

New York's Zombie Property Laws

Jordan Zeranti, Esq., Western New York Law Center

ZOMBIE FORECLOSURES AFTER COVID:

EMERGENCY TRAINING FOR MUNICIPALITIES AND COMMUNITIES

*Please note this presentation is for informational purposes only and is not intended to provide specific legal advice.

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- On June 23, 2016, the Governor signed into law the **Zombie Property Remediation Act, Chapter 73 of the Laws of 2016**, to mitigate the negative impact that vacant properties have on local communities.
- The law, which became effective on **December 20, 2016**, is located at Real Property Actions and Proceedings Law (“RPAPL”) Sections 1308, 1309, & 1310, with supporting regulations at 3 NYCRR 422.
- The law obligates mortgage note holders or their loan servicers (“mortgagees”) to **repair and maintain vacant and abandoned properties** in their portfolios until the property is sold to another party after a foreclosure, or the mortgage servicer releases the lien on the property.



What is “vacant and abandoned residential property”?

- Per NY RPAPL § 1309 (2)(a), “vacant and abandoned residential property” means residential real property, as defined in RPAPL § 1305, with respect to which the **plaintiff has proven**, by preponderance of the evidence, that it has conducted at least **3 consecutive inspections** of such property, with each inspection conducted **25 to 35 days apart** and **at different times of the day**, and at each inspection
 - (i) **no occupant was present** and there was **no evidence of occupancy** on the property to indicate that any persons are residing there; and
 - (ii) the residential real property was **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.

Evidence of lack of occupancy

Per NY RPAPL § 1309 (2)(c) shall include but not be limited to the following conditions:

- (i) overgrown or dead vegetation;
- (ii) accumulation of newspapers, circulars, flyer or mail;
- (iii) past due utility notices, disconnected utilities, or utilities not in use;
- (iv) accumulation of trash, refuse or other debris;
- (v) absence of window coverings such as curtains, blinds, or shutters;
- (vi) one or more boarded, missing or broken windows;
- (vii) the property is open to casual entry or trespass;
- (viii) the property has a building or structure that is or appears structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons.



What is “vacant and abandoned residential property”? (continued)

○ **Per NY RPAPL § 1309 (2)(b)** Residential real property will also be deemed vacant and abandoned if:

(i) **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

(ii) **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.

What is NOT “vacant and abandoned residential property”?

- **Per RPAPL § 1309 (2)(d)** Residential real property will not be deemed vacant and abandoned if, on the property:
 - (i) There is an unoccupied building that is **undergoing construction, renovation, or rehabilitation** that is proceeding diligently to completion;
 - (ii) There is a building **occupied on a seasonal basis**, but otherwise secure;
 - (iii) 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;
 - (iv) There is a building **damaged by a natural disaster** and one or more owner intends to repair and reoccupy the property; or
 - (v) There is a building **occupied by the mortgagor, a relative of the mortgagor or a tenant** lawfully in possession.

Who does the law apply to?

- **First lien** mortgage holders on **1 to 4 family** residential real property that is vacant and abandoned (as defined in RPAPL § 1309)
- Excludes mortgagees with a small market share (Per RPAPL § 1308, “this section shall not apply to state or federally chartered banks, savings banks, savings and loan associations, or credit unions which: (1) originate, own, service and maintain their mortgages or a portion thereof; and (2) have less than three-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year.”)
- Applies prospectively for medium size lenders (“For any state or federally chartered banks, savings banks, savings and loan associations, or credit unions which originate, own, service and maintain between three-tenths of one percent and five-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year, the application of this section shall be prospective only.”)

RPAPL § 1308

Mortgagee to inspect properties associated with a loan that is 90 days or more delinquent* every 25 to 35 days to assess whether the property meets the definition of vacant & abandoned.

Within 7 days, **post notice** on an easily accessible part of the property with servicer's toll free number and monitor for change.

If no response after 7 days (OR emergent property condition), **secure and maintain.**

* Subject to bankruptcy filings, cease & desist orders, threats of violence, or active loss mitigation efforts.

RPAPL § 1309

Expedited application for judgment of foreclosure and sale for vacant and abandoned property.

Plaintiff in a foreclosure proceeding may make an application by notice of motion or order to show cause.

No application may be made until defendant's time to answer the complaint has expired.

Notice must be given to borrower. Court will then decide if home is vacant and abandoned.

RPAPL § 1310

Within 21 days, mortgagee must **register with DFS** all properties that are determined to be vacant and abandoned.

Must include servicer's contact information, date of foreclosure filing, and last known address/contact information for the mortgagor(s) of record.

Cannot have conflicting local ordinances & laws.

Municipalities or public officials can request the list of vacant properties within their jurisdiction.

Maintenance Requirements

- Replace one door lock;
- Secure, replace, or board up broken doors or windows;
- Secure attractive nuisance (pools, wells, septic tanks, etc.);
- Limit discharge of harmful gases, vapors, odors, etc.;
- Winterize the plumbing & heating systems;
- Provide basic utilities;
- Remove / remediate health & safety issues (including code violations);
- Prevent growth of mold;
- Respond to government inquiries re: the property;
- Ensure notices are posted and visible.

Mortgagee must maintain until...

- an occupant of the property has asserted his or her right to occupy the property, or the servicer or its agents have received threats of violence;
- the borrower has filed for bankruptcy;
- a court has ordered the servicer to stop any maintenance of the property;
- a homeowners' association or cooperative has prevented the servicer from gaining access to or maintaining the property;
- the property has been sold or transferred to a new owner;
- the servicer or investor subject to the provisions of this section has released the lien on the property; or
- the mortgage note has been assigned, transferred or sold to another servicer.

Penalties & Enforcement



- Violations can be heard by officer or court of competent jurisdiction.
- NYS Department of Financial Services (DFS) Superintendent can sue mortgagee after giving 7 days' notice of the violation.
- Municipalities can also enforce the maintenance requirements by bringing an action against the mortgagee. Must give **7 day notice to mortgagee** and **10 day notice to DFS**.
- Civil penalty of up to **\$500 a day** per property for each day the violation exists.
- If an **emergency situation** arises, a municipality can cure the emergency and bring an action against the servicer to recover the costs.
- DFS is authorized and empowered to adopt such rules and regulations as may, in the judgment of the superintendent of financial services, be necessary for the effective implementation, administration, operation and enforcement of this section.
- A servicer who peacefully enters a vacant and abandoned property in order to maintain pursuant to this section shall be immune from liability when such servicer is making reasonable efforts to comply with the statute.



