

Foreclosing on Vacant and Abandoned Properties

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On June 19, 2018, the Governor signed into law Act 32 of 2018 which amends Title 68 of the Pennsylvania Consolidated Statutes regulating real and personal property in the Commonwealth of Pennsylvania. The Act became effective as of December 16, 2018. The Act itself addresses expedited foreclosure on both real and personal property. More particularly, the Act addresses vacant and abandoned property and provides an ostensibly streamlined process for foreclosure upon vacant and abandoned property. The Act is officially known as the Vacant and Abandoned Real Estate Foreclosure Act.

The Act defines "vacant property" as mortgaged property with respect to which the owner and all persons claiming through the owner, including tenants, have relinquished possession to the premises. When property is vacant, and a Creditor holds a mortgage against the property, a Creditor may give notice to an Obligor of the delinquency or other default with respect to the obligation secured by a mortgage. The Creditor may also initiate a foreclosure action or action for possession or to quiet title against the mortgaged property, and the Creditor simultaneously may have the property certified as vacant and abandoned. This Certification may be obtained either by what is identified in the Act as "Municipal Certification" and/or "Judicial Certification." Municipal Certification is obtained with a certification from the Municipal Code Enforcement Officer that the property is abandoned. There are certain facts which must be demonstrated previous to the granting of Municipal Certification. Additionally, Judicial Certification is obtained by requesting that the Court find a property to be vacant and abandoned after Notice to the Obligor. Again, certain facts must be demonstrated in order to attain the certification of abandonment. The criteria which must be demonstrated include, i.e.:

- multiple windows, doors or entrances on the property are boarded up, unhinged, closed off, smashed in or otherwise continuously unlocked;
- mortgaged property has been stripped of copper or other metals;
- interior furnishings, personal items, appliances or fixtures have been removed from the mortgaged property;
- gas, electric, water or sewer utility services have been terminated to the mortgaged property or are established in the name of the Creditor to preserve the mortgaged property;
- rubbish, trash, debris, neglected vegetation or natural overgrowth has accumulated on the mortgaged property.

These are among other factors which a Creditor must demonstrate to a Municipal Code Enforcement Officer or to a Court that a property is vacant and abandoned.

If the property is certified as vacant and abandoned, the Creditor is free to proceed under a streamlined Notice Procedure regarding serving legal process upon the Obligor. The Creditor is also entitled to an expedited foreclosure sale and ejectment process which allegedly should only take ninety (90) days after the filing of the Writ of Execution.

Moreover, the accelerated Sale includes a reduced fee of \$500 for the actual sale and \$250 for the ejectment action. Additionally, possession of the mortgaged property when certified as vacant and abandoned may be peacefully obtained while the foreclosure is pending and the Mortgagee or Creditor shall not be responsible to the Obligor for trespass or for other damages. Also, the streamlined process gives to the Creditor the ability to obtain the removal of any personal property items under a streamlined process, which should also reduce costs to the Creditor.

Therefore, when proceeding to foreclose or otherwise take possession of Real Property and related Personal Property, if the property is vacant and abandoned, Creditors should consider utilizing this new streamlined process for obtaining foreclosure, which should reduce the time of the foreclosure process which can be extremely lengthy, as well as the costs.

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