

CALIFORNIA FORECLOSURE UPDATE

New registration requirements for foreclosed properties may lead to penalties, fines for lenders.

By Lyndsey Tadlock and Greg Carpenter

The economic downturn has resulted in a record number of foreclosures in California. Many property owners have simply abandoned these foreclosed properties. Adjacent property owners have complained that the abandoned properties' lack of security and maintenance have resulted in a variety of nuisances and blight of their surrounding neighborhoods.

Affected cities, and some counties, have attempted to combat this problem by placing the burden on lenders to register foreclosed properties with the city or county, and then to comply with ongoing registration and maintenance requirements. Accordingly, lenders need to be aware of whether local ordinances require registration of the real property securing their loans, and whether penalties could be imposed for noncompliance.

INTENT OF FORECLOSURE REGISTRY ORDINANCES

Local ordinances first attempt to describe these issues by detailing the intent of the foreclosure registration within the language of the ordinance. Ordinance No. 181185 of the Los Angeles Municipal Code states the intent of the ordinance is to serve as "a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties as a result of the foreclosure crisis."

PROCEDURES FOR FORECLOSURE REGISTRATION

The ordinances then describe the implicated properties within the definitions section. A close reading of this section is essential to determine whether a property must be registered or not. While several of these registries limit the definition of "property" to residential properties, some ordinances broaden the definition to apply to both residential and commercial properties. For example, the City of Los Angeles (Ordinance 181185) and Oakland (Municipal Code Chapter 8.54) ordinances only apply to residential properties. The City of

San Diego may also implement a foreclosure registry for residential property (Proposed Municipal Code Sections 54.1101-54.1107). However, the City of Fresno (Municipal Code Section 10-620) and San Bruno (Municipal Code Chapter 5.26) ordinances apply to both residential and commercial properties.

Next, the ordinance sets forth the registration procedures. Commonly, the beneficiary or trustee must register the property within a short period after a notice of default is recorded, usually around 30 days. The registering entity must also pay a registration fee, usually around \$150. After registration, the beneficiary or trustee must maintain the property in accordance with the municipal code or other local ordinances.

PROSECUTION AND FINES FOR NONCOMPLIANCE

Failure to comply with these ordinances could result in stiff penalties. The City of Los Angeles ordinance imposes possible prosecution and fines of up to \$1,000 per day, with total penalties not to exceed \$100,000 per property. The City of Fresno imposes a fine of \$1,000 for the first violation, plus abatement, actual, administrative and enforcement costs and administrative expenses incurred. The second violation within a 12-month period is \$10,000, and a third violation is \$50,000.



Tadlock



Carpenter

"Lenders need to be aware of whether local ordinances require registration of the real property securing their loans, and whether penalties could be imposed for noncompliance."

Some cities have also created abandoned property registries that operate in a similar manner to foreclosure registries, including annual registrations and penalties for noncompliance. An abandoned property registry for the City of Cotati in Riverside County requires registration of the vacant property at an even earlier date — upon default of the trustor on the deed of trust — and requires that the beneficiary hire a local property management company to maintain the property.

In order to avoid harsh penalties and prosecution, lenders should review the city and county ordinances and municipal codes where their real property collateral is located, especially where foreclosure is imminent, pending or completed. If an ordinance covers the property, the lender should review the applicable deadlines for registration, and set annual reminders for renewal of the registration.

Lyndsey Tadlock and Greg
Carpenter, Snell & Wilmer L.L.P.'s
Orange County, Calif., office