

Abandoned Property Law

A State-by-State Review of Existing Law and/or Administrative
Mandates That Can Assist Servicers and Attorneys in
Determining Whether a Property is “Abandoned”



Presented by the Legal League 100
Special Initiatives Working Group
December 2021



THE LEGAL LEAGUE 100

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Background

For many years, and particularly since the volume of foreclosures that took place in 2008 and thereafter, both the default-servicing world and local officials have sought ways to improve the handling of vacant and abandoned properties. These non-performing assets can be constant reminders of yesterday's financial crises, given the fact that they attract crime and squatters, devalue neighboring properties, and perpetuate code violations.

Over the past 19 months, the Federal Housing Finance Agency has mandated holds for most GSE loans in default in response to the COVID-19 pandemic, which caused so many blameless Americans to struggle financially. "Abandoned" properties were one exception to this mandate, because if a property was abandoned, no resident would be displaced from the home, thereby eliminating policy concerns. In the absence of any clear and objective universal method available to identify "abandoned" property in this context, the goal of this report is to provide guidance with regard to making such a determination.

What Is an Abandoned Property?

Mortgage servicers and their attorneys across the country continue to grapple with the challenge of determining what constitutes "abandoned" property. A property that is "abandoned" is one in which the owner has no intentions of returning to the property or caring for it. While not synonymous with abandonment, "vacancy" can be a factor in determining whether a property is abandoned. A "vacant" property is one in which no one appears to be living. It is clear that deeper analysis is necessary to determine the legal standards available regarding abandonment—whether judicial, legislative, or executive, and whether on a state, county, or municipal level.

There is no clear and objective method to identify "vacant" or "abandoned" property. Characteristics may include:

- What is the physical condition of the structure?
- How long has the property been in that condition?
- Are utilities shut off?
- Are grass and weeds overgrown?
- Is the property boarded up?
- Is mail being delivered?
- Is 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?
- 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?



Who Certifies That a Property is “Abandoned”?

If there is a model definition of what constitutes an “abandoned” property, the next issue faced is who can make the decision that the property is “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”?

A court order is also a possible remedy in judicial states. A court order reflecting the status of the property as “abandoned” may enable a servicer or lender to proceed with the action, secure the property, and/or appoint a receiver.

Survey of State Law That May Assist in Determining Abandoned Property

Relevant State Law: The information provided herein is a starting point resource for servicers. The identified laws should be read in their entirety and discussed with local counsel in every given jurisdiction. The opinions in this report provided in this review were not always from an attorney licensed and practicing in the state, as they relied on research and information from attorneys in the specific states.

The statutes included are ones currently in effect, as well as proposed legislation where bills are pending in various state houses. The case law and administrative orders relating to the information are also current to the best of our knowledge.

A top-down approach is used by looking to see if there is statutory language going directly to what factors are used to determine whether property is “abandoned” and then moving to case law, administrative orders, or local ordinances.

(1) Alabama

The Alabama legislature has not defined “abandoned” real property for purposes of foreclosure. Therefore, the best way to render a finding as to the abandonment of real property is to review the case law and the local ordinances, if applicable.

“Abandonment” in Alabama is a question of intention and must be evaluated on a case-by-case basis. “To abandon real property there must be a concurrence of the act of leaving the premises vacant and unoccupied with the intention of not returning.” *Wilkinson v. United States*, 177 F. Supp. 101, 105 (S.D. Ala. 1959) citing *Helvering v. Jones*, 120 F.2d 828, 830.

“Abandonment of property requires intent plus an act. A sufficient act is one that manifests a conscious purpose and intention of the owner of personal property neither to use nor to retake the property into his possession.” Wirth, 508 S.W.2d at 267; see also *Milford*, 355 So.2d at 689. Obviously, “[a] determination of abandonment is a finding of fact.” *Newman Signs, Inc. v. Hjelle*, 317 N.W.2d 810, 817 (N.D.1982). *Johnson v. Northpointe Apartments*, 744 So. 2d 899, 905 (Ala. 1999)



(2) Alaska

The Alaska legislature has not defined “vacant” real property for purposes of foreclosure. Therefore, the best way to render a finding as to whether real property is vacant is to review Alaska’s case law and the local ordinances.

According to Municipality of Anchorage, ordinance A0 2016-81(S), in Alaska, a “vacant building” is defined as a structure that was designed for residential or commercial use that has not been lawfully used for residential or commercial purposes for 180 days. Vacant buildings do not include:

- Vacation properties
- Structures used only as seasonal basis
- Building that has been vacant for less than 365 days. If the building has been continuously offered in good faith for sale, lease, or rent since the 181st day, it most recently ceased to be used for lawful residential or commercial purposes; or buildings for which there is:
 - » a valid, open, and current building permit for repair, rehabilitation, construction, or demolition,
 - » such permitted repair, rehabilitation, construction, or demolition activity is actively underway, and such permitted repair, rehabilitation, construction, or demolition is completed within one year from the date the initial permit was issued.

(3) Arizona

There is no statewide definition for abandoned property in Arizona for foreclosure purposes; however, there is case law that interprets “abandonment” for purposes of leased premises. This case law may be a useful guide as to how the CFPB could interpret abandonment for foreclosure purposes.

For purposes of leased premises, the case law on abandonment by a tenant requires: (1) proof of the act of abandonment and (2) the intent to relinquish the premises to the landlord. Factors that the Courts will consider include, but are not limited to, the following: personal belongings in the property, mail delivery, maintenance of the property, trash and debris located on the property, code violations, whether the property is secured, and/or whether there is a written notice signed by the borrower stating they are abandoning the property.

Some local governments within Arizona also have ordinances regarding vacant or abandoned property registration, which will contain definitions of abandoned property. Mortgage servicers should consult with local counsel to review local ordinances where the property is located to determine if there is a statutory definition that may apply in that area.

(4) Arkansas

Neither the Arkansas legislature nor its local ordinances specifically define or address what makes real property “abandoned.” Therefore, the best way to analyze and render a viewpoint as to whether property is “abandoned” in Arkansas is to look at the state’s prevailing case law.

Arkansas’s case law tells us that title to real estate is not lost by abandonment unless abandonment is accompanied by circumstances of estoppel and limitation. *Maroney v. City of Malvren*, 899 S.W.2d 476, 478 (1995) (citing to *Helms v. Vaughn*, 467 S.W.2d 399 (1971); *Carmichael v. Arkansas Lumber Co.*, 152 S.W. 286) (1912)).



(5) California

There is no statutory definition for “abandoned” or property in California. As such, mortgage servicers should consult with local counsel to review local ordinances where the property is located to determine if there is a statutory definition that may apply.

Some local governments within California have ordinances regarding vacant or abandoned property registration, which contain definitions of abandoned property. A review of these ordinances shows that in order for a mortgage servicer to reasonably believe that a property has been abandoned, the servicer would need to review a number of factors. Those factors include, but are not limited to, the following: personal belongings remaining in the property, mail delivery, maintenance of the property, trash and debris located on the property, code violations, whether the property is secured, and/or whether written notice was given by the borrower stating they were abandoning the property.

(6) Colorado

There is no statewide definition of “abandoned” property in Colorado for foreclosure purposes. There is case law interpreting abandonment for purposes of leased premises. This case law may be a useful guide as to how the CFPB could interpret abandonment for foreclosure purposes.

For purposes of leased premises, the case law on abandonment by a tenant requires: (1) proof of the act of abandonment and (2) the intent to relinquish the premises to the landlord. Those factors include, but are not limited to, the following: personal belongings remaining in the property, mail delivery, maintenance of the property, trash and debris located on the property, code violations, whether the property is secured, and/or whether written notice was given by the borrower stating they were abandoning the property.

Additionally, some local Colorado governments have ordinances regarding vacant or abandoned property registration which will contain definitions of abandoned property. Mortgage servicers should consult with local counsel to review such local ordinances where the property is located, in order to determine if there is a statutory definition that may apply.

(7) Connecticut

Unlike many states, Connecticut law directly addresses the issue of abandoned real property.

