

New York State Department of Financial Services Fines Mortgage Servicer \$100,000 for Violating New York's Vacant and Abandoned Property Law

January 24, 2019

The New York State Department of Financial Services (“DFS”) has announced an enforcement action against a mortgage servicer for failing to maintain two “vacant and abandoned” properties under the New York State Abandoned Property Relief Act (the “Act”), known commonly as the “zombie properties” law. This is DFS’s second enforcement action under the Act. DFS Superintendent Maria T. Vullo’s announcement of the enforcement action reminds lenders and mortgage servicers that if they “do not uphold their responsibility to maintain vacant and abandoned properties [they] will be held accountable by DFS.”

The enforcement action was against SN Servicing Corp. (“SN Servicing”), a New York State-registered mortgage loan servicer, for failing to maintain two “vacant and abandoned” properties in Gloversville, New York for at least 230 and 232 days, respectively, and for failing to respond to DFS notices regarding the properties on a timely basis. Although SN Servicing did not register the properties as required by the Act, DFS was able to identify SN Servicing as the responsible servicer after a complaint was filed by the local fire department alleging that both properties were vacant and not being maintained.

DFS issued notices to SN Servicing in August 2017, requiring a response within 14 days. SN Servicing failed to respond on a timely basis. When it did finally respond, it refused to maintain the properties claiming that the mortgagee would not authorize such maintenance. SN Servicing later claimed that the properties were not subject to the requirements of the Act because lien releases, executed in April 2018 but backdated to July 2017, extinguished its maintenance obligation. DFS has taken the position that neither of these reasons excuses a mortgage servicer from having to maintain a vacant and abandoned property. SN Servicing was fined \$100,000.

In connection with the announcement of its first enforcement action under the Act in December 2017, DFS also issued guidance to remind mortgagees and mortgage loan servicers of their responsibilities under the Act and its accompanying regulation. Mortgagees and mortgage loan servicers are required to inspect one-to-four family properties securing loans that have been delinquent for 90 days or more, to register properties with DFS that meet the statutory definition of “vacant and abandoned” property, and maintain such properties. Mortgagees and mortgage loan servicers are also required to submit quarterly reports detailing compliance efforts after registering a “vacant and abandoned” property with DFS.

The Act also requires the registry to be updated within 30 days of any material change to the status of a registered property. A material change to the status includes the occurrence of any event that would remove the property from the requirements under the law (for example, completion of the foreclosure process, demolition of the house, a lien release, or the property becoming real estate owned) and a transfer in servicing rights.

If you have any questions regarding compliance with the New York State Abandoned Property Relief Act or its accompanying regulation, 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 Elizabeth Murphy at (516) 296-9154 or via email at emurphy@cullenanddykman.com.

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