



National Community
Stabilization Trust

FAST TRACK FORECLOSURE LAWS: NOT A SILVER BULLET FOR FIGHTING BLIGHT



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EXECUTIVE SUMMARY

As an organization dedicated to eliminating blight and returning vacant residential Real Estate Owned (REO) properties to productive use through responsible development, the National Community Stabilization Trust (NCST) is always considering strategies to reduce vacancy and improve neighborhoods.

Since the 2008 foreclosure crisis, some stakeholders have strongly promoted state foreclosure laws to accelerate the foreclosure process specifically for vacant residential properties as one such strategy. We decided to study these legislative efforts to see if they were moving the needle in a positive direction.

In short, our research found no evidence to support the idea that “fast track” processes have helped to move the dial, either by expediting foreclosures or by resolving vacancy more quickly, or have hurt consumers by being inappropriately used to oust families from occupied properties.

Rather, our analysis of more recent legislative efforts suggest that the “fast track” idea is being used as a vehicle for broader foreclosure reform, with provisions unrelated to foreclosure timetables favoring whichever stakeholders played the larger role in passing the legislation.

In this report, we give a brief overview of how we define and count vacant properties, the extent to which the vacant property inventory is involved in the foreclosure process, and the mechanics of how foreclosures work, both generally and in “fast track” foreclosure jurisdictions.

We then examine the very sparse data available on these “fast track” processes. Our efforts to access and analyze data were mostly unsuccessful, either because some states do not specifically track data on motion filings and foreclosure timelines or because this data is not publicly available.

We hope that stakeholders ask more questions and engage in a more thoughtful and comprehensive effort to gather information.

After much effort, we were able to locate some data from New Jersey, but not elsewhere. Lacking numbers to crunch and compare across jurisdictions, we conducted interviews on the ground in four states – Illinois and New Jersey, which had enacted fast track laws in 2013, and Ohio and New York, which were just enacting such laws in 2016.

Overall, we found that these fast track procedures were used relatively rarely. For the more recently passed legislation, the motivating forces for passage as well as the ultimate use of the laws appears to be less about the “fast track” aspect and more about other substantive changes to foreclosure law.

Without conclusive results or data-driven success stories, we cannot endorse these legislative efforts as an effective tool to stabilize neighborhoods, yet neither do we see them as posing a danger to consumers. Based on our learning, however, we do make the following recommendations for policymakers:

- Ensure that both proposed and existing statutes require the collection of detailed data about the use of expedited foreclosure provisions.
- Consider how to ensure that expedited foreclosure provisions are used to protect neighborhoods from blight.
- More effectively engage consumer, neighborhood, and housing advocacy groups in the legislative process.
- Break down silos among advocates working in foreclosure prevention and neighborhood stabilization.
- Enforce servicers’ obligation to protect and preserve the property.

Most important, we hope that stakeholders ask more questions and engage in a more thoughtful and comprehensive effort to gather information on the causes of vacancy before attempting to address the problem through changes to state foreclosure laws.

INTRODUCTION

Vacant and abandoned properties pose a significant threat to the economic viability of a community. They blight neighborhoods, pose safety hazards, attract crime, depress neighboring property values, hamper the normal functioning of the housing market, and undermine the local economy. While blight has no defenders, with politicians and policymakers of all stripes vowing to combat it, it remains a persistent and difficult challenge.

One anti-blight initiative that has become popular in recent years is to give mortgage servicers a streamlined process to foreclose on vacant or abandoned properties more quickly than they can foreclose on occupied homes. Between 2009 and 2018, fourteen states enacted “fast-track foreclosure” laws aimed at expediting the foreclosure process for vacant and abandoned properties.¹

In this paper, we discuss the vacant property problem generally and put in context the small proportion of vacant properties actually in the foreclosure process. We share the results of two case studies we conducted of judicial foreclosure states that enacted earlier expedited foreclosure legislation to see if the changes are making a difference to outcomes on the ground.² We also discuss the latest round of legislation enacted or proposed in the past three years. Finally, we discuss next steps for the future of these laws.

PART 1

Overview of the Problem

What Are Vacant Properties, and Why Are They Vacant?

There are many reasons why residential properties are vacant, and it is important to establish what we mean when we refer to “vacant residential properties” at the outset of this report. First, we are generally referring to parcels of land with single-family³ homes built on them, as opposed to raw, unimproved parcels. Some data sources on vacant properties distinguish between seasonally occupied vacation homes and homes occupied on a year-round basis. We do not intend to include vacation homes when we refer to vacant properties, although not all data sources make those distinctions.

It is important to note that the majority of vacant properties have no mortgage, either because the owner – typically an investor⁴ – paid cash or because the mortgage has been satisfied through pay-off or charge-off. For purposes of this paper, we will focus on mortgaged single family residential property, because only those properties are subject to the foreclosure process and thus within the ambit of expedited foreclosure laws. We will endeavor to distinguish, where relevant, between mortgaged and non-mortgaged properties.

There are various reasons why mortgaged properties become vacant. In some cases, owner-occupants vacate a home after defaulting on mortgage payments either because they mistakenly believe they must vacate after receiving a notice of foreclosure or they simply want to leave the home on their own timeline before being evicted. A home abandoned by an owner in default will generally remain vacant (or without a legal tenant, although squatters may inhabit the home) until the foreclosure process is completed.

Another point in time that vacancies typically occur during the foreclosure process is between the foreclosure judgment and the sheriff’s sale. In this instance, the foreclosed-upon owners quite sensibly move out before being tossed out by the sheriff, but if servicers or sheriffs do not complete the process of sale, the home ends up abandoned. In many cases, servicers will “walk away” from properties at this point, leaving title to – and liability for – properties in the name of the original owner, who may not even know this has occurred (some jurisdictions require notice to the owner in this instance; most do not).

Additionally, many mortgaged properties become vacant prior to the filing of a foreclosure. In some instances where an owner has defaulted on the mortgage, servicers may delay filing foreclosure due to a lack of capacity, incorrect information about whether the home is occupied, or a lack of incentive to file due to the property's low (or even negative) value. However, the owner may still abandon the property for the reasons discussed above.

By contrast, when non-mortgaged residential properties fall into disrepair or values in the neighborhood decline, owners may simply walk away from the property since the cost of rehabbing or disposing of the property would be more than the property is worth. In these scenarios, the owners are often investors rather than occupants. Often, the original owner collected rents for many years without investing in maintenance before the property became uninhabitable or the neighborhood declined. Non-mortgaged residential properties pose just as much danger to their communities as mortgaged properties, but because they are not subject to the mortgage foreclosure process, laws aimed at accelerating that process do nothing to address non-mortgaged vacant properties.

How Many Properties Are Vacant?

There are a variety of data on vacant properties. The most frequently cited national data source is the U.S. Postal Service (USPS), which has collected information on vacant properties since 2005. The USPS data derives from daily reports by postal delivery staff indicating properties that have not picked up mail for 90 or more days. The USPS has partnered with the Department of Housing and Urban Development to aggregate its data on a quarterly basis, making it accessible to governmental, academic and nonprofit researchers.⁵

Some municipalities undertaking robust efforts to combat blight and address abandoned property problems conduct boots-on-the-ground, house-by-house surveys to track these problem properties. An increasing number of municipalities and some states have enacted legislation mandating that abandoned property be registered with the town to assist in the effort to monitor vacant properties and hold property owners accountable.

For the purposes of this paper's analysis, it is important to distinguish data on all vacant property from data that specifically focuses on mortgaged vacant property in conjunction with the foreclosure process. ATTOM Data Solutions⁶ matches the USPS overall vacancy data with publicly recorded real estate data to issue periodic reports that lay out the number of vacant homes in some stage of foreclosure, as well as the number of vacant homes owned by investors.⁷

According to ATTOM's October 2017 report, while the total number of vacant residential properties was nearly 1.4 million homes, only 14,312 of these vacant properties (1.1%) were somewhere in the foreclosure process. The overwhelming majority of vacant properties – more than 1 million out of approximately 1.4 million (76%) as of Q3 2017 nationwide – were owned by investors rather than former owner-occupants and were not in foreclosure.⁸ This figure remained virtually unchanged from ATTOM's Q3 2016 vacant property analysis.⁹ Consequently, legislation aimed at accelerating vacant residential property foreclosures addresses only a tiny fraction of the vacancy problem.

Problematic Definitions

There are no universally accepted definitions for the terms “vacant,” “abandoned,” “zombie property” and “zombie foreclosure.” Definitions in existing contracts, regulations and state laws, even within the same state, frequently do not match or are even in conflict. This problem was recently recognized by the National Mortgage Servicing Association in a white paper proposing some uniform definitions and industry standards to aid in the preservation of vacant and abandoned properties.¹⁰

In this paper, unless otherwise specified or defined in further detail, a reference to a “vacant” and/or “abandoned” property refers to a property where the titled owner has moved out of the home with no intention of returning (in other words, they are not traveling or in a hospital/center for a temporary period) and no other person legally occupies the property. While “vacant and abandoned” does not specify whether the property is somewhere in the foreclosure process, this paper avoids the term “zombie foreclosure,” which began as a term used for pre-foreclosure-sale properties but has morphed into a colorful but less useful catch-all synonym for vacancy. Instead, the paper will simply note the foreclosure status of vacant properties when it is relevant to the discussion.

Note that it is difficult for a mortgage servicer or municipal inspector to distinguish between a legal tenant and someone occupying the property illegally; a property occupied by an illegal tenant or a squatter probably should be considered vacant for policy purposes, but often it will not appear vacant if the occupant is engaging in basic maintenance such as grass cutting, collecting the mail and taking out the trash. A vacant home may be completely empty or there may be furniture or trash left behind.

Why Do Some Foreclosures Take So Long?

Before delving into the current status of expedited foreclosure laws, it's useful to review how timelines for foreclosure laws in certain states became so lengthy.

In a judicial foreclosure state, a mortgage servicer – acting on behalf of the lender and through its attorney – files its foreclosure complaint at the conclusion of a specified period of time after a borrower defaults. The plaintiff mortgagee must then obtain service of process over the defendant borrower in order to establish jurisdiction. Some states also require all foreclosures to go through mandatory alternative dispute resolution programs, such as foreclosure mediation or required settlement conferences, before the matter may continue in court and proceed to judgment. Then, whether or not the defendant has presented a foreclosure defense, the action still needs to get onto the court docket, and during the foreclosure crisis, foreclosure dockets became extremely crowded. All of the above steps take time – months, and sometimes years, of time.¹¹

What's more, obtaining a foreclosure judgment is arguably only the halfway point in the overall process in many states. Post-judgment, the plaintiff must obtain either a writ of execution or warrant authorizing the subject property to be scheduled for a sheriff's sale. Depending on the staffing of that county's sheriff's department, the frequency of their sheriff's sales (some counties conduct weekly sales, some monthly, some even more infrequently), and the statutory notice and publication requirements, this process can consume additional months. In many jurisdictions, if no bidder emerges and the property is not sold at the first sale, the notice and publication time periods start all over again before a subsequent sale can be scheduled.