Connecticut Public Act No. 19-92 addresses “abandoned” real estate properties in the state of Connecticut and lists the factors that determine whether a property has been legally abandoned. A property is determined to be “abandoned” if:

- (1) The building has not been legally occupied for at least twelve months;
- (2) the owner has not actively marketed or attempted to sell;
- (3) there is evidence that the building has not changed hands to a good faith purchaser;
- (4) the building is a nuisance or unfit for occupancy;
- (5) the building requires substantial work which there has been no effort to undertake;
- (6) the condition and vacancy “materially” increase the risk of fire to property and neighbors;
- (7) the building is susceptible to unauthorized entry (by squatters) and either has not been secured or was secured by the municipality;
- (8) the building an attractive nuisance for children;
- (9) the building an attractive nuisance for crime;
- (10) the building has the presence of vermin and/or accumulated debris, uncut vegetation



or physical deterioration of the building creates increased risk to health and safety standards; and (11) the building's appearance negatively impacts the surrounding economic well-being and property values.

(8) Delaware

Under Delaware law, foreclosure is a judicial process and there is no express vacant or abandoned foreclosure law. Under statute, for owner-occupied properties, there is a mandatory mediation process. In cases where the property is not owner-occupied, the case would be exempt from the process. While this is not an express streamlined option, it does lower the timeframe involved.

(9) District of Columbia

In Washington, D.C., the local government has the ability to take properties that are vacant or abandoned, and the statute describes the characteristics for a vacant property.

(1) "Abandoned property" means:

(A) A structure:

(i) That is unoccupied by an owner or a tenant; and

(ii) On which the real property tax imposed by § 47-811 has not been paid in 18 months;

(B) A vacant lot on which the real property tax imposed by § 47-811 has not been paid in 18 months;

(C) A structure:

(i) That is unoccupied by an owner or tenant;

(ii) That the Mayor has determined is structurally unsafe; and

(iii) Regarding which the Mayor has issued to the owner a notice requiring that the owner cause the structure to conform with any provision of the fire code, building code, or housing code, or to demolish the structure for safety reasons, and the owner has failed to act in response to the Mayor's notice within the period of time established by statute, regulation, or the notice; or

(D) A vacant lot on which a building has been demolished.

(10) Florida

The Florida legislature does not specifically define or address "abandoned" real property. Thus, the best way to analyze and render an opinion as to whether a property is abandoned in Florida is to review the current state case law, combined with any local ordinances, that address vacant and/or abandoned property.

Under Florida case law, abandonment goes beyond mere vacancy; additional evidence is required such as: (1) disconnected services, (2) a person changing their homestead to another property, (3) and/or change in mail service.

According to Florida case law:

The determination of abandonment of use is a factual question that will not be set aside on review unless totally unsupported by competent substantial evidence. See *Clegg v. Chipola Aviation, Inc.*, 458 So. 2d 1186 (Fla. 1st DCA 1984). A party asserting the issue of abandonment bears the burden of proving



it. *Dade County v. City of North Miami Beach*, 69 So. 2d 780, 783 (Fla. 1953). Abandonment must be established by a “clear affirmative intent.” *Metro. Dade County v. Potamkin Chevrolet*, 832 So. 2d 815, 817 (Fla. 3d DCA 2002) (quoting *Leibowitz v. City of Miami Beach*, 592 So. 2d 1213, 1214 (Fla. 3d DCA 1992)). Nonuse by itself is not abandonment, but is only evidence that may or may not point to abandonment. *Dade County*, 69 So. 2d at 783. Further, “equity abhors a forfeiture,” particularly “when the forfeiture is against the public.” *Id.* Reduction in use during renovation or delaying development for legitimate public reasons is insufficient to show abandonment of a specified use. *Leslie Enters., Inc. v. Metro. Dade County*, 293 So. 2d 73 (Fla. 3d DCA 1974). Finally, reversion based on discontinuance of a particular use is not favored and will be strictly construed against the grantor. *Fla. Power Corp. v. Lynn*, 594 So. 2d 789 (Fla. 2d DCA 1992). Temporary suspension of the use with plans to reactivate the use in the reasonably foreseeable future will not trigger reversion. *Id.*

Meigs Props., Ltd. v. Bd. of Cnty. Comm’rs of Okaloosa Cnty., 107 So. 3d 1171, 1175 (Fla. 1st DCA 2013).

The Florida Supreme Court has also said that, abandonment of homestead occurs when, “the owner removes from the home with no intention of returning, takes up [] permanent abode at another place and pursues [a] livelihood there.” *Barlow v. Barlow*, 23 So.2d 723, 724 (Fla. 1945).

This precedence, along with municipal ordinances relating to vacant and abandoned properties available through Muni-Code, will provide guidance on how one can determine “abandonment” of real property in the state of Florida. Florida’s ordinances generally will provide definitions for “vacant” real property; however, the ordinances generally only refer to tangible personal property (not real property) as “abandoned.” The vacancy aspect of an ordinance is one prong in determining abandonment and personal property located and abandoned on the real property could be another prong (i.e., abandoned, inoperable car with no license or valid registration).

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(11) Georgia

Georgia does not have a statewide statute or definition for “abandoned” property. However, Georgia Code Section 44-14-14 defines “vacant” property as real property that:

- (A) Is intended for habitation, has not been lawfully inhabited for at least 60 days, and has no evidence of utility usage within the past 60 days; or
 - (B) Is partially constructed or incomplete, without a valid building permit.
- Such term shall not include a building or structure containing multiple units with common ownership that has at least one unit occupied with evidence of utility usage.

While not specific to abandoned property, this definition will provide guidance for servicers when determining whether to proceed with foreclosure.

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(12) Hawaii

Unlike many states, Hawaii has statutory law that directly addresses the issue of abandoned real property.

Section 523(A)(15) of the Hawaii Code states that: “all other property, five years after the owner’s right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.” Therefore, legal counsel in this state has clear guidance on how to advise service providers.



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(13) Idaho

Idaho does not have a statute that defines vacant or abandoned property.

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(14) Illinois

Illinois is one of the few states who statutorily define “abandoned” property with regard to foreclosure. In 2013, the Illinois legislature amended the mortgage foreclosure provisions of the Illinois Code of Civil Procedure to define “abandoned residential property” as residential property that is not (1) occupied by any mortgagor or lawful occupant as a principal residence; or (2) is in obvious disrepair according to a list of enumerated conditions. Specifically, under this second test, a residential property qualifies as “abandoned residential property” if:

1. Two or more of the following conditions are shown to exist:
 - a. Construction was initiated on the property and was discontinued prior to completion, leaving a building unsuitable for occupancy, and no construction has taken place for at least six months;
 - b. Multiple windows on the property are boarded up or closed off or are smashed through, broken off, or unhinged, or multiple window panes are broken and unrepaired;
 - c. Doors on the property are smashed through, broken off, unhinged, or continuously unlocked;
 - d. The property has been stripped of copper or other materials, or interior fixtures to the property have been removed;
 - e. Gas, electrical, or water services to the entire property have been terminated;
 - f. There exist one or more written statements of the mortgagor or the mortgagor’s personal representative or assigns, including documents of conveyance, which indicate a clear intent to abandon the property;
 - g. Law enforcement officials have received at least one report of trespassing or vandalism or other illegal acts being committed at the property in the last six months;
 - h. The property has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by a municipal or county authority or a court of competent jurisdiction;
 - i. The local police, fire, or code enforcement authority has requested the owner or other interested or authorized party to secure or winterize the property due to the local authority declaring the property to be an imminent danger to the health, safety, and welfare of the public;
 - j. The property is open and unprotected and in reasonable danger of significant damage due to exposure to the elements, vandalism, or freezing; or
 - k. There exists other evidence indicating a clear intent to abandon the property; or
2. The real estate is zoned for residential development and is a vacant lot that is in need of maintenance, repair, or securing.

The above can be very instructive to local counsel when advising service providers as to abandoned property with regard to foreclosure.

