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PERSPECTIVE

Zombie foreclosure: What is it and how can it be fixed?

By Ryan Griffith

Zombie foreclosures became a major issue after the mortgage crisis and it is an issue that remains unresolved to this day. This is evident by at least four separate law schools publishing journal articles on the subject. Journals at the following law schools published articles on the topic of zombie foreclosure, UC Irvine School of Law, University of New Mexico School of Law, University of Washburn School of Law, and Emory University School of Law. With the coronavirus wreaking havoc on the economy, the issue of zombie foreclosure will resurface. This article will explain the legal tools that California banks, cities, counties and homeowners can use to stop them.

Even though zombie foreclosures are a common occurrence, most people are unaware of what they are, or how to deal with them. A zombie foreclosure starts as a normal foreclosure, when a bank issues a notice of default to a homeowner for missing mortgage payments. What separates a zombie foreclosure from a normal foreclosure is that a property can remain vested in the original owner for years, while a bank in a normal foreclosure, takes the title shortly after the bank issues the notice of default.

Often the owner of a zombie foreclosure believes the bank foreclosed and owns the property, but that is not the case. In these zombie cases the owner is left on the hook for the property taxes, property insurance, and other maintenance responsibilities of the property, which the owner usually cannot afford. The property then falls into

disrepair and often the owner simply abandons the property assuming the bank will or has already taken it over. Once the property is left vacant it is usually overrun by squatters that engage in drug use and/or other criminal activity. Furthermore, the water, electricity, and other services are shut off at the property. The squatters then live in mass at a property without running water, power, and other necessities. The people living in these unsanitary conditions then endanger the surrounding community. The squatters also often have hoarding and other mental health conditions that further blight the surrounding neighborhood.

Once the property falls into such a state of disrepair, the bank, neighbors, and city, point the finger at the record property owner. It is not uncommon for the already financially struggling property owner to face fines and even misdemeanor charges for failure to maintain their property. In 2013, Reuters estimated that 301,874 homes in the United States were zombie properties. These zombie properties burden the police and fire departments, reduce property values, and become magnets for crime.

Why don't banks complete the foreclosure, instead of leaving the property owner on the hook? There are numerous theories for why banks do not complete foreclosures, but there is no concrete answer with universal application. One of the most common reasons a bank does not want to take title is because banks do not want to pay for property maintenance. Additionally, a bank does not want to try and sell all the properties that are actually in foreclosure at once. Banks do this

to artificially increase the value of their properties in foreclosure.

So, what can be done to address the zombie foreclosure issue? There are two solutions: A city or county can utilize the receivership remedy codified at California Health and Safety Code Section 17980.7. Or banks can seek the appointment of a receiver under California Code of Civil Procedure Section 564 et seq.

Health and safety receivership is a way for cities and counties to allow a court appointed receiver to take control of a nuisance property. The California Supreme Court has empowered a receiver appointed under Section 17980.7 to take drastic steps up to and including the demolition of the nuisance property.

Banks are also able to seek the appointment of a receiver under California Code of Civil Procedure Section 564 et seq. This is beneficial for banks because if the property is ultimately not maintained and becomes a significant nuisance, the city or county will step in and issue fines, and potentially seek the appointment of a 17980.7 receiver. If a 17980.7 receiver is appointed, the bank could be responsible for the city or counties attorney fees and costs. Cal. Health and Safety Code Section 17980(c)(11) and (d) (1). To appoint a receiver, banks need to prove the property is at risk of being lost, which is usually not a difficult task in zombie foreclosure cases. *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 116 Cal. App. 2d 869, 873 (1953). It is beneficial for a bank to seek the appointment of a receiver, before a city does, because it stops the property from deteriorating

beyond repair. The bank also protects itself from significant costs like attorney's fees and enforcement costs that a city or county is entitled to in a 17980.7 receivership. Cal. Health and Safety Code Section 17980.7(c)(11) and (d) (1); (see also *City and County of San Francisco v. Jen*, 135 Cal. App. 4th 305, 310-311 (2005).

California is likely to see another wave of zombie foreclosures due to the the coronavirus pandemic. In 2008, the damages of the mortgage crisis are still being felt today with an estimated 301,874 US homes in zombie foreclosure. The impact of unaddressed foreclosures can be horrendous on a community. Banks can help their communities and avoid litigation cost and fines by addressing current and upcoming zombie foreclosures by seeking the appointment of a receiver. If banks do not step up, cities and counties can seek the appointment of a receiver pursuant to California Health and Safety Code Section 17980.7. Receivership is an excellent solution to resolve the zombie foreclosure issue that banks, cities, and counties can explore. ■

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