Additionally, in several judicial foreclosure states, defendants are entitled to a statutory redemption period, a last chance for the homeowner to retain ownership and possession of the property. Typically, a borrower may "redeem" by paying the outstanding mortgage balance and all fees associated with the mortgage.¹² These periods vary greatly, from 10 days post-sale in New Jersey to 12 months in some other states.¹³ Certain states also require a court to approve a sheriff's sale, delaying the start of the redemption clock until the confirmation of sale is entered. Sale, confirmation and redemption timetables can in some instances exceed the time it takes for a plaintiff to obtain a foreclosure judgment.

Not surprisingly, judicial foreclosure states as a group have longer foreclosure timelines than non-judicial states.¹⁴ There are many reasons why a state might choose a judicial foreclosure process. The judicial process affords protections to homeowners in foreclosure by providing an opportunity for third party review of the matter. It can also help investors achieve resolutions other than foreclosure by providing a clear roadmap by which litigants can contest the process, as well as a defined period during which they can attempt to work out either a loan modification or another foreclosure alternative, and judicial involvement can help equalize information and power asymmetries. Yet servicers and lenders report that lengthy foreclosure timelines cost them a great deal of money and other resources, which costs are passed on to consumers through increased costs of foreclosure, and potentially down the road, increased cost of lending and tightening of the credit box.

This debate over whether judicial foreclosures are a good idea involves complex questions of delay causation, creditor and lender rights, and the cost-benefit analysis of, inter alia, the higher numbers of successful loss mitigation outcomes and cure rates found in judicial states.¹⁵ This paper does not address whether one system is better than the other. Rather, it focuses on common ground for both lenders and consumer advocates: that the longer a vacant property sits empty and unsecured, the greater the chance it will deteriorate and attract crime, and the more harm it will cause its neighbors, its investors, the local tax base, neighborhood property values and localities.

Conflicting Views on Expedited Foreclosure Laws

Despite broad agreement that vacant properties harm neighborhoods, depress property values, reduce tax revenues, and consume enormous local resources, actually expediting the foreclosure process for vacant homes is much more difficult. In part, this is due to conflicting incentives both within the consumer advocacy community and the mortgage servicer community. While consumer advocates share the desire to prevent lengthy vacancies that harm communities, the behavior of the mortgage servicing industry during the foreclosure crisis cemented a deep skepticism toward any reduction in due process requirements embedded in the foreclosure process. Consequently, some advocates fear that expedited processes could – intentionally or otherwise – work to the detriment of homeowners and undermine their opportunity for appropriate loss mitigation.

Similarly, while lenders and mortgage servicers theoretically support quicker resolution of vacant property foreclosures to avoid the property taxes, maintenance costs and code violations associated with upkeep of those properties, servicer decisions of whether and when to bring a property to

foreclosure are also fraught with conflicting incentives in the areas of compensatory fees, default servicer compensation, and vacant property management. In most jurisdictions, once a foreclosure occurs, the mortgage servicer takes on all the responsibilities and costs associated with maintaining and securing an abandoned property, which can be expensive. As a result, even when expedited foreclosure processes are available, servicers appear to use them quite rarely.

Municipalities have an interest in accelerating the time it takes to get a vacant home into productive reuse as well, both to combat neighborhood decay and blight and all of the negative side-effects they bring, as well as to increase property tax revenue. Yet municipalities have a finite amount of resources to devote to this problem and often lack information on the property's ownership. Code enforcement operations vary widely from one town to the next, and efforts to remediate safety and health hazards by local inspectors and prosecutors can be thwarted when making contact with a responsible party is difficult.

Given the various crosscutting incentives affecting all parties, the contours of the state expedited foreclosure laws we examined appear to be shaped largely by the nature of the underlying foreclosure law, the degree to which the industry and the advocacy communities have (or haven't) worked together, by how far out from the crisis the law was passed, and, to some extent, by the political composition of each state's legislative and executive branches. The Mortgage Bankers Association (MBA) has been involved in the most recent initiatives, in conjunction with several of the state MBAs, and has published a white paper advancing four "Principles to Expedite the Foreclosure Process for Vacant and Abandoned Properties."¹⁶ While servicers and their representatives initiated the accelerated foreclosure procedures passed in Ohio and amended in Wisconsin, New York's expedited foreclosure reforms resulted from diverse efforts spearheaded by lawmakers, New York's Attorney General, and consumer advocates, as well as the servicing industry.

What Does Expedited Foreclosure Legislation Look Like?

While each state's law is distinct, there are common components to nearly all expedited foreclosure laws in some form.¹⁷ Because 11 of the 14 states that have passed expedited foreclosure laws for vacant residential property used the judicial foreclosure process, our analysis focuses on these states.¹⁹

First, expedited foreclosure laws typically specify which parties may seek a court's determination that a property is abandoned. Most states permit only a plaintiff – the servicer – to seek the expedited process. Next, expedited foreclosure laws set forth the court procedure for seeking such a determination, usually by the filing of a motion or an order to show cause, followed by a hearing.

All but one of these laws enumerate a list of conditions that constitute evidence of abandonment for purposes of triggering the expedited process, typically physical features, such as broken windows, overgrown vegetation and uncollected mail. Often, a court must make specific findings as to what conditions support its determination that a property is abandoned. Some states specify a heightened standard of proof that a plaintiff must meet in order to obtain a determination of abandonment from a court.

Evidence of Abandonment

As an example, New Jersey's list of evidence for proving abandonment [N.J.S.A. 2A:50-73(1)(a)] is the lengthiest, requiring a plaintiff to prove that at least two of the following 15 conditions on the property exist:

1. overgrown or neglected vegetation;
2. accumulation of newspapers, circulars, flyers or mail;
3. disconnected gas, electric, or water utility services;
4. accumulation of hazardous, noxious, or unhealthy substances;
5. accumulation of junk, litter, trash, or debris;
6. absence of window treatments;
7. absence of furnishings and personal items;
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 broken window panes;
10. doors 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 code violation during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy;
13. mortgagee or other authorized party has secured/winterized the property;
14. a written statement by mortgagor expressing clear intent to abandon the property; or
15. any other reasonable indicia of abandonment.

PART 2

Are Expedited Foreclosure Laws Accomplishing their Goal?

Despite the publicity surrounding the passage of expedited foreclosure laws, our research did not locate any reports analyzing whether these laws have accomplished their goal of shortening timelines for vacant and abandoned properties. For this reason, we set out to do our own investigation, fully expecting to find several years of data in states where fast track laws passed between 2011 and 2014.

What we found, unfortunately, is that data on motion filings, timelines associated with these motions, and outcomes of vacant property mortgage foreclosures generally, are either virtually impossible for a member of the public to access or simply do not exist because court systems do not track this data. The only exception in the states we surveyed was New Jersey, which was able to provide us limited data on motion filings after making specific requests through the Superior Court Clerk's Office of the Ombudsman. In short, we were largely unable to crunch empirical data to analyze the effectiveness of these statutes.

Without much quantitative data, we instead set out to gather qualitative data by interviewing participants in the system. Because the interviews were time consuming, we focused on two judicial foreclosure states hit hard by the foreclosure crisis, New Jersey and Illinois. NCST has numerous neighborhood stabilization partners on the ground in these states and has conducted many vacant REO property transactions there in the past 10 years. New Jersey and Illinois also have diverse populations and housing markets ranging from high-density urban to suburban to rural, as well as distressed markets still battling to recover from disinvestment that long predated, but was exacerbated by, the 2008 economic crisis. In these states, we interviewed attorneys, judges, court administrators and lawmakers about whether and how these laws have been used and if they were achieving their intended purpose of shortening timelines for vacant and abandoned properties.



New Jersey

Foreclosure plaintiffs in New Jersey file their complaints through a central, statewide Office of Foreclosure as opposed to the Superior Court vicinage in which the real property at issue is located.²⁰ Typically, the Office of Foreclosure makes recommendations for the disposition of cases, but only in uncontested matters. If a defendant files an answer or other responsive pleading, the Office of Foreclosure sends the file to the General Equity Judge in the county of venue. Given that nearly 95% of NJ foreclosure filings are categorized as uncontested,²¹ the Office of Foreclosure makes recommendations (which are then reviewed by Superior Court judges) in the vast majority of cases.

What Does New Jersey's Expedited Foreclosure Law Do?

In contrast to the typical foreclosure filing process noted above, New Jersey's fast-track foreclosure law, N.J.S.A. 2A:50-73, et seq., permits a plaintiff mortgagee either to file a complaint to proceed summarily for foreclosure of a vacant property at the outset or to file a motion to proceed summarily in a foreclosure action already filed. Upon an affirmative determination of vacancy, a court may enter final judgment of foreclosure immediately. If a defendant files an answer, appears in court, or otherwise submits a written objection to the vacancy designation, a court cannot enter final judgment, and the matter must proceed through the normal foreclosure process.

The plaintiff bears the burden of proof for the vacancy determination and must prove vacancy by bringing clear and convincing evidence of at least two out of 15 conditions on the statute's list of abandonment criteria. After a determination of vacancy and entry of final judgment, the statute mandates that the Sheriff "shall sell the property within 60 days of receipt of the writ of execution." If that deadline cannot be met by the Sheriff, the plaintiff may seek a court order appointing a Special Master or "judicial agent" to hold the sale in place of the Sheriff. The fast track law does not alter New Jersey's very brief redemption period, which gives a borrower 10 days from the date of the foreclosure sale to redeem.²²



How Has the New Jersey “Fast-Track” Law Worked in Practice?

Review of New Jersey’s annually reported statewide statistics for the 2015-2016 year shows that there were approximately 1,700 active, contested foreclosure cases, approximately 4,000 new contested foreclosure cases had been filed that year, and nearly 5,200 foreclosure cases had been resolved that court year.²³ These publicly reported numbers are in stark contrast to the foreclosure data we received from the Superior Court of New Jersey’s Office of the Clerk, in response to our inquiry:

Total Number of New Jersey Foreclosure Complaints Filed, Per Calendar Year:²⁴

2013	49,088
2014	54,389
2015	41,863
2016	33,575
2017	28,329

Total Number of Filings to Proceed in an Expedited Manner, Pursuant to R. 4:64-1A:²⁵

Calendar Year	Order to Show Cause <i>(filed at the outset of the foreclosure action)</i>	Motion to Proceed Summarily <i>(for cases already filed)</i>	Total Expedited Filings
2013 ²⁶	54	105	159
2014	680	134	816
2015	496	145	641
2016	248	238	486
2017	139	238	377

We also requested New Jersey data from ATTOM pertaining to all vacant properties and vacant properties in foreclosure. ATTOM’s vacant foreclosure analysis reports only go back as far as 2015, but they provided their findings in New Jersey as follows:

Calendar Year	Vacant Residential Properties	In-Foreclosure Vacant Residential Properties
2015	42,462	3,997
2016	37,253	3,698
2017	35,816	2,261

Comparing the total number of expedited foreclosure filings to the overall foreclosure filings annually, expedited filings comprised between 1.33 and 1.53 percent of all foreclosures.²⁷ Also, a few trends that may or may not be correlated emerge. As overall foreclosure filings trended downward, so, too, did expedited filings for vacant properties, but the proportion remained small and relatively consistent.

