

# **A Complicated Web:** Vacant and Abandoned Property Law

A State-by-State Review of Existing Law and Proposed Statutes Concerning  
Expedited Foreclosures on Residential Vacant and Abandoned Properties



Prepared by the Legal League 100  
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## THE LEGAL LEAGUE 100

Dear Colleagues,

The Legal League 100 is the nation's premiere collection of financial services law firms organized for the purpose of furthering its members' commitment to supporting the mortgage servicing industry through education, communication, relationship development, and advisory services. The League's multifaceted membership works tirelessly to be a leading force for industry standards, education, market research, and policy advocacy.

Vacant and abandoned residential properties hurt communities and families because they are the precursors for blight in a community. These properties can potentially have a devastating effect on surrounding homeowners because they often become magnets for vandalism, squatting, and violent crime. In extreme cases, these properties have even led to the tragic loss of life. Surrounding properties can expect to experience a loss of value—a significant detriment to the primary source of wealth for many American families.

A uniform national standard on expediting the disposition of these vacant and abandoned properties through the default lifecycle is critical to returning these properties to new property owners and homeowners for the benefit of the consumer, communities, servicers, and investors. In June, the National Mortgage Servicing Association released a proposal calling for the standardization of servicing policy and procedures as they pertain to the treatment of vacant and abandoned properties for the purpose of mitigating the consequences of vacancy. The Legal League 100 recognizes the adoption of standardized procedures as a first step toward protecting homeowners.

The second step is the harmonization of state law as it pertains to the expediting of foreclosure upon vacant and abandoned homes. The document that follows is an overview of state law demonstrating the disparate treatment of these properties from state to state and the disservice to the consumer that is done by overcomplicating the foreclosure process. Our industry has a duty to develop common sense standards and practices that will simplify the servicing of these abandoned homes, shorten vacancy timelines, and ensure that surrounding homeowners are protected.

Sincerely,

**Ed Delgado**  
President & CEO  
Five Star Institute

# EXECUTIVE SUMMARY

For many years, and especially evident since the crush of the volume of foreclosures that took hold after 2008, the mortgage servicing industry has been dealing with two significant issues: (i) how to efficiently and quickly handle the foreclosure of a vacant or abandoned property, and then (ii) after foreclosure, the disposition of any personal belongings discarded, abandoned, or simply left behind on the premises.

## ISSUES ASSOCIATED WITH VACANT OR ABANDONED PROPERTIES

The problem of vacant or abandoned households has persisted, and lenders and servicers face issues on how to quickly move an abandoned property back to a tax-producing property in any given municipal entity. After the post-crash era of 2008, servicers have increasingly had to deal with the problems associated with vacant properties:

*Derelict houses, dormant factories, moribund strip malls, and other types of vacant and abandoned properties are among the most visible outward signs of a community's reversing fortunes. Properties that have turned from productive use to disuse are found in cities, suburbs, and rural areas throughout the country, and they vary widely in size, shape, and former use. But these vacant and abandoned properties are more than just a symptom of larger economic forces at work in the community; their association with crime, increased risk to health and welfare, plunging property values, and escalating municipal costs make them problems in and of themselves, contributing to overall community decline and disinvestment.*<sup>1</sup>

There is a cost not only to the lender; there are many hidden costs for the city or municipality where the properties are.

*Vacant and abandoned properties have long plagued the industrial cities of America's Rust Belt, but the spike in foreclosures following the recent recession has compounded problems for these areas and has caused vacancy rates to surge nationwide, especially in recently booming Sun Belt states such as Florida, Arizona, and Nevada. These communities face mounting blight and physical deterioration of properties, declining tax revenues, and rising public costs.*<sup>2</sup>

Vacant properties are often subjects of vandalism and other associated crime. Vacant properties that are boarded up for long periods of time lead to decline in property values of neighboring houses:<sup>3</sup>

*Studies attempting to quantify the effect of foreclosures on surrounding property values find that foreclosures depressed the sales prices of nearby homes by as little as 0.9 percent to as much as 8.7 percent. Foreclosed homes may or may not become vacant or abandoned, at which point a distressed property may have a more pronounced effect on surrounding properties...*<sup>4</sup>

*Vacant and abandoned properties are widely considered to attract crime because of the "broken windows theory" — that one sign of abandonment or disorder (a broken window) will encourage further disorder. Increased vacancies leave fewer neighbors to monitor and combat criminal activity. Boarded doors, unkempt lawns, and broken windows can signal an unsupervised safe haven for criminal activity or a target for theft of, for example, copper and appliances.*<sup>5</sup>

<sup>1</sup> See *Vacant and Abandoned Properties: Turning Liabilities into Assets*, HUD Publication Winter 2014, found at: <https://www.huduser.gov/portal/periodicals/em/winter14/highlight1.html>

<sup>2</sup> Id.

<sup>3</sup> See, generally, Klein, Aaron, "Understanding the True Costs of Abandoned Properties: How Maintenance Can Make a Difference. An Analysis of the Direct Costs and Long-Term Effects of Foreclosure and Abandonment on Communities," found at: [http://www.communityblightsolutions.com/files/CBS\\_White\\_Paper\\_2017.pdf](http://www.communityblightsolutions.com/files/CBS_White_Paper_2017.pdf)

<sup>4</sup> See *Vacant and Abandoned Properties: Turning Liabilities into Assets*, HUD Publication Winter 2014, found at: <https://www.huduser.gov/portal/periodicals/em/winter14/highlight1.html>

<sup>5</sup> Id. (citations omitted).

Among the crimes that occur is arson: “The U.S. Fire Administration estimates that there were 28,000 fires annually in vacant residences between 2006 and 2008, with half of these spreading to the rest of the building and 11 percent spreading to a nearby building.”<sup>6</sup>

In addition to facing the costs of arson and related crimes, municipalities also “bear the cost of maintaining, administering, and demolishing vacant and abandoned properties as well as servicing them with police and fire protection and public infrastructure. One study calculated that the city of Philadelphia spends more than \$20 million annually to maintain some 40,000 vacant properties, which cost a conservatively estimated \$5 million per year in lost tax revenue to the city and school district.”<sup>7</sup>

According to the HUD Report:

*Demolition costs can vary widely based on several factors, including whether the home is attached to occupied residences, such as a Baltimore row house that can cost \$40,000 to demolish, or whether it contains asbestos or lead-based paint. GAO states that demolition typically costs between \$4,800 and \$7,000 per property. Municipalities also incur administrative costs as they search for owners, enforce codes, and oversee foreclosures, although they may recover some of these costs through fines or fees if an owner can be identified and compelled to pay. Vacancies also reduce local government revenues directly, because owners may walk away from their tax obligations, and indirectly, because of their impact on nearby property values and tax assessments. Although, in some instances, cities can recover this lost revenue through tax lien sales, in others property ownership reverts to the city, which has no viable option other than demolition.*<sup>8</sup>

In many instances, foreclosure of a vacant property can be more time consuming and expensive than foreclosing on an owner-occupied property. In Pennsylvania, for example, there is presently no vacant property foreclosure statute, and thus a lender must utilize the standard foreclosure track. However, there is nothing standard about the foreclosure when dealing with a vacant piece of property. Pennsylvania requires that a borrower be personally served with the foreclosure complaint and then later with a notice of sheriff's sale. When a property has been vacant and abandoned, it can often be a difficult task to track down the borrower or former owner. As such, if service of process cannot be effected, the lender must then file a motion with the court to permit an alternative means of serving process. Most likely, when the court grants the order on special service, the court will require the lender to post the property, mail notice by regular and certified mail, and then, finally, order an incredibly costly publication -- which will have to occur twice, once for the complaint and again for the notice of sale. Thus, the vacancy process in Pennsylvania ends up costing more and taking longer.<sup>9</sup>

## DEFINING VACANT AND ABANDONED

A continuing issue nationwide that relates to this topic is the tough part of defining what exactly constitutes a “vacant” or “abandoned” property.

In general, a vacant property becomes a problem when the borrower / property owner abandons the responsibilities associated with ownership, such as routine maintenance or maintenance of tax payments. There is no uniform definition of what exactly constitutes a “vacant” or “abandoned” property. Characteristics may include:

- » Physical condition of a structure
- » Amount of time that a property has been in that condition
- » Whether utilities are shut off
- » Whether grass and weeds are overgrown
- » Whether the property is boarded up
- » Whether mail is being delivered
- » Whether the property secured (i.e., locked)
- » Does it appear that personal property is on the site
- » Does the property live up to municipal code standards<sup>10</sup>
- » Are municipal citations being remediated
- » Is there trash or debris throughout the property
- » Are automobiles present in the driveway
- » Has copper been removed from the property
- » Are windows broken

6 Id. (citations omitted).

7 Id. (citations omitted).

8 Id. (citations omitted).

9 Pennsylvania is presently considering legislation to adopt a streamlined foreclosure process for vacant and abandoned properties. See below.

10 Some cities or municipalities may view a house as “vacant” if it is “uninhabitable” under the local code.

There is a movement across the country to create a standard definition of “vacant” or “abandoned.” Significantly, the National Mortgage Servicing Association (“NMSA”) has been key in promoting a model definition. The NMSA’s recently issued report, titled “Protecting Consumers and Communities: Proposal for Standardization of Key Definitions, Guidance, and Best Practices for the Preservation and Maintenance of Vacant & Abandoned Residential Properties,” is an excellent discussion of these issues, as well as a basis for several proposals to address these issues.<sup>11</sup>

### **WHO CERTIFIES THAT A PROPERTY IS VACANT OR ABANDONED?**

If there is a model definition of what constitutes a “vacant” or “abandoned” property, the next issue faced is who can make the decision that the property is “vacant” or “abandoned?” In other words, can a servicer unilaterally make the decision? Does there have to be an affidavit signed by a servicer certifying the vacancy? Does a local code enforcement officer have to review and sign a certification of abandonment? Can a local property inspector retained by a servicer make the decision? Is there any judicial involvement in determination of vacant or abandoned?

These issues will continue to evolve as more states address the issue.

### **THE “PERSONAL PROPERTY” PROBLEM**

Related to foreclosure of vacant or abandoned properties is the issue of what to do with the personal belongings that are left behind in the premises. When a foreclosure is completed, there are often personal items remaining in the property. So what are the legal ramifications related to that personal property? States view the situation differently. Some states have specific statutes governing the disposition of personal property. Some states view the property and disposition of it in accordance with landlord-tenant eviction law. Some states view the matter under a theory of involuntary “Bailor-Bailee” situation.

A review of court decisions in recent years shows an increased liability for servicers and lenders relating to the disposition of personal property after a foreclosure. Even in those cases where the lender prevails, there is cost of defense and time delays inherent in the matters. See, e.g., *Russell v. Am. Real Estate Corp.*, 89 S.W.3d 204 (App Ct. TX 2002); *Bradley v. Wells Fargo Bank, N.A.*, 2015 U.S. Dist. LEXIS 113299 (U.S.D.C. N.H. 2015); *Warren v. Bank of America, N.A.*, 2016 U.S. Dist. LEXIS 184470 (U.S.D.C. N.D. TX 2016); *Burkes v. Washington Mutual Bank, F.A.*, 2008 U.S. Dist. LEXIS 95306 (U.S.D.C. E.D. MI 2008); *Snider v. MidFirst Bank*, 211 P.3d 179 (Kansas 2009); *Rachel v. PNC Bank, N.A.*, 2017 U.S. Dist. LEXIS 54854 (U.S.D.C. So. D. Ala. 2017); *Movahedi v. U.S. Bank, N.A.*, 853 F. Supp.2d 19 (U.S.D.C. D.C. 2012); *Mwangi v. Fannie Mae*, 162 F. Supp.3d 1315 (U.S.D.C. N.D. Ga 2016); *Ash v. Bank of America, N.A.*, 2014 U.S. Dist. 10457 (U.S.D.C. E.D. Ca. 2014).

In these cases, the most frequent claims tend to be causes of action sounding in conversion, trespass, or wrongful eviction.

The states that have specific legislation governing the disposition of personal property are noted in this report. Likewise, states that regulate the disposition of personal property via landlord-tenant statutes are referenced.

For other states, reference is made to the Bailor-Bailee statute. Essentially, when a mortgagor leaves behind personal property in a foreclosed property, states (such as Pennsylvania, for example) view the situation as that the former owner has created (involuntarily) a bailor-bailee relationship, wherein the foreclosing entity is now a bailee of the personal property, and in order to dispose of that property, is obligated to comply with the terms of the statute governing a bailee relationship.

### **INCREASED REGULATORY BURDENS ON SERVICERS WITH VACANT OR ABANDONED PROPERTIES**

Over time, the issue has been dealt with by states and municipalities in various ways. Becoming quite common across the country are “foreclosure registration” ordinances and regulations, requiring lenders or servicers to register a property with a municipality after a foreclosure is commenced, or posting a bond or a fee with a municipality. These regulatory burdens add to the costs to lenders and servicers.

On a positive note, legislatures around the country are recognizing that it is to their benefit to have a more streamlined method of foreclosing a vacant property, so as to return it to the tax rolls quickly.

