

New York's Zombie Housing Law – Past, Present and Future

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**DISTRESSED AND ABANDONED PROPERTIES:
UNDERSTANDING THE NEW YORK STATE
ZOMBIE PROPERTY LEGISLATION**

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**I. GENERAL OVERVIEW OF ABANDONED PROPERTY LEGISLATION
IN NEW YORK STATE**

- A. Perhaps the most intractable economic and community development challenge for local government officials is abandoned residential properties. At a minimum, abandoned properties blight the community because no one is performing basic maintenance and upkeep of the properties. Unless the abandonment issue is addressed, abandoned properties can become serious problems for the community, threatening the public's health and safety and impacting property values. Ultimately many of these homes may need to be demolished by the municipality, often at the taxpayers' expense.
- B. New York State has enacted legislation in the Real Property Actions and Proceedings Law ("RPAPL") to deal with abandoned properties.
1. On June 27, 2016, Governor Cuomo signed into law Chapter 73 of the 2016 Laws of the State of New York, entitled the "Abandoned Property Relief Act of 2016"¹, namely Sections 1308, 1309 and 1310 of the Real Property Actions and Proceedings Law ("RPAPL") to confront the lingering vacant and abandoned residential property epidemic resulting from the mortgage foreclosure crisis that continues to blight neighborhoods throughout New York State. The new law helps identify delinquent properties and hold banks and mortgage servicers accountable for their inaction. The purpose of the law is to allow the State and municipalities to better address the growing problem of vacant and abandoned residential properties by creating a Statewide Registry of such properties and imposing a duty on mortgagees and their loan servicing agents to report these properties to the Registry and to take earlier (pre-foreclosure) action to identify, secure and maintain so-called Zombie Houses. Under the new law, mortgage servicers are obligated to maintain such vacant and abandoned properties and are subject to enforcement actions and daily fines if they

¹ Also sometimes referred to as the Zombie Property and Foreclosure Prevention Act of 2016 (the "Zombie Law").

fail to comply. New York State Department of Financial Services (“DFS”) serves as the lead State agency in this initiative.

2. Article 19-A of the RPAPL, is an alternate pre-2016 remedy originally enacted in 1973, entitled “Special Proceeding to Convey Title to Abandoned Dwelling to a City, Town or Village.” The provisions of Article 19-A can also be used to address abandoned properties, which allows local governments to take title to certain types of residential abandoned real property.

C. In New York State, property maintenance issues may also be addressed using the following legal mechanisms:

1. New York State Property Maintenance Code, which is part of the State’s Uniform Fire Prevention and Buildings Code. Municipalities are responsible for enforcing and administering the State’s Property Maintenance Code.
2. A Property Maintenance Local Law establishing both substantive standards and procedures for enforcing the local law;
3. New York State Public Health Law Article 13, which authorizes local boards of health to order nuisance conditions to be remedied;
4. Common law of public nuisance, which holds that local governments may summarily abate public nuisances.

II. OVERVIEW OF THE ABANDONED PROPERTY RELIEF ACT OF 2016

A. The Statutory scheme of the Abandoned Property Relief Act of 2016 is as follows:

1. RPAPL § 1308. Inspecting, securing and maintaining vacant and abandoned residential real property- lays out inspection and maintenance requirements.
2. RPAPL § 1309. Expedited application for judgment of foreclosure and sale of vacant and abandoned property- contains a definition of vacant and abandoned property and provides an expedited foreclosure process for properties deemed vacant.
3. RPAPL § 1310. Creates a Statewide vacant and abandoned property Registry- details reporting requirements and mandates the creation of such a database.

B. Main Components of the Abandoned Property Relief Act of 2016.

1. Requires mortgagees to inspect, secure and maintain mortgage delinquent properties.
 - a. The law expands the existing duty of a mortgagee to maintain vacant residential real property to include “pre-foreclosure” vacant properties.

- b. The law also requires a mortgagee to perform periodic inspections in order to determine whether properties secured by a delinquent mortgage have actually been abandoned.
 2. Requires mortgagees to register vacant and abandoned properties on a State Registry. DFS maintains an electronic statewide database for registering abandoned residential properties.
 3. Allows mortgagees to complete expedited mortgage foreclosure for abandoned properties.
- C. To whom does the law apply?
1. The law applies to all first lien mortgage holders on residential properties with few limited exceptions.²
 2. **Exceptions:** The law does not apply to state or federally chartered banks, savings banks, savings and loan associations, or credit unions which: (1) originate, own, service and maintain their mortgages or a portion thereof; and (2) have less than three-tenths (0.30%) of one percent (1%) of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December 31 of the calendar year ending two years prior to the current calendar year.³
- D. What types of property are regulated by the Abandoned Property Relief Act?
1. "Vacant and abandoned" residential real property consists of one to four family Residential Real Property.⁴ Residential Real Property shall mean real property located in this state improved by any building or structure that is or may be used, in whole or in part, as the home or residence of one or more persons, and shall include any building or structure used for both residential and commercial purposes.⁵
 2. Exception: The following types of buildings are not deemed vacant and abandoned
If the building is:
 - a) Undergoing construction, renovation or rehabilitation that is proceeding diligently, OR
 - b) Used on a seasonable basis but is otherwise secure, OR

² RPAPL § 1308.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at § 1305(1)(a).

- c) Subject of a probate action, action to quiet title or other ownership dispute of which the servicer has notice, OR
 - d) Damaged by natural disaster but owner intends to repair and reoccupy, OR
 - e) Occupied by mortgagor, a relative or a lawful tenant.⁶
- E. In order to trigger the maintenance and registration obligations, a property must meet the legal definition of vacant and abandoned under RPAPL Section 1309. This can occur in one of three ways:

1. Mortgagee Inspections.

- a. The law requires mortgagees to conduct occupancy inspections, every 24-35 days apart, of properties associated with loans that are at least 90-days delinquent. If the mortgagee finds that at each of three consecutive inspections:

- [1] No occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and

- [2] The property is not being maintained in a manner consistent with specific provisions of the New York State Property Maintenance Code, Chapter 3, then the property is deemed to be vacant and abandoned.

- [3] The property must be maintained in accordance with Sections 301, 302 (excluding 302.2, 302.6, and 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1.⁷

- [a] Section 1308(2) provides that the duty to maintain applies where the servicer has a reasonable basis to believe the property is vacant and abandoned (as defined in Section 1309)

- [b] Evidence⁸ of a lack of occupancy, includes, but is not limited to:

- [i] Overgrown vegetation

- [ii] Accumulation of newspapers or flyers,

- [iii] Past due utility notices, disconnected utilities not in use,

- [iv] Accumulation of trash or other debris,

⁶ *Id.* at § 1309(2)(d).

⁷ *Id.* at § 1309(2)(a).

⁸ RPAPL at § 1309(2)(c).

- [v] Absence of window coverings
- [vi] Boarded, missing or broken windows,
- [vii] Property is open to entry to trespass, or
- [viii] A structurally unsound structure exists that poses a potential hazard.

[4] If squatters are found on the property, the property cannot be deemed vacant and abandoned and the new law will not apply. The DFS has acknowledged that this is loophole that needs to be corrected.

[5] Mortgagees must register the vacant property with the DFS for inclusion on the vacant and abandoned property Registry within 21 business days of learning of the vacancy status of the property.

2. Court or Governmental Determination.

- a. A property may be deemed to be an abandoned after a court or other appropriate municipal entity has made a formal determination of vacancy, following due notice to the borrower pursuant to RPAPL Section 1308.⁹
- b. Once a court or leave, declares a property to be vacant and abandoned, following procedures provided in the municipal code or RPAPL Article 19-a, the municipality must contact the State and the State will notify the mortgagees and will make sure the Registry gets updated.

3. Borrower/Owner Affidavits.

- a. If a mortgagor and the owner of the property has issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy.¹⁰

III. INSPECTING, SECURING AND MAINTAINING THE VACANT AND ABANDONED RESIDENTIAL REAL PROPERTY *(the first major component)*

A. Mortgagee Obligations under the Abandoned Property Relief Act.

- 1. **Inspection.** Within 90 days of a borrower's delinquency, the servicer authorized to accept payments of the loan shall complete an exterior inspection of the property to

⁹ *Id.* at § 1309(2)(b)(i).

¹⁰ *Id.* at § 1309(2)(b)(ii).

determine occupancy. Thereafter, throughout the delinquency of the loan, the servicer shall conduct such inspections every 25 to 35 days.¹¹

2. **Secure the property.** Once the residential real property has been deemed to be vacant and abandoned, the mortgagee must take necessary steps to ensure that the property is secured and maintained pursuant to §1308, in order to minimize public safety risks and related blight to the neighborhood and surrounding community.¹²
3. **Post and maintain a notice on the property.** Once the mortgagee has a “reasonable basis” to believe a property is vacant and abandoned, the Mortgagee must post a notice within 7 business days on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant that include the servicer’s toll free number or similar contact information. The servicer must monitor the property to ensure the notice remains posted.¹³
4. **Maintain the property.** If the mortgagee is not contacted for 7 calendar days from the date the notice is posted, or if there is an “emergent property condition” that could cause harm to the property, and the servicer has a “reasonable basis” to believe the property is vacant and abandoned, the servicer must maintain the property.
 - a. Maintenance requirements include:
 - [1] Replace one door lock, if there are two different entry points;
 - [2] Secure, replace or board up broken doors or windows.
 - [3] Secure anything that may be deemed an “attractive nuisance,” including but not limited to pools, wells, septic tanks, refrigerators and outbuildings;
 - [4] Take reasonable steps to prevent the discharge of harmful gases, steam, vapor directly upon adjacent public or private property or another tenant;
 - [5] Winterize the home (i.e. plumbing and heating systems);
 - [6] Provide basic utilities, as appropriate (such as to run a sump pump);
 - [7] Remove and remediate health and safety issues, including code violations;
 - [8] Take reasonable measures to prevent the growth of harmful mold;
 - [9] Respond to government inquiries regarding the property; and

¹¹ *Id.* at § 1308(1).

¹² *Id.* at § 1308(2).

¹³ RPAPL at § 1308(3).

[10] Making sure that the notice, discussed above, remains posted.¹⁴

b. Mortgagees are required to address the health and safety issues and must avoid having properties fall into disrepair. They are not required to beautify the property. RPAPL § 1308 sets forth maintenance requirements; however, some provisions under § 1308 are vague, such as those provisions that require the mortgagee to take reasonable and necessary actions or measures. As a result the DFS recommends using local provisions to fill in the blanks to determine what is reasonable.

5. **Personal property cannot be removed.** The Mortgagee may not remove personal property unless it poses a significant risk to health and safety, or if a government entity has ordered removal.¹⁵

6. **Submit certain required information to DFS about any vacant and abandoned residential real property.**

a. A mortgagee must submit information within 21 days of when it learns, or should have learned, that such property is vacant and abandoned, as defined by RPAPL § 1309 or otherwise defined by DFS.¹⁶

b. A mortgagee is required to update information submitted to the registry within 30 days of when it learns, or reasonable should have learned of the new or changed information.¹⁷

B. When does a mortgagee's obligations end?

1. The mortgagee's maintenance and registration obligations do not apply or will cease to apply:

a. If the borrower has filed for bankruptcy or is actively engaged in loss mitigation efforts;

b. If the mortgagee sells the mortgage or releases the lien on the property;

c. An occupant of the property has asserted his or her right to occupy the property;

d. A court orders the servicer to stop;

e. Servicer is prevented from gaining access by an association or cooperative;

¹⁴ *Id.* at § 1308(4).

¹⁵ *Id.* at § 1308(5).

¹⁶ *Id.* at § 1310(2).

¹⁷ *Id.* at § 1310(3).

- f. Property is sold or transferred to a new owner;
- g. Property is sold or transferred to a new owner.¹⁸

C. Penalties

1. A Mortgagee that fails to comply with the basic duty to maintain vacant and abandon property may be subject to enforcement actions by either the DFS or the municipality in which the property is located and a \$500 a day fine may be imposed for each day it is in violation.¹⁹
2. DFS is authorized to bring an action in court, after is has provided the Mortgagee with at least 7 days' notice.²⁰
3. The municipality in which the property is located is also authorized to bring enforcement actions and retain any penalties. The municipality must also provide the mortgagee with 7 days' notice of brining an action (unless there is an emergency), and provide DFS with written notice at least 10 days prior.²¹
4. In addition, in an emergency, the municipality may perform the necessary maintenance work itself and bring an action in court against the mortgagee to recoup its costs.²²

D. Filing a Complaint

1. If a municipal Building Inspector has a maintenance complaint, the municipal official can file a maintenance complaint online through the DFS website by going to www.dfs.ny.gov/consumer/fileacomplaint/htm and clicking on the consumer complaint form button.
2. The DFS will then seek to determine whether the property is subject to a mortgage, and, if so, identify the party responsible for inspecting and maintaining the property in question. Once identified, DFS will contact the party to ensure that it is complying with its obligation. A municipal Building Inspector may also file a complaint to add a property to the DFS list of vacant and abandoned properties.
3. DFS also created a toll-free hotline for neighbors and community residents to report a vacant and abandoned property or any concerns about a vacant and abandoned property.