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(15) Indiana

The Indiana Code provides direct guidance for determining whether a property is “abandoned.” Under Section 30 of the Indiana Code:

- (a)...[f]or purposes of an abandonment determination under this chapter, one (1) or more of the



following constitute prima facie evidence that property is abandoned:

1. The enforcement authority that has jurisdiction in the location of the property has issued an order under IC 36-7-36-9 with respect to the property.
2. Windows or entrances to the property are boarded up or closed off.
3. Multiple window panes on the property are broken and unrepaired.
4. One (1) or more doors to the property are smashed through, broken off, unhinged, or continuously unlocked.
5. Gas service, electric service, water service, or other utility service to the property has been terminated.
6. Rubbish, trash, or debris has accumulated on the property.
7. The property is deteriorating and is either below or in imminent danger of falling below minimum community standards for public safety and sanitation.
8. The creditor has changed the locks on the property and for at least fifteen (15) days after the changing of the locks the owner has not requested entrance to the property.
9. There exist one (1) or more written statements, including documents of conveyance, that have been executed by the debtor, or by the debtor's personal representatives or assigns, and that indicate a clear intent to abandon the property.
10. There exists other evidence indicating a clear intent to abandon the property.

(b) Regardless of whether any of the conditions described in subsection (a) are found to apply, the debtor's failure to either:

1. present evidence or objections on the issue of abandonment to the court in writing before the appearance date specified in the court's order under section 4(a)(1) of this chapter; or
2. appear before the court on the date specified in the court's order under section 4(a)(1) of this chapter; constitutes prima facie evidence that the property is abandoned.

(c) If the court finds that:

1. one (1) or more of the conditions described in subsection (a) apply; or
2. the circumstances described in subsection (b) apply;

the court shall issue an order finding that the property is abandoned and enter a judgment in rem foreclosing the mortgage.

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(16) Iowa

The Iowa Code provides a definition for "abandoned" real property that can be used to provide advice to service providers regarding foreclosed properties.

Under Chapter 657(A) of the Iowa Code:

"Abandoned" or "abandonment" means that a building has remained vacant and has been in violation of the housing code of the city in which the property is located or the housing code applicable in the county in which the property is located if outside the limits of a city for a period of six consecutive months.



(17) Kansas

Kansas statutory law provides a definition for “abandoned” property that can assist counsel in advising service providers regarding abandoned property at foreclosure.

Under Chapter 12-1750 of the Kansas Statutes,

“Abandoned property” means:

- (1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days; or
- (2) commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties. “Commercial real estate” means any real estate for which the present use is other than one to four residential units or for agricultural purposes.

(18) Kentucky

Kentucky law provides perhaps the clearest definitions for both “vacant” and “abandoned” property.

Chapter 426 of the Kentucky revised statutes provides that:

1. (1) In an action otherwise properly brought to enforce a mortgage or lien against real property, including a lien ...which has been determined by the court to be vacant and abandoned, a sale of the property shall be ordered expeditiously.
2. (2) Real property shall be considered vacant and abandoned, for purposes of this section only, if there has been no legal resident or other person legally entitled to occupy the property residing at the property for a period of forty-five (45) or more consecutive days and two (2) or more of the following or similar circumstances which would lead a reasonable person to believe that the property is vacant exist:
 - a. Overgrown or dead vegetation;
 - b. Accumulation of flyers, mail, or trash;
 - c. Disconnected utilities;
 - d. The absence of window coverings or furniture;
 - e. Uncorrected hazardous conditions or vandalism; or
 - f. Statements of neighbors, delivery persons, or government employees that the property is vacant.
 - g. Proof of vacancy and abandonment may be offered by affidavit filed at or after the time of filing of the complaint by the plaintiff or other lienholder.
3. If the court makes a finding in the order of sale that the property is vacant and abandoned, the master commissioner shall sell the property within seventy (70) days of the order.
4. The plaintiff or other mortgage or lienholder in whose favor the judgment and order of sale were entered shall apply for an order confirming the sale within twenty (20) days of the date of the sale and, unless there have been exceptions to the report of the master commissioner, the court shall act on such application not later than the next regularly scheduled civil motion or rule day.
5. The master commissioner shall make conveyance of the property on the date the court confirms the sale, or as soon thereafter as all costs and fees have been paid by the foreclosing mortgagee or lienholder, or as soon as a third-party purchaser has paid the purchase price.



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(19) Louisiana

Louisiana does not define “abandoned” property in the context of real estate foreclosure. However, other areas of the law do attempt to define abandonment, which can be of assistance for local counsel looking to advise service providers with regard to abandonment at foreclosure.

Louisiana grants mortgagees and loan servicers the authority to access mortgaged property to perform maintenance and to protect and preserve abandoned mortgaged property until the property is sold.

Title 9 of the Louisiana Laws Revised Statutes states that:

- A. If a mortgagee or loan servicer receives a notice from a governing authority in accordance with R.S. 33:5062 or R.S. 33:5065 et seq., identifying certain maintenance required on the mortgaged property, the mortgagee and loan servicer shall have the right to directly or through third parties enter onto the property to perform maintenance.
- B. If any abandoned residential property, as defined by R.S. 33:5066, affected by a mortgage is unoccupied or abandoned, the mortgagee and loan servicer shall each have the legal right, directly or through third parties, to enter onto the property and to perform maintenance to protect and preserve the property until it can be sold at private sale or sheriff’s sale.
- C. The mortgagee, loan servicer, and any third parties hired by them to perform maintenance on the property, as defined by R.S. 33:5066, shall not be liable to the mortgagor or the owner of the seized property or any other person for any financial or pecuniary loss or damage claimed to have been suffered by the mortgagor or owner of the property or any other person by reason of the maintenance of the property.
- D. Any costs and expenses incurred by the mortgagee or loan servicer for maintaining the property may be added to any loan balance secured by the mortgage and recoverable from proceeds received from a sale of the property.

In this context, “abandoned” property is defined by Louisiana Revised Statutes Title 33 as follows:

- 1. “Abandoned residential property” shall mean one-to-four-family residential property that is vacant as the result of the relinquishment of physical possession or control by a homeowner or any other person or entity. Property may be deemed abandoned when there is evidence of conditions, taken separately or as a whole, that would lead a reasonable person to conclude that the property was unoccupied, including but not limited to evidence of vacancy.
- 2. “Evidence of vacancy” shall mean a condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions include but are not limited to overgrown or dead vegetation, accumulation of newspapers, circulars, flyers, or mail, past due utility notices or disconnected utilities, accumulation of trash, junk or debris, the absence of window coverings such as curtains, blinds or shutters, the absence of furnishings or personal items consistent with residential habitation, and statements by neighbors, passersby, delivery agents, or government employees that the property is unoccupied.

Further, the landlord-tenant statute (La. Code Civ. Proc. Ann. art. 4731) and Mobile Home Repossession Law (La. Stat. Ann. § 9:5363.1) provide similar definition of abandonment. Local ordinances in Louisiana can also provide guidance with respect to identifying abandoned property.



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(20) Maine

Maine has statutory law that specifically guides plaintiffs in foreclosure matters with regard to presenting evidence of “abandonment.”

Chapter 713 of the Maine Revised Statutes provides that the determining factors for whether a property is “abandoned” are whether (1) more than 50% of the mortgaged property is for residential purposes and (2) the property is subject of an uncontested foreclosure or uncontested foreclosure judgment with pending foreclosure sale. The evidence of abandonment to be presented includes, but is not limited to: broken or boarded windows; trash; removed furniture; deterioration; mortgagee-secured property with no subsequent owner inquiry, code violations; borrower(s)/owner(s) deceased as well as any other determinative facts. The Plaintiff may seek an order determining the mortgaged premises have been “abandoned” after the foreclosure has commenced. The case would receive priority over other cases, redemption is shortened, and if the property is occupied, the plaintiff assumes landlord duties the later of judgment entry or abandonment order.

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(21) Maryland

Under Maryland law, foreclosure is a non-judicial process and the state does have a special expedited procedure for vacant and abandoned properties.

According to the 2017 Maryland Code, Real Property, at Title 7 - Mortgages, Deeds of Trust, and Vendor’s Liens, § 7-105.14 there is a procedure for the expedited foreclosure:

Expedited foreclosure for vacant and abandoned property.

MD Real Prop Code § 7-105.14 (2017)

MD Real Prop Code § 7-105.14 (2017)

(a) “Residential property” defined. — In this section, “residential property” has the meaning stated in § 7-105.1 of this subtitle.

(b) In general.

(1) A secured party may petition the circuit court for leave to immediately commence an action to foreclose a mortgage or deed of trust on residential property on the basis that the property is vacant and abandoned as provided in this section.

