

New York State Department of Financial Services

Guidance to Mortgagees and Servicers Regarding Property Maintenance Obligations for Vacant and Abandoned Residential Real Properties in New York

On December 20, 2016, legislation signed by Governor Andrew M. Cuomo to address the challenges posed by vacant and abandoned “zombie properties” to communities throughout the State of New York went into effect. The law, located at Real Property Actions and Proceedings Law (“RPAPL”) Sections 1308 and 1310, with supporting regulations at 3 NYCRR 422, obligates mortgage note holders or their loan servicers (referred to collectively herein as “mortgagees”) to take action to mitigate the negative impact that vacant properties have on local communities.

Obligations

The law imposes four basic obligations on mortgagees:

1. 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 and abandoned contained in RPAPL 1308;
2. To register with the Department of Financial Services (the “Department”) all properties that are determined to be vacant and abandoned;
3. To secure and maintain, according to the maintenance requirements detailed in RPAPL 1308 (see Appendix A for an overview), vacant and abandoned properties; and
4. To report, on a quarterly basis, on the dates on which the inspections of properties associated with a delinquent loan were performed and, if that property has been identified as vacant and abandoned, provide a general overview of the maintenance work performed on the property during the preceding quarter.

The Department is reminding mortgagees of their obligation to address their maintenance issues specifically including, without limitation, that:

1. Any boarded windows or doors that are forced or otherwise become loose must be secured.
2. Weeds and grass may not be allowed to grow in excess of 10 inches. Neighbors should not be relied on to cut the grass to comply with the requirements of RPAPL 1308.
3. Garbage and yard waste must be cleared from the exterior of vacant properties and disposed of in an appropriate manner – it may not be piled up in a corner of the property.
4. Handrails on decks and stairways must be firmly secured, with attention paid to rusted metal and rotten wood.

5. Property addresses must be clearly displayed so as to be visible from the street.
6. The RPAPL 1308 notice identifying the servicer and the servicer's contact information should be periodically checked to make sure that it remains legible. Notices posted in sunny areas are likely to fade and become illegible.

In addition, mortgagees and servicers are reminded of the legal requirement to register vacant and abandoned properties and submit quarterly reporting of compliance efforts after registering a vacant and abandoned home or lot with the Department.

Enforcement

A mortgagee that fails to comply with these or any of the other obligations imposed by the law will be subject to enforcement action by the Department or the locality in which the property is located and a \$500 a day fine for each day the violation persists.

Upon the identification of a potential violation of RPAPL 1308, the Department will contact the responsible mortgagee or servicer to ensure that the situation is immediately and fully remediated and to obtain records concerning the maintenance of the subject property, including photographs. The information requested will vary depending on the type of issues identified at the property, but mortgagees should be prepared to provide documentary evidence to establish the date that the loan became 90 days delinquent and triggered the inspection obligation, the maintenance history of the property, and the satisfactory completion of any outstanding property maintenance issues. Mortgagees should be aware that the Department will cross-check maintenance records provided through the complaint process and other means against the quarterly reporting to ensure that mortgagees are providing consistent and accurate records. The Department will take any and all other actions to ensure full compliance with the law and that violations are appropriately penalized.

If there are any questions regarding this guidance, please contact VacantProperty@dfs.ny.gov

Appendix A

A. Exterior Structure

General

1. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

Attractive Nuisances

2. Any part of the property that may be deemed to be an attractive nuisance including, but not limited to, a water feature that could create a drowning risk, refrigerator or freezer units, outbuildings, wells or septic tanks, must be secured.

Doors

3. Doors must be maintained in good condition with locks that tightly secure the door.
4. Broken doors must be secured, replaced or boarded up, leaving at least one means of egress.
5. For properties with two or more doors, at least one lock must be replaced.

Windows

6. Windows and skylights must be kept in sound condition, good repair and weather tight.
7. Broken windows must be secured, replaced or boarded up.

Roofs and Drainage

8. The roof and flashing shall be sound, tight and not have defects that admit rain.
9. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure.
10. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions.
11. Roof water shall not be discharged in a manner that creates a public nuisance.

Stairways, Decks, Porches and Balconies

12. Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.
13. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

Accessory Structures

14. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

Basement Hatchways

15. Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

Property Identification

16. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property.
17. These numbers shall contrast with their background.
18. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm).

B. Exterior Property

Weeds

1. Premises and immediate exterior property shall be maintained free from weeds or plant growth in excess of 10 inches (254 mm).
2. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.
3. Combustible waste, refuse and large quantities of dry vegetation which by reason of their proximity to buildings or structures would constitute a fire hazard or contribute to the spread of fire shall be removed.

Sidewalks and Driveways

4. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

C. Garbage and Pests

Sanitation

1. All exterior property and premises shall be maintained in a clean, safe and sanitary condition.
2. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage

Rodent Infestations

3. All structures and exterior property shall be kept free from rodent harborage and infestation.
4. Where rodents are found, they shall be promptly exterminated by processes that are allowed by local and which will not be injurious to human health.
5. Proper precautions shall be taken, including the elimination of rodent harborages, to prevent reinfestation after extermination.

D. Other

Winterization

1. Where appropriate, applicable plumbing and heating systems must be winterized

Utilities

2. When allowed by the local utility provider, basic utilities including, but not limited to, water, electricity, natural gas, propane and sewer service, 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, must be provided.
3. Utility services may turned off to prevent, for example, flooding or water leaks in the property, or when other utility services could reasonably create a hazard to the property or an unauthorized occupant or person entering the property.

Health and Safety Issues and Code Violations

4. Any significant health and safety issues, including outstanding code violations, must be removed or remediated.

Mold Prevention

5. Reasonable measures must be taken to prevent the growth of harmful mold.

Posting of Notice Required by 1308

6. For as long as the property remains subject to the requirements of RPAPL 1308, a notice must be posted on the property on an easily accessible part of the property that would be reasonably visible to a property owner. The notice must identify the servicer responsible for the property and provide the servicer's toll free number or similar contact information.

Noxious Discharge

7. Reasonable measures must be taken to ensure that pipes, ducts, conductors, fans and 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.