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Bank's should beware of local laws and ordinances when foreclosing mortgages

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Over the past several years lenders have been inundated by laws affecting foreclosures as federal and state governments have tried to grapple with a multitude of issues resulting from the foreclosure crisis. Paying attention only to federal and state laws leaves one blind to ordinances passed by cities and towns throughout Massachusetts that have also had to grapple with the foreclosure crisis. Local communities have been significantly affected by foreclosures and have responded by enacting ordinances directed at foreclosing lenders. Lack of attention to these local laws and ordinances can lead to significant fines and penalties.

Since 2008, approximately 40 cities and towns in the Commonwealth (from Adams to Boston) have enacted ordinance designed to secure and maintain vacant and foreclosing properties. The purpose of the local ordinances is to protect and preserve the quiet enjoyment of occupants, abutters and neighborhoods, and to minimize hazards to public safety personnel inspecting and entering vacant or foreclosed properties.

Requirements

Most of the ordinances require a foreclosing mortgagee to "register" any property it intends to foreclose by delivering a form created by the city/town to a local official, usually the building commissioner and/or fire chief, within a set number of days after "the initiation of the foreclosure process." The "initiation of the foreclosure process" is defined in different ways, but is typically tied to the first publication of a foreclosure notice under MGL Ch. 244, Section 14 or the delivery of a deficiency notice under MGL Ch. 244, Section 17B. The time frames range from "forthwith" (Worcester) to 30 days (Fitchburg), but the most common time frame is 7-14 days following the initiation of foreclosure.

Most registrations require that the foreclosing mortgagee (i) inspect the property to determine whether it is abandoned, (ii) provide a contact name and telephone number, and (iii) designate a property manager who must reside within 20 driving miles of the property. Some ordinances also require that the mortgagee post a notice on the outside/front of the building containing the name and twenty-four-hour contact phone number of a local individual or property management company responsible for maintenance.

If the mortgagee becomes a mortgagee in possession or becomes the owner of the property as a result of the foreclosure sale, it must maintain the property in accordance with relevant sanitary codes, building codes, and local regulations regarding visible maintenance. Special requirements apply to vacant/abandoned properties.

Fees/Fines

The initial registration is subject to a fee of $40 to $500 and must be renewed annually during the foreclosure process and as long as the mortgagee owns the property after foreclosure.

Each city/town also has its own schedule of fines for failure to comply with the ordinance. The failure to initially register a property when required may result in a fine of $300, and each week that the registration is not filed may constitute a separate offense. The failure to identify a property manager and the failure to maintain a property have similar fines of $300 each and each week may constitute a separate violation.

Finally, a mortgagee that fails to comply with local maintenance requirements may find that improvements have been performed by the city/town at the cost of the mortgagee resulting in a lien placed on the property.

Conclusion

Foreclosing mortgagees must not only keep up with all of the changes at the state and federal level but must also pay attention to ordinances passed by local cities and towns. Ignoring local ordinances may result in significant fines and penalties.

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