

# **Zombies Among Us**

**The Monroe County  
Vacant and Abandoned Property  
Taskforce Report**

**October 2016**

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Office of United States Congresswoman Louise Slaughter

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October 13, 2016

Dear Friends,

The problem of vacant and abandoned properties continues to plague our community years after the Great Recession and housing crisis that began in 2008. In April of this year, we formed the Monroe County Vacant and Abandoned Property Task Force to tackle this problem. Our backgrounds in local government and housing legal services led us to convene representatives from all sectors connected with this community-wide problem, including banks, law firms, realtors, municipalities, non-profit housing agencies and consumer advocates. It is the first of its kind in New York State.

One of the primary goals of the Task Force is to ensure that members of our community are effectively communicating and supporting each other's work as it relates to vacant and abandoned properties. The members of the Task Force contributed their hard work and expertise to the production of this report, and all the organizations involved have made a long-term commitment to continue their participation. We thank them for their efforts.

We are motivated by the fact that previous efforts in this area have been disjointed, with the various stakeholders working in "silos" – unconnected and thus not very effective. Our goal is to give local government officials important information and tools to assist them in protecting the quality of their neighborhoods and their tax base.

The initial mission of the Task Force was to produce this comprehensive report that breaks down the issues surrounding the problem of vacant and abandoned properties in our neighborhoods. We identify strategies and practices that are currently working and provide recommendations for local governments, as well as areas in which the Monroe County Clerk's Office can provide more assistance to municipalities.

This report is organized into three main areas, each of which can play a vital role in minimizing the damage done by vacant and abandoned properties:

- Prevention of Vacancies – stopping the problem before a property becomes vacant
- Identification and Maintenance of Vacancies – protecting neighborhoods from the dangers of abandoned or "zombie" properties
- Rehabilitation of Vacancies – improving the property and getting it reoccupied as quickly as possible.

We believe that coordinating the Task Force's efforts around these three areas will help us to achieve our goals. As we continue to meet, study the issue and implement recommendations, we welcome feedback and ideas from the public, so please email us at [vacantproperty@monroecounty.gov](mailto:vacantproperty@monroecounty.gov) or call us at 585-753-1698. We look forward to working with everyone in order to make a true impact in our community.

Sincerely,



Adam J. Bello  
Task Force Co-Chair



Rebecca Caico  
Task Force Co-Chair

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# 1. Introduction

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## Scope of the Problem

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### Impact on Communities

The house on Montcalm Drive in the Town of Irondequoit had been vacant since 2010, and neighbors had begun to notice a tree growing through a hole in the roof. Town code enforcement ticketed the home and demanded repairs be made, but the owners had moved out of state and could not be located. While the homeowners had a mortgage on the property, calls to bank officials were no help. Month after month, the house fell further and further into disrepair. One neighbor was trying to sell her own property during this time, but when potential buyers would show up and see the eyesore next door, they turned around without ever walking inside.

That real-life example has played out over and over again across Monroe County. Ask any resident, and they can tell you about the “eyesore around the corner” or the dilapidated home up the street that has sat empty for years. Many local leaders report that it is the number one issue brought up by their constituents.

The problem is particularly acute in the City of Rochester, where there are currently over 2,400 privately owned vacant structures. However, there is no municipality in Monroe County that is exempt from this issue. Neighborhoods with vacant and abandoned properties frequently experience a rise in criminal and nuisance activity. One study shows that areas immediately surrounding a vacant property show a 15 percent increase in violent crime.<sup>1</sup> Neighboring homeowners will typically see a drop in the value of their home simply as a result of being next to a vacant and abandoned home. Across Monroe County, it is estimated that vacant and abandoned properties are costing homeowners \$11,000,000 in lowered property values.<sup>2</sup>

The story had a happy ending for the residents of Montcalm Drive in Irondequoit, as town officials eventually were able to have the abandoned home demolished. But the cost of the demolition was over \$10,000, and it took years to get to the point of demolition. Municipal leaders will need a better strategy and more tools available to them if they are going to tackle this issue going forward.

It is with that purpose that this Task Force came together.

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## Scope of the Problem

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### Creation of the Vacant and Abandoned Task Force

When Adam Bello was Supervisor of the Town of Irondequoit, he identified over 250 vacant properties in his town alone. As the Town Supervisor of an older and established inner-ring suburb, he knew both from his own experience and the concerns shared by many constituents that this was one of the single most concerning issues facing homeowners in his community. Through informal discussions with other town supervisors, he quickly realized he was not alone in facing this issue.