Examining the number of expedited filings against the ATTOM data for in-foreclosure vacant properties, query why plaintiffs sought expedited foreclosures in only 16% of all vacant foreclosure cases in 2015. Those numbers decline to 13.2% in 2016. While the percentage of expedited filings ticks up again in 2017 to approximately 16.5%, it is noteworthy that the amount of orders to show cause filed at the outset shrinks to 139, compared to the number of motions filed in active cases, which holds steady at 238.

First-Hand Accounts from New Jersey Foreclosure Stakeholders

We also conducted interviews of attorneys (representing both investors and consumers), court administrators, judges and lobbyists. All reported the impression that New Jersey's expedited foreclosure law is used quite rarely. One Superior Court judge who has heard foreclosure motions on a regular basis in a busy, urban county hit hard by the foreclosure crisis had never presided over such a motion and was unaware that New Jersey even had an expedited process for vacant properties.

Plaintiffs' attorneys told us that the low number of expedited motion filings was due to the work involved to file a motion and prove abandonment by clear and convincing evidence. They said that it was simply not worth the time and effort given that it would save only a month or two over the usual process. Additionally, these attorneys feared judges would disfavor such motions because of a perceived general antipathy toward lenders/servicers held by judges who have sat on the bench through the foreclosure crisis and robo-signing scandal.²⁸ At least one attorney for homeowners – who agreed few such motions were filed – claimed that the reason plaintiffs' attorneys don't use the expedited process is that servicers are in no hurry to either take ownership of – and responsibility for – these properties, or to realize the losses that would likely result from the foreclosure sale.

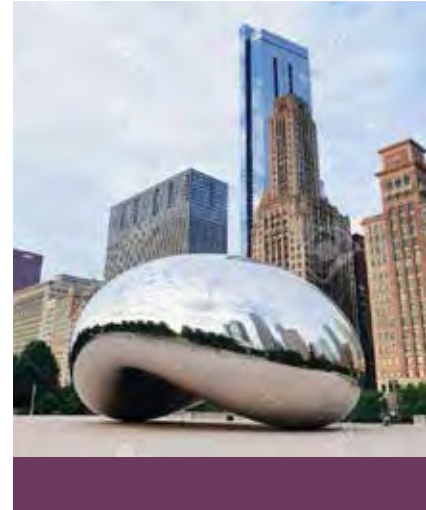
Another factor in play in New Jersey is a significant backlog in sheriff's sales of foreclosed properties. Accounts from practitioners varied, but it appears that the time from judgment to sale can last from nine to 18 months, depending on in which of New Jersey's 21 counties the Sheriff's sale is to be held, which further reduces the usefulness of an expedited foreclosure process.

Illinois

In a typical Illinois foreclosure case, after a borrower becomes delinquent and is served with statutorily required notices from the lender, the lender's attorney files a foreclosure complaint, usually 120 days after the first missed payment. Process is then served on the defendants in the case within 30 days of the filing of the complaint. The borrower then has 30 days to file their answer to the complaint.

Thereafter, a plaintiff will typically file a motion for summary judgment, which, if opposed, will require a briefing schedule and a hearing, adding an additional two months or so on average. If a foreclosure judgment is entered on the motion for summary judgment – and since foreclosures are typically easy to prove, it usually is – then a borrower has three months from the date of judgment to redeem the full amount owed to the lender. At the expiration of the three-month redemption period, a sale is held, and then the plaintiff must seek judicial approval of the sale, which takes another month or more.

While this process roughly tracks to about 12-18 months from start to finish, Fannie Mae and Freddie Mac deem 630 days to be the allowable timeframe from last paid installment on the mortgage to the conclusion of a foreclosure sale.²⁹



What Does Illinois' Expedited Foreclosure Law Do?

The expedited foreclosure law in Illinois, 735 ILCS 5/15-1505.8, became effective on June 1, 2013. Entitled “Expedited judgment and sale procedure for abandoned residential property,” this legislation permits a plaintiff mortgagee to file a motion requesting an expedited judgment of foreclosure contemporaneously with or any time after the filing of the complaint. The motion must be accompanied by an affidavit setting forth facts demonstrating that the residential property is abandoned.³⁰ The hearing “shall be given priority by the court” and must be heard within 21 days of filing.

If, at the hearing, the court finds that the property is abandoned, it would then grant the motion and immediately proceed to a trial of foreclosure. However, the court may not grant the motion if “the mortgagor, an unknown owner, or a lawful occupant” appears “in any manner before or at the hearing and objects to the finding of abandonment.”

In a typical residential foreclosure in Illinois, a mortgagor’s right of redemption runs from the later of seven months from the date of the service of the foreclosure complaint on the mortgagor(s) or three months from the entry of judgment of foreclosure.³¹ (This provision is different from most jurisdictions with rights of redemption, which typically set forth a period from the date of the foreclosure sale.) Enacted in 1987, this redemption right includes a mechanism for a plaintiff to shorten the redemption period to 30 days from the date of judgment in situations where a court “finds that the mortgaged real estate has been abandoned”³² – a period unchanged by, and referenced in, the 2013 expedited procedures law, which also instructs that the property “shall be sold at the earliest practicable time.”³³ In effect, Illinois’ “fast track” law does nothing to accelerate the foreclosure process that did not already exist.

Is Illinois Seeing Results from the Expedited Foreclosure Process?

Our attempts to gather data about the Illinois fast track procedure were unsuccessful. Apparently, any motions to expedite under 735 ILCS 5/1505.8 are entered into the court database under a catch-all “miscellaneous” category. Thus, there is no way – short of literally reviewing every miscellaneous motion in Cook County – to track data on how many motions to expedite have been filed, let alone whether cases in which motions were filed achieved swifter dispositions than those filed under the normal process.

Consequently, we once again resorted to numerous interviews of members of the legal community in Illinois. And again, all interviewed reported that the expedited procedure is rarely used and has done little to advance the law’s stated objective of moving vacant and abandoned properties through the process more quickly.

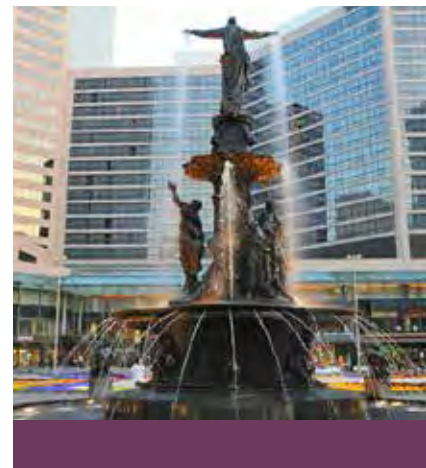
Plaintiffs' attorneys offered several reasons why they rarely use the statute. One is that the statute establishes a 60-90 day timeline for service of the added motion to accelerate, wherein attorneys must exercise due diligence to achieve actual service on the borrower before resorting to constructive service via publication.³⁴ Plaintiffs also must submit an affidavit attesting to the property's abandonment in order to schedule the hearing by a party with personal knowledge of the condition of the property. Consequently, there is not much time saved.

Several attorneys brought up the provision to shorten the redemption period to 30 days for an abandoned property, which has existed since the enactment of the 1987 general foreclosure statute. Thus, they observed, the new procedure really does not provide any new advantage. However, attorneys seemed to appreciate the clearly enumerated criteria for an abandonment determination, which takes the guesswork out of how to prove a property is vacant.

PART 3

Fast Track Legislation in Ohio and New York in 2016

Given that expedited foreclosure processes don't appear to be used much in Illinois and New Jersey and that timelines are shortening in most places as the foreclosure crisis winds down, what makes lawmakers, lobbyists and policy advocates in other judicial states think that expedited foreclosure continues to be a priority? To answer this question, we did a deep dive into two of the major states that have recently passed new statutes. Once we dug into the statutes and the process for passing them, it appears that the expedited processes have largely served as a hook on which to hang a number of other reforms of the foreclosure process that would not necessarily pass as stand-alone legislation.



Ohio

At the end of the 2015-2016 legislative session, Ohio passed H.B. 390,³⁵ touted as the solution to Ohio's massive blight problem.³⁶ But unlike the earlier expedited foreclosure laws in other states, H.B. 390 included sweeping changes to Ohio's entire judicial foreclosure process, only a small number of which are specific to the vacant property foreclosure process. Below, we describe several elements of the law.

The Expedited Foreclosure Process

A plaintiff mortgagee who has filed a foreclosure action may file a motion to proceed in an expedited manner if a property is vacant or abandoned. To determine abandonment, a court must first find by a preponderance of the evidence that the subject mortgage is in default and that the plaintiff is entitled to enforce the instrument. If that bar is met, the court must then find by clear and convincing evidence the existence of at least three out of 11 indicia of abandonment enumerated in the statute. Ohio requires that a government official verify that the home is vacant, either as one of the three factors proven at the initial hearing or within seven days of a preliminary finding by a court not based on a local official's verification.³⁷

If a judge determines that a property is abandoned after an oral hearing, a judgment of foreclosure is entered contemporaneously, and the sale must be held within 75 days. Notably, the filing of an answer or objection by a "mortgagor or other defendant" setting forth a defense to the entry of a foreclosure judgment, or the filing of a written statement by a "mortgagor or other defendant" indicating that the property is not abandoned will preclude a finding of abandonment.³⁸ If the property is not sold 12 months from the entry of judgment, a municipality may ask the county prosecutor to file a motion ordering a no-minimum bid sale.

Other Provisions Unrelated to Vacancy and Abandonment

The Ohio law also contains the following provisions:

- > **Enables a plaintiff to enforce an instrument that is not in the plaintiff's possession.**³⁹ This provision is not limited to real property, whether abandoned or occupied. Rather, it is applicable to any instrument or note, whether it is a mortgage note collateralized by real property, a promissory note, or any other enforceable instrument. During the foreclosure crisis, many plaintiffs could not produce proof of ownership of the mortgage, which for many homeowners served as an effective defense against foreclosure. Efforts to create such documentation after the fact often led to adverse legal rulings for creditors.⁴⁰
- > **Criminalizes property damage done by an owner to their home after the filing and service of a foreclosure complaint.** This provision doubles down on the civil remedies against vandalism already available under Ohio law through the contract provisions of the mortgage itself.
- > **Requires all sheriff's foreclosure sales to be conducted online and also authorizes a plaintiff to sell the foreclosed property outside of the sheriff's sale system through a private selling officer.** Additionally, while the original sale price listed for auction must be the appraised price and no property may sell for less than two-thirds the appraised value at a first sale, if a property does not sell on the first sale, there is no minimum bid required for the second or any subsequent sale, meaning investors could purchase abandoned properties for a dollar on the internet.

