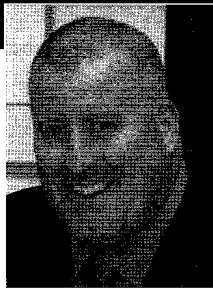


Should You Consider Accepting Foreclosed Applicants?



BY MIKE LAPSLEY, RENTGROW, INC., lapsley@rentgrow.com

The foreclosure crisis continues to dominate headlines, and the outlook remains grim. Earlier this year, CNNMoney.com cited a survey by the Mortgage Bankers Association and reported “over 900,000 households are in the foreclosure process, up 71% from a year ago.”

So when it comes to applicant screening, how should you handle applicants who are coming to you from a foreclosure? Should this raise a red flag? Should you consider accepting applicants with a foreclosure? Are these applicants “risky” or merely victims of a mortgage industry run amok? The best answer seems to be “it depends,” and it pays to take other factors into consideration when weighing your options.

With the growing number of foreclosures that we hear about every day, many rental properties are seeing an increased volume of foreclosures in their applicant pools. Still the actual volume remains quite small – just around 2% based on our most current data (Editor’s note – article submitted 11/08). Compare that number to the percentage of applicants who have medical collections – consistently over 30% – and you begin to realize how small it really is in the grand scheme of things.

You may be experiencing a higher rate in your market and we understand the concerns surrounding those foreclosed applicants who do cross your desks. The decision about whether to accept these applicants will depend on your management company’s philosophy, geography, and market concerns (e.g. how tight is the market and how high are occupancy rates?). As you make this decision, here are some issues to consider as well as some strategies for minimizing risk if you do decide to accept foreclosed applicants:

Keep In Mind that a Foreclosed Applicant May be a Good Renter.

During the last several years many people made poor home-buying decisions by

getting into unrealistic mortgage programs. Some individuals in these situations may still be worth considering. In other words, there are times when a foreclosure is not necessarily indicative as to whether someone is a responsible resident who can make rental payments on time.

Adopt Simple Changes to Your Screening Criteria.

If you do decide to consider foreclosure applicants, you can change the criteria in your screening process to help you make a more informed decision about those applicants. Some resident screening systems even give you the option to remove foreclosures from scoring. In these cases, we recommend that you consider the following:

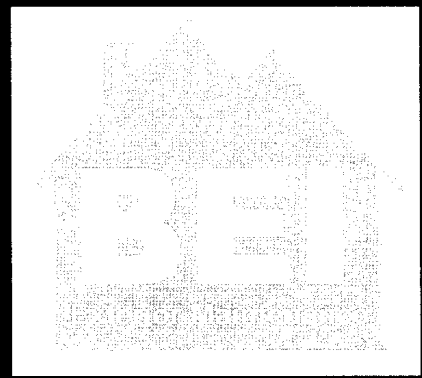
1. Is the rental payment going to be lower than the mortgage payment?
2. Does the applicant’s credit score improve—or does she or he “pass”—when you take the foreclosure out of the equation during the credit check?

If the answer to these questions is yes, it’s possible that you could have an acceptable applicant despite the foreclosure. But before you can make that decision, it’s important to get a more complete overview of their credit history.

Don’t Overlook Collateral Damage.

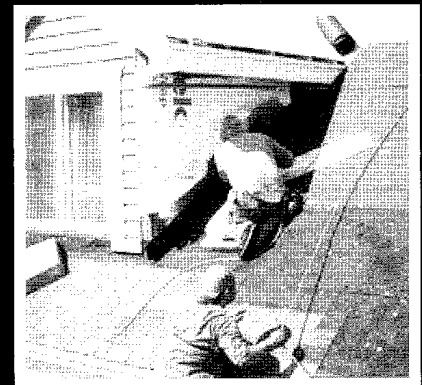
Whether it’s by necessity or by choice, individuals who have gone through a foreclosure often allow other financial commitments, like auto loan payments, to slip—this is what we refer to as “collateral damage.” Trying to separate out collateral damage that’s related to the foreclosure as opposed to just plain bad credit can be risky. That’s why we recommend that if an applicant doesn’t meet your resident screening criteria after you’ve removed a foreclosure, it’s best