(2) On filing a petition under this section, the secured party shall send a copy of the petition to the mortgagor’s or grantor’s last known address and the record owner of the property by certified mail, return receipt requested, and first-class mail.

(3) The circuit court shall rule on the petition promptly after the petition is filed.

(c) Criteria to determine “vacant and abandoned” property. — A residential property is vacant and abandoned under this section if all of the following criteria apply to the property:

(1) The court finds that the mortgage or deed of trust on the residential property has been in default for 120 days or more in a condition on which the mortgage or deed of trust provides that a sale may be made;

(2) The court finds that at least three of the circumstances listed in subsection (d) of this section are true as to the property;

(3) No mortgagor or grantor has filed with the court an answer or objection setting forth a defense or objection that, if proven, would preclude the entry of a final judgment and a decree of foreclosure; and

(4) No mortgagor or grantor has filed with the court a written statement that the property is not



vacant and abandoned.

(d) Circumstances constituting vacant and abandoned property. — The circumstances of a residential property that a court may find are true under subsection (c)(2) of this section are:

- (1) Gas, electric, sewer, or water utility services to the property have been disconnected;
- (2) Windows or entrances to the structure on the property are boarded up or closed off, or multiple window panes are broken and unrepaired;
- (3) Doors to the structure on the property are smashed through, broken off, unhinged, or continuously unlocked;
- (4) Junk, litter, trash, debris, or hazardous, noxious, or unhealthy substances or materials have accumulated on the property;
- (5) Furnishings, window treatments, or personal items are absent from the structure on the property;
- (6) The property is the object of vandalism, loitering, or criminal conduct, or there has been physical destruction or deterioration of the property;
- (7) A mortgagor or grantor has made a written statement expressing the intention of all mortgagors or grantors to abandon the property;
- (8) There is a determination that no owner or tenant appears to be residing on the property at the time of an inspection of the property by the secured party;
- (9) Two or more citations have been issued by a county or municipal corporation against the property for failure to maintain the property and a health and safety issue exists that has not been rectified;
- (10) The property has been condemned by a county or municipal corporation; or
- (11) Other reasonable indicia of abandonment exist.

(e) Effect of grant of petition. —

- (1) If the court finds that a residential property is vacant and abandoned and the secured party filing a petition for leave to file an action for immediate foreclosure is entitled to judgment, the court shall grant the petition.
- (2) Except as provided under subsection (f) of this section, if the court grants the petition under paragraph (1) of this subsection, § 7-105.1 of this subtitle does not apply to an action to foreclose a mortgage or deed of trust on the residential property that is found to be vacant and abandoned.

(f) Service of foreclosure documents; challenge.

- (1) A secured party filing an order to docket or complaint to foreclose based on a petition granted by a court under subsection (e)(1) of this section shall serve the foreclosure documents, accompanied by the document required under paragraph (4) of this subsection, by:
 - (i) Personal delivery of the papers to the mortgagor or grantor; or
 - (ii) Leaving the papers with a resident of suitable age and discretion at the mortgagor's or grantor's dwelling house or usual place of abode.
- (2) If at least two good faith efforts on different days to serve the mortgagor or grantor under paragraph (1) of this subsection have not succeeded, the secured party may effect service by:
 - (i) Filing an affidavit with the court describing the good faith efforts to serve the mortgagor or grantor; and
 - (ii)
 1. Mailing a copy of all the documents required to be served under paragraph (1) of this subsection by certified mail, return receipt requested, and first-class mail to the mortgagor's or grantor's last known address and, if different, to the address of the residential property subject to the mortgage or deed of trust; and
 2. Posting a copy of all the documents required to be served under paragraph (1) of this subsection in a conspicuous place on the residential property subject to the mortgage or deed of trust.
 - (3) The individual making service of documents under this subsection shall file proof of service with the court in accordance with the Maryland Rules.



- (4) The service of documents under paragraph (1) of this subsection shall be accompanied by a separate, clearly marked notice, in the form prescribed by regulations adopted by the Commissioner of Financial Regulation, that states:
- (i) The significance of the order to docket or complaint to foreclose; and
 - (ii) The right of a record owner or occupant of the property to challenge the finding that the residential property is vacant and abandoned.
- (5)
- (i) A challenge to the finding that the residential property is vacant and abandoned shall be filed with the court in the foreclosure proceeding not later than 20 days after service is made under this subsection.
 - (ii) If a timely filed challenge under this subsection is upheld, the secured party shall comply with the requirements of § 7-105.1 of this subtitle.

(22) Massachusetts

Massachusetts does not have statutory authority relating to “abandoned” real property for purposes of foreclosure, but local ordinances pertaining to same may provide local counsel with some guidance.

A receivership order could deem a property abandoned and/or uninhabitable. Legal Definition of Abandonment: *Property over which the owner has voluntarily given up dominion and control with no intention of recovering it.*

“Abandonment” based on its legal definition can be determined by a property inspection to see if there are signs of usage. Those signs are occupancy, appearance or lack thereof of personal items, existing utilities, and landscaping appearance.

Title insurers in the jurisdictions request property inspection reports to prove abandonment (as well as vacancy).

(23) Michigan

There is not a specific “abandoned” property foreclosure procedure in Michigan. However, Michigan does have an Affidavit of Abandonment statute that allows for the redemption period to be shortened in a non-judicial foreclosure.

Section 3241(a) of the Michigan Revised Judicature Act of 1961 states that:

For purposes of this chapter, if foreclosure proceedings have been commenced under this chapter against residential property not exceeding 4 units, there is a conclusive presumption that the premises have been abandoned if all of the following requirements are satisfied before the end of the redemption period:

- a. The mortgagee has made a personal inspection of the mortgaged premises and the inspection does not reveal that the mortgagor or persons claiming under the mortgagor are presently occupying or will occupy the premises.
- b. The mortgagee has posted a notice at the time of making the personal inspection and has mailed by certified mail, return receipt requested, a notice to the mortgagor at the mortgagor’s last known address, which notices state that the mortgagee considers the premises abandoned and that the mortgagor will lose all rights of ownership 30 days after the foreclosure sale or when the time to provide the notice required by subdivision (c) expires, whichever is later, unless the mortgagor; the mortgagor’s heirs or personal representative; or a person lawfully



- claiming from or under 1 of them provides the notice required by subdivision (c)
- c. With 15 days after the notice required by subdivision (b) was posted and mailed, the mortgagor; the mortgagor's heirs or personal representative; or a person lawfully claiming from or under 1 of them has not given written notice by first-class mail to the mortgagee at an address provided by the mortgagee in the notices required by subdivision (b) stating that the premises are not abandoned.

(24) Minnesota

Minnesota does not have a statute that defines vacant or abandoned property.

(25) Mississippi

Mississippi's Uniform Disposition of Unclaimed Property Act (2010 MS Code Chapter 12) does not address real property, despite Chapter 12 falling under Title 89, which is entitled "Real and Personal Property." However, there is case law that may be instructive to local counsel when advising service providers.

Case law indicates the analysis of "abandonment" is a question of fact. Intent to abandon along with an external act or omission to act manifesting such intent are the crucial factors in determining whether one has abandoned property. *Columbus & Greenville Ry. Co. v. Dunn*, 185 So. 583, 586 (1939); 1 C.J.S. Abandonment § 4 (1985); 1 Am.Jur.2d Abandoned, Lost, Etc. Property, § 15 (1962); see also *Yellow Cab Co. of Biloxi v. Checker Taxi Cab Owners Association*, 103 So.2d 350, 352 (1958).

(26) Missouri

Missouri does not have statutory authority with respect to "abandoned" property for purposes of foreclosure. However, the definition of an "abandoned" property in another context may provide some assistance.

The Abandoned Housing Act provides a mechanism for declaring a property "abandoned" for purposes of reclaiming and rehabilitation by a neighborhood organization. Chapter 447, Section 622, provides that: 447.622. Petition, requirements. — Any organization may petition to have property declared abandoned pursuant to the provisions of sections 447.620 to 447.640 and for temporary possession of such property, if:

1. The property has been continuously unoccupied by persons legally entitled to possession for at least six months prior to the filing of the petition;
2. The taxes are delinquent on the property;
3. The property is a nuisance; and
4. The organization intends to rehabilitate the property.

