

VACANT PROPERTY REGISTRATIONS: The Good, The Bad and The Ugly

Background

Most local governments want to ensure the safety, health and welfare of their communities and encourage residents to be active participants in maintaining their towns. Sometimes when a property is vacant due to foreclosure or some other reason it can pose a risk. Sometimes referred to as “zombie properties,” local governments wish to identify a responsible party to secure the property and work to get it back to market. In certain instances, identifying a responsible and responsive party poses a challenge to municipalities. The creation of a vacant property registration, which usually includes a fee for registration, is one method of attempting to identify and hold responsible parties accountable.

However, there are many unintended outcomes that can result from a well-intentioned registration requirement. When the definition of registrable property is too vague, or fees and penalties are excessively high it can produce deleterious effects and worsen the situation.

Common Definitions and Missteps

One cause of vacancy involves foreclosure. The foreclosure process in Illinois is complex, so correct definitions for ordinance language is imperative.

Pre-Foreclosure and **in foreclosure** are colloquial terms meaning the lender has filed a notice of intent to file a lawsuit to foreclose on their security interest, which is the mortgaged property. During this time the

property is probably occupied by the owner who may be struggling financially. The owner still has a period to renegotiate, reinstate or redeem the loan which is secured by the property. Excessive registration fees add financial pressure on the owner and there are local, federally funded housing counseling and financial assistance programs that could be deployed.

When the court enters a judgment against the owner who does not contest or appear in the foreclosure case, a **default judgment** can be entered. The owner still has time to reinstate or redeem the loan. During this time, the property may still be occupied by the struggling owner.

A property has been **foreclosed** upon when the redemption period ends, the property is sold at the foreclosure sale and the court issues an order confirming the sale and the deed is transferred to the lender or another entity who might have bought the property at the foreclosure sale. The property is less likely to be occupied at this point; but if it is, the new owner would need to notify the occupant that they must leave. If they do not leave, the eviction process must be followed.

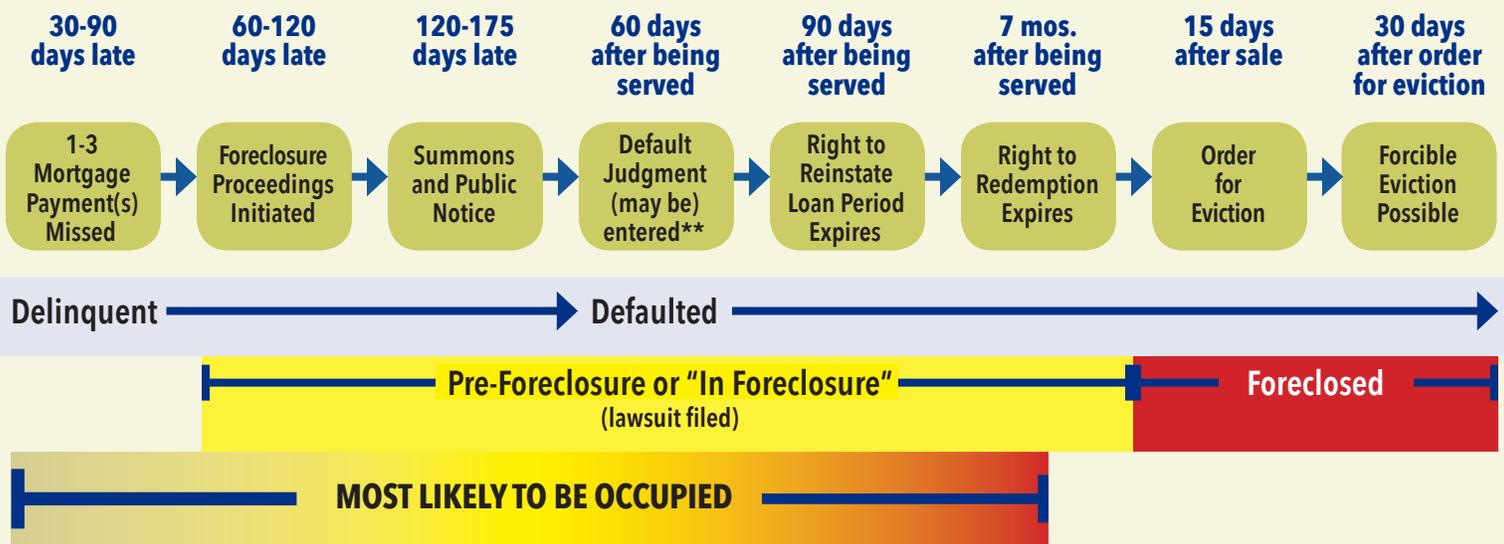
Vacant Properties are sometimes defined as registrable if they are vacant for as little as 30 days. This short time period could have very negative outcomes for residents who have valid reasons for their absence, like illness, wintering in other states, or even taking a long vacation. The time period can be problematic if a resident is trying to sell their home but has already purchased a new home and moved. In this instance it can be argued that the registration fee becomes a back-door transfer tax. If the goal is to identify responsible owners of vacant properties where there are code violations, require the registration only after code violations have gone unanswered.