Department of
Financial Services

The Role of NYS Department of Financial Services

Elizabeth Butler, Esq., DFS

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**Department of
Financial Services**

Vacant and Abandoned Property Registry

OVERSIGHT, USE AND ACCESS

July 21, 2021

REGISTRY INFORMATION

The Database contains information that is reported and entered by the mortgagee or its agent.

The Property address entered by mortgagee may be incorrect, or even the determination that a property is vacant and abandoned, can be wrong.

DFS suggests everyone use the database on a trust but verify basis.

“PUBLIC OFFICIAL”

3 NYCRR 422.2

A member of the New York State legislature, a member of the elected governing body of a county, town, village or city, and in the city of New York, the city council, and the highest ranking elected executive official of a county, city, town or village.



PUBLIC OFFICIAL ACCESS TO THE REGISTRY

Applications to access the registry may be submitted at:

<https://myportal.dfs.ny.gov/foreclosure>

While primary account access may only be provided to authorized public officials, upon approval, the official may create secondary accounts for those with whom they will be working to further the purposes of RPAPL 1310 for the relevant locality.

Public officials are entitled only to information that relates to the official's geographic area.

Information provided to public officials may only be used to further the purposes of RPAPL 1310, or other related laws or ordinances.

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REQUESTING ACCESS TO THE DATABASE

Foreclosure Database portal looks like this:



The screenshot shows the login interface for the New York State Department of Financial Services Foreclosure Database. At the top left is the New York State logo. To its right, the text reads "DEPARTMENT OF FINANCIAL SERVICES" and "FORECLOSURE DATABASE" in large, bold, teal letters. Below this, there are two input fields: "User ID" and "Password". Under the "Password" field is a "Login" button. Below the "Login" button is a "Public Official New ID Request" button. At the bottom of the page, there is a horizontal line followed by a paragraph of text: "Filers must have a User ID and Password to access the Department of Financial Services Foreclosure Database. If you have not received your organization's User ID and Password, or if this is your organization's first time submitting a filing, please see [instructions](#) or email preforeclosurefiling@dfs.ny.gov for directions on obtaining a User ID and Password."

ID APPLICATION PAGE

User Details Cancel Submit

Government Office or Agency* NYS Department of Financial Services LOGIN ID* peter.dean

Street Address* One State Street

19th Floor

City* New York State* New York

Zip Code* 10004 -

Phone (main)* 2124805278 Ext

Phone (alt) Ext

Email* peter.dean@dfs.ny.gov

Contact Details

Title* Executive Deputy Superintendent

First Name* Peter Last Name* Dean

Public Officials will only be permitted access to information about properties located within their jurisdiction and should request access accordingly.

Add County

Zip codes by County

Suffolk-11731	Suffolk-11740
Suffolk-11733	Suffolk-11721
Suffolk-11735	Suffolk-11740
Suffolk-11738	
Suffolk-11739	
Suffolk-11741	
Suffolk-11742	
Suffolk-11743	
Suffolk-11747	
Suffolk-11749	

DATABASE FUNCTIONALITY

CREATING SUBACCOUNTS

Request Sub User ID

Government Office or Agency:* LizTest

Userid (Valid Email Address):*

New Password:*

Re-enter New Password:*

Enabled: Yes ▾

First Name:*

Last Name:*

Title:

Alternate Email:

Phone:*

Phone Ext:

Alternate Phone:

Alternate Phone Ext:

If Foreign Address, Select Yes: No ▾

Street Address:*

Address Line 2:

City:*

State: New York ▾

County: --Select County-- ▾

Zipcode* -

Addr Country* US

Cancel

Submit



NEW LOGIN PROCEDURES AS OF JUNE 1, 2021

As of June 1, 2021 a new way of logging into the DFS Foreclosure System has been introduced. This upgrade created a more secure way of logging in by using Multi Factor Authentication. It requires every user to login with a valid email address.

Converting Existing IDs

If your organization has still not converted your user ID to the new format, your designated main contact will have to follow a link on the login page to request a conversion of your existing ID into the new format. The new primary ID must be a valid email address. Public Officials that already have sub IDs will need to convert them to the new format, that uses valid email addresses.

IDs in the old format are no longer active.

New Security Features


In the new system, as soon as the User ID is entered, an email with a PIN is generated and sent to the email associated with that ID. When the user enters the PIN, they will be allowed to enter their password, and upon successful verification of all 3 credentials the user will be allowed to proceed.

Additional parts of the security enhancements:

- PINs will be valid for only 60 minutes.
- Users can only request resend of PIN 5 times.
- If there are more than 5 requests, the account will be locked for 2 hours.
- Password reset will be available after answering the 3 security questions.

DATABASE FUNCTIONALITY

VACANT PROPERTY REPORT


DEPARTMENT OF FINANCIAL SERVICES
FORECLOSURE DATABASE

[Home](#) [Account Information](#) [Vacant and Abandoned Property Report](#) [Uploaded Reports](#) [Change Password](#)

Vacant and Abandoned Property Report

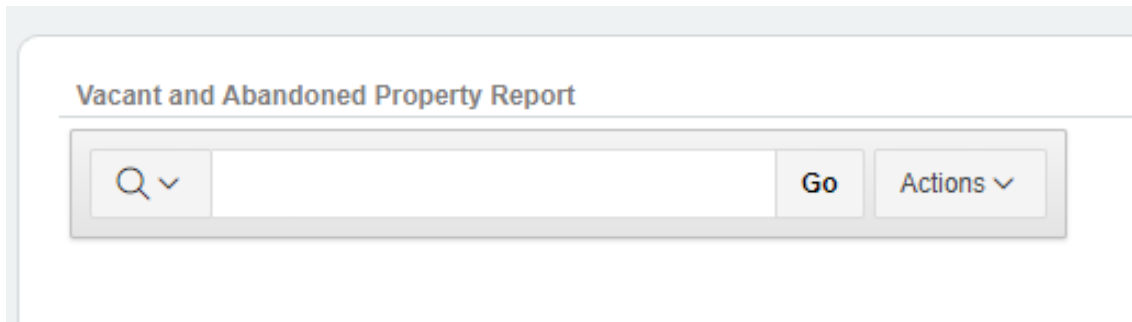
Go
Actions ▾

▼ 🔍 Row text contains '11740' ✕

Tracking Number	Property Addr.	Property City	Property Zip	Property County	Servicer Name	Servicer Address	Servicer Phone Main	Servicer E-Mail(s)	In Dispute?
NYS5362	██████████	HUNTINGTON STATION	11746-2219	SUFFOLK	Ditech Financial LLC	300 Landmark Towers, 345 St. Peter Street, St. Paul, MN, 55102,	6512934600	██████████@ditech.com	No
NYS4161	██████████	HUNTINGTON STATION	11746-4416	SUFFOLK	Ditech Financial LLC	300 Landmark Towers, 345 St. Peter Street, St. Paul, MN, 55102,	6512934600	██████████@ditech.com	No
NYS3499042	██████████	HUNTINGTON STATION	11746	SUFFOLK	Nationstar Mortgage LLC.	8950 Cypress Waters Blvd., Coppell, TX, 75019,	4695492000	compliance@nationstarmail.com	No
NYS3429	██████████	DIX HILLS	11746	SUFFOLK	Nationstar Mortgage LLC.	8950 Cypress Waters Blvd., Coppell, TX, 75019,	4695492000	compliance@nationstarmail.com	No
NYS2922	██████████	DIX HILLS	11746	SUFFOLK	Nationstar Mortgage LLC.	8950 Cypress Waters Blvd., Coppell, TX, 75019,	4695492000	compliance@nationstarmail.com	No

DATABASE FUNCTIONALITY

DATA SORTING TOOLS



Upper left hand of screen has a search feature and an “Actions” button.