In this report, we review the current statute relating to vacant property foreclosure statutes.

<sup>11</sup> See “Protecting Consumers and Communities: Proposal for Standardization of Key Definitions, Guidance, and Best Practices for the Preservation and Maintenance of Vacant & Abandoned Residential Properties,” National Mortgage Servicing Association, June 2017.

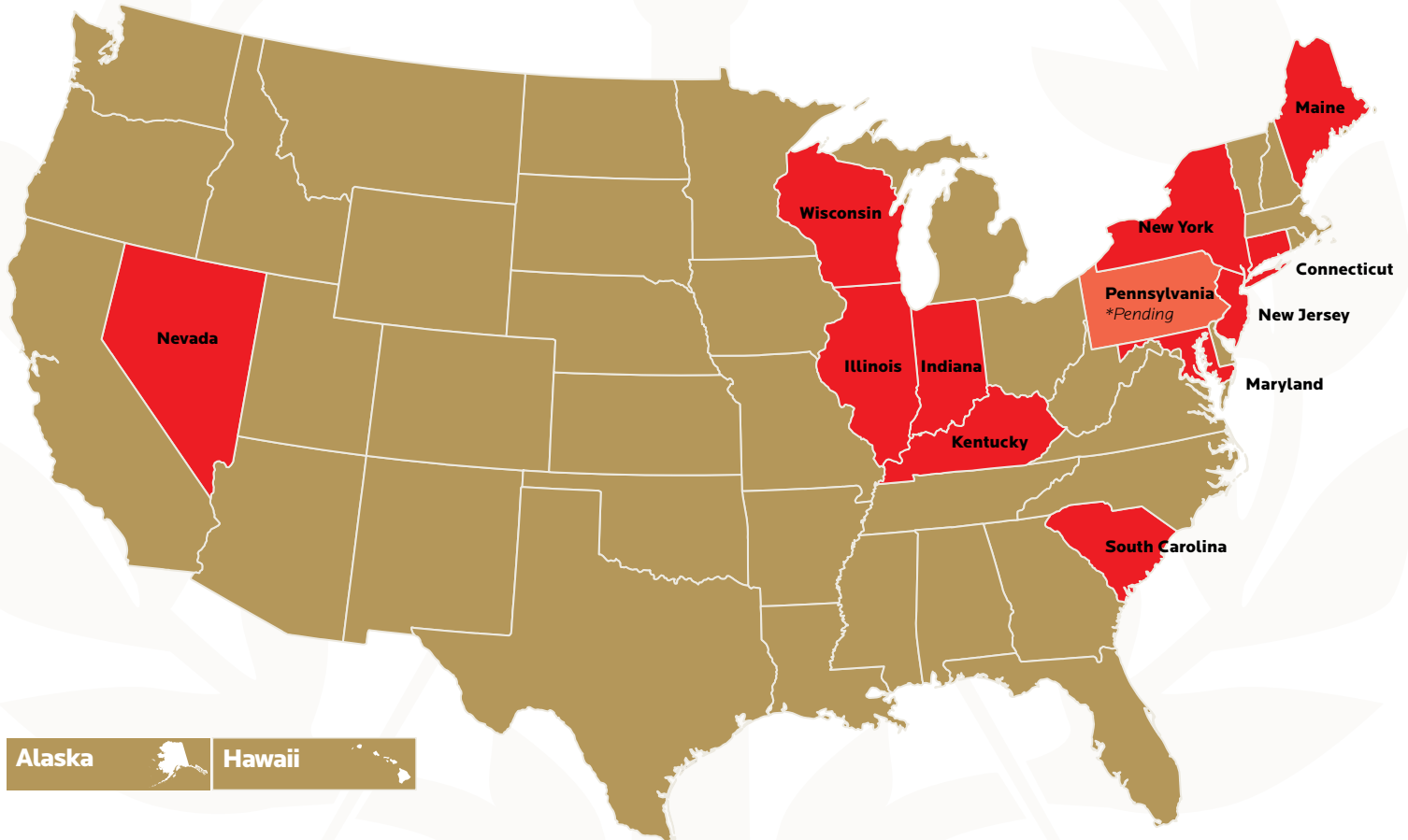


## THE LEGAL LEAGUE 100

### REVIEW OF STATE LAW

Relevant State Statutes: The information provided herein is a concise starting-point resource. The identified statutes and laws should be read in their entirety. In addition, local counsel should be consulted in each jurisdiction.

States with Statutes that Provide for the Expedited Foreclosure of Vacant and Abandoned Properties





## SUMMARY OF STATE FORECLOSURE STATUTES

### ALABAMA

**Foreclosure Statutes:** Code of Ala. § 35-10-12. Alabama is a non-judicial foreclosure state. There is no special foreclosure statute for vacant properties.

### ALASKA

**Foreclosure Statutes:** Alaska Stat. § 34.20.070. Alaska is a non-judicial foreclosure state when the deed of trust/mortgage has a power of sale clause. There is no special foreclosure statute for vacant properties.

### ARIZONA

**Foreclosure Statutes:** Arizona is a non-judicial state when the deed of trust contains a power of sale. There is no special foreclosure statute for vacant properties.

### ARKANSAS

**Foreclosure Statutes:** Arkansas is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through the non-judicial process. Ark. Code Ann. § § 18-50-101 to 18-50-116. Arkansas has a non-judicial foreclosure process when the security instrument contains a power of sale.

### CALIFORNIA

**Foreclosure Statutes:** California Civil Code, Section 2924. California has a non-judicial foreclosure procedure when the security instrument contains a power of sale. There is no special foreclosure statute for vacant properties.

### COLORADO

**Foreclosure Statutes:** Colorado has a non-judicial foreclosure statute when the security instrument contains a power of sale. Colo. Rev. Stat. §§ 38-38-100.3 to 38-38-114. There is no special foreclosure statute for vacant properties.

### CONNECTICUT

**Foreclosure Statutes:** Conn. Gen. Stat. § 49-1 to 49-31v. Connecticut has a judicial foreclosure process and has a statute to expedite the foreclosure process for homes that are deemed vacant and abandoned. Conn. Gen. Stat. § 49-31s. The mortgagee may file a motion with the court that establishes the home is vacant. If granted by the court, the foreclosure process is expedited.

### DELAWARE

**Foreclosure Statutes:** Del. Code Ann. tit. 10, Chapter 49, §§ 5061 through 5067. Delaware is a judicial foreclosure state. There is no special foreclosure statute for vacant properties.

### DISTRICT OF COLUMBIA

**Foreclosure Statutes:** D.C. Code Ann. § § 42-815 through 42-816. The District of Columbia is a non-judicial foreclosure statute when the security instrument has a power of sale. There is no special foreclosure statute for vacant properties.

### FLORIDA

**Foreclosure Statutes:** Florida is a judicial foreclosure state. Fla. Stat. § 702.01 through 702.11. There is no special foreclosure statute for vacant properties.

### GEORGIA

**Foreclosure Statutes:** Georgia has a non-judicial foreclosure process. There is no special foreclosure statute for vacant properties.

### HAWAII

**Foreclosure Statutes:** Haw. Rev. Stat. §§ 667-1.5 through 667-20.1 (judicial); §§ 667-21 through 667-41 (non-judicial). Hawaii has non-judicial foreclosure proceedings when the security instrument contains a power of sale. There is no special foreclosure statute for vacant properties.

### IDAHO

**Foreclosure Statutes:** Idaho Code § § 45-1505 to 45-1515. Idaho has non-judicial foreclosure proceedings. There is no special foreclosure statute for vacant properties.

### ILLINOIS

**Foreclosure Statutes:** Illinois is a judicial foreclosure state. See 735 Ill. Comp. Stat § § 5/15-1501 to 5/15-1605. Illinois has an expedited procedure for properties that are deemed abandoned. See, 735 ILCS 5/15-1505.8. The mortgagee may file a motion with the court for an expedited judgment and sale procedure. The motion must be sent by regular mail to the last known address of the mortgagor and can be filed simultaneously with the foreclosure complaint.

### INDIANA

**Foreclosure Statutes:** Indiana has a judicial foreclosure process. See Ind. Code § § 32-30-10-1 to 32-30-10-14, 32-29-1-1 to 32-29-1-11, 32-29-7-1 to 32-29-7-14. At any time during a mortgage foreclosure action, the mortgagee may petition the court for a determination by the court that the property subject to foreclosure is abandoned. See, Ind. Code Ann. § 32-30-10.6-3. The petition must include evidence that the property is abandoned. After the motion is filed, the court will issue an order to show cause why the property should not be found vacant upon the mortgagor. Ind. Code Ann. § 32-30-10.6-4. One or more of the following will establish prima facie evidence of abandonment: windows or entrances are broken or boarded, utilities are shut off, the property is deteriorating, the mortgagee changed the locks and the borrower has not returned, excessive trash on the property, or other evidence that indicates that the property is vacant. Ind. Code Ann. § 32-30-10.6-5. If the borrower fails to respond to the order to show cause, the court will also include this as evidence that the property was abandoned. Upon such findings, the court will enter an order for judgment in foreclosure.



**IOWA**

**Foreclosure Statutes:** Iowa has a judicial foreclosure process. Iowa Code §§ 654.1 to 654.26, 655A.1 to 655A.9, 628.26, 628.27. Iowa does not have an expedited foreclosure process for vacant homes.

**KANSAS**

**Foreclosure Statutes:** Kansas has a judicial foreclosure process. Kan. Stat. Ann. § 60-2410. Kansas does not have an expedited foreclosure process for vacant homes.

**KENTUCKY**

**Foreclosure Statutes:** Kansas has a judicial foreclosure process. Ky. Rev. Stat. Ann. §§ 426.005, 426.200, 426.260, 426.530, 426.560. Kentucky has a statute that expedites the foreclosure process when the home is deemed vacant. KRS § 426.205. The lender can file an affidavit along with the court, along with the complaint that provides evidence that the home is vacant. The court will deem the property vacant if there has been no legal resident for 45 or more days or there are circumstances that would lead a “reasonable person” to believe that the property is vacant, such as: disconnected utilities, overgrown vegetation, and statements from neighbors that indicate the property is vacant. If the court deems the property vacant, the property shall be sold within 70 days from the date of the order.

**LOUISIANA**

**Foreclosure Statutes:** The most common form of foreclosure is an executory proceeding. La. Code Civ. Proc. Ann. Arts. 3721 to 3753, 2631 to 2772. The security instrument must have a confession of judgment clause in order to have an executory proceeding. La. Code Civ. Proc. Ann. Art. 2631. Louisiana does not have an expedited foreclosure process for vacant homes.

**MAINE**

**Foreclosure Statutes:** Maine has a judicial foreclosure process. Me. Rev. Stat. Ann. tit. 14, §§ 6101 to 6325. Maine has a foreclosure process for homes deemed vacant. 14 M.R.S. § 6326. The mortgagee may at any time during the foreclosure action file with the court a motion to determine that the subject property is vacant. If the court finds by “clear and convincing evidence” that the property is vacant, the court may issue an order of abandonment. Once the order is issued, the foreclosure is advanced on the docket, the period of redemption is shortened to 45 days, and the order for abandonment is recorded in the registry of deeds.

**MARYLAND**

**Foreclosure Statutes:** Maryland has recently adopted a statute that allows a secure party to request authority to immediately commence foreclosure on vacant or abandoned property. The new law is effective October 1, 2017, and amends the previously unused vacant and abandoned property provision of the Maryland Code.

The new statute eliminates some of the requirements imposed on Trustees to complete foreclosures on vacant and abandoned properties and potentially reduces the timeframe to complete a foreclosure sale of such property.

The statute permits the filing of a Petition for Immediate Foreclosure (“Petition”) if certain conditions are met or

are present in order for a property to be deemed vacant or abandoned. The Bill lays out a number of criteria that can be used to establish the fact of vacancy or abandonment, including, but not limited to, evidence that utilities are disconnected, windows or doors are broken or missing or continuously unlocked, an accumulation of trash or debris, a lack of personal property or furnishings, a determination of vacancy or abandonment by the secured party upon inspection, and other similar indicia. The Petition need only be sent to the Borrower via Certified and First-Class Mail, but does not remove the requirement for personal service of the Order to Docket. Upon a finding that the secured party has met its burden, the new law mandates that the court “shall grant the petition” but does not mandate the time within which it must do so.

Once granted, the Petition allows for the docketing of a foreclosure action without the need to send a Notice of Intent to Foreclose, a Preliminary Loss Mitigation Affidavit, and removes the requirement that allows for mediation. The Bill does add a 20-day period after docketing, during which the Borrowers may challenge the determination that the property is abandoned or vacant. All told, these changes could potentially reduce the total foreclosure times to between six to seven months, a decrease of almost 100 days from current practice (please note that due to some ambiguous language in the statute, these timeframes are a best-case estimate, and could be longer) and reduce the costs to complete the sale. The Bill requires the Commissioner of Financial Regulation to draft a form notice that must accompany the Order to Docket.