¹⁸ RPAPL at § 1308(6).

¹⁹ *Id.* at § 1308(8)(a)

²⁰ *Id.* at § 1308(8)(b)

²¹ *Id.* at § 1308(8)(c).

²² *Id.*

a. 1-800-343-3736

E. Preemption of Local Regulations

1. Local Vacant Property registries are preempted as they apply to mortgagees²³.
2. Local Property maintenance regulations are preempted as they apply to mortgagees.²⁴
3. Municipalities are not preempted from regulating property owners, including bank-owned properties (as opposed to properties in which banks have only a mortgage interest).

IV. THE STATEWIDE VACANT AND ABANDONED PROPERTY REGISTRY
(the second major component)

- A. The Real Property Actions and Proceedings Law was amended in 2016 by adding Section 1310 which charges the New York State with maintaining a statewide vacant and abandoned property electronic Registry.
- B. Lenders must submit information within 21 days of learning the house is vacant and abandoned. If information changes, lenders must update DFS no later than 30 days after the change.
- C. Lenders must give at least the following information to DFS about the vacant and abandoned property:
 1. Name, address and contact information for the lender or the party responsible for maintaining the property; and
 2. Date when foreclosure was filed on property (if applicable, and
 3. Last known address and contact information of the mortgagor (the borrower)
- D. Information provided to DFS is deemed and treated as confidential.
- E. However, the Superintendent of DFS, may release the information if it is in the best interest of the public. Any release any such released information must continue to be treated confidentially by the parties receiving the information.²⁵

²³ RPAPL at § 1308(13).

²⁴ *Id.*

²⁵ *Id.* at § 1310(1).

F. DFS must provide any county, city, town or village official, upon written request, access to the Registry information specific to property located in the official's jurisdiction.²⁶

1. To access the Registry, elected officials must first register online to access the information available on the Registry. Once an elected official registers, the elected official may create five subaccounts to provide other municipal officials access to the Registry. The Registry is highly confidential and cannot be shared with the public. Only elected officials can obtain initial access. The Registry will include the vacant property address and the mortgagee's information.

G. Local Vacant and Abandoned Property Registry Preemption

1. Pursuant to RPAPL § 1310(5), local governments may not (1) impose a duty to register vacant and abandoned property, locally with the municipality in addition to the State Registry, or (2) establish or impose a penalty or other monetary obligation related to registering vacant and abandoned properties with respect to a state-or federally-chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property.
2. The preemption provisions found in RPAPL § 1310 do *NOT* preempt local governments from imposing vacant property registry requirements on property owners, including bank-owned properties (as opposed to properties in which banks have only a mortgage interest.)²⁷

V. EXPEDITED APPLICATION FOR JUDGMENT OF FORECLOSURE AND SALE FOR VACANT AND ABANDONED PROPERTY²⁸ (*the third major component*)

A. Mortgagee must file a foreclosure proceeding and wait for time for defendant's time to answer to expire.

1. Lender can make an application when:
 - a. A settlement conference is NOT scheduled

[1] The right to answer expires 20-30 days after service of foreclosure.

²⁶ *Id.*

²⁷ *Id.* at § 1310(5).

²⁸ *Id.* at § 1309.

b. A settlement conference IS scheduled

[1] The right to answer expires after the first settlement conference is held- assuming no homeowner appears.

B. Mortgagee files a motion or order to show cause (OSC) for judgment of foreclosure and sale on the grounds that the property is vacant and abandoned.²⁹ The motion or OSC must:

1. Include the last known address of the borrower and the property address,
2. Be served on the defendant regardless of whether the defendant filed an answer or appeared in the case,
3. State in bold letters on the first page:
 - a. “The plaintiff in this lawsuit has applied for an expedited judgment of foreclosure and sale of your property on the ground that it is vacant and abandoned.”
 - b. “Your property may be foreclosed upon and sold without any further proceedings if you do not respond to this motion by or on the return date which is ____.”
 - c. “You have the right to stay in your property until a court orders you to leave.” and
 - d. “You may respond to this motion by either submitting a written document or by appearing in court on the return date.”
4. Include an affidavit or other proof including at least proof of ownership of the mortgage and note, photographs, and utility records if available, and other documentation evidencing the property is vacant and abandoned,
5. State the principal balance and sums alleged due and include a “detailed and itemized account of each fee, each cost, and a calculation of interest accrued,” and
6. Request that the court compute the total amount due without the appointment of a referee.³⁰

²⁹ RPAPL at § 1309(1).

³⁰ *Id.* at § 1309(1)(a)-(d).

- C. The court must send a separate notice (prescribed by the Office of Court Administration or developed on its own) to the defendant letting them know that the plaintiff has filed an application to expedite the foreclosure and sale on the ground that the property is vacant and abandoned.³¹
- D. The court may require the plaintiff to appear and provide testimony, although it is not required.
- E. If the defendant fails to file an answer, notice of appearance, a written objection or fails to appear on the return date of the proceeding or otherwise fails to demonstrate any intention to contest the action, the court shall make a written finding “as soon as practicable” setting forth:
 - 1. The court’s determination that the property is vacant and abandoned, and the evidence relied upon, as provided by the plaintiff,
 - 2. Evidence reviewed and relied upon by the court to determine that the plaintiff is the owner of mortgage note, and
 - 3. The sums reviewed by the court and determined to be due and owed.³²
- F. A denial of a judgment of foreclosure and sale where the court does not find that the mortgaged property is vacant and abandoned shall not be deemed a judgment on the merits for purposes of any other proceeding with respect to such real property.³³
- G. Prohibition and Liability: Lenders are strictly prohibited from attempting to intimidate, coerce, or otherwise try to get a lawful occupant to vacate the property. A lender may be immune from liability if they are making “reasonable efforts” to comply with this section.
- H. Regulations: The Office of Court Administration (OCA) may adopt rules necessary to implement these procedures.³⁴

VI. TIMELINES FOR SALE OF PROPERTY

- A. In an attempt to ensure that foreclosed properties are being brought to sale timely rather than languishing as “zombie properties³⁵,” the Abandoned Property Relief Act of 2016,

³¹ *Id.* at § 1309(1).

³² *Id.* at § 1309(4).

³³ *Id.* at § 1309(5)(b).

³⁴ *Id.* at § 1309(7).

amends RPAPL § 1351, the provision that directs that a judgment in a mortgage foreclosure action must be sold within 90 days of the date of the judgment.

- B. The Abandoned Property Act also amends RPAPL § 1353, the provision that states after a foreclosure sale, the deed must be transferred to the purchaser to require that if the purchaser is the plaintiff from the foreclosure action, the purchaser must place the property on the market for sale within 180 days, or if repairs are being made, within 90 days from the date the repairs are completed, whichever comes first. A court may grant an extension for good cause.

VII. REAL PROPERTY ACTIONS AND PROCEEDINGS LAW ARTICLE 19-A. – A SPECIAL PROCEEDING TO CONVEY TITLE TO AN ABANDONED DWELLING TO A CITY, TOWN OR VILLAGE

- A. Initiating abandonment proceedings- making a finding of abandonment.
1. RPAPL only applies to residential property (but not to one-or two-family dwellings that are occupied by the owners).³⁶ RPAPL may not be used to deal with abandoned commercial property.
 2. A municipality's department of agency responsible for regulating the occupancy and maintenance of residential property is also responsible for initiating abandonment proceedings. The department must first make an official finding that a dwelling is abandoned.
 - a. Under RPAPL § 1971(1)(a), an occupied dwelling is abandoned if:
 - [1] The owner fails to collect rent or to institute summary proceedings for nonpayment and rent for three consecutive months; and
 - [2] The dwelling is dangerous to live, health or safety because of the owner's failure to maintain the dwelling, including, but not limited to,
 - [a] Failure to provide services
 - [b] Failure to make repairs, failure to supply janitorial service;
 - [c] Failure to purchase fuel;

³⁵ A zombie property is defined as a property encumbered with a mortgage that is delinquent which the owner has abandoned but which the mortgagee fails to foreclose on.

³⁶ RPAPL § 1970.

[d] Failure to other needed supplies; and

[e] Failure to pay utility bills.³⁷

b. Under RPAPL § 1971(1)(b), a vacant dwelling is abandoned if:

[1] Structure is not sealed or continuously guarded as required by law or;

[2] The Structure was sealed or is being continuously guarded by a person other than the owner, a mortgagee, lienor or agent thereof, and either

[a] Vacate order currently prohibits occupancy; or

[b] Property tax has been due and unpaid at least one year.³⁸

3. Once the department responsible for enforcing occupancy and maintenance laws finds that a dwelling is abandoned, it must then file in its records a certification containing the finding of abandonment and the facts on which the finding is based.³⁹
4. In addition, the department must immediately, prominently, and conspicuously attach to the dwelling a notice which states that the building has been found to be abandoned and that it is a crime to take, remove or otherwise damage any fixture or part of the building. The Certification must be affixed to the dwelling.⁴⁰

B. The Judicial Proceeding- Notifying Parties with an Interest in the Property.

1. After the department has found a dwelling to be abandoned, the department may then commence a proceeding, in Supreme Court in the county in which the dwelling is located, to finalize the vesting of the property's title with the municipality. Before the department may institute the proceeding, it must first file in the county clerk's office a copy of the certificate of abandonment and a notice that the department intends to commence the proceeding.⁴¹
2. The notice filed with the clerk must contain the names of the dwelling's owner and each mortgagee, lienor, and lessee of record, if any. The notice must be indexed by

³⁷ *Id.* at § 1971(1)(a).

³⁸ *Id.* at § 1971(1)(b).

³⁹ *Id.* at § 1971(2).

⁴⁰ *Id.*

⁴¹ *Id.* at § 1972(1).

the clerk as required by New York State Civil Practice Law and Rules § 6511 and has the same effect as a notice of pendency⁴².

- a. The note expires one year after its filing, unless the proceeding to convey title to the premise has been commenced within that period.⁴³
3. In addition, the department must also serve the property owner with a copy of the certification and a notice stating that proceedings pursuant to RPAPL Article 19-A may be instituted unless the owner notifies the department that the property has not been abandoned. Service upon the owner must be made:
 - a. Personally; or
 - b. By posting the notice in a conspicuous place upon the dwelling, and mailing a copy by registered or certified mail to the last known owner at their last known address.⁴⁴
4. The owner may, within 30 days of the notice being served, notify and demonstrate to the department that the conditions upon which the department made its findings of abandonment either do not exist or have been corrected.⁴⁵
5. Within five days of serving the owner, a copy of the certification must also be served on each mortgagee, lienor and lessee of record, if any, personally or by registered mail to the address set forth in the recorded instrument or , if no address appears therein, to the person at whose request the instrument was recorded.⁴⁶
 - a. The copy of the certification must, in the case of a mortgagee or lienor, be accompanied by a notice that proceedings pursuant to RPAPL Article 19-A may be instituted unless the mortgagee or lienor either commences proceedings or forecloses the mortgage or lien, or enters into an agreement with the department to bring the building into compliance with the applicable provisions of the law, within 15 days of the mailing.⁴⁷

C. Commencing the Judicial Proceeding.

⁴² RPAPL § 1972(1).

⁴³ *Id.*

⁴⁴ *Id.* at § 1972(2).

⁴⁵ *Id.*

⁴⁶ *Id.* at § 1972(3).

⁴⁷ *Id.* at § 1972(3).

1. Once the department has complied with all the notice requirements set forth in in RPAPL § 1972, the department may commence a proceeding in a court of competent jurisdiction in the county in which the dwelling is located, to vest title to the property in the municipality.⁴⁸
 - a. The petition commencing the proceeding must be accompanied by a copy of the certification and by an affidavit stating that the provisions of RPAPL § 1972 have been complied with and that no party served with the notice pursuant to such section has acted to remedy the abandonment.⁴⁹
 - b. A copy of the petition must be served on all persons who were notified pursuant to RPAPL § 1972 by personal service pursuant to CPLR Article 3.⁵⁰
 - c. A notice of pendency must also be filed pursuant to the provision of CPLR § 6501.⁵¹
 - d. Finally, a copy of the petition and notice stating that any person having or claiming an interest in the property may appear at the hearing to protect their interest must be posted in a conspicuous place on the premises.⁵²
2. The petition must be noticed to be heard not less than 15 days after service is completed on all parties to the proceeding.⁵³
3. A special proceeding pursuant to Article 19-A may also be commenced by order to show cause, in which case the manner of service and the time at which the order is returnable shall be prescribed therein by the court.
4. If any party to the proceeding contests the abandonment, the burden of proving that the dwelling is abandoned is on the municipality, and the court may only make a finding based on the facts before it.
5. The court may order a stay of the proceeding for such time as it deems proper to permit a mortgagee or lienor to foreclose their mortgage or lien or to permit the owner, mortgager or lienor to enter the property to make repairs, or if the property is vacant, to seal or continuously guard the building as required by the law.⁵⁴
 - a. The court may impose terms up on the owner, mortgagee or lienor as it deems proper for the issuance of the order, including the posting of a security.

⁴⁸ RPAPL § 1973(1).

⁴⁹ *Id.* at § 1973(2).

⁵⁰ *Id.* at § 1973(3).