Actions button pulls up a drop down menu that allows you to download a spreadsheet, sort the data, create a chart and “flashback” to the database at a previous time.

COORDINATED ENFORCEMENT

DFS is able to help localities:

- a) Identify and contact mortgagees;
- b) Get mortgagees to remedy any outstanding maintenance issue(s); and
- c) Obtain historical maintenance information for a property.

A locality looking for assistance from DFS should file a complaint at www.dfs.ny.gov/complaint.

At least 10 days prior to bringing any court action under RPAPL 1308, notice must be provided to DFS by emailing vacantproperty@dfs.ny.gov. A [template notice form](#) is available on the Department's website.

Any civil penalty recovered by a municipality will be retained by the municipality.

RESOURCE CENTER

Resource Center

- (1) Public Official Vacant Property Presentation
- (2) Sample Notice of Violation (registered but not maintained)
- (3) Sample Notice of Violation (not registered and not maintained)
- (4) Text of NY RPAPL Section 1308
- (5) Text of NY RPAPL Section 1310
- (6) Text of NY RPAPL Section 1309
- (7) Text of NY RPAPL Article 19-A
- (8) Text of 3 NYCRR 422
- (9) A link to the Department's NY RPAPL 1308 Enforcement Notice Form
- (10) List of entities exempt under 1308
- (11) Access the Department's consumer foreclosure page
- (12) Access the Department's complaint portal
- (13) Email the Department's vacant property mailbox (vacantproperty@dfs.ny.gov)
- (14) Link to the 2010 Property Maintenance Code

Property Maintenance: A Bank and Mortgage Servicer Perspective

Chip Nolan, M&T Bank

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Vacant and abandoned vs. Zombie Property

Vacant and Abandoned

- Per RPAPL 1309
 - Three (3) consecutive inspections 25-35 days apart at different times of day
 - No occupant present and no evidence of occupancy
 - Property not maintained (per sections of NYS property maintenance code)
 - Court or state or local government, with notice to the mortgagor(s), determines the property is vacant and abandoned
 - Each mortgagor separately issues a sworn statement of intent to vacate and abandon the property, confirmed by subsequent inspection

Zombie property

- A vacant and abandoned property ("VAP") is not automatically a zombie
- Zombies occur when
 - A servicer does not timely proceed with foreclosure in good faith
 - A servicer does not initiate or dismisses foreclosure when a mortgagor is not engaged and/or does not qualify for loss mitigation
- Zombies are NOT
 - VAPs that are proceeding through foreclosure process where delays occur because of loss mitigation review, bankruptcy filing, court delays
 - VAPs where the servicer completes foreclosure or otherwise discharges its lien on the property

Foreclosure process overview



- Outreach by servicer for loss mitigation assistance
- 90-day pre-foreclosure letter

- Lis pendens (Notice of Pendency) filed, summons & complaint filed
- Mortgagor files answer

- Court-mediated loss mitigation discussion/ review
- If successful, foreclosure is dismissed

- Discovery and Summary Judgment
- Trial

- Referee Appointed
- Judgment of Foreclosure and Sale

- Third-party purchase, or
- Revert to servicer for REO sale or conveyance

NYS 2016 Zombie Property and Foreclosure Prevention Act

RPAPL 1308

- Applies to 1st lien, 1-4 family residential real property
- Set expectations for
 - Inspections
 - Seven (7)-day posted notice of vacancy
 - Securing and maintaining
- Prohibits removal of personal property prior to foreclosure sale
- Established a civil penalty of \$500 per each day for non-compliance with maintenance requirements

RPAPL 1309

- Defined a VAP
- Provides exclusions for unabandoned vacant properties
- Established an application for expedited Judgment and Sale for VAPs

