

Real Estate Title Insurance & Construction Law

Speeding up Foreclosures on Abandoned Residential Properties

New law permits an expedited process if the home at issue is not occupied

By Joy Harmon Sperling and
Kathleen A. Trawinski

In an attempt to assist with resolving the foreclosure crisis or, at least, expediting the foreclosure process in New Jersey, on Dec. 6, 2012, Gov. Chris Christie signed into law an act permitting lenders to file a summary action to expedite the foreclosure process if the property at issue is deemed vacant and abandoned residential property.

Proponents of the act hope that it will help stabilize the residential real estate market by reducing the time it takes to complete certain foreclosures, and thereafter return the property to an occupied status, by permitting the lender to have the sheriff conclude a sale in short order. It is anticipated that the act

will benefit both lenders and borrowers and, therefore, New Jersey as a whole, by reducing the cost and time associated with litigating residential mortgage foreclosure actions.

The act takes effect immediately but will “remain inoperative until the first day of the fourth month next following the date of enactment,” which will be April 1, 2013.

The Act’s General Provisions

The act allows lenders to bring a summary action in the Superior Court of New Jersey to foreclose a mortgage debt secured by residential property that is vacant and abandoned. Additionally, a lender may file an application to proceed in a summary manner, at any time after filing a foreclosure action, if the residential property that is the subject of the foreclosure action is believed to be vacant and abandoned. Under the act, a court may enter a final residential mortgage foreclosure judgment if it finds, by clear and convincing evidence, that the residen-

tial property is vacant and abandoned, as defined by the act, and that a review of the pleadings and documents filed with the court supports the entry of such a judgment. A court will not enter a final residential mortgage foreclosure judgment under this act if the court finds that the property is not vacant or abandoned or that the mortgagor or any other defendant has filed an answer, appearance or other written objection that is not withdrawn, and the defenses or objection asserted by the mortgagor or other defendant provide cause to preclude the entry of a final judgment.

Vacant and Abandoned

The act defines “vacant and abandoned” residential property to mean “residential real estate with respect to which the mortgagee proves, by clear and convincing evidence, that the mortgaged real estate is vacant and has been abandoned.” Real property will be deemed vacant and abandoned if the court finds that the mortgaged property is not occupied by a mortgagor or tenant, and at least two of the following conditions exist:

- (1) Overgrown or neglected vegetation;
- (2) The accumulation of newspapers, circulars, flyers or mail on the property;
- (3) Disconnected gas, electric or water utility services to the property;
- (4) The accumulation of hazardous, noxious or unhealthy substances or mate-

Sperling is a partner at Day Pitney LLP in Parsippany, where she is a member of the firm’s commercial litigation department and chairwoman of its consumer finance and creditors’ rights practice group. Trawinski is part of the firm’s commercial litigation department and a candidate for admission in New Jersey and New York.

rials on the property;

(5) The accumulation of junk, litter, trash or debris on the property;

(6) The absence of window treatments such as blinds, curtains or shutters;

(7) The absence of furnishings and personal items;

(8) Statements by neighbors, delivery persons or government employees indicating that the residence is vacant and abandoned;

(9) Windows or entrances to the property that are boarded up or closed off, or multiple window panes that are damaged, broken and unrepaired;

(10) Doors to the property that are smashed through, broken off, unhinged or continuously unlocked;

(11) A risk to the health, safety or welfare of the public or any adjoining or adjacent property owners, that exists due to acts of vandalism, loitering, criminal conduct or the physical destruction or deterioration of the property;

(12) An uncorrected violation of a municipal building, housing or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;

(13) The mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;

(14) A written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property; or

(15) Any other reasonable indicia of abandonment.

Procedural Requirements

The act requires a lender, in addition to the service of process required by the New Jersey Court Rules, to establish that a process server has made two unsuccessful attempts to serve the foreclosure complaint on the mortgagor or occupant

at the residential property. These attempts must be at least 72 hours apart and during different times of the day — either before noon, between noon and 6 p.m., or between 6 p.m. and 10 p.m. The act further requires that a lender, with any order to show cause served as original service of process or a motion to proceed summarily, must serve a notice that the lender is seeking to proceed summarily for entry of a residential foreclosure judgment because the property is vacant and abandoned. Additionally, when a property is deemed vacant and abandoned as defined by the act, a lender is not required to serve the debtor with the notice to cure required by Section 6 of the Fair Foreclosure Act. These provisions serve to expedite the foreclosure process by reducing the number of notices required to be sent to the debtor and the time the lender has to wait to move forward with its foreclosure proceeding.

If the court concludes that the property is vacant and abandoned and enters final judgment, the sheriff is required to sell the property within 60 days of receipt of any writ of execution issued by the court.

N.J.'s Other Efforts to Address the Foreclosure Crisis

The act is among the New Jersey Legislature's many recent efforts to address the increase in residential mortgage foreclosure filings and to resolve those cases as expeditiously as possible. Another bill the legislature is considering would codify the state's Foreclosure Mediation Program, which was established in 2009 in response to the increase in residential foreclosures. This bill, which passed the Assembly on Dec. 3, 2012, would ensure the continuation of mediation services that assist homeowners and lenders in pursuing an alternative to litigation. Along these lines, another bill was recently passed by the Senate, which authorizes municipalities to impose penalties on creditors that fail to timely remedy code violations on vacant

and abandoned properties in foreclosure. The bill provides that, where a property is deemed to be a nuisance or in violation of any applicable state or local code, the creditor must abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property.

Additionally, both houses of the New Jersey Legislature recently approved a bill that would require the New Jersey Housing and Mortgage Finance Agency (HMFA) to expend the entire amount of funds provided to the state by the federal government in order to help homeowners avoid foreclosure and to expand participation in the New Jersey HomeKeeper Program. The bill would also allow the HMFA to establish other programs, including programs to facilitate permanent mortgage modifications through principal reductions by lenders. The bill awaits action by Gov. Christie.

The New Jersey courts are also making efforts to assist with expediting the foreclosure process for lenders. Indeed, the concept underlying the act regarding vacant and abandoned residential property — i.e., providing for a faster process to foreclose mortgages — mirrors the holding in *Sturdy Savings Bank v. Roberts*, No. F-15764-10, 2012 N.J. Super. LEXIS 106 (Ch. Div. Feb. 21, 2012). In that case, Superior Court Judge William Todd of the Chancery Division in Cape May County determined that a property that secures a residential mortgage that is not currently occupied by the debtor does not qualify as a residential property. A debtor who has a mortgage on vacant and abandoned property is therefore not entitled to the protections afforded to borrowers under the New Jersey Fair Foreclosure Act with respect to a right to cure any default. In passing the act, the legislature has essentially sent a message that it, too, is taking meaningful action to attempt to remedy New Jersey's foreclosure crisis. ■