⁵¹ *Id.*

⁵² *Id.*

⁵³ RPAPL § 1973(4).

⁵⁴ *Id.* at § 1974(2).

- b. At the expiration of the period prescribed by the court, the court may:
- [1] Extend the time the owner, mortgage or lienor have to comply with the order,
 - [2] Dismiss the proceeding if the owner, mortgagee or lienor have substantially complied with the order, or
 - [3] Issue a judgment as provided in RPAPL § 1974(3), if the court finds that the owner, mortgagee or lienor has failed to comply with the order.
- c. If the court finds that the dwelling is abandoned, the court must enter a final judgment in favor of the petitioner. The final judgment must direct the officer of the municipality in which the dwelling is located to execute and record a deed conveying title of the premise to the municipality 30 days after entry of judgment. Once the judgment is entered, the municipality is vested with titled to the property and is the property's legal owner.⁵⁵

⁵⁵ *Id.* at § 1974(3).

ADDENDUM

1. New York City Housing Preservation and Development
Press Release entitled “City Files Lawsuits Against Mortgage Holders of Zombie Homes”
2. Summons and Complaint – *City of New York v. Wells Fargo Home Inc.*, (Kings County Supreme Court, Index No. 518892-2018)
3. Town of Bedford, New York – Chapter 42 – Unsafe Buildings
4. Town of Bedford, New York – Chapter 96 – Property Maintenance

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For Immediate Release: Wednesday, September 19, 2018

Contact: General HPD Press Contact, hpdmedia@hpd.nyc.gov

City Files Lawsuits Against Mortgage Holders of Zombie Homes

Building on the work of HPD's Zombie Homes Initiative, the City of New York filed five lawsuits against non-compliant mortgage holders, seeking more than \$1 million, for neglecting their properties

NEW YORK, NY – The New York City Department of Housing Preservation and Development (HPD) joins the New York City Law Department to announce that the City has filed lawsuits against the mortgage holders of five zombie properties—vacant, distressed, one-to-four family homes with delinquent mortgages—throughout Brooklyn. These cases were filed leveraging data collected by HPD's Zombie Homes Initiative, which works with the New York City Law Department to hold non-compliant banks and mortgage servicers accountable for failing to maintain vacant properties on the brink of foreclosure.

The City is suing for over \$1 million in penalties under the 2016 New York State Zombie Property and Foreclosure Prevention Act and to reimburse the City for emergency repair and maintenance costs incurred since the property was designated as abandoned.

"Zombie homes are blight on our neighborhoods and contribute to the city's housing shortage. Through HPD's Zombie Homes Initiative, we are holding mortgage holders accountable and intervening at properties that pose public safety risks, while also conducting extensive outreach to help homeowners who may be on the brink of foreclosure," said **HPD Commissioner Maria Torres-Springer**. "I applaud the Law Department for their efforts and thank our partners at LISC and the New York State Attorney General's Office for their leadership in the fight to address zombie homes and maintain strong and healthy New York City neighborhoods."

"Through the funding my office secured in our settlements with the big banks, we've been able to empower communities across the state to fight the devastating effects of the foreclosure crisis and housing downturn," said **New York State Attorney General Barbara D. Underwood**. "I'm proud that these funds have made it possible for New York City to tackle zombie homes and hold mortgage holders accountable to ensure stronger and safer communities."

"HPD's Zombie Homes Initiative has achieved substantial success ensuring that banks fulfill their obligations to maintain vacant properties subject to foreclosure. But a stubborn few financial institutions have ignored HPD's notices and have failed to meet their legal obligations to prevent these properties from becoming community eyesores. Consequently, the City has filed the first round of suits to ensure compliance and to seek statutory penalties," said **New York City Corporation Counsel Zachary W. Carter**.

"In a city that desperately needs to uncover every possible housing resource, HPD has accomplished so much, so quickly, with its LISC zombie grant," said **Helene Caloir, Director of LISC's NYS Housing Stabilization Fund**. "The agency has succeeded in identifying many zombie homes, taking legal action against a first group of lienholders who were failing to maintain their vacant houses, and helping tens of thousands of at-risk homeowners avoid foreclosure."

HPD's Zombie Homes Initiative was launched in 2017 through funding from the Local Initiatives Support Corporation (LISC), which originated from settlement agreements with banks obtained by the New York State Attorney General's Office. Over the past year, the Initiative has worked with City and State agencies, as well as community stakeholders, to identify zombie homes in Brooklyn, Queens, Staten Island, and the Bronx to create a database of properties that are likely to be zombie homes, design innovative ways to breathe new life into these properties, and connect residents at risk of losing their homes with foreclosure prevention resources.

Since its inception, HPD's Zombie Homes Initiative has identified up to 4,000 zombie homes throughout the city, conducted more than 500 surveys of likely zombie homes, sent 26,000 mailings and made 15,000 robocalls to homeowners on the brink of foreclosure, and initiated City interventions on over 125 properties. These interventions included securing open and accessible properties by HPD's Office of Enforcement and Neighborhood Services, lot clean-ups conducted by the Department of Sanitation, and inspections by the Department of Buildings.

"Vacant and abandoned homes undermine property values and sow the seeds of neighborhood decay. The Department of Financial Services is pleased to have provided assistance to HPD and looks forward to continuing to work with all municipalities throughout the state to erase the blight of zombie homes from New York," said **New York State Department of Financial Services Superintendent Maria T. Vullo**.

"At a time when creating and maintaining affordable housing remains one of our most urgent priorities, I'm pleased that HPD's 'Zombie Homes' initiative is achieving meaningful results in

turning vacant eyesores into hope for so many families and individuals in New York City,” said **Assemblyman Steven Cymbrowitz (D-Brooklyn), Chair of the Assembly’s Housing Committee**.

“Zombie homes serve as a stark reminder that for some New Yorkers, the housing crisis that began in 2008 still isn’t over. Just last year, the foreclosure rate in our city reached its highest level since 2009 – and the communities I represent have been particularly hard-hit. At a time when our homeowners are under increasing financial stress and these deteriorating properties are blighting communities, we need to use every tool in our regulatory toolbox to hold mortgage services and lenders accountable. I applaud HPD and the Law Department on the aggressive action they are taking today, and look forward to working with them to end the foreclosure epidemic plaguing our city” said **Council Member Rafael Espinal**.

With support from HPD, the New York City Law Department has filed lawsuits against non-compliant mortgage holders with the New York State Supreme Court on the following Brooklyn zombie homes:

Zombie Home	Mortgage Holder
581 Saratoga Avenue	Rushmore Loan Management Services, LLC
31 Essex Street	Ocwen Financial Corporation
1554 Dumont Avenue	Seterus, Inc.
1889 Bergen Street	CitiMortgage, Inc.
1831 Park Place	Wells Fargo Bank, NA

The Zombie Homes Initiative surveyed likely zombie homes to assess their vacancy status and maintenance conditions and sent warning letters to lenders and mortgage servicers that failed to maintain these properties according to State law. The City brought suits against the lenders and mortgage servicers that were not in compliance after receiving the notices.

The Zombie Homes Initiative’s work furthers the efforts of the Zombie Property and Foreclosure Prevention Act to curb the threat that zombie homes pose to communities. The law requires mortgage holders to maintain properties they know to be vacant and abandoned, or face a civil penalty of \$500 per property, per day, which the New York City Law Department can enforce. Any penalties won will be retained by the City, and the City will also seek to require the lenders and mortgage servicers to bring properties into compliance and to expedite their foreclosures.

The Zombie Homes Initiative pilot concluded in July 2018, but HPD will continue to work with the Law Department to evaluate which of the remaining properties surveyed are appropriate for legal enforcement. HPD will also continue to track and survey zombie homes to identify properties that are not being maintained in accordance with the law. Additionally, HPD will explore avenues for working with the State Legislature to strengthen the Zombie Property and Foreclosure Prevention Act.

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The New York City Department of Housing Preservation and Development (HPD) is the nation's largest municipal housing preservation and development agency. Its mission is to promote quality housing and diverse, thriving neighborhoods for New Yorkers through loan and development programs for new affordable housing, preservation of the affordability of the existing housing stock, enforcement of housing quality standards, and educational programs for tenants and building owners. HPD is tasked with fulfilling Mayor de Blasio's Housing New York Plan which was recently expanded and accelerated through *Housing New York 2.0* to complete the initial goal of 200,000 homes two years ahead of schedule—by 2022, and achieve an additional 100,000 homes over the following four years, for a total of 300,000 homes by 2026. For full details visit www.nyc.gov/hpd and for regular updates on HPD news and services, connect with us on Facebook, Twitter, and Instagram @NYCHousing.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- X
CITY OF NEW YORK,

Plaintiff,

v.

WELLS FARGO HOME INC.

Defendant.
----- X

SUMMONS

Index No. _____

Plaintiff's Address:
100 Church Street
New York, New York 10038

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within the time provided by law as noted below. If you fail to answer this summons, a judgment will be taken against you for the relief demanded in the complaint, together with interest and the costs of this action.

Dated: September 19, 2018
Defendant's Address for Service:
New York Department of State
One Commerce Plaza
99 Washington Avenue
Albany, New York 12231

Attorneys for Plaintiff(s):
LINEBARGER GOGGAN BLAIR &
SAMPSON, LLP
61 BROADWAY, SUITE 2600
NEW YORK, NY 10006
TELEPHONE: 212/518-0412
FAX: 212/518-0420

NOTE: The law provides that:

- 1) If this summons is served by delivery to you personally within the State of New York, you must answer within 20 days after such service; or
- 2) If this summons is served by delivery to any person other than you personally, or is served outside the State of New York, or by publication, or by any means other than personal delivery to you within the State of New York, you are allowed 30 days after service is complete within which to answer.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- X
CITY OF NEW YORK,

Plaintiff

VERIFIED COMPLAINT

Index No. _____

v.

Filed: _____

WELLS FARGO HOME INC.

Defendant.
----- X

Plaintiff, City of New York ("City"), by its attorneys, Linebarger Goggan Blair & Sampson, LLP., Special Assistant Corporation Counsel for the City of New York, for its complaint against Defendant, on personal knowledge as to facts relating to the City of New York and on information and belief as to other allegations, respectfully alleges as follows:

PARTIES

1. The City of New York is a municipal corporation organized pursuant to the laws of the State of New York.

2. Wells Fargo Home Inc., (the "Defendant") is a domestic corporation incorporated under the laws of the State of New York.

PRELIMINARY STATEMENT

3. The Legislature enacted the "Abandoned Property Neighborhood Relief Act of 2016", to respond to the blight caused by vacant and abandoned properties in New York that are in foreclosure. Chapter 73, Part Q of the Laws of 2016, codified at New York Real Property Actions and Proceedings Law (RPAPL) §§1308-1310. The law requires mortgagees and servicers to maintain vacant properties in foreclosure. Required maintenance includes a variety of steps to ensure that the property does not present significant health or safety issues and compliance with multiple provisions of the New York State Property

Maintenance Code. RPAPL §1308(4, 7). RPAPL §1308(8) authorizes municipalities to bring an action to enforce the law and to seek penalties. Properties subject to the law are referred to as Zombie Properties.

FACTS

4. The real property the subject of this matter is a residential property located at 1831 Park Place, Brooklyn, NY 11233 (the "Subject Property") and is encumbered by an existing mortgage filed and recorded and serviced by Defendant.

5. The property owner has defaulted on the mortgage and/or abandoned the premises, rendering the Subject Property vacant and abandoned pursuant to RPAPL §1309.

6. Defendant has registered the Subject Property with the New York Department of Financial Services as required by RPAPL §1310.

7. Defendant has not completed foreclosure proceedings on the Subject Property nor maintained or secured the Subject Property as required by RPAPL §1308.

8. Pursuant to RPAPL §1308(1) Defendant shall complete an exterior inspection of the Subject Property to determine occupancy within 90 days of the borrower's delinquency. Throughout the delinquency of the loan, the Defendant shall conduct an exterior inspection every 25 to 35 days.

9. If Defendant has a reasonable basis to believe the Subject Property is vacant or abandoned, Defendant shall secure and maintain the property pursuant to RPAPL §1308(3)-(7).

10. Defendant has failed to inspect, maintain or secure the Subject Property.

11. The City of New York, acting through its Department of Housing Preservation and Development, has established the Zombie Homes Initiative to ensure compliance with the law and enforce it as necessary.

12. On September 20, 2017 and again on March 12, 2018, Plaintiff inspected the Subject Property, confirmed that the property was vacant and/or abandoned and found multiple code and other violations of RPAPL § 1308(4, 7).

13. The violations have not been corrected to date.

14. Plaintiff sent notice to Defendant on January 23, 2018 and again on February 26, 2018 providing Defendant with notice of the code violations and advising of its failure to comply with the provisions of RPAPL. Plaintiff further advised of its intent to enforce the provisions of RPAPL through possible legal action to secure compliance, to recover any costs incurred by the City to maintain the property and to recover civil penalties in an amount of up to \$500 per day. Defendant did not respond and has failed to inspect, maintain or secure the Subject Property.

15. On June 21, 2018 Plaintiff sent Defendant further notice of its intent to pursue penalties pursuant to §1308 of the RPAPL. Defendant failed to respond to Plaintiff's notice.

