

# FEDERAL RESERVE BANK *of* CLEVELAND

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January 16, 2014

## VIA E-MAIL

Mr. William R. Breetz, Jr.  
Chairman, Uniform Law Commission Drafting Committee  
for Home Foreclosure Procedures Act  
University of Connecticut School of Law  
Knight Hall Room 202  
35 Elizabeth Street  
Hartford, CT 06105

Re: November 15, 2013 draft of the Home Foreclosure Procedures Act ("Act")

Dear Mr. Breetz:

This letter provides comments on sections 102, 505, and 506 of the Act related to abandoned property.<sup>1</sup> As expressed at the last meeting, we want to make sure that the abandoned property provisions the Committee drafts are both effective and efficient. As discussed at the last meeting, the Act's provisions to expedite private mortgage foreclosures for abandoned property are modeled on provisions from Indiana. Anecdotal reports from bank council suggest that the Indiana law is not being regularly used because it is too cumbersome. Attachment A illustrates that after the foreclosure fast track laws became effective in Illinois and Indiana, the durations loans spend in foreclosure did not drop. They have remained level or increased. This is occurring even though roughly 20% of the Illinois homes in foreclosure are vacant and over 30% of the Indiana homes in foreclosure are vacant.<sup>2</sup> These ratios have been stable or increased since the effective date of each fast track law. This data supports the anecdotal reports of the underutilization of foreclosure fast track legislation and illustrates the importance of the Committee's efforts to draft a law that is as effective and efficient as possible.

We place our comments in the context of the laws of eleven states that expedite aspects of the residential foreclosure process for abandoned and vacant real property. Our analysis of these laws and the Act is presented in a series of attachments to this letter, which culminate in a redlined version of the abandoned property sections of the Act:

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<sup>1</sup> The views expressed herein are our personal views, and not those of the Federal Reserve Bank of Cleveland or the Board of Governors of the Federal Reserve System.

<sup>2</sup> Based on quarterly data provided by RealtyTrac.

- Attachment A graphs the duration that loans finishing the foreclosure process have spent in foreclosure in Indiana and Illinois.
- Attachment B offers our observations about the similarities and differences between these laws.
- Attachment C provides a comparison of many features of the eleven state laws.
- Attachment D presents the factual circumstances that support a determination of abandonment under the law of seven of these states.
- Attachment E diagrams the steps leading to a determination that property is abandoned property under the Act in the judicial and non-judicial tracks with our indications of possible changes.
- Attachment F provides the text of the expedited foreclosure laws in all eleven states.
- Attachment G suggests revisions to the Act for consideration by the Committee.

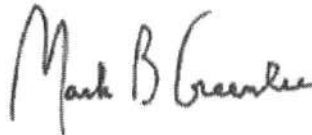
Our analysis, comments, and proposed changes to the Act reflect our views of a balanced approach to an expedited procedure for vacant and abandoned property that improves market efficiency while protecting homeowners

We look forward to discussing these matters at the Committee's meeting at the end of January.

Sincerely,



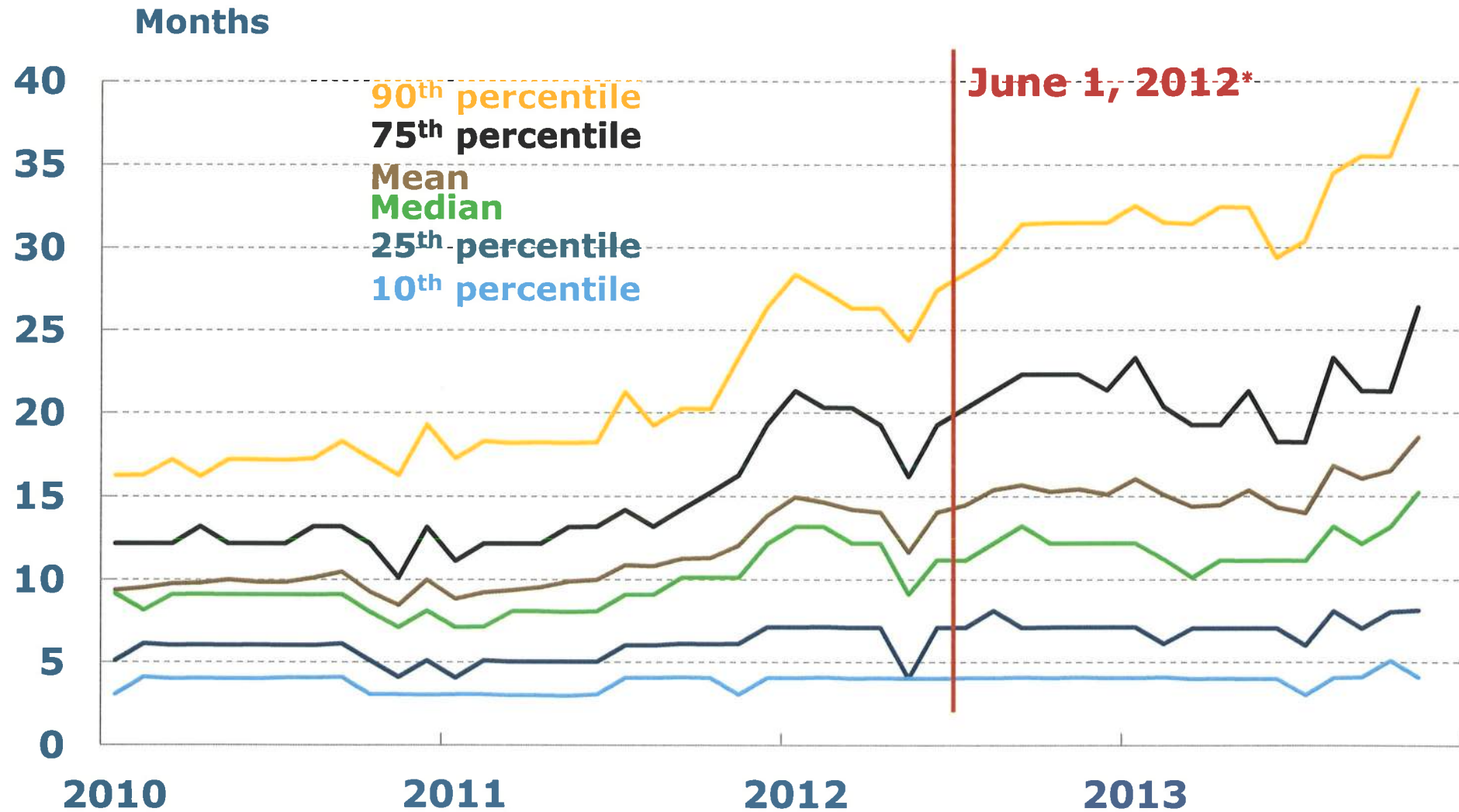
Thomas J. Fitzpatrick IV  
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Enclosures  
cc: Ms. Lucy Grelle

# Duration to Complete Foreclosure Process: Illinois

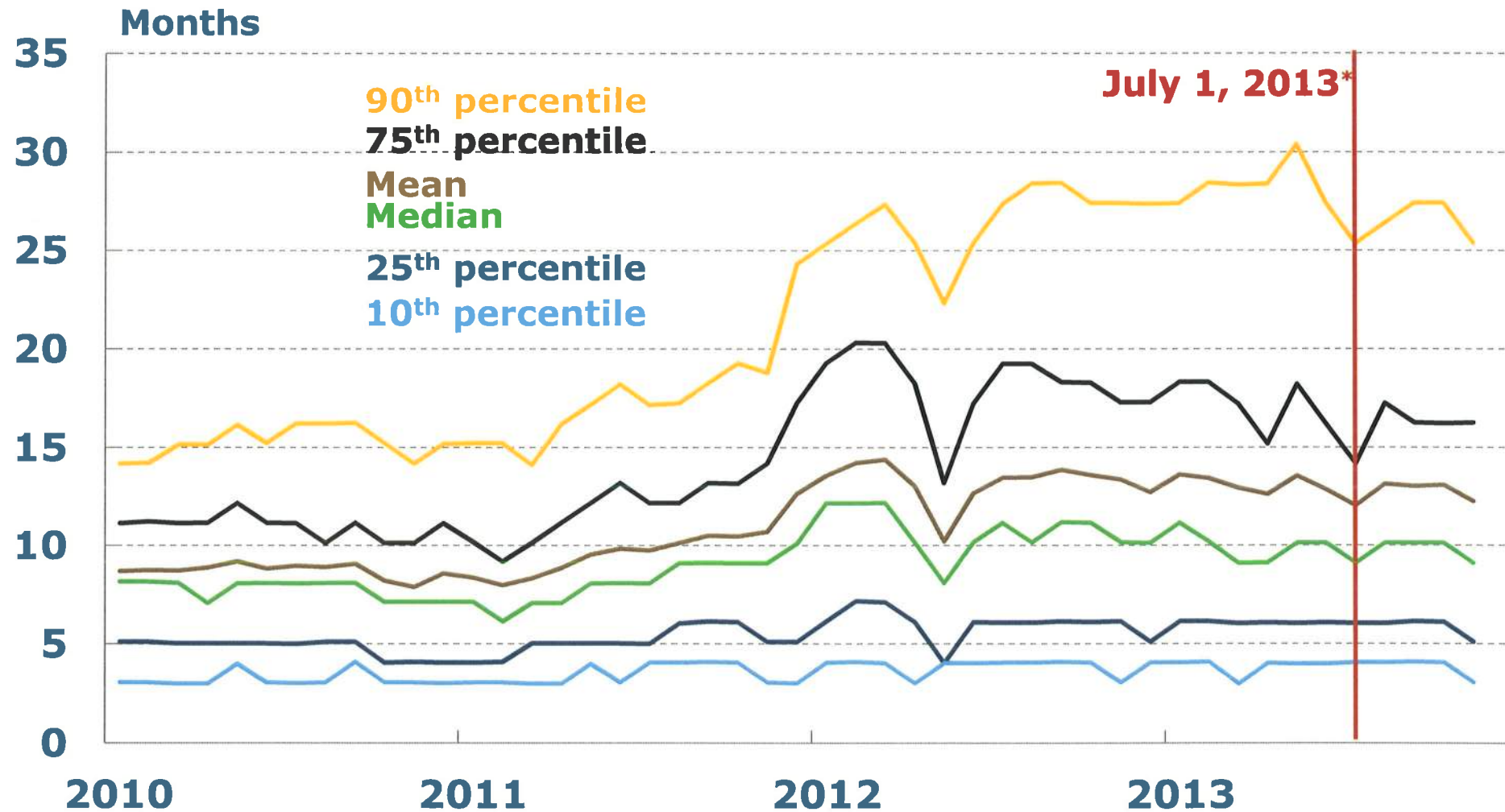


Source: LPS

\* Effective date of P.A. 97-1164

FEDERAL RESERVE BANK  
of CLEVELAND

# Duration to Complete Foreclosure Process: Indiana



Source: LPS

\* Effective date of P.L.102-2012

FEDERAL RESERVE BANK  
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To supplement our comments on the November 15, 2013 draft of the Home Foreclosure Procedures Act (“Act”), we offer the following observations about the laws of the eleven states with expedited procedures for foreclosure upon abandoned residential property.

1. Judicial/Non-Judicial Parity. Expedited procedures for abandoned residential property apply in five states<sup>1</sup> where a judicial process is the most common type of foreclosure and six states<sup>2</sup> where a non-judicial process is the most common type of foreclosure.
2. Expedited Sale Date. The approach to expediting the foreclosure process for abandoned property in the five judicial states<sup>3</sup> is to shorten the period between foreclosure judgment and the date for sale of the property. The periods range from 35 to 120 days after the court order of sale.
3. Shortened Redemption Period. The approach to expediting the foreclosure process for abandoned property in four of the non-judicial states<sup>4</sup> is to shorten<sup>5</sup> or eliminate<sup>6</sup> the redemption period after sale of the abandoned property. In the two states,<sup>7</sup> in which redemption is not available to debtors, the date of the sale of the property after the determination of abandonment is shortened.
4. Effective Date. The enactment of laws in four of the non-judicial states<sup>8</sup> precedes the mortgage foreclosure crisis that began in [2007?]. The effective dates range from 1963 to 1989. The two other non-judicial states<sup>9</sup> implemented expedited foreclosure laws in 2010 and 2013. Each of them includes a four year sunset provision. The expedited process laws in the four judicial states<sup>10</sup> became effective in 2012 and 2013. The remaining judicial state<sup>11</sup> had an expedited process for abandoned property since 1977 but added examples of circumstances that support a finding of abandonment in 2012. In general, the earlier laws shortened redemption periods and the more recent laws shortened the time between the foreclosure judgment and sale.
5. Residential Property. While four of the states<sup>12</sup> with expedited foreclosure processes for abandoned property cover residential and commercial property, the remaining seven state laws<sup>13</sup> only apply to residential property. Of the laws only covering residential property six<sup>14</sup> of them cover 1-to-4 family units and one<sup>15</sup> only covers single family principal residences. Only the residence of the owner, debtor, or mortgagor is covered by expedited procedures.<sup>16</sup> Five of these states<sup>17</sup> exclude agricultural property in some way. One state excludes a model home from the definition of residential property.
6. Abandoned Determination. In three states,<sup>18</sup> the determination of abandonment is left wholly to the discretion of the court based upon the evidence presented. In six states,<sup>19</sup> the statute specifies the evidentiary consequences of specified factual circumstances. In two of these states,<sup>20</sup> the filing of an affidavit averring 1 or 2 facts constitutes *prima facie* evidence of abandonment. In states that use this factual circumstances approach,<sup>21</sup> the number of possible probative facts ranges from 5 to 15. Attachment D hereto lists more than 20 different facts in column format to allow for comparison of the various statutory factors. The draft of the Act includes 8 circumstances similar to 8 of these statutory factors.
7. Exceptions to Abandonment. Under four of the state laws,<sup>22</sup> residential property is not considered abandoned if it is an (1) unoccupied building undergoing construction, renovation, or rehabilitation, (2) secure building is occupied on a seasonal basis, and (3) secure building subject to a probate action, action to quiet title or other ownership dispute.

One state<sup>23</sup> adds to these three exceptions a secure building on which there is a bona fide rental or sale sign, as well as a secure building in substantial compliance with all applicable ordinances, codes, regulations, and laws. Another state<sup>24</sup> adds an exception for time share interests to these three exceptions. Another state<sup>25</sup> only exempts unoccupied building undergoing construction, renovation, or rehabilitation from the definition of abandoned.

8. Hearing. Four of the eleven state laws<sup>26</sup> explicitly provide for a court finding of abandonment after a hearing. Two states<sup>27</sup> provide for summary proceedings without a hearing if there is no appearance or motion in opposition by the defendant. In these states, the court may enter judgment summarily based upon the pleadings and documents filed. The other state laws require a court finding based upon evidence presented without specifically mentioning the need for a hearing.
9. Standard of Proof. Most of the states the use the ordinary standard of proof for civil actions, preponderance of the evidence, but two states<sup>28</sup> impose the higher standard of clear and convincing evidence.
10. Burden of Proof. Four states<sup>29</sup> treat an affidavit or other evidence as establishing specified facts as *prima facie* evidence of abandonment. Two states further shift the burden of proof. One state<sup>30</sup> provides that the defendant's lack of appearance establishes a conclusive presumption of abandonment if the specified inspection, notice, and lack of claim of non-abandonment by the defendant are established. The other state<sup>31</sup> provides that lack of appearance by the defendant is conclusive evidence of abandonment.
11. Affidavit. Six states<sup>32</sup> specifically mention an affidavit as acceptable evidence of abandonment. Two of these states<sup>33</sup> require that the affidavit be supported by documentary evidence. One of these states<sup>34</sup> specifically mentions photographs as a form of documentary evidence. Two states further enhance the affidavit requirements. In one state, there is an explicit requirement that an affidavit be based upon the personal knowledge of an eligible holder, agent thereof, or government official.<sup>35</sup> In the other state,<sup>36</sup> the beneficiary of the deed of trust must provide an affidavit and a government official must provide a certification in support of an abandonment determination.
12. Persons Entitled. Depending on the state, persons with different status are entitled to initiate, request, move, or petition for a determination of abandonment, which if so found, expedites the foreclosure process. It may be the plaintiff, mortgagee, lender, lien holder, creditor, eligible holder, beneficiary of a deed of trust or other person. In addition, two states authorize a government authority to expedite the foreclosure process. In one of these states,<sup>37</sup> a political subdivision may initiate a proceeding to reduce the mortgagor's redemption period. In the other state,<sup>38</sup> an enforcement authority with jurisdiction where the property is located may intervene in a foreclosure action filed by a creditor to seek a determination of abandonment.
13. Independent Certification. One state<sup>39</sup> requires a government agency, or contractor of such an agency, to provide a certification in addition to an affidavit or other evidence provided by the mortgagee, creditor or person in similar position to support a determination of abandonment.
14. Service of Process. Seven states<sup>40</sup> alter the rules for service of process for abandoned property. The state requirements for service of process vary considerably as to notice upon

the person and property. One state<sup>41</sup> only requires service by First Class mail. One state<sup>42</sup> requires personal service upon the mortgagor or conspicuous posting on the property. Two states<sup>43</sup> require service on the mortgagor by First Class mail and posting on the property. Notice by certified mail and posting on the property is required in two other states.<sup>44</sup> One state<sup>45</sup> imposes a timing requirement – two attempts to personally serve the mortgagor at the property at least 72 hours apart at different times of the day.

15. Personal Property. One state law<sup>46</sup> addresses personal property remaining in or upon residential property determined to be abandoned, stating that the personal property also shall be deemed to have been abandoned by the owner of such personal property and that it may be donated or otherwise disposed of by the foreclosing party.

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<sup>1</sup> Illinois, Indiana, Kentucky, New Jersey, and Wisconsin.  
<sup>2</sup> Arizona, Colorado, Michigan, Minnesota, Nevada, and Washington.  
<sup>3</sup> Illinois, Indiana, Kentucky, New Jersey, and Wisconsin.  
<sup>4</sup> Arizona, Michigan, and Minnesota.  
<sup>5</sup> Arizona, Illinois, Michigan, and Minnesota.  
<sup>6</sup> Washington.  
<sup>7</sup> Colorado and Nevada.  
<sup>8</sup> Arizona, Michigan, Minnesota, and Washington.  
<sup>9</sup> Colorado and Nevada.  
<sup>10</sup> Illinois, Indiana, Kentucky, and New Jersey.  
<sup>11</sup> Wisconsin.  
<sup>12</sup> Arizona, Kentucky, Washington, and Wisconsin.  
<sup>13</sup> Colorado, Illinois, Indiana, Michigan, Minnesota, Nevada, and Washington.  
<sup>14</sup> Colorado, Michigan, Minnesota, Nevada, and New Jersey.  
<sup>15</sup> Illinois.  
<sup>16</sup> Illinois, Indiana, New Jersey, and Wisconsin.  
<sup>17</sup> Arizona, Illinois, Michigan, Minnesota, and Washington.  
<sup>18</sup> Arizona, Washington, and Wisconsin.  
<sup>19</sup> Colorado, Illinois, Indiana, Kentucky, Nevada, and New Jersey.  
<sup>20</sup> Colorado and Minnesota.  
<sup>21</sup> Colorado, Illinois, Indiana, Kentucky, Nevada, and New Jersey.  
<sup>22</sup> Colorado, Illinois, Nevada, and New Jersey.  
<sup>23</sup> Illinois.  
<sup>24</sup> New Jersey.  
<sup>25</sup> Minnesota.  
<sup>26</sup> Colorado, Illinois, Indiana, and Minnesota, Washington.  
<sup>27</sup> Colorado and New Jersey.  
<sup>28</sup> Colorado and New Jersey.  
<sup>29</sup> Colorado, Indiana, Minnesota, and Washington.  
<sup>30</sup> Michigan.  
<sup>31</sup> Minnesota.  
<sup>32</sup> Colorado, Illinois, Kentucky, Michigan, Minnesota, and Nevada.  
<sup>33</sup> Colorado and Nevada.  
<sup>34</sup> Colorado.  
<sup>35</sup> Colorado.  
<sup>36</sup> Nevada.  
<sup>37</sup> Minnesota.  
<sup>38</sup> Indiana.  
<sup>39</sup> Nevada.  
<sup>40</sup> Colorado, Illinois, Indiana, Michigan, Minnesota, and New Jersey.  
<sup>41</sup> Indiana.  
<sup>42</sup> Colorado.  
<sup>43</sup> Illinois and Nevada.  
<sup>44</sup> Michigan and Minnesota.  
<sup>45</sup> New Jersey.  
<sup>46</sup> Illinois.



