

New York State Department of Financial Services

Industry Best Practices: Inspecting, Securing, and Maintaining Vacant and Abandoned Properties in New York

As part of its ongoing effort to reduce blight and alleviate burdens on local communities, the New York State Department of Financial Services (the “Department”) offers the following best practices to banks and mortgage loan servicers with respect to inspecting, securing, and maintaining vacant and abandoned properties.

The provisions of these best practices are applicable to first lien mortgages on one-to-four family residential real property and are subject to controlling laws, court orders, and investor and insurer guidelines.

Individual circumstances involving vacant and abandoned properties vary. Accordingly, actions that are not prescribed by these best practices but are consistent with their spirit and intent may be warranted in certain circumstances.

A. Conducting Inspections

1. Subject to bankruptcy filings, cease and desist orders, threats of violence, or active loss mitigation efforts, within 60 days of a borrower’s delinquency, the servicer will complete an exterior inspection of the subject property to determine occupancy. Thereafter, throughout the delinquency of the loan, the servicer will conduct an exterior inspection of the property every 25 to 35 days, at different times of the day.

B. Determining that a Property is Vacant and Abandoned

1. If the borrower is delinquent and subject to property inspections, the servicer will secure and maintain residential real property pursuant to Sections C and D of these best practices where the servicer has a reasonable basis to believe that the residential real property is vacant and abandoned and is not otherwise restricted from accessing the property. A “reasonable basis to believe that residential real property is vacant and abandoned” is based, at a minimum, on three consecutive inspections of such property in accordance with the timeline set out in Section A of these best practices, where all such inspections reveal evidence that the property is vacant and abandoned, or on any one inspection which reveals compelling evidence that immediate action is necessary to prevent property deterioration. “Evidence that the property is vacant and abandoned” includes, at a minimum, the following conditions:
 - a. No occupant is present at any inspection, and there is no evidence at any inspection of activity on the property to indicate that any persons are residing there; and
 - b. The residential real property is not being maintained in a manner consistent with the standards set forth in New York Property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1.

2. The servicer will also secure and maintain residential real property pursuant to Sections C and D of these best practices where:
 - a. A court or other appropriate state or local governmental entity has determined that such residential real property is vacant and abandoned; or
 - b. The borrower has issued a written statement expressing clear intent of all borrowers and occupants to vacate and abandon the property, and the servicer is not otherwise restricted from accessing the property.
3. Residential real property will not be deemed vacant and abandoned if, on the property:
 - a. There is an unoccupied building that is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion;
 - b. There is a building occupied on a seasonal basis, but otherwise secure;
 - c. There is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute of which the servicer has actual notice; or
 - d. There are squatters or other unauthorized occupants.

C. Securing the Property

1. Within seven business days of determining that the property is vacant and abandoned based on the criteria set forth in Section B, the servicer will post a notice on an easily accessible part of the property that would be reasonably visible to the borrower, property owner, or occupant and monitor the property for any change in occupancy or contact with the borrower, property owner, or occupant. The posted notice will provide the servicer's toll free number or similar contact information.
2. If the posted notice is not responded to or persists for seven consecutive calendar days without contact with the borrower, property owner, or occupant indicating that the property is not vacant or abandoned, or if an emergent property condition that could reasonably damage, destroy, or harm the property arises, the servicer will:
 - a. Replace at least one door lock to provide subsequent access to the property;
 - b. Secure, replace, or board up broken doors and windows;
 - c. Secure any part of the property that may be deemed an attractive nuisance (e.g., a water feature that could create a drowning risk, refrigerator or freezer units, outbuildings, wells, or septic tanks);
 - d. Take reasonable measures to ensure that pipes, ducts, conductors, fans, or blowers do not discharge harmful gases, steam, vapor, hot air, grease, smoke, odors, or other gaseous or particulate waste directly upon abutting or adjacent public or private property or that of another tenant;

- e. Where appropriate, winterize the applicable plumbing and heating systems;
 - f. Provide basic utilities (e.g., water, electricity, natural gas, propane and sewer service), as appropriate and when allowed by the local utility provider, that are needed for the operation of a sump pump or dehumidifier or when there are jointly owned or shared utilities with adjoining properties or units, except for turning off water service to prevent flooding or water leaks in the property, or when other utility service could reasonably create a hazard to the property or an unauthorized occupant or person entering the property;
 - g. Remove and remediate any significant health and safety issues, including outstanding code violations;
 - h. Take reasonable measures to prevent the growth of harmful mold; and
 - i. Respond to government inquiries regarding property condition, subject to restrictions regarding financial privacy.
3. At no time will the servicer remove personal property from the property unless:
- a. The personal property poses a health and safety issue; or
 - b. There is an uncontested order to do so by a governmental entity.

D. Maintaining the Property

1. A servicer who has determined a property to be vacant and abandoned and who has secured the same will take reasonable and necessary actions to maintain the property until the earlier of the following events:
- a. An occupant of the property has asserted his or her right to occupy the property, or the servicer has received threats of violence;
 - b. The borrower has filed for bankruptcy;
 - c. A court has ordered the servicer to stop any maintenance of the property;
 - d. A homeowners association or cooperative has prevented the servicer from gaining access to or maintaining the property;
 - e. The property has been sold or transferred to a new owner; or
 - f. The servicer or the investor has released the lien on the property.
2. Reasonable and necessary actions to maintain the property include but are not limited to:
- a. Ensuring that the property remains secure pursuant to Section C; and

- b. Maintaining property in a manner consistent with the standards set forth in New York property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1, to the extent that the mortgage servicer or its agents are able to obtain necessary or required permits or approvals.
3. At no time will the servicer remove personal property from the property unless:
 - a. The personal property poses a health and safety issue; or
 - b. There is an uncontested order to do so by a governmental entity.

E. Notice to the Department

1. Within 30 days of securing a property in accordance with Section C of these best practices, the servicer will notify the Department that the property is vacant and abandoned.
2. The Department will establish an online portal for servicers to file this notification and will make the filed information available to local authorities.