

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 70

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO LOCAL GOVERNMENT; REQUIRING THAT THE GOVERNING BODY
OF A CLASS A COUNTY ENACT A FORECLOSURE MAINTENANCE ORDINANCE
REQUIRING THE LEGAL OWNER OF A FORECLOSED RESIDENTIAL REAL
PROPERTY TO MAINTAIN THE PROPERTY; PROVIDING FOR A PENALTY;
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the
"Foreclosure Maintenance Act".

SECTION 2. DEFINITIONS.--As used in the Foreclosure
Maintenance Act:

A. "abandoned residential real property" means any
residential property that:

(1) is vacant and is under a current notice of
default or notice of mortgagee's sale by the lender or is the

.188944.1

underscored material = new
[bracketed material] = delete

1 subject of a tax lien sale; or

2 (2) has been the subject of a foreclosure sale
3 where the title was retained by the beneficiary of a mortgage
4 involved in the foreclosure or transferred under a deed in lieu
5 of foreclosure or sale;

6 B. "evidence of vacancy" means any condition that
7 on its own, or combined with other conditions present, would
8 lead a reasonable person to believe that the property is
9 vacant, including:

10 (1) overgrown or dead vegetation;

11 (2) accumulation of abandoned personal
12 property; or

13 (3) statements by neighbors, delivery agents
14 or government agents in combination with other evidence that
15 the property is vacant;

16 C. "failure to maintain" means failure to provide
17 general upkeep and care for the property, including failure to:

18 (1) remove excessive amounts or overgrowth of
19 weeds, brush or dead vegetation;

20 (2) remove trash, junk, debris or unused
21 building materials;

22 (3) remove an accumulation of newspapers,
23 circulars, flyers or notices, except those required by federal,
24 state or local law;

25 (4) remove discarded personal items, including

1 furniture, clothing, large and small appliances, printed
2 materials, vehicles and any other items that provide evidence
3 of vacancy; or

4 (5) prevent or eliminate rodent, pest or
5 insect infestation, including mosquito larvae growing in
6 standing water;

7 D. "foreclosure" means the process by which a
8 property, placed as security for a real estate loan, is sold at
9 public sale to satisfy the debt when the borrower defaults on
10 the loan, including the recording of a lis pendens in
11 contemplation of a foreclosure;

12 E. "governing body" means the board of county
13 commissioners of a class A county;

14 F. "public nuisance" means a condition on the
15 property resulting from a failure to maintain that jeopardizes
16 the public health and safety or negatively affects the
17 surrounding residential property values; and

18 G. "vacant" means not legally occupied.

19 **SECTION 3. PROPERTY MAINTENANCE REQUIREMENT.**--Whether
20 purchased at a foreclosure sale or acquired through foreclosure
21 under a mortgage or deed of trust, a legal owner shall maintain
22 abandoned residential real property. Failure to maintain an
23 abandoned residential real property may result in a penalty
24 imposed upon the legal owner as provided by the ordinance
25 enacted by the governing body. Abandoned residential real

.188944.1

1 property that is not properly maintained constitutes a public
2 nuisance.

3 SECTION 4. ORDINANCE ENACTED--REQUIRED PROVISIONS--
4 APPLICABILITY.--

5 A. A governing body by ordinance shall compel the
6 legal owner of abandoned residential real property to maintain
7 the structure and the land within the lot lines of the
8 property. An ordinance enacted in accordance with the
9 provisions of the Foreclosure Maintenance Act shall at a
10 minimum provide:

11 (1) that a violation of any provision of the
12 ordinance shall be subject to a citation and may be subject to
13 a monetary penalty;

14 (2) notice of the alleged violation to the
15 legal owner, including a description of the conditions that
16 gave rise to the allegations;

17 (3) notice of the intent to impose a monetary
18 penalty if action by the legal owner to correct the violation
19 is not commenced within a period of not more than fourteen days
20 and completed within a period of not less than thirty days;

21 (4) except as otherwise provided in this
22 section, notice of a period of not less than thirty days for
23 the legal owner of the property to remedy any violation prior
24 to the imposition of the monetary penalty;

25 (5) a process to allow the legal owner an

1 opportunity to contest the allegations contained in the
2 citation;

3 (6) a process used in determining the amount
4 of the penalty to be imposed that includes consideration given
5 to any timely and good faith efforts by the legal owner to
6 remedy the violation; and

7 (7) a maximum penalty of one thousand dollars
8 (\$1,000) for each day that the legal owner fails to maintain
9 the property, commencing on the day following the expiration of
10 the period allowed to remedy the violation established by the
11 local ordinance.

12 B. The ordinance enacted pursuant to the provisions
13 of the Foreclosure Maintenance Act may include provisions to
14 establish different compliance periods for different conditions
15 on the same property.

16 C. The ordinance may provide less than thirty days'
17 notice to remedy a condition before the imposition of a penalty
18 if it is determined that a specific condition of the property
19 threatens public health or safety; provided that adequate
20 notice of that determination and the time for compliance is
21 given.

22 D. Monetary penalties collected pursuant to an
23 ordinance enacted in accordance with the provisions of the
24 Foreclosure Maintenance Act shall be directed to the governing
25 body's local nuisance abatement program or other similar local

.188944.1

1 program as determined by the governing body.

2 E. The provisions of an ordinance enacted in
3 accordance with the Foreclosure Maintenance Act apply only to
4 abandoned residential real property.

5 SECTION 5. NOTICE--REQUIREMENTS.--The notice provision of
6 an ordinance enacted pursuant to the Foreclosure Maintenance
7 Act shall provide as follows:

8 A. for real property foreclosed but not yet sold,
9 the notice shall be mailed to the address provided in the deed
10 or other instrument as specified in Section 48-10-12 NMSA 1978;
11 or

12 B. for real property sold at foreclosure, notice to
13 the purchaser of the trustee's deed as specified in Subsection
14 B of Section 48-10-14 NMSA 1978 and to the return address
15 provided on the deed or other instrument.

16 SECTION 6. SEVERABILITY.--The provisions of the
17 Foreclosure Maintenance Act are severable. If any provision of
18 that act or its application is held invalid, that invalidity
19 shall not affect other provisions or applications that can be
20 given effect without the invalid provision or application.

21 SECTION 7. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.