State Laws Expediting Foreclosure for Vacant and Abandoned Residential Property<sup>1</sup>

The color of the heading indicates the most common foreclosure method in the state<sup>2</sup> with pink indicating judicial foreclosure and non-judicial in green indicating non-judicial foreclosure.

Subject	Arizona <sup>3</sup>	Colorado <sup>4</sup>	Illinois <sup>3</sup>	Indiana <sup>6</sup>	Kentucky <sup>7</sup>	Michigan <sup>8</sup>	Minnesota <sup>9</sup>	Nevada <sup>10</sup>	New Jersey <sup>11</sup>	Washington <sup>12</sup>	Wisconsin <sup>13</sup>
APPLICABILITY											
Judicial Foreclosure	Yes	No <sup>14</sup>	Yes	Yes	Yes	-	-	-	Yes	n/a	Yes
Non-judicial Foreclosure	Yes	Yes	No <sup>15</sup>	n/a	n/a	Yes	Yes	Yes	-	Yes	-
Effective Date	1963	8/1/2010 expires 7/1/2014	6/1/2013	7/1/2012 <sup>16</sup>	7/12/2012	1986 <sup>17</sup>	1989 4/4/2008 <sup>18</sup> 4/21/2009 <sup>19</sup>	7/1/2013 Expires 6/30/2017	4/1/2013	1965	1977 4/4/2012 <sup>20</sup>
RESIDENTIAL PROPERTY											
Residential real property	Yes <sup>21</sup>	Yes	Yes <sup>22</sup>	Yes <sup>23</sup>	Yes <sup>24</sup>	-	Yes	Yes <sup>25</sup>	Yes	Yes <sup>26</sup>	Yes <sup>27</sup>
Residential if:										-	
Single family residence of Mortgagor	-	-	Yes <sup>28</sup>	-	-	-	-	-	-	-	-
Debtor's primary dwelling	-	-	-	Yes	-	-	-	-	-	-	-
1-to-4 family units	-	Yes <sup>29</sup>	-	-	-	Yes	Yes <sup>30</sup>	Yes	-	-	-
1-to-4 owner-occupied residence	-	-	-	-	-	-	-	-	-	-	Yes
1-to-4 debtor occupied residence	-	-	-	-	-	-	-	-	Yes <sup>31</sup>	-	-
Not residential if:											
Agricultural	Yes <sup>32</sup>	-	Yes <sup>33</sup>	-	-	Yes <sup>34</sup>	Yes	-	-	Yes <sup>35</sup>	-
Model home	-	-	-	-	-	-	Yes	-	-	-	-
Related personal property <sup>36</sup>	-	-	Yes	-	-	-	-	-	-	-	-
DETERMINATION OF VACANCY AND/OR ABANDONMENT <sup>1</sup>											
Abandoned if:											
Court finding of abandonment	Yes	Yes	Yes	Yes	Yes <sup>37</sup>	No <sup>38</sup>	Yes	No	Yes <sup>39</sup>	Yes	Yes <sup>40</sup>
# of specific facts required	-	≥ 2 facts	≥ 2 facts <sup>41</sup>	≥ 1 fact	≥ 2 facts	-	1 fact	≥ 2 facts plus <sup>42</sup>	≥ 2 facts <sup>43</sup>	-	-
Time of observation	-	> 1 time	1 time	1 time	≥ 45 days	-	1 time	1 time	1 time	≥ 6 months <sup>44</sup>	-
Unoccupied principal residence	-	-	Yes <sup>45</sup>	-	Yes <sup>46</sup>	-	-	Yes	-	-	-
Relinquish possession or control	-	-	-	-	-	-	-	-	-	-	Totality of circumstances <sup>47</sup>
Not abandoned if:											
construction <sup>48</sup>	-	Yes	Yes	-	-	-	Yes	Yes	Yes	-	-
seasonal <sup>49</sup>	-	Yes	Yes	-	-	-	-	Yes	Yes	-	-
legal action <sup>50</sup>	-	Yes	Yes	-	-	-	-	Yes	Yes	-	-
rental or sale signs <sup>51</sup>	-	-	Yes	-	-	-	-	-	-	-	-
secure & compliant <sup>52</sup>	-	-	Yes	-	-	-	-	-	-	-	-
time share interest	-	-	-	-	-	-	-	-	Yes	-	-
CONSEQUENCES OF VACANCY AND/OR ABANDONMENT DETERMINATION											
Expedited sale after court order or recording of notice of default and election to sell	-	45 to 65 days after recording election <sup>53</sup>	-	no 3 month wait after court order <sup>54</sup>	≤ 70 days after court order <sup>55</sup>	-	-	≥ 60 days after notice & election recorded <sup>56</sup>	≤ 60 days after writ of execution	-	5 weeks after order (not 12 months) <sup>57</sup>
Expedited confirmation after sale	-	-	Earliest practicable <sup>58</sup>	-	≤ 20 days <sup>59</sup>	-	-	-	-	-	-
Shortened redemption period	35 days after or 6 months after sale	No <sup>60</sup>	From 2 years to 30 days	-	-	6, 3 or 1 month <sup>61</sup>	5 weeks later (rather than 6 months)	-	-	No redemption after sale confirmed	No <sup>62</sup>
Deficiency judgment	-	-	-	-	-	-	-	-	-	Not allowed <sup>63</sup>	-



State Laws Expediting Foreclosure for Vacant and Abandoned Residential Property<sup>1</sup>

Subject	Arizona <sup>3</sup>	Colorado <sup>4</sup>	Illinois <sup>5</sup>	Indiana <sup>6</sup>	Kentucky <sup>7</sup>	Michigan <sup>8</sup>	Minnesota <sup>9</sup>	Nevada <sup>10</sup>	New Jersey <sup>11</sup>	Washington <sup>12</sup>	Wisconsin <sup>13</sup>
EXPEDITED PROCEEDINGS											
Hearing	-	20–30 days after motion <sup>64</sup>	30-51 days after motion <sup>65</sup>	15-25 days after order to show cause	-	No	15-25 days after order to show cause	No	No	-	-
Evidence	-	Affidavit with photographic or other documentary evidence attached <sup>66</sup>	Affidavit	Writing or testimony	Affidavit	Affidavit	Affidavit of foreclosing party, sheriff, building inspector, or other government officials	Affidavit & <u>certification</u> by designated government agency or contractor with documentary evidence attached	Documents and pleadings	Evidence	Proper evidence <sup>67</sup>
Prima facie evidence	-	Affidavit of eligible holder with ≥ 2 facts	-	≥ 1 facts, debtor’s failure to appear, present evidence, or object <sup>68</sup>	-	-	Affidavit stating non-occupancy with supporting facts <sup>69</sup>	-	-	Lack of payment on mortgage and lack of occupancy ≥ 6 months	-
Evidentiary standard	-	Clear and convincing evidence <sup>70</sup>	-	-	-	Conclusive presumption if requirements satisfied <sup>71</sup>	Conclusive evidence if no appearance by defendant <sup>72</sup>	-	Clear and convincing evidence	-	Affirmative finding upon proper evidence
Summary action (court order without a hearing)	-	<u>no</u> hearing if no response to motion	-	-	-	-	-	-	based on documents and pleadings filed <sup>73</sup>	-	-
Non-judicial action determination	-	-	-	-	-	Yes <sup>74</sup>	-	Yes	-	-	-
INITIATING EXPEDITED PROCEDURE											
Persons who can initiate, request, move, or petition:	-	-	-	-	-	-	-	-	-	-	-
Plaintiff	-	-	-	-	Yes	-	-	-	-	-	-
Mortgagee	-	-	Yes	-	-	-	-	-	-	-	-
Lender	-	-	-	-	-	-	-	-	Yes	-	-
Lien holder	-	-	-	-	Yes	-	-	-	-	-	-
Eligible holder <sup>75</sup>	-	Yes	-	-	-	-	-	-	-	-	-
Creditor	Yes <sup>76</sup>	-	-	Yes	-	-	-	-	-	-	-
Parties entitled to enforce mortgage lien	-	-	-	-	-	-	-	-	-	-	Yes
Party entitled to foreclosure on mortgage	-	-	-	-	-	-	Yes	-	-	Yes	-
Government authority	-	-	-	Yes <sup>77</sup>	-	-	Yes <sup>78</sup>	-	-	-	-
Beneficiary of Deed of Trust	-	-	-	-	-	-	-	Yes	-	-	-
Holder of Sheriff’s certificate	-	-	-	-	-	-	Yes	-	-	-	-

State Laws Expediting Foreclosure for Vacant and Abandoned Residential Property<sup>1</sup>

Subject	Arizona <sup>3</sup>	Colorado <sup>4</sup>	Illinois <sup>5</sup>	Indiana <sup>6</sup>	Kentucky <sup>7</sup>	Michigan <sup>8</sup>	Minnesota <sup>9</sup>	Nevada <sup>10</sup>	New Jersey <sup>11</sup>	Washington <sup>12</sup>	Wisconsin <sup>13</sup>
MODIFICATION OF SERVICE OF PROCESS:											
Personal	-	Mortgagor personally served <u>or</u>	1 <sup>st</sup> class mail <u>and</u> <sup>79</sup>	only 1 <sup>st</sup> class mail <sup>80</sup>	-	Certified mail return receipt <u>and</u> <sup>81</sup>	Certified mail and	1 <sup>st</sup> class mail <u>and</u>	-	-	-
# of attempts	-	-	-	-	-	-	-	-	2 attempts at the property <sup>82</sup>	-	-
Time between attempts	-	-	-	-	-	-	-	-	≥ 72 hours apart & different times of day <sup>83</sup>	-	-
Property	-	posted on front door <sup>84</sup>	Posted conspicuously	-	-	posted	posted conspicuously	post on front door	-	-	
Publication	-	4x times for 4 consecutive weeks w/ last at least 5 days before sale	-	-	-	-	-	-	-	-	-

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<sup>1</sup> Many details have been omitted to provide this high-level comparison of residential foreclosures related to private debts, not government debts such as taxes.

<sup>2</sup> Most common method of foreclosure based on National Consumer Law Center, Foreclosures: Mortgage Servicing, Mortgage Modifications, and Foreclosure Defense, Appendix E (2013).

<sup>3</sup> A.R.S. §§ 12-1281 and 12-1282.

<sup>4</sup> C.R.S. §§38-38-901 to 38-38-906 (repealed effective July 1, 2014) and Col. R. Civ. Pro. 120.1.

<sup>5</sup> § 735 ILCS 5/15 §§ 1200.5, 1200.7, 1219, 1505.8 and 1603(b)(4).

<sup>6</sup> Ind. Code §§32-20-10-6.1 to 32-30-10.6.5.

<sup>7</sup> K.R.S. § 426.205.

<sup>8</sup> M.C.L.S. §§ 600.3240, 600.3241. and 600.3241a.

<sup>9</sup> Minn. Stat. § 582.032.

<sup>10</sup>N.R.S. § 107.080 (SB 278).

<sup>11</sup> N.J. Stat. § 2A:50-73 and 2A:50-1.

<sup>12</sup> R.C.W. §§ 61.12.093 and 61.12.094.

<sup>13</sup> Wis. Stat. § 846.101 and 846.102.

<sup>14</sup> Explicitly states that expedited process is not applicable to judicial foreclosures.

<sup>15</sup> No real estate may be sold by virtue of any power of sale contained in a mortgage or any other agreement. §735 5/15/-1405.

<sup>16</sup> Amendments effective July 1, 2013.

<sup>17</sup> Minor changes in 2007.

<sup>18</sup> Added the failure of the defendant to appear after service of process constitutes conclusive evidence of abandonment.

<sup>19</sup> Added political subdivision as a person entitled to shorten the redemption period for abandoned property.

<sup>20</sup> Courts had the ability to expedite the date of sale for abandoned property since 1977. However, effective April 4, 2012, the legislature shortened period between judgment and sale for abandoned property from 2 months to 5 weeks and added examples of circumstances that may support a finding of abandonment.

<sup>21</sup> Also covers commercial property.

<sup>22</sup> Either not occupied by any mortgagor or lawful occupant as principal residence or contains an incomplete structure if the real estate is zoned for residential development where the structure is uninhabited and is need of maintenance, repair or securing.

<sup>23</sup> “Residential real estate” is not defined but a covered mortgage foreclosure involves a debtor’s dwelling financed with a loan to be used primarily for personal, family, or household purposes secured by a mortgage on a dwelling or residential real estate upon which a dwelling is constructed or intended to be constructed.

<sup>24</sup> Also covers commercial property.

<sup>25</sup> And not occupied primary residence by grantor of deed of trust, person who hold title of record, or any lawful occupant.

<sup>26</sup> Covers any real estate improved by a structure or structures, which includes commercial property.

State Laws Expediting Foreclosure for Vacant and Abandoned Residential Property<sup>1</sup>

<sup>27</sup> Also covers commercial property.

<sup>28</sup> Real estate improved with single family residence or residential condominium unit or multiple dwelling structure containing single family dwelling units for one or more families living independently of one another.

<sup>29</sup> Unoccupied 1-to-4 family units used primarily personal, family or household use that is secured by 1<sup>st</sup> lien upon the dwelling or residential real estate.

<sup>30</sup> Also, mortgaged premises ≤ 10 acres.

<sup>31</sup> “Residential” means 1-to-4 family units, at least 1 of which is occupied, or is planned to be occupied, by debtor or a member of the debtor’s immediate family as the person’s residence, including a house, real property or condominium. The expedited procedure may be used if the residential real estate is not occupied by the mortgagor or a tenant with a lease entered into before the filing of notice of foreclosure.

<sup>32</sup> Agricultural or grazing use.

<sup>33</sup> A single tract of agricultural real estate consisting of more than 40 acres is excluded from the definition of “residential real estate.”

<sup>34</sup> The redemption period for agricultural property is 1 year. There is a presumption of agricultural use based providing proof of the filing of schedule F to Federal Tax Return on form 1040 for the previous year.

<sup>35</sup> Applies to all real property improved by a structure or structures except property used primarily for agriculture.

<sup>36</sup> Personal property within abandoned residential property.

<sup>37</sup> Determination that abandoned and vacant.

<sup>38</sup> Abandonment determined without court finding based upon affidavit states (1) mortgagee mailed notice of default sent to mortgagor within 30 days before commencement of foreclosure proceedings without response from the mortgagor and (2) mortgagor is not presently occupying or intending to occupy the premises. In addition, the mortgagee send mortgagor copy of the affidavit and the mortgagor or person claiming through the mortgagor does not record an affidavit before the expiration of the redemption period stating occupancy of the premise or an intention to occupy the premises.

<sup>39</sup> Court finding that abandoned and vacant, as well as not occupied by mortgagor or tenant evidenced by lease entered into before notice to foreclose.

<sup>40</sup> Enter judgment based on submission of proper evidence.

<sup>41</sup> Also deemed abandoned if the real estate is zoned for residential development and is a vacant lot that is need of maintenance, repair or securing.

<sup>42</sup> And (1) obligation in default without cure, (2) gas, electric and water services terminated, appears (3) no children enrolled in school residing at the address, (4) social security, unemployment or public assistance payments not being delivered, electronically or otherwise, to the address, and (5) owner not presently serving in the U.S. armed forces or National Guard.

<sup>43</sup> And not occupied by mortgagor or tenant as evidenced by a lease agreement entered into prior to the service of notice of intention to commence foreclosure.

<sup>44</sup> Lack of occupancy by mortgagor or successor in interest for a continuous six months and no payments upon the mortgage for at least six months.

<sup>45</sup> Not occupied by mortgagor or lawful occupant as principal residence or contains an incomplete structure in need of maintenance, repair or securing.

<sup>46</sup> No legal residency or other legal occupancy.

<sup>47</sup> Determination of totality of circumstances includes consideration of factors listed in the statute.

<sup>48</sup> Undergoing construction, renovation, or rehabilitation that is proceeding diligently.

<sup>49</sup> Occupied on a seasonal basis but otherwise secure.

<sup>50</sup> Secure but subject to a probate action, action to quiet title, or other ownership dispute.

<sup>51</sup> Secure building with bona fide rental or sale signs.

<sup>52</sup> Building is secure and in substantial compliance with all applicable ordinances, codes, regulations, and laws.

<sup>53</sup> Time election recorded with court (filing of and court order filed with public trustee must occurred before election recorded).

<sup>54</sup> For mortgages executed on or after July 1, 1975, a decree of sale may not be issued for sale of the property for a period of 3 months after the filing of a complaint. This waiting period is not applicable if the court finds that the property has been abandoned.

<sup>55</sup> Court order determining that property is vacant and abandoned.

<sup>56</sup> But no longer than 6 months; if not conducted within 6 months, then certificate and affidavit deemed withdrawn and beneficiary liable for civil penalty of up to \$500.

<sup>57</sup> If real estate of 20 acres or less. For commercial and multi-family residences, the sale may be conducted 3 months, rather than 6 months, after the court order.

<sup>58</sup> Earliest practicable time after sale and posting of specified notice.

<sup>59</sup> Or as soon as costs/fees paid mortgagee or lien holder or 3<sup>rd</sup> party paid purchase price.

<sup>60</sup> Redemption rights are not available to the debtor, although they are available to a lien creditor.

<sup>61</sup> The following redemption periods apply to residential property:

If the amount claimed due at the time of the foreclosure notice is > 66% of the original indebtedness	6 months
If abandonment is determined before the commencement of foreclosure proceedings	3 months
If abandonment is determined before the commencement foreclosure proceedings and the amount claimed due at the time of the foreclosure notice is > 66% of the original indebtedness	1 month
If abandonment is determined after the commencement of foreclosure proceedings	30 days
If property is used for agricultural purposes, the redemption period is 1 year.	

<sup>62</sup> Mortgagor, heirs, personal representative, and assigns may redeem at any time before sale. § 846.13.

<sup>63</sup> No deficiency judgment allowed if redemption rights eliminated because of abandonment.

