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FDIC Addresses Risk Management Practices for Discontinued Foreclosure Proceedings

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The Federal Deposit Insurance Corporation ("FDIC") has issued guidance to banks on how to handle discontinued foreclosures, with the goal of minimizing the impact that such discontinued proceedings will have on properties and affected neighborhoods.

The guidance is set forth in a Financial Institution Letter clarifying supervisory expectations for a financial institution's risk management practices regarding abandoned foreclosures (the "Letter"). The March 2, 2016 Letter discusses the general practice and impact of discontinuing foreclosure actions as well as FDIC supervisory expectations for institutions' policies and practices related to the discontinuance of a foreclosure.

The FDIC continues to encourage institutions to avoid unnecessary foreclosures by working constructively with borrowers and considering prudent workout arrangements. When workout arrangements are unsuccessful or not feasible, existing supervisory guidance reminds institutions to establish policies and procedures for acquiring other real estates that mitigate the impact the foreclosure process has on the value of surrounding properties.

According to the Letter, institutions that initiate foreclosure proceedings may decide to discontinue such proceedings based on financial considerations, such as a determination that the cost to foreclose, rehabilitate and sell a property exceeds its current market value. According to the FDIC, when such decisions are made after a foreclosure has been initiated, the borrower may have already abandoned the property, which can lead to blight, crime or a negative effect on the local community and neighboring properties.

The Letter states that institutions should establish appropriate policies and practices pertaining to decisions to discontinue foreclosures which address:

- Obtaining and assessing the best practical information on the market value of the real estate subject to the foreclosure.
- Implementing criteria for determining when the institution's liens should be released due to potential litigation risk arising from the institution's position as mortgagee of the now-abandoned property.
- Notifying appropriate state or local government authorities, such as tax authorities, courts or code enforcement departments, of the decision to no longer pursue the foreclosure and comply with all applicable state or local notification requirements.
- Notifying the borrower, by reasonable means, that (i) the mortgage holder is no longer pursuing foreclosure, (ii) the mortgage holder has or has not released the lien, (iii) the borrower has the right to occupy the property until a sale or other title transfer action occurs, (iv) the borrower remains financially obligated for

the outstanding loan balance, real estate and other applicable taxes, insurance, and homeowner association dues, and (v) the borrower is responsible for maintaining the property in accordance with all state and local laws, codes and ordinances.

The FDIC's supervisory activities will include a review of institutions' policies and practices related to foreclosures and the decision to discontinue such actions. Examiners will review institutions' analyses for initiating, pursuing and discontinuing foreclosure actions and also for releasing liens, along with management reports on these activities. Examiners will also review the actions taken by institutions to contact the borrower with the information described above and whether the institutions' consumer inquiry and complaint processes sufficiently address concerns regarding abandoned foreclosures.

The Letter can be found at https://www.fdic.gov/news/news/financial/2016/fil16014.pdf

Please note that the issue of discontinued foreclosures and abandoned properties has received increased scrutiny in New York State. The Department of Financial Services and the New York Attorney General have raised concerns about this issue, and the New York State Legislature is considering legislation on the topic. The "Abandoned Property Neighborhood Relief Act," which was recently introduced in the Assembly, would, among other things, define "vacant and abandoned property"; expand the duty of a mortgagee to maintain such property; provide for an expedited proceeding for vacant and abandoned property; and create an abandoned property neighborhood relief fund.

If you have any questions regarding the discontinuance of foreclosure actions, the FDIC Letter, or the pending legislation in New York, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Diana Acosta at 516-357-3739 or via email at dacosta@cullenanddykman.com.

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