16. On August 20, 2018, Plaintiff notified the Department of Financial Services of its intent to bring an action against Defendant under the Zombie Property and Foreclosure law.

CAUSE OF ACTION AND REQUEST FOR RELIEF

17. Plaintiff brings this action pursuant to RPAPL §1308(8)(c) to enforce the obligations as described therein. Plaintiff seeks an order directing Defendant to comply with all of the requirements of RPAPL §§1308-1310, including properly maintaining the Subject Property, making all necessary repairs and other actions with respect to the Subject Property as required by those provisions and all other applicable codes, and expediting the foreclosure of the Subject Property as provided for in RPAPL §1309.

18. Plaintiff also seeks to recover any costs it has incurred or may incur to maintain the Subject Property.

19. Plaintiff also requests the imposition of civil penalties in the amount of up to \$500 for each day code violations existed and continue to exist on the Subject Property beginning January 23, 2018.

WHEREFORE, the City demands judgment against the Defendant:

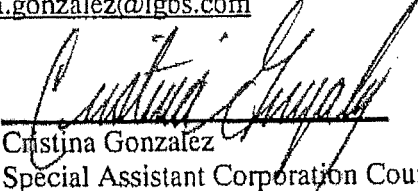
A. Ordering it to maintain the Subject Property as required by law, including the correction of any and all code violations against the Subject Property;

- B. Expediting the foreclosure of the Subject Property as may be necessary;
- C. Reimbursing Plaintiff for any costs it has incurred or may incur to maintain the Subject Property;
- D. Entering a judgment against Defendant for civil penalties in the amount of up to \$500 per day beginning January 23, 2018; costs and disbursements of this action; and
- E. Providing such other relief as this Court may deem just and proper.

Dated: September 19, 2018

Linebarger Goggan Blair & Sampson, LLP
Special Assistant Corporation Counsel of the
City of New York
Attorney for the City of New York
61 Broadway, Suite 2600
New York, NY 10006
Tel. 212-518-0412
Fax. 212-518-0420
Cristina.gonzalez@lgbs.com

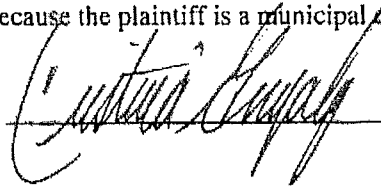
By:


Cristina Gonzalez
Special Assistant Corporation Counsel

VERIFICATION

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

CRISTINA GONZALEZ, being duly sworn, says that he/she is a Special Assistant Corporation Counsel of the office of Zachary W. Carter, Corporation Counsel of the City of New York; that the City of New York is the plaintiff in the within action; that the allegations in the Complaint as to plaintiff are true to his/her knowledge; that the matters alleged therein upon information and belief, he/she believes to be true; and that the basis of his/her knowledge is the books and records of the plaintiff and/or statements made to him/her by officers or employees thereof. This verification is not made by the plaintiff because the plaintiff is a municipal corporation.



Sworn to before me this
19 day of September, 2018


NOTARY PUBLIC

DANIEL A SANTIAGO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SA8350992
Qualified In Kings County
My Commission Expires 11-21-2020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

CITY OF NEW YORK,

Plaintiff,

v.

WELLS FARGO HOME INC.

Defendant.

SUMMONS

Index No. _____

Plaintiff's Address:
100 Church Street
New York, New York 10038

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within the time provided by law as noted below. If you fail to answer this summons, a judgment will be taken against you for the relief demanded in the complaint, together with interest and the costs of this action.

Dated: September 19, 2018
Defendant's Address for Service:
New York Department of State
One Commerce Plaza
99 Washington Avenue
Albany, New York 12231

Attorneys for Plaintiff(s):
LINEBARGER GOGGAN BLAIR &
SAMPSON, LLP
61 BROADWAY, SUITE 2600
NEW YORK, NY 10006
TELEPHONE: 212/518-0412
FAX: 212/518-0420

NOTE: The law provides that:

- 1) If this summons is served by delivery to you personally within the State of New York, you must answer within 20 days after such service; or
- 2) If this summons is served by delivery to any person other than you personally, or is served outside the State of New York, or by publication, or by any means other than personal delivery to you within the State of New York, you are allowed 30 days after service is complete within which to answer.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

CITY OF NEW YORK,

Plaintiff

v.

WELLS FARGO HOME INC.

Defendant.

VERIFIED COMPLAINT

Index No. _____

Filed: _____

Plaintiff, City of New York ("City"), by its attorneys, Linebarger Goggan Blair & Sampson, LLP., Special Assistant Corporation Counsel for the City of New York, for its complaint against Defendant, on personal knowledge as to facts relating to the City of New York and on information and belief as to other allegations, respectfully alleges as follows:

PARTIES

1. The City of New York is a municipal corporation organized pursuant to the laws of the State of New York.

2. Wells Fargo Home Inc., (the "Defendant") is a domestic corporation incorporated under the laws of the State of New York.

PRELIMINARY STATEMENT

3. The Legislature enacted the "Abandoned Property Neighborhood Relief Act of 2016", to respond to the blight caused by vacant and abandoned properties in New York that are in foreclosure. Chapter 73, Part Q of the Laws of 2016, codified at New York Real Property Actions and Proceedings Law (RPAPL) §§1308-1310. The law requires mortgagees and servicers to maintain vacant properties in foreclosure. Required maintenance includes a variety of steps to ensure that the property does not present significant health or safety issues and compliance with multiple provisions of the New York State Property

Maintenance Code. RPAPL §1308(4, 7). RPAPL §1308(8) authorizes municipalities to bring an action to enforce the law and to seek penalties. Properties subject to the law are referred to as Zombie Properties.

FACTS

4. The real property the subject of this matter is a residential property located at 1831 Park Place, Brooklyn, NY 11233 (the "Subject Property") and is encumbered by an existing mortgage filed and recorded and serviced by Defendant.

5. The property owner has defaulted on the mortgage and/or abandoned the premises, rendering the Subject Property vacant and abandoned pursuant to RPAPL §1309.

6. Defendant has registered the Subject Property with the New York Department of Financial Services as required by RPAPL §1310.

7. Defendant has not completed foreclosure proceedings on the Subject Property nor maintained or secured the Subject Property as required by RPAPL §1308.

8. Pursuant to RPAPL §1308(1) Defendant shall complete an exterior inspection of the Subject Property to determine occupancy within 90 days of the borrower's delinquency. Throughout the delinquency of the loan, the Defendant shall conduct an exterior inspection every 25 to 35 days.

9. If Defendant has a reasonable basis to believe the Subject Property is vacant or abandoned, Defendant shall secure and maintain the property pursuant to RPAPL §1308(3)-(7).

10. Defendant has failed to inspect, maintain or secure the Subject Property.

11. The City of New York, acting through its Department of Housing Preservation and Development, has established the Zombie Homes Initiative to ensure compliance with the law and enforce it as necessary.

12. On September 20, 2017 and again on March 12, 2018, Plaintiff inspected the Subject Property, confirmed that the property was vacant and/or abandoned and found multiple code and other violations of RPAPL § 1308(4, 7).

13. The violations have not been corrected to date.

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CAUSE OF ACTION AND REQUEST FOR RELIEF

17. Plaintiff brings this action pursuant to RPAPL §1308(8)(c) to enforce the obligations as described therein. Plaintiff seeks an order directing Defendant to comply with all of the requirements of RPAPL §§1308-1310, including properly maintaining the Subject Property, making all necessary repairs and other actions with respect to the Subject Property as required by those provisions and all other applicable codes, and expediting the foreclosure of the Subject Property as provided for in RPAPL §1309.

18. Plaintiff also seeks to recover any costs it has incurred or may incur to maintain the Subject Property.

19. Plaintiff also requests the imposition of civil penalties in the amount of up to \$500 for each day code violations existed and continue to exist on the Subject Property beginning January 23, 2018.

WHEREFORE, the City demands judgment against the Defendant:

A. Ordering it to maintain the Subject Property as required by law, including the correction of any and all code violations against the Subject Property;

- B. Expediting the foreclosure of the Subject Property as may be necessary;
- C. Reimbursing Plaintiff for any costs it has incurred or may incur to maintain the Subject Property;
- D. Entering a judgment against Defendant for civil penalties in the amount of up to \$500 per day beginning January 23, 2018; costs and disbursements of this action; and
- E. Providing such other relief as this Court may deem just and proper.

Dated: September 19, 2018

Linebarger Goggan Blair & Sampson, LLP
Special Assistant Corporation Counsel of the
City of New York
Attorney for the City of New York
61 Broadway, Suite 2600
New York, NY 10006
Tel. 212-518-0412
Fax. 212-518-0420
Cristina.gonzalez@lgbs.com

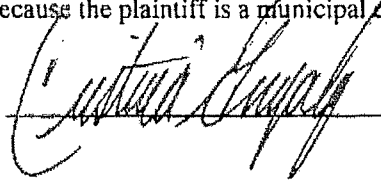
By:


Cristina Gonzalez
Special Assistant Corporation Counsel

VERIFICATION

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

CRISTINA GONZALEZ, being duly sworn, says that he/she is a Special Assistant Corporation Counsel of the office of Zachary W. Carter, Corporation Counsel of the City of New York; that the City of New York is the plaintiff in the within action; that the allegations in the Complaint as to plaintiff are true to his/her knowledge; that the matters alleged therein upon information and belief, he/she believes to be true; and that the basis of his/her knowledge is the books and records of the plaintiff and/or statements made to him/her by officers or employees thereof. This verification is not made by the plaintiff because the plaintiff is a municipal corporation.



Sworn to before me this
19 day of September, 2018


NOTARY PUBLIC

DANIEL A SANTIAGO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SA6350992
Qualified in Kings County
My Commission Expires 11-21-2020

*Town of Bedford, NY
Tuesday, June 4, 2019*

Chapter 42. Buildings, Unsafe

[HISTORY: Adopted by the Town Board of the Town of Bedford 4-19-1994 as L.L. No. 1-1994. Amendments noted where applicable.]

GENERAL REFERENCES

Electrical inspections — See Ch. 52.

Uniform Fire Prevention and Building Code — See Ch. 59.

§ 42-1. Purpose.

Unsafe buildings pose a threat to public health, safety and welfare. It is the purpose of this chapter to provide for the safety, health, protection and general welfare of persons and property in the Town of Bedford by requiring such unsafe buildings to be repaired or demolished and removed.

§ 42-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BUILDING

Any structure or edifice or portion thereof presently or formerly used for residential, business, industrial, agricultural, recreational or other purpose, whether occupied or vacant.

BUILDING INSPECTOR

The Building Inspector or Assistant Building Inspector of the Town of Bedford or such other person appointed by the Town Board to enforce the provisions of this chapter.

PORTION OF BUILDING

Any debris, rubble or parts of buildings which remain on the ground or on the premises after demolition, reconstruction, fire or other casualty.

UNSAFE BUILDING

Any structure or edifice or portion thereof which:

- A. Because of its condition, is or may become insecure structurally or otherwise deteriorated and is or may become dangerous to the public.
- B. Is open at the doorways or windows or walls, making it accessible.
- C. Is or may become a place of rodent infestation.
- D. Consists of debris, rubble or parts of buildings left on the ground after demolition, reconstruction, fire or other casualty.

- E. Presents any other danger to the health, safety and general welfare of the public.

§ 42-3. Maintenance of buildings in unsafe condition prohibited.

It shall be unlawful for any owner, tenant or occupant of any building or portion of any building, and the owner, tenant or occupant of the land upon which the same is situated, to maintain such building or portion of such building in any condition or manner which shall be unsafe as defined in § 42-2 of this chapter.

§ 42-4. Investigation and report.

When, in the opinion of the Building Inspector or of the Assistant Building Inspector, any building located in the Town of Bedford shall be determined to be dangerous or unsafe to the public as defined in § 42-2, the Building Inspector or Assistant Building Inspector shall make a formal inspection thereof and report in writing to the Town Board his findings and recommendations in regard to the building's removal or repair.

§ 42-5. Order to repair; hearing.

The Town Board shall thereupon consider said report, and, if it finds that said building is dangerous and unsafe to the public, it shall, by resolution, order its repair if the same can be safely repaired and, if not, its removal and demolition and shall further order that a hearing be held before the Town Board at a time and place therein specified and on at least five (5) days' notice to the owner of the building and the owner, tenant or occupant of the land upon which the same is situated or persons having an interest therein to determine whether said order to repair or remove shall be affirmed or modified or vacated and, in the event of modification or affirmance, to assess all costs and expenses incurred by the town in the repair or removal of such building against the land on which said building is located.

§ 42-6. Contents of notice.

The notice shall contain the following:

- A. The name of the owner or person in possession as appears from the tax and deed records.
- B. A brief description of the premises and its location.
- C. A description of the building which is unsafe or dangerous and a statement of the particulars in which it is unsafe or dangerous.
- D. An order requiring the same to be made safe and secure or to be removed.
- E. That the securing or removal of said building shall commence within a specified number of days of the service of the notice and shall be completed within a specified number of days thereafter.
- F.

The time and place of the hearing to be held before the Town Board at which hearing the owner or occupant shall have the right to contest the order and findings of the Town Board.

