



HOUSINGWIRE MAGAZINE
JULY 2013

BANK

THE RIDE *TO* NOWHERE

MORTGAGE SERVICING SETTLEMENTS SETTLE NOTHING



COLLATERAL DAMAGE

The financial consequences of the homeowner bill of rights movement, second in a series
P.36

REX REVISITED

A look back at HousingWire's successful Real Estate Expo, REX Annual 2013
P.42



Departments

Servicing

Robert Klein is founder and chairman of Safeguard Properties, the nation's largest mortgage field service company.



BY ROBERT KLEIN



LAW AND ORDER

Ohio city attracts plaudits for tackling foreclosure blight, but major challenge remains

In many ways, Youngstown, Ohio, serves as a comeback model for similar cities around the country that have lost jobs and population since the industrial decline that began in the late 1970s.

Thanks to forward-thinking leaders who have cultivated a supportive business environment, Youngstown has become one of the most improved economies in the country, according to an analysis by the Brookings Institution. A growing energy market has sparked a manufacturing resurgence. A vibrant technology scene is attracting startup companies, warranting mention by President Barack Obama in his State of the Union address earlier this year. And Youngstown's downtown is springing back to life as an entertainment destination.

Unfortunately, like other cities across the country, Youngstown has also suffered in the aftermath of the housing crisis, with vacant and abandoned properties straining city resources, hurting neighborhoods and driving out residents. It's understandable that city leaders would want to take action to preserve neighborhoods, protect the safety of its citizens and help maintain the momentum of economic recovery.

However, their decision to enact what is being viewed as one of the most onerous vacant property ordinances as a solution to the problem may actually do more harm than good. The ordinance has a number of possible ramifications, with three apparent major drawbacks in particular some deem worthy of rumination.

GOOD GUYS PAY, BAD GUYS DON'T

The first concerns the fact the ordinance requires the owner of a vacant property to post a cash bond of not less than \$10,000 to assure the continued maintenance of the property until it either moves through the foreclosure process and is sold to a new owner, or is demolished. The definition of an owner has been broadened to include the person in title, the entity that holds the mortgage and even authorized agents and vendors of the mortgage company who have direct or indirect control of a property.

Here is the sad irony: Irresponsible owners who let their properties deteriorate in the first place aren't likely to comply with the ordinance. Code enforcement officers and other officials will waste precious time chasing ghosts, with nothing to show for it.

On the other hand, the vast majority of mortgage companies and their agents who already secure and maintain properties abandoned by homeowners could be penalized by the ordinance and forced to pay, even though their properties aren't causing problems.

LIENHOLDER CONFLICT

Second, until mortgage companies take legal title to a property, their rights are limited — even when homeowners abandon properties. Prior to an actual foreclosure sale, banks can only

perform services to prevent code violations and protect the collateral value of the property in the absence of an occupant. In other words, the requirements of the Youngstown ordinance will most likely conflict with laws limiting a bank's rights prior to foreclosure.

The expanded definition of a homeowner in the Youngstown ordinance actually sets up the city for potentially expensive and protracted legal actions. In fact, two years ago, the city of Chicago considered similar language in their ordinance, defining lienholders as homeowners prior to foreclosure. Ultimately, they removed the language after listening to the concerns of the mortgage industry in this regard.

IT DOESN'T FIX THE PROBLEM

Third and finally, the worst enemy of a vacant property is time, and the Youngstown ordinance seems to do nothing to address this. If the city of Youngstown really wants to protect the condition of vacant properties and make banks responsible, the answer might be to help them take possession more quickly. That requires a change in state law to accelerate vacant properties through foreclosure.

In Ohio, the foreclosure process can take two years or longer, whether the property is occupied or abandoned. Even with the billions of dollars the mortgage industry spends annually across the country to inspect and maintain vacant properties, these homes will deteriorate as they await foreclosure. Many will be vandalized, losing value, becoming neighborhood nuisances and negatively impacting surrounding properties.

When a property is deemed vacant and abandoned, accelerating foreclosure would allow banks to obtain title while the property is still in good condition so that it can be sold and reoccupied more quickly.

Here is a sad irony: Irresponsible owners who let their properties deteriorate in the first place aren't likely to comply with the ordinance.

For some, accelerated foreclosure is a far better alternative to vacant property ordinances. It can reduce the burden on city code enforcement officials and first responders to address nuisance issues. It can protect the condition and value of vacant properties, especially those in fragile neighborhoods. And, perhaps most importantly, it can help maintain viable housing for families, especially first-time home buyers and lower income people.

Youngstown's leaders have demonstrated a progressive attitude toward rejuvenating their city. There is a strong argument that says they should continue to lead the way to protect homes and neighborhoods across Ohio by promoting legislation designed to accelerate the foreclosure process for vacant and abandoned properties. ■

KEY CONCEPTS

Mortgage companies and their agents who already secure and maintain abandoned properties could be penalized by a new Youngstown, Ohio, ordinance and forced to pay.

The requirements of the Youngstown ordinance will most likely conflict with laws limiting a bank's rights prior to foreclosure.

If the city really wants to protect the condition of vacant properties and make banks responsible, the answer might be to help them take possession more quickly.