

Illinois Law to Fast-Track Foreclosures on Abandoned Residential Properties

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Over the past several years, vacant and abandoned properties have become a significant problem in many American cities. Some cities, such as Cleveland and Los Angeles, have attempted without success to use litigation to hold mortgage lenders and servicers responsible for the impact these properties have on communities. Other cities, such as Chicago, have enacted local ordinances intended to address the problem.

On February 8, 2013, the State of Illinois enacted legislation intended to address the issue by expediting the foreclosure of abandoned or vacant residential properties. The impact of this law could be significant. The new law, which goes into effect on June 1, 2013, allows a lender to file a motion requesting a foreclosure be expedited. If the lender complies with applicable notice requirements and a judge certifies that a property is abandoned, a foreclosure trial can proceed immediately. Normally this process takes well over two years in Illinois. However, under this new law, the process could be reduced to as few as 90 days. The new law also removes uncertainty and litigation risk that previously existed over securing abandoned residential properties prior to completed foreclosure process. In this way it helps address a concern lenders and servicers have expressed about the Chicago vacant building ordinance, which imposes obligations upon them to secure abandoned properties securing mortgages they service even before they are placed in possession of those properties. The law also imposes new foreclosure fees and filing requirements that mortgagees must follow.

Expedited Judgment and Sale Procedure for Abandoned Residential Properties

The new law now authorizes a mortgagee to utilize an expedited judgment and sale process. Securing an expedited judgment and sale requires a motion, supported by affidavit, detailing the facts demonstrating that the mortgaged real estate is abandoned in accordance with the new definition of "abandoned residential property," discussed below. The notice of the motion to expedite is to be sent by first-class mail to the last known address of the mortgagor and posted at the subject property. The new law also provides a proposed notice to be posted at the property.

The motion must be heard by the court within 15 days of filing, or when the time to answer the foreclosure complaint has expired, whichever is later. The hearing of the motion is to be given priority and scheduled by the court within those required time periods. If the court finds that the mortgaged real estate is abandoned, the court shall grant the motion and immediately proceed to a trial of the foreclosure. The court may not grant the motion if the mortgagor, an unknown owner, or a lawful occupant appears before or at the hearing and objects to a finding of abandonment. The reinstatement and redemption periods provided for under Illinois mortgage foreclosure law remain unaffected.

Determining if Residential Properties are Abandoned

The law amends the mortgage foreclosure provisions of the Illinois Code of Civil Procedure to define "abandoned residential property" as residential property that is not (1) occupied by any mortgagor or lawful occupant as a principal residence; or (2) is in obvious disrepair

according to a list of enumerated conditions. Specifically, under this second test, a residential property qualifies as "abandoned residential property" if:

1) Two or more of the following conditions are shown to exist:

- a) Construction was initiated on the property and was discontinued prior to completion, leaving a building unsuitable for occupancy, and no construction has taken place for at least six months;
- b) Multiple windows on the property are boarded up or closed off or are smashed through, broken off, or unhinged, or multiple window panes are broken and unrepaired;
- c) Doors on the property are smashed through, broken off, unhinged, or continuously unlocked;
- d) The property has been stripped of copper or other materials, or interior fixtures to the property have been removed;
- e) Gas, electrical, or water services to the entire property have been terminated;
- f) There exist one or more written statements of the mortgagor or the mortgagor's personal representative or assigns, including documents of conveyance, which indicate a clear intent to abandon the property;
- g) Law enforcement officials have received at least one report of trespassing or vandalism or other illegal acts being committed at the property in the last six months;
- h) The property has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by a municipal or county authority or a court of competent jurisdiction;
- i) The local police, fire, or code enforcement authority has requested the owner or other interested or authorized party to secure or winterize the property due to the local authority declaring the property to be an imminent danger to the health, safety, and welfare of the public;
- j) The property is open and unprotected and in reasonable danger of significant damage due to exposure to the elements, vandalism, or freezing; or
- k) There exists other evidence indicating a clear intent to abandon the property; or

2) The real estate is zoned for residential development and is a vacant lot that is in need of maintenance, repair, or securing.



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Immunity from Liability for Securing Abandoned Residential Properties

The new law grants immunity from liability for acts taken by mortgagees and their agents to secure residential properties. Specifically, the new law provides that "[n]o mortgagee or agent of the mortgagee shall be liable to the mortgagor or other owner of an abandoned residential property in any civil action for negligence or civil trespass in connection with entering, securing, or maintaining the abandoned

residential property." Mortgagees and their agents are entitled to this immunity from liability, provided that they have a good faith belief that the residential property meets the definition of "abandoned residential property." This immunity applies even before a court certifies the property as abandoned.

Increased Foreclosure Fees to Support Housing Counseling

The law also imposes a new sliding scale of additional foreclosure filing fees, ranging from \$50 to \$500, to be paid by lenders through 2017, based on the number of foreclosure actions they undertake annually. An institution that files more than 175 foreclosures will pay \$500 per foreclosure, while one with between 50 and 175 will pay \$250 per foreclosure, and those with less than 50 foreclosures a year will pay \$50 per filing. The state anticipates the law will generate \$120 million in fees in the next three years, and a portion of those funds will be directed to county and municipal governments to help offset their costs in dealing with abandoned homes and to housing counseling agencies.

Additional Notices of Foreclosure and Affidavits Required in Large Cities

In addition to requiring that a notice of foreclosure be sent to municipalities and county governments, the new law requires additional notices be sent in cities with a population of more than 2 million. Within 10 days after filing the foreclosure complaint, notice must also be sent by first class mail, postage prepaid, to the alderman for the ward in which the real estate is located. The mortgagee must also file an affidavit of compliance with this notice requirement. The failure to send a copy of the notice to the alderman or to file an affidavit as required could result in the dismissal without prejudice of the complaint or counterclaim on a motion of a party or the court.

Take Away

While the new law provides clarity for dealing with inventories of abandoned properties and statutory immunity for securing such properties prior to foreclosure, the law also imposes new requirements and filing fees. Lenders and servicers need to take steps to ensure that their Illinois foreclosure processes are in compliance with these new requirements.

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About the Authors



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