- G. That in the event that such owner, occupant or other person having an interest in said premises shall fail to contest such order and fail to comply with the same, the Town Board will order the repair or removal of such building by the town and that the town will assess all costs and expenses incurred in such repair or removal against the land on which said building is located.
- H. That in any case where a building which is required to be made safe and secure under this chapter is made safe by the boarding up thereof, the material used for such boarding up shall be painted, as near as practicable, the same color as the building.

§ 42-7. Service and filing of notice.

- A. A copy of said notice shall be personally served upon the owner or one (1) of the owners, executors, legal representatives, agents, lessees or other persons having a vested interest in the premises as shown on the town tax records or in the records of the Westchester County Clerk's office.
- B. If no such person can be reasonably found for personal service, then a copy of said notice shall be mailed to such person by registered mail addressed to his or her last known address as shown on said records and by personally serving a copy of said notice upon any adult person residing in or occupying said premises and by securely affixing said notice upon said building.
- C. A copy of said notice shall be filed in the Westchester County Clerk's office, which notice shall be filed in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules (CPLR) and shall have the same effect as a notice of pendency as therein provided. A notice so filed shall be effective for a period of one (1) year from the date of the filing. It may be vacated upon an order of a Judge or Justice of a court of record or upon the written consent of the Town Attorney of the Town of Bedford. The Westchester County Clerk shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or of a certified copy of such order.

§ 42-8. Hearing.

The Town Board shall conduct the public hearing at the time and place specified in the notice to repair or demolish. It may adjourn the hearing from time to time until all interested parties are heard and until the hearing is completed. At the conclusion of the hearing, the Town Board shall determine by resolution to revoke the order to repair or remove, modify said order or continue and affirm said order and direct the owner or other persons to complete the work within the time specified in the order or such other time as shall be determined by the Town Board.

§ 42-9. Failure to comply; exceptions; contract award.

In the event of the refusal, failure or neglect of the owner or the person so notified to comply with said order of the Town Board within the time specified in said order and after the public hearing, the Town Board shall order that such building be made safe and secure or removed and demolished by town employees or by independent contractors. Except in emergency cases as herein provided, any contract for repair or demolishing and removal of a building in excess of five thousand dollars (\$5,000.) shall be awarded through competitive bidding.

§ 42-10. Assessment of expenses.

All costs and expenses incurred by the town in connection with proceedings set forth in this chapter, including the cost of actually making safe, securing or removing said dangerous and unsafe condition, shall be assessed against the land on which the dangerous or unsafe condition is or was located.

§ 42-11. Emergency situations.

Where it reasonably appears that there is present a clear and imminent danger to the life, safety or health of any person or property unless an unsafe building is immediately repaired and secured or demolished, the Town Board may by resolution authorize the Building Inspector to immediately cause the repair or demolition of such unsafe building. The expense of such repair or demolition shall be a charge against the land on which it is located and it shall be assessed, levied and collected as against said land.

§ 42-12. Application for court order.

The Town Board, in its discretion, may elect to apply to the Supreme Court of the State of New York for an order directing that the building be repaired and secured or demolished and removed.

§ 42-13. Special proceeding for costs.

The Town Board may commence a special proceeding pursuant to § 78-b of the General Municipal Law to collect the costs of demolition, including reasonable and necessary legal expenses.

§ 42-14. Severability.

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter but shall be confined in this operation to the clause, sentence, paragraph, section or part thereof directly involved in a litigation in which said judgment shall have been rendered.

*Town of Bedford, NY
Wednesday, June 5, 2019*

Chapter 90. Property Maintenance

[HISTORY: Adopted by the Town Board of the Town of Bedford 12-1-2015 by L.L. No. 14-2015. Amendments noted where applicable.]

GENERAL REFERENCES

Unsafe buildings — See Ch. 42.

Littering — See Ch. 78.

§ 90-1. Purpose.

The existence of unsanitary or deteriorating building and property conditions can endanger the well-being of the public, jeopardize the security of private property, and adversely affect the value of surrounding buildings and properties. It is the purpose of this chapter to provide basic and uniform standards governing the maintenance, appearance and condition of all buildings and properties within the Town to promote the economic well-being of the Town and ensure the health, safety and welfare of its residents.

§ 90-2. Compliance required.

- A. It is the responsibility of every owner, occupant or tenant to keep their property in a well maintained and sanitary appearance and condition so as not to adversely affect the value and condition of surrounding properties and the neighborhood.
- B. It shall be unlawful for the owner, tenant, or occupant of any property to maintain any of the following conditions on their property:
 - (1) Attractive nuisances, including, but not limited to, abandoned, broken or neglected structures, equipment, excavations, wells or shafts.
 - (2) Litter and debris.
 - (3) Overgrown and unsightly conditions resulting from overgrown grass or vegetation on established lawns.
 - (4) Inoperative or unlicensed motor vehicles parked, kept, or stored on any property or motor vehicles in disrepair, or in the process of being stripped or dismantled.
 - (5) Broken or unsecured:
 - (a) Roofs;
 - (b) Gutters;
 - (c) Siding;

- (d) Chimneys;
 - (e) Fencing;
 - (f) Outdoor lighting fixtures;
 - (g) Pools or spas;
 - (h) Accessory structures;
 - (i) Windows;
 - (j) Doors, exits, or entryways; or
 - (k) Any other structural element.
- (6) Broken or exposed electrical wires or electrical equipment.
- (7) Unfinished or abandoned construction which has not been issued a current valid building permit.
- (8) Graffiti or signs, not in compliance with the Town Zoning Code,^[1] on the exterior of any building, fence or other structure in any front yard, side yard, rear yard or vacant lot.
- [1] *Editor's Note: See Ch. 125, Zoning.*
- (9) Unresolved fire damage.
- (10) Presence of vermin, rodent harborage or infestation.
- (11) Otherwise failing to be in compliance with any other provision of the Codes of the Town of Bedford or Property Maintenance Code of the State of New York.

§ 90-3. Penalties for offenses.

Any owner or occupant who violates any provisions of the Property Maintenance Code of the State of New York or this chapter shall be subject to a penalty of up to \$200 for each day during which such violation continues.

§ 90-4. Compliance procedures.

Pursuant to the authority provided in Sections 106 and 301 of the Property Maintenance Code of the State of New York, the following compliance procedures are established:

- A. If an owner or occupant of such property fails to maintain property in accordance with the provisions of Property Maintenance Code or this chapter, the Building Inspector shall serve upon such owner or occupant by certified mail, return receipt requested, and by ordinary mail at the owner's or occupant's last-known address, a written notice of violation and an order to correct such violation within 30 days.
- B. If an owner or occupant fails, neglects, or refuses to comply with the notice of violation within 30 days of service of the notice of violation as set forth in Subsection A above, the

Building Inspector shall report in writing to the Town Board his findings and recommendations in regard to the correction of such violation. Thereafter, the Town Board shall hold a public hearing in regard to the violation. The public hearing shall be held upon notice served upon the owners, occupants, or other persons having an interest in the premises as shown on the Town tax records or on the records of the Westchester County Clerk's office. The notice shall be mailed to such person by certified mail, return receipt requested, and by ordinary mail at the last known address as shown on the Town of Bedford tax records, advising such property owner or occupant of their right to attend the public hearing before the Town Board to contest such violation.

- C. If after the public hearing the owner or occupant fails to correct or remove such violation within 10 days of the public hearing, the Town may correct or remove the violation. All costs and expenses incurred by the Town in connection with this chapter, including all penalties, shall be charged against the owner of the property. An itemized memorandum of the costs and expenses incurred by the Town shall be mailed to the persons charged with the violation by certified mail, return receipt requested. The owner or occupant shall pay to the Town all costs and expenses incurred by the Town in curing such violation and all penalties associated with the violation within 30 days of the receipt of the itemized memorandum of costs.
- D. In the event that the amount due to the Town by the owner or occupant is not paid within 30 days following the mailing of the charges such costs shall become and be a lien upon the property that was the subject of the violation and shall be added to and become part of the property taxes to be assessed and levied upon such property by the Town and shall bear interest at the same rate as and be collected and enforced in the same manner as unpaid taxes.

§ 90-5. Supplemental remedies.

In addition to the remedies set forth in this chapter, the Town reserves the right to pursue any and all remedies available, including, but not limited to, those set forth in Articles 13 and 19-A of the New York State Real Property Actions and Proceedings Law, and the Building Inspector is authorized to take any and all action specified in these articles.

§ 90-6. Emergency situation.

Where it reasonably appears that there is present a clear and imminent danger to the life, safety or health of any person or property unless action authorized under this chapter is taken immediately, then the Building Inspector shall have the power to abate, correct or remove the emergency, and any costs and expenses incurred by the Town abating, correcting or removing the emergency shall be charged to the owner of the property at issue. In the event that the amount due to the Town by the owner is not paid within 30 following notification by the Town, the costs and expenses shall become and be a lien upon the property involved and shall be added to and become part of the property taxes next to be assessed and levied upon such property by the Town and shall bear interest at the same rate as and be collected and enforced in the same manner as taxes.

§ 90-7. Severability.

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter but shall be confined in this operation to the clause, sentence, paragraph, section or part thereof directly involved in a litigation in which said judgment shall have been rendered.

§ 90-8. When effective.

This chapter shall be effective immediately upon filing with the Secretary of State.

Zombie Property and Foreclosure Prevention Act

Materials by:

Rebecca Caico, Esq.

Heather Rogers, Esq.

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Overview

Who?

- Communities in NY
- Homeowners in NY
- Banks and Servicers doing business in NY
- Courts in NY

What?

- Requires lenders to track and maintain vacant & abandoned (V & A) properties
- Creates a registry and hotline for V & A properties
- Creates a faster foreclosure process for lenders to use for V & A properties
- Changes the foreclosure process by adding protections for homeowners

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Overview

Where?

- Changes were made to following NY laws –
 - RPAPL § 1303, 1304, 1308, 1309, 1310, 1351, 1353
 - CPLR Article 34 Rule 3408

When?

- Signed by Governor Cuomo June 23, 2016
- Went into effect December 20, 2016

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Overview

Why?



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Lenders Must Track and Maintain V & A Properties

RPAPL 1308

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Maintenance of V & A Property

■ Which lenders must adhere to the maintenance requirement?

- All 1st lien mortgage holders for 1-4 family homes UNLESS
 - Lender originates, owns, services AND maintains a portion of their mortgages
- AND
- Lender has less than 3/10th of 1% of the total loans in the state as of December 31st, 2014

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Maintenance of V & A Property

▪ Servicer's Obligation to Inspect and Secure Property

- Within **90** days of a borrower becoming delinquent, the lender must inspect exterior of property
- Every **25-35** days, at different times of the day after the first inspection lender must conduct additional inspections
- Within **7** days of determining the house is V & A, lender must post a notice with the lender's contact information on the property
- After **7** days from when notice is posted and evidence continues that home is V & A, lender must secure the property

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Maintenance of V & A Property

When a Lender Shall Determine a House is V & A -

- Lender has conducted 3 inspections 25-35 days apart AND at different times of the day AND found evidence that home is V & A
- OR
- A court or government entity has formally determined, with notice to the borrower, that the property is V & A
- OR
- Each borrower has separately provided a sworn statement stating their intent to vacate and abandon the property

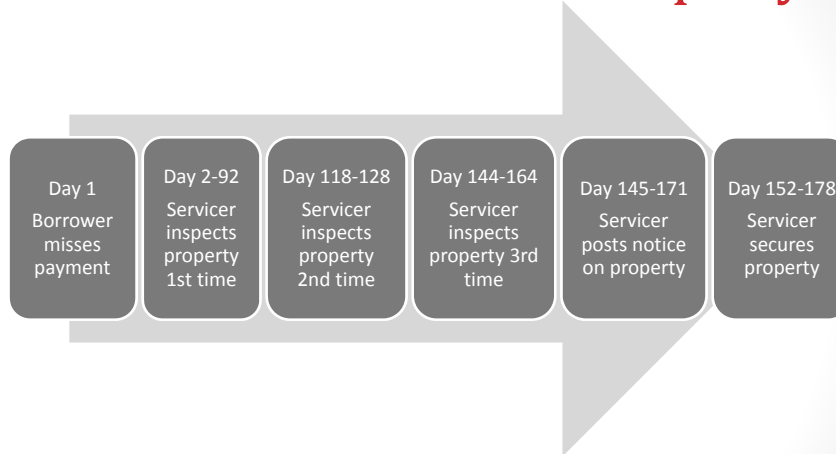
When a Lender Shall Secure a V & A Property -

- After the notice is posted on the property for 7 days and no borrower or occupant contacts the servicer about the property and the property continues to show evidence of vacancy
- OR
- Immediately if there is emergency condition that could likely damage the property

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Maintenance of V & A Property



TIMELINE FOR SERVICER TO SECURE PROPERTY IF IT IS VACANT SHORTLY AFTER DELINQUENCY

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Maintenance of V & A Property

■ Evidence a Property is V & A

- Overgrown or dead vegetation
- Accumulation of newspapers and mail
- Past due utility notices, disconnected utilities, or utilities not in use
- Accumulation of trash
- Absence of window coverings
- Boarded or broken windows
- Property is not locked up
- Property has a building on it that is structurally unsafe or presents some other potential danger to people