**MASSACHUSETTS**

**Foreclosure Statutes:** Massachusetts has a non-judicial foreclosure process when the security instrument contains a power of sale. Mass. Gen. Laws Ch. 244, § 14, 17A, 17B, 18, 35A. Massachusetts does not have a process for vacant properties.

**MICHIGAN**

**Foreclosure Statute:** Though there is not a specific abandoned property foreclosure procedure, Michigan does have an Affidavit of Abandonment statute (post-foreclosure) that allows the redemption period to be shortened in a non-judicial foreclosure. Also, under this statute, there is a rebuttable presumption that any personal property left behind is deemed abandoned.

The majority of Michigan foreclosures are non-judicial; however, in a judicial foreclosure, there is not a statutory right to shortening redemption and can be shortened only with Judge’s order or party consent. Mich. Comp. Laws §§ 600.3101 to 600.3185, 600.3201 to 600.3285.

**MINNESOTA**

**Foreclosure Statutes:** Minnesota has a non-judicial foreclosure process when the security instrument has a power of sale. Minn. Stat. §§ 580.01 to 580.30. Minnesota does not have a process for vacant properties.

**MISSISSIPPI**

**Foreclosure Statutes:** Mississippi has a non-judicial foreclosure process when the security instrument contains a power of sale. Miss. Code. Ann. §§ 89-1-55 to 89-1-59. Mississippi does not have a process for vacant properties.





**MISSOURI**

**Foreclosure Statutes:** Missouri is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through the non-judicial process. Mo. REv. Stat. § Section 443.310.1.

**MONTANA**

**Foreclosure Statutes:** Montana is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through the non-judicial process. 71-1-313.

**NEBRASKA**

**Foreclosure Statutes:** Nebraska is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through the non-judicial process. There is no special foreclosure statute for vacant properties. R.R.S. Neb. § 76-1008.

**NEVADA**

**Foreclosure Statutes:** Nevada is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through the non-judicial process. Below is the text of the Nevada statute for vacant property foreclosures:

107.130. EXPEDITED PROCEDURE FOR EXERCISE OF TRUSTEE'S POWER OF SALE INVOLVING ABANDONED RESIDENTIAL PROPERTY; INSPECTION OF REAL PROPERTY TO DETERMINE ABANDONMENT; REQUIRED NOTICE; CERTIFICATION AND AFFIDAVIT; CIVIL PENALTY FOR NONCOMPLIANCE WITH CERTAIN REQUIREMENTS.

A beneficiary may elect to use an expedited procedure for the exercise of the trustee's power of sale pursuant to NRS 107.080 if, after an investigation, the beneficiary:

*Determines that real property is abandoned residential property; and*

*Receives from the applicable governmental entity a certification pursuant to subsection 4.*

Each board of county commissioners of a county and each governing body of an incorporated city shall designate an agency or a contractor to inspect real property upon receipt of a request pursuant to paragraph (b) of subsection 3 and to provide certifications that real property is abandoned residential property pursuant to subsection 4.

If a beneficiary has a reasonable belief that real property may be abandoned residential property, the beneficiary or its agent:

- (a) May enter the real property, but may not enter any dwelling or structure, to investigate whether the real property is abandoned residential property. Notwithstanding any other provision of law, a beneficiary and its agents who enter real property pursuant to this paragraph are not liable for trespass.

- (b) May request a certification pursuant to subsection 4 from the agency or contractor designated by the applicable governmental entity pursuant to subsection 2.

4. Upon receipt of a request pursuant to paragraph (b) of subsection 3, the agency or contractor designated by the applicable governmental entity shall inspect the real property to determine the existence of two or more conditions pursuant to subparagraph (7) of paragraph (b) of subsection 1 of NRS 107.0795. The designee and any employees of the designee may enter the real property, but may not enter any dwelling or structure, to perform an inspection pursuant to this subsection, and the designee and any employees who enter real property pursuant to this subsection are not liable for any civil damages as a result of any act or omission, not amounting to gross negligence, or for trespass. If the designee or an employee of the designee determines that the real property is abandoned residential property, the designee shall serve a notice by first-class mail to the grantor or the successor in interest of the grantor and by posting the notice on the front door of the residence. The notice must provide that unless a lawful occupant of the real property contacts the designee within 30 days after service of the notice, the designee will issue a certification that the real property is abandoned residential property and that the beneficiary may use the certification to seek an expedited procedure for the exercise of the trustee's power of sale. If a grantor or the successor in interest of the grantor or a lawful occupant of the real property fails to contact the designee within 30 days after service of the notice, the designee shall provide to the beneficiary a certification that the real property is abandoned residential property. The certification required by this subsection must:

- (a) Be signed and verified by the designee or the employee or employees of the designee who inspected the real property;
- (b) State that, upon information and belief of the designee, after investigation by the designee or the employee or employees of the designee, the real property is abandoned residential property; and
- (c) State the conditions or circumstances supporting the determination that the property is abandoned residential property. Documentary evidence in support of such conditions or circumstances must be attached to the certification.

5. For an inspection, service of notice and issuance of a certification pursuant to subsection 4, the agency or contractor designated pursuant to subsection 2 by the applicable governmental entity may charge and receive from the beneficiary a fee of not more than \$300.

6. A beneficiary who elects to use an expedited procedure for the exercise of the trustee's power of sale pursuant to NRS 107.080 must include, or cause to be included, with the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 an affidavit setting forth the facts supporting the determination that the real property is abandoned residential property and the certification provided to the beneficiary pursuant to subsection 4. The affidavit required by this subsection must:



- (a) Be signed and verified by the beneficiary;
- (b) State that, upon information and belief of the beneficiary after investigation by the beneficiary or its agent, the property is abandoned residential property; and
- (c) State the conditions or circumstances supporting the determination that the property is abandoned residential property. Documentary evidence in support of such conditions or circumstances must be attached to the affidavit.

7. If the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 includes the affidavit and certification described in subsection 6, before the sale, the grantor or a successor in interest of the grantor may record in the office of the county recorder in the county where the real property is located an affidavit stating that the real property is not abandoned residential property, unless the grantor or the successor in interest of the grantor has surrendered the property as evidenced by a document signed by the grantor or successor confirming the surrender or by the delivery of the keys to the real property to the beneficiary. Upon the recording of such an affidavit:

- (a) The grantor or the successor in interest must mail by registered or certified mail, return receipt requested, to the beneficiary and the trustee a copy of the affidavit; and
- (b) The notice of default and election to sell and the affidavit and certification described in subsection 6 are deemed to be withdrawn.

8. If the notice of default and election to sell recorded pursuant to subsection 2 of NRS 107.080 includes the affidavit and certification described in subsection 6, the trustee's sale of the abandoned residential property must be conducted within 6 months after the beneficiary received the certification. If the trustee's sale is not conducted within 6 months after the beneficiary received the certification:

- (a) The notice of default and election to sell and the affidavit and certification described in subsection 6 are deemed to be withdrawn; and
- (d) The beneficiary is liable to the grantor or the successor in interest of the grantor for a civil penalty of not more than \$500.

9. The period specified in subsection 8 is tolled:

- (a) If a borrower has filed a case under 11 U.S.C. Chapter 7, 11, 12 or 13, until the bankruptcy court enters an order closing or dismissing the bankruptcy case or granting relief from a stay of the trustee's sale.
- (b) If a court issues a stay or enjoins the trustee's sale, until the court issues an order granting relief from the stay or dissolving the injunction.

10. As used in this section:

- (a) "Applicable governmental entity" means:
  - (1) If the real property is within the boundaries of a city, the governing body of the city; and
  - (2) If the real property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.
- (a) "Beneficiary" means the beneficiary of the deed of trust or the successor in interest of the beneficiary or any person designated or authorized to act on behalf of the beneficiary or its successor in interest.

**NEW HAMPSHIRE**

**Foreclosure Statutes:** New Hampshire is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through the non-judicial process. There is not a vacant property foreclosure statute.

**NEW JERSEY**

**Foreclosure Statutes:** New Jersey has a vacant property foreclosure process: NJ Stat. §C.2.A:50-73 NJ's vacant property foreclosure law

2A:50-73 Summary action to foreclose mortgages on certain properties.

Real property shall be deemed "vacant and abandoned" if the court finds that the mortgaged property is not occupied by a mortgagor or tenant as evidenced by a lease agreement entered into prior to the service of a notice of intention to commence foreclosure according to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), and at least two of the following conditions exist:

- (1) Overgrown or neglected vegetation;
- (2) The accumulation of newspapers, circulars, flyers or mail on the property;
- (3) Disconnected gas, electric, or water utility services to the property;
- (4) The accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (5) The accumulation of junk, litter, trash or debris on the property;
- (6) The absence of window treatments such as blinds, curtains or shutters;
- (7) The 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 window panes that are damaged, broken and unrepaired;
- (10) Doors to the property 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 violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
- (13) The mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;
- (14) A written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;
- (15) Any other reasonable indicia of abandonment.

b. For the purposes of this section, a residential property shall not be considered "vacant and abandoned" if, on the property:

- (1) There is an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;
- (2) There is a building occupied on a seasonal basis, but otherwise secure; or
- (3) There is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

c. In addition to the residential mortgage foreclosure procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage debt secured by residential property that is vacant and abandoned may be brought by a lender in the Superior Court. In addition, a lender may, at any time after filing a foreclosure action, file with the court, in accordance with the Rules Governing the Courts of the State of New Jersey, an application to proceed in a summary manner because the residential property that is the subject of the foreclosure action is believed to be "vacant and abandoned"; provided, however, that this section shall not apply to a foreclosure of a timeshare interest secured by a mortgage.

d. (1) In addition to the service of process required by the Rules of Court, a lender shall establish, for the entry of a residential foreclosure judgment under this section, that a process server has made two unsuccessful attempts to serve the mortgagor or occupant at the residential property, which attempts must be at least 72 hours apart, and during different times of the day, either before noon, between noon and 6 p.m., or between 6 p.m. and 10 p.m.

(2) In addition to any notices required to be served by law or the Rules of Court, a lender shall, with any order to show cause served as original service of process or a motion to proceed summarily, serve a notice that the lender is seeking, on the return date of the order to show cause, or on the date fixed by the court, to proceed summarily for entry of a residential foreclosure judgment because the property is vacant and abandoned.

(3) When a property is deemed vacant and abandoned as herein defined, a lender shall not be required to serve the debtor with the notice to cure required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-58).

e. (1) The court may enter a final residential mortgage foreclosure judgment under this section upon a finding, (a) by clear and convincing evidence, that the residential property is

vacant and abandoned as defined under subsection a. of this section, and (b) that a review of the pleadings and documents filed with the court, as required by the Rules of Court, supports the entry of a final residential mortgage foreclosure judgment.

(2) A final residential mortgage foreclosure judgment under this section shall not be entered if the court finds that:

- (a) The property is not vacant or abandoned; or
- (b) The mortgagor or any other defendant has filed an answer, appearance, or other written objection that is not withdrawn and the defenses or objection asserted provide cause to preclude the entry of a final residential mortgage foreclosure judgment.

f. If a final residential mortgage foreclosure judgment under this section is not entered on the original or adjourned return date of an order to show cause or the date fixed by the court to proceed summarily, the court may direct that the foreclosure action continue on the normal track for residential mortgage foreclosure actions for properties that are not vacant and abandoned and the notice to cure served with the order to show cause or the order fixing that date for the matter to proceed summarily shall be of no effect.

g. All actions brought to foreclose on real property pursuant to this section shall proceed in accordance with the Rules of Court.

h. Nothing in this section is intended to supersede or limit other procedures adopted by the Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation.

i. Nothing in this section shall be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law.

j. Notwithstanding paragraph (3) of subsection a. of section 12 of P.L.1995, c.244 (C.2A:50-64) to the contrary, if the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the sheriff shall sell the property within 60 days of the sheriff's receipt of any writ of execution issued by the court. If it becomes apparent that the sheriff cannot comply with the provisions of this subsection, the foreclosing plaintiff may apply to the court for an order appointing a Special Master or judicial agent to hold the foreclosure sale. L.2012, c.70, s.1.

**NEW MEXICO**

**Foreclosure Statutes:** Pursuant to New Mexico law, foreclosure is a judicial foreclosure process. There is no express expedited process.

**NEW YORK**

New York recently adopted legislation providing for a means to expedite foreclosures of vacant or abandoned properties. Under the statute, Plaintiff provides notice to Defendant borrower that an expedited judgment of foreclosure and sale on the grounds that the property is vacant is before the court. Defendant is put on notice that a failure to respond may result in no further legal proceedings, followed by a sale.



The application must be supported by an affidavit and proof that Plaintiff owns the mortgage and note; photographs documenting the property is vacant; and utility records evidencing the property’s occupancy status. The court must promptly send notice to the Defendant of Plaintiff’s application for expedited judgment of foreclosure and sale in a form prescribed by, or at the discretion of, the courts. The chief administrative judge of the courts is required to adopt the rules as he or she deems necessary to expeditiously implement the provisions of this section. NY RPAPL § 1309 (Real property actions and proceedings section 1309).