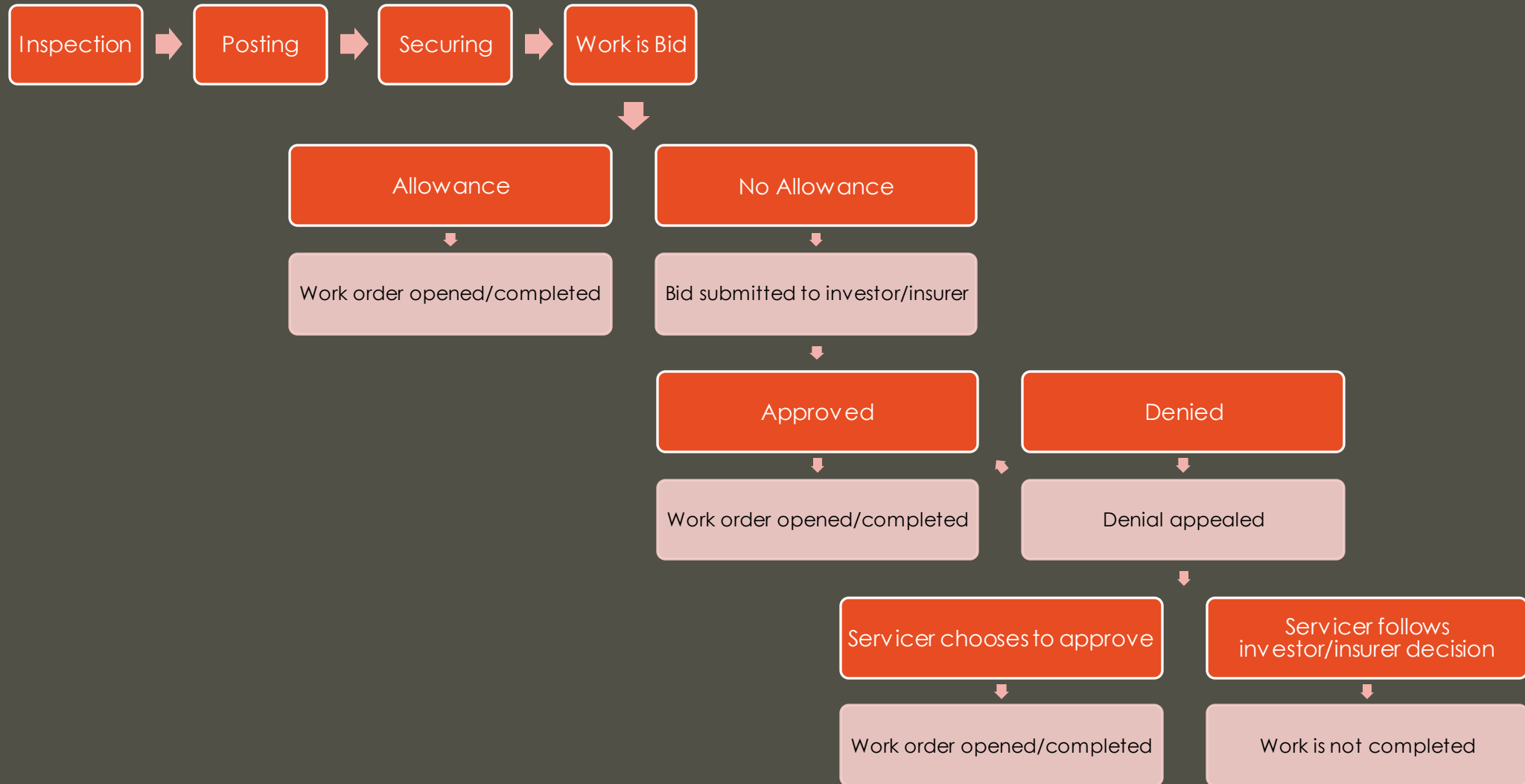
RPAPL 1310

Established a requirement for NYS Department of Financial Service (“DFS”) to maintain a statewide electronic database/registry of VAPs

3 NYCRR 422.8

Established the ability for NYS DFS to release to a Public Official information in the VAP registry that is specific to the scope of Public Official’s district or political subdivision

VAP Maintenance Process





Local Vacant Property Registries

Michael Halpern, Founder & President of MuniReg LLC
Former Director of Community Initiatives, Safeguard Properties

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Property Preservation companies: the low(er) man in the pecking order

- Safeguard Properties
- MCS
- Cyprex
- Five Brothers
- NFR
- Altisource etc.



Why Consider a Registry?

Good source of information

- Servicer
- Loan type
- Legal status
- Who is NOT, or no longer the responsible party

Vacant Property Registration Ordinances (VPROs) have two main objectives:

- 1) Ensure that owners and responsible parties of vacant properties are known to the municipality and other interested parties can be reached if necessary.
- 2) Ensure owners and responsible parties of vacant properties are aware of their obligations of ownership under relevant city codes and regulations.

“VPRO” is a “catch-all” term, often utilized for various types of registries that we will discuss today including “foreclosed” and “default”.

Vacant Property Registration Ordinances: A Proven Tool in the Fight Against Zombie Foreclosures and Blight

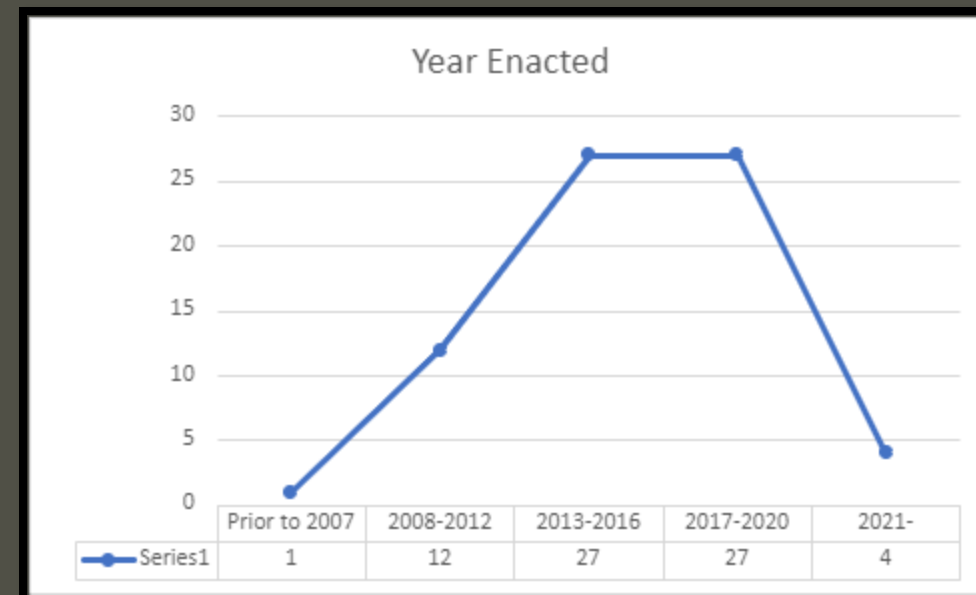
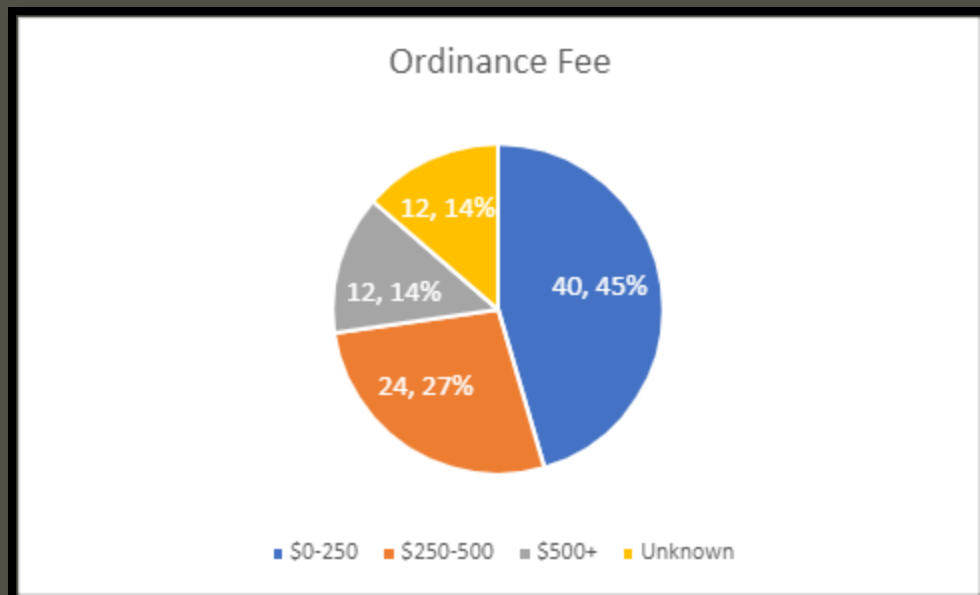
Blight Elimination

- The traditional benefits of blight elimination i.e. increased property values, reduction in crime, positive community image etc.
- All independent of the potential revenue from the registration fees.