Fees Set Too High – Many municipalities are setting fees as high as \$300 every 6 months. Setting the fees too high can exacerbate the property maintenance problems the municipality is trying to solve when property owners must choose between paying for a fee or paying for repairs. If the property is vacant due to foreclosure, the lender, if lender is the owner, may disregard the fee, effectively passing it on to a future purchaser. It will not take long for back penalties and fees to accumulate to such a level that no one will want to purchase the property. **The result is that “zombie” properties sit in a perpetual state of disrepair.**

Outsourcing Foreclosed and Vacant Property Registrations – outside firms make promises that their service will not require any staff time or government resources. They also will promise not to register occupied or pre-foreclosure properties. Experience suggests that once the private firm is in place, many occupied properties are registered, and a large amount of time is spent by staff implementing and maintaining the registration.

Understanding the Residential Foreclosure Process in Illinois*



*Generalization for demonstration purposes

**Default if debtor does not appear or contest the suit



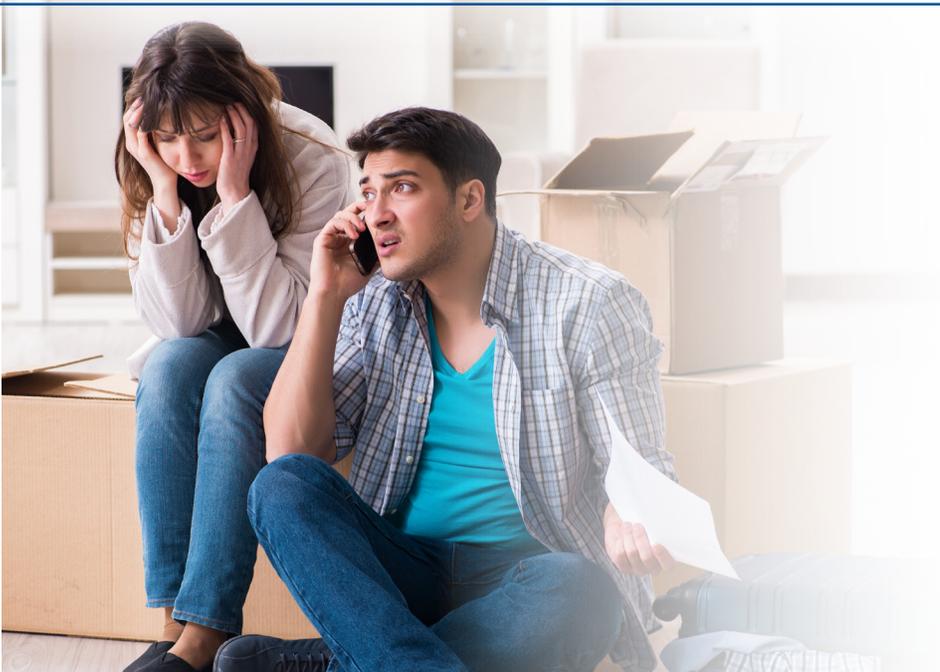
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Potential Solutions

If your municipality is still in need of a vacant property registration, there are many ways to minimize the unintended negative consequences:

- **Public Records Search:** A notice of a foreclosure suit is a matter of public record. If trying to determine the point of contact for a property, a search can be conducted through the Circuit Clerk's office. After the foreclosure sale, once the judicial deed is recorded, the Recorder of Deeds office should be the source of information.
- If the municipality wants to hold the lender/owner accountable, define registrable properties as only those that have been foreclosed on and subsequently purchased by the lender. The property is far less likely to be occupied when the owner's period to redeem the loan has expired.
- Only register a property for vacancy if the property has outstanding, unanswered code violations. This will help avoid unnecessary and confusing registrations of homes that are for sale, or where the resident is otherwise gone for an extended period of time.
- Create a simple, in-house, vacant property registration and use the existing property maintenance code to determine if a property should be included. This will enable the municipality to focus on the problem properties instead of penalizing a property simply for being vacant.
- Set fees at a level that enables the municipality to hold the property owner accountable, but not so high as to create perpetual "zombie" properties – those that are financially unfeasible for anyone to purchase and rehabilitate.
- Exempt properties from the registration if they are listed for sale by an Illinois Licensed Real Estate Broker.
- Include language that specifies that the fee will only be assessed on a foreclosing entity if the property is a "foreclosure" property. This will help ensure that occupants or future owners are not further harmed.
- Create a list of HUD approved housing counseling agencies and reputable financial assistance resources and encourage troubled property owners to contact them. In many cases there are local programs that will provide guidance in renegotiating loans and even mortgage assistance.

It is better to stabilize a homeowner than to do more harm, pushing the property toward the lengthy foreclosure process.



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