




800 City Hall, 200 E. Wells St., Milwaukee, WI 53202, Telephone 414-286-2601, Fax 414-286-8550

MEMORANDUM

TO: Special Joint Committee on the Redevelopment of Abandoned and Foreclosed Homes

FROM: Heather Hecimovich Hough 
Assistant City Attorney

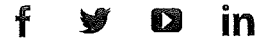
DATE: February 25, 2016

RE: Documents and Information in Preparation for the February 29, 2016 Meeting

In preparation for the meeting to be held by this Special Joint Committee on Monday, February 29, 2016 at 9:00 a.m., the City Attorney's Office submits the following information:

1. Copies of two zombie property publications recently authored by the City Attorney's Office. These publications were an effort to educate the public and the legal community as well as to assert the City's position on zombie properties. These publications were timely with proposed legislative changes to Wis. Stat. § 846.102.
2. Since the last Special Joint Committee meeting, the City Attorney's Office and DNS have collaborated on updating the information we receive from mortgage lenders to disclose for the Registration of Residential Properties Pending Foreclosure (MCO 200-22.5). The City now requires disclosure of any federal interest (i.e., invested or backed by Fannie Mae, Freddie Mac, FHA, etc.). The first run of registrants provided 91 registered properties; of those, 28 have a federal interest. The City will review the registry quarterly and examine if the properties affiliated with a federal interest have code violations, stalled foreclosure proceedings, etc., and will work directly with the federal interest to address any "zombie" issues encountered.

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How to Prevent Zombie Foreclosures and Improve Neighborhoods

Gregg Hagopian

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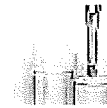
Judging Capacity in the Elder Population

In judicial-foreclosure states, better judicial supervision of mortgage-foreclosure cases can prevent zombie foreclosures, lessen blight, and improve neighborhoods.

A zombie foreclosure occurs when a mortgage-foreclosure case in litigation becomes stalled without good reason. The defendant/owner/mortgagor hasn't filed for bankruptcy, isn't seeking loan modification, and hasn't been deployed for the armed services. The lender that started the case simply isn't proceeding diligently to conclude the case. The lien of the mortgage, and the stalled or slow-moving lawsuit, cloud title, thereby paralyzing the parcel into a zombie state where neither the plaintiff/lender/mortgagee nor the defendant/owner/mortgagor is maintaining or repairing the parcel.

The foreclosure case is not finished and the lender doesn't own the parcel yet, so the lender isn't repairing or maintaining, or assuming owner duties. And the owner/defendant who couldn't afford the mortgage loan can't afford to repair, maintain, or put money into a home he thinks he has lost or will lose to foreclosure anyway. The parcel falls into disrepair, and becomes a blighting influence on the block and the neighborhood. If the owner in a stalled foreclosure case moves out and abandons the parcel, the zombie problem worsens. The downward spiral in the physical condition of the house and the blight become even more pronounced.

Judges play a critical role in this process. As supervisor of the litigation before them, judges can take simple steps to net huge neighborhood-improving results. They can ensure that the plaintiff/lender/lawyers move the case along to completion. They can require periodic scheduling conferences or status reports from the lender lawyers to



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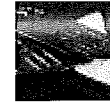


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ensure that the case is progressing. Those simple steps, inherent in the court's power to control court dockets and manage cases, will have huge impact on the parcel, its physical condition, the neighbors, and the neighborhood. Judges can simply reinforce the rules of professional conduct that the plaintiff/lender/lawyers must follow; to, in good faith, diligently pursue and advance the lawsuit that they filed to actual completion and to refrain from acting in a way that causes harm to others or unnecessary delay. The ABA Model Rules of Professional Conduct require lawyers to act with reasonable diligence and promptness in representing the client (Rule 1.3), to make reasonable efforts to expedite litigation consistent with client interests (Rule 3.2), and to not use means aimed at causing delay or burden to third persons (Rule 4.4).

The Milwaukee County, Wisconsin Circuit Court, and Judge Nancy Margaret Russo in the Cuyahoga County, Ohio Common Pleas Court have adopted measures mandating periodic scheduling conferences to ensure that mortgage-foreclosure cases advance and don't stall. Judge Russo said, "it works. We move properties fast... neighborhoods are safer."

While each state's mortgage-foreclosure law is unique, there are commonalities. The lender lawyer files a foreclosure complaint, the lender gets a judgment of foreclosure, the judgment starts a redemption period in which the owner can pay off the loan to stop the foreclosure, and if the owner doesn't redeem, the parcel gets scheduled for auction or sheriff sale, and the parcel is sold to the high bidder. The Court confirms the sale, and a sheriff or foreclosure deed gets issued to the buyer.



