



## REAL ESTATE ALERT

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# Vacant Property Ordinances: Additional Duties and Penalties Upon Lenders

by Jeffrey S. Wertman

To address the problems associated with vacant properties, such as vandalism, crime, and maintenance issues, many local governments have enacted “vacant property ordinances.” These ordinances are typically based upon the municipality’s authority to control and abate nuisances.

These ordinances expose lenders to new liabilities and costs that lenders did not historically face until after the foreclosure process was completed and the lender became the owner of the property. Miami-Dade County, Florida has enacted an ordinance, which imposes new duties and penalties upon lenders during foreclosures involving residential property.

### **Overview of Miami-Dade County Ordinance 08-134**

On December 2, 2008, the Miami-Dade Board of County Commissioners approved Ordinance 08-134. This ordinance expanded Chapter 19 of the Miami-Dade Code (known as the Responsible Property Owner and Merchant Act), and applies to all single family residential dwelling units, including condominium, duplex, and townhome units in unincorporated Miami-Dade County.

In general, Ordinance 08-134

provides that the holder or owner of any mortgage who files a *lis pendens* and/or an action for foreclosure upon a mortgaged residential property is responsible for registering the property with the Building and Neighborhood Compliance Department (the “BNC”) through a “Registry”, and for complying with compliance with the maintenance requirements of Miami-Dade County for improved and unimproved residential property. If a property is vacant and Miami-Dade County observes a maintenance violation, the holder or owner of the mortgage will receive a notice of violation.

Specifically, Ordinance 08-134 provides in part:

“The holder and/or owner of any mortgage which is upon real property which is in violation of this chapter shall be a responsible party for compliance with this chapter upon the filing of a *lis pendens* and/or an action, the purpose of which is to foreclose upon the mortgage or similar instrument that secures debt upon the real property. The responsibility for compliance with this chapter of a mortgage owner/holder shall be

effective, in the case of a single family residential unit, only during the periods of time that the residential unit shall be vacant and in foreclosure. In all instances, the responsibility of a holder/owner of a mortgage shall remain until such time as the property is sold or transferred to a new owner, or the foreclosure action described herein is dismissed.”

If the property is occupied, a *lis pendens* is being filed, and the property is registered, the occupant, not the lender, is responsible for the maintenance of the property and any fines that are imposed for violations.

The implementation of the ordinance commenced on July 10, 2009.

### **Registration**

There is a \$125 fee to register each property. The registration fee covers the costs of initial inspections, file case management, processing and postage.

The registration can be electronically filed at: <http://bldgappl.miamidade.gov/foreclosureregistry/MainPage.aspx>

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The registration is renewable on its registration anniversary and terminates when a certificate of title is issued or when the foreclosure action is withdrawn.

The ordinance provides that a citation of \$500 can be issued to entities which fail to register the property within 30 days of the filing of the *lis pendens*.

A person can determine if a property has been registered searching the Foreclosure Registry Search at: <http://bldgappl.miamidade.gov/foreclosureregistry/Search.aspx>

### After Registration

Once the registration is filed with the BNC, the department conducts an inspection to ensure that the property is being maintained to Miami-Dade County code standards. The inspection covers, among other things, the structural condition of the property, whether the windows and doors are secured or boarded up, whether pools have a barrier that meets the zoning code standards, whether there is junk, trash, abandoned property or solid waste on the property, and the maintenance of the lawn/yard and swale area.

The ordinance allows for imposition of liens on the property after the date of the *lis pendens* that is the obligation of the lender and grants the County the option of imposing civil penalties, seeking injunctive relief, and filing criminal charges against the lender.

### Lender's Right to Enter Upon Property

The ordinance requires mortgagees to maintain the residential property in foreclosure, failing which the County will direct service providers of its choice to make the repairs and perform the maintenance. The County's service providers may be much more expensive than if the lender or property owner procures the contractor. Therefore, it is essential that lenders have the right in the loan documents to access the property so they can use their own contractors and vendors to correct deficiencies and make repairs.

### Conclusion

To address the additional duties imposed by Ordinance 08-134 and other similar vacant property ordinances being enacted around the country, and minimize the risk of penalties, lenders should have a specific person in charge of compliance with such ordinances.

In addition, lender should review and consider revising their existing loan documents. It is vital for lenders to have the right in the loan documents to enter the mortgagor's property upon the filing of a *lis pendens*, make repairs, and perform maintenance. Alternatively, lenders should obtain a court order allowing them access to the mortgaged property to comply with the ordinance. Loan documents should also allow the lender to recover all costs of complying with the ordinance and any code violation penalties imposed upon the lender.

Finally, lenders should evaluate their insurance coverage for vacant properties, seek to have receivers appointed to oversee properties in foreclosure, if appropriate, and have contractors ready the foreclosure is registered to undertake the necessary repairs and maintenance. ■

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