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SENATE BILL 122

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Steven P. Neville

AN ACT

RELATING TO REAL PROPERTY; ENACTING A MECHANISM FOR EXPEDITED
FORECLOSURE OF VACANT AND ABANDONED RESIDENTIAL PROPERTY;
PROVIDING THAT A MORTGAGE HOLDER MAY ENTER AND SECURE VACANT
AND ABANDONED RESIDENTIAL PROPERTY UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. [NEW MATERIAL] RESIDENTIAL PROPERTY DEFINED.--

As used in Sections 1 through 5 of this act, "residential
property" means real property located within this state
consisting of land and a structure on that land containing four
or fewer dwelling units, each of which is intended for
occupancy by a separate household. "Residential property"
includes a residential condominium unit owned by an individual,
notwithstanding the number of units in the structure, and a
manufactured or mobile home.

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1 SECTION 2. ~~[NEW MATERIAL]~~ VACANT AND ABANDONED

2 RESIDENTIAL PROPERTY.--A residential property shall be
3 considered vacant and abandoned if:

4 A. the owner of the residential property is in
5 default on the residential mortgage loan secured by the
6 residential property;

7 B. two or more of the following circumstances
8 apply:

9 (1) at the time of any inspection of the
10 residential property by a state, county or municipal official,
11 or by the mortgage holder or an agent of the mortgage holder,
12 no person is visibly present from an exterior inspection of the
13 residential property;

14 (2) no utility connections, including water,
15 sewer, natural gas or electric connections, service the
16 residential property, or no such utility connections are
17 actively being billed by any utility provider regarding the
18 residential property;

19 (3) junk, litter, trash, debris or hazardous,
20 noxious or unhealthy substances or materials have accumulated
21 on the residential property;

22 (4) furnishings, window treatments and
23 personal items are absent from the residential property;

24 (5) neighbors, delivery persons or government
25 employees provide statements indicating that the residential

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1 property is vacant and abandoned;

2 (6) a risk to the health and safety or welfare
3 of the public, or any adjoining or adjacent property owners,
4 exists due to acts of vandalism, loitering, criminal conduct or
5 the physical destruction or deterioration of the residential
6 property;

7 (7) a mortgagor issues a written statement
8 expressing clear intent of all mortgagors to abandon the
9 residential property; or

10 (8) any other reasonable indicia that the
11 residential property is vacant and abandoned exist; and

12 C. the owner of the residential property fails to
13 submit evidence sufficient to negate a finding that the
14 residential property is vacant and abandoned.

15 SECTION 3. [NEW MATERIAL] EXPEDITED FORECLOSURE PROCESS
16 FOR VACANT AND ABANDONED RESIDENTIAL PROPERTY.--

17 A. If a residential mortgage loan is secured by
18 residential property that appears to be vacant and abandoned
19 pursuant to this section, and the owner of the residential
20 property is in default on the loan, the mortgage holder may
21 bring a summary action in a court of competent jurisdiction to
22 foreclose on that residential mortgage loan.

23 B. If, at the time that a mortgage holder brings an
24 action to foreclose on a residential mortgage loan, the
25 mortgage holder files a motion for summary foreclosure pursuant

1 to this section, the court shall hear the motion for summary
2 foreclosure not earlier than before the period to answer the
3 foreclosure complaint has expired and not later than fifteen
4 days after the period to answer the foreclosure complaint has
5 expired. If the mortgage holder files the motion for summary
6 foreclosure after the period to answer the foreclosure
7 complaint has expired, the court shall hear the motion not
8 later than fifteen days after the motion is filed.

9 C. A motion for summary foreclosure pursuant to
10 this section shall be supported by affidavit and shall:

11 (1) set forth the facts demonstrating that the
12 residential property is vacant and abandoned; and

13 (2) contain an itemization of the amount of
14 principal, interest, costs, fees, expenses and any additional
15 charges that are outstanding.

16 D. Service of a motion for summary foreclosure
17 shall be made by mailing a copy to the mortgagor at the
18 mortgagor's last known address and by posting notice at the
19 residential property subject to foreclosure as required
20 pursuant to Section 5 of this act.

21 E. At the hearing held pursuant this section, the
22 court shall determine whether a residential property is vacant
23 and abandoned. If the court finds that the residential
24 property is vacant and abandoned, the court shall grant the
25 motion and immediately enter judgment on the foreclosure

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1 complaint. If the court enters a final judgment of
2 foreclosure, the reinstatement period and redemption period for
3 the residential property shall end in accordance with Section
4 39-5-19 NMSA 1978. Notwithstanding the provisions of Section
5 39-5-1 NMSA 1978, publication of notice of the sale shall be
6 once a week for two consecutive weeks.

7 SECTION 4. [NEW MATERIAL] RIGHT OF MORTGAGE HOLDER TO
8 SECURE PROPERTY--IMMUNITY.--

9 A. If a mortgage holder has filed a motion for
10 summary foreclosure, the mortgage holder may enter the
11 residential property to secure and protect it from damage.

12 B. No mortgage holder or agent of the mortgage
13 holder acting pursuant to Subsection A of this section shall be
14 liable to the mortgagor or other owner of a vacant and
15 abandoned residential property in any action for negligence or
16 trespass in connection with entering, securing or protecting
17 the abandoned residential property from damage; provided,
18 however, that prior to entry of a final judgment of
19 foreclosure, a mortgage holder shall not be deemed to have a
20 responsibility to enter, secure or protect a residential
21 property from damage.

22 SECTION 5. [NEW MATERIAL] NOTICE TO BE POSTED AT
23 PROPERTY.--Notice pursuant to this section shall be
24 conspicuously posted at the property subject to foreclosure at
25 least fourteen days before a hearing on a motion requesting an

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1 expedited judgment and sale and shall be in not less than
2 twelve-point boldface type and in substantially the following
3 form:

4 "NOTICE TO ANY TENANT OR OTHER LAWFUL OCCUPANT OF THIS PROPERTY
5 A lawsuit has been filed to foreclose on this property, and the
6 party asking to foreclose on this property has asked a judge to
7 find that THIS PROPERTY IS VACANT AND ABANDONED.

8 The judge will be holding a hearing to decide whether this
9 property is VACANT AND ABANDONED.

10 IF YOU LAWFULLY OCCUPY ANY PART OF THIS PROPERTY, YOU MAY
11 CHOOSE TO GO TO THE HEARING and explain to the judge how you
12 are a lawful occupant of this property.

13 If the judge is satisfied that you are a LAWFUL OCCUPANT of
14 this property, the court will find that this property is NOT
15 VACANT AND ABANDONED.

16 The hearing will be held in the courthouse at the following
17 address, date and time:

18 Court name: _____

19 Court address: _____

20 Date of hearing: _____

21 Time of hearing: _____

22 Name of lawsuit: _____

23 Number of lawsuit: _____

24 Address of this property: _____".

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