



Alerts

NY Strengthens Law Concerning Zombie Properties as Well as Good Faith Negotiations

July 25, 2016

Consumer Financial Services Alert

New York Senate Bill S8159

On June 23, 2016, the New York State Legislature passed a bill imposing new requirements upon mortgage servicers seeking to foreclose on defaulted home loans. The bill — S8159, dubbed the "zombie bill" by Governor Andrew Cuomo — is aimed principally at ensuring continued maintenance of vacant, foreclosure properties, though the bill also introduces a number of measures meant to keep borrowers in their homes. The law takes effect in December 2016, at which point several key procedures, highlighted below, will be required.

The new bill alters pre-foreclosure procedure in an effort to curtail the growing number of properties that become vacant as a result of borrowers abandoning homes. Specifically, servicers must now actively inspect properties for signs of vacancy or abandonment. Within seven days of determining that a property is vacant or abandoned, servicers must post notice on the property stating that the property is now being maintained, and must provide a contact telephone number. Should the homeowner fail to contact the mortgage servicer within seven days of posting, the servicer must secure and begin maintaining the property. The bill imposes a \$500.00 per-day fine for non-compliance. Servicers should ensure that their postings are timely, and be ready to engage in any required property maintenance as soon as the borrower contact period has lapsed. Moreover, servicers must timely self-report the data on all vacant properties with a state-created electronic registry. Failure to self-report may also lead to regulatory penalties for noncompliance. While the bill is wide-sweeping certain federal and state chartered depositories are exempt from the requirement.

With respect to abandoned or vacant homes, the bill does offer servicers an option to expedite the foreclosure process. Servicers may do so by making an application for an order to show cause seeking entry of judgment of foreclosure and sale on the grounds that the property is in fact vacant and/or abandoned. Foreclosing servicers must move to auction within 90 days of obtaining the judgment, and must ensure that the property becomes reoccupied within 180 days of taking title. Servicers should ensure that procedures are in place to fill vacant homes, as their maintenance requirements will continue to be imposed, and they can incur costs for failure to comply with those maintenance rules on an ongoing basis.

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Once foreclosure is properly commenced, servicers will find new rules implicated almost immediately. Among other new provisions, the law grants courts with the latitude to sanction servicers up to \$25,000.00 plus attorney's fees for non-compliance with good-faith participation in the conference. Servicers may find these new provisions to alter the loan modification process and the types of offers typically made to homeowners.

For its part, the new rule also imposes a number of ongoing obligations upon New York State. Among the administrative actions that the bill requires is imminent publication by the Department of Financial Services a so-called Consumer Bill of Rights. Moreover, the state will create and finance the Community Restoration Fund, in which the state may purchase defaulted mortgage notes from homeowners and forgive portions of a loan's principal balance or reduce interest rates. The Attorney General's Office and Department of Financial Services will likewise be required to bulk up the information and educational services provided to homeowners facing foreclosure.

While the provisions of New York's new bill impose procedural hurdles upon servicers that can be costly if not adhered to, the new rules may ultimately have the positive effect of a forced efficiency. Servicers may find it financially sensible to take swift and prudent action to cure home vacancies and ensure that other costly municipal codes are not inadvertently broken by allowing properties to go on abandoned.

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