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Maintenance of V & A Property

■ How a Servicer Must Secure a V & A Property

1. Replace only 1 door lock if there are at least 2 doors
2. Secure, replace or board up broken doors and windows
3. Secure any part of the property considered an attractive nuisance
4. Limit the discharge of harmful gases, vapors, odors, etc. to neighboring properties
5. Winterize the plumbing and heating systems
6. Provide basic utilities as appropriate to maintain condition of the home or neighboring properties
7. Remove and fix any significant safety and health concerns including code violations
8. Prevent the growth of mold, through reasonable efforts
9. Respond to government inquiries regarding the property
10. Keep the notice on the property in a location that is easily visible

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Maintenance of V & A Property

■ Servicer Must Maintain the Security of V & A Property Until One of the Following Occurs

- An occupant asserts their right to occupy
- Servicer or their agent receives threats of violence
- Borrower files bankruptcy
- A court orders the servicer to stop
- Servicer is prevented from gaining access by a homeowner's association or cooperative
- Property is sold or transferred to a new owner
- Servicer or investor releases the lien
- Mortgage note is assigned, transferred, or sold

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Maintenance of V & A Property

Enforcement

- NY DFS Superintendent can sue the servicer in court after giving 7 days of notice to the servicer of the violations
- Local municipalities can sue the servicer after giving the servicer 7 days of notice AND giving NY DFS 10 days of notice

Penalties

- Up to \$500 for each day and each property that a violation persists
- Servicer is immune from liability if they peacefully enter a property and is making reasonable efforts to comply with the statute

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Maintenance of V & A Property

▪ Conflicting Local Ordinances and Laws

- Local municipalities cannot impose a requirement to maintain properties that is **inconsistent** with the state law on lenders that the state law applies

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Maintenance of V & A Property

Perspective from Plaintiff/Lender

- Squatters, vandals and the requirement to maintain while dealing with them
- Timing can be difficult to manage, penalties for mistakes
- Potential liabilities (though someone protected) from making the wrong judgment call
- Implementing systems to handle these requirements in a short period of time; property preservation companies, tracking, IT issues

Perspective from Defendant/Consumer

- Plaintiff releases lien – leaves mess for local municipalities to fix
- Some municipalities don't want boarded up windows – may make some properties easier to identify as vacant
- Special concerns about homeowners impacted by natural disasters

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New Statewide Registry and Hotline for V & A Properties

RPAPL 1310

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Statewide Registry

■ Who Must Submit to the Vacancy Registry?

- Any servicer who services a loan in NY which is secured by a residential property
 - Includes owner-occupied and investor-owned residential properties

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Statewide Registry

- NY Department of Financial Services will maintain an electronic database
- Lenders must submit information within 21 days of learning the house is V & A
 - If information changes, lenders must update DFS no later than 30 days after the change
- Public officials may request information in the database related to their locality

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Statewide Registry

- **Lenders must give at least the following information to DFS about the V & A Property**
 1. Name, address and contact information for the lender or the party responsible for maintaining the property, AND
 2. Date when foreclosure was filed on property (if applicable), AND
 3. Last known address and contact information of the mortgagor (the borrower)

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Statewide Registry

- **Conflicting Local Ordinances and Laws**
 - Local municipalities cannot require lenders who must submit to the statewide registry to also submit to a local registry that is inconsistent with the state law
 - Local municipalities cannot impose penalties or fees related to a local registry

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Statewide Registry

- DFS created a toll-free hotline for neighbors and community residents to report a V & A property or any concerns about a V & A property

1-800-342-3736

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Statewide Registry

Perspective from Plaintiff/Lender

- Centralized collection is beneficial but is it duplicative?
- Can it be linked to municipalities data bases? Or be used in place of those individual and varying registries?

Perspective from Defendant/Consumer

- Data from Hotline and Registry is not linked when provided back to public officials

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Optional Faster Foreclosure Process for V & A Properties

RPAPL 1309

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Faster Foreclosure Process

- **Lender has the right to apply for an expedited foreclosure process if they can prove to the court the home is V & A**
 - Must wait to submit the application until after the borrower's time to file an answer has expired
 - Must give notice to the borrower of the application
 - Must make an application to the court by motion or order to show cause

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Faster Foreclosure Process

- **Lender can make an application when -**
 - A settlement conference **is NOT** scheduled
 - the right to answer expires 20-30 days after service of foreclosure
 - A settlement conference **is** scheduled
 - the right to answer expires after the first settlement conference is held –assuming no homeowner appears

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Faster Foreclosure Process

- **Notices to be Given to Borrowers**
 - Lenders must serve a copy of their application to the borrower– even if the borrower has not answered the complaint or appeared in the case
 - The Lender's application must state:
 - The lender is applying for a faster foreclosure process because the lender found the home V & A;
 - The borrower has a right to respond to the application to avoid the expedited process by submitting something in writing or appearing in court on the dates provided; AND
 - The borrower has the right to stay in their home until eviction by the court
 - Court must send a notice to borrower informing them that the lender is applying for a faster foreclosure process

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Faster Foreclosure Process

- **Must make an application to the court by motion or order to show cause**
 - Application from Plaintiff must include the following:
 - The last known address of the homeowner;
 - The notice for the homeowner;
 - An affidavit from lender supporting the claim the house is V & A;
 - Proof supporting the claim the house is V & A;
 - The amount owed on the note and mortgage with documents supporting the amount claimed; AND
 - A request that the court confirm the amount owed on the mortgage and note without a referee.

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Faster Foreclosure Process

- **After the court sends a notice to homeowner about the application, the court may decide a home is V & A and eligible for the faster process IF –**
 - The lender proves it to the court,
 - A government entity has decided the home is V & A, OR
 - All borrowers and owners have provided sworn statements that the house is V & A
- **If the court decides the home is V & A**
 - The court will provide a written decision “as soon as practicable” including the evidence relied upon to determine the house is V & A

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Faster Foreclosure Process

Protections for Borrowers Protections for Lenders

Lenders are prohibited from trying to intimidate, coerce, or try to convince a person lawfully living in the property to leave the property

Lenders are immune from liability if they make a mistake when deciding a property is V & A if they make reasonable efforts to comply with the law

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Faster Foreclosure Process

Perspective from Plaintiff/Lender

- Borrowers given another “bite at the apple” to litigate the matter post default
- Different counties handling the process differently – making the overall process more cumbersome
- No mandatory timelines for the court to follow
- Lenders are always asking for ways to shorten the timeline of the NY foreclosure process and to get properties to market faster
- What if counties institute a different process, or continue one they already had in place? Valid? Which one to use?

Perspective from Defendant/Consumer

- Process is not mandatory – will allow banks to cherry pick the properties with value and will just walk away from liens
- Banks in other states don’t use expedited foreclosure processes – won’t help our communities
- No mandatory timelines for the court to follow

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Restoring Neighborhoods:
New York's 2016 Zombie Property and Foreclosure Prevention Act

By Kirsten Keefe
June 30, 2016

On June 23, 2016, Governor Andrew Cuomo signed into law Chapter 73 of the Laws of New York 2016, an omnibus bill that addresses vacant and abandoned properties, establishes timelines for the sale of property post-foreclosure judgment, and updates and enhances protections for homeowners in default and foreclosure. The law was passed as Part Q in the final bill of the session (A.10741/S.8159)¹ and includes provisions and intentions that were part of several bills introduced to address the foreclosure crisis and the problem of vacant and abandoned properties throughout New York State. All provisions of the law go into effect on December 20, 2016.

I. VACANT AND ABANDONED PROPERTY PROVISIONS

A. Introduction

Chapter 73 includes three significant provisions regarding vacant and abandoned residential real property: property maintenance, an expedited foreclosure process, and the creation of a statewide electronic registry.

Definition of Vacant and Abandoned Residential Real Property

Chapter 73 establishes a new definition of “vacant and abandoned property” that applies to all three sections (set forth in NY Real Property Actions and Proceedings law (RPAPL) § 1309).

Residential real property² shall be deemed vacant and abandoned where:

1. The plaintiff has proven by a preponderance of the evidence, that it has conducted at least 3 inspections, each between 25 to 35 days apart and at different times of the day, and at each inspection:
 - (A) No occupant was present and there was no evidence of occupancy; evidence of a lack of occupancy includes but is not limited to:

¹ Chapter 73 of the Laws of New York, available at

http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A10741&term=&Summary=Y&Text=Y.

² RPAPL § 1305(a) defines "residential real property" as “real property located in this state improved by any building or structure that is or may be used in whole or in part, as the home or residence of one or more persons, and shall include any building or structure used for both residential and commercial purposes.”

- i. Overgrown vegetation,
 - ii. Accumulation of newspapers or flyers,
 - iii. Past due utility notices, disconnected utilities or utilities not in use,
 - iv. Accumulation of trash or other debris,
 - v. Absence of window coverings,
 - vi. Boarded, missing or broken windows,
 - vii. Property is open to entry to trespass, *or*
 - viii. A structurally unsound structure exists that poses a potential hazard or danger; *and*
- (B) There is evidence that the property was not being maintained in a manner consistent with the standards set forth in NY Property Maintenance Code chapter 3 sections: 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1; *OR*
- 2. A court or government entity has formally determined, with due notice to the borrower, that the property is vacant and abandoned; *OR*
 - 3. Each borrower and owner has separately issued a sworn statement expressing their intent to vacate and abandon the property.

Residential real property shall not be deemed vacant and abandoned where there is a building:

- 1. Undergoing construction, renovation or rehabilitation that is proceeding diligently, *OR*
- 2. Used on a seasonable basis but is otherwise secure, *OR*
- 3. Subject of a probate action, action to quiet title or other ownership dispute of which the servicer has notice, *OR*
- 4. Damaged by natural disaster but owner intends to repair and reoccupy, *OR*
- 5. Occupied by mortgagor, a relative or a lawful tenant.

The Term “Lender ”

Various terms are used throughout Chapter 73 to identify the entity ultimately responsible for the mortgage and note including “lender,” “assignee,” “mortgage loan servicer,” “servicer,” “plaintiff,” and “agent.” The term “lender” is used at times in this article as shorthand to refer to these parties.

B. Inspecting, Securing and Maintaining Vacant and Abandoned Residential Real Property (adds RPAPL § 1308)

Since April 2010, a lender who acquires a judgment in a residential mortgage lending action is required to maintain the property if it is vacant and abandoned property.³ The new law extends the property maintenance requirement to the point in time the mortgage holder determines (or should have determined) the property is vacant and abandoned.

Application: The law applies to first lien mortgage holders on 1 to 4 family residential real property that is vacant and abandoned as defined in RPAPL § 1309. The law does not apply to smaller lenders⁴ and it applies prospectively for medium size lenders.⁵ It applies to all properties on which the largest lenders own the mortgage notes starting December 20, 2016.

³ RPAPL § 1307.

⁴ RPAPL § 1308 excludes lenders with small market share, stating “For each calendar year this section shall not apply to state or federally chartered banks, savings banks, savings and loan associations, or credit unions which: (1) originate, own, service and maintain their mortgages or a portion thereof; and (2) have less than three-tenths of

Requirements:

1. Inspection: A servicer must conduct an inspection within 90 days of delinquency and thereafter every 25 to 35 days at different times of the day to determine if the property is vacant and abandoned.⁶
2. Notice: Once a property is determined to be vacant and abandoned, the servicer must post a notice within 7 business days “on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant. . .”⁷ that includes the servicer’s toll free number or similar contact information. The servicer must monitor to ensure the notice remains posted.
3. Maintenance: If the servicer is not contacted for 7 calendar days from the date the notice was posted, or if there is an “emergent property condition” that could cause harm to the property, and the servicer has a “reasonable basis” to believe the property is vacant and abandoned, the servicer must maintain the property.⁸ Maintenance requirements include:
 - a. Replace one door lock, if there are two different entry points;
 - b. Secure, replace or board up broken doors or windows;
 - c. Secure anything deemed an “attractive nuisance” including but not limited to pools, wells, septic tanks, refrigerators, and outbuildings;
 - d. Take reasonable steps to prevent the discharge of harmful gases, steam, vapor;
 - e. Winterize the home;
 - f. Provide basic utilities, as appropriate (such as to run a sump pump);
 - g. Remove and remediate health and safety issues, including code violations;
 - h. Prevent the growth of mold, through reasonable efforts;
 - i. Respond to government inquiries regarding the property; *and*
 - j. Ensure the notice remains posted.
4. Ongoing maintenance: A servicer is responsible for ongoing “reasonable and necessary” maintenance actions including, but not limited to:
 - a. Ensuring the property remains secure pursuant to this law, *and*
 - b. Ensuring the property is maintained consistent with the following sections of the NY Property Maintenance Code: 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1.⁹
5. Personal property: The servicer may not remove personal property unless it poses a significant risk to health and safety, or if a government entity has ordered removal.¹⁰
6. End of maintenance obligation: A servicer’s obligation to maintain ends when:

one percent of the total loans in the state which they either originate, own, services, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year.” Under RPAPL § 1308(11), any agreements a lender in this category may have had with DFS remain in full force and effect.

