

VACANT PROPERTY UPKEEP

The increasing level of mortgage default and delays in the foreclosure process in many jurisdictions has, inevitably, led to rising numbers of abandoned and vacant properties in neighborhoods around the country. The resulting urban blight has effects which go beyond mere unsightliness, extending to increased levels of crime including drug use, vermin infestation, as well as negative effects on neighborhood property prices.

Laws that seek to manage blight are clear on the responsibilities of owners to maintain their properties. Likewise, it is clear and generally understood that, upon completion of the foreclosure process, ownership (and the associated responsibilities) passes from the borrower to a new owner, which may be the lender, Fannie Mae, Freddie Mac, or a private investor.

In the case of property in foreclosure, particularly that which is abandoned and unoccupied, the point at which responsibility for the upkeep of the property is transferred is often unclear. In most cases, lenders do not have the right to occupy property or perform maintenance until ownership in the property is legally transferred, though lenders want to take steps as early as possible in the process to protect properties from neglect and vandalism. This is a crucial point that is central to considerations on how to enshrine in law – at any level – the responsibilities for upkeep and maintenance of vacant property.

AFSA'S POSITION

Some local ordinances have proved problematic for AFSA members. There is no argument that once a foreclosure is complete, tenants have vacated and a property has been legally transferred to the owner of the mortgage, be that a lender or investor, that the new owner should properly maintain the property and be subject to fines the city would impose on any other homeowner for maintenance. However, AFSA believes that holding lenders responsible for the maintenance of a property before the foreclosure process is complete is unfair and unhelpful. In order to give homeowners every opportunity to stay in their homes, foreclosure is an often-protracted process. Indeed, many foreclosure filings do not proceed all the way to forfeiture. It is unfair and impractical for lenders to assume responsibility for a home before ownership is transferred.

In addition, in many cases, borrowers walk away from their property before a foreclosure is complete. The lender has no way of knowing when a property is vacated and thus, no practical means of judging when to assume responsibility for its upkeep. In most cases, the lender has no legal right to enter the property before a transfer of the property occurs. In the case of rental properties, such as apartment buildings or other multiple dwellings, early transfer of

responsibility would have the effect of making a lender a landlord – a business that most lenders would be ill equipped to perform.

AFSA also believes that municipalities legislating on foreclosures potentially create a balkanization of laws lenders must comply with across every city in the country. This creates an unreasonable, unworkable and costly burden. Lenders need some uniformity in foreclosure laws in order to comply with them.

For all of these reasons, AFSA believes that the greatest care must be taken to ensure that ordinances do not mandate that a lender take responsibility for a property before the foreclosure is complete, particularly when the efforts of the lender are focused on working out means by which a homeowner can stay in their home. Speeding up the foreclosure timeline, for properties that have been abandoned with no interest or ability by the borrower to stay in the home, would allow the lender to assume responsibility over the property faster, and reduce the harm caused to communities by vacant and abandoned properties.