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"CRISIS: FORECLOSURE!" By: The Law Office of Ernest B. Fenton

I am Attorney Ernest B. Fenton. I am a solo practitioner, with a concentration of real estate and business. The purpose of this article is to illuminate one of the more pressing issues that a homeowner may face: foreclosure.

Foreclosure is the process by which Lenders dispossess homeowners from their legal and possessory interest in their property. The comprehensive set of laws related to foreclosure are contained in 735 ILCS 5/15-1101, Illinois Mortgage Foreclosure Law (IMFL).

Most frequently, this process is initiated by a lender when a homeowner has defaulted on the loan. Usually, this happens when a mortgagor (homeowner) is three months or more in arrears on their mortgage payment. At that time, a lender may initiate the foreclosure process by filing a Complaint to Foreclose in the county where the property is located.

Of course, there are a myriad of reasons why someone may default or "fall behind" on their mortgage payment. They range from a loss of employment, death of a "breadwinner," or mis-management of money. Also, an unexpected increase in the monthly mortgage payment due to a property tax increase or adjustment of the rate of interest due on the note, for those who have an adjustable rate mortgage (ARM), may lead to "falling behind."

What's most important is the devastating effect that this phenomenon is having on the lives of families and those communities that are most affected by it. One can only imagine the psychological impact of that level of loss. Having to explain to a child why they are "leaving" their home, school, and friends, as is often times the case, and having to divest themselves, generally, from what they know.

What's left is a socio-economic blight on the community. A devolution of culture and history as the next "so-called" investor swoops in and ravishes the cinder carcass. Its impact can be witnessed simply by visiting Chicago's South Side neighborhoods' of Englewood and Roseland or suburban Harvey or Robbins. Or, if you be so indulgent, its effects can be found in the eyes of Grandma Jones and the four grandchildren she has been raising, or Elder Smith, whose penchant for kindness has finally "caught up to him."

For certain, these are profiles of real people...good people...who are far from being the stereotypical irresponsible degenerate that we too often associate having the foreclosure "problem." These good people who are being disproportionately affected by foreclosure in Englewood, Roseland, and Harvey are fundamentally no different than the good people of Rogers Park, the Loop, or Flossmoor. The lack of responsiveness to this issue has created a crisis in our communities.

To substantiate my claim of crisis, look no further than CNN's report of February 2004 that highlighted the fact that Cook County, Illinois had the highest level of foreclosure in the Country for 2003, an unprecedented 3034 homes lost.

In an attempt to address this issue, Illinois enacted a new law called HB4050. It is a pilot program that tracks real estate transactions in zip codes that have a higher than normal rate of foreclosure within Cook County. It also requires that certain homebuyers be certified by a housing counselor prior to purchasing a property in those areas affected by this new law.

My recommendation for new homebuyers is that they negotiate the best terms possible on their loan. I inform my clients that shopping for a loan is much like shopping for a car: the loan product options and terms are abundant and negotiable. And, thus, it is critical that they demand the very best terms from their lender. I point out the fact that the difference of one percentage point in their interest rate may translate into several hundred dollars a month more in their mortgage payment; and that over the life of the loan that would mean that they would be paying tens of thousands of dollars more.

If you are already a homeowner and you find yourself having difficulty paying your mortgage, don't hesitate to contact your lender to discuss alternative paying arrangements. A lender will often times allow you to "skip" a payment or enter into what's called a deferment plan. By entering into this plan you will be obligated to making the payment at the end of your loan term.

If the lender does not seem amenable to finding a workable solution for each of you, it's important that you seek professional assistance immediately. Namely, I advise that you contact a Real Estate Attorney.

A Real Estate Attorney understands the complexity of the foreclosure process. Moreover, we are familiar with and know how to interpret and apply the law to protect your interest.

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