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SENATE BILL 70

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

INTRODUCED BY

Timothy M. Keller and Eleanor Chavez

AN ACT

RELATING TO LOCAL GOVERNMENT; REQUIRING THAT EACH MUNICIPAL AND COUNTY GOVERNING BODY 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

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 vacant  
9 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

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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 municipal or county  
13 governmental entity that enacts ordinances;

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

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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

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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

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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.