- November 2019 White Paper “*Foreclosure Externalities and Vacant Property Registration Ordinances*”
- “This paper tests the effectiveness of vacant property registration ordinances (VPROs) in reducing negative externalities from foreclosures...and we find that the enactment of VPROs in Florida more than halved the negative externality from foreclosure.”
- “Given that VPROs had relatively little enforcement cost, indeed they raised revenue for the city, they seem a relatively efficacious way to directly address the foreclosure externalities arising from any future downturn in housing markets. Certainly compared to other interventions like the Home Affordable Modification Program (HAMP) that attempted to forestall bank initiated foreclosures (and their spillovers) via costly inducements to banks, VPROs appear to be highly cost effective.”

New York State Vacant Property Registration Ordinance Data



- 45% of cities with VPROs have fees between \$0 and \$250
- A Major increase in VPROs after 2007

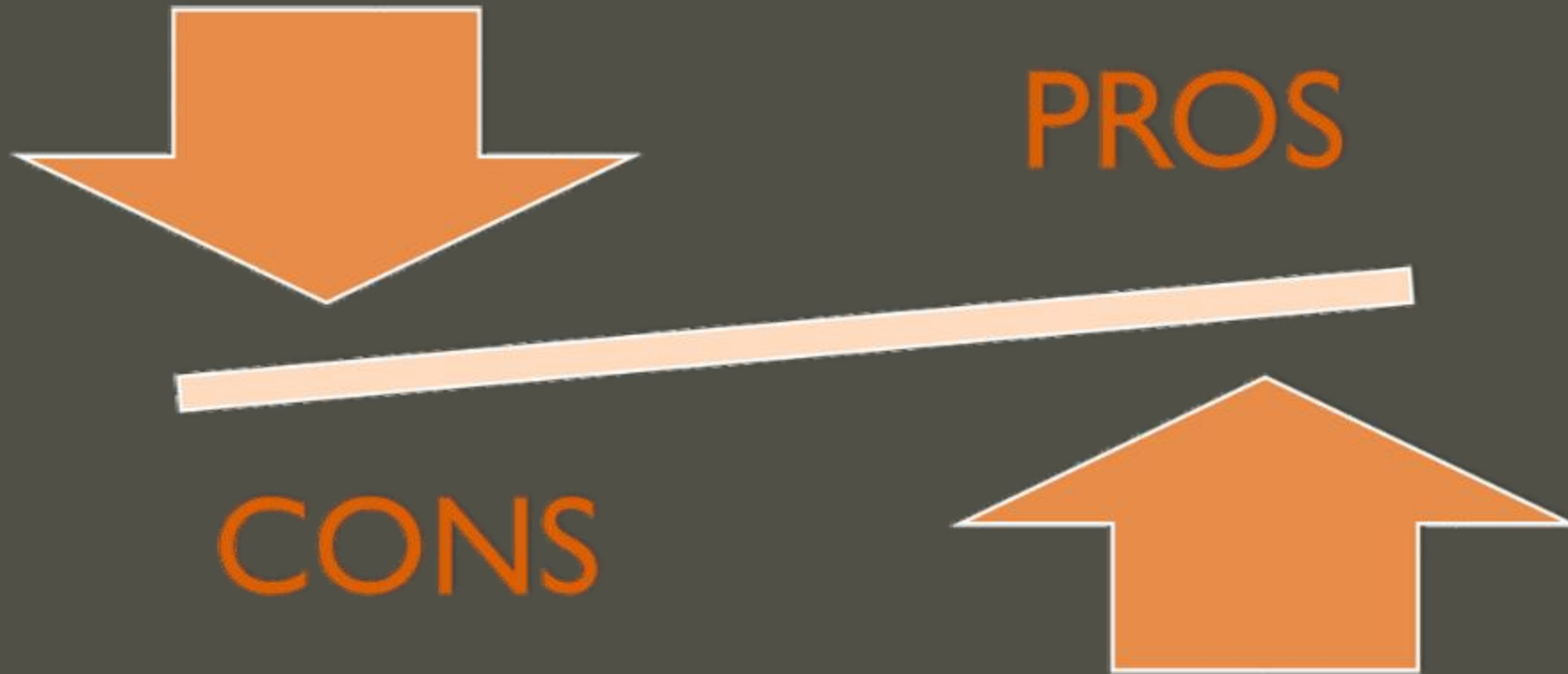
Resources Available

- State: DFS Database
- Regional: Erie County Zombie Foreclosure Task Force
- Local: VPRO

Benefits of VPRO

- **“Time is Money”**
 - Eliminates the often-significant time spent by the Code Enforcement/Building official in identifying ownership.
 - Significantly shortens the time period for corrective actions, positively impacting the property condition (property value) and its impact on surrounding properties (broken window theory)
 - Reduces the complaint call volume.
- **“A Penny Saved is a Penny Earned”**
 - Eliminates the need to utilize municipal resources to correct violation
 - Eliminates the cost of notifications (certified letter, postings etc.)
- **Blight Elimination**
 - The traditional benefits of blight elimination i.e. increased property values, reduction in crime, positive community image etc.
 - All independent of the potential revenue from the registration fees.

Pros & Cons of Outsourcing



**Compare
&
Contrast**

In-House Administration "PROS"	In-House Administration "CONS"	Outsourcing "PROS"	Outsourcing "CONS"
<ul style="list-style-type: none"> ✓ No out of pocket fees 	<ul style="list-style-type: none"> • Incomplete compliance 	<ul style="list-style-type: none"> ✓ No out of pocket fees 	<ul style="list-style-type: none"> • Potential decreased fee revenue
<ul style="list-style-type: none"> ✓ Inherent value of the program 	<ul style="list-style-type: none"> • Additional stress on existing staff 	<ul style="list-style-type: none"> ✓ Inherent value of the program 	
<ul style="list-style-type: none"> ✓ Retention of full fee revenue 	<ul style="list-style-type: none"> • Time, efforts, and money still expended on research 	<ul style="list-style-type: none"> ✓ No need to burden current resources 	
		<ul style="list-style-type: none"> ✓ Outsourcer is incented to maximize compliance ✓ Additional resource/partner with new perspectives 	

Contact Information

Website: www.munireg.com

Email: info@munireg.com

Phone: 866-686-4734

Presenter:

Michael Halpern

mhalpern@munireg.com

Thank you for attending!