**NORTH CAROLINA**

**Foreclosure Statutes:** North Carolina is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through the non-judicial process. There is no vacant property foreclosure statute. N.C. Gen. Stat. § 45-21.16

**NORTH DAKOTA**

**Foreclosure Statutes:** Though North Dakota does not presently have an expedited vacant property foreclosure process, the state does have a statute that permits a plaintiff to protect “abandoned” real property during the foreclosure process or after sheriff’s sale. 32-19-19. Injury to property restrained Abandoned real property.

The court, by injunction, on good cause shown, may restrain the party in possession from doing any act to the injury of real property during the existence of the lien or foreclosure of a mortgage thereon and until the expiration of the time allowed for redemption. If before the sheriff’s sale the mortgagee or after the sheriff’s sale the holder of the sheriff’s certificate of sale reasonably believes that the property is abandoned, the mortgagee or holder of the sheriff’s certificate may petition the court to determine abandonment. A notice of hearing must be sent by mail to the last-known address of the mortgagor or the party entitled to possession of the real property at least ten days prior to the date of the hearing to determine abandonment. Service by mail is complete upon mailing. If the court determines that the real property is abandoned, the court may grant the mortgagee or holder of the sheriff’s certificate immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The court may proceed at the hearing to consider remedies to prevent waste.

**OHIO**

**Foreclosure Statutes:** OHIO REV. CODE § 2308.02. Expedited proceedings for vacant and abandoned properties.

(A) A mortgagee who files a foreclosure action on a residential property may file a motion with the court to proceed in an expedited manner under this section on the basis that the property is vacant and abandoned. In order to proceed in an expedited manner, upon the filing of such motion, the mortgagee must be a person entitled to enforce the instrument secured by the mortgage under division (A)(1) or (2) of section 1303.31 of the Revised Code or a person with the right to enforce the obligation secured by the mortgage pursuant to law outside

of Chapter 1303. of the Revised Code.

(B) If a motion to proceed in an expedited manner is filed before the last answer period has expired, the court shall decide the motion not later than twenty-one days, or within the time consistent with the local rules, after the last answer period has expired. If a motion to proceed in an expedited manner is filed after the last answer period has expired, the court shall decide the motion not later than twenty-one days, or within the time consistent with local rules, after the motion is filed.

(C) In deciding the motion to proceed in an expedited manner, the court shall hold an oral hearing and deem the property to be vacant and abandoned if all of the following apply:

- (1) The court finds by a preponderance of the evidence that the residential mortgage loan is in monetary default.
- (2) The court finds by a preponderance of the evidence that the mortgagee is a person entitled to enforce the instrument secured by the mortgage under division (A)(1) or (2) of section 1303.31 of the Revised Code or a person with the right to enforce the obligation secured by the mortgage pursuant to law outside of Chapter 1303. of the Revised Code.
- (3) The court finds by clear and convincing evidence that at least three of the following factors are true:
  - (a) Gas, electric, sewer, or water utility services to the property have been disconnected.
  - (b) Windows or entrances to the property are boarded up or closed off, or multiple window panes are broken and unrepaired.
  - (c) Doors on the property are smashed through, broken off, unhinged, or continuously unlocked.
  - (d) Junk, litter, trash, debris, or hazardous, noxious, or unhealthy substances or materials have accumulated on the property.
  - (e) Furnishings, window treatments, or personal items are absent from the structure on the land.
  - (f) The property is the object of vandalism, loitering, or criminal conduct, or there has been physical destruction or deterioration of the property.
  - (g) A mortgagor has made a written statement expressing the intention of all mortgagors to abandon the property.
  - (h) Neither an owner nor a tenant appears to be residing in the property at the time of an inspection of the property by the appropriate official of a county, municipal corporation, or township in which the property is located or by the mortgagee.
  - (i) The appropriate official of a county, municipal corporation, or township in which the property is located provides a written statement or statements indicating that the structure on the land is vacant and abandoned.



(j) The property is sealed because, immediately prior to being sealed, it was considered by the appropriate official of a county, municipal corporation, or township in which the property is located to be open, vacant, or vandalized.

(k) Other reasonable indicia of abandonment exist.

(4) No mortgagor or other defendant has filed an answer or objection setting forth a defense or objection that, if proven, would preclude the entry of a final judgment and decree of foreclosure.

(5) No mortgagor or other defendant has filed a written statement with the court indicating that the property is not vacant and abandoned.

(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.

(b) Any court costs assessed in connection with the inspection conducted pursuant to division (C)(6)(a) of this section shall not be more than fifty dollars.

(D) If the court decides after an oral hearing that the property is vacant and abandoned and that the mortgagee who filed the motion to proceed in an expedited manner is entitled to judgment, the court shall enter a final judgment and decree of foreclosure and order the property to be sold in accordance with division (E) of this section. If the court does not decide that the property is vacant and abandoned, the seventy-five-day deadline established in division (E) of this section shall not apply to the sale of the property.

(E) If the court decides that the property is vacant and abandoned and enters a final judgment and decree of foreclosure under division (D) of this section, the property shall be offered for sale not later than seventy-five days after the issuance of the order of sale. The sale of the property shall be conducted in accordance with the requirements in Chapter 2329. of the Revised Code, including possible postponement of the sale pursuant to division (C) of section 2329.152 of the Revised Code.

(F) Nothing in this section shall supersede or limit other procedures adopted by the court to resolve the residential mortgage loan foreclosure action, including foreclosure mediation.

**OKLAHOMA**

**Foreclosure Statutes:** Oklahoma does not have a law that expedites the foreclosure process of abandoned or vacant property, but the state does have a statute that enables the plaintiff in a foreclosure action to take steps to occupy the mortgaged, abandoned/vacant property through the duration of the judicial foreclosure process. Okla. Stat. tit 46 § 302.

Plaintiff files a motion with the court to protect the property during the pending litigation. The motion needs to include facts that show the property is subject to physical deterioration and devaluation (either presently or there is a substantial risk), there are health and/or safety risks to the general public, or there exists a risk of additional legal proceedings due to ordinance violations, law violations, unpaid taxes or accrual of liens, etc. An inspection and posting three days after plaintiff/ mortgagee files the motion shall be executed by Sheriff. The motion may be served personally if it appears the property is occupied. A hearing may be scheduled at least 15 days after the notice is posted.

The motion is denied if an occupant, defendant, or party appears in court and proves he or she can properly care for the property through the duration of the foreclosure process.

If the motion is granted, Plaintiff must inventory and care for personal property on the premises. The mortgaged real property shall also be secured by Plaintiff for the duration of the foreclosure action. The court order does not modify any rights of any person to the property until a final disposition is issued by the court.

**OREGON**

**Foreclosure Statutes:** Oregon is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is not a vacant property foreclosure statute. ORS § 86.726, et seq.

Oregon's non-judicial foreclosure has unique limitations and restrictions including requiring a resolution conference and the plaintiff must petition the Attorney General to proceed to sale without the resolution conference and permitting defendants to go through the judicial process.



**PENNSYLVANIA**

Pennsylvania does not have a statute dealing with a specialized procedure for foreclosure of vacant properties. In the current legislative session, bills have been introduced in both chambers of the legislature that would adopt a new procedure for foreclosures on vacant or abandoned properties. Senate Bill Number 471 and House Bill No. 653, Session of 2017 (styled the "Vacant and Abandoned Real Estate Foreclosure Act"), would provide the following if enacted:

A property is deemed abandoned if:

- » A creditor or purchaser has been designated as a conservator of the mortgaged property under the Abandoned and Blighted Property Conservatorship Act;
- » The mortgaged property is certified as vacant or abandoned by the local municipality; or
- » By pleading submitted to the court that shows:
  - Support by images or other appropriate evidence, alleging that the property is vacant or abandoned; and
  - Under the penalties for false swearing under 18 Pa. C.S. § 4903.
  - The request may be submitted contemporaneously with the complaint
- » The affiant may be a municipal code enforcement officer, the creditor or purchaser, or any competent adult who has personal knowledge of the condition of the mortgaged property, including a property inspector or agent retained by the creditor.
- » Within 10 business days the prothonotary shall provide a rule to show cause to the creditor if the affidavit contains assertions of fact that comply with the requirements for certification as vacant and abandoned.
  - The rule to show cause shall be served on Defendant's counsel, if represented
  - There shall be three attempts to serve personally by creditor
  - Rule to show cause may be served on the owner or any other obligor other than the owner, regardless of whether the complaint was served.
- » Parties have 20 days to respond to the rule to show cause. If no response is filed, the court shall render an order certifying the mortgaged property as vacant.
- » If a timely response is filed, a hearing shall be scheduled within 20-30 days.

A mortgaged property may be certified as vacant and abandoned by a municipal code enforcement officer under section 4(b) or in a judicial proceeding under section 4(c) if the mortgaged property is vacant and satisfies at least two of following indicia of abandonment:

- » Multiple windows, doors or entrances on the property are boarded up, unhinged, closed off, smashed in, or are continuously unlocked.
- » The mortgaged property has been stripped of copper or other metals.
- » Interior furnishings, personal items, appliances, or fixtures have been removed from the mortgaged property, including window treatments, such as blinds, curtains, or shutters.
- » Gas, electric, water, or sewer utility services have been terminated to the mortgaged property or are established in the name of the creditor to preserve the mortgaged property.
- » Newspapers, circulars, flyers, or mail have accumulated on

- the mortgaged property, or the United States Postal Service has discontinued delivery to the mortgaged property.
- » Rubbish, trash, debris, neglected vegetation, or natural overgrowth has accumulated on the mortgaged property.
- » Multiple municipal building or housing code violations exist for the mortgaged property, which violations have been documented as being uncorrected during the preceding year.
- » Written and signed statements have been issued by the mortgaged property's adjoining neighbors, adjacent neighbors, delivery persons, or a municipal code enforcement officer indicating that the mortgaged property is vacant and abandoned.
- » Hazardous, noxious, or unhealthy substances or materials have accumulated on the mortgaged property.
- » Other credible evidence exists indicating the intent of the owner or obligor to vacate and abandon the mortgaged property.
  - Determining vacancy.—Any competent evidence may be relied on to determine that a mortgaged property is vacant, including evidence that:
    - The mortgaged property was found to be vacant at the time of two inspections occurring at least 45 days apart.
    - After the first inspection the mortgaged property was posted with a notice advising any occupant of the mortgaged property to immediately contact the person who conducted the inspection and advising that failure to do so may have adverse legal consequences.
    - There was no response to the notice posted after the first inspection was received from a person legally entitled to occupy the mortgaged property prior to the second inspection.
  - Corrective action by creditor or purchaser.— The remediation of conditions that provide evidence of abandonment under subsection (b) by the creditor or purchaser or corrective action taken by a municipality or other person to protect the public health and welfare shall not prevent a mortgaged property from meeting the requirements to be certified as vacant and abandoned.

*Effect of certification of vacancy and abandonment*

Foreclosure action.—In a foreclosure action, a mortgaged property certified as vacant and abandoned shall not be subject to mediation, conciliation, diversion, or other program established by a local court to encourage resolution of owner-occupied residential mortgage foreclosures.

Service and notification.—Following a certification that a mortgaged property is vacant and abandoned, any subsequent documents required to be served on and any notices required to be delivered to the owner and any obligor other than the owner may be exclusively served and delivered by first-class mail to an address specified by the owner or obligor for the receipt of communications relating to the property or, if no such address is specified, by delivery to the address of the mortgaged property and by posting of notice in a conspicuous location on the mortgaged property.

*Scheduling of sheriff's sale*

- » If a mortgaged property is certified as vacant and abandoned, the sheriff on receipt of an accelerated sale fee of \$500 shall schedule a sale of the mortgaged property within 60 days following the filing of the writ of execution and the sheriff's deed must be recorded no later than 30 days following the sale.
- » The accelerated sale fee shall be payable at the time of the filing of the writ of execution and shall be immediately refunded if:
  - the time frames specified in this subsection are not complied with; or
  - if the expedited sale date is postponed or continued by any party other than the creditor.

*Scheduling of execution of writ of possession.*

- » If a mortgaged property is certified as vacant and abandoned, the sheriff on the receipt of an additional fee of \$250 shall accelerate the scheduling of execution of a writ of possession.
- » In order to impose the additional fee, the sheriff must schedule the removal of a former owner's personal property from the mortgaged property and the securing of the personal property within 30 days or less following the filing of the writ of execution.
- » The additional fee shall be immediately refunded if:
  - the time frames set forth above are not complied with; or
  - the expedited execution is postponed or continued by any party other than the purchaser.

Possession of Mortgaged Property Pending Foreclosure. If a mortgaged property is certified as vacant and abandoned, or with the consent of the owner or any obligor other than the owner, the creditor may enter the mortgaged property peacefully for the purpose of inspecting, maintaining, and repairing the mortgaged property and shall not be liable to the owner for trespass or for damage to the property resulting from a cause other than the creditor's gross negligence or willful misconduct.

Property Maintenance. –The maintenance obligations of a creditor that exercises the right to possession pending foreclosure are limited to compliance with property maintenance requirements of the Federal Housing Administration for loans insured by the administration, or of Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, for mortgages held by either respective entity.