Vacancy is an element of abandonment which can be confirmed by property inspection. Also see local ordinances available through Muni-code.

(27) Montana

Montana does not have a statute that defines vacant or abandoned property.



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(28) Nebraska

Neither the Nebraska legislature nor local ordinances specifically define or address “abandoned” real property. The best way for local counsel to analyze and render an opinion as to whether property is “abandoned” is to look to local ordinances. For instance, most local ordinances specify that it shall be the responsibility of the owner to perform the responsibilities of the occupant when premises are vacant. More specifically, Sec. 48-146 of the Omaha, Nebraska Code of Ordinances states:

- (a) Abandoned *real property* means any structure that is vacant and exhibits evidence of vacancy; and
1. Is a property that is the subject of a notice of sale by a lender or mortgage pursuant to either a mortgage or deed of trust; or
 2. Is a property that is the subject of a tax lien certificate; or
 3. Is a property that is the subject of an active or ongoing action in foreclosure; or
 4. Is a property that has been the subject of a sheriff’s or trustee’s sale in foreclosure, in which the highest or successful bidder was the beneficiary of a mortgage or deed of trust involved in the foreclosure; or
 5. Is a property that is the subject of a deed in lieu of foreclosure in favor of the beneficiary of a mortgage or deed of trust.

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(29) Nevada

Unfortunately, Nevada’s statute regarding abandoned property for purposes of foreclosure, Nevada Revised Statute 107.0795, expired on June 30, 2021. While the statute is no longer in effect, it would still likely provide persuasive guidance to a court over whether the property is abandoned.

The text of the former statute outlining the conditions for “abandonment” under the Nevada Revised Statutes reads:

1. Abandoned residential property means residential real property:
 - (a) Consisting of not more than four family dwelling units or a single-family residential unit, including, without limitation, a condominium, townhouse or home within a subdivision, if the unit is sold, leased or otherwise conveyed unit by unit, regardless of whether the unit is part of a larger building or parcel that consists of more than four units; and
 - (b) That the grantor or the successor in interest of the grantor has surrendered as evidenced by a document signed by the grantor or successor confirming the surrender or by the delivery of the keys to the property to the beneficiary or that satisfies the following conditions:
 - (1) The residential real property is not currently occupied as a principal residence by the grantor of the deed of trust, the person who holds title of record or any lawful occupant;
 - (2) The obligation secured by the deed of trust is in default and the deficiency in performance or payment has not been cured;
 - (3) The gas, electric and water utility services to the residential real property have been terminated;
 - (4) It appears, after reasonable inquiry, that there are no children enrolled in school residing at the address of the residential real property;
 - (5) Payments pursuant to the federal Social Security Act, including, without limitation, retirement and survivors’ benefits, supplemental security income benefits and disability insurance benefits, payments for unemployment compensation or payments for public assistance, as defined in NRS 422A.065, are not currently being delivered, electronically or otherwise, to a person who has registered the address of the residential real property as his or her residence with the agency making the payment;
 - (6) An owner of the residential real property is not presently serving in the Armed Forces of



the United States, a reserve component thereof or the National Guard; and

(7) Two or more of the following conditions exist:

- (I) Construction was initiated on the residential real property and was discontinued before completion, leaving a building unsuitable for occupancy, and no construction has taken place for at least 6 months;
- (II) Multiple windows on the residential real property are boarded up or closed off or are smashed through, broken off or unhinged, or multiple window panes are broken and unrepaired;
- (III) Doors on the residential real property are smashed through, broken off, unhinged or continuously unlocked;
- (IV) The residential real property has been stripped of copper or other materials, or interior fixtures to the property have been removed;
- (V) Law enforcement officials have received at least one report of trespassing or vandalism or other illegal acts being committed at the residential real property within the immediately preceding 6 months;
- (VI) The residential real property has been declared unfit for occupancy and ordered to remain vacant and unoccupied under an order issued by a municipal or county authority or a court of competent jurisdiction;
- (VII) The local police, fire or code enforcement authority has requested that the owner or any other interested or authorized party secure the residential real property because the local authority has declared the property to be an imminent danger to the health, safety and welfare of the public; or
- (VIII) The residential real property is open and unprotected and in reasonable danger of significant damage resulting from exposure to the elements or vandalism.

2. The term does not include residential real property if:

- (a) There is construction, renovation or rehabilitation on the residential real property that is proceeding diligently to completion, and any building being constructed, renovated or rehabilitated on the property is in substantial compliance with all applicable ordinances, codes, regulations and laws;
- (b) The residential real property is occupied on a seasonal basis, but is otherwise secure;
- (c) There are bona fide rental or sale signs on the residential real property, or the property is listed on a Multiple Listing Service, and the property is secure; or
- (d) The residential real property is secure but is the subject of a probate action, action to quiet title or any other ownership dispute.

(30) New Hampshire

New Hampshire statutory authority regarding “abandonment” relates only to intangible, personal property and not real property. However, a receivership order could deem a property abandoned and/or uninhabitable. Legal Definition of Abandonment: *Property over which the owner has voluntarily given up dominion and control with no intention of recovering it.*

“Abandonment,” based on its legal definition, can be determined by a property inspection to see if there are signs of usage. Those signs are occupancy, appearance or lack thereof of personal items, existing utilities, and landscaping appearance.

Title insurers in the jurisdictions request property inspection reports to prove abandonment (as well as vacancy).



(31) New Jersey

New Jersey has a statute providing for an expedited process for foreclosures of vacant or abandoned properties.

New Jersey enacted a statute that went into effect in 2014 regarding a “summary action” for foreclosing mortgages on certain vacant and abandoned properties. This procedure enabled lenders to use summary actions to foreclose mortgages on abandoned and vacant residential property. Similar to other states’ classifications, properties can be defined as vacant and abandoned if the properties meet any two of the following conditions:

- Accumulation of junk, litter, debris, or trash
- Neglected or overgrown vegetation
- The accumulation of mail or newspapers on the property
- Disconnected utility services
- The accumulation of unhealthy or hazardous substances on the property
- It’s a risk to the welfare and safety of the public
- Doors have been smashed, unhinged, or broken off
- Statements from people in the area indicate that the property is vacant and abandoned
- Absence of personal items and furnishings
- Absence of window treatments
- Written statements from the mortgager expressing the clear intent from all the people on the mortgage to abandon the property
- Winterizing the property
- Uncorrected violations of housing or building codes

According to the Order from the New Jersey Supreme Court on April 29, 2013:

“In addition to the content required by Rule 4:64-1(a) and (b), a complaint for foreclosure of vacant and abandoned residential property as established by N.J.S.A. 2A:50-73 shall set out facts that the plaintiff alleges demonstrate that the property is vacant and abandoned. The complaint shall incorporate the Rule 4:64-2(b) affidavit or certification of amount due that the plaintiff will rely upon to establish the judgment amount. Notwithstanding the procedure for judgment set forth in Rule 4:64-1(d)(1)(A), where residential property is vacant and abandoned as established by N.J.S.A. 2A:50- 73, a notice of motion for entry of judgment and the notice of tenants’ rights during foreclosure in the form prescribed by Appendix XII-J of the Rules of Court are not required to be served. A copy of the Rule 4:64-2(b) affidavit or certification of amount due shall be served with the Rule 4:67-1 order to show cause or the Rule 4:67-2 notice of motion to proceed summarily.”

(32) New Mexico

The New Mexico legislature proposed a vacant and abandoned property foreclosure mechanism in 2015. It was not enacted but it contained similar definitions as other states.

On a local level, cities in New Mexico have adopted abandoned property registration requirements, land banks, and other means to deal with vacant and abandoned properties.



(33) New York

New York State does not appear to have statutory definitions for “abandoned” real property. However, New York’s Department of Financial Services (DFS) does address vacant and abandoned properties, which they refer to as “zombie properties.”

The DFS website defines “zombie properties” as homes that the homeowner has abandoned, typically in the face of a foreclosure action. The determination of the zombie status is through monthly occupancy inspections after the loan has been delinquent more than 90 days. The property may be deemed “vacant and abandoned” following three consecutive inspections whereby there is no evidence of occupancy and basic maintenance work is not being performed. Following that, a mortgagee needs to secure and maintain the property.