How the Ohio Law Was Drafted

As with New Jersey and Illinois, our research in Ohio consisted primarily of interviews with members of the legal community – including lawyers and lobbyists directly involved in the drafting of the law – as well as with lending industry and consumer finance advocates. These interviews began after the law's passage but before its implementation, so there was no expectation that performance data would be available.

The legislative drafting process had been in the works for over two years, prompted in part by the Federal Reserve Bank Cleveland's 2013 report urging Ohio's consideration of a fast track for vacant and abandoned properties.⁴¹ To draft it, State Senator Bill Coley (R-Butler Co.) convened a working group consisting of members of the Ohio Bar Association, the Ohio Bankers and Mortgage Bankers Associations, and a few selected advocacy groups.

While an earlier bill had focused on an expedited foreclosure process only, the drafters of this bill aimed to modernize the entire foreclosure process, especially the implementation of online sales and private selling officers. According to one source, the plaintiffs' bar was "humoring legislators and advocates" by including the expedited foreclosure procedure, knowing all along that they would not be compelled to use it if they did not like it. In short, there is no harm to plaintiffs in including a fast track procedure in a "foreclosure reform" bill, so long as plaintiffs get the exclusive option whether to use these procedures at all. A lobbyist hired by one of Ohio's largest foreclosure firms, who sat on the legislative working group and was a chief architect of the bill, confirmed that "fast track is not the story – it's not what's going to be impactful." The "real story" was the online sheriff's auction process that would be a "first of its kind in the nation."

Many Ohio housing and consumer advocates expressed frustration at being left out of the legislative process. While some were aware that an expedited foreclosure bill was in the works in mid-to-late 2015, they were caught by surprise when the much more sweeping draft legislation was delivered in April 2016 with little time to offer input. Representatives from 60 Ohio nonprofits, land banks, advocacy organizations and municipal agencies wrote to its House sponsor, Rep. Jonathan Dever (R-Cincinnati) shortly before its passage to express numerous concerns about the bill.⁴²

A significant concern for advocates was that the bill would not help prevent neighborhood blight, but would instead support lender efforts to walk away from distressed abandoned homes and would attract irresponsible bargain hunters who have no qualms about violating local ordinances. According to one advocate, "there is very little in this bill about insuring a responsible outcome; virtually no provisions for vetting and regulating the 'private selling officers' hired by the banks, no provisions for linking local code enforcement data with online bidding. The removal of the 2/3 minimum bid requirement is a virtual invitation to every irresponsible bottom-feeding investor."

Ohio's foreclosure law went into effect on September 28, 2016. As of April 20, 2018, not a single application to expedite a foreclosure on the basis of the property being vacant had been filed in Cuyahoga or Hamilton Counties.⁴³ According to members of both counties' court staff, the lack of filings is due to the already swift turnaround times, which they reported as approximately 60 to 120 days for vacant properties from complaint to judgment. They believe that plaintiffs see the expedited foreclosure process as "not worth the effort" – or the cost – of the extra motion practice. As is the case in Illinois, the Ohio court system does not track individual motion filings, so there is no way at present to obtain hard data.

Undermining Wisconsin's Fast Track Legislation

Wisconsin passed a bipartisan law in 2011 that, among other things, provided an expedited foreclosure sale after a shortened five-week redemption period in the case of abandoned property.⁴⁴ Additionally, in 2015, the Wisconsin Supreme Court held in *Bank of New York Mellon v. Carson* that the statute contained a “reasonable period” test that could be enforced by a court when a plaintiff who had obtained an abandonment determination did not diligently pursue a foreclosure sale.⁴⁵ A final sale cleared the title to the property and allowed it to be returned to productive use.

Yet at the behest of the plaintiffs’ bar, the Wisconsin Legislature amended the statute in 2016 to give a plaintiff 12 months from the date of foreclosure judgment to schedule a sheriff’s sale or to walk away from the property. This change allows the lender an opportunity to wait for values to rise to maximize its return, while the community continues to experience the high costs and negative impact of an abandoned, blighted property.

The Milwaukee City Attorney’s Office opposed the amendments, citing the damage that a 12-month delay could cause to properties and communities. The Office urged either the adoption of a 40-day time period between judgment and sale, as recommended by the Mortgage Bankers Association,⁴⁶ or that the 846.102 statute remain unchanged.

According to Milwaukee Assistant City Attorney Gregg Hagopian, “Lenders who start foreclosure cases should diligently pursue them to completion, including bringing them to sale. A homeowner in default on a mortgage loan, who gets sued, and who has a court-issued judgment of foreclosure against her, has reasonable belief that she lost, or will lose, title – especially when she doesn’t have money to redeem. So it’s not surprising that she moves and abandons. A stalled foreclosure case against an abandoned parcel creates so much damage to that house, to that block, to that neighborhood, and to that city.”

New York

New York passed the “Abandoned Property Neighborhood Relief Act of 2016,”⁴⁷ which went into effect on December 20, 2016. New York lenders had initially proposed a bill⁴⁸ to expedite its lengthy foreclosure process, long regarded as one of the longest in the nation.⁴⁹ At the same time, New York’s Attorney General Eric Schneiderman had been proposing legislation holding lenders and servicers accountable for securing and maintaining vacant properties.⁵⁰ The final bill signed by the Governor contained elements of both proposals, as well as some measures supported by New York’s robust housing and consumer advocacy community.⁵¹ As in Ohio, New York’s new law made significant changes to the foreclosure process beyond merely modifying the court procedures for vacant and abandoned properties.



The Expedited Foreclosure Process

New York’s legislation enables a plaintiff in a foreclosure action to seek a court’s determination that the property is vacant and abandoned and thereby obtain an expedited judgment of foreclosure. The law includes a list of evidence that could support a determination of vacancy and abandonment, specifying eight separate features.⁵² While this list is similar to other states’ indicia of abandonment, it does not require the court to make specific findings as to a minimum number of indicia to be proven.

If any defendant enters an appearance, files an answer or written objection, or otherwise indicates an intention to contest, no judgment of foreclosure may be entered based simply on evidence of vacancy. If a court denies the application to enter judgment because it has not found that the property is vacant and abandoned, the denial is without prejudice to the underlying foreclosure proceeding.

Notably, the sections of the law pertaining to the court procedure for determination of vacancy and abandonment and entry of foreclosure judgment make no reference to timelines whatsoever. The closest the law comes to providing for an expedited timetable is that the court must make its written findings “as soon as practicable” and the chief administrative judge of the courts is instructed to adopt “such rules as he or she deems necessary to expeditiously implement the provisions of this section.”

Simultaneously and part of the same omnibus bill, sections of New York State law regarding post-judgment sales were amended to specify timelines for the sale of all foreclosed properties, not just those determined by a court to be vacant and abandoned. Whereas prior New York foreclosure law specified no timeline, all properties must now be sold no later than 90 days following entry of a foreclosure judgment. Further, if the purchaser at a foreclosure sale is the plaintiff, the purchaser must then “place the property back on the market for sale or other occupancy” within 180 days, or, if repairs are underway, within 90 days of completion, whichever occurs first. A court may grant an extension for good cause.

Other Provisions

The Abandoned Properties Neighborhood Protection Act includes the following additional provisions:

- > **Mandates inspection, maintenance and security requirements on first lien mortgage holders of one-to-four family vacant and abandoned residential properties.**⁵³ Within 90 days of a borrower’s delinquency, the servicer is required to perform exterior inspections every 25 to 35 days to determine occupancy. This inspection obligation remains for the life of the delinquency, regardless of foreclosure status.

- > **Requires the servicer to secure and maintain all delinquent properties that it reasonably believes to be vacant and abandoned.** The servicer must post a notice including contact information within seven days of determining abandonment, and, if there is no response after seven additional days, it must take specified affirmative steps to maintain and protect the property until: (1) the original borrower asserts his or her right to occupancy or files bankruptcy; (2) the lien is released; or (3) the mortgage or property is sold and transferred to a new owner. Violations of any of these obligations subject the servicer to a \$500-per-day civil penalty.

- > **Establishes a statewide vacant and abandoned property electronic registry to be maintained by the Department of Financial Services (DFS).** Servicers are affirmatively obligated to report any vacant properties within 21 days of when they learn or should have learned of the property’s abandonment, including the name and contact information of the lender, assignee or servicer responsible for maintaining the property, the date of the filing of a foreclosure action if applicable, and the name and last known contact information of the mortgagor(s).

- > **Requires DFS to establish a toll-free hotline for the purpose of reporting vacant properties and any hazardous conditions caused by them.**
- > **Amends New York’s mandatory foreclosure settlement conference process** to include, inter alia, civil penalties up to \$25,000 as well as actual damages and attorney’s fees for any plaintiff found by the court to have not participated in the settlement conference in good faith.

How the New York Law Came About

The changes to New York’s foreclosure laws contained in the sprawling 2016 omnibus bill⁵⁴ actually began with a lender-backed bill that focused on expediting the judicial process for foreclosing on vacant residential property, similar to New Jersey’s law.⁵⁵ Subsequently, few of the lender-backed bill’s elements were incorporated, and the final version of the legislation was drafted to include input from housing and consumer advocacy groups as well as the Offices of the Governor and the State Attorney General.

As a result of the compromise nature of the bill, not only lenders and servicers but also consumer advocates express some dissatisfaction with the law’s final form. Consumer advocates would like to specify timelines for the vacancy determination process and would improve the criteria for defining and proving vacancy and the notice provisions, and some would prefer a mandatory process with strict timelines requiring servicers and lenders to foreclose as quickly as possible upon learning of a vacant and abandoned property, rather than the elective process now available to plaintiffs. Lenders object to the requirement to inspect, report, secure and maintain vacant properties for what ultimately could be a lengthy period of time given NY timelines, and they find the prospect of facing \$500/day penalty for failing to register or maintain properties as “very frightening.”

While the law is still new, people with whom we spoke do not think the expedited foreclosure procedure is being used much since it went into effect in December 2016. One attorney admitted to avoiding the process due to a lack of clarity around what happens if a court declines to declare the property abandoned – does a plaintiff then need to start all over again by filing a new foreclosure complaint or does the docket then proceed under a normal foreclosure process? He is also skeptical that the overloaded court system could actually produce quick results given his experience, including – among other things – waiting more than 18 months for a ruling on an unopposed motion.

The inconsistency within the New York court system further complicates matters, since foreclosure-related rules and procedures can vary not only county-to-county but even judge-by-judge within a county.

PART 4

Next Steps

While foreclosure inventory has slowly waned and court backlogs have become less unwieldy in the almost decade since the crisis, our research found no evidence to support the idea that “fast track” processes have helped to move the dial, either by expediting foreclosures or by resolving vacancy more quickly.