- » For other creditors, the mortgaged property maintenance obligations of a creditor that exercises its right to possession pending foreclosure shall be limited to:
  - care for the yard and exterior of a building on vacant and abandoned mortgaged property, including removing excessive foliage growth that diminishes the value of surrounding properties
  - measures reasonably necessary to prevent trespassers from remaining on the mortgaged property
  - preventing mosquito larvae from growing in standing water on the mortgaged property and infestations by other vermin and insects
  - taking other actions needed to prevent conditions on the mortgaged property that create a serious and imminent hazard to public health or safety

**RHODE ISLAND**

**Foreclosure Statutes:** Rhode Island is a non-judicial foreclosure jurisdiction that requires a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is no special foreclosure statute for vacant properties. 34 R.I. Gen. Laws. Ann. § 34-27-4.

**SOUTH CAROLINA**

**Foreclosure Statutes:** South Carolina has a vacant property S.C. Code Ann. § 29-3-625 (faster foreclosure for vacant property).

Abandoned property means real property subject to a mortgage where either:

- » The mortgaged property is not occupied and at least two (2) of the following conditions exist:
  - windows or entrances to the property are boarded up or closed off, or multiple window panes are damaged, broken, or unrepaired;
  - doors to the property are smashed through, broken off, unhinged, or continuously unlocked;
  - hazardous, noxious, or unhealthy substances or materials have accumulated on the property;
  - gas, electric, or water utility services have been terminated by the utility for at least 30 days due to failure to pay by the property owner;
  - a risk to the health, safety, or welfare of the public exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
  - an uncorrected violation of a building, housing, or similar code during the preceding year that the property owner has received notice to correct and has failed to do so;
  - an order by governmental authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
  - a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;
  - written statements of neighbors, delivery persons, or governmental employees indicating that the property is abandoned; or
  - any other indicia of abandonment; or
  - The mortgaged property is vacant, unimproved land and is in need of maintenance, repair, or securing;
  - A showing under items (1) or (2) of this section must be proven by clear and convincing evidence.

Real property must not be considered "abandoned" if, on the property, there is:

- » An unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;
- » A building occupied on a seasonal basis, but otherwise secure;
- » A building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute; or
- » A building owned by a property owner who is deceased and the heirs can be identified. The mortgage holder must submit proof that efforts were made to identify and contact heirs.

A mortgagee or successor in interest to a mortgagee may move the court for an expedited judgment of foreclosure and sale of real property that is considered "abandoned" pursuant to this



section. The motion must be a motion to expedite foreclosure and sale, which:

- » must be supported by affidavit and must set forth the facts pursuant to subsection (A) demonstrating that the mortgaged property is abandoned; and
- » may be filed by the mortgagee at the time the Order of Reference is filed or any time thereafter.

In addition to any notices required to be served by law a mortgagee shall serve a notice on each defendant that the mortgagee is seeking an entry of a judgment and decree of foreclosure on the date fixed by the court or on the return date of the rule to show cause.

A motion to expedite foreclosure and sale may be heard by the master-in-equity or special referee, or in those counties without a master-in-equity, by a circuit judge.

A motion to expedite a foreclosure action is designated as a priority matter pursuant to the South Carolina Rules of Civil Procedure and should be heard by the court as quickly as possible.

The court, after a hearing, shall grant the motion to expedite foreclosure and sale and enter a judgment of foreclosure and sale upon a finding by clear and convincing evidence that:

- » The mortgaged property is abandoned as defined under subsection (A); and
- » The pleadings, documents filed with the court, and testimony supports the entry of a final judgment of foreclosure and sale.

The court shall not grant the motion to expedite foreclosure and sale or enter a judgment of foreclosure and sale if the court finds that:

- » The mortgaged property is not abandoned; or
- » The mortgagor or any other defendant has filed an answer, appearance, or other written objection that is not withdrawn and the defenses or objections asserted provide cause to preclude the entry of a judgment of foreclosure and sale.

If a motion to expedite foreclosure and sale is denied, the court may direct that the foreclosure action continue pursuant to standard procedure under South Carolina law for mortgage foreclosure actions for properties that are not abandoned. Nothing in this section may be construed to supersede or limit procedures adopted by the South Carolina Supreme Court to resolve residential mortgage foreclosure actions.

HISTORY: 2014 Act No. 218 (S.1007), Section 1, eff June 2, 2014.

### **SOUTH DAKOTA**

**Foreclosure Statutes:** South Dakota is a non-judicial foreclosure jurisdiction so long as the deed in trust contains a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is no special foreclosure statute for vacant properties. S.D. Codified Laws § 21-47 and S.D. Codified Laws § 21-48.

### **TENNESSEE**

**Foreclosure Statutes:** Tennessee is a non-judicial foreclosure jurisdiction so long as the deed in trust contains a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is no special foreclosure statute for vacant properties. Tenn Code Ann. § 35-5-101.

### **TEXAS**

**Foreclosure Statutes:** Texas is a non-judicial foreclosure jurisdiction so long as the deed in trust contains a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is no special foreclosure statute for vacant properties. Tex. Prop. Code § 51.002.

### **UTAH**

**Foreclosure Statutes:** Utah is a non-judicial foreclosure jurisdiction so long as the deed in trust contains a power of sale clause in the deed of trust. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is no special foreclosure statute for vacant properties. Utah code ann. § 57-1-24.

### **VERMONT**

**Foreclosure Statutes:** Vt. Stat. Ann. tit. 12, § 4941.

Vermont permits a mortgagee to pursue a strict foreclosure. In a strict foreclosure action, the court can give the property back to the mortgagee by decree without a foreclosure sale if the property value is less than the mortgage debt.

Under a strict foreclosure, if the property is not redeemed, the clerk of court issues a writ of possession at the request of the plaintiff mortgagee. Vt. Stat. Ann. tit. 12, § 4945.

### **VIRGINIA**

**Foreclosure Statutes:** Va. Code Ann. § 55-59.1.

Virginia is a non-judicial foreclosure state that requires notice of the sale be served upon the record owner, lienholder, and any other party with an interest 30 days prior to the sale of the property. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is no special foreclosure statute for vacant properties.

### **WASHINGTON**

**Foreclosure Statutes:** Washington is a non-judicial foreclosure state that requires notice of the sale be served upon the record owner, lienholder, and any other party with an interest 30 days prior to the sale of the property. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is no vacant property foreclosure statute.

Rev. Code Wash. (ARCW) § 61.12.093

The majority of foreclosures are non-judicial unless the security instrument does not contain a power of sale. There is not a vacant foreclosure statute but if the court finds that a property is abandoned for six or more months, then the purchaser at sale takes title without any right of redemption for the prior owner/mortgagee.





## THE LEGAL LEAGUE 100

Rev. Code Wash. (ARCW) § 61.12.093

“Lack of occupancy by, or by authority of, the mortgagor or his or her successor in interest for a continuous period of six months or more prior to the date of the decree of foreclosure, coupled with failure to make payment upon the mortgage obligation within the said six month period, will be prima facie evidence of abandonment.”

### WEST VIRGINIA

**Foreclosure Statutes:** W. Va. Code Ann. § 38-1-4.

West Virginia is a non-judicial foreclosure state, which means notice of the date and time of the sale is provided to anyone with an interest in the mortgaged property, including lienholders. Otherwise, a mortgage foreclosure action must be instituted. However, most foreclosures are done through non-judicial means. There is not a vacant property foreclosure statute.

### WISCONSIN

**Foreclosure Statutes:** Wis. Stat. Ann. § 846.102

#### 846.102 ABANDONED PREMISES

- » A property is abandoned when there is a relinquishment of possession or control of mortgaged premises whether or not the mortgagor or the mortgagor's assigns have relinquished equity and title.
- » A representative of the city, town, village, or county where the mortgaged premises are located may provide testimony or evidence relating to whether the premises have been abandoned by the mortgagor.
- » The court shall consider the following when determining whether a property has been abandoned. If:

- there are boarded, closed, or damaged windows or doors to the premises
  - missing, unhinged, or continuously unlocked doors to the premises
  - terminated utility accounts for the premises
  - accumulation of trash or debris on the premises
  - at least two reports to law enforcement officials of trespass, vandalism, or other illegal acts committed on the premises
  - unsafe or unsanitary conditions that create imminent danger of becoming unsafe or unsanitary.
- » If the court finds the mortgaged premises have been abandoned, judgment shall be entered, except that the plaintiff shall, no later than 12 months from the date when judgment was entered, do one of the following:

- After five weeks following the date when judgment was entered, hold a sale of the mortgaged premises and have the sale confirmed. Notice of the time and place of sale shall be given under sections 815.31 and 846.16. Notice may be given at any point in the 12 month period.
  - Release or satisfy the mortgage lien and vacate the judgment.
- » After 12 months, any party (including the city, town, village, or county) can petition the court for an order compelling a sale of the mortgaged premises. 12

### WYOMING

**Foreclosure Statutes:** Wyoming has non-judicial foreclosure, unless the deed of trust/mortgage does not contain a power of sale. Vacant properties were not addressed in the foreclosure statutes. Wyo. Stat. § 34-4-104

## SURVEY OF STATUTES GOVERNING PERSONAL PROPERTY

Servicers and lenders continually face issues with regard to the disposal of personal property left behind in foreclosed homes. As is the case with the definition of “Vacant” or “Abandoned,” there is also no uniform definition of “abandoned personal property.” With no uniform designation, there are a multitude of different legal theories, statutes and regulations involved with the proper process and procedure to remove personal belongings from a foreclosed premises.

There are three primary legal theories involved with the proper means to discard any personal belongings. First, some states have express statutory authority under the foreclosure statute on how to dispose of any belongings. Second, some states view the former owner as essentially a “tenant at sufferance” and therefore require a lender or servicer to follow the applicable Landlord-Tenant laws. Some states only view Landlord-Tenant law as applicable where the occupant was a tenant of the prior owner / mortgagor. Some states even view the matter as one in which a Bailor-Bailee relationship is created between the lender / servicer and the prior owner. In other words, post-foreclosure, the occupant becomes an “involuntary bailor” entrusting his personal property to the “involuntary bailee” (i.e., the lender or servicer). As such, the applicable law to follow regarding personal property left behind is actually statutory guidance on Bailor-Bailees.

The below is a survey and list of potential applicable statutes, on a state-by-state basis, to give guidance as to how a lender or servicer may protect itself from litigation relating to unlawful conversion or trespass. This is by no means a 100% exhaustive list or analysis of all applicable laws or regulations, and local counsel should be contacted.

A review of this panoply and wide variety of statutes demonstrates the need for some uniformity in the means for disposal of personal property left behind post-foreclosure.

### ALABAMA

With regard to personal property, Alabama has multiple statutes that are relevant, depending on the type of property.

§ 35-9A-423: Remedies for absence, nonuse, and abandonment (landlord-tenant)

(d) If a tenant leaves property in the unit more than 14 days after termination... the landlord has no duty to store or protect the tenant’s property in the unit and may dispose of it without obligation.

(e) ... property shall be considered abandoned if electric service to the property has been terminated for seven consecutive days.

§ 35-12A-1: Definitions (Manufactured Dwelling)

Manufactured dwelling – residential trailer, mobile home, or manufactured home

Abandoned = satisfied either of following:

Tenant absent from premises following expiration of 30 days after default, termination, or expiration of lease agreement

Tenant absent from premises continuously for 30 days after service of a court order

§ 35-12A-6: Store of dwelling and personal property of tenant (manufactured dwelling)

Store all abandoned personal property of tenant, including goods left inside a manufactured dwelling or outside in a place of safekeeping and exercise reasonable care for the personal property

§ 35-12A-8: Sale of abandoned dwelling and personal property

If tenant does not respond within time provided by notice.... Or remove within 45 days after... manufactured dwelling community owner may sell abandoned manufactured dwelling and personal property...

### ALASKA

§ 34.03.230: Remedies for absence, nonuse, and abandonment (landlord-tenant)

§ 34.03.260: Disposition of abandoned property (landlord-tenant)

.... If a tenant has left personal property upon the premises, and the landlord reasonably believes that tenant has abandoned personal property, landlord may:

Give notice to tenant that it must be removed (time frame no less than 15 days) and if it is not removed, landlord may sell property at a public sale ; OR

If landlord determines personal property to be valueless or that cost of storing and conducting sale would exceed.... Again give notice to tenant first (no less than 15 days)... and then may destroy or otherwise dispose of property

Landlord shall store all personal property (not valueless) of the tenant in a place of safekeeping and shall exercise reasonable care of the property...

### ARIZONA

§ 33 – 1370: Abandonment; notice; remedies; personal property (landlord-tenant)

... landlord may retake the dwelling unit and re-rent it at fair value if no personal property remains in unit.

... landlord may store the tenant’s personal possessions in unoccupied dwelling unit that was abandoned, in any other available unit or any storage space owned by landlord...

12 See, generally, “Foreclosures in Limbo: Zombie Properties.” Payne & Decker. Wis. Law. Oct. 2015, which contains a very good analysis of issues related to vacant properties.