<sup>64</sup> Foreclosure process is generally non-judicial based on a power of sale by public trustee, but use of the expedited process for abandoned property requires the filing of a motion with the court.

<sup>65</sup> Motion may be filed no earlier than the time an answer is due (usually 30 days after service of the summons) and no later than 21 days after the time an answer is due.

<sup>66</sup> Affidavit filed at or after time of filing of foreclosure complaint based on personal knowledge.

<sup>67</sup> Person entitled to enforce the mortgage lien may present proper evidence and representative of city, town, village or county where premises located may present testimony or evidence.

<sup>68</sup> Debtor’s failure to appear, present evidence or object is prima facie evidence.

State Laws Expediting Foreclosure for Vacant and Abandoned Residential Property<sup>1</sup>

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<sup>69</sup> Affidavit by either (1) sheriff, building inspector, zoning administrator, housing official or other official with jurisdiction over mortgaged premises, stating that mortgaged premises not occupied and any of specified facts or (2) foreclosing party or their agent or contractor stating any of specified facts, and that the affiant has changed the locks and that no party having a possessory right has requested entrance for a period of 10 days.

<sup>70</sup> Adds and no appearance to oppose the motion to declare the property abandoned.

<sup>71</sup> Requirements: (1) personal inspection by mortgagee does not reveal occupancy (2) notice posted on premises and certified mail notice to mortgagor at last known address, (3) no notice within 15 days therefrom sent by mortgagor or other lawfully claimants stating the premises are not abandoned.

<sup>72</sup> Conclusive evidence.

<sup>73</sup> The court may enter judgment summarily based on pleadings and documents filed with the court.

<sup>74</sup> Determination of abandonment based on recording of affidavit, mailing notice to mortgagor, and lack of response from mortgagor.

<sup>75</sup> Holder of first lien on residential mortgage loan.

<sup>76</sup> Right to redeem starts with senior lien creditor 35 days or 6 months and 5 days after judgment debtor fails to redeem, and then right to redeem passes to each junior lien creditor in order of priority for 5 day periods.

<sup>77</sup> Enforcement authority with jurisdiction in the location may petition to intervene in the foreclosure action.

<sup>78</sup> Political subdivision.

<sup>79</sup> To mortgagor's last known address.

<sup>80</sup> To mortgagor's last known address

<sup>81</sup> Notice mortgagee intends to foreclose on property as abandoned and related affidavit mailed to mortgagor's last known address.

<sup>82</sup> Attempts to serve the mortgagor or occupant.

<sup>83</sup> Either before noon, between noon and 6 pm, or between 6 pm and 10 pm.

<sup>84</sup> Conspicuous posting (e.g., front door).

**Factual Circumstances Establishing Abandonment** (circumstances similar to list in Nov. 15. 2013 draft of Home Foreclosure Procedures Act in **bold face**)

	<b>COLORADO</b> C.R.S. § 38-38-905(4)(B)	<b>ILLINOIS</b> § 735 ILCS 5/15 § 1200.5(B)	<b>INDIANA</b> IND. CODE § 32-30-10.6-5	<b>KENTUCKY</b> K.R.S. § 426.205(2)	<b>MINNESOTA</b> MINN. STAT. § 582.032(7)	<b>NEVADA</b> S.B. 278 § 2	<b>NEW JERSEY</b> N.J. STAT. § 2A:50-73(A)
	≥2 OF THE FOLLOWING FACTS OBSERVED > 1 TIME:	≥2 OF THE FOLLOWING FACTS OBSERVED 1 TIME:	≥1 OF THE FOLLOWING FACTS OBSERVED 1 TIME:	≥2 OF THE FOLLOWING FACTS OBSERVED FOR ≥ 45 DAYS:	≥ 1 OF THE FOLLOWING FACTS OBSERVED 1 TIME:	≥2 OF THE FOLLOWING FACTS OBSERVED > 1 TIME:	≥2 OF THE FOLLOWING FACTS OBSERVED 1 TIME:
1	<b>windows or entrances to the property are boarded up or closed off, or multiple window panes are broken and unrepaired</b>	<b>multiple windows on the property are boarded up or closed off or are smashed through, broken off, or unhinged, or multiple window panes are broken and unrepaired</b>	<b>windows or entrances to the property are boarded up or closed off or multiple window panes on the property are broken and unrepaired</b>		<b>windows or entrances to the premises are boarded up or closed off, or multiple window panes are broken and unrepaired</b>	<b>multiple windows on the residential real property are boarded up or closed off or are smashed through, broken off or unhinged, or multiple window panes are broken and unrepaired</b>	<b>windows or entrances to the property that are boarded up or closed off or multiple window panes that are damaged, broken and unrepaired</b>
2	<b>doors to the property are smashed through, broken off, unhinged, or continuously unlocked</b>	<b>doors on the property are smashed through, broken off, unhinged, or continuously unlocked</b>	<b>≥1 doors to the property are smashed through, broken off, unhinged, or continuously unlocked</b>		<b>doors to the premises are smashed through, broken off, unhinged, or continuously unlocked</b>	<b>doors on the residential real property are smashed through, broken off, unhinged or continuously unlocked</b>	<b>doors to the property that are smashed through, broken off, unhinged, or continuously unlocked</b>
3		the property has been stripped of copper or other materials, or interior fixtures to the property have been removed				residential real property has been stripped of copper or other materials, or interior fixtures to the property have been removed	
4				absence of window coverings			absence of window treatments such as blinds, curtains or shutters
5				absence of furniture			absence of furnishings and personal items
6	<b>gas, electric, and water service to the property have been terminated for a period of at least thirty days</b>	<b>gas, electrical, or water services to the entire property have been terminated</b>	<b>gas service, electric service, water service, or other utility service to the property has been terminated</b>	<b>disconnected utilities</b>	<b>gas, electric, or water service to the premises has been terminated</b>		<b>disconnected gas, electric, or water utility services to the property</b>
7			<b>rubbish, trash, or debris has accumulated on the property</b>		<b>rubbish, trash, or debris has accumulated on the mortgaged premises</b>		<b>accumulation of junk, litter, trash or debris on the property</b>
8				accumulation of flyers, mail, or trash			accumulation of newspapers, circulars, flyers or mail
9				overgrown or dead vegetation			overgrown or neglected vegetation



**Factual Circumstances Establishing Abandonment** (circumstances similar to list in Nov. 15. 2013 draft of Home Foreclosure Procedures Act in **bold face**)

	<b>COLORADO</b> C.R.S. § 38-38-905(4)(B)	<b>ILLINOIS</b> § 735 ILCS 5/15 § 1200.5(B)	<b>INDIANA</b> IND. CODE § 32-30-10.6-5	<b>KENTUCKY</b> K.R.S. § 426.205(2)	<b>MINNESOTA</b> MINN. STAT. § 582.032(7)	<b>NEVADA</b> S.B. 278 § 2	<b>NEW JERSEY</b> N.J. STAT. § 2A:50-73(A)
10			uncorrected hazardous conditions			accumulation of hazardous, noxious, or unhealthy substances or materials on the property	
11		≥1 written statements of the mortgagor or the mortgagor's personal representative or assigns, including documents of conveyance, which indicate a clear intent to abandon the property;	≥1 written statements, including documents of conveyance, that have been executed by the debtor, or by the debtor's personal representatives or assigns, and that indicate a clear intent to abandon the property				<b>written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property</b>
12	<b>police or sheriff's office has received at least two reports of trespassers on the property or of vandalism or other illegal acts being committed on the property</b>	<b>law enforcement officials have received at least one report of trespassing or vandalism or other illegal acts being committed at the property in the last 6 months</b>		<b>vandalism</b>	<b>police or sheriff's office has received at least two reports of trespassers on the premises, or of vandalism or other illegal acts being committed on the premises</b>	<b>law enforcement officials have received at least one report of trespassing or vandalism or other illegal acts being committed at the residential real property within the immediately preceding 6 months</b>	<b>risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property</b>
13	<b>property is deteriorating and is either below or is in imminent danger of falling below minimum local government standards for public safety and sanitation</b>		<b>property is deteriorating and is either below or in imminent danger of falling below minimum community standards for public safety and sanitation</b>		<b>premises are deteriorating and are either below or are in imminent danger of falling below minimum community standards for public safety and sanitation</b>		
14		property has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by a municipal or county authority or a court of competent jurisdiction	enforcement authority that has jurisdiction in the location of the property has issued an order under IC 36-7-36-9 with respect to the property			residential real property has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by a municipal or county authority or a court of competent jurisdiction	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

**Factual Circumstances Establishing Abandonment** (circumstances similar to list in Nov. 15, 2013 draft of Home Foreclosure Procedures Act in **bold face**)

	<b>COLORADO</b> C.R.S. § 38-38-905(4)(B)	<b>ILLINOIS</b> § 735 ILCS 5/15 § 1200.5(B)	<b>INDIANA</b> IND. CODE § 32-30-10.6-5	<b>KENTUCKY</b> K.R.S. § 426.205(2)	<b>MINNESOTA</b> MINN. STAT. § 582.032(7)	<b>NEVADA</b> S.B. 278 § 2	<b>NEW JERSEY</b> N.J. STAT. § 2A:50-73(A)
15			<b>creditor has changed the locks on the property and for ≥ 15 days after the changing of the locks the owner has not requested entrance to the property</b>				
16		construction initiated on the property and discontinued prior to completion, leaving a building unsuitable for occupancy, and no construction has taken place for ≥ 6 months				construction was initiated on the residential real property and was discontinued before completion, leaving a building unsuitable for occupancy, and no construction has taken place for ≥ 6 months	
17		property is open and unprotected and in reasonable danger of significant damage due to exposure to the elements, vandalism, or freezing				residential real property is open and unprotected and in reasonable danger of significant damage resulting from exposure to the elements or vandalism	
18		local police, fire, or code enforcement authority has requested the owner or other interested or authorized party to secure or winterize the property due to the local authority declaring the property to be an imminent danger to the health, safety, and welfare of the public				local police, fire or code enforcement authority has requested that the owner or any other interested or authorized party secure the residential real property because the local authority has declared the property to be an imminent danger to the health, safety and welfare of the public	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
19				statements of neighbors, delivery persons, or government employees that the property is vacant			statements of neighbors, delivery persons, or government employees indicating that the residence is vacant and abandoned
20		evidence indicating a clear intent to abandon	other evidence indicating a clear intent to abandon				any other reasonable indicia of abandonment



Factual Circumstances Establishing Abandonment (circumstances similar to list in Nov. 15. 2013 draft of Home Foreclosure Procedures Act in bold face)

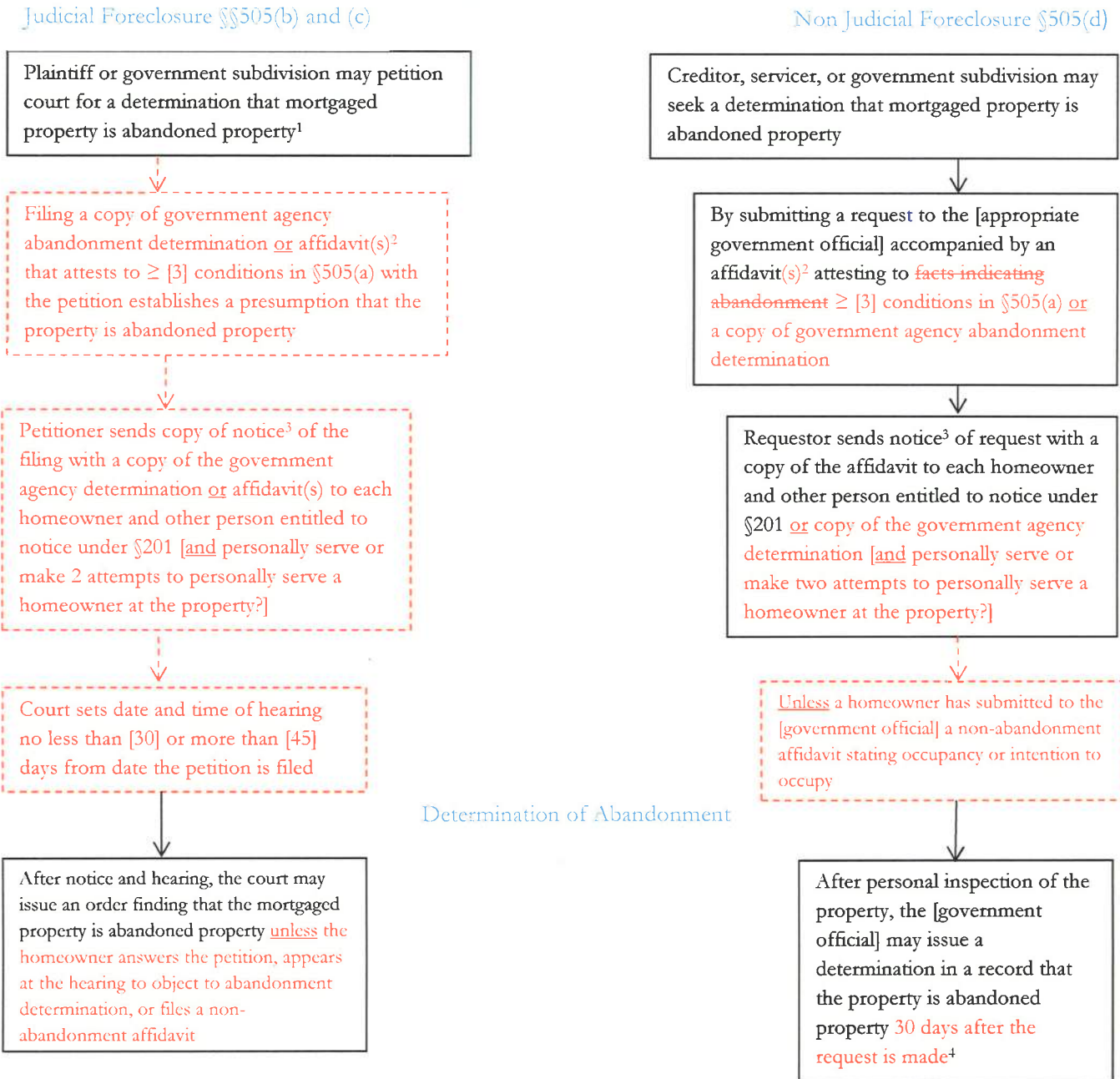
	COLORADO C.R.S. § 38-38-905(4)(B)	ILLINOIS § 735 ILCS 5/15 § 1200.5(B)	INDIANA IND. CODE § 32-30-10.6-5	KENTUCKY K.R.S. § 426.205(2)	MINNESOTA MINN. STAT. § 582.032(7)	NEVADA S.B. 278 § 2	NEW JERSEY N.J. STAT. § 2A:50-73(A)
		the property	the property				
						IN ADDITION, <b>ALL</b> OF THE FOLLOWING CONDITIONS ARE SATISFIED:	
						gas, electric and water utility services to the residential real property have been terminated	
						it appears, after reasonable inquiry, that there are no children enrolled in school residing at the address of the residential real property	
						payments pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits, payments for unemployment compensation or payments for public assistance, as defined in NRS 422.050 and 422A.065, are not currently being delivered, electronically or otherwise, to a person who has registered the address of the residential real property as his or her residence with the agency making the payment	
						an owner of the residential real property is not presently serving in the U.S. Armed Forces, a reserve component thereof or the National Guard	

This chart diagrams the steps leading to a determination that mortgaged property is abandoned property through a judicial and non-judicial process under the November 15, 2013 draft of the Home Foreclosure Procedures Act. The text in black tracks the language of the Act. Indications of possible changes to improve consistency, clarity, and completeness of the Act are highlighted in red. Subject headings appear in blue.

Definition of Abandoned Property §505(a)



Seeking Abandonment Determination



Footnotes:  
¹ In a common interest community, the association that governs that community may intervene in the proceeding.  
² Photographic or other documentary evidence that supports the conditions must be attached to the affidavit.  
³ Notice of petition or request for determination of abandonment, consequences thereof, contact information, and ability to object to abandonment determination.  
⁴ The [government official] sends determination to the creditor, homeowner, and any other person entitled to notice under §201. The determination or refusal to issue a determination is subject to judicial review.

STATE STATUTES RELATED TO VACANT AND ABANDONED RESIDENTIAL PROPERTY

Arizona ..... 1

Colorado ..... 2

Illinois ..... 6

Indiana ..... 16

Kentucky ..... 20

Michigan ..... 22

Minnesota ..... 26

Nevada ..... 29

New Jersey ..... 33

Washington ..... 36

Wisconsin ..... 37

Arizona Revised Statutes

A.R.S. § 12-1281. Parties entitled to redeem property

Property sold subject to redemption, or any part sold separately, may be redeemed by the following persons or their successors in interest:

- 1. The judgment debtor<sup>1</sup> or his successor in interest in the whole or any part of the property.
- 2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

HISTORY: Last year in which legislation affected this section: 1955

A.R.S. § 12-1282. Time for redemption

A. The judgment debtor or his successors in interest may redeem at any time within thirty days after the date of the sale if the court determined as part of the judgment under which the sale was made that the property was both abandoned and not used primarily for agricultural or grazing purposes.

B. The judgment debtor or his successor in interest may redeem at any time within six months after the date of the sale except when the court has made the determinations as provided in subsection A.

C. If the redemption as provided in subsection A or B is not made, the senior creditor having a lien, legal or equitable, upon the premises sold, or any part thereof, subsequent to the judgment under which the sale was made, may redeem within five days after expiration of the applicable period provided in subsection A or B, and each subsequent creditor having a lien in succession, according to priority of liens, within five days after the time allowed the prior lienholder, respectively, may redeem by paying the amount for which the property was sold and all liens prior to his own held by the person from whom redemption is made, together with the eight per cent added to the amount as provided in section 12-1285.

HISTORY: Last year in which legislation affected this section: 1963

<sup>1</sup> A.R.S. § 12-1570. Definitions In this article, unless the context otherwise requires: . . .

5. "Judgment debtor" means a person or entity against which a money judgment has been awarded or against which an order for support of a person is due and unpaid or against which an order pursuant to chapter 14 of this title has been entered.

## Colorado Revised Code

### **C.R.S. § 38-38-901. Definitions**

As used in this part 9, unless the context otherwise requires:

(1) "Eligible evidence of debt" means an evidence of debt that:

(a) Constitutes a residential mortgage loan, as defined in section 12-61-902, C.R.S.,<sup>2</sup> and

(b) Is a first lien upon the property.

(2) "Eligible holder" means the holder of an eligible evidence of debt that is secured by a deed of trust that does not specify a longer period of publication than set forth in section 38-38-904

(2) (g) (I).

(3) "Expedited mailing list" means the initial mailing list in accordance with section 38-38-904

(2) (a) provided to the public trustee by the holder that includes the names and addresses of all persons who are included in an amended mailing list.

(4) "Order for expedited sale" or "order" means the order issued by a court of competent jurisdiction pursuant to section 38-38-903.

HISTORY: Source: L. 2010: Entire part added, (HB 10-1249), ch. 181, p. 649, § 1, effective April 29.