Additionally, while we did not find evidence that expedited procedures are being used inappropriately to oust families from occupied properties, this finding might be attributable to the lack of homeowner advocates involved in vacancy-related actions or the small number of actions that have been brought under these laws.

However, our analysis of more recent legislative efforts suggest that the “fast track” idea is being used as a vehicle for broader foreclosure reform, with provisions unrelated to foreclosure timetables favoring whichever stakeholders played the larger role in passing the legislation. The first-hand accounts from Ohio support this theory, and advocates on the ground there are closely watching how the new online foreclosure sale procedures and criminal prosecution procedures are implemented. Industry, on the other hand, has reacted negatively to the new inspection and maintenance obligations for vacant properties in New York, and all stakeholders in New York are cautious about how these mandates will be enforced.

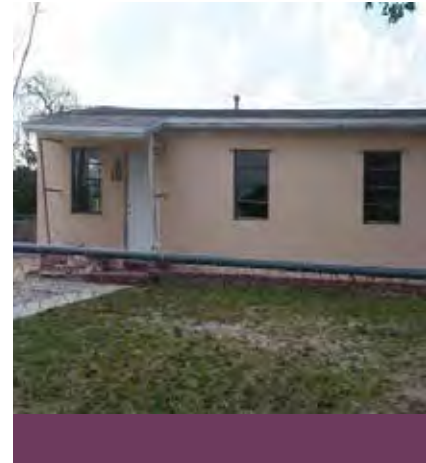
Given the lack of empirical data, we cannot at this time reach a strong conclusion regarding either the advantages or disadvantages of expedited foreclosure processes. That said, our work did provide a great deal of insight into the overall question. Based on our research, we make the following recommendations to policymakers:

- **Ensure that both proposed and existing statutes require the collection of detailed data about the use of expedited foreclosure provisions.** Any expedited foreclosure law must provide for robust data collection, analysis and reporting to track use, enable comparisons of timelines with non-vacant properties, and identify where obstacles exist in the judicial foreclosure and sheriff’s sale processes. Court systems in certain states already collect and report on a vast array of data collected and maintained by the courts, often in the form of an annual summary.⁵⁶ These reports go into granular detail on certain types of cases. For example, many states report granular-level data tracking family cases, separately tracking divorce, spousal and child support, and domestic violence cases, and reporting their volume, timelines, disposition and other precise details as well as comparisons over prior years. In situations where the initial law did not provide for data collection, the legislature should pass appropriate amendments.

- **Consider how to ensure that expedited foreclosure provisions are used to protect neighborhoods from blight.** Policymakers should consider whether to give other interested parties – particularly municipalities, neighboring property owners adversely affected by blighted homes, and code enforcement officials – the power to compel an expedited foreclosure if the servicer fails to bring one. This can be done either as part of new legislative efforts towards foreclosure fast track in states yet to enact them, or by amending laws in the states that have.
- **More effectively engage consumer, housing, and neighborhood advocacy groups in the legislative process.** When presented with an expedited foreclosure bill, advocates and legislators should much more carefully consider whether the legislation will be effective as well as whether the bill contains provisions that relate to other aspects of the foreclosure process. Many of these bills have passed unanimously or at least by a wide, bipartisan margin, as legislators do not want to be seen impeding efforts to fight blight, but especially if the bill contains provisions that could potentially harm consumers or neighborhoods, policymakers should approach much more skeptically.
- **Break down silos among advocates working in foreclosure prevention and neighborhood stabilization.** Legal aid lawyers, housing counselors, and other housing, consumer finance, and foreclosure prevention advocates should work more closely with neighborhood stabilization advocates to stay in the loop regarding foreclosure for vacant properties. These laws have significant implications for homeowners, tenants, and neighborhood viability.
- **Enforce servicers' obligation to protect and preserve the property.** All mortgage/deeds of trust give the mortgagee the right to protect the collateral, and all secondary market buyers or insurers will require that protection.⁵⁷ Mortgage servicers therefore must engage in a range of activities to protect that value, including securing a property if it becomes vacant. Most servicers rely heavily on third parties to manage in the inspections and other activities involved in protecting the collateral, and management of these third parties is extremely challenging. Even discerning when a property has become vacant is extremely complicated, and protecting a vacant property from crime, fire, and trespassers is even harder. Yet while this task is admittedly among the most difficult aspect of a servicer's job, it is also one of the most important and central. Both mortgagees and agencies providing regulatory oversight should ensure that servicers do this part of their job effectively.

CONCLUSION

Community blight is a non-partisan problem that needs the investment of resources across all political, industry and advocacy persuasions. However, it does not appear that adding new expedited foreclosure processes will do much to prevent blight. Policymakers working on this issue should ask hard questions about whether these expedited foreclosure laws are needed and if reflexive support for them is masking other legislative provisions that deserve a more robust debate. Finally, it is crucial to collect more data – both about the nature of local vacancy problems and about the relationship between foreclosure laws and vacancy – to assist in creating more useful strategies to reduce vacancy and blight.



ENDNOTES

1. These states are Illinois, Indiana, Kentucky, Maine, Maryland, Michigan, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Wisconsin.
2. NCST wishes to acknowledge the work of Geoffry Walsh at the National Consumer Law Center (NCLC), whose 2014 report, “Fast Track Foreclosure Laws: Are They Headed in the Right Direction?” offers a thorough inventory and analysis of earlier post-crisis fast track foreclosure laws. Walsh’s report examines then-recently enacted statutes in five judicial foreclosure states (Oklahoma, Kentucky, Indiana, New Jersey and Illinois) and two non-judicial foreclosure states (Michigan and Nevada), as well as the Uniform Law Commission’s draft “Home Foreclosures Procedure Act.” See Geoffry Walsh, National Consumer Law Center, “Fast Track Foreclosure Laws: Are They Headed in the Right Direction?” (Jan. 2014) (Available at: <https://www.nclc.org/images/pdf/pr-reports/report-fast-track-foreclosure-laws.pdf>) (Hereinafter referenced as “Walsh Report”).
3. The Federal Housing Finance Agency (FHFA) defines the term “single-family housing” as a residence consisting of 1-4 dwelling units. See Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (the Safety and Soundness Act), 12 U.S.C. § 4502(21), available at <https://www.fhfa.gov/Government/Documents/Federal-Housing-Enterprises-Financial-Safety-and-Soundness-Act.pdf>.
4. 76% of all vacant residential properties (nearly 1 million out of 1.4 million) are non-mortgaged, investor-owned properties, according to ATTOM Data Solutions’ Q3 2017 report released on October 26, 2017, available at <https://www.attomdata.com/news/risk/2017-u-s-residential-vacant-property-zombie-foreclosure-report/>.
5. The portal to register for access to these data is available at <https://www.huduser.gov/portal/usps/home.html>
6. ATTOM Data Solutions (“ATTOM”) operates and publishes its real estate data reports on its own website, www.attomdata.com, as well as on the www.realtytrac.com website.
7. ATTOM’s Q3 2017 report, released on October 26, 2017, is available at <https://www.attomdata.com/news/risk/2017-u-s-residential-vacant-property-zombie-foreclosure-report/>
8. Id.
9. ATTOM’s Q3 2016 report is available at <https://wpnewsroom.realtytrac.com/news/q3-2016-residential-property-vacancy-zombie-foreclosure-report/>
10. National Mortgage Servicing Association, “Protecting Consumers and Communities,” (Dallas, June 2017), available at <http://nationalmortgageservicingassociation.com/wp-content/uploads/2018/03/NMSA-Proposal-for-Standardization-of-VA-Property-Procedure.pdf>
11. Fannie Mae’s state-by-state chart of what it deems “allowable delays” between the last paid installment on the mortgage and the foreclosure sale date is available at https://www.fanniemae.com/content/guide_exhibit/foreclosure-timeframes-compensatory-fees-allowable-delays.pdf. Freddie Mac’s state-by-state timeline chart is available at <http://www.freddie-mac.com/singlefamily/service/pdf/exh83.pdf>.
12. HUD defines redemption as: “a period after your home has already been sold at a foreclosure sale when you can still reclaim your home. You will need to pay the outstanding mortgage balance and all costs incurred during the foreclosure process.” Available at: http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding_foreclosure/redemption However, some states (such as Illinois) begin to run their redemption period from the date of judgment, not the date of the sheriff’s sale. And bear in mind that not all jurisdictions offer a right to redeem.
13. ATTOM publishes a chart of state foreclosure law features, which includes redemption periods where applicable, available at <http://www.realtytrac.com/real-estate-guides/foreclosure-laws/>.
14. Like all general propositions, this is not true for every state – some judicial states have relatively short timelines, while some non-judicial states have longer timelines for various reasons.

ENDNOTES

15. See Alan White, “Fast Foreclosures, Slow Foreclosures” (April 7, 2015), available at <http://www.creditslips.org/creditslips/2015/04/fast-foreclosures-slow-foreclosures.html>.

16. Mortgage Bankers Association and New York Mortgage Bankers Association, “Principles to Expedite the Foreclosure Process for Vacant and Abandoned Properties,” (undated), available at <https://www.mba.org/Documents/Policy/VacantandAbandonedPrinciples--MBAandNYMBA.pdf>.

17. For detailed, state-by-state analysis of most of the laws enacted before 2014, see Walsh Report, pp. 6-9.

18. Illinois, Indiana, Kentucky, Maine, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina and Wisconsin and are judicial foreclosure states, and Maryland, Michigan and Nevada are non-judicial states.

19. Further analysis of the components of expedited foreclosure laws in judicial states can be found in Appendix I, *infra*.

20. This central foreclosure filing system, which is not used for any other civil proceedings, has been in effect in New Jersey since 1983, with the adoption of Court Rule 1:34-6, available at <https://www.njcourts.gov/attorneys/assets/rules/r1-34.pdf>. Pursuant to that Rule, the Office of Foreclosure “shall be responsible for recommending the entry of orders or judgments in uncontested foreclosure matters [...] subject to the approval of a Superior Court Judge” and enumerates 15 specific categories of motions over which the Office of Foreclosure has authority to make recommendations.

21. December 10, 2010, Press Release from NJ’s Administrative Office of the Courts, quoting NJ Supreme Court Chief Justice Stuart Rabner, available at <https://www.njcourts.gov/pressrel/2010/pr101220a.pdf?cacheID=xo25TFu>

22. N.J. Court Rule 4:65-6

23. Statewide statistics on “contested foreclosures” is found on page 50 of the July 2015-June 2016 New Jersey Court Management report, available at <http://www.njcourts.gov/public/assets/stats/cman1606.pdf>

24. See February 15, 2018, letter from Clerk of the Superior Court Michelle M. Smith, Esq., attached hereto as Appendix II.

25. See February 6, 2018, letter from Clerk of the Superior Court Michelle M. Smith, Esq., attached hereto as Appendix II.

26. New Jersey’s fast track foreclosure law went into effect on April 1, 2013.

27. 1.50% in 2014, 1.53% in 2015, 1.45% in 2016, and 1.33% in 2017.