Landlord shall hold the tenant's personal property for a period of ten days after the landlord's declaration of abandonment ... landlord may sell property...

**ARKANSAS**

AR Code § 18-27-103

(a) Upon the purchase of land at a judicial sale, non-judicial foreclosure sale, under the Arkansas Statutory Foreclosure Act, § 18-50-101 et seq., or otherwise, or a tax sale, all personal property remaining on the land or in any structure on the land shall be considered to have been abandoned if:

(1) The owner of the personal property has received notice of the sale of the land and has neither removed the personal property nor notified the purchaser in writing of the owner's claim to the personal property within thirty (30) days of recording the deed commemorating the sale; or

(2) (A) After the sale, the purchaser may mail to the last known mailing address of all previous occupants and post notice of the sale of the land and the owner of the personal property has not:

(i) Removed the personal property; or

(ii) Notified the purchaser in writing of the owner's claim to the personal property within thirty (30) days of the posting of the notice.

(B) The notice shall be dated, mailed by certified mail, posted conspicuously on the land, and contain a statement that informs the owner of the personal property that all personal property not removed or claimed within the thirty (30) days of the posting date period shall be considered abandoned.

(b) (1) If the owner of the personal property does not remove the personal property within thirty (30) days, but merely gives the purchaser written notice of the owner's claim, the purchaser may remove and store the personal property at the owner's expense.

(2) (A) The personal property shall be stored for no more than thirty (30) days at the owner's expense.

(B) If the owner of the personal property does not take possession of the personal property and pay the reasonable expense of storage within the thirty (30) days, the personal property shall be considered abandoned.

(c) A purchaser of land that disposes of personal property that is considered abandoned under this section is not subject to liability or suit.

(d) The following property is not personal property that may be considered abandoned under this section:

(1) A manufactured home or mobile home on which a creditor or other party holds a mortgage, lien, security interest, or other encumbrance; and

(2) Abandoned personal property on which a creditor or other party holds a mortgage, lien, security interest, or other encumbrance.

§ 18-16-108: Abandonment of property (landlord-tenant)

... all property left in and about the premises by the lessee shall be considered abandoned and may be disposed of by the lessor as the lessor shall see fit without recourse by the lessee All property... is subject to lien in favor of lessor...

**CALIFORNIA**

§ 798.61: Abandoned mobilehomes; notice of belief of abandonment; sale; disposal

... management shall post a notice of belief of abandonment on the mobile home for not less than 30 days...

Management must declare in a petition whether it intends to sell

the contents of the abandoned mobile home before its disposal Must seek a judgment from the court confirming abandonment Management shall enter home and complete an inventory of contents and submit that to the court

Following judgment of abandonment, not less than 10 days following a notice of sale, management may conduct a public sale of home, its contents, or both

§ 800.36: Abandonment of floating home not owned by marina

... deemed abandoned... if floating home marina gives written notice of belief of abandonment and homeowner fails to give marina written notice that it is not

Gives form for "notice of belief of abandonment"

§ 1951.3: Abandonment by lessee; notice by lessor; form

Essentially the same as above

§ 887.050: Conditions necessary (easement abandonment)

§ 1983: Notice to former tenant and owner of property (landlord-tenant)

(a) Where personal property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property...

Notice may describe all or a portion of the property

§ 1986: Storage of property (landlord-tenant)

Personal property described in the notice shall either be left on vacated premises or stored by landlord in a place of safekeeping until landlord either releases property or disposes of property

§ 1988: Sale of property (landlord-tenant)

... shall be sold at public sale by competitive bidding

If value determined to be less than \$700, than landlord may retain property or dispose of in any manner...

§ 2929.3: Maintenance of vacant residential property purchased at foreclosure sale (Mortgages)

A legal owner shall maintain vacant residential property purchased by that owner at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust Gov't may impose civil fine for violation of up to \$1,000/day "Failure to maintain" means failure to care for exterior of property...

§ 1174: Judgment for possession of premises; personal property (summary proceedings)

Personal property remaining on the premises which the landlord reasonably believes to have been lost shall be disposed of pursuant to Article I of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code

Landlord shall give notice to any person (other than tenant) reasonably believed by landlord to be owner of personal property remaining on premises...

... shall store personal property in a place of safekeeping until either released or disposed of

§ 704.980: Declaration of Abandonment (homestead)



**COLORADO**

§ 38-20-116: Abandoned property; notice of sale (Title 38: Property)

Property is presumed to be abandoned if the owner has failed to contact the lienholder for a period of not less than thirty days and the lienholder, in good faith, is without knowledge of any evidence indicating that the owner does not intend to abandon the property

... provide notice at least fifteen days prior to selling or otherwise disposing of abandoned property

If notice is returned unclaimed, lienholder shall publish said notice at least one day in a newspaper in the count where property is located...

Discusses “abandoned motor vehicles”

§ 38-13-110: Report and payment or delivery of abandoned property

A person holding property, tangible or intangible, presumed abandoned... shall report to the administrator concerning the property as provided in this section...

**CONNECTICUT**

Connecticut law permits a mortgagee to simultaneously raise an action in ejectment for possession in the foreclosure action. Upon execution, the “officer shall eject the person or persons in possession and may remove such person’s possessions and personal effects and deliver such possessions and effects to the place of storage designated by the chief executive officer of the town for such purposes.” Conn. Gen. Stat. § 49-31s.

Certain Landlord-Tenant law may be applicable as well to a hold-over tenant and his or her personal property.

§ 47a-11b: Abandonment of unit by occupants; landlord’s remedies (landlord-tenant)

“Abandonment” means the occupants have vacated the premises without notice to the landlord and do not intend to return...

... landlord may send notice to each occupant...and include:

If the occupant does not contact him, he intends to remove any possessions and personal effects remaining in the premises and to re-rent premises, and

If occupant does not reclaim such possessions and personal effects within 30 days after notice, they will be disposed of as permitted by this section

Landlord shall inventory any possessions and personal effects of the occupant in the premises and shall remove them and keep them for not less than 30 days

If occupant does not reclaim... landlord may dispose of them as he deems appropriate

§ 49-22: Execution of ejectment on foreclosure judgment; disposition of property (mortgages)

(c) Whenever a mortgage or lien upon land has been foreclosed and execution of ejectment issued, and the possessions and personal effects of the person in possession thereof are removed by a state marshal under this section, such possessions and effects shall be delivered by such marshal to the designated place of storage

If possessions are not reclaimed by such person and expense of storage not paid within 15 days after such ejectment, office shall sell the same at public auction, after using reasonable efforts to locate and notify such person of sale...

**DELAWARE**

25 Del. C. § 4001: Definition of Abandoned Personal Property (Title 25: Property)

“Abandoned personal property” shall be deemed to be tangible personal property which the rightful owner has left in the care or custody of another person and has failed to maintain, pay for storage of, exercise dominion or control over, and has failed to otherwise assert or declare the ownership rights to the tangible personal property for a period of 1 year

25 Del. C. § 4002: Right and Title to Abandoned Personal Property

... any person who holds, stores, safekeeps or otherwise is left with possession of any abandoned personal property, including but not limited to automobiles, motorcycles, boats and furnishings... shall be vested with complete and absolute title to said abandoned personal property

25 Del. C. § 4003: Procedure to Obtain Title

Any person who holds,..., may be vested with complete right and title to said abandoned personal property upon application to a court of competent jurisdiction

Must include, among others, a statement that petitioner has conducted a lien search concerning the subject property for any liens...

25 Del. C. § 4004: Sheriff’s Sale of Property when there are Lienholders

If it is determined that there are lienholders or other person... court shall further order that subject property shall be sold at sheriff’s or constable’s sale

Prior to any sale... petitioner shall give at least 15 days’ notice of sale by handbills posted in 5 or more public places and by advertising in a newspaper in the county...

25 Del. C. § 5507: Landlord Remedies for Absence or Abandonment (landlord-tenant)

(e) ... landlord may immediately remove and store, at tenant’s expense, any and all items left on premises by the tenant. Seven days after the appeal period has expired, property shall be deemed abandoned and may be disposed of by landlord without further notice or liability

21 Del. C. § 4401: Abandoned Vehicles on Private Property (Title 21: Motor Vehicles)

**DISTRICT OF COLUMBIA**

DC ST § 42-3131.05: Definitions (Title 42: Real Property)

“Vacant building” means real property improved by a building which, on or after April 27, 2001, has not been occupied continuously; provided, that in the case of residential buildings, a building shall only be vacant if the Mayor determines that there is no resident for which an intent to return and occupy the building can be shown

DC ST § 42-3131.12: Vacant Building Maintenance Standard

DC ST § 42-3171.01: Definitions (Nuisance property)

“Abandoned property” means: A structure that is unoccupied by an owner or a tenant, and, on



which the real property tax imposed by §47-811 has not been paid for 18 months

...

DC ST § 42-3171.03: Disposal of Abandoned or Deteriorated Property

Mayor may dispose of abandoned or deteriorated property acquired under §42-3171.02, or acquired by any other means... through competitive process or through a negotiated sale...

**FLORIDA**

F.S.A. §705.102 – 705.104: Deals with abandoned personal property on public property

F.S.A. § 714.104: Notification of Former Tenant of Personal Property Remaining on Premises after Tenancy has Terminated (landlord-tenant)

When personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by tenant, through eviction or otherwise, the landlord shall give written notice to such tenant and to any other person the landlord reasonably believes to be owner of the property § 715.105 provides the form for notice § 715.107 provides for storage of abandoned property In vacated premises or stored by landlord in place of safekeeping until either released or disposed of

F.S.A. § 715.109: Sale or Disposition of Abandoned Property If personal property described in notice is not released, it shall be sold at public sale by competitive bidding Notice of time and place shall be given by an advertisement of sale published once a week for two consecutive weeks in a newspaper of general circulation Sale must take place at least 10 days after first publication Any excess proceeds must be paid to treasury of the county

**GEORGIA**

No applicable statute.

**HAWAII**

HRS § 521-56: Disposition of tenant’s abandoned possessions (residential landlord-tenant)

When the tenant... has abandoned personalty which the landlord, in good faith, determines to be of value, in or around the premises, the landlord may sell such personalty, in a commercially reasonable manner, store such personalty at the tenant’s expense, or donate such personalty to a charitable organization.

Landlord shall first make reasonable efforts to contact/inform tenant

Landlord may sell the personalty after advertising the sale in a daily paper for at least three consecutive days Value-less personalty may be disposed of by landlord’s discretion

HRS § 356D-56.1: Disposition of Abandoned or Seized Property (state low-income housing)

Property abandoned or seized in or around any state low-income housing project

Authority shall send notice by certified mail at least five calendar days prior to disposition

If the identity or address of owner is unknown or cannot be determined, notice shall be posted on the premises on which the property was abandoned or seized

If property has value in excess of \$500, notice of disposition shall be made at least once statewide or in a publication of local circulation

Shall be sold via public auction through oral offers

If less than \$500, property may be disposed of as the authority deems appropriate

HRS § 261-71: Custody and Disposal of Abandoned Aircraft

**IDAHO**

I.C. § 55-403: Abandoned or Unclaimed Property in Possession of Sheriff or city police department

... any personal property which has come into the possession or custody of the sheriff... such property shall be lawfully released or discharged from the attachment or other process under which it was taken into custody and which remains unclaimed or unredeemed by the owner or one entitled to possession thereof for more than six months...

Shall be subject to sale by the sheriff or city police department at public auction for cash on not less than five or more than 10 days’ notice except as otherwise provided...

Copy of notice of such sale at public auction... shall be mailed to such owner or one entitled to possession, with postage prepaid, at least fourteen days prior to such sale

... property may be sold singly or in lots or as a whole as sheriff sees fit

Also discusses process for firearm or ammunition abandoned or seized

**ILLINOIS**

735 ILCS 5/15-1200.5: Abandoned Residential Property (mortgage foreclosure)

Gives definition of abandoned residential property Uses factors to show property is abandoned; lists several examples

735 ILCS 5/15-1505.8: Expedited Judgment and Sale Procedure for Abandoned Residential Property

Deals first with motions for expedited judgments on mortgage foreclosure

Then it goes into what is to be done with personal property left behind

(k)(1): ... any personal property remaining in or upon the abandoned residential property shall be deemed to have been abandoned by the owner of such personal property and may be disposed of or donated by the holder of the certificate of sale... Cannot be done in the event a lawful occupant is in possession of the mortgaged real estate and has not been made a party to the foreclosure proceedings

Lays out the forms for providing notice

65 ILCS 5/11-20-15.1: Lien for costs of removal, securing, and enclosing on abandoned residential property

**INDIANA**

IC 32-31-4-2: Abandonment of property by tenant; court order allowing removal by landlord



## THE LEGAL LEAGUE 100

Landlord has no liability for loss or damage of tenant's abandoned personal property  
... tenant's personal property is considered abandoned if a reasonable person would conclude that the tenant has vacated the premises and has surrendered possession of the personal property

If landlord is awarded possession of dwelling by court order... and tenant fails to remove property... landlord may deliver property to warehouseman or storage facility approved of by the court

IC 32-31-4-3: Delivery to warehouseman after notice to tenant; release of exempt property

... deliver personal property to warehouseman or to a storage facility if notice of both the following has been provided to tenant:

Order for removal of personal property

Identity and location of warehouseman or storage facility

IC 32-31-4-5: Sale of unclaimed property

If tenant does not claim property within ninety (90) days after receiving notice... warehouseman or storage facility may sell the property received

LR84-SCoo Rule 10: Judgment for possession of Real Estate or Personal Property (Vigo County Small Claims Rule 10)

If a tenant leaves personal property of value in or about premises under circumstances, which reasonably show abandonment of personal property... landlord may:

Remove property using reasonable care and store it

Immediately notify tenant via first class mail of removal and storage

If no response by tenant, landlord may destroy valueless property and sell remaining property

LR64-SCoo Rule 1700: Judgments for Possession of Real Estate (Porter County Small Claims Rule 1700)

Same as IC 32-31-4-3 above

### IOWA

I.C.A. § 555B.2: Removal – notice to sheriff (mobile homes and personal property)

Real property owner may remove.... Mobile home and other personal property... abandoned on that real property and store it until paid a fair and reasonable charge

Owner shall notify the sheriff of the county

If property is not claimed within six months after providing notice, then sheriff shall sell it at a public or private sale.