### **C.R.S. § 38-38-902. Expedited sale - how commenced - failure to file order**

(1) (a) For a notice of election and demand recorded on or after August 1, 2010, but prior to August 1, 2013, an eligible holder may elect to require the public trustee to hold an expedited sale by filing with the public trustee either:

(I) A copy of the order for expedited sale; or

(II) A separate document notifying the public trustee of the election for an expedited sale.

(b) Except as set forth in section 38-38-904 (2) (b), the order or separate document required pursuant to paragraph (a) of this subsection (1) shall be filed together with the documents required pursuant to section 38-38-101 (1).

(c) If an eligible holder files a separate document with the public trustee pursuant to section 38-38-101 (1) (h), the provisions of subsection (2) of this section shall not apply.

(2) Notwithstanding the provisions of section 38-38-108 (1) (a), if an eligible holder files the order or separate document required pursuant to paragraph (a) of subsection (1) of this section, the public trustee shall set an initial date of sale of the property that is no less than forty-five calendar days nor more than sixty-five calendar days after the date of recording of the notice of

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<sup>2</sup> 12-61-902. Definitions

As used in this part 9, unless the context otherwise requires: . . .

(4.3) "Dwelling" shall have the same meaning as set forth in the federal "Truth in Lending Act", 15 U.S.C. sec. 1602 (v)<sup>2</sup>.

...

(8) "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.<sup>2</sup> . . .

election and demand.

(3) An eligible holder who files the separate document identified in subparagraph (II) of paragraph (a) of subsection (1) of this section shall be required to file a copy of the order for expedited sale with the public trustee no later than thirty calendar days after the date of recording of the notice of election and demand.

HISTORY: Source: L. 2010: Entire part added, (HB 10-1249), ch. 181, p. 650, § 1, effective April 29.

### **C.R.S. § 38-38-903. Court order for expedited sale**

(1) On and after August 1, 2010, whenever a public trustee forecloses upon a deed of trust under this article, an eligible holder may file a motion for an order for expedited sale with a court of competent jurisdiction to issue the same pursuant to rule 120 or other rule of the Colorado rules of civil procedure. The motion shall state that:

- (a) The holder of the evidence of debt is an eligible holder;
- (b) The deed of trust secures an eligible evidence of debt; and
- (c) The property has been abandoned or, in the alternative, the grantor of the deed of trust requests the order for expedited sale.

(2) The hearing related to the motion for an order for expedited sale shall be combined with the proceeding required pursuant to section 38-38-105 (2). The clerk of the court shall fix a time not less than twenty nor more than thirty calendar days after the filing of the motion and a place for the hearing of the combined proceeding. At least fifteen calendar days prior to the hearing, notice of the proceeding in English and in Spanish shall be personally served on the grantor of the deed of trust or posted in a conspicuous place on the property. If notice is given through posting, the notice shall be posted on the front door of the residence, but if access to the door is not possible or is restricted, then the notice shall be posted at an alternative conspicuous location, such as a guard gate or similar impediment. Notice provided pursuant to this subsection (2) shall be in addition to any other service required by the Colorado rules of civil procedure.

(3) The court shall enter an order for expedited sale if clear and convincing evidence is presented proving the allegations in the motion and no appearance is made to oppose the motion.

(4) (a) An affidavit that meets the requirements set forth in paragraph (b) of this subsection (4) is prima facie evidence of abandonment.

(b) (I) The affidavit shall be signed by and based on the personal knowledge of the eligible holder, an agent of the eligible holder, the sheriff of the county in which the property is located, or a building inspector or other municipal or county official having jurisdiction over the property, and shall state that the property is not actually occupied and that the signer has inspected the property on more than one occasion and on each occasion has determined that the property is abandoned. The affidavit shall further set forth at least two of the following supporting facts:

- (A) Windows or entrances to the property are boarded up or closed off, or multiple window panes are broken and unrepaired;
- (B) Doors to the property are smashed through, broken off, unhinged, or continuously unlocked;
- (C) Gas, electric, and water service to the property have been terminated for a period of at least thirty days;

(D) The police or sheriff's office has received at least two reports of trespassers on the property or of vandalism or other illegal acts being committed on the property; or

(E) The property is deteriorating and is either below or is in imminent danger of falling below minimum local government standards for public safety and sanitation.

(II) Photographic or other documentary evidence that demonstrates the supporting facts set forth in the affidavit shall be attached to the affidavit.

(c) A signed affidavit by the grantor of the deed of trust that secures an eligible evidence of debt requesting an order for expedited sale is prima facie evidence of the same.

(d) Nothing in sub-subparagraph (C) of subparagraph (I) of paragraph (b) of this subsection (4) shall be construed to require a public utility to disclose any information about a customer.

HISTORY: Source: L. 2010: Entire part added, (HB 10-1249), ch. 181, p. 650, § 1, effective April 29.

#### **C.R.S. § 38-38-904. Modification of foreclosure proceedings**

(1) If the public trustee sets an expedited sale pursuant to section 38-38-902 (2), the provisions of parts 1 and 8 of this article shall be modified as set forth in subsection (2) of this section.

(2) (a) The eligible holder shall not be required to file a mailing list pursuant to section 38-38-101 (1) (e). The eligible holder shall file an expedited mailing list no later than fifteen calendar days after the recording of the notice of election and demand.

(b) The eligible holder shall not be required to file the separate document pursuant to section 38-38-101 (1) (h).

(c) The public trustee shall not be required to mail the combined notice pursuant to section 38-38-103 (1) (a).

(d) The public trustee shall mail the combined notice required pursuant to section 38-38-103 (1) (b) to the persons shown on the expedited mailing list no more than twenty-five calendar days after recording of the notice of election and demand.

(e) The deadline for delivering an amended mailing list pursuant to section 38-38-103 (2) (a) shall be no later than thirty calendar days after the recording of the notice of election and demand. The public trustee shall send the notice pursuant to section 38-38-103 (4) to the persons on the amended mailing list no later than five business days from the receipt of the amended mailing list. If the notice is sent less than twenty-one calendar days prior to the actual date of sale, the public trustee shall continue the sale for one week. If a sale is continued pursuant to this paragraph (e), the maximum number of weeks that a sale may be continued pursuant to paragraph (h) of this subsection (2) shall be three.

(f) A legible copy of this section shall be added to the sections that are sent pursuant to section 38-38-103 (4) (b).

(g) The requirements related to the publication of the combined notice set forth in section 38-38-103 (5) shall be modified as follows:

(I) The notice shall be published once each week for four consecutive weeks;

(II) The last date that the notice is published shall be more than five calendar days prior to the first scheduled date of sale; and

(III) The provisions of section 38-38-103 (5) (d) shall not apply.

(h) A sale may not be continued more than four weeks pursuant to section 38-38-109 (1) (a). This paragraph (h) shall not affect the allowable period for a continuance pursuant to section 38-38-104 (7) or 38-38-109 (1) (b).

(i) The eligible holder shall not be required to post the notice required pursuant to section 38-38-802.

HISTORY: Source: L. 2010: Entire part added, (HB 10-1249), ch. 181, p. 652, § 1, effective April 29.

#### **C.R.S. § 38-38-905. Withdrawal of notice of election and demand**

(1) (a) A foreclosure shall be deemed withdrawn and the eligible holder shall have forty-five calendar days within which to file a written withdrawal of the notice of election and demand, if the eligible holder:

(I) Fails to file a copy of the order for expedited sale with the public trustee as required by section 38-38-902 (3);

(II) Fails to file an expedited mailing list as required by section 38-38-904 (2) (a); or

(III) Delivers an amended mailing list after the deadline set forth in section 38-38-904 (2) (e).

(b) The public trustee shall record a written withdrawal of the notice of election and demand filed pursuant to paragraph (a) of this subsection (1).

(2) If the public trustee does not receive a written withdrawal of the notice of election and demand as required by paragraph (a) of subsection (1) of this section, the public trustee shall transmit by mail or electronic transmission to the eligible holder a notice requesting the holder to file the written withdrawal. If the written withdrawal is not filed within thirty calendar days after the notice is transmitted, the public trustee may record at any time a withdrawal of the notice of election and demand.

(3) If a foreclosure is deemed withdrawn pursuant to this section, the public trustee shall collect from the eligible holder all fees and costs actually incurred by the public trustee together with a withdrawal fee in the amount authorized under section 38-37-104 (1) (b) (V).

HISTORY: Source: L. 2010: Entire part added, (HB 10-1249), ch. 181, p. 653, § 1, effective April 29.

#### **C.R.S. § 38-38-906. Nonapplicability to judicial foreclosures**

The provisions of this part 9 shall not apply to a judicial foreclosure.

HISTORY: Source: L. 2010: Entire part added, (HB 10-1249), ch. 181, p. 653, § 1, effective April 29.

#### **C.R.S. § 38-38-907. Repeal of part**

This part 9 is repealed, effective July 1, 2014.

HISTORY: Source: L. 2010: Entire part added, (HB 10-1249), ch. 181, p. 653, § 1, effective April 29.



**§ 735 ILCS 5/15-1200.5. Abandoned residential property**

"Abandoned residential property" means residential real estate<sup>3</sup> that:

(a) either:

- (1) is not occupied by any mortgagor or lawful occupant as a principal residence; or
- (2) contains an incomplete structure if the real estate is zoned for residential development, where the structure is empty or otherwise uninhabited and is in need of maintenance, repair, or securing; and

(b) with respect to which either:

(1) two or more of the following conditions are shown to exist:

(A) construction was initiated on the property and was discontinued prior to completion, leaving a building unsuitable for occupancy, and no construction has taken place for at least 6 months;

(B) multiple windows on the property are boarded up or closed off or are smashed through, broken off, or unhinged, or multiple window panes are broken and unrepaired;

(C) doors on the property are smashed through, broken off, unhinged, or continuously unlocked;

(D) the property has been stripped of copper or other materials, or interior fixtures to the property have been removed;

(E) gas, electrical, or water services to the entire property have been terminated;

(F) there exist one or more written statements of the mortgagor or the mortgagor's personal representative or assigns, including documents of conveyance, which indicate a clear intent to abandon the property;

(G) law enforcement officials have received at least one report of trespassing or vandalism or other illegal acts being committed at the property in the last 6 months;

(H) the property has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by a municipal or county authority or a court of competent jurisdiction;

(I) the local police, fire, or code enforcement authority has requested the owner or other interested or authorized party to secure or winterize the property due to the local authority declaring the property to be an imminent danger to the health, safety, and welfare of the public;

(J) the property is open and unprotected and in reasonable danger of significant damage

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<sup>3</sup> § 735 ILCS 5/15-1225. (Effective November 19, 2013) Residential real estate in foreclosure

For purposes of Sections 9-207.5, 15-1224, 15-1506, 15-1508, and 15-1701 of this Code [735 ILCS 5/9-207.5, 735 ILCS 5/15-1224, 735 ILCS 5/15-1506, 735 ILCS 5/15-1508, and 735 ILCS 5/15-1701] only, the term "residential real estate in foreclosure" means any real estate, except a single tract of agricultural real estate consisting of more than 40 acres, which is improved with a single family residence or residential condominium units or a multiple dwelling structure containing single family dwelling units for one or more families living independently of one another, for which an action to foreclose the real estate: (1) has commenced and is pending; (2) was pending when the bona fide lease was entered into or renewed; or (3) was commenced after the bona fide lease was entered into or renewed.

- due to exposure to the elements, vandalism, or freezing; or  
(K) there exists other evidence indicating a clear intent to abandon the property; or  
(2) the real estate is zoned for residential development and is a vacant lot that is in need of maintenance, repair, or securing.

HISTORY: Source: P.A. 97-1164, § 15. EFFECTIVE DATE: This section is effective June 1, 2013, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

**§ 735 ILCS 5/15-1200.7. Abandoned residential property; exceptions**

A property shall not be considered abandoned residential property if: (i) there is an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in substantial compliance with all applicable ordinances, codes, regulations, and laws; (ii) there is a building occupied on a seasonal basis, but otherwise secure; (iii) there is a secure building on which there are bona fide rental or sale signs; (iv) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute; or (v) there is a building that is otherwise secure and in substantial compliance with all applicable ordinances, codes, regulations, and laws.

HISTORY: Source: P.A. 97-1164, § 15. EFFECTIVE DATE.: This section is effective June 1, 2013, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

**§ 735 ILCS 5/15-1505.8. Expedited judgment and sale procedure for abandoned residential property**

(a) Upon motion and notice, the mortgagee may elect to utilize the expedited judgment and sale procedure for abandoned residential property stated in this Section to obtain a judgment of foreclosure pursuant to Section 15-1506 [735 ILCS 5/15-1506]. The motion to expedite the judgment and sale may be combined with or made part of the motion requesting a judgment of foreclosure. The notice of the motion to expedite the judgment and sale shall be sent by first-class mail to the last known address of the mortgagor, and the notice required by paragraph (1) of subsection (l) of this Section shall be posted at the property address.

(b) The motion requesting an expedited judgment of foreclosure and sale may be filed by the mortgagee at the time the foreclosure complaint is filed or any time thereafter, and shall set forth the facts demonstrating that the mortgaged real estate is abandoned residential real estate under Section 15-1200.5 and shall be supported by affidavit.

(c) If a motion for an expedited judgment and sale is filed at the time the foreclosure complaint is filed or before the period to answer the foreclosure complaint has expired, the motion shall be heard by the court no earlier than before the period to answer the foreclosure complaint has expired and no later than 21 days after the period to answer the foreclosure complaint has expired.

(d) If a motion for an expedited judgment and sale is filed after the period to answer the foreclosure complaint has expired, the motion shall be heard no later than 21 days after the motion is filed.

(e) The hearing shall be given priority by the court and shall be scheduled to be heard within the applicable time period set forth in subsection (c) or (d) of this Section.

(f) Subject to subsection (g), at the hearing on the motion requesting an expedited judgment and sale, if the court finds that the mortgaged real estate is abandoned residential property, the court shall grant the motion and immediately proceed to a trial of the foreclosure. A judgment of foreclosure under this Section shall include the matters identified in Section 15-1506.

(g) The court may not grant the motion requesting an expedited judgment and sale if the mortgagor, an unknown owner, or a lawful occupant appears in the action in any manner before or at the hearing and objects to a finding of abandonment.

(h) The court shall vacate an order issued pursuant to subsection (f) of this Section if the mortgagor or a lawful occupant appears in the action at any time prior to the court issuing an order confirming the sale pursuant to subsection (b-3) of Section 15-1508 and presents evidence establishing to the satisfaction of the court that the mortgagor or lawful occupant has not abandoned the mortgaged real estate.

(i) The reinstatement period and redemption period for the abandoned residential property shall end in accordance with paragraph (4) of subsection (b) of Section 15-1603 [735 ILCS 5/15-1603], and the abandoned residential property shall be sold at the earliest practicable time at a sale as provided in this Article.

(j) The mortgagee or its agent may enter, secure, and maintain abandoned residential property subject to subsection (e-5) of Section 21-3 of the Criminal Code of 2012 [720 ILCS 5/21-3].

(k) Personal property.

(1) Upon confirmation of the sale held pursuant to Section 15-1507, any personal property remaining in or upon the abandoned residential property shall be deemed to have been abandoned by the owner of such personal property and may be disposed of or donated by the holder of the certificate of sale (or, if none, by the purchaser at the sale). In the event of donation of any such personal property, the holder of the certificate of sale (or, if none, the purchaser at the sale) may transfer such donated property with a bill of sale. No mortgagee or its successors or assigns, holder of a certificate of sale, or purchaser at the sale shall be liable for any such disposal or donation of personal property.

(2) Notwithstanding paragraph (1) of this subsection (k), in the event a lawful occupant is in possession of the mortgaged real estate who has not been made a party to the foreclosure and had his or her interests terminated therein, any personal property of the lawful occupant shall not be deemed to have been abandoned, nor shall the rights of the lawful occupant to any personal property be affected.

(l) Notices to be posted at property address.

(1) The notice set out in this paragraph (1) of this subsection (l) shall be conspicuously posted at the property address at least 14 days before the hearing on the motion requesting an expedited judgment and sale and shall be in boldface, in at least 12 point type, and in substantially the following form:

"NOTICE TO ANY TENANT OR OTHER LAWFUL  
OCCUPANT OF THIS PROPERTY

A lawsuit has been filed to foreclose on this property, and the party  
asking to foreclose on this property has asked a judge to find that THIS  
PROPERTY IS ABANDONED.

The judge will be holding a hearing to decide whether this property is ABANDONED.  
IF YOU LAWFULLY OCCUPY ANY PART OF THIS PROPERTY, YOU MAY  
CHOOSE TO GO TO

THIS HEARING and explain to the judge how you are a lawful occupant of this  
property.

If the judge is satisfied that you are a LAWFUL OCCUPANT of this property,  
the court will find that this property is NOT ABANDONED.

This hearing will be held in the courthouse at the following address, date,  
and time:

Court name:.....

Court address:.....

Court room number where hearing will be held:.....

(There should be a person in this room called a CLERK who can help you.

Make sure you know THIS PROPERTY'S ADDRESS.)

Date of hearing:.....

Time of hearing:.....

MORE INFORMATION

Name of lawsuit:.....

Number of lawsuit:.....

Address of this property:.....

IMPORTANT

This is NOT a notice to vacate the premises. You may wish to contact a  
lawyer or your local legal aid or housing counseling agency to discuss any  
rights that you may have.

WARNING

INTENTIONAL REMOVAL OF THIS NOTICE BEFORE THE DATE AND TIME  
STATED IN THIS

NOTICE IS A CLASS B MISDEMEANOR, PUNISHABLE BY UP TO 180 DAYS IN  
JAIL AND A

FINE OF UP TO \$ 1500, UNDER ILLINOIS LAW. 720 ILCS 5/21-3(a).

NO TRESPASSING

KNOWINGLY ENTERING THIS PROPERTY WITHOUT LAWFUL AUTHORITY IS  
A CLASS B

MISDEMEANOR, PUNISHABLE BY UP TO 180 DAYS IN JAIL AND A FINE OF UP  
TO \$ 1500,

UNDER ILLINOIS LAW. 720 ILCS 5/21-3(a).".

(2) The notice set out in this paragraph (2) of this subsection (l) shall be conspicuously posted  
at the property address at least 14 days before the hearing to confirm the sale of the abandoned  
residential property and shall be in boldface, in at least 12 point type, and in substantially the  
following form:

"NOTICE TO ANY TENANT OR OTHER LAWFUL OCCUPANT OF THIS PROPERTY

A lawsuit has been filed to foreclose on this property, and the judge has found that THIS PROPERTY IS ABANDONED. As a result, THIS PROPERTY HAS BEEN OR WILL BE SOLD.

HOWEVER, there still must be a hearing for the judge to approve the sale. The judge will NOT APPROVE this sale if the judge finds that any person lawfully occupies any part of this property.

IF YOU LAWFULLY OCCUPY ANY PART OF THIS PROPERTY, YOU MAY CHOOSE TO GO TO

THIS HEARING and explain to the judge how you are a lawful occupant of this property. You also may appear BEFORE this hearing and explain to the judge how you are a lawful occupant of this property.

If the judge is satisfied that you are a LAWFUL OCCUPANT of this property, the court will find that this property is NOT ABANDONED, and there will be no sale of the property at this time.

This hearing will be held in the courthouse at the following address, date, and time:

Court name:.....

Court address:.....

Court room number where hearing will be held:.....