28. Ronald D. Orol, “U.S. breaks down \$9.3 bln robo-signing settlement,” MarketWatch.com, (February 28, 2013), available at <https://www.marketwatch.com/story/us-breaks-down-93-blm-robo-signing-settlement-2013-02-28>.

29. Fannie Mae’s state-by-state chart of what it deems “allowable delays” between the last paid installment on the mortgage and the foreclosure sale date is available at https://www.fanniemae.com/content/guide_exhibit/foreclosure-timeframes-compensatory-fees-allowable-delays.pdf. Freddie Mac’s state-by-state timeline chart is available at <http://www.freddiemac.com/singlefamily/service/pdf/exh83.pdf>.

30. Illinois’ statutory definition of “abandoned property” is contained in 735 ILCS 5/15-1200.5.

31. 735 ILCS 5/15-1603(b)(1)

32. *Id.* at (b)(4)

33. 735 ILCS 5/15-1505.8(i)

34. To effect service of process, a mortgagee is required to send notice of the motion to expedite by first-class mail to the last known address of the mortgagor and to conspicuously post a detailed form notice at least 14 days before the hearing date. The form notice, set forth in the text of the statute, advises lawful occupants of the property of their rights to appear and contest the abandonment determination. [735 ILCS 5/15-1505.8(a) and (1)(1)]

ENDNOTES

35. The full text of the as-passed legislation is available for download at <https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-HB-390> (The provisions relating to the foreclosure process begin on page 55 of the PDF document.)
36. Kelsey Ramirez, "Ohio Signs Fast Track Foreclosure Law," Housingwire.com, (June 29, 2016), available at <http://www.housingwire.com/articles/37398-ohio-signs-fast-track-foreclosure-law>.
37. (6)(a) If a government official has not verified the real property is vacant and abandoned pursuant to division (C)(3)(h), (i), or (j) of this section, but the court makes a preliminary finding that the residential real property is vacant and abandoned pursuant to division (C) of this section, then within seven days of the preliminary finding, the court shall order the appropriate official of a county, municipal corporation, or township in which the property is located to verify the property is vacant and abandoned.
38. While numerous other states with comparable protections extend them to "lawful occupants" (such as tenants), Ohio does not expressly do so.
39. Sec. 1303.38.
40. Ronald D. Orol, "U.S. breaks down \$9.3 bln robo-signing settlement," MarketWatch.com, (February 28, 2013), available at <https://www.marketwatch.com/story/us-breaks-down-93-bln-robo-signing-settlement-2013-02-28>
41. Kyle Fee and Thomas J. Fitzpatrick IV, "Estimating the Impact of Fast-Tracking Foreclosures in Ohio and Pennsylvania," Economic Commentary, Federal Reserve Bank of Cleveland, (March 6, 2014), available at <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2014-economic-commentaries/ec-201403-estimating-the-impact-of-fast-tracking-foreclosures-in-ohio-and-pennsylvania.aspx>.
42. See Appendix III
43. These are two of Ohio's most populous counties, and contain the Cleveland and Cincinnati metropolitan areas, respectively. This information was obtained from interviews with court staff in these counties' respective Magistrates' offices.
44. The Wisconsin Supreme Court, in *Bank of New York Mellon v. Carson*, 2015 WI15 (paragraphs 35-36), discusses the legislative history of Wisconsin Statute 846.102, including the 2011 legislation.
45. *Bank of New York Mellon v. Carson*, 2015 WI15 (paragraphs 37-46).
46. Mortgage Bankers Association and New York Mortgage Bankers Association, "Principles to Expedite the Foreclosure Process for Vacant and Abandoned Properties," (undated), available at <https://www.mba.org/Documents/Policy/VacantandAbandonedPrinciples--MBAandNYMBA.pdf>
47. Ben Lane, "New York adopts 'sweeping' new laws to tackle foreclosure problems," Housingwire.com, (June 27, 2016), available at <http://www.housingwire.com/articles/37376-new-york-adopts-sweeping-new-laws-to-tackle-states-foreclosure-problems>
48. S.4498 was proposed by State Sen. Rich Funke (R-Central Islip) on March 25, 2015 and is available at <https://www.nysenate.gov/legislation/bills/2015/S4498>
49. As noted in Fannie Mae's most recent "Foreclosure Time Frames and Compensatory Fee Allowable Delays Exhibit," released on September 29, 2016, New York State's foreclosure timeline remained unchanged at 1,110 days, behind only the District of Columbia (1,230), New Jersey (1,140) and New York City (1,140); available at https://www.fanniemae.com/content/guide_exhibit/foreclosure-timeframes-compensatory-fees-allowable-delays.pdf.
50. See fn. 46, supra; in New York's Foreclosure Prevention, Tenant Protection and Property Maintenance Act of 2009, a prevailing plaintiff in a foreclosure action was given a duty to maintain a vacant or abandoned property from the point of acquiring judgment, until the transfer of the property to a new owner.
51. The portions of the omnibus bill pertaining to mortgage foreclosure are contained in Part Q, available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/GPB38budgetcleanup-bill.pdf>

ENDNOTES

52. There are three methods for deeming property “vacant and abandoned.”

- Plaintiff can prove that it conducted three separate inspections of the property, each 25 to 35 days apart and at different times of day, and that at each inspection no occupant was present, no evidence of occupancy was witnessed, and the property was not being maintained to applicable New York maintenance codes.
- A court or “other appropriate state or local governmental entity” can make a finding that the property is vacant and abandoned, with proper written notice to the borrower.
- Borrowers may attest to their intent to abandon, followed by an inspection confirming the home is vacant.

53. The law exempts and/or prospectively applies to state and federally chartered banks, savings banks, savings and loan associations, and credit unions that originate and service their own loans, depending on the share of the total amount of loans in the state they originate and service.

54. See footnote 52, *supra*.

55. See footnote 48, *supra*.

56. As an example, the Administrative Office of Pennsylvania Court’s annual “Caseload Statistics of the Unified Judicial System of Pennsylvania” from 1993 – 2016 are available at <http://www.pacourts.us/news-and-statistics/research-and-statistics/caseload-statistics>.

57. See, for example, the Fannie Mae Servicing Guide, Section D-2-2-10, which mandates that a servicer inspect, maintain, repair and secure a property in disrepair, both for occupied homes where a borrower refuses to make needed repairs, as well as for vacant or abandoned homes. Available at <https://www.fanniemae.com/content/guide/servicing/d2/2/10.html>.

APPENDIX 1

Judicial Fast Track States	Who may seek a vacancy determination	Court Procedure for Seeking Vacancy Determination	Criteria for Vacancy Determination	Burdens of Proof and Evidentiary Standards	Timetables for adjudication, redemption, and sale	Miscellaneous
Oklahoma 46 Okla. Stat. § 302 Eff. Nov. 1, 2011	Plaintiff/mortgagee	<ul style="list-style-type: none"> -A motion shall be filed if plaintiff knows or has reason to know property is vacant. -Sheriff must receive notice and perform inspection. -Relief granted is motion to protect and preserve property, not foreclosure judgment. 	Sheriff's determination, based on "best judgment and belief."	Not specified, beyond: "the best judgment and belief of the sheriff, or designee."	<ul style="list-style-type: none"> -Normal motion calendar, 15 days minimum return date. -Silent as to other timetables. 	<ul style="list-style-type: none"> -if borrower appears, borrower can be ordered to protect premises, subject to contempt. -mortgagee faces no such contempt penalties.
Indiana Amended Indiana Code §§ 32-30-10.6 to 32-30-10.6-5 Eff. March 2012	During a foreclosure action: Creditor, or -Local enforcement authority, by filing a motion to intervene -Even without a mortgage or a pending foreclosure action, an executive of a city or town may petition for an abandonment determination.	<ul style="list-style-type: none"> -Creditor or enforcement authority requests vacancy determination. -Court issues an Order to Show Cause. -Hearing must take place between 15 days and 25 days after Order. -If court determines property is abandoned, it may order immediate foreclosure sale. 	1 or more of the following 10 factors constitutes prima facie evidence of abandonment: (1) Enforcement authority has issued an order determining the property is vacant; (2) Windows/entrances boarded up or closed off; (3) Multiple broken window panes; (4) One or more doors smashed through, broken off, unhinged, or continuously unlocked; (5) Gas, electric, water, or other utility service has been terminated; (6) Rubbish, trash, or debris has accumulated; (7) The property is deteriorating and below or in imminent danger of falling below minimum public safety and sanitation standards; (8) 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) One (1) or more signed, written statements by debtor, personal reps. or assigns, that indicate a clear intent to abandon the property; or (10) Other evidence indicating a clear intent to abandon the property.	Burden shifts to borrower to prove that property is not abandoned at order to show cause hearing.	<ul style="list-style-type: none"> -Hearing must take place between 15 days and 25 days after CSC issues. -IN has no post-sale redemption period, but sale typically cannot occur until 3 months after filing of foreclosure complaint. -If court determines property is abandoned, it may order immediate foreclosure sale. -If plaintiff's motion is filed with complaint, order for sale could issue simultaneously with deadline for borrower's answer to complaint. (GW Report) 	Regardless of whether any indicia of abandonment are found, borrower's failure to provide written objections or appear to contest the determination constitutes prima facie evidence of abandonment.
Wisconsin I (2011) Wis. Stat. 846.10(2) Wis. Stat. 846.102 Eff. April 5, 2012 (Amended in April 2016, See Below.)	Unspecified, however: "In addition to the parties to the action to enforce a mortgage lien, a representative of the city, town, village, or county [...] may provide testimony or evidence to the court [...] relating to whether the premises have been abandoned by the mortgagor."	Statute does not specify whether abandonment determination must be requested by motion or order to show cause. Simply makes reference to the court making an "affirmative finding upon proper evidence being submitted."	"Totality of the circumstances, including the following:" (a) Boarded, closed, or damaged windows or doors (b) Missing, unhinged, or continuously unlocked doors (c) Terminated utility accounts (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 (f) Conditions that make the premises unsafe or unsanitary or that make the premises in imminent danger of becoming unsafe or unsanitary.	"an affirmative finding upon proper evidence being submitted"	"Sale of such mortgaged premises shall be made upon the expiration of 3 weeks from the date when such judgment is entered."	
Kentucky Ken. Rev. Stat. § 426.205 Eff. July 12, 2012	Plaintiff or other lienholder.	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.	1. No legal occupant for 45+ consecutive days, and 2. 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.	Silent	<ul style="list-style-type: none"> -master commissioner shall sell the property within seventy (70) days of the order. - plaintiff shall apply for an order confirming the sale within twenty (20) days of the date of the sale 	<ul style="list-style-type: none"> -law does not explicitly eliminate borrower's post-sale redemption rights (1-year). -presumably borrower loses right to possession upon vacancy determination.