The above process and determination would only apply to one- to four-family residential properties subject to a mortgage in default.

Additionally, a court order could determine a property is vacant.

(34) North Carolina

North Carolina does not have a statute that defines vacant or abandoned property.

(35) North Dakota

In 2019, North Dakota enacted a statute that amended the notice of default requirements under the state’s judicial foreclosure process. Under the new law, a lender or servicer is not required to provide a formal “notice of default” prior to filing a judicial foreclosure action if the property is “abandoned,” or if service by mail has been attempted three times and the attempted service is returned as refused or unclaimed.

The new law permits a foreclosing lender or servicer to allege abandonment in the foreclosure complaint, or in a petition to the court for a determination of abandonment, which may occur any time prior to the foreclosure sale.

If “abandonment” is alleged by the lender, or a determination of abandonment is petitioned for, an affidavit is prima facie evidence of abandonment if the affidavit is executed by: the foreclosing lender or servicer, the sheriff, or deputy sheriff of the county where the property is located. An affidavit can also be executed by a building inspector, zoning administrator, housing official, or other municipal or county official having jurisdiction over the property. The law lists the criteria that must be included in the affidavit.

The law also clarifies that a court may consider remedies to prevent waste in a foreclosure action or upon a petition for abandonment. With regard to service, the law provides that actual service of notice before a foreclosure is not required if the property is abandoned.

Finally, the law also permits a court to eliminate the redemption period following a foreclosure sale if the property is abandoned.



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(36) Ohio

Ohio has statutory authority that provides guidance as to whether a property that is “abandoned” for foreclosure purposes.

Ohio Revised Code 2308.02(C)(3) states that the court may deem a foreclosed property to be vacant and abandoned if at least three of the following factors are true:

- a. (a) Gas, electric, sewer, or water utility services to the property have been disconnected.
- b. (b) Windows or entrances to the property are boarded up or closed off, or multiple window panes are broken and unrepaired.
- c. (c) Doors on the property are smashed through, broken off, unhinged, or continuously unlocked.
- d. (d) Junk, litter, trash, debris, or hazardous, noxious, or unhealthy substances or materials have accumulated on the property.
- e. (e) Furnishings, window treatments, or personal items are absent from the structure on the land.
- f. (f) The property is the object of vandalism, loitering, or criminal conduct, or there has been physical destruction or deterioration of the property.
- g. (g) A mortgagor has made a written statement expressing the intention of all mortgagors to abandon the property.
- h. (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. (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. (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. (k) Other reasonable indicia of abandonment exist.

.....
(37) Oklahoma

According to Oklahoma’s statutes, the laws provide for certain relief where properties are vacant

- A. Upon commencement of a suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust in a court of competent jurisdiction, if the plaintiff/mortgagee believes, knows, or has reason to know, that the subject property is abandoned or vacated and, as a result of such abandonment:
 1. Physical deterioration and devaluation of the property is occurring or has occurred;
 2. There exists a risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, due to potential or actual acts of vandalism, loitering, criminal conduct or the physical destruction or deterioration of the property; or
 3. There exists a risk of additional legal process for violation of law, ordinance, unpaid taxes or accrual of liens, the plaintiff/mortgagee may seek a court order to protect and preserve the property pending the disposition of the suit, action or proceeding before the court.
- B. A motion to protect and preserve an abandoned or vacated property subject to a suit, action or proceeding to foreclose or otherwise enforce the remedies in the mortgage, contract for deed or deed of trust shall be filed and heard in accordance with court rules and statutory civil procedures for motions.



THE LEGAL LEAGUE 100

Abandoned Property Law

- C. The plaintiff/mortgagee, after filing a motion to protect and preserve property in the pending litigation before the court, and having received from the court a date, time and location to hear the motion, shall present a certified copy of the motion and hearing notice to the sheriff in the county in which the property is located. The sheriff, upon receiving a written request to post a motion and hearing notice on a property within his or her jurisdiction, shall within three (3) days of the receipt of such request, physically inspect the subject property and determine whether or not the property is abandoned or occupied. At the time of the physical inspection of the property, the sheriff shall either post a copy of the motion and hearing notice in a conspicuous place on the property or shall physically serve an occupant of the property as required by the provisions of this section. The sheriff shall receive from the plaintiff/mortgagee a sheriff's service fee not to exceed One Hundred Fifty Dollars (\$150.00) for the inspection of each property and may designate a deputy or reserve deputy to perform the inspection and posting or service specified in this section.
- D. Upon physical inspection, if the sheriff determines the property to be abandoned or vacated, the sheriff shall post the required motion and hearing notice on the property and make a return of inspection and posting to the plaintiff/mortgagee at the address provided by the plaintiff/mortgagee. In the event, the property is occupied or appears to be occupied in the judgment of the sheriff, the sheriff shall attempt actual service of the motion and hearing notice on an occupant of the property as provided for service of summons, and if a person is not available to accept service or cannot be found, the sheriff shall post the motion and hearing notice in a conspicuous place on the property and make a written return of inspection and service to the plaintiff/mortgagee at the address provided by the plaintiff/mortgagee.
- E. The sheriff's written return of inspection and posting or return of inspection and service shall be made within three (3) days of the date of actual inspection. The return shall be deposited into the regular U.S. mail, postage prepaid, and the return document shall certify that:
 - 1. The motion and hearing notice was either served in person upon an occupant of the property or was physically posted on the property and the exact date of service or posting;
 - 2. A physical inspection and observation of the property was conducted; and
 - 3. In the best judgment and belief of the sheriff, or designee, the property was abandoned and vacated or occupied by the defendant/mortgagor or a lawful tenant or other person, and any reason or belief for that determination.
- F. The posting of the motion and hearing notice shall be deemed proper service and sufficient notice to the defendant/mortgagor and all occupants of the property for purposes of holding the hearing and authorizing the court to issue an order to protect and preserve the property pending disposition of the litigation before the court. The court shall not require any additional or alternative notification to the defendant/mortgagor or any occupant. Nothing shall prohibit the plaintiff/mortgagee from notifying, or attempting to notify, the defendant/mortgagor or any potential occupant of the subject property in another manner. If the plaintiff/mortgagee elects notification by publication in addition to the posting required by this section, he or she shall publish a copy of the motion and hearing notice at least twice in the fifteen-day period immediately preceding the hearing date in a publication of general circulation in the jurisdiction in which the property is located. A copy of the motion and hearing notice shall be sent or delivered to the defendant's legal counsel of record as required by court rule and statutory civil procedure for notifying opposing counsel of motions and hearings.
- G. The motion posted or served shall be in the form and style recognized for pleadings filed in the official court case, and shall contain the name of the parties, court case number, the date, time and place of the hearing, and a statement directing the defendant/mortgagor or any occupant of the property to appear in person, or through legal counsel, or be deemed to have abandoned and vacated the property.
- H. No hearing shall be held on a motion to protect and preserve the property subject to a suit, action or proceeding to foreclose or enforce remedies in the mortgage, contract for deed or



deed of trust, unless at least fifteen (15) days has passed from the date of posting or service of the motion and hearing notice. At the hearing, the court shall hear testimony of the parties present, including any person who claims to be an occupant or tenant of the property and who is not a named litigant in the pending litigation before the court. The testimony shall include inquiry into the property's previous and current condition and the reasons or beliefs supporting or objecting to a determination that the property is abandoned or vacated. The court shall review the sheriff's written return of inspection and posting or the return of inspection and service. The court shall not require the presence of the defendant/mortgagor or defendant's legal counsel to grant an order authorizing the plaintiff/mortgagee to take action to protect and preserve the subject property pending the disposition of the litigation before the court.