(There should be a person in this room called a CLERK who can help you.

Make sure you know THIS PROPERTY'S ADDRESS.)

Date of hearing:.....

Time of hearing:.....

MORE INFORMATION

Name of lawsuit:.....

Number of lawsuit:.....

Address of this property:.....

IMPORTANT

This is NOT a notice to vacate the premises. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights that you may have.

WARNING

INTENTIONAL REMOVAL OF THIS NOTICE BEFORE THE DATE AND TIME STATED IN THIS NOTICE IS A CLASS B MISDEMEANOR, PUNISHABLE BY UP TO 180 DAYS IN JAIL AND A FINE OF UP TO \$ 1500, UNDER ILLINOIS LAW. 720 ILCS 5/21-3(a).

NO TRESPASSING

KNOWINGLY ENTERING THIS PROPERTY WITHOUT LAWFUL AUTHORITY IS A CLASS B MISDEMEANOR, PUNISHABLE BY UP TO 180 DAYS IN JAIL AND A FINE OF UP TO \$ 1500, UNDER ILLINOIS LAW. 720 ILCS 5/21-3(a)."

HISTORY: Source: P.A. 97-1164, § 15; 98-20, § 15. EFFECTIVE DATE. This section is effective June 1, 2013, pursuant to Ill. Const. (1970) Art. IV, § 10 and 5 ILCS 75/2.

**§ 735 ILCS 5/15-1508. (Effective until November 19, 2013) Report of Sale and Confirmation of Sale**

(a) *Report.* The person conducting the sale shall promptly make a report to the court, which report shall include a copy of all receipts and, if any, certificate of sale.

(b) *Hearing.* Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 [735 ILCS 5/15-1507] was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale. The confirmation order shall include a name, address, and telephone number of the holder of the certificate of sale or deed issued pursuant to that certificate or, if no certificate or deed was issued, the purchaser, whom a municipality or county may contact with concerns about the real estate. The confirmation order may also:

- (1) approve the mortgagee's fees and costs arising between the entry of the judgment of foreclosure and the confirmation hearing, those costs and fees to be allowable to the same extent as provided in the note and mortgage and in Section 15-1504 [735 ILCS 5/15-1504];
- (2) provide for a personal judgment against any party for a deficiency; and
- (3) determine the priority of the judgments of parties who deferred proving the priority pursuant to subsection (h) of Section 15-1506 [735 ILCS 5/15-1506], but the court shall not defer confirming the sale pending the determination of such priority.

(b-3) *Hearing to confirm sale of abandoned residential property.* Upon motion and notice by first-class mail to the last known address of the mortgagor, which motion shall be made prior to the sale and heard by the court at the earliest practicable time after conclusion of the sale, and upon the posting at the property address of the notice required by paragraph (2) of subsection (l) of Section 15-1505.8 [735 ILCS 5/15-1505.8], the court shall enter an order confirming the sale of the abandoned residential property, unless the court finds that a reason set forth in items (i) through (iv) of subsection (b) of this Section exists for not approving the sale, or an order is entered pursuant to subsection (h) of Section 15-1505.8. The confirmation order also may address the matters identified in items (1) through (3) of subsection (b) of this Section. The notice required under subsection (b-5) of this Section shall not be required.

(b-5) *Notice with respect to residential real estate.* With respect to residential real estate, the notice required under subsection (b) of this Section shall be sent to the mortgagor even if the mortgagor has previously been held in default. In the event the mortgagor has filed an appearance, the notice shall be sent to the address indicated on the appearance. In all other cases, the notice shall be sent to the mortgagor at the common address of the foreclosed property. The notice shall be sent by first class mail. Unless the right to possession has been previously terminated by the court, the notice shall include the following language in 12-point boldface capitalized type:

IF YOU ARE THE MORTGAGOR (HOMEOWNER), YOU HAVE THE RIGHT TO REMAIN IN POSSESSION FOR 30 DAYS AFTER ENTRY OF AN ORDER OF POSSESSION, IN ACCORDANCE WITH SECTION 15-1701(c) OF THE ILLINOIS MORTGAGE FORECLOSURE LAW.

(b-10) *Notice of confirmation order sent to municipality or county.* A copy of the confirmation order required under subsection (b) shall be sent to the municipality in which the foreclosed

property is located, or to the county within the boundary of which the foreclosed property is located if the foreclosed property is located in an unincorporated territory. A municipality or county must clearly publish on its website a single address to which a copy of the order shall be sent. If a municipality or county does not maintain a website, then the municipality or county must publicly post in its main office a single address to which a copy of the order shall be sent. In the event that a municipality or county has not complied with the publication requirement in this subsection (b-10), then a copy of the order shall be sent by first class mail, postage prepaid, to the chairperson of the county board or county clerk in the case of a county, to the mayor or city clerk in the case of a city, to the president of the board of trustees or village clerk in the case of a village, or to the president or town clerk in the case of a town.

(b-15) Notice of confirmation order sent to known insurers. With respect to residential real estate, the party filing the complaint shall send a copy of the confirmation order required under subsection (b) by first class mail, postage prepaid, to the last known property insurer of the foreclosed property. Failure to send or receive a copy of the order shall not impair or abrogate in any way the rights of the mortgagee or purchaser or affect the status of the foreclosure proceedings.

(c) *Failure to Give Notice.* If any sale is held without compliance with subsection (c) of Section 15-1507 of this Article, any party entitled to the notice provided for in paragraph (3) of that subsection (c) who was not so notified may, by motion supported by affidavit made prior to confirmation of such sale, ask the court which entered the judgment to set aside the sale. Any such party shall guarantee or secure by bond a bid equal to the successful bid at the prior sale, unless the party seeking to set aside the sale is the mortgagor, the real estate sold at the sale is residential real estate, and the mortgagor occupies the residential real estate at the time the motion is filed. In that event, no guarantee or bond shall be required of the mortgagor. Any subsequent sale is subject to the same notice requirement as the original sale.

(d) *Validity of Sale.* Except as provided in subsection (c) of Section 15-1508, no sale under this Article shall be held invalid or be set aside because of any defect in the notice thereof or in the publication of the same, or in the proceedings of the officer conducting the sale, except upon good cause shown in a hearing pursuant to subsection (b) of Section 15-1508. At any time after a sale has occurred, any party entitled to notice under paragraph (3) of subsection (c) of Section 15-1507 may recover from the mortgagee any damages caused by the mortgagee's failure to comply with such paragraph (3). Any party who recovers damages in a judicial proceeding brought under this subsection may also recover from the mortgagee the reasonable expenses of litigation, including reasonable attorney's fees.

(d-5) *Making Home Affordable Program.* The court that entered the judgment shall set aside a sale held pursuant to Section 15-1507, upon motion of the mortgagor at any time prior to the confirmation of the sale, if the mortgagor proves by a preponderance of the evidence that (i) the mortgagor has applied for assistance under the Making Home Affordable Program established by the United States Department of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008 [P.L. 110-343, Div. A.], as amended by the American Recovery and Reinvestment Act of 2009 [Public Law 111-5], and (ii) the mortgaged real estate was sold in material violation of the program's requirements for proceeding to a judicial sale. The provisions of this subsection (d-5), except for this sentence, shall become inoperative on January 1, 2014 for all actions filed under this Article after December 31, 2013, in which the mortgagor did not apply for assistance under the Making Home Affordable Program on or before December 31, 2013.

(e) *Deficiency Judgment.* In any order confirming a sale pursuant to the judgment of foreclosure, the court shall also enter a personal judgment for deficiency against any party (i) if otherwise authorized and (ii) to the extent requested in the complaint and proven upon presentation of the



report of sale in accordance with Section 15-1508. Except as otherwise provided in this Article, a judgment may be entered for any balance of money that may be found due to the plaintiff, over and above the proceeds of the sale or sales, and enforcement may be had for the collection of such balance, the same as when the judgment is solely for the payment of money. Such judgment may be entered, or enforcement had, only in cases where personal service has been had upon the persons personally liable for the mortgage indebtedness, unless they have entered their appearance in the foreclosure action.

(f) *Satisfaction.* Upon confirmation of the sale, the judgment stands satisfied to the extent of the sale price less expenses and costs. If the order confirming the sale includes a deficiency judgment, the judgment shall become a lien in the manner of any other judgment for the payment of money.

(g) The order confirming the sale shall include, notwithstanding any previous orders awarding possession during the pendency of the foreclosure, an award to the purchaser of possession of the mortgaged real estate, as of the date 30 days after the entry of the order, against the parties to the foreclosure whose interests have been terminated.

An order of possession authorizing the removal of a person from possession of the mortgaged real estate shall be entered and enforced only against those persons personally named as individuals in the complaint or the petition under subsection (h) of Section 15-1701 [735 ILCS 5/15-1701] and in the order of possession and shall not be entered and enforced against any person who is only generically described as an unknown owner or nonrecord claimant or by another generic designation in the complaint.

Notwithstanding the preceding paragraph, the failure to personally name, include, or seek an award of possession of the mortgaged real estate against a person in the confirmation order shall not abrogate any right that the purchaser may have to possession of the mortgaged real estate and to maintain a proceeding against that person for possession under Article 9 of this Code or subsection (h) of Section 15-1701; and possession against a person who (1) has not been personally named as a party to the foreclosure and (2) has not been provided an opportunity to be heard in the foreclosure proceeding may be sought only by maintaining a proceeding under Article 9 of this Code or subsection (h) of Section 15-1701.

(h) With respect to mortgaged real estate containing 5 or more dwelling units, the order confirming the sale shall also provide that (i) the mortgagor shall transfer to the purchaser the security deposits, if any, that the mortgagor received to secure payment of rent or to compensate for damage to the mortgaged real estate from any current occupant of a dwelling unit of the mortgaged real estate, as well as any statutory interest that has not been paid to the occupant, and (ii) the mortgagor shall provide an accounting of the security deposits that are transferred, including the name and address of each occupant for whom the mortgagor holds the deposit and the amount of the deposit and any statutory interest.

HISTORY: Source: P.A. 86-974; 88-265, § 5; 89-203, § 30; 95-826, § 5; 96-265, § 5; 96-856, § 25; 96-1245, § 5; 97-333, § 575; 97-575, § 5; 97-1159, § 5; 97-1164, § 15.

## **§ 735 ILCS 5/15-1603. Redemption**

Redemption.

(a) *Owner of Redemption.* Except as provided in subsection (b) of Section 15-1402 [735 ILCS 5/15-1402], only an owner of redemption may redeem from the foreclosure, and such owner of redemption may redeem only during the redemption period specified in subsection (b) of Section 15-1603 and only if the right of redemption has not been validly waived.

(b) *Redemption Period.*

(1) In the foreclosure of a mortgage of real estate which is residential real estate at the time the foreclosure is commenced, the redemption period shall end on the later of (i) the date 7

months from the date the mortgagor or, if more than one, all the mortgagors (A) have been served with summons or by publication or (B) have otherwise submitted to the jurisdiction of the court, or (ii) the date 3 months from the date of entry of a judgment of foreclosure. (2) In all other foreclosures, the redemption period shall end on the later of (i) the date 6 months from the date the mortgagor or, if more than one, all the mortgagors (A) have been served with summons or by publication or (B) have otherwise submitted to the jurisdiction of the court, or (ii) the date 3 months from the date of entry of a judgment of foreclosure. (3) Notwithstanding paragraphs (1) and (2), the redemption period shall end at the later of the expiration of any reinstatement period provided for in Section 15-1602 [735 ILCS 5/15-1602] or the date 60 days after the date the judgment of foreclosure is entered, if the court finds that (i) the value of the mortgaged real estate as of the date of the judgment is less than 90% of the amount specified pursuant to subsection (d) of Section 15-1603 and (ii) the mortgagee waives any and all rights to a personal judgment for a deficiency against the mortgagor and against all other persons liable for the indebtedness or other obligations secured by the mortgage.

(4) Notwithstanding paragraphs (1) and (2), the redemption period shall end on the date 30 days after the date the judgment of foreclosure is entered if the court finds that the mortgaged real estate has been abandoned. In cases where the redemption period is shortened on account of abandonment, the reinstatement period shall not extend beyond the redemption period as shortened.

(c) Extension of Redemption Period.

(1) Once expired, the right of redemption provided for in Sections 15-1603 or 15-1604 [735 ILCS 5/15-1603 or 735 ILCS 5/15-1604] shall not be revived. The period within which the right of redemption provided for in Sections 15-1603 or 15-1604 [735 ILCS 5/15-1603 or 735 ILCS 5/15-1604] may be exercised runs independently of any action by any person to enforce the judgment of foreclosure or effect a sale pursuant thereto. Neither the initiation of any legal proceeding nor the order of any court staying the enforcement of a judgment of foreclosure or the sale pursuant to a judgment or the confirmation of the sale, shall have the effect of tolling the running of the redemption period.

(2) If a court has the authority to stay, and does stay, the running of the redemption period, or if the redemption period is extended by any statute of the United States, the redemption period shall be extended until the expiration of the same number of days after the expiration of the stay order as the number of days remaining in the redemption period at the time the stay order became effective, or, if later, until the expiration of 30 days after the stay order terminates. If the stay order terminates more than 30 days prior to the expiration of the redemption period, the redemption period shall not be extended.

(d) Amount Required to Redeem. The amount required to redeem shall be the sum of:

(1) The amount specified in the judgment of foreclosure, which shall consist of (i) all principal and accrued interest secured by the mortgage and due as of the date of the judgment, (ii) all costs allowed by law, (iii) costs and expenses approved by the court, (iv) to the extent provided for in the mortgage and approved by the court, additional costs, expenses and reasonable attorneys' fees incurred by the mortgagee, (v) all amounts paid pursuant to Section 15-1505 [735 ILCS 5/15-1505] and (vi) per diem interest from the date of judgment to the date of redemption calculated at the mortgage rate of interest applicable as if no default had occurred; and

(2) The amount of other expenses authorized by the court which the mortgagee reasonably incurs between the date of judgment and the date of redemption, which shall be the amount certified by the mortgagee in accordance with subsection (e) of Section 15-1603.

(e) Notice of Intent to Redeem. An owner of redemption who intends to redeem shall give written notice of such intent to redeem to the mortgagee's attorney of record specifying the date designated for redemption and the current address of the owner of redemption for purposes of receiving notice. Such owner of redemption shall file with the clerk of the court a certification of the giving of such notice. The notice of intent to redeem must be received by the mortgagee's attorney at least 15 days (other than Saturday, Sunday or court holiday) prior to the date designated for redemption. The mortgagee shall thereupon file with the clerk of the court and shall give written notice to the owner of redemption at least three days (other than Saturday, Sunday or court holiday) before the date designated for redemption a certification, accompanied by copies of paid receipts or appropriate affidavits, of any expenses authorized in paragraph (2) of subsection (d) of Section 15-1603. If the mortgagee fails to serve such certification within the time specified herein, then the owner of redemption intending to redeem may redeem on the date designated for redemption in the notice of intent to redeem, and the mortgagee shall not be entitled to payment of any expenses authorized in paragraph (2) of subsection (d) of Section 15-1603.

(f) Procedure for Redemption.

(1) An owner of redemption may redeem the real estate from the foreclosure by paying the amount specified in subsection (d) of Section 15-1603 to the mortgagee or the mortgagee's attorney of record on or before the date designated for redemption pursuant to subsection (e) of Section 15-1603.

(2) If the mortgagee refuses to accept payment or if the owner of redemption redeeming from the foreclosure objects to the reasonableness of the additional expenses authorized in paragraph (2) of subsection (d) of Section 15-1603 and certified in accordance with subsection (e) of Section 15-1603, the owner of redemption shall pay the certified amount to the clerk of the court on or before the date designated for redemption, together with a written statement specifying the expenses to which objection is made. In such case the clerk shall pay to the mortgagee the amount tendered minus the amount to which the objection pertains.

(3) Upon payment to the clerk, whether or not the owner of redemption files an objection at the time of payment, the clerk shall give a receipt of payment to the person redeeming from the foreclosure, and shall file a copy of that receipt in the foreclosure record. Upon receipt of the amounts specified to be paid to the mortgagee pursuant to this Section, the mortgagee shall promptly furnish the mortgagor with a release of the mortgage or satisfaction of the judgment, as appropriate, and the evidence of all indebtedness secured by the mortgage shall be cancelled.

(g) Procedure Upon Objection. If an objection is filed by an owner of redemption in accordance with paragraph (2) of subsection (f) of Section 15-1603, the clerk shall hold the amount to which the objection pertains until the court orders distribution of those funds. The court shall hold a hearing promptly to determine the distribution of any funds held by the clerk pursuant to such objection. Each party shall pay its own costs and expenses in connection with any objection, including attorneys' fees, subject to Section 2-611 of the Code of Civil Procedure.

(h) Failure to Redeem. Unless the real estate being foreclosed is redeemed from the foreclosure, it shall be sold as provided in this Article.

HISTORY: Source: P.A. 86-974.

**Ind. Code Ann. § 32-30-10.6-1. Applicability of chapter.**

This chapter applies to the following:

(1) A mortgage<sup>4</sup> foreclosure action filed under IC 32-30-10-3.

(2) A determination that property is abandoned or vacant for purposes of IC 6-1.1-24.

HISTORY: P.L.102-2012, § 4, emergency eff. March 16, 2012; P.L.203-2013, § 19, emergency eff. July 1, 2013.

**Ind. Code Ann. § 32-30-10.6-2. "Enforcement authority" defined.**

As used in this chapter, "enforcement authority" refers to the enforcement authority (as defined in IC 36-7-9-2) that has jurisdiction in the location of the property.

HISTORY: P.L.102-2012, § 4, emergency eff. March 16, 2012; P.L.203-2013, § 20, emergency eff. July 1, 2013. NOTES: The 2013 amendment deleted "that is the subject of a mortgage foreclosure action" at the end.

**Ind. Code Ann. § 32-30-10.6-3. Petition for determination of abandonment.**

(a) At any time during a mortgage foreclosure action, the creditor may petition the court for a determination that the mortgaged property is abandoned. A petition filed with the court under this section must:

(1) allege that the mortgaged property is abandoned; and

(2) include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) [IC 32-30-10.6-5(a) or IC 32-30-10.6-5(b)] of this chapter apply.

A petition under this section shall be served on the debtor in the manner prescribed by the Indiana Rules of Trial Procedure.

(b) At any time during a mortgage foreclosure action, the enforcement authority that has jurisdiction in the location of the mortgaged property may petition the court for a determination that the mortgaged property is abandoned by filing a motion to intervene in the foreclosure action in the manner prescribed by the Indiana Rules of Trial Procedure. The motion to intervene must:

(1) include a statement of the enforcement authority's jurisdiction in the location of the mortgaged property;

(2) allege that the mortgaged property is abandoned; and

(3) include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) of this chapter apply.

HISTORY: P.L.102-2012, § 4, emergency eff. March 16, 2012.

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<sup>4</sup> Ind. Code Ann. § 32-30-10.5-5. "Mortgage" defined.

(a) As used in this chapter, "mortgage" means:

(1) a loan; or

(2) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage (or another equivalent consensual security interest) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(b) The term does not include a land contract (as defined in IC 24-4.4-1-301(36)) or similar agreement in which the debtor does not possess a deed.