⁵ RPAPL § 1308 applies prospectively for lenders with a medium size market share, stating “For any state or federally chartered banks, savings banks, savings and loan associations, or credit unions which originate, own, service and maintain between three-tenths of one percent and five-tenths of one percent of the total loans in the state which they either originate, own, services, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year.” Under RPAPL § 1308(11), any agreements a lender in this category may have had with DFS remain in full force and effect.

⁶ RPAPL § 1308(2). The inspection requirement is subject to bankruptcy filings, cease and desist orders, threats of violence, and active loss mitigation efforts. RPAPL § 1308(1).

⁷ RPAPL § 1308(3).

⁸ RPAPL § 1308(4).

⁹ RPAPL § 1308(7). Provisions are subject to the servicer being able to obtain necessary permits or approvals.

¹⁰ RPAPL § 1308(5).

- a. An occupant asserts their right to occupy, or if servicer receives threats of violence;
- b. Borrower files for bankruptcy;
- c. A court orders the servicer to stop;
- d. Servicer is prevented from gaining access by an association or cooperative;
- e. Property is sold or transferred to a new owner;
- f. Servicer or investor has released the lien, *or*
- g. Mortgage note is assigned, transferred or sold.¹¹

Penalties and Enforcement:

A civil penalty up to \$500 per day for each day the violation persists is available. The NYS Department of Financial Services (DFS) is authorized to bring an action in court, after it has provided the servicer with at least 7 days notice. Municipalities¹² are also authorized to bring enforcement actions and get penalties provided they provide the servicer with 7 days notice (unless there is an emergency), as well as provide DFS written notice at least 10 days prior.¹³ Servicers are immune from liability where they peacefully enter a property and the servicer “is making reasonable efforts to comply with the statute.”¹⁴

Regulations:

DFS must promulgate regulations to implement this section, including reporting requirements by financial institutions.¹⁵ DFS also may promulgate regulations regarding enforcement.¹⁶

Preemption:

All provisions of the law are subject to federal laws, court orders and investor and insurer guidelines. Localities cannot impose duties, penalties or monetary obligations regarding the maintenance of vacant and abandoned properties as defined in RPAPL § 1309 in a manner inconsistent with this law, including against lenders and servicers who may not covered by this law.¹⁷

C. Expedited Application for Judgment of Foreclosure and Sale for Vacant and Abandoned Property (adds RPAPL 1309)

Chapter 73 establishes an expedited process that plaintiffs may elect to use when bringing a foreclosure action on a vacant and abandoned property, as defined in this section.

Process:

- 1. Plaintiff must file a foreclosure action and wait for time for defendant to answer to expire.
- 2. Plaintiff files a motion or order to show cause (OSC) for judgment of foreclosure and sale on the grounds that the property is vacant and abandoned. The motion or OSC must:
 - a. Include the last known address of the borrower and the property address,

¹¹ RPAPL § 1308(6).

¹² Pursuant to New York General Municipal Law § 2, a “municipal corporation” includes a county, town, city and village.

¹³ Failure to comply with the notice requirements shall not be deemed a defense. RPAPL § 1308(8)(c).

¹⁴ RPAPL § 1308(9).

¹⁵ RPAPL § 1308(12).

¹⁶ RPAPL § 1308(8)(d).

¹⁷ RPAPL § 1308(13); Chp. 73 of the Laws of New York 2016, § 10.

- b. Be served on the defendant regardless of whether the defendant filed an answer,
 - c. State in bold letters on the first page:
 - i. "The plaintiff in this lawsuit has applied for an expedited judgment of foreclosure and sale of your property on the ground that it is vacant and abandoned."
 - ii. "Your property may be foreclosed upon and sold without any further proceedings if you do not respond to this motion by or on the return date which is ____."
 - iii. "You have the right to stay in your property until a court orders you to leave." *and*
 - iv. "You may respond to this motion by either submitting a written document or by appearing in court on the return date."
 - b. Include an affidavit or other proof including at least proof of ownership of the mortgage and note, photographs, and utility records if available, and other documentation evidencing the property is vacant and abandoned,
 - c. State the principal balance and sums alleged due and include a "detailed and itemized account of each fee, each cost, and a calculation of interest accrued," *and*
 - d. Request that the court compute the total amount due without the appointment of a referee.¹⁸
3. The court must send a separate notice (prescribed by the Office of Court administration or developed on its own) to the defendant letting them know that the plaintiff has filed an application to expedite the foreclosure and sale on the ground that the property is vacant and abandoned.
 4. The court may require the plaintiff to appear and provide testimony, though it is not required¹⁹;
 5. Only if the defendant fails to file an answer, appearance, written objection or otherwise fails to demonstrate any intention to contest the action, such as failing to appear on the return date,²⁰ the court shall make a written finding "as soon as practicable" setting forth:
 - a. the court's determination if the property is vacant and abandoned, and the evidence relied upon, as provided by the plaintiff,
 - b. evidence relied upon to determine that the plaintiff is the owner of mortgage note, *and*
 - c. the sums determined to be due and owed.²¹
 6. If judgment is denied, it shall be on the motion or OSC only, and shall not be deemed on the merits for purposes of any other proceeding.²²

Prohibition and Liability:

Lenders are strictly prohibited from attempting to intimidate, coerce, or otherwise try to get a lawful occupant to vacate the property. A lender may be immune from liability if they are making "reasonable efforts" to comply with this section.²³

Regulations:

The Office of Court Administration (OCA) may adopt rules deemed necessary to implement.²⁴

¹⁸ RPAPL § 1309(1).

¹⁹ RPAPL § 1309(3).

²⁰ RPAPL § 1309(5)(a).

²¹ RPAPL § 1309(4).

²² RPAPL § 1309(5)(b).

²³ RPAPL § 1309(6).

²⁴ RPAPL § 1309(7).

D. Statewide Vacant and Abandoned Property Electronic Registry (adds RPAPL § 1310)

A lack of information regarding vacant and abandoned properties has been a great obstacle for the state and for municipalities trying to address “zombie properties.” Chapter 73 provides for the creation of a statewide registry, accessible to municipalities to determine who is responsible for a property and whether the property is in foreclosure.

Registry:

The law requires DFS to maintain a statewide registry in the form of an electronic database of vacant and abandoned residential property (either on their own or through a contractor). A lender must submit information within 21 days of when it “learns, or should have learned, that such property is vacant and abandoned,” as defined by RPAPL § 1309 or otherwise defined by DFS.²⁵ A lender is required to update information submitted to the registry within 30 days of when it “learns, or reasonably should have learned, of the new or changed information.”²⁶

DFS shall set forth the information to be provided but at a minimum, lenders must include:

1. Name, address and contact information for lender or its agent responsible for maintenance;
2. Date foreclosure was filed, if applicable; *and*
3. The last known address and contact information for the mortgagor(s).²⁷

Access and Hotline:

Information in the registry shall be deemed confidential,²⁸ however DFS may release information if determined to be in the “best interest of the public,” and shall release information to public officials regarding their district upon written request.²⁹ DFS must establish and maintain a toll-free hotline, posted on its website, for neighbors and community residents to report concerns regarding vacant and abandoned properties.

Regulations:

DFS may adopt regulations governing access to the registry, the manner and frequency of registration, and the information to be provided.³⁰

Preemption:

All provisions of the law are subject to federal laws, court orders and investor and insurer guidelines. Localities cannot impose duties, penalties or monetary obligations regarding the duty to register vacant and abandoned properties as defined in 1309 in a manner inconsistent with this law, including against lenders who are not covered by this law.³¹

²⁵ RPAPL § 1310(2).

²⁶ RPAPL § 1310(3).

²⁷ RPAPL § 1310(2).

²⁸ RPAPL § 1310(1).

²⁹ RPAPL § 1310(1), stating “The department of financial services shall, upon written request, provide public officials of any state district, county, city, town or village with access to information specific to such public official’s district, county city, town or village maintained on such database to further the purposes of this section, section 1307 of this article or article 19-A of this chapter, or any other related law, code, rule, regulation or ordinance.”

³⁰ RPAPL § 1310(4).

³¹ RPAPL § 1310(5); Chp. 73 of the Laws of New York 2016, § 10.

II. TIMELINES FOR SALE OF PROPERTY

In an attempt to ensure that foreclosed properties are being brought to sale timely rather than languishing as “zombie properties,”³² Chapter 73 instills timelines for when properties must be sold post foreclosure judgment.

- A. Chapter 73 amends RPAPL § 1351, the provision that directs a judgment in a mortgage foreclosure, to require that a property be sold within 90 days of the date of the judgment. Current law contains no timeline.
- B. Chapter 73 amends RPAPL § 1353, the provision that states after a foreclosure sale the deed must be transferred to the purchaser, to require that if the purchaser is the plaintiff from the foreclosure action, the purchaser must place the property on the market for sale within 180 days, or if repairs are being made, within 90 days from the date the repairs are completed, whichever comes first. A court may grant an extension for good cause.

III. ENHANCED PROTECTIONS FOR HOMEOWNERS IN DEFAULT AND FORECLOSURE

NYS legislation passed in 2008 and 2009 created protections for homeowners in default and foreclosure. Among those protections are a notice that must be sent to homeowners at least ninety days before a lender can commence a foreclosure action including a referral list to reputable non-profit agencies, a notice to be sent by the lender at the time the foreclosure complaint is filed warning them about scams, and mandatory settlement conferences in all residential mortgage foreclosure cases. Chapter 73 updates and provides enhancements and additional protections to these existing laws and provides for the creation of a “Consumer Bill of Rights” for homeowners.

A. Consumer Bill of Rights (amends RPAL § 1303 to add subdivision 3-a)

DFS must draft and publish a new “Consumer Bill of Rights” with input from stakeholders, within 60 days of enactment of the law (by August 22, 2016). The Consumer Bill of Rights must “detail the rights and responsibilities of the plaintiff and defendant in a foreclosure proceeding” and be updated annually and as appropriate.³³

B. Notice to Homeowners at time of foreclosure filing (amends RPAPL § 1303)

Since 2009,³⁴ RPAPL § 1303 has required a prescribed notice to be sent to homeowners by the lender at the time the foreclosure is filed. The notice must be sent in a separate envelope from the foreclosure and must be on a different colored piece of paper. The original purpose of the notice was to warn homeowners about scams and solicitations for assistance and inform them about protections under New York State law.³⁵

³² See NYS Dept. of Financial Svcs., *Report on New York’s Foreclosure Process*, (May 2015) at 7, finding the average number of days it takes a property to move from judgment to sale is 172 downstate and 148 upstate, available at http://www.dfs.ny.gov/reportpub/fore_proc_report_052015.pdf.

³³ RPAPL § 1303(3-a).

³⁴ Chapter 507 of the Laws of New York 2009.

³⁵ See Keefe, Kirsten, *New State Law Addresses Mortgage Foreclosure Crisis and Subprime Lending Abuses*, explaining RPAPL § 1303 notice, and RPL § 265-b providing protections for consumers against “distressed property consultants,” available at https://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ny_summary_08.pdf;

Chapter 73 amends the notice, adding language to let homeowners know they have the right to remain in their home until the foreclosure and sale are completed. The new notice reads (emphasis added, new language is in bold):

“Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Department of Financial Services at (enter number) or visit the Department's website at (enter web address).

Rights and Obligations

YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right to stay in your home during the foreclosure process. You are not required to leave your home unless and until your property is sold at auction pursuant to a judgment of foreclosure and sale. Regardless of whether you choose to remain in your home, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accordance with state and local law.

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services."

C. Ninety Day Pre-Foreclosure Notice (amends RPAPL § 1304)

Since 2009,³⁶ lenders have been required to send a prescribed notice to borrowers with home loans at least 90 days prior to the initiation of a foreclosure lawsuit. A list of at least five non-profit housing counseling agencies serving the geographic region (now county) of the borrower must be attached to the notice.

Keefe, Kirsten, *New York State Passes the "Home Equity Theft Prevention Act,"* (August 1, 2006), explaining protections for consumers against deed theft, available at <http://www.empirejustice.org/issue-areas/consumer/mortgage-lending--foreclosure-prevention/foreclosure-prevention-scams/articles/new-york-state-passes.html#.V3VChKJCh-8>.

³⁶ Chapter 472 of the laws of NY 2008 established the notice pursuant to RPAPL § 1304 and applied it to "high-cost," (as defined in Banking Law § 6-l) "subprime" and "nontraditional" home loans (defined in RPAPL § 1304(5)). Chapter 507 of the laws of NY 2009 extended application to all "home loans" with a sunset date in five years for the extension. Chapter 62 of the Laws of NY 2011 extended the sunset date by five years. Chapter 73 maintains that sunset date but provides that all amendments except the LEP provision (§ 1304(5)) will continue should provisions under Chapter 507 of the laws of 2009 expire.

