

New York State Addresses Vacant & Abandoned Properties

New York Demonstrates Intolerance for Property Zombification with Passage of Act

By Donald A. Young, Boylan Code

For far too long, vacant and abandoned foreclosed homes have been a serious problem for citizens and public officials in New York.

According to a recent study,¹ vacant foreclosed homes number over 3,000 in the state of New York, trailing only New Jersey. One need not venture inside a property to see that it is vacant and abandoned – usually its status is quite evident to passersby. The telltale signs are overgrown grass and weeds, broken or boarded windows, sagging gutters and other signs of disrepair. Abandoned homes are not only eyesores

for citizens, but pose safety hazards and drag down values of nearby homes. To top it off, the local municipalities are often stuck with maintaining these homes – cutting the grass to prevent rodent infestation, repairing the gutters to prevent flooding and sometimes demolishing homes that have become a serious safety concern. Often, these costs are significant and are ultimately passed on to the taxpayers.

As one might suspect, the current law requires the homeowner to maintain his or her property.

When that owner defaults on his or her mortgage, often due to financial distress, the owner does not have the means to maintain the property, thus resulting in various property maintenance issues. Sometimes the owner(s) eventually abandon the property during the foreclosure process. Under the current law, since a lender does not become the owner of the property until the foreclosure process is completed (which can sometimes take years in New York), the maintenance responsibility continues to fall on the owner who no longer lives the property

and has little incentive or ability to maintain it. Thus, the property continues to fall further into disrepair, often resulting in intervention by the local municipality at the ultimate cost of the local taxpayers.

New York recently enacted the “Abandoned Property Neighborhood Relief Act of 2016,” effective Dec. 20, 2016, to address these issues.



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The provisions of the act fall into three primary categories: 1) requiring lenders to inspect and maintain vacant property prior to completion of foreclosure, 2) the implementation of a statewide abandoned property registry and reporting system to monitor vacant properties, and 3) providing an expedited foreclosure process for vacant properties.

As mentioned above, currently, the responsibility to maintain a foreclosure falls to the lender only when it comes into ownership of the property at the completion of the lengthy foreclosure process. Pursuant to the act (with some limited exceptions), lenders will now have the duty to inspect and maintain abandoned and vacant properties prior to completion of the foreclosure proceedings. Specifically, within 90 days of delinquency, the lender must complete an exterior inspection of the home to determine whether it is vacant and must continue to inspect every 25 to 35 days.

If a home is determined to be vacant, the lender must secure and maintain the property including: securing points of entry (i.e. doors, broken windows), winterizing the property, protecting against mold growth and addressing code violations (such as overgrown grass and weeds). Should a lender fail to maintain the property, it will be subject to a \$500-per-day fine. Additionally, should a lender fail to maintain the property, a municipality may itself address maintenance, and per the act, will have the right to commence an action directly against the lender to recover its costs. Pre-foreclosure recovery against the lender is generally not available today and will be a boon to municipalities that will now have a method by which to quickly and fully recoup their maintenance costs (as opposed to

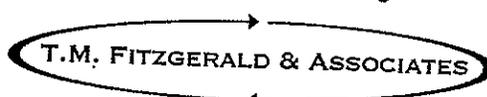
common practice now, where a municipality's costs are often billed to an owner who is nowhere to be found and ultimately levied on to a tax bill that the owner cannot pay).

The act also calls for the implementation for a statewide electronic abandoned and vacant homes registry to be operated by the New York State Department of Financial Services (DFS). Upon learning (or "should have learned") that a property is vacant, the lender/servicer must cause the property to be entered into the statewide vacant property registry within 21 days by providing the following information to DFS: 1) the name and contact information of the lender who will be required to maintain the property, 2) whether a foreclosure action has been filed and if so, when and 3) the last known

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contact information of the homeowner.

Though the act provides that the information in the registry will be kept "confidential" (presumably to protect defaulting homeowners), it also provides that the information will be provided by the DFS to local municipal officials upon request so long as it is used strictly to address vacant and abandoned property in a manner consistent with the act. Furthermore, the act calls for the establishment of a hotline where neighbors and residents can report apparent vacant properties to the DFS. If executed properly, the registry and the hotline could be an invaluable resource that could be leveraged by both New York State and local municipal officials to ensure lenders are timely and fully addressing maintenance responsibilities on vacant foreclosures.

In the legal and banking community that deals with foreclosures, New York is known for its notoriously slow and cumbersome foreclosure process – a process to which many attribute at least some blame for the vacant and abandoned properties crises. The act seeks to address this problem by implementing an expedited foreclosure process for vacant and abandoned property. In sum, lenders may make use of an expedited legal process known as an "order to show cause" in order to quickly bring a foreclosure process to conclusion so long as the lender demonstrates that the property is indeed vacant. In order to do so, it must conduct three consecutive inspections of the subject property, at least 25 to 35 days apart, and show: 1) no evidence of residents living there, and 2) that the property was not being maintained in a manner consistent with the requirements of the New York Property Maintenance Code. Evidence of lack of occupancy may include: overgrown or dead vegetation, accumulation of mail, past due utility notices, accumulation of trash, absence of window coverings, broken windows, failure to secure entry points and structural or otherwise hazardous problems with the property.

In addition, New York is pursuing measures to

prevent abandoned property in the first place, including the establishment of the "Community Restoration Fund" program, whereby New York will be able to purchase defaulted mortgages and offer favorable mortgage modifications in order to keep owners in their homes.

Prior to the act, municipalities sought to address vacant properties by adopting a patchwork of local legislation. Generally, the local legislation would focus on requiring lenders to register with the local municipality and post a bond that can be accessed by the municipality to deal with maintenance on foreclosed properties. Municipalities should be aware that the Act provides that local legislation cannot be inconsistent with the Act. New York State's intent appears to be that the Act will accomplish the purpose of the aforementioned local legislation by having DFS maintain a statewide registry (rather than local registries), by legally requiring lenders to maintain prior to foreclosure (and thus dispensing with the need for municipalities to step in) and by providing municipalities a direct path to recovery against lenders should they fail in their duties.

As the effective date of the Act approaches (Dec. 20, 2016), public officials should prepare to make use of the new tools they will have at their disposal. From the ability to interface with DFS to identify vacant homes to the right to recover maintenance costs directly from the lender, the Act promises long overdue tools that appear likely to significantly and positively address the abandoned and vacant homes crisis in New York. □

This also appears on Mr. Young's land use and zoning blog at www.zonedinlegal.com.

(Endnotes)

1. <http://www.housingwire.com/articles/37068-strong-housing-market-helps-reduce-lingering-foreclosure-inventory>.