§ 555B.4 = Notice

§ 555B.9 = Disposal – proceeds

### KANSAS

K.S.A. 58-2565: abandonment by tenant; personal property of tenant; disposition; procedure (landlord-tenant)

(d) If tenant abandons or surrenders possession of dwelling and leaves household goods, furnishings, fixtures or any other personal property in or at the dwelling or if he is forcibly removed... landlord may take possession of the property, store it at tenant's expense and sell or otherwise dispose of the same upon the expiration of 30 days after landlord takes possession if At least 15 days prior to sale or other disposition of such property the landlord shall publish once in the newspaper of general circulation

Within seven days of publication, copy must be sent to tenant via certified mail

K.S.A. 79-2026: Liability for unpaid taxes on Personal property abandoned or repossessed (taxation)

K.S.A. 26-507: ... removal of personal property; abandonment (Eminent domain)

Defendant has 14 days to remove personal property from premises

### KENTUCKY

No applicable statute.

### LOUISIANA

No applicable statute.

### MAINE

30-A M.R.S.A. § 3106-A: Municipal Authority to Manage Abandoned Mobile Homes

... municipality is authorized to take corrective action in accordance with this section, up to and including taking possession of and disposing of an abandoned mobile home and all related personal property...

14 M.R.S.A. § 4422: Exempt Property

### MARYLAND

No applicable statute.

### MASSACHUSETTS

M.G.L.A. 105A § 9: Abandoned leased spaces; possession and disposition of personal property upon abandonment

In the case of an abandoned lease space, the operator shall have the right to take possession of the leased space after 14 days and dispose of any personal property in the leased space

Must first attempt to contact occupant on two separate occasions, at least three days apart

M.G.L.A. 23G § 3: Powers (Massachusetts Development Finance Agency)

### MICHIGAN

Statute re: personal property left behind post-foreclosure: under Michigan's foreclosure statute, when a property is deemed abandoned, personal property is also presumed abandoned.

Outside of this instance, there is not a statute on personal property post-foreclosure. For eviction of personal property, Michigan follows case law and the objective (reasonable person) standard is used to determine if personal property should or shouldn't be considered abandoned.

### MINNESOTA

M.S.A. § 345.75: Abandoned Tangible Personal Property (Unclaimed Property)

If property has not been removed within six months after it comes into the possession of a person, it is abandoned and shall



become the property of the person in possession, after notice to the prior owner  
30 days' notice

M.S.A. § 504B.271: Tenant's Personal Property Remaining in Premises (landlord-tenant)

If tenant abandons rented premises, landlord may take possession of the tenant's personal property remaining on the premises, and shall store and care for property

Landlord may sell or otherwise dispose of property 28 days after he receives actual notice of abandonment OR after 28 it reasonably appears to the landlord that tenant has abandoned premises

Proceeds of sale go to landlord to cover reasonable costs or storage and sale; remaining money shall be paid to the tenant upon written demand

Must first make reasonable efforts to notify tenant of sale at least 14 days prior to the sale

### MISSISSIPPI

§ 89-7-1: Removal of goods (landlord-tenant)

No goods or chattels, lying or being in or upon any message, lands or tenements, leased or rented for life, years, at will, or otherwise, shall at any time be liable to be taken by virtue of any writ of execution, or other process whatever, unless the party so taking the same shall, before the removal of the goods or chattels from such premises, pay or tender to the landlord or lessor thereof, all the unpaid rent for the said premises, whether the day of payment shall have come or not, provided it shall not amount to more than one (1) year's rent; and the party suing out such execution or other process, paying or tendering to such landlord or lessor the rent unpaid, not to exceed one (1) year's rent, may proceed to execute his judgment or process; and the officer levying the same shall be empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the money due under the process, and when the rent contracted for is payable, not in money, but in other things, the creditor shall pay the landlord the money value of such things.

### MISSOURI

V.A.M.S. 441.065: Abandonment of premises, disposition of remaining property (landlord-tenant)

Any property of tenant remaining... after abandoning premises... may be removed or disposed of by landlord without liability...

Any property of a tenant remaining in or at the premises, after the tenant abandons the premises, may be removed or disposed of by the landlord without liability to the tenant for such removal or disposition. The premises shall be deemed abandoned if:

The landlord has a reasonable belief that the tenant has vacated the premises and intends not to return;

The rent is due and has been unpaid for thirty days; and

The landlord posts written notice on the premises and mails to the last known address of the tenant by both first class mail and certified mail, return receipt requested, a notice of the landlord's belief of abandonment. The notice shall include the following, where appropriate: [See Statute for Notice format]; and

The tenant fails to either pay rent or respond in writing to the landlords notice within 10 days after both the date of the posting and deposit of such notice by either by first class mail or certified

mail, return receipt requested, stating the tenant's intention not to abandon the premises.

### MONTANA

§ 70-24-430: Disposition of personal property abandoned by tenant after termination

If a tenancy terminates in any manner except by court order and the landlord has clear and convincing evidence that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 48 hours has elapsed since the landlord obtained that evidence, the landlord may immediately remove the abandoned property from the premises and immediately dispose of any trash or personal property that is hazardous, perishable, or valueless.

The landlord shall inventory and store all abandoned personal property of the tenant that the landlord reasonably believes is valuable in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge reasonable fees for removal and storage of the personal property.

After removal and storage, landlord shall make a reasonable attempt to notify the tenant in writing that the property is being stored and that if not claimed/removed by the tenant by a time period of not less than 10 days, the property will be disposed.

### NEBRASKA

§69-2303: Personal property remaining on premises; landlord; duties; notice; contents; delivery

When personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated, the landlord shall give written notice to such tenant that describes the property.

§69-2304: Notice; statement required

§69-2305: Notice; form

§69-2306: Landlord; property; removal and storage; liability

§69-2307: Landlord; release of personal property; when

§69-2308: Sale of personal property; when required; notice of sale; requirements; disposition of proceeds

§69-2309: Release or disposition of personal property; liability of landlord

§69-2310: Costs of storage; how assessed

§69-2311: Residential landlord; surrender personal property to residential tenant; conditions; applicability of section

§69-2312: Landlord retaining personal property; civil action authorized (against Landlord)

§69-2313: Lost personal property; disposition; liability

Personal property which the landlord reasonably believes to have been lost shall be disposed of as otherwise provided by law, but if the appropriate law enforcement agency or other governmental agency refuses to accept custody of such property, the landlord may dispose of the property pursuant to the Disposition of Personal Property Landlord and Tenant Act. The landlord shall not be liable to the owner of the property if he/she disposes of such property in compliance with the Act.

### NEVADA

§118A.030: "Abandoned Property" defined

"Abandoned property" means property which is left unattended on the premises after the termination of the tenancy, unless the owner of the property has expressed an intent to return for the property.

§118A.450: Abandonment of dwelling unit by tenant: Remedies; presumption



§118A.460: Procedure for disposal of personal property abandoned or left on premises

The landlord may dispose of personal property abandoned on the premises by the former tenant by: (i) reasonably provide for safe storage for 30 days after abandonment; and (ii) after 30 days, landlord may dispose of property if the landlord has made reasonable efforts to locate the tenant, has notified the tenant in writing of his/her intent to dispose of the property, and 14 days have elapsed since the notice was submitted to the tenant.

**NEW HAMPSHIRE**

RSA § 540- A:3(VII)

A Landlord must maintain and exercise reasonable care in the storage of the personal property of a tenant who has vacated the premises, either voluntarily or by eviction, for a period of 28 days. During this period, the tenant can recover his property without paying rent or storage fees. After 28 days, the landlord may dispose of the property without notice to the tenant.

**NEW JERSEY**

NJ Stat. § 2A:18-72

Disposal of remaining personal property abandoned by tenant (1) A landlord of commercial or residential property, in the manner provided by P.L.1999, c.340 (C.2A:18-72 et al.), may dispose of any tangible goods, chattels, manufactured or mobile homes or other personal property left upon a premises by a tenant after giving notice as required by section 2 of P.L.1999, c.340 (C.2A:18-73), only if the landlord reasonably believes under all the circumstances that the tenant has left the property upon the premises with no intention of asserting any further claim to the premises or the property and:  
a. A warrant for removal has been executed and possession of the premises has been restored to the landlord; or  
b. The tenant has given written notice that he or she is voluntarily relinquishing possession of the premises.

The provisions of P.L.1999, c.340 (C.2A:18-72 et al.) shall not apply to the disposal of tenant property left on nonresidential rental property if there is a lease in effect which has been duly executed by all parties which contains specific terms and conditions for the disposal of tenant property

**NEW MEXICO**

No applicable statute.

**NEW YORK**

No applicable statute.

**NORTH CAROLINA**

§42-25.9: Remedies

If the total value of all property remaining on the premises at the time of execution of a writ of possession in an action for summary ejectment is less than \$500, the property shall be deemed abandoned five days after the time of execution, and the landlord may throw away or dispose of the property.

§42-36.2: Notice to tenant of execution of writ for possession of property; storage of evicted tenant’s personal property

§42-36.3: Death of residential tenant; landlord may file affidavit to remove personal property from the dwelling unit

**NORTH DAKOTA**

§32-19-41: Abandoned personal property –Disposal by record title owner

The grantee in a sheriff’s deed that has been recorded, or after a deed in lieu of foreclosure, may retain and dispose of without legal process any personal property left on the real property 30 days after the issuance of a sheriff’s deed. If the total estimated value of the personal property is \$500 or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least 15 days before disposing of the personal property.

**OHIO**

§5321.15: Landlord of residential premises denied certain remedies

(B) No landlord of residential premises shall seize the furnishings or possessions of a tenant, or of a tenant whose right to possession has terminated, for the purpose of recovering rent payments, other than in accordance with an order issued by a court of competent jurisdiction.

**OKLAHOMA**

46 Okl.St. Ann. §302: Abandoned or vacated property–Motion to Protect and preserve–Motion and hearing procedure

Upon commencement of a suit to foreclose a mortgage, if mortgagee has reason to know that the subject property is abandoned or vacated and, as a result of such abandonment there is (i) physical deterioration and devaluation; (ii) risk to health, safety or welfare to the public; or (iii) risk of additional legal process for violation of law, ordinance, unpaid taxes or accrual of liens, the mortgage may seek a court order to protect and preserve the property pending the disposition of the suit.

41 Okl. St. Ann §130: Abandoning, surrendering, or eviction from possession of dwelling unit–disposition of personal property

If the tenant abandons possession of the dwelling unit or has been lawfully removed and leaves personal property, the landlord may take possession of the property and if, in the judgment of the landlord, the property has not ascertainable or apparent value, the landlord may dispose of the property.

If the property has ascertainable or apparent value, the landlord shall provide written notice to the tenant by certified mail to the last-known address setting forth that if the property is not removed within a specified period of time, the property will be deemed abandoned. Any property left with the landlord for a period of 30 days or longer shall be conclusively determined to be abandoned and may be disposed by the landlord.

41Okl.St. Ann §130.1: Death of a tenant–Disposition of personal property

**OREGON**

90.425: Personal property abandoned by tenant

Prior to storing, selling or disposing of tenant’s personal property, the landlord must provide written notice to the tenant





setting forth information such as, but not limited to: (i) statement that the personal property left behind is considered abandoned; (ii) tenant or lienholder or owner must contact the landlord by a specified date to arrange for removal of the property; (iii) the property is stored at a place of safekeeping; (iv) if the tenant or lienholder or owner fails to contact the landlord within the specified date, or after that contact, fails to remove the property within 15 days, the landlord may sell or dispose of the personal property.

If the personal property is ultimately deemed abandoned, the landlord may dispose the personal property if he/she determines that the reasonable current fair market value is \$1,000 or less or so low that the costs of storage and conducting a public sale probably exceeds the amount that would be realized from the sale.