We hope you found this information invaluable.

Feedback is always appreciated!

Stay healthy and safe and have a wonderful summer!



Community Outreach & Educating Neighbors

Richard Chudy, Town of Amherst

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Code Enforcement Tip:

**Engage your community to be your eyes and ears:
Community involvement is key to your success.**

**Educate the community about when and how to
efficiently report code violations.**

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Educating the community on the Maintenance/Code enforcement process in relation to foreclosures:

- Educate the community as to what the process is and also how they can help. Reporting issues early helps.
- Educate the community on realistic timeframes.
- Community members will become frustrated when they are not given the information or are not kept in the loop.
- Community members may be able to get you in touch with the property owner. Open communication with property owner may lead to other creative ways to solve the foreclosure matter.

Working with Servicers and Property Maintenance companies to remedy situations

- Accountability
- Realistic Time Frames
- Benchmarks
- Clear expectations

Takeaway/ Suggestion:

Get your community involved in the process!

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Housing Counseling & Legal Services

Gail Londner, Belmont Housing

Amy Gathings, Esq., Western New York Law Center

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HOMEOWNER PROTECTION PROGRAM

Statewide network of over 80 housing counseling and legal service organizations committed to helping families save their homes from foreclosure, scams, and tax liens

Network of free services that has already helped over 120,000 New Yorkers avoid homelessness, crushing debt, and displacement

**LOCAL
HOUSING
COUNSELING
AGENCIES**



(716) 884-7791



(716) 250-2400

HUD CERTIFIED HOUSING COUNSELORS

Housing Counselors are required to pass a rigorous 6-part examination by August 2021 in order to be HUD-Certified

Certified counselors and housing counseling agencies must follow strict National Industry Standards and best practices

Counselors have ongoing continuing education requirements

FORECLOSURE PREVENTION HOUSING COUNSELING

- We help borrowers explore their foreclosure prevention options
- Assistance with escrow shortages and determining affordability
- Information on current government programs
- Assistance in completion of loss mitigation applications
- Negotiations of loan modifications with lenders
- Referrals to legal service agencies and other community resources when applicable
- Transition counseling when home retention not possible

WHY WORK WITH A HOUSING COUNSELOR?

- Homeowners who work with a certified counselor are nearly three times more likely to receive a loan modification compared to those who do not work with a counselor
- Counseled homeowners are 70% more likely to remain current on their mortgage afterward



FORECLOSURE PREVENTION PROJECT

716-828-8428

BENEFITS OF SETTLEMENT CONFERENCE



The bank is not allowed to move forward with foreclosure until the case is released from settlement conference



Attorney's fees accrued during conference cannot be passed on to the homeowner



GOOD FAITH STANDARD applies to the bank and bank attorney and there is accountability

OPTIONS EXPLORED AT SETTLEMENT CONFERENCE

- Forbearance
- Loan Modification
- Repayment Plan
- Non-retention options (Deed-In-Lieu, Short Sale, Full Sale)

- **IMPORTANT NOTE: MORTGAGE SERVICER MUST FOLLOW THE INVESTOR GUIDELINES AT ALL TIMES**

SERVICER V. INVESTOR

○ INVESTOR

- LEGALLY OWNS THE LOAN
- SETS RULES RE WHAT TO DO WITH DELINQUENT LOANS
- FHA/FANNIE/FREDDIE/USDA/VA – all government agencies that back mortgage loans and all have their own guidelines on servicing delinquent loans that are publicly available
- PRIVATE INVESTOR – guidelines are proprietary and difficult to view

○ SERVICER

- Investor/owner contracts with another entity to handle sending correspondence, collecting payments, keeping records, etc.
- Must always follow all guidelines set out by the investor of the loan
- Must seek investor approval for certain options before offering to the homeowner and abide by all investor documentation requirements

FORBEARANCE

- Temporary Option
- Not a permanent solution
- Available for COVID 19 and unemployment hardships
- Best to apply for a permanent option as soon as a homeowner is able

LOAN MODIFICATION

- Arrears, fees, taxes, etc. get added to the unpaid principle balance
- Interest is set at a fixed rate or step rate
- Loan term is stretched to 360 or 480 months
- Sometimes principle deferment or balloon payments

REPAYMENT PLAN

- Monthly payments are resumed
- Additional amounts added to pay back arrears over a certain period, usually not to exceed 24 months

**IF YOU REACH A SETTLEMENT, THE
BANK MUST CANCEL THE
FORECLOSURE LAWSUIT WITHIN
90 DAYS**

“Stipulation to discontinue and cancel lis pendens” or
“motion to discontinue and cancel lis pendens”

Behind on your loan?
Stay in your home!

Learn more or find
assistance:

stayinyourhomeWNY.com

(716) 828-8439

Stay in Your Home Campaign
Sponsors and Members

Sponsored by:

-  Michael P. Kearns
Erie County Clerk
- 
- 
- 
-  CITY OF North Tonawanda
- 
-  TOWN OF WEST SENECA
"PROUD PAST - UNLIMITED FUTURE"
- 

In Collaboration with:

- 
- 
- 
- 
- 
- 
- 

QUESTIONS? REACH US ON OUR
HOTLINE: 716-828-8439

What can a homeowner do when staying in the home is not an option?



Non-Retention Options

Christie Noonan, GRI, SFR, PSA, HUNT Real Estate

ZOMBIE FORECLOSURES AFTER COVID:

EMERGENCY TRAINING FOR MUNICIPALITIES AND COMMUNITIES

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Short Sale OR Deed In Lieu



What is a short sale?

When the lender/mortgage company has agreed to accept less than what is owed (including principal, tax and insurance payments, late fees, court costs, attorney fees etc.) and will issue a satisfaction of the mortgage once that amount is received.

A “Short Sale” has nothing to do with time. The process can take several months to complete and requires full participation from the homeowner.

(And patience from the buyer)

How and where does a homeowner start?



- Call a Realtor experienced in Short Sales
- Contact the lender to initiate a short sale
- List the property for Fair Market Value
- Start collecting the needed documentation such as hardship letter, w-2's, taxes and banking information

Short Sale Benefits to a Homeowner

In some cases, a homeowner may have equity that they are unaware exists. A short sale always requires the assistance of a Real Estate Professional to complete the transaction.

- Eliminates the remaining mortgage debt.
- Avoids the negative impact of foreclosure on a credit report.
- Could receive relocation assistance in some cases — up to \$3,000 or more.
- Start repairing their credit sooner than if they went through a foreclosure.
- Can help to eliminate other subordinate liens and judgements against the house.