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Independent Contractor Exemption Certificate



BY TODD B. LILJENQUIST, DIRECTOR OF GOVERNMENT RELATIONS

There has been some confusion over the interpretation and application of the new Independent Contractor Exemption Certificate (ICEC) requirements in Minnesota and we have received numerous contacts from members about the law. This article will discuss the law itself and how it has been interpreted by the Minnesota Department of Labor and Industry and the Minnesota Department of Revenue. You will need to determine for yourself in consultation with legal counsel the best means for complying with state law.

Minnesota Statutes § 181.723

Based on information provided from the Office of the Legislative Auditor that a large number of Minnesota employers misclassify workers as independent contractors, the Minnesota Legislature passed the ICEC in 2007. The ICEC states that effective January 1, 2009, independent contractors performing public or private sector commercial or residential building construction or improvement services must obtain an ICEC from the Minnesota Department of Labor and Industry (DLI).

In order to receive a certificate, an individual must submit a sworn statement that nine factors exist. Some of the factors require the individual to: maintain a separate business with the individual's own office, equipment, and materials; realize a profit or suffer a loss under contracts; have recurring business liabilities and

obligations; and operate under contracts to perform specific services for specific amounts of money and under which the individual controls the means of performing the services. **The law does provide one major exception to the requirement to obtain an ICEC in that it only applies to sole proprietorships.** If the individual is registered as a corporation, LLC, or partnership with the Minnesota Secretary of State, they are excluded from the requirement of having to obtain an ICEC.

It is the duty of the individual to obtain an ICEC before performing work as an independent contractor, but it is also the duty of the company contracting with the individual to obtain a copy of the ICEC before service as an independent contractor may commence. An individual covered by the law who fails to obtain an ICEC is considered an employee of the hiring company and may not be treated as an independent contractor. There are penalties for failing to comply with an employer's legal obligations to employees, such as failing to obtain workers' compensation insurance, pay unemployment insurance tax, or comply with OSHA or labor standards and wage laws. Also, penalties of up to \$5,000 for each violation may be assessed by DLI.

When this issue was before the legislature in 2007, the MHA Legislative Committee looked at the proposal and decided, based on the language of the proposal and intent of the legislative authors of the bill,

that the association would take no legislative action because the requirements of the law seem to only apply to MHA members in the construction industry. The law specifically states that it "only applies to individuals performing public or private sector commercial or residential building construction or improvement services." Construction and improvement services are not defined in the law but there seems to be a good argument that such services only encompass those provided by construction contractors. Even the broader phrase "improvement services" in the context of the legislation seems limited to the situation in which significant construction improvement services are being provided under the direction of a general contractor. Also, the law only applies to those services performed "in the course of the [company's] trade, business, profession, or occupation." A reasonable interpretation of this limitation would counsel toward covering only those entities who, as a regular part of their business, provide construction or improvement services; in other words, construction contractors. Finally, testimony provided in various committees on the legislation focused almost exclusively on businesses engaged in the construction trades.

Department of Labor and Industry interpretation

In recent conversations with staff members at DLI, we have been informed that the agency is interpreting the law to include companies and individuals who manage commercial or residential properties. Property managers, according to DLI, essentially act as general contractors when "construction or improvement services" are provided to the properties which they manage. According to DLI, the law does not apply to those who simply own commercial or residential property, but it does apply to those who

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not to overlook any additional problems. The fact is, you'll never know for sure whether those problems are related to the foreclosure or cause for ongoing concern.

In our experience, most companies today are in fact considering applicants with foreclosures, and while this seems to be the current trend, we also realize the importance of identifying ways to mitigate the risk. With the strategies we've outlined above, we believe you can make informed decisions about foreclosed applicants. ■

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