



L E G A L

S E R V I C E S

I N C O R P O R A T E D

TESTIMONY

ON

**RULES RELATING TO NOTIFICATION BY A
MORTGAGEE COMMENCING AN ACTION TO RECOVER
RESIDENTIAL REAL PROPERTY**

BEFORE:

**CITY OF NEW YORK, DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT**

PRESENTED BY:

**ADAM COHEN
SENIOR STAFF ATTORNEY
MFY LEGAL SERVICES, INC.**

April 17, 2012

Good afternoon and thank you for the opportunity to testify today. My name is Adam Cohen. I am a Senior Staff Attorney at MFY Legal Services, Inc. MFY Legal Services provides legal services to more than 7,500 low-income clients in New York City every year. MFY's Foreclosure Prevention Project represents homeowners in Queens, Brooklyn and Staten Island to defend foreclosure actions and to assist them to obtain loan modifications. MFY handles matters for low income New Yorkers in the areas of housing, employment, consumer, disability rights and seniors.

Working in MFY's Foreclosure Prevention Project, I have represented hundreds of homeowners at various stages of the foreclosure process, and in affirmative individual and class action lawsuits against the loan servicing industry and the law firms they retain to foreclose on the homes of New Yorkers.

The proposed rule under consideration requiring foreclosing mortgagees and related entities to provide certain information to HPD is necessary for HPD to accomplish the legislative intent of Local Law 4 of 2012. The proposed rule is also necessary to accomplish HPD's general mission of protecting existing housing stock and expanding the availability, quality and affordability of housing in New York City.

I. Problems with REO Property Maintenance

In a typical residential foreclosure action, a loan servicing company files the foreclosure proceeding as agent for and in the name of the trustee for a securitized pool of mortgage loans. For purposes of this testimony and ease of reference, I will simply refer to the foreclosing entity

as “the bank,” with the understanding that the term encompasses banks, mortgage loan servicers, securitized trusts, real estate management subsidiaries, and others.

At the end of the foreclosure process, the property is sold in an auction at the courthouse. More often than not – particularly in the current soft real estate market – the bank becomes the new owner of residential property sold at foreclosure auction. These homes are commonly known as “REO property,” which is shorthand for real estate owned property. Ordinarily, the bank is required to manage the REO property in accordance with contracts that govern the securitized trust.¹ One of the ripple effects of the national foreclosure crisis is the failure of banks to properly maintain foreclosed properties.²

Local governments wind up bearing the cost burden when banks fail to maintain REO property. Expenses associated with such failures include exterior and sidewalk maintenance, rodent abatement, ensuring the property is inhabitable for any tenant whose tenancy rights survive the foreclosure action, and, in extreme instances, demolition costs.³ In areas of New York City that are hit hardest by the foreclosure crisis, additional work – and consequent expense – is often

¹ Stergios Theologides, *Servicing REO Properties: The Servicer’s Role and Incentives*, Federal Reserve Bank of Boston and Cleveland and the Federal Reserve Board (<http://www.bos.frb.org/commdev/REO-and-vacant-properties/77-Theologides.pdf>).

² See, e.g., Ann Marie Costella, *It’s payback time: group ‘trashes’ bank*, Queens Chronicle, March 22, 2012, available at http://www.qchron.com/editions/eastern/it-s-payback-time-group-trashes-bank/article_9615e159-a235-5574-819b-b841395bf404.html; *Queens Residents Say Neighbor’s Yard Is An Eyesore*, CBS New York, March 28, 2012, available at <http://newyork.cbslocal.com/2012/03/28/queens-residents-say-neighbors-yard-is-an-eyesore/>; City Beat Staff, *Fixing foreclosure blight*, San Diego City Beat, April 11, 2012, available at <http://www.sdcitybeat.com/sandiego/article-10392-fixing-san-diegorss-foreclosure-blight.html>.

³ See Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 Alb. Gov’t L. Rev. 101 at 120 (2009).

required in order to board up broken windows or doors, to clear the front and back yard of the property to curb the spread of rodents, and to remove other public hazards.⁴

Additional administrative expenses are also associated with large numbers of vacant and abandoned properties such as increased dispatching of police or fire services, code enforcement, and other municipal employees and public safety personnel, compounding the economic fallout of the foreclosure crisis.⁵ Such factors, when taken together, depress values of surrounding properties while simultaneously eroding the property tax base.⁶

A recent study from the National Fair Housing Alliance (NFHA) documents “many disturbing and consistent trends in the maintenance and marketing of REO properties by lenders and servicers **depending on the racial composition of the neighborhoods in which they were located**”⁷ (emphasis added). The report goes on to state that “REO homes in African-American and Latino neighborhoods were routinely found to be in substandard condition, and thus were found to be more likely to remain vacant and continue inflicting damage on their neighborhoods.”⁸

⁴ See *Id.*

⁵ See *Id.* at 111.

⁶ See *Id.*

⁷ *The Banks Are Back – Our Neighborhoods Are Not, Discrimination in the Maintenance and Marketing of REO Properties*, pg. 48, National Fair Housing Alliance (2012). See also Brady Dennis, *Report Finds Racial Discrepancies In Upkeep of Foreclosed Properties*, Washington Post, April 4, 2012.