Short Sale Benefits for the Bank and Municipality



- The homeowner continues to stay in the home until closing.
- Eliminates a Vacant or Zombie property.
- Homeowners are still maintaining utilities, lawn care and snow removal until closing.
- The costs for both entities are reduced.
- Sale price is usually higher than a foreclosed property.
- Although longer than a traditional sale; the home is in the hands of a new owner much faster than a foreclosure.
- Reduces the number of call and complaints from neighbors. Reducing Code Enforcements involvement.

What is a Deed in Lieu of Foreclosure?

When the borrower signs the deed giving the property back to the lender.

Deed In Lieu Benefits to a Homeowner

The homeowner can contact the mortgage lender directly to help with this process.

Homeowners are advised to contact an Attorney for guidance.

- Borrower could walk away from the house and mortgage immediately.
- The bank generally forgives the balance of the debt owed.
- Avoids the negative impact of foreclosure on a credit report.
- Could receive relocation assistance in some cases.
- Start repairing their credit sooner than if they went through a foreclosure.

Deed in Lieu Benefits for the Lender and Municipality



- Eliminates a Vacant or Zombie property.
- Property is put up for sale faster than a home in foreclosure.
- Costs are reduced for the Lender.

A sample of properties that have been successful in starting a short sale:

- 6698 East Eden Rd, Hamburg - \$6,000 in equity at closing
- 171 Stockbridge, Buffalo - \$900 in relocation funds at closing
- 39 Colton, Lackawanna - \$1,000 in relocation funds at closing
- 17 Winkler, Tonawanda - \$40,000 in equity at closing
- 217 Prospect, Hamburg - \$1,000 in relocation funds at closing
- 79 Warsaw, Lackawanna - \$6,000 in equity at closing
- 22 Hollywood, Buffalo - \$1,500 in relocation funds at closing

Beware of Scams

Dear [REDACTED],

Are you unable to afford repairs for your house? Do you want to cash out before War with North Korea breaks out? Or move somewhere affordable?

My Name is [REDACTED] and I want to buy your property [REDACTED]. We'll deal with the repairs & even take care of bad tenants & low rents.



NEED TO SELL
YOUR HOUSE FAST?
We Buy Houses

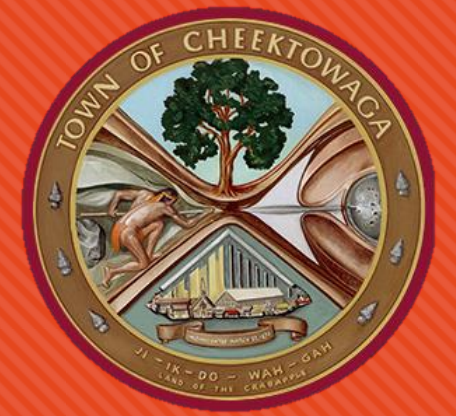
ANY CONDITION... ANY SITUATION



WE BUY ANY HOUSE



- ✓ Facing Foreclosure
- ✓ Behind On Payments
- ✓ Unwanted Inheritance
- ✓ Problem Tenants
- ✓ House Needs Repair



Town of Cheektowaga Success Stories & Best Practices, Proactive Measures

Dale Marie Parks, Town of Cheektowaga

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Beginning in 2017 we noted 545 vacant dwellings within the Town of Cheektowaga (not including the Villages of Sloan and Depew).

As of today we have noted 163 vacant dwellings.

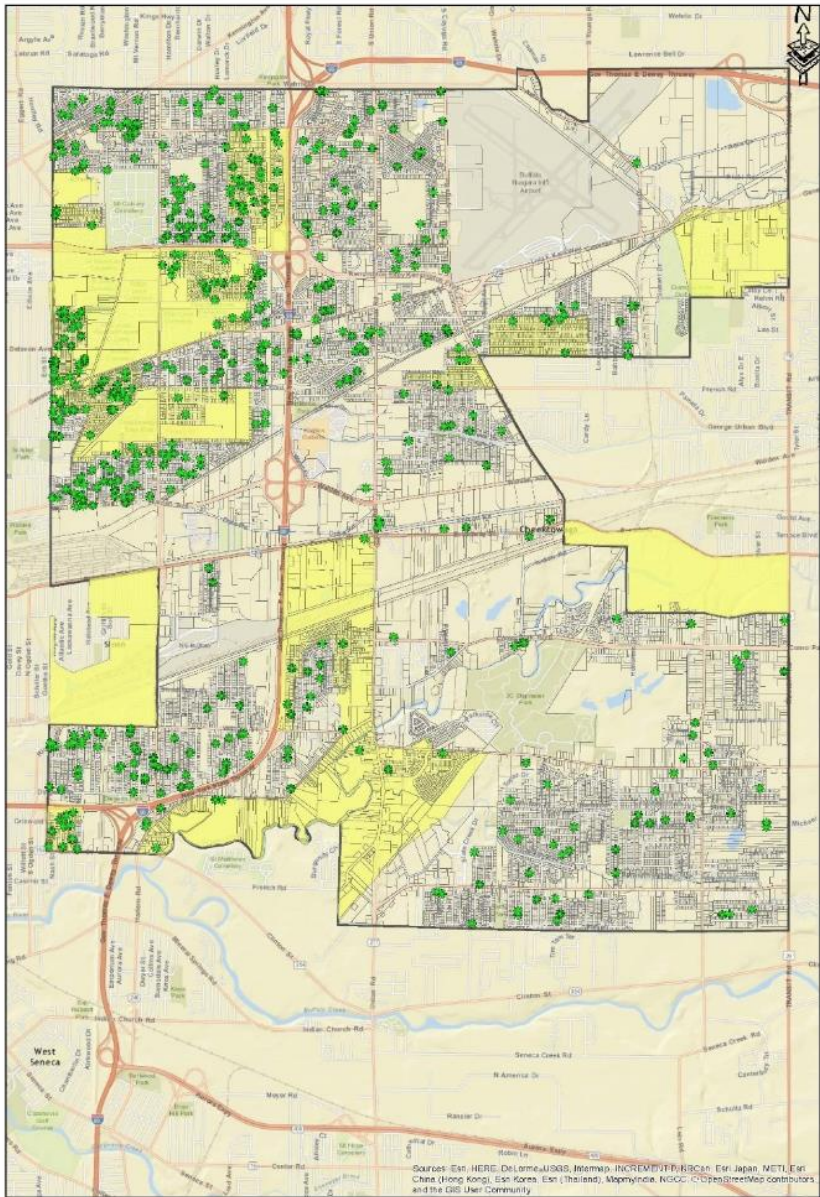
We have also divided these 163 vacant dwellings into two categories:

- * **Zombie Properties** – approx. 35 properties
- * **“Estate” Properties** – 128 properties