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Note the anomaly. Unlike other litigation where the judgment ends the case, in mortgage-foreclosure litigation, the judgment doesn't end the case. There are post-judgment steps to accomplish (wait-out redemption, sheriff auction, confirmation of sale, deed) before the case can come to a true end when the sheriff or foreclosure deed gets issued.

In distressed urban neighborhoods, where home values and conditions have declined, lenders and their mortgage servicing companies can have incentive to bring foreclosure cases to induce redemption (loan payoff). If the case filing, however, doesn't result in loan pay-off, they also have incentive to not finish the case. Lenders don't necessarily want to own the homes (they don't want to add "REO," bank-owned, parcels to their inventory) because if the lenders own, they do have to maintain, repair, manage, and sell. While lenders don't have to bid at the sheriff sale or foreclosure auction, if it is unlikely that there will be bidders who will bid an amount to reasonably minimize the lenders' loss, the lenders sometimes freeze, and put the foreclosure litigation on hold, zombie-izing the parcel and the foreclosure case.

It is at this point, in the post-judgment, post-redemption period, when the court can step in with the simple steps to stop the zombie state. The court should require the lender lawyer to advance the case and schedule the post-judgment auction sale. If no one wishes to bid, then the lender and lender lawyer should move for dismissal of the case, and satisfy the mortgage of record, to finalize the case in that manner, and conclude the litigation and remove the cloud on title. With the cloud removed, and the foreclosure case ended, the defendant/owner/mortgagor is clearly responsible for the parcel.

One way or another, the lender lawyer that invokes the judiciary by filing a foreclosure lawsuit must be held accountable by the court to finish the case, either by consummating the post-judgment duties to get a sheriff or foreclosure deed issued to another who will be responsible for the parcel and its upkeep, or by dismissing the litigation if the lender or third parties don't want to own the parcel. Requiring case completion by sale or dismissal removes the cloud on title caused by foreclosure.

Better judicial supervision of mortgage-foreclosure cases truly can prevent zombie foreclosures, lessen blight and improve neighborhoods.



Gregg Hagopain is an Assistant City Attorney for the City of Milwaukee, Wisconsin.

February 18th, 2016

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Wisconsin Law Journal

Requiring lenders to sell after foreclosure would ward off 'zombie' properties

By: DOLAN MEDIA NEWSWIRES February 10, 2016 8:22 am

By Heather Hecimovich Hough

Foreclosing plaintiffs should be compelled to bring abandoned properties to sale because judicial economy requires it and because failure to do so causes municipalities and taxpayers to suffer adverse, unfair and unjust consequences.

Mortgage lenders seek the court's assistance when foreclosing by way of order and judgment. To stall a foreclosure or decide after judgment is entered not to pursue the foreclosure to sale is to render the court's order useless.

If mortgage lenders were compelled to complete a foreclosure action, these lenders would then have to carefully analyze if foreclosure is the best course of action upfront before filing an action with the court. If such analysis were regularly performed before commencing action, fewer properties would be abandoned quite so quickly and fewer foreclosures would weigh on the state's already strained judicial resources.

A tangible property is attached to a foreclosure proceeding. The consequences of an unexecuted money judgment are limited to the parties in the suit.

An unexecuted foreclosure judgment, on the other hand, significantly affects the community surrounding a tangible property. No other civil action so adversely affects non-parties who do not have a voice in the proceeding or some sort of recourse.

When a mortgage lender fails to bring an abandoned property to sale, the taxpayers and the municipality bear the brunt of such a decision. Abandoned properties in foreclosure limbo can give rise to neighborhood blight.

These properties, neither cared for nor maintained by either party involved in the original real estate transaction, are left to decay and depress property values in the surrounding neighborhood and community. These eyesore properties attract vagrants and thieves (and thus, crime) to a neighborhood.

Windows are boarded up, lawns become overgrown, and property maintenance is not performed. The value of the abandoned property rapidly decreases and, as a result, the value of neighboring properties plummets.

Surrounding homeowners are faced with notably less-marketable properties. Municipalities are forced to maintain and monitor these abandoned properties with taxpayers footing the bill.

Further, valuable municipal resources from real estate tax proceeds are left unpaid. If taxes remain unpaid, the municipality's last option is to take ownership through tax foreclosure, again at taxpayers' expense.

A compelled sale significantly reduces the harm. A prompt sale equates to the prompt return of the property to the real estate market.

An invested buyer becomes responsible for the care and maintenance of the property, lifting the burden from the municipality and its taxpayers. Property taxes are paid, generating additional municipal resources.

Blight is reduced and even eradicated once the property becomes inhabited. Compelling mortgage lenders, the most involved and capable party to the foreclosure action, to sell abandoned properties serves the best interests of those who are affected most by abandoned properties — the courts, the community and taxpayers.



Heather Hecimovich Hough is an assistant city attorney for the city of Milwaukee. She specializes in litigation concerning "zombie" (vacant and foreclosed) and nuisance properties.