

New Lawsuits Relating to Abandoned Properties Have Been Authorized Against Mortgagees in New York

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On December 18, 2019, New York Governor Andrew Cuomo signed legislation enacting the Zombie Property Remediation Act of 2019 (the Act), which went into effect immediately.

Mortgage lenders and servicers should be aware of the Act, available [here](#), as it authorizes new lawsuits against mortgagees.

Specifically, the Act amends the New York Real Property Actions and Proceedings Law (RPAPL) by adding a new section, RPAPL § 1392, which authorizes municipalities to compel mortgagees to either expeditiously complete a foreclosure or file a satisfaction of mortgage for any property which has been certified or deemed abandoned.

The full text of RPAPL § 1392 is as follows:

If a property has been certified abandoned pursuant to section nineteen hundred seventy-one of this chapter, or deemed vacant and abandoned pursuant to section thirteen hundred nine of this article, the city, village, or town in which the property is located may commence a proceeding in a court of competent jurisdiction in the county in which the property is located to compel any or all mortgagees to: (a) if the note is in default, the mortgagee shall commence a foreclosure procedure within three months and shall meet all deadlines to ensure the case is ready to be moved to judgment within a reasonable time period but not to exceed one year; (b) if a foreclosure has already been commenced, file the necessary motions and within three months paperwork to move the case to judgment foreclosure within three months; or (c) issue a certificate of discharge of the mortgage within three months and file a satisfaction of the mortgage with the appropriate local office.

Since this provision is predicated on RPAPL sections 1971 and 1309, and since those sections apply to residential real property, this provision should similarly apply only to residential real property.^[1]

Notably, the statute permits a proceeding against “any or all” mortgagees, which could include subordinate mortgagees.

It is also noteworthy that Article 19-A of the RPAPL already allows municipalities to commence proceedings to vest title to abandoned residential properties in the municipality. Now, subsection (c) of RPAPL § 1392 apparently allows municipalities to bring a proceeding to compel all mortgagees to issue discharges and file satisfactions of mortgages. Whether it would be equitable for a municipality to seek relief under only this subsection, instead of subsections (a) or (b), remains to be determined. The appropriate method of commencing a proceeding under this section may actually be to seek a judgment for all three forms of relief in the alternative: (a), (b) or (c), so as to leave it to the mortgagee to determine which of the three subsections should be complied with.

Some additional issues posed by this statute are as follows:

As for subsection (a):

- Can a mortgagee be compelled to foreclose on abandoned property if there is a non-monetary (e., technical) default on a loan?[2]
- What constitutes a “foreclosure procedure?” For example, does service of any of the various notices required prior to filing a foreclosure complaint constitute a “foreclosure procedure?”
- When exactly is a case “ready to be moved to judgment?”
- A “reasonable time period” may vary significantly based on the county where the foreclosure action is pending.[3]

As for subsection (b):

- What are “necessary motions” and what constitutes “paperwork to move the case to judgment foreclosure?” Arguably, any or all papers filed in a foreclosure action serve to move the case to a final judgment of foreclosure and sale.
- If a foreclosure action has just been commenced, would it even be possible to satisfy these deadlines given the lengthy foreclosure timelines in New York?[4]

As for subsection (c):

- If a mortgagee is compelled to file a mortgage satisfaction, is it entitled to any payment for any outstanding sums due? If so, from whom? If not, would a satisfaction be accurate if it states that the mortgage was “satisfied?”

Additional issues are bound to arise as the provisions of RPAPL § 1392 are litigated.

This statute is yet another which has been enacted over the last few years addressing abandoned properties. The legislative trend has been to ensure that abandoned properties are quickly re-occupied or otherwise put to good use. In this regard, mortgage lenders and servicers who have reason to believe that mortgaged properties have become abandoned would be well advised to prepare for the need to foreclose and to do so quickly.

Footnotes

[1] However, it should be noted that this new section does not on its face state that it is limited to any particular type of property.

[2] On its face, this subsection does not require a monetary payment default, but it does require a default under the *note*. Generally, the note usually contains the promise to make payments, whereas the mortgage contains other provisions (e.g., covenants involving DSCR, financial reporting and property maintenance) that must be complied with. Incorporation of such other provisions into the note could result in a default thereunder.

[3] It is also unclear when the “reasonable time period” commences. Even if it commences as late as the date of filing the foreclosure summons and complaint, the “one year” time period may be unrealistic given the relatively lengthy foreclosure process in New York.

[4] Although RPAPL § 1309 contains procedures for initiating an expedited foreclosure for vacant and abandoned properties, it is conceivable that a property becomes abandoned only after the initiation of a foreclosure in the ordinary course.

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