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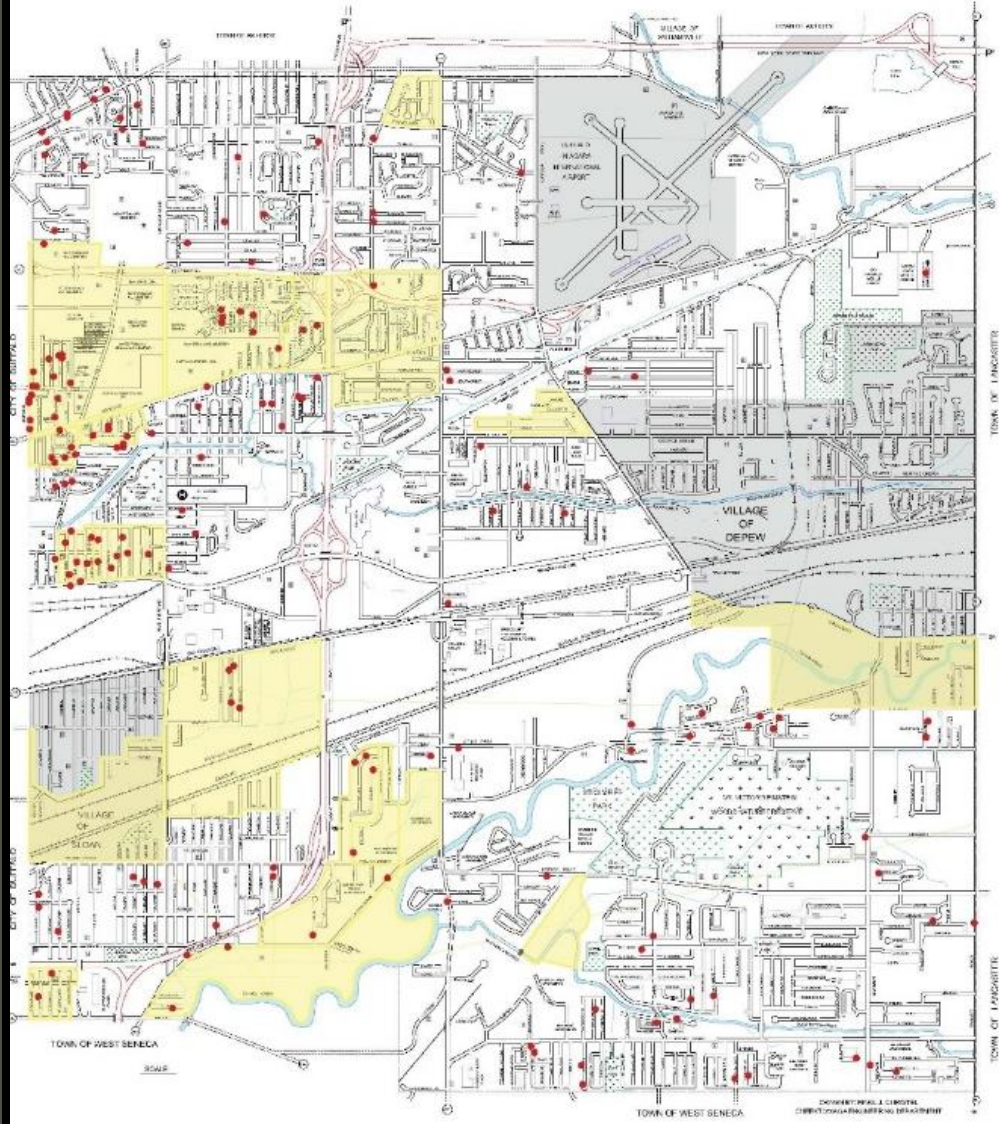
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Town of Cheektowaga
 Vacant Residential Dwellings
 January 1, 2017 to September 1, 2017

- Legend**
- ★ vacant dwellings (545)
 - Low to Moderate Income Areas



Town of Cheektowaga
 Vacant Residential Dwellings
 2021

- Legend**
- Vacant dwellings (163)
 - Census Block Groups 51% or more / low to moderate income (2019-2020)

Tools in our Vacant Home Toolbox:

- * **Partnership with the Western New York Law Center**
 - foreclosure prevention outreach
 - ownership research
 - contact servicer and banks; draft legal letters
 - initiate Article 19-A process

- * **Partnership with Belmont Housing Resources for WNY**
 - pre-foreclosure outreach

- * **Partnership with BENLIC**
 - identify vacant properties for the Land Bank Super Bid @ EC Tax Foreclosure Auction
 - use of Administrative Search Warrants to access vacant property interiors

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Town of Cheektowaga Case Study:

8 Delray Drive

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Before



Before



Before



Timeline:

- **October 2018 – complaint filed with DFS**
- **February 15, 2019 – WNYLC retained to bring suit**
- **February 15, 2019 – Demand letter sent to servicer**
- **February 26, 2019 – 1st servicer counsel asks for settlement (stalls out quickly – bank attorney does not respond to emails, misses scheduled calls, etc.)**
- **February 28, 2019 – Sent §1308 Notice to Mortgagee of intent to sue the servicer**

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Timeline (cont.):

- February 28, 2019 – §1308 Notice sent to DFS of intent to sue the servicer
- March 1, 2019 – re-issue Demand Letter to the bank
- March 11, 2019 – Notice to Mortgagee that filing suit on Thursday if settlement remains stalled (4 days notice)
- March 13, 2019 – Issue escalated to servicer's in-house counsel
- April 10, 2019 – 1st in-person meeting between parties, including a walkthrough of the property

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Interior Photos



Interior Photos



Interior Photos



Timeline (cont.):

From this point forward, the relationship between parties started to improve. We worked together to try and locate the homeowners in order to try and expedite the foreclosure process.

- April – August, 2019 – Trying to locate the homeowner
- April – June, 2019 – Exterior repairs in progress by servicer
- June 27, 2019 – Exterior repairs completed

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After



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Timeline (cont.):

June 2019 – October 2020:

Back and forth settlement offers (process slowed down by COVID-19 and servicer attorney being in Europe)

October 1, 2020 – Property sold via Referee's Deed

October 27, 2020 – Cheektowaga Town Board accepts and approves a settlement for \$5,000 from the servicer, in addition to the repair work completed by the servicer.

Case closed!

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Epilogue: Why Getting Zombie Properties to New Owners Matters!



Thank you for attending!

If you have further questions,
please reach out to us at:

Western New York Law Center, Inc.
37 Franklin St., Suite 210
Buffalo, NY 14202

(716) 855-0203 *138
eczombietaskforce@wnylc.com

SAVE THE DATE!

September 21, 2021

10 am – 12 pm

**Next Erie County Zombie
Foreclosure Task Force meeting**

