

MEMO

TO: Amanda Stearns
Date: December 2, 2008
From: Albert Farris
RE: property maintenance issues with foreclosed properties

Request:

- Provide draft ordinance language to deal with foreclosed properties;

History:

- Neighbors usually get upset about vacant homes when lawns aren't mowed and begin calling town hall or public works. When I find a vacancy, I try to find the listed owner, which typically results in no action because they are in default or foreclosure.
- Such is the case on Shady Lane. Wells Fargo is now the titled holder of this property. No voice mail messages have been answered, and to date there is no real estate sign on the property. Another foreclosed property now has a brokers sign on it and I will call for general contact information.
- My experience trying to find a responsible party at mortgage companies that are holding foreclosed properties is that it is a laborious process that results in no contact or response to numerous voice mail messages that I have left. In addition to voice mail, I have left knob/notice hangers seeking a response. Some of these have been picked up presumable by a property management or real estate person. To date there has been no response.

Enforcement:

- A mortgagee, the lender, has no more legal authority to enter the property than I do under the illegal search and seizure provision of the constitution. We are limited to the same right of entry as the UPS person. Unless we are invited into the property or back yard we can't go there, we would be trespassing.
- Having an ordinance to require someone to do something, may be unenforceable from a practical standpoint. History indicates that once a foreclosure action is taken and title is in the mortgagee, they will maintain the property, repair broken glass, and remove the personal property. It is in their best interest to keep the property presentable.

Summary:

- Recent questions on this subject emailed to many of my peers resulted in a sharing of the same frustrations. Two communities I know of have ordinances that allow them to go on property when a structure becomes a dangerous building to do the necessary work and file a tax lien. However, an ordinary lien for maintenance will be vacated in a foreclosure action because it is subordinate to the first mortgage.
- We have the tools necessary to act when we have dangerous and/or unsanitary buildings but not when they are just unsightly. A property maintenance code can become a problem in the inverse. We could be chasing folks that don't maintain their flower beds or haven't painted their home recently.

Bill Plouffe has given us some guidance with several foreclosure questions.

- A foreclosure can take place within 90 days of notice of foreclosure which typically happens after being 90 days delinquent on mortgage payments, and an action in the courts.
- Can we enter a property in ambiguous ownership to clean it up and place a lien?
 - I see no authority in the State statutes for making such a lien into a tax lien which would trump the mortgage except in the case of a dangerous, unsanitary, etc., building that is cleaned-up by the municipality pursuant to 17 M.R.S.A. sec. 2851, et seq. (dangerous buildings). As you know, the latter statutes have a procedure for abatement of what is a nuisance that can end up with the municipality's costs being converted to a tax lien. However, I doubt that the types of non-maintenance that you have asked about rise to that level.

