

# Proposed Regulation Issued Under New York State's "Zombie Properties" Law

September 28, 2016

The New York State Department of Financial Services ("DFS") has proposed a new regulation (the "Proposed Regulation") that will require mortgage lenders and servicers to report vacant and abandoned properties in accordance with the New York State "zombie properties" legislation signed into law in June. The "zombie properties" legislation obligates mortgage lenders and servicers to inspect, monitor, and maintain certain residential properties that are believed to be vacant and abandoned. The Proposed Regulation is intended to establish reporting requirements to complement the recently passed legislation.

The Proposed Regulation is subject to a 45-day notice and public comment period following the October 12, 2016 publication in the New York State Register. Accordingly, both the Proposed Regulation and the "zombie properties" legislation are scheduled to take effect on December 20, 2016.

The Proposed Regulation expands upon the provisions of the "zombie properties" legislation by imposing certain reporting requirements on mortgagees and mortgage loan servicers with respect to vacant and abandoned property. Under the Proposed Regulation, "mortgagee" is defined as "the holder of a mortgage secured by residential real property and may include the original lender under a mortgage, its successors and assigns, and includes all credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named." "Mortgage loan servicer" means "an individual or entity engaged in mortgage servicing."

Specifically, the Proposed Regulation would require: (1) mortgagees and mortgage loan servicers to report the vacant and abandoned property to the DFS; and (2) mortgagees to submit a quarterly report to the DFS.

## Vacant and Abandoned Property Reporting

Under the Proposed Regulation, every mortgagee (or mortgage loan servicer), within 21 business days of when the mortgagee (or mortgage loan servicer) of a property learns or should have learned, that a property is vacant and abandoned, would be required to submit on a DFS-prescribed form the following information:

- i. the current name, address and contact information for the lender, assignee or mortgage loan servicer responsible for maintaining the subject property;
- ii. whether a foreclosure proceeding has been commenced as to the subject property, and, if so, the date the proceeding was commenced and the status of the proceeding;

- iii. the last known address and contact information for the mortgagor(s) of record; and
- iv. any additional information requested by the superintendent.

The Proposed Regulation provides that a mortgagee (or mortgage loan servicer) learns, or should have learned, that a property is vacant and abandoned when it knew or should have known one or more of the following:

- i. that three inspections of the subject residential real property conducted 25 to 35 days apart and at different times of the day indicated, or would have indicated, that (a) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons were residing there; and (b) the residential real property was not being maintained in a manner consistent with the standards set forth in New York property maintenance code chapter sections 301, 302;
- ii. that a court or other appropriate state or local governmental entity has formally determined, following due notice to the borrower at the property address and any other known addresses, that such residential real property is vacant and abandoned; or
- iii. that each borrower and owner has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.

Every mortgagee (or mortgage loan servicer) would be required to exercise due diligence to determine whether a property is vacant and abandoned.

## Quarterly Reporting

Under the Proposed Regulation, every mortgagee (that is not exempt from New York Real Property Actions and Proceedings Law (RPAPL) Section 1308(1), as provided in the “zombie properties” legislation) would be required to file with the DFS superintendent a quarterly report containing the following information:

- i. identification of all loans secured by a mortgage on residential real property held by the mortgagee where the borrower has been delinquent for 90 or more days;
- ii. for each loan identified pursuant to the above provision:
  - a. The date on which each inspection of the subject property to determine occupancy was conducted as required by RPAPL Section 1308(1), and the identity and employer of the person who performed the inspection.
  - b. The date on which a determination was made that the subject property was vacant and abandoned.
  - c. The date on which the notice required by RPAPL Section 1308(3) was posted on the subject property.
  - d. Identification of all actions to secure and maintain the subject property that has been taken, the date each action was taken, the nature of each action, and the identity and employer of the person who performed each action.
  - e. Whether a foreclosure proceeding has been commenced as to the subject property, and if so, the date the proceeding was commenced and the status of the proceeding; and
- i. any additional information requested by the superintendent.

Each quarterly report must be filed by a mortgagee within 30 days of the end of the quarter to which it pertains. The quarterly reporting requirement appears to only apply to mortgagees and not to mortgage servicers.

The “zombie properties” legislation and the DFS’s Proposed Regulation impose significant obligations on mortgagees and mortgage loan servicers, who will now be responsible for monitoring, maintaining, and reporting zombie properties. Mortgagees will need to become proactive by closely monitoring delinquencies in order to determine whether properties are indeed vacant and abandoned, which would trigger the new requirements. Penalties for violations of the “zombie properties” legislation include a \$500 civil fine per property per day.

If you have any questions regarding the Proposed Regulation or the “zombie properties” legislation, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at [jsimon@cullenanddykman.com](mailto:jsimon@cullenanddykman.com), Kevin Patterson at 516-296-9196 or via email at [kpatterson@cullenanddykman.com](mailto:kpatterson@cullenanddykman.com), Elizabeth Murphy at 516-296-9154 or via email at [emurphy@cullenanddykman.com](mailto:emurphy@cullenanddykman.com), or Adam Barazani at 516-357-3767 or via email at [abarazani@cullenanddykman.com](mailto:abarazani@cullenanddykman.com).

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