**PENNSYLVANIA**

The proposed law for expedited foreclosure of an abandoned property is proposing to address the gap in the law that exists between a sheriff's sale and abandoned personal property.

Senate Bill Number 471 and House Bill no. 653, Session of 2017 Section 7. Post-sheriff's sale possessory action, effect of certification of vacancy and abandonment in action for possession and disposition of abandoned personal property.

(a) Removal of personal property by former owner.

(1) When a former owner relinquishes possession of mortgaged property certified as vacant and abandoned, the former owner shall remove from the mortgaged property all items of personal property.

(2) For the purposes of this section, a former owner shall be deemed to have relinquished possession when the former owner has:

- (i) Physically vacated the premises;
- (ii) Removed substantially all of the former owner's personal property; or
- (iii) Provided a forwarding address or written notice stating that the former owner has vacated the premises or otherwise communicated to the creditor that the former owner has relinquished possession of the mortgaged property.

(b) Removal of personal property by purchaser.--If the former owner fails to remove personal property from mortgaged property certified as vacant and abandoned after delivery of a sheriff's deed or a deed in lieu of foreclosure, concurrent with the filing of an action for possession or at any time after the action is filed, the purchaser may remove the remaining personal property of the former owner in the following manner:

(1) The purchaser shall serve notice of intent to remove personal property from the mortgaged property on the owner in the manner provided by section 6(b).

(2) The purchaser shall conspicuously post a personal property removal notice that includes:

- (i) The date the notice was posted;
- (ii) The address of the mortgaged property;
- (iii) The date of the sheriff's sale or the date the title was acquired by the purchaser;
- (iv) A notice that personal property that remains on the mortgaged property must be retrieved by the former owner;
- (v) A statement that:

(A) The former owner has 10 days from the date of the notice to

notify the purchaser that the former owner will be retrieving the personal property.

(B) If the intent to retrieve is conveyed to the purchaser, the personal property shall be retained by the purchaser at the mortgaged property or a site of the purchaser's choosing for 30 days from the date of the notice.

(C) If no communication is made to purchaser within 10 days, the personal property may be disposed of at the discretion of the purchaser; and

(vi) a telephone number, e-mail or facsimile number and address for the purchaser or its agent where they can be contacted and the location where the personal property can be retrieved, if not at the mortgaged property, and a statement that retrieval of the personal property after 10 days will require the former owner to pay for costs related to the storage of the personal property.

(3) At all times between posting of the personal property removal notice and the expiration of the 10-day period, the purchaser shall exercise ordinary care with regard to any personal property that the former owner left in or on the mortgaged property.

(4) At the expiration of the 10-day period, the purchaser shall owe no duty to the former owner with regard to caring for the personal property and may, in the purchaser's discretion, dispose of the personal property subject to the following:

(i) If the personal property is sold and proceeds exceed any outstanding obligations owed to the owner or obligor, the proceeds shall be forwarded to the former owner by certified mail.

(ii) If no forwarding address has been provided to the purchaser by the former owner, the owner shall hold the proceeds for 30 days and, if unclaimed, may retain the proceeds.

(5) If the purchaser has issued a personal property removal notice to the former owner, the purchaser may store the former owner's personal property at another location within reasonable proximity to the mortgaged property subject to the following:

(i) If the purchaser stores the personal property at another location, the purchaser may remove the personal property from the mortgaged property by any means reasonably calculated to safeguard the personal property for the time period required under this section.

(ii) A former owner shall not be required to pay any costs related to the removal or storage of personal property by the purchaser if the former owner retrieves the personal property within 10 days of the date of the notice.

(6) If the former owner or occupant retrieves the personal property after 10 days of the date of the notice but before 30 days, the former owner shall pay any reasonable and actual costs related to the removal or storage of the personal property by the purchaser for that time period.

**RHODE ISLAND**

No applicable statute.

**SOUTH CAROLINA**

SECTION 27-40-730. Remedies for absence, nonuse, and ABANDONMENT

(a) The unexplained absence of a tenant from a dwelling unit for a period of fifteen days after default in the payment of rent must



be construed as abandonment of the dwelling unit.

(b) If the tenant has voluntarily terminated the utilities and there is an unexplained absence of a tenant after default in payment of rent, abandonment is considered immediate and the fifteen day rule as described in (a) does not apply.

(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy, subject to the landlord's remedies under Section 27-40-740. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is considered to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is considered to be a month or a week, as the case may be.

(d) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has removed a substantial portion of his property or voluntarily and permanently terminated his utilities and has left personal property in the dwelling unit or on the premises with a fair-market value of five hundred dollars or less, the landlord may enter the dwelling unit, using forcible entry if required, and dispose of the property.

(e) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has left personal property in the dwelling unit or on the premises in the cases not covered by subsection (d) above, the landlord may have the property removed only pursuant to the provisions of Sections 27-37-10 to 27-37-150.

(f) Where property is disposed of by the landlord pursuant to subsection (d) and the property was in excess of five hundred dollars, the landlord is not liable unless the landlord was grossly negligent.

**SOUTH DAKOTA**

S.D. Codified Laws § 43-32-25 and 43-32-26  
Personal Property Statutes: There was not a law in the foreclosure statutes that pertained to personal property after a sheriff sale. S.D. Codified Laws § 43-32-25 states that property of a lessee valued at less than \$500 is presumed abandoned. A lessor must have property stored that is valued at more than \$500. S.D. Codified Laws § 43-32-26.

**TENNESSEE**

Tenn. Code Ann. § 66-28-405 (2015)

(a) The tenant's unexplained or extended absence from the premises for thirty (30) days or more without payment of rent as due shall be prima facie evidence of abandonment. The landlord is then expressly authorized to reenter and take possession of the premises.

(b) (1) The tenant's nonpayment of rent for fifteen (15) days past the rental due date, together with other reasonable factual circumstances indicating the tenant has permanently vacated the premises, including, but not limited to, the removal by the tenant of substantially all of the tenant's possessions and personal effects from the premises, or the tenant's voluntary termination of utility service to the premises, shall also be prima facie evidence of abandonment.

(2) In cases described in subdivision (b)(1), the landlord shall post notice at the rental premises and shall also send the notice to the tenant by regular mail, postage prepaid, at the rental premises address. The notice shall state that:

(A) The landlord has reason to believe that the tenant has abandoned the premises;

(B) The landlord intends to reenter and take possession of the premises, unless the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice;

(C) If the tenant does not contact the landlord within the ten-day period, the landlord intends to remove any and all possessions and personal effects remaining in or on the premises and to rerent the dwelling unit; and

(D) If the tenant does not reclaim the possessions and personal effects within thirty (30) days of the landlord taking possession of the possessions and personal effects, the landlord intends to dispose of the tenant's possessions and personal effects as provided for in subsection (c).

(3) The notice shall also include a telephone number and a mailing address at which the landlord may be contacted.

(4) If the tenant fails to contact the landlord within ten (10) days of the posting and mailing of the notice, the landlord may reenter and take possession of the premises. If the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice and indicates the tenant's intention to remain in possession of the rental premises, the landlord shall comply with the provisions of this chapter relative to termination of tenancy and recovery of possession of the premises through judicial process.

(c) When proceeding under either subsection (a) or (b), the landlord shall remove the tenant's possessions and personal effects from the premises and store the personal possessions and personal effects for not less than thirty (30) days. The tenant may reclaim the possessions and personal effects from the landlord within the thirty-day period. If the tenant does not reclaim the possessions and personal effects within the thirty-day period, the landlord may sell or otherwise dispose of the tenant's possessions and personal effects and apply the proceeds of the sale to the unpaid rents, damages, storage fees, sale costs and attorney's fees. Any balances are to be held by the landlord for a period of six (6) months after the sale.

**TEXAS**

Tex. Prop. Code § 24.0061.

The owner must obtain a writ of possession ordering an executing officer to post notice that property not removed will be removed from the home.

**UTAH**

78-36-12.6. Abandoned premises – Retaking and rerenting by owner – Liability of tenant – Personal property of tenant left on premises.

(1) In the event of abandonment, the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:

(a) for the entire rent due for the remainder of the term; or

(b) for rent accrued during the period necessary to rerent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental



unit to its condition when rented by the tenant less normal wear and tear. This subsection applies, if less than Subsection (a), notwithstanding that the owner did not re-rent the premises.

(2) (a) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant.

(b) (i) The owner shall make reasonable efforts to notify the tenant of the location of the personal property.

(ii) If the property has been in storage for over 30 days and the tenant has made no reasonable effort to recover it, the owner may:

(A) Sell the property and apply the proceeds toward any amount the tenant owes; or

(B) Donate the property to charity if the donation is a commercially reasonable alternative.

(c) Any money left over from the sale of the property shall be handled as specified in Title 67, Chapter 4a, Part 2, Standards for Determining When Property is Abandoned or Unclaimed.

(d) Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens.

### VERMONT

As it relates to evictions, an owner may dispose of personal property without notice or liability 15 days after the issuance of a writ of possession is served or upon the landlord being legally restored to possession. 12 V.S.A. § 4854a.

### VIRGINIA

No applicable statute.

### WASHINGTON

One statute that pertains to unclaimed personal property in the hands of the sheriff. §63.40.010. In relevant part, when personal property comes into the possession of the sheriff in connection with their duties, if the property remains unclaimed for 60 days after written notice, the sheriff may sell at public auction, retain the property, or destroy the items. As it pertains to landlord/tenant law, if the landlord stores property valued at less than \$50, then the landlord can dispose of the property after seven days from the date he provided notice. If the property is valued over \$50, the landlord must give 45 days of notice that he intends to dispose or sell the property. §59.18.312.

### WEST VIRGINIA

W. Va. Code Ann. § 38-1-17 Personal property after foreclosure; notice and access to recover personal property; abandonment Following a foreclosure on residential real property pursuant to this article, and after the previous owner has vacated the property either voluntarily or following an eviction proceeding, any personal property remaining on the real property may be deemed abandoned if the purchaser of the real property provides notice, pursuant to this section, and the personal property remains on the real property at the conclusion of the notice period. The notice shall state that the personal property will be deemed abandoned if it is not removed from the real property before the end of the thirtieth day following the postmark date of the notice. If the locks are changed or the previous owner is otherwise prevented from accessing the personal property, the purchaser shall provide the previous owner access to the personal property on reasonable terms. The notice shall state a phone number, a mailing address, and a physical address where the purchaser or an agent for the purchaser who can provide access to the personal

property can be contacted; and shall further state that the previous owner may contact the purchaser, and that purchaser will provide the previous owner access to the personal property on reasonable terms. The notice shall be sent to the former owner(s) of the real property at all the address(es) to which notice of foreclosure sale was sent as set forth in the trustee's report of sale, as well as the last known address, if different. If the purchaser has received notice in writing or by electronic record that personal property belongs to another or that another person or entity has a security interest in the personal property, and if that person's or entity's mailing address is also received by the purchaser in writing or by electronic record, notice shall be sent to that person or entity as well. The notice shall be made to all required persons, as stated in this section, by both certified mail and regular mail. The notice is complete when mailed, notwithstanding the fact that the notice may be returned as unclaimed or refused. If the notice period passes and the personal property remains on the real property, then the personal property shall be deemed abandoned and the purchaser of the real property may dispose of the remaining personal property in the purchaser's discretion. The notice required by this section may not be waived before the property is vacated.

### WISCONSIN

Wis. Stat. Ann. § 704.055 Disposition of personalty left by trespasser

(1) Definition. In this section, "trespasser" means a person who is not a tenant and who enters or remains in residential rental property without the consent of the landlord or another person lawfully on the property.

(2) At the landlord's discretion

(a) If a trespasser is removed or otherwise removes from residential rental property and leaves personal property, the landlord shall hold the personal property for 7 days from the date on which the landlord discovers the personal property. After that time, the landlord may presume that the trespasser has abandoned the personal property and may dispose of the personal property in any manner that the landlord, in the landlord's sole discretion, determines is appropriate but shall promptly return the personal property to the trespasser if the landlord receives a request for its return before the landlord disposes of it.

(b) If the landlord disposes of the abandoned personal property by private or public sale, the landlord may send the proceeds of the sale minus any costs of sale and, if the landlord has first stored the personal property, minus any storage charges to the department of administration for deposit in the appropriation under s. 20.505 (7) (h).

(3) Rights of 3rd persons. The landlord's power to dispose as provided by this section applies to any personal property left on the landlord's property by the trespasser, whether owned by the trespasser or by others. The power to dispose under this section applies notwithstanding any rights of others existing under any claim of ownership or security interest. The trespasser, other owner, or any secured party has the right to redeem the personal property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of any expenses that the landlord has incurred with respect to the disposition of the personal property.

### WYOMING

There is no statute that deals with personal property after a sheriff's sale. As it pertains to landlord/tenant law, the landlord must give the tenant notice of intention to dispose after seven days. §1-21-1210



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## THE LEGAL LEAGUE 100

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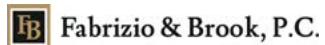
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