⁸ *Id.*

As a direct result of the foreclosure crisis, code enforcement officials are now required to respond to a high volume of complaints about foreclosed properties with uncut grass, graffiti, unauthorized parties, vandalism, structural stripping, bug and rodent infestation, garbage-littered lawns and a host of other problems in neighborhoods that have a high volume of vacant and uncared for REO properties. “[C]ode officials are struggling with how to adapt their code enforcement programs and remedies to address the often surreal, Alice in Wonderland-esque world of the mortgage industry and local foreclosure rules and processes.”⁹ Compounding this problem is the confusing and complex structure of the mortgage banking industry. “[T]he complexity of the [mortgage] industry makes it difficult to identify a responsible party: the lender and mortgage servicers, and especially the mysterious investors, make it nearly impossible for code officials to provide legal notice and therefore renders many typical code enforcement remedies, such as criminal prosecution, useless.”¹⁰

II. The Proposed Rule Will Enable HPD to (1) Identify Properties Likely to Suffer from Code Violations and (2) Identify and Locate the Legally Responsible Entity or Entities for the Subject Property

The proposed notice requirements will enable HPD to locate properties that are at significant risk of future code violations because they are in some stage of the foreclosure process and are thus at higher risk of becoming vacant or abandoned. HPD can proactively target these distressed properties by sending HPD inspectors to the property to assess its condition and determine whether the property is still occupied to ensure the property does not turn into a blight and/or lower the value of surrounding properties.

⁹ See Schilling at 120.

¹⁰ *Id.* at 121.

In addition to location information, the proposed reporting rule will provide HPD with information about the identity and contact information for the entity or person who is legally responsible for maintenance of the property in foreclosure or post-foreclosure. Thus HPD will be able to notify the responsible party about any code violation and demand that the violation be remedied. Therefore, the proposed rule will enable HPD to do its job more efficiently while affording responsible parties the opportunity to cure previously unknown violations. It will also increase the incidence of successful enforcement actions because HPD will be able to readily identify the legally responsible party.

III. The Information Required by the Proposed Rule Is Readily Available and Easily Accessible by the Company Servicing the Mortgage Loan

Almost all of the information required to be reported under the proposed rule is in the possession of the foreclosing bank. In fact, much of this information can be found in the summons and complaint the bank files in order to initiate the foreclosure action, including the following: (1) mortgagee name, contact information and property location information; (2) identity and contact information of the holder of the note of indebtedness; (3) name and contact information of the law firm commencing the foreclosure on behalf of the plaintiff; (4) name and contact information of the company servicing the mortgage loan at issue; (5) name and contact information for the defendant in the foreclosure action; (6) date of commencement of the foreclosure action; (7) court in which the foreclosure action was commenced and index number; (8) amount of the principal balance and itemized payoff amount owed under the mortgage loan in foreclosure; (9) interest rate, maturity date, and reinstatement amount of mortgage loan; (10) other liens that may exist on the property subject to foreclosure; and (11) city register file number of the recorded mortgage being foreclosed. Although a copy of the last financial statement of income and

expenses submitted to the loan servicer is not attached to the summons and complaint, the loan servicing company in direct control of the foreclosure action has this information in its possession because it is responsible for evaluating loan modification and other loss mitigation requests from the homeowner.

More than 95% of the information that HPD seeks to obtain under the proposed rule is contained in the pleadings and can be entered into an electronic reporting form very easily by either the loan servicing company itself, the law firm retained by the servicer to foreclose on the property, or a third-party vendor that is given access to this information. Consequently, complaints and concerns voiced by the mortgage banking industry that the reporting requirements are too burdensome or onerous are unfounded and should be ignored.

IV. HPD Should Require Information about Any Field Services Company Retained to Maintain REO Properties

Many banks hire what are known as “field services companies” to act as property managers and inspectors to ensure that properties are secure, clean and well-maintained both during and after the foreclosure process.¹¹ One such company is Safeguard Properties, which has widespread operations in New York City.¹² If a bank retains a field company to monitor and maintain the property either during the foreclosure process or at the point when the home becomes REO property, it should be required to disclose this information to HPD. This will allow HPD to

¹¹ Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, Albany Government Law Review at 120 (2009).

¹² See http://www.safeguardproperties.com/Services/High_Risk_Code_Enforcement.aspx (last visited on April 12, 2012) (“We create open lines of communication between our clients and code enforcement officials so that problems can be addressed before violations or citations are issued . . . When a problem occurs, Safeguard ensures that the problem is rectified according to local standards.”)

contact the field company to notify it of violations so that they might be remedied quickly and efficiently.

V. HPD Should Report Code Violations on REO Properties to the New York State Office of the Attorney General

The March 2012 49-state settlement with the five largest banks that service residential mortgage loans includes a requirement that the banks “implement policies and procedures to ensure that REO properties do not become blighted.”¹³ This requirement is found in section VIII(A)(1) of Exhibit A to the Consent Judgment. Thus, HPD should report code violations to the New York Attorney General, which is well-positioned to support HPD’s efforts to ensure that REO properties are well maintained and compliant with New York City’s building and housing maintenance codes.

Once again, thank you for the opportunity to testify.

¹³ See *United States of America, et al. vs. Bank of America Corporation, et al*, Case No.: 1:12-cv-00361-RMC (D.C. Dist. Ct. 2012).