**Ind. Code Ann. § 32-30-10.6-3.5. Alternatives to seeking determination of abandonment of property.**

- (a) This section applies to a property whether or not there is a mortgage on the property.
  - (b) As an alternative to seeking a determination of abandonment under any other statute, the executive of a city or town that:
    - (1) has jurisdiction in the location of a property; and
    - (2) does not have a person designated as a hearing authority, as defined by IC 36-7-9-2;may petition a court for a determination that the property is abandoned.
  - (c) A petition filed with the court under this section must do all the following:
    - (1) Include a statement of the enforcement authority's jurisdiction in the location of the property.
    - (2) Allege that the property is abandoned.
    - (3) Include evidence that one (1) or more of the conditions set forth in section 5(a) or 5(b) [IC 32-30-10.6-5(a) or IC 32-30-10.6-5(b)] of this chapter apply.
  - (d) A petition under this section shall be served on:
    - (1) the creditor and the debtor, if the property is subject to a mortgage; and
    - (2) any other appropriate party;in the manner prescribed by the Indiana Rules of Trial Procedure.
- HISTORY: P.L.203-2013, § 21, emergency eff. July 1, 2013.

**Ind. Code Ann. § 32-30-10.6-4. Order to show cause.**

- (a) Upon receiving a request for a determination of abandonment from a creditor or an enforcement authority through a petition or motion filed with the court and served on the required parties in accordance with section 3 or 3.5 [IC 32-30-10.6-3 or IC 32-30-10.6-3.5] of this chapter, the court shall issue an order to show cause as to why the property should not be found to be abandoned and directing the petitioner, the debtor, and any other person or party the court considers appropriate to appear before the court on a date and time specified in the order under subdivision (1). The court's order under this subsection must do the following:
  - (1) Direct the parties subject to the order to appear before the court on a date and time specified by the court. The date specified under this subdivision must not be:
    - (A) earlier than fifteen (15) days; or
    - (B) later than twenty-five (25) days;after the date of the court's order under this section.
  - (2) Notify the parties subject to the order that any party ordered to appear:
    - (A) may present evidence or objections on the issue of abandonment to the court:
      - (i) in writing before the appearance date specified by the court under subdivision (1); or
      - (ii) in writing or by oral testimony on the date and at the time specified by the court under subdivision (1);in the manner specified by the court; and
    - (B) has the right to be represented by an attorney when appearing before the court.
  - (3) Notify the parties subject to the order that if a party fails to:
    - (A) submit written evidence or objections to the court before the appearance date specified by the court under subdivision (1); or
    - (B) appear before the court on the date and at the time specified by the court under subdivision (1);the party's failure to submit evidence or objections or to appear before the court will result in a finding of abandonment by the court.

(b) A party subject to an order issued by the court under this section has the following rights, as described in the court's order under subsection (a):

- (1) The right to present evidence or objections on the issue of abandonment to the court:
  - (A) in writing before the appearance date specified in the court's order under subsection (a)(1); or
  - (B) in writing or by oral testimony on the date and at the time specified in the court's order under subsection (a)(1);in the manner specified by the court.

(2) The right to be represented by an attorney when appearing before the court.

HISTORY: P.L.102-2012, § 4, emergency eff. March 16, 2012; P.L.203-2013, § 22, emergency eff. July 1, 2013. NOTES: The 2013 amendment substituted "section 3 or 3.5" for "section 3" in the first sentence of the introductory language of (a); substituted "party" for "debtor" or variants in (a)(3); and made a stylistic change.

**Ind. Code Ann. § 32-30-10.6-5. Prima facie evidence that property is abandoned - Issuance of order.**

(a) Subject to subsection (b), for purposes of an abandonment determination under this chapter, one (1) or more of the following constitute prima facie evidence that property is abandoned:

- (1) The enforcement authority that has jurisdiction in the location of the property has issued an order under IC 36-7-36-9 with respect to the property.
- (2) Windows or entrances to the property are boarded up or closed off.
- (3) Multiple window panes on the property are broken and unrepaired.
- (4) One (1) or more doors to the property are smashed through, broken off, unhinged, or continuously unlocked.
- (5) Gas service, electric service, water service, or other utility service to the property has been terminated.
- (6) Rubbish, trash, or debris has accumulated on the property.
- (7) The property is deteriorating and is either below or in imminent danger of falling below minimum community standards for public safety and sanitation.
- (8) The creditor has changed the locks on the property and for at least fifteen (15) days after the changing of the locks the owner has not requested entrance to the property.
- (9) There exist one (1) or more written statements, including documents of conveyance, that have been executed by the debtor, or by the debtor's personal representatives or assigns, and that indicate a clear intent to abandon the property.
- (10) There exists other evidence indicating a clear intent to abandon the property.

(b) Regardless of whether any of the conditions described in subsection (a) are found to apply, the debtor's failure to either:

- (1) present evidence or objections on the issue of abandonment to the court in writing before the appearance date specified in the court's order under section 4(a)(1) [IC 32-30-10.6-4(a)(1)] of this chapter; or
- (2) appear before the court on the date specified in the court's order under section 4(a)(1) of this chapter;

constitutes prima facie evidence that the property is abandoned.

(c) If the court finds that:

- (1) one (1) or more of the conditions described in subsection (a) apply; or
- (2) the circumstances described in subsection (b) apply;

the court shall issue an order finding that the property is abandoned.

HISTORY: P.L.102-2012, § 4, emergency eff. March 16, 2012; P.L.203-2013, § 23, emergency eff.

July 1, 2013. NOTES: The 2013 amendment deleted "mortgaged" preceding "property" throughout the section.

**Ind. Code Ann. § 32-29-7-3. Time limitations on issuance of process -- Filing of judgment and decree -- Sale of premises -- Notice of sale.**

(a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds under IC 32-30-10.6 that the mortgaged real estate has been abandoned, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. After the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court. However, if: . . .

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 [IC 32-29-7-4] of this chapter, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for:

(1) a date not later than one hundred twenty (120) days after the date on which the judgment and decree under seal of the court are certified to the sheriff by the clerk; and

(2) a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

HISTORY: P.L.2-2002, § 14; P.L.98-2004, § 118; P.L.238-2005, § 55; P.L.240-2005, § 1; P.L.100-2008, § 1, eff. July 1, 2008; P.L.68-2010, § 2, eff. July 1, 2010; P.L.102-2012, § 1, emergency eff. March 16, 2012.



**Kentucky Revised Statutes**

**K.R.S. § 426.205. Sale of vacant and abandoned real property to enforce mortgage or lien -- Proof of vacancy and abandonment -- Confirmation of sale and conveyance of property.**

(1) In an action otherwise properly brought to enforce a mortgage or lien against real property determined by the court to be vacant and abandoned, a sale of the property shall be ordered expeditiously.

(2) Real property shall be considered vacant and abandoned, for purposes of this section only, if there has been no legal resident or other person legally entitled to occupy the property residing at the property for a period of forty-five (45) or more consecutive days and two (2) or more of the following or similar circumstances which would lead a reasonable person to believe that the property is vacant exist:

- (a) Overgrown or dead vegetation;
- (b) Accumulation of flyers, mail, or trash;
- (c) Disconnected utilities;
- (d) The absence of window coverings or furniture;
- (e) Uncorrected hazardous conditions or vandalism; or
- (f) Statements of neighbors, delivery persons, or government employees that the property is vacant.

Proof of vacancy and abandonment may be offered by affidavit filed at or after the time of filing of the complaint by the plaintiff or other lienholder.

(3) If the court makes a finding in the order of sale that the property is vacant and abandoned, the master commissioner shall sell the property within seventy (70) days of the order.

(4) The plaintiff or other mortgage or lienholder in whose favor the judgment and order of sale were entered shall apply for an order confirming the sale within twenty (20) days of the date of the sale and, unless there have been exceptions to the report of the master commissioner, the court shall act on such application not later than the next regularly scheduled civil motion or rule day.

(5) The master commissioner shall make conveyance of the property on the date the court confirms the sale, or as soon thereafter as all costs and fees have been paid by the foreclosing mortgage or lienholder, or as soon as a third-party purchaser has paid the purchase price.

HISTORY: (Enact. Acts 2012, ch. 93, § 1, effective July 12, 2012.)

**K.R.S. § 426.220. Redemption--Right of--Payment of money--Possession of defendant.**

(1) If land sold under execution does not bring two-thirds of its appraised value, the defendant and his representatives may redeem it within six (6) months from the day of sale, by paying the purchaser or his representative the original purchase money and ten percent per annum interest thereon. The defendant redeeming his land shall take a receipt from the purchaser and lodge it with the clerk of the court, which receipt shall be filed and recorded with the execution under which the sale was made.

(2) The defendant may tender the redemption money to the purchaser or his agent or attorney, if in the county where the land lies or in the county where the judgment was obtained, and if the money is refused or if the purchaser does not reside in either of the counties, the defendant may, before the

expiration of six (6) months, go to the clerk of the court where the execution issued and make affidavit of the tender and refusal or that the purchaser or his agent or attorney does not reside in the county where the land lies or where the execution issued, as he believes. He may then pay to the clerk the redemption money for the purchaser, and the clerk shall give a receipt therefor and file the affidavit with the execution in his office.

(3) When the right of redemption exists, the defendant may remain in possession until the right of redemption expires.

HISTORY: (1684; 2013, ch. 103, § 1, effective June 25, 2013).

**K.R.S. § 426.530. Right of redemption -- Manner of redeeming -- Purchaser to receive writ of possession and deed.**

(1) If real property sold in pursuance of a judgment or order of a court, other than an execution, does not bring two-thirds of its appraised value, the defendant and his representatives may redeem it within a year from the day of sale, by paying the original purchase money and ten percent (10%) per annum interest thereon.

(2) The defendant shall pay the redemption money to the clerk of the court in which the judgment was rendered or the order of sale was made. Upon payment by the defendant, the master commissioner shall convey the real property to the defendant.

(3) When the right of redemption exists, the purchaser shall receive an immediate writ of possession and a deed containing a lien in favor of the defendant, reflecting the defendant's right to redeem during the statutory period.

HISTORY: (2364: amend. Acts 1982, ch. 216, § 1, effective July 15, 1982.)

**Michigan Complied Laws Service**

**MCLS § § 600.3240. Redemption of premises; payment; redemption of senior lien; defenses; recordation; redemption periods; amount stated in recorded affidavit; county having population of more than 750,000 and less than 1,500,000; limitation on amount charged by register of deeds; use of property for agricultural purposes; presumption. [Effective until January 10, 2014]**

Sec. 3240. (1) A purchaser's deed is void if the mortgagor, the mortgagor's heirs or personal representative, or any person lawfully claiming under the mortgagor or the mortgagor's heirs or personal representative redeems the entire premises sold by paying the amount required under subsection (2) and any amount required under subsection (4), within the applicable time limit prescribed in subsections (7) to (13), to the purchaser or the purchaser's personal representative or assigns, or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser.

(2) The amount required to be paid under subsection (1) is the sum that was bid for the entire premises sold, with interest from the date of the sale at the interest rate provided for by the mortgage, together with the amount of the sheriff's fee paid by the purchaser under section 2558(2)(q), and an additional \$ 5.00 as a fee for the care and custody of the redemption money if the payment is made to the register of deeds. Except as provided in subsection (15), the register of deeds shall not determine the amount necessary for redemption. The purchaser shall attach an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property under this subsection, including any daily per diem amounts, and the date by which the property must be redeemed shall be stated on the certificate of sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption funds. The purchaser shall accept the amount computed by the designee.

(3) If a distinct lot or parcel separately sold is redeemed, leaving a portion of the premises unredeemed, the deed shall be void only to the redeemed parcel or parcels.

(4) If, after the sale, the purchaser, the purchaser's heirs or personal representative, or any person lawfully claiming under the purchaser or the purchaser's heirs or personal representative pays taxes assessed against the property, amounts necessary to redeem senior liens from foreclosure, condominium assessments, homeowner association assessments, community association assessments, or premiums on an insurance policy covering any buildings located on the property that under the terms of the mortgage it would have been the duty of the mortgagor to pay if the mortgage had not been foreclosed and that are necessary to keep the policy in force until the expiration of the period of redemption, redemption shall be made only upon payment of the sum specified in subsection (2) plus the amounts specified in this subsection with interest on the amounts specified in this subsection from the date of the payment to the date of redemption at the interest rate specified in the mortgage. This subsection does not apply unless all of the following are filed with the register of deeds with whom the deed is deposited:

(a) An affidavit by the purchaser or someone in his or her behalf who has knowledge of the facts of the payment showing the amount and items paid.

(b) The receipt or copy of the canceled check evidencing the payment of the taxes, amounts necessary to redeem senior liens from foreclosure, condominium assessments, homeowner association assessments, community association assessments, or insurance premiums.

(c) An affidavit of an insurance agent of the insurance company stating that the payment was made and what portion of the payment covers the premium for the period before the expiration of the period of redemption.

(5) If the redemption payment in subsection (4) includes an amount used to redeem a senior lien from a nonjudicial foreclosure, the mortgagor shall have the same defenses against the purchaser with respect to the amount used to redeem the senior lien as the mortgagor would have had against the senior lien.

(6) The register of deeds shall indorse on the documents filed under subsection (4) the time they are received. The register of deeds shall record the affidavit of the purchaser only and shall preserve in his or her files the recorded affidavit, receipts, insurance receipts, and insurance agent's affidavit until expiration of the period of redemption.

(7) For a mortgage executed on or after January 1, 1965, of commercial or industrial property, or multifamily residential property in excess of 4 units, the redemption period is 6 months from the date of the sale.

(8) Subject to subsections (9) to (12), for a mortgage executed on or after January 1, 1965, of residential property not exceeding 4 units, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage, the redemption period is 6 months.

(9) Subject to subsection (10), for a mortgage of residential property not exceeding 4 units, if the property is abandoned as determined under section 3241, the redemption period is 3 months.

(10) For a mortgage of residential property not exceeding 4 units, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage and the property is abandoned as determined under section 3241, the redemption period is 1 month.

(11) If the property is abandoned as determined under section 3241a, the redemption period is 30 days or until the time to provide the notice required by section 3241a(c) expires, whichever is later.

(12) For a mortgage of property that is used for agricultural purposes, the redemption period is 1 year from the date of the sale.

(13) If subsections (7) to (12) do not apply, the redemption period is 1 year from the date of the sale.

(14) The amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section.

(15) The register of deeds of a county having a population of more than 750,000 and less than 1,500,000, at the request of a person entitled to redeem the property under this section, shall determine the amount necessary for redemption. In determining the amount, the register of deeds shall consider only the affidavits recorded under subsections (2) and (4). A county, register of deeds, or employee of a county or register of deeds is not liable for damages proximately caused by an incorrect determination of an amount necessary for redemption under subsection (2).

(16) A register of deeds may charge not more than \$ 50.00 for determining the amount necessary

for redemption under this section.

(17) For purposes of this section, there is a presumption that the property is used for agricultural purposes if, before the foreclosure sale under this chapter, the mortgagor provides the party foreclosing the mortgage and the foreclosing party's attorney proof that the mortgagor filed a schedule F to the mortgagor's federal income tax form 1040 for the year preceding the year in which the proceedings to foreclose the mortgage were commenced and records an affidavit with the register of deeds for the county in which the property is located stating that the proof has been delivered. If the mortgagor fails to provide proof and record an affidavit as required by this subsection before the foreclosure sale, there is a presumption that the property is not used for agricultural purposes. The party foreclosing the mortgage or the mortgagor may file a civil action to produce evidence to rebut a presumption created by this subsection. An action under this section shall be filed before the expiration of the redemption period that would apply if the property is determined not to be used for agricultural purposes.

HISTORY: Pub Acts 1961, No. 236, Ch. 32, § 3240, by § 9911 eff January 1, 1963; amended by Pub Acts 1964, No. 15, eff August 28, 1964; 1964, No. 102, eff August 28, 1964; 1971, No. 104, eff March 30, 1972; 1972, No. 377, eff March 30, 1973; 1986, No. 94, imd eff May 7, 1986; 1994, No. 397, imd eff December 29, 1994; 1996, No. 214, imd eff May 28, 1996; 2000, No. 380, imd eff January 2, 2001 (see 2000 note below); Amended by Pub Acts 2004, No. 538, eff March 30, 2005 (see Mich. Const. note below); 2006, No. 579, imd eff January 3, 2007; 2010, No. 303, imd eff December 17, 2010; 2011, No. 303, imd eff December 22, 2011 (see 2011 note below).

**MCLS § § 600.3241. Abandonment of premises; presumption.**

Sec. 3241. For purposes of this chapter, abandonment of premises shall be conclusively presumed upon satisfaction of the following requirements:

(a) Within 30 days before the commencement of foreclosure proceedings hereunder, the mortgagee mails by certified mail, return receipt requested, to the mortgagor's last known address a notice that the subject mortgage is in default and that the mortgagee intends to foreclose it.

(b) Before commencement of foreclosure proceedings hereunder, the mortgagee executes and causes to be duly recorded in the county where the premises are located an affidavit which states:

- (i) That the mortgagee has mailed to the last known address of the mortgagor a notice of default and intention to foreclose pursuant to subdivision (a) and that the mortgagor has not responded to the notice.
- (ii) That the mortgagee has made a personal inspection of the mortgaged premises and that the inspection does not reveal that the mortgagor or persons claiming under him are presently occupying or intend to occupy the premises.

(c) The mortgagee mails by certified mail, return receipt requested, a copy of the affidavit recorded pursuant to subdivision (b) to the mortgagor at his last known address before commencement of foreclosure proceedings.

(d) The mortgagor, his heirs, executor, administrator, or any person lawfully claiming from, or under 1 of them, before expiration of the period of redemption, does not give a written affidavit to the mortgagee and record a duplicate original in the county where the premises are located stating that the mortgagor or person claiming under him is occupying or intends to occupy the premises.

HISTORY: Pub Acts 1961, No. 236, Ch. 32, § 3241, as added by Pub Acts 1971, No. 104, eff March 30, 1972.

**MCLS § § 600.3241a. Abandonment of premises; residential property not exceeding 4 units; presumption.**

Sec. 3241a. For purposes of this chapter, if foreclosure proceedings have been commenced under this chapter against residential property not exceeding 4 units, abandonment of premises shall be conclusively presumed upon satisfaction of all of the following requirements before the end of the redemption period:

(a) The mortgagee has made a personal inspection of the mortgaged premises and the inspection does not reveal that the mortgagor or persons claiming under the mortgagor are presently occupying or will occupy the premises.

(b) The mortgagee has posted a notice at the time of making the personal inspection and has mailed by certified mail, return receipt requested, a notice to the mortgagor at the mortgagor's last known address, which notices state that the mortgagee considers the premises abandoned and that the mortgagor will lose all rights of ownership 30 days after the foreclosure sale or when the time to provide the notice required by subdivision (c) expires, whichever is later, unless the mortgagor; the mortgagor's heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them provides the notice required by subdivision (c).

(c) Within 15 days after the notice required by subdivision (b) was posted and mailed, the mortgagor; the mortgagor's heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them has not given written notice by first-class mail to the mortgagee at an address provided by the mortgagee in the notices required by subdivision (b) stating that the premises are not abandoned.