1. If the defendant/mortgagor, or an occupant or tenant, appears in person or through legal counsel, and the court is satisfied that the defendant, or person, is physically residing in the property, or if not occupying the property is willing and able to properly protect and preserve the property pending the litigation before the court, the motion shall be denied. However, the court shall enter an order requiring the person to protect and preserve the property under such conditions as the court may determine. Failure of the person to comply with the court order to protect and preserve the property shall be contempt of court.
2. If the defendant/mortgagor, or an occupant or tenant, fails to appear in person, and there exists no compelling reason why the defendant/mortgagor, or person, could not appear in person, and the property appears to be deteriorating or at risk of deteriorating as a result of abandonment, vandalism or any unlawful or intentionally malicious act, the court shall enter an order directing the plaintiff/mortgagee to take action to protect and preserve the property pending and in anticipation of foreclosure or other enforcement of remedies in the mortgage, contract for deed or deed of trust.
3. Upon issuance of an order to protect and preserve property, the court shall direct the plaintiff/mortgagee to inventory, or cause to be inventoried by an independent person, any personal property remaining on or about the subject property and to file such inventory in the court case file.
 - I. When a court order is issued to protect and preserve property, the plaintiff/mortgagee shall be authorized to take, and shall take, possession and secure the property pending and in anticipation of foreclosure or other enforcement of remedies in the mortgage, contract for deed or deed of trust.
 - J. An order issued to protect and preserve property pursuant to the provisions of this section may be vacated and set aside at any time by the court upon motion by the defendant/mortgagor, or occupant or tenant, and satisfactory proof that the property is not or was not abandoned or vacated, or was leased or rented and lawfully occupied by a person other than the defendant/mortgagor at the time of issuance of the order, provided, the property was not subjected to intentional malicious acts by the defendant, or person, to deface, destroy or devalue the property.
 - K. A motion filed, or court order issued, to protect and preserve the property as provided in this section shall not alter, modify, relinquish or release any right, title or interests of any party in or to any property, or alter, modify, relinquish or release any party's position, standing, claims, defenses or objections in the suit, action or proceeding pending before the court to foreclose or enforce any remedy in the mortgage, contract for deed or deed of trust. 46 OK Stat § 46-302 (2014).



(38) Oregon

Oregon does not have a statewide definition of “vacant” or “abandoned” real property for foreclosure purposes. Servicers will need to look to the case law and determine if the facts of the particular case warrant a reasonable belief the property is abandoned. Also, many counties have issued local statutes regarding registration of vacant or abandoned property, but the specific definition can vary. Servicers should look to local counsel to review the local ordinances for where the property is located.

(39) Pennsylvania

Pennsylvania adopted a Vacant and Abandoned Property Foreclosure Act, in an attempt to streamline the process for foreclosing vacant and abandoned properties. The key in Pennsylvania is that the property must be both “vacant” and “abandoned” in order to fall within the act.

The Act provides a list of characteristics of vacant and abandoned properties, and the statute provides that the property must contain at least three of the characteristics in order to meet the criteria of being vacant and abandoned. Per the statute, those criteria are:

- Multiple windows, doors or entrances on the property are boarded up, unhinged, closed off, smashed in or are continuously unlocked.
- The Property has been stripped of copper or other metals.
- Interior furnishings, personal items, appliances or fixtures have been removed from the Property.
- Window treatments, such as blinds, curtains or shutters removed from the Property.
- Gas service terminated.
- Electric service terminated.
- Water or sewer utility services terminated.
- Newspapers, circulars, flyers or mail accumulated on the Property.
- United States Postal Service has discontinued delivery to the Property.
- Rubbish, trash and/or debris on the Property.
- Vegetation or natural overgrowth has accumulated on the Property.
- There are open municipal building or housing code violations for the Property and the violations have been documented as being uncorrected during the preceding year.
- Obtaining a written and signed statement(s) by the Property’s adjoining neighbors, adjacent neighbors or delivery persons as to the property being abandoned.
- The local municipal code enforcement officer who indicates that the municipality has deemed the Property vacant and abandoned.
- Hazardous, noxious or unhealthy substances or materials have accumulated on the Property.
- Written communication from the owner stating that he/she/they have vacated or abandoned the Property or intend to do so.

(40) Puerto Rico

Puerto Rico does not have a statute that defines vacant or abandoned property. Puerto Rico is a judicial foreclosure jurisdiction. It typically takes approximately 60-90 days to effectuate an uncontested foreclosure.



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(41) Rhode Island

Rhode Island has statutory law that determines the legal definition of an “abandoned” property.

Pursuant to Rhode Island General Laws section 34:

1. (1) “Abandon” or “abandonment” means a situation where the owner of a building has intended to abandon the building and has manifested the intent with some act or failure to act. In determining whether an owner has abandoned his or her building, a court shall infer the intent of the owner from the existence of serious code violations that pose a health and/or safety hazard to the community and that have gone unrepaired for an unreasonable amount of time and from any of the surrounding facts and circumstances including, but not limited to the following:
 - (i) Whether or not the building is vacant;
 - (ii) Whether or not the grounds are maintained;
 - (iii) Whether or not the building’s interior is sound;
 - (iv) Whether or not any vandalism on the building has gone unrepaired;
 - (v) Whether or not rents have been collected from the building’s tenants by the owner;
 - (vi) The length of time any of the above conditions have existed; vacancy/abandonment for purposes of how to contact the borrowers and how to protect/preserve the property are determined through a property inspection, considering the factors listed above.

Additionally, a court order that declares the property abandoned can be used.

.....
(42) South Carolina

South Carolina statutorily defines “abandonment” when making a determination as to whether real property has been abandoned.

Under Section 29 of the South Carolina Code:

- A. For the purposes of this section, “abandoned property” means real property subject to a mortgage where either:
 - (1) the mortgaged property is not occupied and at least two of the following conditions exist:
 - a. windows or entrances to the property are boarded up or closed off or multiple window panes are damaged, broken, or unrepaired;
 - b. doors to the property are smashed through, broken off, unhinged, or continuously unlocked;
 - c. hazardous, noxious, or unhealthy substances or materials have accumulated on the property;
 - d. gas, electric, or water utility services have been terminated by the utility for at least thirty days due to failure to pay by the property owner;
 - e. 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;
 - f. 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;
 - g. an order by governmental authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
 - h. a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;
 - i. written statements of neighbors, delivery persons, or governmental employees indicating that the property is abandoned; or
 - j. any other indicia of abandonment; or



(2) the mortgaged property is vacant, unimproved land and is in need of maintenance, repair, or securing;

(3) a showing under items (1) or (2) of this section must be proven by clear and convincing evidence.

(B) For the purposes of this section, real property must not be considered “abandoned” if, on the property, there is:

(1) 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) a building occupied on a seasonal basis, but otherwise secure;

(3) a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute; or

(4) 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.

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(43) South Dakota

South Dakota is a non-judicial state, and it does not have an express statute regarding foreclosure of vacant or abandoned properties. Various locations do have registration requirements for foreclosures.

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(44) Tennessee

Tennessee does not have a statutory definition for “abandoned” property for foreclosure purposes. However, there are statutes determining whether a property is “vacant” that can be instructive, as well as local ordinances and case law that can be useful in determining “abandonment.”

Under Section 13 of the Tennessee Code, some statutory factors considered for acquisition of vacant properties and redevelopment are as follows: fitness for human habitation, fire hazard, disconnection of utilities, trash and debris, and delinquent property taxes of at least three years. TN Code § 13-21-202 (2016).

Vacancy is an indication of abandonment. According to Chapter 9 of the Memphis, Tennessee Code (a local ordinance), abandoned real property means any real property that is vacant, is subject to unauthorized occupancy, and has been determined by evidence of an affidavit by an agent or officer of the City of Memphis Housing Code Enforcement. Under the Code, evidence of vacancy means any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; electricity, water or other utilities turned off; stagnant swimming pool; or statement by neighbors, passers-by, delivery agents or government agents.

Local practitioners have also used the language in Chapter 28 of the Tennessee Code (the Landlord and Tenant Act) as guidance:

- (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



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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.

With respect to the perceived "abandonment" of real property, Tennessee courts have set a precedent of requiring a great deal of evidence of abandonment. In those cases in which the courts have entertained a possible finding of abandonment of an interest in real property, the standard was that "clear and unmistakable affirmative act [had been made] indicating a purpose to repudiate ownership." *Phy v. Hatfield*, 126 S.W. at 105 (Tenn. 1909). The Tennessee Supreme Court concluded that "[d]ivestiture of a vested legal title by 'abandonment' is unknown at common law, unless it results from some estoppel or adverse possession." *Southern Coal & Iron Co. v. Schwoun*, 239 S.W. 398, 409 (Tenn. 1921). *Morgan v. Champion Roofing & Remodeling*, No. W2002-01941-COA-R3CV, 2003 WL 21756699, at *8 (Tenn. Ct. App. July 29, 2003).