Chapter 73 includes a number of technical and substantive amendments to the 1304 90 day pre-foreclosure filing notice:

1. Requires lender to send the notice to the borrowers at any other address on record, in addition to the property address as formerly required.³⁷
2. Shifts the responsibility for maintaining the list of approved housing counseling agencies serving each county (to be included with the notice) from the NYS Division of Housing and Community Renewal to DFS.³⁸
3. Clarifies language to make clear that a lender is not required to send the notice "if the borrower has filed for bankruptcy protection under the law."³⁹
4. Clarifies that the notice must be sent one time, per loan, in a twelve month period in connection with a delinquency, but if a borrower cures and then re-defaults, even within a twelve month period of the first notice being sent, the lender is obligated to send a new 1304 notice in connection with the new delinquency.⁴⁰
5. Adds a requirement that for borrowers with limited English proficiency (LEP), the notice must be sent in the native (or proficient) language of the borrower if that language is one of the top six most common non-English languages in New York State. DFS must determine and post those languages on its website.⁴¹
6. Amends and updates the prescribed notice, including:
 - i. adding language regarding the borrower's right to remain in the home until a court orders them to leave and that they remain responsible for the home until such time;
 - ii. listing the NYS Office of the Attorney General's Homeowner Protection Program toll-free consumer hotline.

Following is the notice with the amendments (emphases added, new language in bold):

~~"YOU [COULD LOSE YOUR HOME]~~ **MAY BE AT RISK OF FORECLOSURE.**
PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

"As of ____, your home loan is ____ days **and** ____ **dollars** in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home. ~~[You can cure this default by making the payment of _____ dollars by ____.]~~

~~[If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home.]~~ Attached to this notice is a list of government approved housing counseling agencies in your area which provide free ~~[or very low cost]~~ counseling. ~~[You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance.]~~ **You can also call the NYS Office of the Attorney General's Homeowner Protection Program (HOPP) toll-free consumer hotline to be connected to free housing counseling services in your area at 1-855-HOME-456 (1-855-466-3456), or visit their website at <http://www.aghomehelp.com/>. A statewide listing by county is also available at http://www.dfs.ny.gov/consumer/mortg_ny_np_counseling_agencies.htm.** **Qualified free help is available; watch out for companies or people who charge a fee for these services.**

³⁷ RPAPL § 1304(1).

³⁸ RPAPL § 1304(2).

³⁹ RPAPL § 1304(3). Prior language stated the notice was not required if, "an application for the adjustment of debts of the borrower or an order for relief from the payment of debts."

⁴⁰ RPAPL § 1304(4).

⁴¹ RPAPL § 1304(5).

Housing counselors from New York-based agencies listed on the website above are trained to help homeowners who are having problems making their mortgage payments and can help you find the best option for your situation. If you wish, you may also contact us directly at ____ and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If ~~[this matter is not resolved]~~ **you have not taken any actions to resolve this matter** within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Department of Financial Services' toll-free helpline at (show number) or visit the Department's website at (show web address).

IMPORTANT: You have the right to remain in your home until you receive a court order telling you to leave the property. If a foreclosure action is filed against you in court, you still have the right to remain in the home until a court orders you to leave. You legally remain the owner of and are responsible for the property until the property is sold by you or by order of the court at the conclusion of any foreclosure proceedings. This notice is not an eviction notice, and a foreclosure action has not yet been commenced against you.”

D. Mandatory Settlement Conferences in Residential Foreclosure Actions (amends CPLR Rule 3408, and adds subdivisions (i), (j), (k), (l), (m))

CPLR Rule 3408, passed in 2008 applicable to “high-cost,” “subprime,” and “nontraditional” home loans, and amended in 2009 to cover all “home loans,” requires courts to hold mandatory settlement conferences to see if the parties can reach a mutually agreeable resolution to avoid foreclosure.⁴² The settlement conferences have had a tremendous impact on keeping families in their homes. Chapter 73 amends five existing provisions and adds six provisions in an effort to clarify unclear provisions and instill efficiency in the conferences.

Chapter 73 clarifies and enhances the following five subsections of Rule 3408:

3408(a) Coverage: Clarifies that settlement conference discussions should include “loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation option” (in other words, cases should not be removed from the settlement conference part if loan modification is not possible but the parties are discussing alternatives).

3408(c) Appearance: Clarifies that both parties must appear in person or by counsel at the conference, and that either party may appear by telephone if the court permits.

3408(e) Documents: Changes a “should” to a “shall” regarding the parties having to bring documents to the conference, and adds document requirements for the plaintiff including application forms for the homeowner to apply for loss mitigation, and if applicable, a status

⁴² Chapter 472 of the Laws of NY 2008 established the mandatory settlement conference requirement in foreclosure actions involving a “high-cost,” (defined in Banking Law § 6-l) “subprime” and “nontraditional” home loan (defined in RPAPL § 1304(5)). Chapter 507 of the laws of NY 2009 extended application to all “home loans” and added protections, but also included a sunset date of five years for the provisions added through Chapter 507. Chapter 62 of the laws of 2011 extended the sunset date by five years. Chapter 73 maintains that sunset date and includes in it all amendments to Rule 3408 contained in Chapter 73 but for the amendment to Rule 3408(1) mandating conferences include negotiations regarding loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation option.

report regarding loss mitigation applications with a list of documents that are required, an expected date of review. If an application was denied, plaintiff must provide the denial letter along with an explanation and input fields used to determine net present value, and the pooling and servicer agreement if it was denied because of an investor restriction.

3408(f) Good faith: Sets forth a “good faith” standard, to be determined based on “the totality of the circumstances,” and measured by:

1. Compliance with Rule 3408, local court rules and other court directives;
2. Compliance with mortgage servicing rules, regulations, guidelines and standards for loss mitigation including loan modification, short sales, deeds in lieu of foreclosure;
3. Conduct regarding efforts to reach an agreement, not causing undue delay and providing accurate information to the court.

Either party’s failure to make or accept an offer can be constituted as a failure to negotiate in good faith.

3408(g) Discontinuance: Reduces time for plaintiff to file notice of discontinuance and vacatur of lis pendens from 150 to 90 days after agreement is executed.

Chapter 73 adds the following six subsections to Rule 3408:

3408(i) Good faith determination: Failure to negotiate in good faith may be determined by motion or sua sponte by the court. Referees, judicial hearing officers or other court staff are authorized to “hear and report findings of fact and conclusions of law and may make reports and recommendations for relief to the court. . .”

3408(j) Plaintiff’s failure to negotiate in good faith: If the court finds the plaintiff failed to negotiate in good faith, the court shall at least toll interest, costs and fees for duration of any undue delay caused, and may: (1) compel production of documents, (2) impose a civil penalty up to \$25,000 (to go to state), and/or (3) award damages, fees, attorney fees and expenses.

3408(k) Defendant’s failure to negotiate in good faith: If the court finds that the defendant failed to negotiate in good faith (after considering equitable factors such as whether the defendant was represented by counsel), the court shall remove the case from the settlement conference part.

3408(l) Notice by the court: If a defendant has not filed an answer, at the first conference, the court shall advise the borrower of the requirement to file an answer, explain what it means to file an answer and the repercussions if they do not, and provide information about available resources for foreclosure prevention assistance. The court must also provide the defendant with a copy of the “Consumer Bill of Rights” that DFS is required to develop pursuant to RPAPL sec. 1303(3-a).

3408(m) Right to file a late answer: Defendants who do not file an answer within the 20 or 30 day time period, but who appear at the conference, have an automatic 30 day extension to file an answer to the complaint.

3408(n) Motions: Provides that any motions submitted during the pendency of the settlement conferences shall be held in abeyance, except motions concerning compliance with 3408 and its implementing rules.

IV. CONCLUSION

A severability clause is included to state that if any section or portion of the act is determined to be invalid, the rest of the act shall remain valid.

For more information, contact Kirsten Keefe at kkeefe@empirejustice.org, or (518) 462-6831.

SUPREME COURT STATE OF NEW YORK
COUNTY OF _____

CITY OF _____,

Plaintiff,

VERIFIED COMPLAINT

INDEX NO.:

vs.

NAME OF BANK OR SERVICER,

Defendants.

PRELIMINARY STATEMENT

1. The Legislature enacted the "Abandoned Property Neighborhood Relief Act of 2016" to define the duty of a mortgagee or its loan servicing agent to maintain vacant property secured by a delinquent mortgage. This law is codified in the Real Property Action and Proceedings Law (RPAPL) §§1308-1310. Required maintenance includes a variety of steps to ensure that the property does not present significant health or safety issues and compliance with multiple provisions of the New York State Property Maintenance Code. RPAPL §1308(4, 7). RPAPL §1308(8) authorizes municipalities to bring an action to enforce the law and to seek penalties.

2. Plaintiff brings this action pursuant to RPAPL §1308(8)(c) to enforce the obligations as described in the law. Plaintiff seeks an order directing Defendant to comply with all of the requirements of RPAPL §§1308-1310, including properly maintaining the property at issue in this action, making all necessary repairs and other actions with respect to the property as required by those provisions and all other applicable codes, and expediting the foreclosure of the property at issue in this action as provided for in RPAPL §1309.

3. Plaintiff also seeks to recover any costs it has incurred or may incur to maintain the property at issue in this action.

4. Plaintiff also requests the imposition of civil penalties in the amount of up to \$500 for each day code violations existed and continue to exist on the property at issue in this action beginning on _____.

PARTIES

5. Plaintiff City of _____ is a municipal corporation organized pursuant to the laws of the State of New York.

6. Defendant _____ is a first lien mortgage holder on the property that is the subject of this action and is (a corporation incorporated under the laws of the State of New York) (or a state or federally chartered bank, savings bank, savings and loan association, or credit union).

JURISDICTION

7. This Court has jurisdiction of this action pursuant to RPAPL §1308.

VENUE

8. Venue in this action is proper pursuant to C.P.L.R. 507 because the property involved is in _____ County.

FACTS

9. The real property at issue in this action is a residential property located at _____ (Subject Property) and is encumbered by an existing mortgage filed and recorded and serviced by Defendant. The mortgage is filed (list the book and page number where the mortgage is filed in the county clerk's records)

10. The property owner has defaulted on the mortgage and/or abandoned the premises, rendering the Subject Property vacant and abandoned pursuant to RPAPL §1309.

(List filing date and index number of the foreclosure action)

11. Defendant has not completed foreclosure proceedings on the Subject Property nor maintained or secured the Subject Property as required by RPAPL §1308.

12. Pursuant to RPAPL §1308(1) the Defendant is required to complete an exterior inspection of the Subject Property to determine occupancy within 90 days of the borrower's delinquency. Throughout the delinquency of the loan, the Defendant is required to conduct an exterior inspection every 25 to 35 days.

13. Pursuant to the statutory scheme, if the Defendant had a reasonable basis to believe the Subject Property is vacant or abandoned, Defendant was obligated to secure and maintain the property pursuant to RPAPL §1308(3)-(7).

14. Defendant has failed to adequately inspect, maintain or secure the Subject Property.

15. The plaintiff conducted at least three consecutive inspections of the Subject Property, and each inspection was conducted twenty-five to thirty-five days apart and at different times of the day. The inspections were conducted on_____ at ____ (AM) (PM), on_____ at ____ (AM) (PM), and on_____ at ____ (AM) (PM).

16. At each inspection (i) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and (ii) the residential real property was not being maintained in a manner consistent with the standards set forth in New York property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1.

17. Specifically, the inspections showed that the property (list violations of the NYS Property Maintenance Code) Copies of the property inspection reports are attached as Exhibit A.

18. Defendant determined that the Subject Property is vacant and abandoned and registered the Subject Property with the New York Department of Financial Services as required by RPAPL §1310 On _____.

19. Plaintiff gave at least seven days' notice to the defendant by sending notice of these violations to Defendant on _____ and again on _____ and advised Defendant of its failure to comply with the provisions of the RPAPL. Copies of the notices are attached as Exhibit B.

20. On _____ Plaintiff sent Defendant further notice of its intent to enforce the provisions of the RPAPL through possible legal action to secure compliance, to pursue penalties pursuant to §1308 of the RPAPL, to recover any costs incurred by the City to maintain the property and to recover civil penalties in an amount of up to \$500 per day from the date Defendant registered the property with the New York Department of Financial Services. A copy of the notice sent to Defendant is attached as Exhibit C.

21. Defendant did not respond and has failed to inspect, maintain or secure the Subject Property.

22. The violations on the Subject property have not been corrected to date.

23. On _____, Plaintiff sent written notice to the Department of Financial Services of its intent to bring this action against the Defendant. (Attach notice and any response from DFS)

REQUEST FOR RELIEF

WHEREFORE, the plaintiff demands judgment as follows:

- A. Ordering the Defendant to maintain the subject property as required by law, including the correction of any and all code violations against the Subject property.
- B. Ordering the Defendant to expedite the foreclosure of the Subject Property as may be necessary;
- C. Reimbursing Plaintiff for any costs it has incurred or may incur to maintain the Subject Property;
- D. Entering a judgment against Defendant for civil penalties in the amount of up to \$500 per day beginning on _____, the day Defendant registered the Subject Property with the Department of Financial Services; (or the last day the notices described in paragraph 19 were sent to Defendant)
- E. Awarding costs and disbursements of this action; and
- F. Providing such other and further relief as the Court may deem just and proper.

Dated: _____, New York
_____, 2018

NAME, ADDRESS AND PHONE NUMBER OF ATTORNEY(S),

Signature

Counsel for Plaintiff