HISTORY: Pub Acts 1961, No. 236, Ch. 32, § 3241a, as added by Pub Acts 1986, No. 94, imd eff May 7, 1986; Amended by Pub Acts 2006, No. 579, imd eff January 3, 2007.

## Minnesota Statutes

### **Minn. Stat. § 582.032 FIVE-WEEK REDEMPTION PERIOD; CERTAIN ABANDONED PROPERTIES**

Subdivision 1. *Application.* --This section applies to mortgages executed after December 31, 1989, under which there has been a default in the payment of money existing for at least 60 days as of the date of the filing of the complaint or motion provided for in this section. This section applies only when the mortgaged premises are:

- (1) ten acres or less in size;
- (2) improved with a residential dwelling consisting of less than five units which is neither a model home nor a dwelling under construction; and
- (3) not property used in agricultural production.

This section applies to foreclosures by action under chapter 581 and to foreclosures by advertisement under chapter 580.

Subd. 2. *Before foreclosure sale.* --Notwithstanding section 580.23 or 581.10, if at any time before the foreclosure sale but not more than 30 days before the first publication of the notice of sale, a court order is entered reducing the mortgagor's redemption period to five weeks under subdivision 7, after the mortgaged premises have been sold as provided in chapter 580 or 581, the mortgagor, and the mortgagor's personal representatives or assigns, within five weeks after the sale under chapter 580, or within five weeks after the date of the order confirming the sale under chapter 581, may redeem the mortgaged premises as provided in section 580.23, subdivision 1, or 581.10, as applicable.

Subd. 3. *After foreclosure sale.* --Notwithstanding section 580.23 or 581.10, if at any time after the foreclosure sale, a court order is entered reducing the mortgagor's redemption period under subdivision 7, the period during which the mortgagor, the mortgagor's personal representatives and assigns, may redeem the mortgaged premises in accordance with the provisions of section 580.23, subdivision 1, or section 581.10, as applicable, is reduced so as to expire five weeks from the date the order is entered. Within ten days after the order is entered, a certified copy of the order must be filed with the office of the county recorder or registrar of titles for the county in which the mortgaged premises are located, and a copy of the order must be posted in a conspicuous place on the mortgaged premises. Within ten days of the order's entry, a copy of the order must be sent by certified mail to any party holding a lien or interest of record junior to the foreclosed mortgage who has filed with the county recorder or registrar of titles a certificate identifying the lienholder and the lien claimed, stating the lienholder's address and the legal description of the property covered by the lien, and requesting notice of any postforeclosure sale reduction of the mortgagor's redemption period for any superior lien. Affidavits of posting and mailing to evidence the same are prima facie evidence of the facts stated therein and are entitled to recordation along with the certified copy of the order.

Subd. 4. *Summons and complaint.* --In a foreclosure by advertisement, the party foreclosing a mortgage or holding the sheriff's certificate of sale or the political subdivision in which the mortgaged premises are located may initiate a proceeding in district court to reduce the mortgagor's redemption period under this section. The proceeding must be initiated by the filing of a complaint, naming the mortgagor, or the mortgagor's personal representatives or assigns of record, as defendant, in district court for the county in which the mortgaged premises are located. If the

proceeding is initiated by a political subdivision, the party foreclosing the mortgage or holding the sheriff's certificate of sale must also be named as a defendant, and the summons and complaint shall be delivered by certified mail to the foreclosing attorney. If the proceeding is commenced after the foreclosure sale, the holders of junior liens and interests entitled to notice under subdivision 3 must also be named as defendants. The complaint must identify the mortgaged premises by legal description and must identify the mortgage by the names of the mortgagor and mortgagee, and any assignee of the mortgagee; the date of its making; and pertinent recording information. The complaint must allege that the mortgaged premises are:

- (1) ten acres or less in size;
- (2) improved with a residential dwelling consisting of less than five units, which is not a model home or a dwelling under construction;
- (3) not property used in agricultural production; and
- (4) abandoned.

The complaint must request an order reducing the mortgagor's redemption period to five weeks. When the complaint has been filed, the court shall issue a summons commanding the person or persons named in the complaint to appear before the court on a day and at a place stated in the summons. The appearance date shall be not less than 15 nor more than 25 days from the date of the issuing of the summons. A copy of the filed complaint must be attached to the summons.

Subd. 5. *Order to show cause.* --In a foreclosure by action, the plaintiff or the holder of the sheriff's certificate may make a motion to reduce the mortgagor's redemption period under this section. The political subdivision in which the mortgaged premises are located may intervene in the action and make a motion to reduce the redemption period. The motion must conform generally to the pleading requirements provided in subdivision 4. For purposes of the motion, the court has continuing jurisdiction over the parties and the mortgaged premises through the expiration of the redemption period. When the motion has been filed, the court shall issue an order to show cause commanding the parties it considers appropriate to appear before the court on a day and at a place stated in the order. The appearance date may not be less than 15 nor more than 25 days after the date of the order to show cause. A copy of the motion must be attached to the order to show cause.

Subd. 6. *Service.* --The summons or order to show cause may be served by any person not named a party to the action. The summons or order to show cause must be served at least seven days before the appearance date, in the manner provided for service of a summons in a civil action in the district court. If the defendant cannot be found in the county, the summons or order to show cause may be served by sending a copy by certified mail to the defendant's last known address, if any, at least ten days before the appearance date. The summons or order to show cause must be posted in a conspicuous place on the mortgaged premises not less than seven days before the appearance date. If personal or certified mail service cannot be made on a defendant, then the plaintiff or plaintiff's attorney may file an affidavit to that effect with the court and service by posting the summons or order to show cause on the mortgaged premises is sufficient as to that defendant.

Subd. 7. *Hearing; evidence; order.* --At the hearing on the summons and complaint or order to show cause, the court shall enter an order reducing the mortgagor's redemption period as provided in subdivision 2 or 3, as applicable, if evidence is presented supporting the allegations in the complaint or motion and no appearance is made to oppose the relief sought. An affidavit by the sheriff or a



deputy sheriff of the county in which the mortgaged premises are located, or of a building inspector, zoning administrator, housing official, or other municipal or county official having jurisdiction over the mortgaged premises, stating that the mortgaged premises are not actually occupied and further setting forth any of the following supporting facts, is prima facie evidence of abandonment:

- (1) windows or entrances to the premises are boarded up or closed off, or multiple window panes are broken and unrepaired;
- (2) doors to the premises are smashed through, broken off, unhinged, or continuously unlocked;
- (3) gas, electric, or water service to the premises has been terminated;
- (4) rubbish, trash, or debris has accumulated on the mortgaged premises;
- (5) the police or sheriff's office has received at least two reports of trespassers on the premises, or of vandalism or other illegal acts being committed on the premises; or
- (6) the premises are deteriorating and are either below or are in imminent danger of falling below minimum community standards for public safety and sanitation.

An affidavit of the party foreclosing the mortgage or holding the sheriff's certificate, or one of their agents or contractors, stating any of the above supporting facts, and that the affiant has changed locks on the mortgaged premises under section 582.031 and that for a period of ten days no party having a legal possessory right has requested entrance to the premises, is also prima facie evidence of abandonment. Either affidavit described above, or an affidavit from any other person having knowledge, may state facts supporting any other allegations in the complaint or motion and is prima facie evidence of the same. Written statements of the mortgagor, the mortgagor's personal representatives or assigns, including documents of conveyance, which indicate a clear intent to abandon the premises, are conclusive evidence of abandonment. In the absence of affidavits or written statements, or if rebuttal evidence is offered by the defendant or a party lawfully claiming through the defendant, the court may consider any competent evidence, including oral testimony, concerning any allegation in the complaint or motion. A defendant's failure to appear at the hearing after service of process in compliance with subdivision 6 is conclusive evidence of abandonment by the defendant, subject to vacation under Rule 60.02 of the Minnesota Rules of Civil Procedure. An order entered under this section must contain a legal description of the mortgaged premises.

Subd. 8. *Recording.* --A certified copy of an order reducing a mortgagor's redemption period entered under this section may be recorded in the office of the county recorder or registrar of titles for the county in which the mortgaged premises are located.

Subd. 9. *Costs.* --Upon motion of a political subdivision that initiated a proceeding under subdivision 4 or intervened under subdivision 5, if an order is entered to reduce the redemption period to five weeks, the court shall award costs and disbursements to the political subdivision. The party foreclosing the mortgage or holding the sheriff's certificate of sale is liable for an award under this subdivision but may recover these amounts upon reinstatement or redemption as provided in section 580.30, subdivision 1, or 582.03, subdivision 1.

History: 1989 c 328 art 3 s 13; 1Sp1989 c 2 s 2,3; 2008 c 178 s 1; 2009 c 123 s 10-13; 2010 c 375 s 14

**Nevada Revised Statutes**

**Senate Bill No. 278**

AN ACT relating to real property; establishing an expedited process for the foreclosure of abandoned residential property; authorizing a board of county commissioners or the governing body of an incorporated city to establish by ordinance a registry of abandoned residential real property and a registry of real property in danger of becoming abandoned; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 107 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2.** As used in this section and NRS 107.080 to 107.110, inclusive, and sections 3 and 4 of this act, unless the context otherwise requires:

1. “Abandoned residential property” means residential real property:

(a) Consisting of not more than four family dwelling units or a single-family residential unit, including, without limitation, a condominium, townhouse or home within a subdivision, if the unit is sold, leased or otherwise conveyed unit by unit, regardless of whether the unit is part of a larger building or parcel that consists of more than four units; and

(b) That the grantor or the successor in interest of the grantor has surrendered as evidenced by a document signed by the grantor or successor confirming the surrender or by the delivery of the keys to the property to the beneficiary or that satisfies the following conditions:

(1) The residential real property is not currently occupied as a principal residence by the grantor of the deed of trust, the person who holds title of record or any lawful occupant;

(2) The obligation secured by the deed of trust is in default and the deficiency in performance or payment has not been cured;

(3) The gas, electric and water utility services to the residential real property have been terminated;

(4) It appears, after reasonable inquiry, that there are no children enrolled in school residing at the address of the residential real property;

(5) Payments pursuant to the federal Social Security Act, including, without limitation, retirement and survivors’ benefits, supplemental security income benefits and disability insurance benefits, payments for unemployment compensation or payments for public assistance, as defined in NRS 422.050 and 422A.065, are not currently being delivered, electronically or otherwise, to a person who has registered the address of the residential real property as his or her residence with the agency making the payment;

(6) An owner of the residential real property is not presently serving in the Armed Forces of the United States, a reserve component thereof or the National Guard; and

(7) Two or more of the following conditions exist:

(I) Construction was initiated on the residential real property and was discontinued before completion, leaving a building unsuitable for occupancy, and no construction has taken place for at least 6 months;

(II) Multiple windows on the residential real property are boarded up or closed off or are smashed through, broken off or unhinged, or multiple window panes are broken and unrepaired;

(III) Doors on the residential real property are smashed through, broken off, unhinged or continuously unlocked;

(IV) The residential real property has been stripped of copper or other materials, or interior fixtures to the property have been removed;

(V) Law enforcement officials have received at least one report of trespassing or vandalism or other illegal acts being committed at the residential real property within the immediately preceding 6 months;

(VI) The residential real property has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by a municipal or county authority or a court of competent jurisdiction;

(VII) The local police, fire or code enforcement authority has requested that the owner or any other interested or authorized party secure the residential real property because the local authority has declared the property to be an imminent danger to the health, safety and welfare of the public; or

(VIII) The residential real property is open and unprotected and in reasonable danger of significant damage resulting from exposure to the elements or vandalism.

2. The term does not include residential real property if:

(a) There is construction, renovation or rehabilitation on the residential real property that is proceeding diligently to completion, and any building being constructed, renovated or rehabilitated on the property is in substantial compliance with all applicable ordinances, codes, regulations and laws;

(b) The residential real property is occupied on a seasonal basis, but is otherwise secure;

(c) There are bona fide rental or sale signs on the residential real property, or the property is listed on a Multiple Listing Service, and the property is secure; or

(d) The residential real property is secure but is the subject of a probate action, action to quiet title or any other ownership dispute.

**Sec. 3.** 1. A board of county commissioners or the governing body of an incorporated city may establish by ordinance:

(a) A registry of abandoned residential property that contains information concerning abandoned residential property located in the county or city.

(b) A registry of residential property located in the county or city that may be in danger of becoming abandoned residential property.

2. If a beneficiary of a deed of trust, the successor in interest of the beneficiary or the trustee includes with a notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 the affidavit and certification described in subsection 6 of section 4 of this act and the county or city in which the abandoned residential property is located has established a registry of abandoned residential property, the beneficiary or its successor in interest or the trustee must submit a copy of the affidavit and certification to the entity maintaining the registry for the county or city in which the abandoned residential property is located.

3. If a beneficiary of a deed of trust, the successor in interest of the beneficiary or the trustee receives a copy of the affidavit described in subsection 7 of section 4 of this act, the beneficiary or its successor in interest or the trustee must notify the entity maintaining the registry for the county or city in which the property described in the affidavit is located. Upon receiving such a notification, the entity maintaining the registry must remove the property from the registry.

4. If a property which has been removed from a registry established pursuant to this section subsequently becomes abandoned residential property or in danger of becoming abandoned residential property, the property may be added to the applicable registry in accordance with this section or the requirements established for the registry by the board of county commissioners or the governing body of an incorporated city.

Sec. 4. 1. A beneficiary may elect to use an expedited procedure for the exercise of the trustee's power of sale pursuant to NRS 107.080 if, after an investigation, the beneficiary:

- (a) Determines that real property is abandoned residential property; and
- (b) Receives from the applicable governmental entity a certification pursuant to subsection 4.

2. Each board of county commissioners of a county and each governing body of an incorporated city shall designate an agency or a contractor to inspect real property upon receipt of a request pursuant to paragraph (b) of subsection 3 and to provide certifications that real property is abandoned residential property pursuant to subsection 4.

3. If a beneficiary has a reasonable belief that real property may be abandoned residential property, the beneficiary or its agent:

- (a) May enter the real property, but may not enter any dwelling or structure, to investigate whether the real property is abandoned residential property. Notwithstanding any other provision of law, a beneficiary and its agents who enter real property pursuant to this paragraph are not liable for trespass.

- (b) May request a certification pursuant to subsection 4 from the agency or contractor designated by the applicable governmental entity pursuant to subsection 2.

4. Upon receipt of a request pursuant to paragraph (b) of subsection 3, the agency or contractor designated by the applicable governmental entity shall inspect the real property to determine the existence of two or more conditions pursuant to subparagraph

(7) of paragraph (b) of subsection 1 of section 2 of this act. The designee and any employees of the designee may enter the real property, but may not enter any dwelling or structure, to perform an inspection pursuant to this subsection, and the designee and any employees who enter real property pursuant to this subsection are not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, or for trespass. If the designee or an employee of the designee determines that the real property is abandoned residential property, the designee shall serve a notice by first-class mail to the grantor or the successor in interest of the grantor and by posting the notice on the front door of the residence. The notice must provide that unless a lawful occupant of the real property contacts the designee within 30 days after service of the notice, the designee will issue a certification that the real property is abandoned residential property and that the beneficiary may use the certification to seek an expedited procedure for the exercise of the trustee's power of sale. If a grantor or the successor in interest of the grantor or a lawful occupant of the real property fails to contact the designee within 30 days after service of the notice, the designee shall provide to the beneficiary a certification that the real property is abandoned residential property. The certification required by this subsection must:

- (a) Be signed and verified by the designee or the employee or employees of the designee who inspected the real property;

- (b) State that, upon information and belief of the designee, after investigation by the designee or the employee or employees of the designee, the real property is abandoned residential property; and

- (c) State the conditions or circumstances supporting the determination that the property is abandoned residential property. Documentary evidence in support of such conditions or circumstances must be attached to the certification.

5. For an inspection, service of notice and issuance of a certification pursuant to subsection 4, the agency or contractor designated pursuant to subsection 2 by the applicable governmental entity may charge and receive from the beneficiary a fee of not more than \$300.

6. A beneficiary who elects to use an expedited procedure for the exercise of the trustee's power of sale pursuant to NRS 107.080 must include, or cause to be included, with the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 an affidavit setting forth the facts supporting the determination that the real property is abandoned residential property and the

certification provided to the beneficiary pursuant to subsection 4. The affidavit required by this subsection must:

- (a) Be signed and verified by the beneficiary;
- (b) State that, upon information and belief of the beneficiary after investigation by the beneficiary or its agent, the property is abandoned residential property; and
- (c) State the conditions or circumstances supporting the determination that the property is abandoned residential property. Documentary evidence in support of such conditions or circumstances must be attached to the affidavit.

7. If the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 includes the affidavit and certification described in subsection 6, before the sale, the grantor or a successor in interest of the grantor may record in the office of the county recorder in the county where the real property is located an affidavit stating that the real property is not abandoned residential property, unless the grantor or the successor in interest of the grantor has surrendered the property as evidenced by a document signed by the grantor or successor confirming the surrender or by the delivery of the keys to the real property to the beneficiary. Upon the recording of such an affidavit:

- (a) The grantor or the successor in interest must mail by registered or certified mail, return receipt requested, to the beneficiary and the trustee a copy of the affidavit; and
- (b) The notice of default and election to sell and the affidavit and certification described in subsection 6 are deemed to be withdrawn.

8. If the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 includes the affidavit and certification described in subsection 6, the trustee's sale of the abandoned residential property must be conducted within 6 months after the beneficiary received the certification. If the trustee's sale is not conducted within 6 months after the beneficiary received the certification:

- (a) The notice of default and election to sell and the affidavit and certification described in subsection 6 are deemed to be withdrawn; and
- (b) The beneficiary is liable to the grantor or the successor in interest of the grantor for a civil penalty of not more than \$500.

9. The period specified in subsection 8 is tolled:

- (a) If a borrower has filed a case under 11 U.S.C. Chapter 7, 11, 12 or 13, until the bankruptcy court enters an order closing or dismissing the bankruptcy case or granting relief from a stay of the trustee's sale.
- (b) If a court issues a stay or enjoins the trustee's sale, until the court issues an order granting relief from the stay or dissolving the injunction.

10. As used in this section:

- (a) "Applicable governmental entity" means:
  - (1) If the real property is within the boundaries of a city, the governing body of the city; and
  - (2) If the real property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.
- (b) "Beneficiary" means the beneficiary of the deed of trust or the successor in interest of the beneficiary or any person designated or authorized to act on behalf of the beneficiary or its successor in interest.

Sec. 5. NRS 107.080 is hereby amended to read as follows: . . . .

Sec. 6. NRS 107.086 is hereby amended to read as follows: 107.086 1. [In] Except as otherwise provided in this subsection, in addition to the requirements of NRS 107.085, the exercise of the power of sale pursuant to NRS 107.080 with respect to any trust agreement which concerns owner-occupied housing is subject to the provisions of this section. The provisions of this section do not apply to the exercise of the power of sale if the notice of default and election to sell recorded

pursuant to subsection 2 of NRS 107.080 includes an affidavit and a certification indicating that, pursuant to section 4 of this act, an election has been made to use the expedited procedure for the exercise of the power of sale with respect to abandoned residential property. . . .

**Sec. 6.5.** Nothing in this act shall be construed to limit the ability of a county or city to enforce any existing ordinance relating to abandoned property.