(45) Texas

The Texas legislature nor the local ordinances do not specifically define or address "abandoned" real property. The best way to analyze and render an opinion as to whether property is "abandoned" in Texas is to look to local ordinances, if any, that address vacancy or abandonment.

By way of example, in Harris County there is an official form titled Report of Abandoned Property. The crux of the form seems to focus on whether or not the taxes are delinquent. In addition, common sense evidence of abandonment should come into play (i.e. utilities off, code violations, etc.)

(46) Utah

The only statute that may provide guidance with respect to real property abandonment addresses abandoned mobile homes and discusses tenant being out of mobile home for 45 days along with non-payment of rent. See, generally, Title 57, Real Estate.

(47) Vermont

27 V.S.A. §1461 addresses when "property" is presumed abandoned citing the number of years but does not address mortgaged real estate being abandoned as homestead. The intended property does not include real estate for purposes of taking further legal action against it based on those ground.

A party may be able to look to local ordinances on vacant and abandoned property for guidance to determine property status.



(48) Virginia

Virginia legislature has not defined “abandoned” real property for purposes of foreclosure.

(49) Washington

Washington does not have vacant or abandoned foreclosure statute; however, under the Washington Revised Code, if a court finds that a property is abandoned for six or more months, then the purchaser at sale takes title without any right of redemption. Specifically, RCW 61.12.093 states:

In actions to foreclose mortgages on real property improved by structure or structures, if the court finds that the mortgagor or his or her successor in interest has abandoned said property for six months or more, the purchaser at the sheriff’s sale shall take title in an to such property free from all redemption rights as provided for in RCW 6.23.010 et seq. upon confirmation of the sheriff’s sale by the court. Lack of occupancy by, or by authority of, the mortgagor or his or her successor in interest for 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.

The above statute can be information for local counsel attempting to advise a service provider.

(50) West Virginia

A bill was introduced in West Virginia on February 10, 2021, that would create an expedited foreclosure. The bill is pending as of this date but states the following:

§8-12-22. Foreclosure actions involving abandoned properties.

(a) This section shall be known and may be cited as the “Zombie Property Remediation Act of 2021”.

(b) If a property has been determined to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare pursuant to an ordinance adopted pursuant to §8-12-16 of this code, or determined vacant and abandoned pursuant to §8-12-22(b) of this code, the municipality in which the property is located may commence a proceeding in a court of competent jurisdiction in the county in which the property is located to compel any or all mortgagees to:

- (1) If the note is in default, the trustee or mortgagee shall commence a foreclosure procedure within three months and shall meet all deadlines to ensure the case is ready to be moved to judgment within a reasonable time period but not to exceed one year;
- (2) If a foreclosure has already been commenced, file the necessary motions and within three months paperwork to move the case to judgment foreclosure within three months; or



- (3) Issue a certificate of discharge of the trust deed lien or mortgage within three months and file a satisfaction of the lien or mortgage with the appropriate local office.
- (c) (1) As used in this section, vacant and abandoned residential property means residential real property with respect to which the plaintiff has proven, by preponderance of the evidence, that it has conducted at least three consecutive inspections of the property, with each inspection conducted 25 to 35 days apart and at different times of the day, and at each inspection:
- (A) No occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and
 - (B) The residential real property was not being maintained in a manner that it is in violation of any specific requirement or prohibition applicable to any dwelling, building, or structure provided by the approved building or fire code of the jurisdiction;
- (2) Residential real property shall also be considered vacant and abandoned if:
- (A) A court or other appropriate state or local governmental entity has formally determined, following due notice to the borrower at the property address and any other known addresses, that the residential real property is vacant and abandoned; or
 - (B) Each borrower and owner has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.
- (3) Evidence of lack of occupancy shall include, but not be limited to, the following conditions:
- (A) Overgrown or dead vegetation;
 - (B) Accumulation of newspapers, circulars, flyers or mail;
 - (C) Past due utility notices, disconnected utilities, or utilities not in use;
 - (D) Accumulation of trash, refuse, or other debris;
 - (E) Absence of window coverings such as curtains, blinds, or shutters;
 - (F) One or more boarded, missing, or broken windows;
 - (G) The property is open to casual entry or trespass; or
 - (H) The property has a building or structure that is or appears structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons.
- (4) Residential real property may not be considered vacant and abandoned if there is on the property:
- (A) An unoccupied building that is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion;
 - (B) A building occupied on a seasonal basis, but otherwise secure;
 - (C) A building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute of which



the servicer has actual notice;

(D) A building damaged by a natural disaster and one or more owner intends to repair and reoccupy the property; or

(E) A building occupied by the mortgagor, a relative of the mortgagor or a tenant lawfully in possession.

(d) For any foreclosure resulting under this section or otherwise pursuant to any trust deed of record, if the successful bidder is the mortgagee, the trustee shall transfer by recorded deed, the property to the mortgagee within 30 days of the foreclosure sale. Any municipality wherein the property is located may, by injunction proceeding, require the trustee, acting on behalf of the mortgagee, to convey the property to the mortgagee by recorded deed of record. Any municipality filing such an action and obtaining relief by injunction may recover attorney fees and costs related to the action.

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(51) Wisconsin

Wisconsin state law directly addresses what constitutes an “abandoned” property for purposes of foreclosure.

According to Chapter 846 of the Washington Statutes Annotated:

1. In an action for enforcement of a mortgage lien, and upon motion of the plaintiff or the city, town, village, or county where the mortgaged premises are located, if the court makes an affirmative finding upon proper evidence being submitted that the mortgaged premises have been abandoned by the mortgagor and the mortgagor’s assigns, judgment shall be entered as provided in sub. (3). In this section, “abandoned” means the relinquishment of possession or control of the mortgaged premises whether or not the mortgagor or the mortgagor’s assigns have relinquished equity and title.
2. In addition to the parties to the action to enforce a mortgage lien, a representative of the city, town, village, or county where the mortgaged premises are located may provide testimony or evidence to the court under sub. (1) relating to whether the premises have been abandoned by the mortgagor. In determining whether the mortgaged premises have been abandoned, the court shall consider the totality of the circumstances, including the following:
 - a. Boarded, closed, or damaged windows or doors to the premises.
 - b. Missing, unhinged, or continuously unlocked doors to the premises.
 - c. Terminated utility accounts for the premises.
 - d. Accumulation of trash or debris on the premises.
 - e. At least 2 reports to law enforcement officials of trespassing, vandalism, or other illegal acts being committed on the premises.
 - f. Conditions that make the premises unsafe or unsanitary or that



make the premises in imminent danger of becoming unsafe or unsanitary

(3)(a) If the court finds that the mortgaged premises have been abandoned under sub. (1), judgment shall be entered as provided in s. 846.10, except that the plaintiff shall, no later than 12 months from the date when the judgment is entered, do one of the following:

1. Hold a sale of the mortgaged premises and have the sale confirmed under s. 846.16(2m). Any sale of the mortgaged premises may be held at any time after the expiration of 5 weeks from the date when the judgment is entered. Notice of the time and place of sale shall be given under s. 846.16(1) and may be given at any time within the 12-month period.
2. Release or satisfy the mortgage lien and vacate the judgment of foreclosure. If the plaintiff presents evidence that the mortgage lien has been released or satisfied and requests that the judgment of foreclosure be vacated, the court shall vacate the judgment of foreclosure with prejudice.

(b) If, 12 months after the date when the judgment is entered, the plaintiff has not completed an action under par. (a)1. or 2., any party to the action or the city, town, village, or county where the mortgaged premises are located may petition the court for an order compelling a sale of the mortgaged premises.

(52) Wyoming

Wyoming does not have a statewide definition of vacant or abandoned property for foreclosure purposes. Servicers will need to look to the case law and determine if the facts of the particular case warrant a reasonable belief the property is abandoned. Also, many counties have issued local statutes regarding registration of vacant or abandoned property, but the specific definition can vary. Servicers should look to local counsel to review the local ordinances for where the property is located.