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New Jersey N.J.S.A. 2A:50-73 Eff. April 1, 2013	Plaintiff/Mortgagee	--A complaint to proceed summarily for foreclosure of a vacant property at the outset; or --A motion to proceed summarily in a foreclosure action already filed. --Court may enter final judgment upon determining vacancy. --Court cannot enter final judgment if defendant files answer, appears or provides written objection.	At least 2 of 15: (1) overgrown or neglected vegetation; (2) accumulation of newspapers, circulars, flyers or mail; (3) disconnected gas, electric, or water utility services; (4) accumulation of hazardous, noxious, or unhealthy substances; (5) accumulation of junk, litter, trash, or debris; (6) absence of window treatments; (7) absence of furnishings and personal items; (8) statements of neighbors, delivery persons, or gov 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 broken window panes; (10) doors 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 code violation during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy; (13) mortgagee or other authorized party has secured/winterized the property; (14) a written statement by mortgagee expressing clear intent to abandon the property; or (15) any other reasonable indicia of abandonment.	--Plaintiff bears burden of proof: --Must prove abandonment by clear and convincing evidence	--Sheriff shall sell the property within 60 days of receipt of the writ of execution. --If this deadline cannot be met by Sheriff, plaintiff may seek court's appointment of a Special Master or judicial agent to hold the sale. --N redemption right is 10 days post-sale (N.J. CT. R. 4:65-6)	Sets forth specific scenarios where a property may not be deemed abandoned: (1) unoccupied building undergoing construction, renovation, or rehab that is proceeding diligently and is in compliance with all applicable ordinances, codes, regulations, and statutes; (2) building occupied on a seasonal basis, but otherwise secure; (3) building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.
Illinois 735 ILCS 5/15-1905.8 735 ILCS 5/15-1603(b) 735 ILCS 5/15-1200.5 Eff. June 1, 2013	Plaintiff/Mortgagee	--Motion to expedite judgment and sale for abandoned residential property. --May be filed at or any time after time of filing foreclosure complaint. --If court determines abandonment, moves immediately to trial of foreclosure.	Two part test: (1) Must not be occupied by mortgagor or lawful occupant; and (2) 7 of 11 factors: (a) construction was initiated but not completed, no activity for 6+ months; (b) multiple broken windows; (c) doors broken, or continuously unlocked; (d) stripped of copper, fixtures, other materials; (e) gas, electrical or water service terminated; (f) 1 or more written statements of mortgagor, pers. rep. or assigns indicate clear intent to abandon; (g) 1 EO rec'd at least 1 report of vandalism, trespass or other illegal act in past 6 mos.; (h) declared unfit for occupancy by municipality, county or court order; (i) police/fire/code enf. requests or authorizes party to secure or winterize property, in imminent danger to public health, safety, welfare; (j) property is open and unprotected, in reasonable danger of significant damage; (k) other evidence indicating clear intent to abandon.	Silent	--Motion filed with complaint is heard no earlier than answer period expires, no later than 21 days after answer period. --Motion filed after answer period must be heard no later than 21 days from filing date of motion. --Redemption / reinstatement period ends 30 days after judgment is entered. (Normal redemption period for non-vacant properties is 7 months from service of complaint or 3 months from judgment, whichever occurs later.)	--Motion cannot be granted if mortgagor, "unknown owner" or lawful occupant appears at any time before or at hearing and objects. --Order must be vacated if owner or tenant appears before sale confirmation and presents satisfactory evidence of non-abandonment. --(k) permits liability-free "trash out" of personal property, presumes all contents to be abandoned.

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Judicial Fast Track States	Who may seek a vacancy determination	Court Procedure for Seeking Vacancy Determination	Criteria for Vacancy Determination	Burdens of Proof and Evidentiary Standards	Timetables for adjudication, redemption, and sale	Miscellaneous
<p>Wisconsin II (2016)</p> <p>Wis. Stat. 846.10(2) Wis. Stat. 846.102</p> <p>Eff. April 27, 2016</p> <p>(Amended from prior form enacted April 5, 2011.)</p>	<p>-Plaintiff/Mortgagee</p> <p>-Also, the city, town, village, or county may seek determination.</p> <p>-Amended law explicitly excludes borrower from list of parties who can seek abandonment determination.</p>	<p>-Upon motion of the plaintiff or the city, town, village, or county where the mortgaged premises are located.</p> <p>-Judgment shall be entered if the court determines the premises to be abandoned.</p>	<p>Unchanged from 2012 version: "Totality of the circumstances, including the following:"</p> <p>(a) Boarded, closed, or damaged windows or doors</p> <p>(b) Missing, unhinged, or continuously unlocked doors</p> <p>(c) Terminated utility accounts</p> <p>(d) Accumulation of trash or debris on the premises</p> <p>(e) At least 2 reports to law enforcement, officials of trespassing, vandalism, or other illegal acts</p> <p>(f) Conditions that make the premises unsafe or unsanitary or that make the premises in imminent danger of becoming unsafe or unsanitary.</p>	<p>Unchanged from 2012 version:</p> <p>"an affirmative finding upon proper evidence being submitted"</p>	<p>-Now allows lender up to 12 months from the entry of judgment to decide whether to sell or to walk away.</p> <p>-Sale may not occur sooner than 5 weeks from entry of judgment.</p>	<p>For mortgages after April 27, 2016, the redemption period for occupied homes is reduced:</p> <p>-from 12 months to 6 months for unwaived deficiencies</p> <p>-from 6 months to 3 months for waived deficiencies.</p> <p>- Plaintiff has 12 months from entry of judgment to either:</p> <ol style="list-style-type: none"> 1. Hold a sale of the mortgaged premises and have the sale confirmed; or 2. Release or satisfy the mortgage lien and vacate the judgment of foreclosure. If the plaintiff presents evidence that the mortgage lien has been released or satisfied and requests that the judgment of foreclosure be vacated, the court shall vacate the judgment of foreclosure with prejudice."
<p>Ohio (2016)</p> <p>O.R.C. 52308.01, et seq.</p> <p>(H.B. 390 – 2016)</p> <p>Eff. Sept. 2016</p>	<p>-Mortgagee who has filed foreclosure action.</p>	<p>-Plaintiff files motion to proceed in expedited manner for vacant and abandoned property.</p> <p>-If court determines vacancy after oral hearing, it will enter foreclosure judgment and order sale within 75 days.</p>	<p>At least 3 of 11 factors:</p> <p>(a) Gas, electric, sewer, or water utilities disconnected;</p> <p>(b) Windows or entrances boarded up, or multiple broken window panes;</p> <p>(c) Doors smashed through, broken off, unhinged, or continuously unlocked;</p> <p>(d) Junk, litter, trash, debris, or hazardous, noxious, or unhealthy substances or materials have accumulated;</p> <p>(e) Furnishings, window treatments, or personal items are absent from the structure;</p> <p>(f) The property is the object of vandalism, loitering, or criminal conduct, or there has been physical destruction or deterioration of the property;</p> <p>(g) A mortgagor has made a written statement expressing the intention of all mortgagors to abandon the property;</p> <p>(h) Neither an owner nor a tenant appears to be residing at the time of an inspection by the appropriate local official or by the mortgagee;</p> <p>(i) Local official provides a written statement indicating that the structure is vacant and abandoned;</p> <p>(j) The property is sealed because a local official determined it to be open, vacant, or vandalized;</p> <p>(k) Other reasonable indicia of abandonment exist.</p>	<p>-Preponderance standard for default and plaintiff's right to proceed.</p> <p>-Clear and convincing standard for vacancy criteria.</p>	<p>-Motion must be decided within 21 days.</p> <p>-If court determines vacancy, judgment is entered and sale is ordered to be held within 75 days.</p> <p>-Redemption rights expire upon confirmation of sale.</p> <p>-If property is not sold 12 months from entry of judgment, municipality may intervene by asking county prosecutor to file motion ordering sale with no minimum bid.</p> <p>-Judgment creditor may redeem within 14 days of sale by paying sale price.</p>	<p>-Plaintiff not required to possess the note to enforce any obligation, not just limited to vacant/abandoned.</p> <p>-Criminal mischief statute revised to include damage to one's own property after foreclosure action is filed.</p> <p>-Private selling officers authorized.</p> <p>-Internet sales of foreclosed properties must be implemented by creation of public sheriff's auction website within 90 days of enactment.</p> <p>-Plaintiff may elect to postpone sale 180 days if sale is through public sheriff's website.</p>

APPENDIX 2

SUPERIOR COURT OF NEW JERSEY

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR
OF THE COURTS

STEVEN D. BONVILLE, Esq.
CHIEF OF STAFF

MICHELLE M. SMITH, Esq.
CLERK OF SUPERIOR COURT



OFFICE OF THE CLERK
RICHARD L. HUGHES JUSTICE COMPLEX
P.O. BOX 971
TRENTON, NEW JERSEY 08625-0971
(609) 421-6100

February 6, 2018

Robert Finn
Public Policy Associate
National Community
Stabilization Trust
910 17th Street NW, Suite 500-A
Washington, DC 20006

Re: R:4:64-1A Data

Dear Mr. Finn:

This letter is in response to your January 29, 2018 correspondence requesting information on New Jersey's accelerated foreclosure process for vacant and abandoned properties. Specifically, you are seeking, "Numbers of filings to proceed in an expedited manner, pursuant to R. 4:646-1, per calendar year."

Please be advised that Rule 1:38 et seq. of the New Jersey Rules of Court governs public access to court records and administrative Judiciary records. As such, your January 29, 2018 correspondence is being treated as a request made pursuant to Rule 1:38.

In response to your request please find the vacant and abandoned property motions filed by year:

Year	Order to Show Cause Abandoned Property	Summarily Abandoned Property
2013	54	105
2014	680	134
2015	496	145
2016	248	238
2017	139	238
2018*	20	2

If you have any further questions or for further information, please contact the Superior Court Clerk's Office by calling (609) 421-6100 between the hours of 8:30 am - 4:30 pm or sending an email to SCCOCInquiries@njcourts.gov.

APPENDIX 2

SUPERIOR COURT OF NEW JERSEY

CLARA A. GRANT, J.A.D.
ADMINISTRATIVE DIRECTOR
OF THE COURTS

STEVEN D. BENVILLE, ESQ.
CHIEF OF STAFF

MICHELLE M. SMITH, ESQ.
CLERK OF SUPERIOR COURT



OFFICE OF THE CLERK
RICHARD J. HUGHES JUSTICE CENTER
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TRENTON, NEW JERSEY 08623-0971
(609) 421-6100

February 15, 2018

Robert Finn
Public Policy Associate
National Community
Stabilization Trust
910 17th Street NW, Suite 500-A
Washington, DC 20006

Re: Foreclosure Data, 2013-2018

Dear Mr. Finn:

This letter is in response to your February 12, 2018 correspondence requesting foreclosure information. Specifically, you are seeking, "the total number of foreclosure complaints filed in New Jersey, per calendar year, from January 1, 2011 through the present."