**Sec. 7.** This act becomes effective on July 1, 2013, and expires by limitation on June 30, 2017.

## New Jersey Statutes

### **N.J. Stat. § 2A:50-73. Summary action to foreclose mortgages on certain properties <sup>5</sup>**

a. For the purposes of this section, "vacant and abandoned" residential property means 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 shall be deemed "vacant and abandoned" if the court finds that the mortgaged property is not occupied by a mortgagor or tenant as evidenced by a lease agreement entered into prior to the service of a notice of intention to commence foreclosure according to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), 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 materials 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;

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<sup>5</sup> N.J. Stat. § 2A:50-55. Definitions

As used in this act:

"Deed in lieu of foreclosure" means a voluntary, knowing and uncoerced conveyance by the residential mortgage debtor to the residential mortgage lender of all claim, interest and estate in the property subject to the mortgage. In order for a conveyance to be voluntary, the debtor shall have received notice of, and been fully apprised of the debtor's rights as specified in section 4 of this act. For purposes of this act, "voluntarily surrendered" has the same meaning as "deed in lieu of foreclosure."

"Immediate family" means the debtor, the debtor's spouse, or the mother, father, sister, brother or child of the debtor or debtor's spouse.

"Non-residential mortgage" means a mortgage, security interest or the like which is not a residential mortgage. If a mortgage document includes separate tracts or properties, those portions of the mortgage document covering the non-residential tracts or properties shall be a non-residential mortgage.

"Obligation" means a promissory note, bond or other similar evidence of a duty to pay.

"Office" means the Office of Foreclosure within the Administrative Office of the Courts.

"Residential mortgage" means a mortgage, security interest or the like, in which the security is a residential property such as a house, real property or condominium, which is occupied, or is to be occupied, by the debtor, who is a natural person, or a member of the debtor's immediate family, as that person's residence. This act shall apply to all residential mortgages wherever made, which have as their security such a residence in the State of New Jersey, provided that the real property which is the subject of the mortgage shall not have more than four dwelling units, one of which shall be, or is planned to be, occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated.

"Residential mortgage debtor" or "debtor" means any person shown on the record of the residential mortgage lender as being obligated to pay the obligation secured by the residential mortgage.

"Residential mortgage lender" or "lender" means any person, corporation, or other entity which makes or holds a residential mortgage, and any person, corporation or other entity to which such residential mortgage is assigned.

History: L. 1995, c. 244, § 3.

(8) statements of 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, 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;

(15) any other reasonable indicia of abandonment.

b. For the purposes of this section, a residential property shall not be considered "vacant and abandoned" if, on the property:

(1) there is an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;

(2) there is a building occupied on a seasonal basis, but otherwise secure; or

(3) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

c. In addition to the residential mortgage foreclosure procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage debt secured by residential property that is vacant and abandoned may be brought by a lender in the Superior Court. In addition, a lender may, at any time after filing a foreclosure action, file with the court, in accordance with the Rules Governing the Courts of the State of New Jersey, an application to proceed in a summary manner because the residential property that is the subject of the foreclosure action is believed to be "vacant and abandoned"; provided, however, that this section shall not apply to a foreclosure of a timeshare interest secured by a mortgage.

d. (1) In addition to the service of process required by the Rules of Court, a lender shall establish, for the entry of a residential foreclosure judgment under this section, that a process server has made two unsuccessful attempts to serve the mortgagor or occupant at the residential property, which 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.

(2) In addition to any notices required to be served by law or the Rules of Court, a lender shall, with any order to show cause served as original service of process or a motion to proceed summarily, serve a notice that the lender is seeking, on the return date of the order to show cause, or on the date fixed by the court, to proceed summarily for entry of a residential foreclosure judgment



because the property is vacant and abandoned.

(3) When a property is deemed vacant and abandoned as herein defined, a lender shall not be required to serve the debtor with the notice to cure required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-58).

e. (1) The court may enter a final residential mortgage foreclosure judgment under this section upon a finding, (a) by clear and convincing evidence, that the residential property is vacant and abandoned as defined under subsection a. of this section, and (b) that a review of the pleadings and documents filed with the court, as required by the Rules of Court, supports the entry of a final residential mortgage foreclosure judgment.

(2) A final residential mortgage foreclosure judgment under this section shall not be entered if the court finds that:

(a) the property is not vacant or abandoned; or

(b) 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 provide cause to preclude the entry of a final residential mortgage foreclosure judgment.

f. If a final residential mortgage foreclosure judgment under this section is not entered on the original or adjourned return date of an order to show cause or the date fixed by the court to proceed summarily, the court may direct that the foreclosure action continue on the normal track for residential mortgage foreclosure actions for properties that are not vacant and abandoned and the notice to cure served with the order to show cause or the order fixing that date for the matter to proceed summarily shall be of no effect.

g. All actions brought to foreclose on real property pursuant to this section shall proceed in accordance with the Rules of Court.

h. Nothing in this section is intended to supersede or limit other procedures adopted by the Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation.

i. Nothing in this section shall be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law.

j. Notwithstanding paragraph (3) of subsection a. of section 12 of P.L.1995, c.244 (C.2A:50-64) to the contrary, if the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the sheriff shall sell the property within 60 days of the sheriff's receipt of any writ of execution issued by the court. If it becomes apparent that the sheriff cannot comply with the provisions of this subsection, the foreclosing plaintiff may apply to the court for an order appointing a Special Master or judicial agent to hold the foreclosure sale.

**History:** L. 2012, c. 70, § 1, eff. Dec. 3, 2012, operative April 1, 2013.

**N.J. Stat. § 2A:50-1. No personal deficiency judgment in foreclosure actions or execution thereon for balance due**

No judgment shall be rendered in any action to foreclose a mortgage for any balance which may be due plaintiff over and above the proceeds of the sale of the mortgaged property, and no execution shall issue therein for the collection of any such balance.

**History:** L. 1951 (1st SS), c. 344.

**Revised Code Washington**

**Rev. Code Wash. ARCW § § 61.12.093. Abandoned improved real estate -- Purchaser takes free of redemption rights**

In actions to foreclose mortgages on real property improved by structure or structures, if the court finds that the mortgagor or his or her successor in interest has abandoned said property for six months or more, the purchaser at the sheriff's sale shall take title in and to such property free from all redemption rights as provided for in RCW 6.23.010 et seq. upon confirmation of the sheriff's sale by the court. Lack of occupancy by, or by authority of, the mortgagor or his or her successor in interest for a continuous period of six months or more prior to the date of the decree of foreclosure, coupled with failure to make payment upon the mortgage obligation within the said six month period, will be prima facie evidence of abandonment.

HISTORY: 2012 c 117 § 162; 1965 c 80 § 1; 1963 c 34 § 1. 2012 c117 § 162, effective June 7, 2012, made language gender-neutral.

**Rev. Code Wash. ARCW § 61.12.094. Abandoned improved real estate -- Deficiency judgment precluded -- Complaint, requisites, service**

When proceeding under RCW 61.12.093 through 61.12.095, no deficiency judgment shall be allowed. No mortgagee shall deprive any mortgagor, his or her successors in interest, or any redemptioner of redemption rights by default decree without alleging such intention in the complaint: PROVIDED, HOWEVER, That such complaint need not be served upon any person who acquired the status of such successor in interest or redemptioner after the recording of lis pendens in such foreclosure action.

HISTORY: 2012 c 117 § 163; 1965 c 80 § 2; 1963 c 34 § 2.

**Rev. Code Wash. ARCW § 61.12.095. Abandoned improved real estate -- Not applicable to property used primarily for agricultural purposes**

RCW 61.12.093 and 61.12.094 shall not apply to property used primarily for agricultural purposes.

HISTORY: 1965 c 80 § 3; 1963 c 34 § 3.

## **Wisconsin Statutes**

### **Wis. Stat. § 846.101. Foreclosure without deficiency; 20-acre parcels.**

(1) If the mortgagor has agreed in writing at the time of the execution of the mortgage to the provisions of this section, and the foreclosure action involves a one- to 4-family residence that is owner-occupied at the commencement of the action, a farm, a church or a tax-exempt charitable organization, the plaintiff in a foreclosure action of a mortgage on real estate of 20 acres or less, which mortgage is recorded subsequent to January 22, 1960, may elect by express allegation in the complaint to waive judgment for any deficiency which may remain due to the plaintiff after sale of the mortgaged premises against every party who is personally liable for the debt secured by the mortgage, and to consent that the mortgagor, unless he or she abandons the property, may remain in possession of the mortgaged property and be entitled to all rents, issues and profits therefrom to the date of confirmation of the sale by the court.

(2) When plaintiff so elects, judgment shall be entered as provided in this chapter, except that no judgment for deficiency may be ordered therein nor separately rendered against any party who is personally liable for the debt secured by the mortgage and the sale of such mortgaged premises shall be made upon the expiration of 6 months from the date when such judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 within such 6-month period except that first printing of a copy of such notice in a newspaper shall not be made less than 4 months after the date when such judgment is entered.

History: 1973 c. 189 ss. 7, 20; Stats. 1973 s. 816.101; Sup. Ct. Order, 67 Wis. 2d 585, 768, 783 (1975); Stats. 1975 s. 846.101; 1977 c. 304; 2009 a. 180.

### **Wis. Stat. § 846.102. Abandoned premises.**

(1) In an action for enforcement of a mortgage lien if the court makes an affirmative finding upon proper evidence being submitted that the mortgaged premises have been abandoned by the mortgagor and assigns, judgment shall be entered as provided in s. 846.10 except that the sale of such mortgaged premises shall be made upon the expiration of 5 weeks from the date when such judgment is entered. Notice of the time and place of sale shall be given under ss. 815.31 and 846.16 and placement of the notice may commence when judgment is entered. In this section "abandoned" means the relinquishment of possession or control of the premises whether or not the mortgagor or the mortgagors assigns have relinquished equity and title.

(2) In addition to the parties to the action to enforce a mortgage lien, a representative of the city, town, village, or county where the mortgaged premises are located may provide testimony or evidence to the court under sub. (1) relating to whether the premises have been abandoned by the mortgagor. In determining whether the mortgaged premises have been abandoned, the court shall consider the totality of the circumstances, including the following:

- (a) Boarded, closed, or damaged windows or doors to the premises.
- (b) Missing, unhinged, or continuously unlocked doors to the premises.
- (c) Terminated utility accounts for the premises.
- (d) Accumulation of trash or debris on the premises.
- (e) At least 2 reports to law enforcement officials of trespassing, vandalism, or other illegal

acts being committed on the premises.

(f) Conditions that make the premises unsafe or unsanitary or that make the premises in imminent danger of becoming unsafe or unsanitary.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 768, 783 (1975); 1975 c. 41 s. 52; 1975 c. 199; Stats. 1975 s. 846.102; 1977 c. 304; 2011 a. 136.

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**HOME FORCLOSURE PROCEDURES ACT****SECTION 102. DEFINITIONS.** In this [act]:

(1) “Abandoned property” means mortgaged property with respect to which the homeowner and persons claiming through the homeowner, including tenants, have relinquished possession. The term does not include unoccupied residential property that is:

(A) undergoing construction, renovation, or rehabilitation that is proceeding with reasonable diligence to completion; ~~{or}~~

(B) used or held for use by the homeowner as a vacation home or seasonal home, physically secured and in substantial compliance with the law of this state and all applicable ordinances, codes, and rules; ~~;~~ [or]

[(C) subject of a probate action, action to quiet title, or other ownership dispute.]

(22) “Residential property” means real property [in this state?] improved with not more than four dwelling units, including structures ancillary to a unit. The term includes an attached single-family unit, a single-family manufactured-housing unit treated as real property under law of this state, a time share in residential property if that time share is treated as real property under law of this state, real property on which construction of not more than four dwelling units has commenced, and a single-family unit in a common-interest community. The term does not include property used primarily for agricultural or grazing purposes.

**SECTION 505. ABANDONED PROPERTY.**

(a) A governmental agency’s determination, finding, or order that mortgaged property is abandoned, or the presence of not less than [three] of the following conditions, establishes a presumption that the property is abandoned property:

(1) One or more doors to the property are boarded up, closed off, smashed through, broken off, unhinged, or continuously unlocked, or multiple windows are boarded up or closed off; or multiple window panes are broken.

(2) Gas service, electric service, water service, or other utility service to the property has been terminated or utility consumption is extremely low so as to indicate that the property is not regularly occupied.

(3) Rubbish, trash, or debris has accumulated on the property.

(4) The property is deteriorating so as to constitute a serious threat to public health or safety.

(5) A creditor, servicer, or contractor of a servicer has changed the locks or otherwise secured ~~on~~ the property and, for at least 30 days after the changing of the locks or securing the property, the homeowner has not contacted the creditor, servicer, contractor to request entrance to the property.

(6) One or more written statements signed by the homeowner, homeowner's personal representative, or assigns indicate a clear intent to abandon the property

(7) A law enforcement agency has received at least two separate reports of trespass, vandalism or other illegal acts being committed on the property in the previous 180 days.

(8) The homeowner has died and there is no evidence that a survivor or an heir of the homeowner is in actual possession of the property.

(b) In a judicial-foreclosure proceeding, the plaintiff or a governmental subdivision in which the mortgaged property is located may petition the court for a determination that the

property is abandoned property. If the property is located in a common-interest community, the association that governs that community may intervene in the proceeding.

The petitioner must send each homeowner and person entitled to notice under Section 201 with notice of the filing of the petition in the manner proscribed in Section 202.

The notice must include the following:

(1) Copy of the petition;

(2) Either a copy of the affidavit or affidavits attesting to the presence of conditions set forth in Section 505(a) or a government agency's determination, finding, or order that the property is abandoned;

(3) Description of the consequences that will follow from a determination of abandonment;

(4) Inform the recipient that the recipient may contact the [applicable government official] to obtain further information or object to the proposed determination of abandonment.

This notice may be [combined / sent?] with the notice required by Section 201.

[In addition, the petitioner must personally serve, or make two attempts to personally serve, the notice on a homeowner at the property, which 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 court shall fix a date and time for hearing the petition no less than [30] days or more than [45] days after the filing of the petition, which shall include notice to the homeowner and any other person entitled to notice under Section 201.

If the plaintiff, a servicer, a contractor of a servicer, or the government subdivision in which the mortgaged property is located executes an affidavit attesting to the presence of



conditions set forth in Section 505(a), the affidavit shall be signed by and based on personal knowledge of the affiant. Photographic or other documentary evidence that demonstrates the supporting facts set forth in the affidavit shall be attached to the affidavit.

(c) In a judicial-foreclosure proceeding, after notice and hearing, the court may issue an order finding that the mortgaged property is abandoned property based evidence of service of process required by subsection (b) and:

(i) a government agency determination, finding, or order that the property is abandoned,

(ii) an affidavit or affidavits attesting to the presence of at least [three] conditions set forth in Section 505(a), or

(iii) other written evidence or oral testimony,  
unless the homeowner or a person claiming through the homeowner:

(i) file an answer to the petition,

(ii) appear at the hearing to object to a determination of abandonment, or

(iii) file an affidavit stating that the property is not abandoned,

which is not withdrawn.

(d) In a non judicial-foreclosure proceeding, a creditor, [trustee,?] ~~or~~ servicer or a governmental subdivision in which the mortgaged property is located may seek a determination that the property is abandoned property by submitting a request accompanied by an affidavit or affidavits of the creditor, [trustee,?] servicer, contractor of a servicer, or representative of a governmental subdivision attesting to facts indicating abandonment at least [three] conditions set forth in section 505(a) or a government agency's determination, finding, or order that that the property is abandoned to [insert name of appropriate government official].



(1) The person seeking the determination must send a notice to each homeowner and other person entitled to notice under Section 201 in the manner proscribed in Section 202. The notice must include: (i) a copy of the request and the affidavit or (ii) copy of the request and government agency's determination, finding, or order that that the property is abandoned, describe the consequences that will follow from a determination of abandonment, and inform the recipient that the recipient may contact the [government official] to obtain further information or to object to the proposed determination of abandonment. This notice may be [combined / sent] with the notice required by Section 201.

[In addition, the person seeking the determination must personally serve or make two attempts to personally serve, the notice on a homeowner at the property, which 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.]

~~.(2) After personal inspection of the property, the [insert name of appropriate government official] may issue a determination in a record that the property is abandoned property.~~

(2) The [appropriate government official] may issue a determination in a record that the property is abandoned property 30 days after submission of the request for a determination that the property is abandoned property, if the [appropriate government official] has:

(i) received evidence of service of process required by subsection (d)(1);  
(ii) received a government agency determination, finding, or order that the property is abandoned or an affidavit or affidavits attesting to at least [three] of the conditions set forth in Section 505(a); and

(iii) personally inspected the property,  
unless the [appropriate government official] has previously received from the homeowner or a  
person claiming through the homeowner a copy of an affidavit stating that the homeowner or a  
person claiming through the homeowner is occupying or intends to occupy the property.

The [insert name of appropriate government official] shall send the determination to the creditor, the homeowner, and any other person entitled to notice under Section 201.

(3) The determination or the refusal of the [insert name of appropriate government official] to issue a determination is subject to de novo judicial review.

#### Drafters' Notes

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5. Other laws may limit the ability of a creditor to foreclose on abandoned property, such as the Servicemembers Civil Relief Act and Protecting Tenants at Foreclosure Act. See 50 App. U.S.C.A. § 501 et seq. and 12 U.S.C.A. § 5220 note.

#### **SECTION 506. FORECLOSURE OF ABANDONED PROPERTY.**

(a) In a judicial-foreclosure proceeding, if a court renders an order under Section 505(c) finding that mortgaged property is abandoned property and the court ~~has previously rendered or shall~~ at the same time

(1) renders a judgment of foreclosure, ~~the court shall and~~

(2) order a public sale of the abandoned property not earlier than [30] days but not later than [~~60~~45] days after entry of the order.

(b) In a non judicial foreclosure proceeding, on the issuance of a determination under Section 505(d) that the mortgaged property is abandoned property, a creditor, servicer, contractor

of a servicer, or trustee may conduct an expedited public sale of the property. The sale may take place not earlier than [30] days but not later than [~~60~~45] days after the issuance of the determination, unless judicial review of the determination is commenced. The creditor or servicer shall comply with the notice requirements of Section 405, except that [15]-days advance notice of the sale is sufficient.

(c) After a judicial order or a determination in a record finding that the mortgaged property is abandoned property under Section 505(c) or (d), the creditor or servicer shall take necessary and appropriate action to cause the foreclosure sale to be completed within ~~a~~ reasonable time [120] days unless the creditor releases its mortgage and files the release in the [land records]. Unless the creditor releases its mortgage, the creditor may not seek to end its obligation to maintain the property under Section 507 by dismissing, terminating, or suspending the foreclosure proceeding.

(d) Upon [a foreclosure sale / confirmation of a sale] held pursuant to subsection (a) or (b), any personal property remaining in or upon the abandoned property shall be deemed to have been abandoned by the owner of such personal property and may be disposed of by the purchaser of the property. No mortgagee or its successors or assigns or purchaser shall be liable for any such disposal of personal property.

~~(de)~~ The completion of a [foreclosure sale / confirmation of sale] pursuant to subsection (a) or (b) terminates the rights of the homeowner or any other person to redeem the property under other law of this state.