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INDIANA CRACKS DOWN ON VACANT HOUSES

In high default regions of the country such as my hometown of Indianapolis, local and state governments continue to search for the solution to the problems associated with default and foreclosure.

In our community, due to a number of factors, vacant abandoned homes have become the issue of the last few years. These factors include the approximate 200 day length of time to complete a foreclosure (derived from the Fannie Mae timeline standard of 215 days and the

Freddie Mac timeline standard of 198 days). Initial movements were mostly based in community involvement to recreate areas of high default. Now, as the problems continue to grow, legislative bodies are searching for solutions.

A new law has been enacted in Indiana that will potentially create a mechanism whereby your collateral could become government property without you having much opportunity to do anything about it. As with many legislative acts, if this new law proves successful, don't be surprised to see similar initiatives in other areas with vacant home problems such as Detroit and Atlanta. Certainly Indianapolis isn't Detroit, which is marred by 30,000 abandoned buildings. But the more than two-decade-long focus on downtown Indianapolis—which helped the city center avoid the cratering experienced by its Midwestern rival—will be for

naught if the abandoned houses plaguing other areas of the city aren't eradicated. Therefore, the combination of a new legal mechanism with the city's government leadership goals and initiatives, increases the likelihood that these laws may be aggressively utilized.

The problem begins with an abandoned property that ultimately ends up in foreclosure. I sometimes laugh when people ask me about redemption in Indiana. No, we do not have redemption, but we do have a very long foreclosure process that often provides for a deterioration of the mortgage collateral. It also places lenders and servicers in a helpless position if their policies and procedures include a hands-off approach (securing and winterizing) despite the long delays. In a four season area, a home not properly prepared, and vacant, ultimately is likely to end up with many additional problems that cause it to become an eyesore to a community, not to mention a significant loss proposition. Indiana cities will be able to speed up redevelopment of abandoned houses after the Indiana General Assembly approved this legislation known as House Bill 1102.

House Bill 1102 removes some restrictions on cities and towns, which formerly made the acquisition process of vacant/abandoned homes last from three to five years. With greater power to seize abandoned houses, city officials will be able to cut that time to less than a year. The approved legislation specifies that real property for which any taxes or special assessments are delinquent from the prior year is eligible for tax sale if a county executive has certified to the county auditor that the real property is vacant or abandoned. With the new law, fines for offenses such as unsafe building code violations—say, a vacant house is in need of repairs—will be counted as “special assessments” and given the same weight as unpaid property taxes. So in the future, any unpaid building code

finer could trigger a tax sale. The bill does specify that this property must be offered for sale in a different phase of the tax sale or on a different day of the tax sale than the phase or day at which the property is offered for sale. The bill interestingly also prohibits persons who have previously violated the unsafe building laws from bidding at the tax sale.

Under the new Indiana law, errant owners who might once have been able to delay action by the city will subsequently be given far less time to get their properties in shape and pay off their fines before the confiscation process begins and the house is sold at a tax sale. Under existing measures, seizures of abandoned houses by a city are possible only when property taxes are unpaid. Under the new law, abandoned and vacant properties with special assessments would also be eligible to move to tax sale. This eligibility will be under the new shorter timelines and would only occur if the County Executive were to certify these properties.

The law goes into effect in two stages: Beginning in July 2006, fines levied by cities against negligent property owners will have the same weight as taxes, so if left unpaid, they can trigger tax sales.

Beginning in January 2007, the rules of tax sales and tax sale redemption will change. Historically, a property owner could withhold paying property taxes for three years before their property would come to a tax sale. Under the new law, that time frame will be shortened substantially, to as little as 11 months if the outstanding items are building code violations and it is certified that the property is vacant. After a vacant or abandoned property is sold through a tax sale, the previous owner will have

four months to pay the back taxes and resume ownership, instead of the current "redemption" period of 12 months.

Here is a hypothetical example that I see occurring fairly regularly in our market.

January 2007: The default and the foreclosure notices arrive at our subject property. Owner is still living in the home but there is evidence of deferred maintenance and possible city violations.

June 2007: Owner files bankruptcy, temporarily staying the foreclosure.

September 2007: The foreclosure stay is lifted. Owner has now relocated. All

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utilities are shut off (if not already). Maintenance has been non-existent for months and more citations have accumulated. This is likely when the city takes notice of the vacant property and potentially issues a citation to clean up the yard or board broken windows (as an example).

Now the clock can start ticking. What seems logical is a swift foreclosure, a cleaned up property, and a sale with no further problems from the city. But what if the citations had started in January because the home was vacant but the owner still used the above delaying tactics? Prior to the actual foreclosure sale, the property could be sold at a tax sale and even worse, could have a new owner with no regard for the previous liens. All of this could be completed in a time frame of 15

months! Is this scenario completely unlikely? Or, in a city where it is not unusual for us to be handed a new foreclosure assignment only to find when arriving that the home was demolished one year ago, is it a serious threat?

To our servicing partners, I offer two ideas that should be discussed with all parties involved in the default process, beginning at loss mitigation through foreclosure and REO servicing:

1. Pre-foreclosure maintenance of vacant property;
2. Automatic requirement to check with the city for any outstanding code violations immediately upon assignment. (I am aware of at least two servicing companies who have specifically added this requirement to their procedures).

The following web address will take you to the City of Indianapolis Web site and specifically the Abandoned Housing Initiative begun in 2003. The passage of House Bill 1102 has now given the city teeth to continue the aggressive actions started with this initiative.

<http://www.indygov.org/eGov/City/DMD/Abandoned/home.htm>

If you would like a copy of an article from the Indianapolis Star dated 5/29/2006 that discusses how the new law might be enforced, please feel free to email me at joel@wilmothgroup.com and I will be happy to send you a pdf copy of the article.

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