Please be advised that Rule 1:38 et seq. of the New Jersey Rules of Court governs public access to court records and administrative Judiciary records. As such, your February 12, 2018 correspondence is being treated as a request made pursuant to Rule 1:38.

In response to your request please find the total number of foreclosure complaints filed, per calendar year, from January 1, 2011 through the present:

TOTAL 2011	11037
TOTAL 2012	30896
TOTAL 2013	49088
TOTAL 2014	54389
TOTAL 2015	41863
TOTAL 2016	33575
TOTAL 2017	28329
TOTAL 2018	2187 as of January 31, 2018

If you have any further questions or for further information, please contact the Superior Court Clerk's Office by calling (609) 421-6100 between the hours of 8:30 am - 4:30 pm or sending an email to SCCOmbudsman.Mailbox@njcourts.gov.

Sincerely,



Michelle M. Smith, Esq.
Clerk of the Superior Court

APPENDIX 3

April 19, 2016

The Hon. Jonathan Dever
Ohio House of Representatives
77 South High Street, 11th Floor
Columbus, Ohio 43215

Dear Representative Dever:

The individuals named below represent an ad hoc group of citizens and advocates concerned with some provisions contained in House Bill 463. We are writing in response to your request to submit proposed amendments to you by Friday, April 15th. This updated letter adds the names of 60 housing advocates and public officials across the state of Ohio who share concerns about this bill.

Our specific concerns with regard to House Bill 463 are as follows:

Points of Major Concern

- We strongly oppose the proposed removal of the minimum bid requirement for properties unsold after the first auction as laid out in Section 2329.52 (B), beginning at line 1174 of the bill. Removing the 2/3 minimum bid requirement discourages competitive bidding as reasonable bidders may withhold a bid in a first auction in anticipation of purchasing the property at an amount below the minimum bid at a subsequent auction. Further, removing the price floor will attract more bidders that may be financially capable of buying a property at rock-bottom prices, but financially incapable of rehabilitating or maintaining the property. Finally, removal of the 2/3 minimum bid will negatively impact borrowers by increasing the likelihood that they will be left responsible for a large deficiency following the sale of the collateral at a depressed price. Currently, a court has the discretion to allow the minimum bid to be lowered in cases where a property does not sell for 2/3 of its appraised value. We assert that the existing procedure strikes a more fair balance between the rights of a Plaintiff to execute on its judgment and the need of municipalities to ensure that blighted properties aren't leaving one set of unprepared and/or irresponsible hands for another.
- We strongly oppose the extension of the statute of limitations to enforce a promissory note secured by a mortgage from six to 21 years as laid out in Section 1303.16 (A)(2), beginning at line 127. We do not believe that there is an existing inconsistency with Ohio Revised Code section 5301.30, as 5301.30 specifically refers only to mortgages or liens without a stated term.
- We strongly oppose the amendment to Ohio's Uniform Commercial Code provision regarding enforcement of lost notes, found at Section 1303.38 (A)(1) beginning at line 177. As this provision would apply to enforcement of any debt secured by a promissory note (not just mortgages), we believe that Ohio's adoption of this change must be carefully considered in a broader context.
- We strongly oppose the adoption of criteria to determine vacancy or abandonment which rely solely on the assertion of the observations of a foreclosing bank or an employee thereof. We believe the objectivity of the observer is more important than the specificity of the criteria, and therefore request the inclusion of a requirement that in addition to the

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criteria laid out in Section 2308.02 (C)(3)(a)-(g), a Plaintiff must also secure verification of abandonment by a governmental authority, as provided by one of the items described in (h)-(j).

- We advocate for a neutral and responsible system for execution of foreclosure judgments by banks and tax lien certificate holders. This includes stringent registration requirements for online buyers of properties, maintenance of the 2/3 minimum bid requirement to discourage bottom-feeding by speculators, and the continued role of the sheriff as selling agent.
- We believe in the authority of municipalities to maintain requirements for vacant property registration and oppose the dilution of local authority to monitor blighted properties in their jurisdiction. We request that specific language be included that makes it clear that, by enacting this bill, the legislature does not intend to preempt any local vacant property ordinances.
- We advocate for language that would enable municipalities and land reutilization corporation lienholders to trigger the expedited foreclosure process.
- We oppose the proposed removal of the requirement contained in Section 323.47 - that the taxes, assessments, and interest that are or will be a lien on such land at the time the deed is recorded will be paid out of the proceeds of the sale. The proposed changes will have the effect of allowing real estate to transfer at a sheriff sale or private selling agent sale with taxes still due and owing at that transfer and require the county treasurer or fiscal officer to apply the “leftover balance” to the regular taxes due and place the property in a delinquent status immediately. This will increase the delinquency rate of the counties, as well as affecting the ability of the new owner to freely sell the property again. Currently all taxes, assessments and interest due at the time the deed is transferred are paid from the proceeds of the sale, or if the proceeds are insufficient the title will not transfer until such amounts are paid in full. Therefore title at a sheriff sale transfers free and clear of all liens, and the taxes are current. We do not believe that a deficiency judgment is a proper remedy or solution to this issue as it will become increasingly difficult for county treasurers to collect these unpaid charges.

In addition to the above-noted points of major concern, we reassert our general concern regarding the purpose, scope, and timing of this legislation. Real property often represents the most significant investment most people will ever have. We would therefore caution the legislature against casting aside Ohio’s long commitment to a judicial foreclosure process, culminating in a sale conducted by a county sheriff and overseen by a court of law for the sake of achieving expediency in a narrow group of cases.

Change, speed, and modernization are not the enemy. We agree in principle that it is time that we, as a community, address the blight that grows like a cancer in some of Ohio’s most vulnerable neighborhoods. However, we do not agree that the weakening of judicial and sheriff oversight will move us in the right direction. Conversely, we believe that some of the changes proposed in this legislation will have unintended consequences that will increase the churn of dilapidated properties and extend the amount of time that properties are in limbo.

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Finally, we are deeply concerned about such significant changes to Ohio law being made on a truncated timeline and without a full and proper airing. For the vast majority of Ohio's housing and community development advocates and municipal and county officials, the provisions of this bill are only coming to light over the past weeks. Rushing this bill to a quick vote, without a full airing of its unintended consequences, is not in the interest of the people of the State of Ohio.

Your commitment to addressing neighborhood blight is commendable, and we acknowledge the leadership that you have demonstrated in the development of this bill. We look forward to hearing from you regarding the issues we have brought forth regarding HB 463. Should you prefer to continue this discussion in person, we would be happy to make ourselves available to do so. Thank you for your consideration.

Sincerely,

Andy Nikiforovs, Executive Director, Community Housing Solutions
 Angela Shuckahosee, Executive Director, Cleveland Tenants Organization
 April E. Bowersock, Auglaize County Treasurer
 Bart Hamilton, Richland County Treasurer
 Ben Faller, Executive Director, Home Repair Resource Center
 Bill Faith, Executive Director, Coalition on Homelessness and Housing in Ohio (COHHIO)
 Brad Cromes, Portage County Treasurer
 Carolyn Rice, Montgomery County Treasurer
 Carrie Pleasants, Executive Director, Housing Research and Advocacy Center
 Chris Alvarado, Executive Director, Slavic Village Development Corporation
 Councilwoman Toni Jones, City of Maple Heights
 County Land Reutilization Corporation
 Dan Yemma, Mahoning County Treasurer
 Dave Vaughn, Executive Director, Portage County Land Bank
 David Mann, President, Lucas County Land Bank
 Dawn Cragon, Ashtabula County Treasurer
 Debora Flora, Executive Director, Mahoning County Land Bank
 Debra Wilson, Co-Founder, Fairfax Leadership Initiative
 Elaine Gohlstein, Executive Director, Harvard Community Center
 Erika Anthony, Senior Director of Advocacy, Policy and Research, Cleveland Neighborhood Progress
 Frank Ford, Western Reserve Land Conservancy
 Gary Cole, Crawford County Treasurer and Chair, Crawford County Land Bank
 Greg Hill, ECLRC Board of Directors
 Ian Andrews, Executive Director, LakewoodAlive
 Irma Celestino, Sandusky County Treasurer
 Jan Draper, Marion County Treasurer
 Jennifer Kuzma, Executive Director, Northeast Ohio First Suburbs Consortium
 Jim McCarthy, President, Miami Valley Fair Housing Center
 John Anoliefo, Executive Director, Famicos Foundation
 John C. Rosenberger, President, Central Ohio Community Improvement Corporation
 John Zimmerman, Vice President, Central Ohio Fair Housing Association
 Jon Peterson, Delaware County Treasurer
 Karen Poelking, Board President, One South Euclid Development Corporation
 Laura N. Brunner, President and CEO, Port of Greater Cincinnati Development Authority, Hamilton

APPENDIX 3

Lou Tisler, Executive Director, Neighborhood Housing Services
Mark McDermott, Regional Vice President, Enterprise Community Partners
Matt Martin, Executive Director, Trumbull Neighborhood Partnership
Mayor Chase Ritenauer, City of Lorain
Mayor Georgine Welo, City of South Euclid
Melissa K. Harvey, Executive Director, Ashtabula Land Reutilization Corporation
Michael J. Kaper, Executive Director, Fairfield County Land Reutilization Corporation
Michael Migden, Deputy Fiscal Officer, Summit County Fiscal Office
Nathan Miner, NeighborWorks Collaborative of Ohio
Neighborhood Development Services, Ravenna
NeighborWorks Collaborative of Ohio
Patricia Kidd, Fair Housing Resource Center
Patrick Bravo, Executive Director, Summit County Land Bank
Patrick J. Shenigo, Erie County Commissioner and ECLRC Board of Directors
Rachael Gilroy, Allen County Treasurer
Raymond M. Agresta, Jefferson County Treasurer
Rob Curry, Executive Director, Cleveland Housing Network
Sam Lamancusa, Trumbull County Treasurer and President, Trumbull County Land Bank
Scott J. Schell, Executive Director, Erie County Land Bank (ECLRC)
Stephen D. Burcham, Lawrence County Treasurer
Stephen T. Metzger, Clark County Treasurer
Tammy Skipper, Executive Director, Fair Housing Contact Service
Tina Koumoutsos, Executive Director, Neighborhood Housing Services of Greater Springfield
Tom Kroma, Director, Department of Neighborhoods, City of Toledo
Vickie L. Grimm, Williams County Treasurer
Wade Kapszukiewicz, Lucas County Treasurer
William J. Monaghan, Erie County Commissioner and ECLRC Board of Directors

cc: Committee Chair Terhar and members of the Financial Institutions, Housing, and Urban
Development Committee
Bill Dean, District 74
Bill Reineke, District 88
Christie Bryant Kuhns, District 32
David Leland, District 22
Gary Scherer, District 92
Hearcel F. Craig, District 26
Kent Smith, District 8
Louis Terhar, District 30
Mike Dovilla, District 7
Nathan H. Manning, District 55
Robert Sprague, District 83
Stephen D. Hambley, District 69
Tim W. Brown, District 3