing constructive eviction confront an uneven playing field when attempting to gain legal redress for their concerns.

Constructive evictions function by forcing tenants to pursue their rights through government channels that are oversubscribed and difficult to navigate, while at the same time exposing them to harsh conditions. To manage caseloads, government programs that provide assistance to individuals with grievances against their landlords typically employ rationing methods (Lipsky 2011), such as strict disqualification criteria or long waits for services. For example, the Chicago RLTO specifies that

tenants have a right to report unsafe or uninhabitable building conditions to city inspectors, and sue for repairs in building court. However, the process of obtaining an inspector's report, filing and winning a claim in building court, and waiting for a landlord to take action following the court ruling can take several months (Patricia Fron, personal communication, March 12, 2012). For a tenant with no heat in the winter, these channels are impossibly slow. The ongoing exposure to freezing temperatures acts as a sensory reminder of the power differential that exists between banks and tenants.

Community action by Occupy groups and the Chicago Anti-Eviction Campaign has often focused on combating evictions that are executed through official channels, with the hope of either exhausting the resources of the Sheriff's Office, or pressuring Sheriff Tom Dart to resume the moratorium on foreclosure evictions (Patricia Fron, personal communication, March 12, 2012). As a result, collective action often involves "occupying" foreclosed buildings despite orders from the Sheriff's Office to vacate the property. However, even if Sheriff Tom Dart reinstated the moratorium on foreclosure evictions, displacement and abuses of tenant rights would potentially continue to occur at a high rate through the use of coercive constructive eviction methods. By shifting eviction strategies away from official channels, banks and landlords have minimized the power and influence of bureaucratic discretion in policy outcomes.

CONCLUSION

Mass displacement of tenants and the non-enforcement of legal entitlements reflect challenges to consumer and citizen rights in an era of government retrenchment and fiscal austerity. Despite a refusal by Sheriff Tom Dart to enforce eviction orders that he deemed illegal or unethical, the practice of mass eviction still occurs, at perhaps a higher and more efficient rate, through the extralegal practice of constructive eviction. The scale of the problem, and a shortage of resources to combat it, enables banks to engage in illegal practices without consequence. Meanwhile, foreclosed and abandoned buildings decrease property values and shrink tax revenues, further reducing the resources available to allow the Cook County government and the City of Chicago to enforce legislation designed to protect tenant rights. As a result, municipal governments lose the ability to implement policy with each new abandoned building.

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