Irondequoit created a vacant property registry and tougher code enforcement regulations, but it was difficult for a single municipality to make progress on its own. One of the biggest challenges a local government faces in addressing vacant properties is the complexity of the issue. Each property has a unique story and reason that it sits vacant.

As part of his research on the subject, Adam Bello and his staff met with a number of organizations and individuals who work in the housing and foreclosure fields. It quickly became apparent that there are experts right here in Monroe County working on the issue every day: people who were willing to share information, knowledge and expertise. Shortly after being named Monroe County Clerk, Adam met with attorneys from Empire Justice Center. It was at that meeting that the group agreed to create a task force to address vacant properties. Rebecca Caico, Senior Attorney at Empire Justice, agreed to co-chair the task force. She brought with her expertise in the field and knowledge of the local players who are instrumental in making the task force a success.

The Monroe County Vacant and Abandoned Task Force began their work on April 14, 2016. Since then we have had many more meetings and events, including:

- 14 planning meetings;
- 3 meetings of the full Task Force;
- 5 Task Force sub-group meetings;
- 12 meetings with various stakeholders, including town supervisors and community groups;
- 1 Facebook Live forum to share the initial Task Force presentation and to seek public input (viewed by over 1,000 people); and
- 2 public forums (attended by over 100 residents).

This report contains the findings and recommendations so far, but every member of this Task Force is well aware that the work is far from complete. This report was created to offer a detailed overview of the issue and an explanation of many factors that contribute to it. The report also acts as the group's action plan for the coming months and years. The Task Force fully intends to continue efforts to make changes in the areas with which we have direct control, particularly focusing on improving the sharing of information and the speed in which vacant property issues are resolved, and help lobby other levels of government for the implementation of our recommendations.

# 2. Prevention of Vacancies

## Owner-Occupied Properties

### Pre-Purchase Counseling

Avoiding the abandonment of residential properties often begins long before the threat of foreclosure. The dream of homeownership remains a goal for many people. Attaining that goal requires hard work from the prospective homeowner. For many, the process of purchasing a home is intimidating. It can be difficult to make sound financial decisions about purchasing a home when the expectations of homeownership are dramatically different from renting a home. Working with a local housing counseling agency approved by the United States Department of Housing and Urban Renewal (“HUD”) is an excellent way to prepare for successful homeownership.

There have been multiple studies describing the benefits of pre-purchase housing counseling.<sup>3</sup> Borrowers who receive housing counseling have a 15 percent lower rate of falling behind on their mortgage compared to borrowers who did not receive housing counseling, and that number jumps to 29 percent for a first-time homebuyer.<sup>4</sup>

Since the financial crisis began in 2008, changes in mortgage lending and the housing market have made it more difficult than ever before to purchase a home. Prospective homebuyers will benefit from help in making an educated decision on whether purchasing a home is a financially prudent decision. Other advantages from counseling include an increased understanding of the responsibilities and commitment involved with owning a home. Homeownership is not the best decision for everyone, and pre-purchase counseling might prevent a future delinquency.

There are seven locally based and HUD-approved counseling agencies in Monroe County that specialize in pre-purchase counseling.



## Owner-Occupied Properties

### Mortgage Default Counseling

While efforts to educate homeowners prior to purchase can help, there will inevitably be situations where borrowers fall behind on their mortgage payments after moving into their home. There is no single reason why a homeowner becomes delinquent on a mortgage. Some of the most common causes are divorce, high medical bills, unemployment, and failed property investments.

**“...working with a housing counselor can be tremendously advantageous for a homeowner...”**

Reasons also vary within a region. In the Town of Perinton, the Town Supervisor reports that high mortgage payments and job loss are the biggest factors. Gates and Irondequoit have a larger percentage of older residents, and therefore see issues associated with aging (e.g. illness, homeowner moving to a nursing home, death of a homeowner) as more common causes of a residential property becoming vacant and abandoned.

Whatever the reason, working with a housing counselor can be tremendously advantageous for a homeowner at this point in the process. Any homeowners struggling with their mortgage payments should be directed to one of four locally based, HUD-approved counseling agencies that offer free mortgage default counseling.

The Task Force encourages all homeowners to proactively reach out to these housing counseling agencies. Homeowners who engage with a foreclosure prevention counselor receive a thorough assessment of their situation, including the options available to avoid foreclosure and potentially stay in their homes. The homeowners receive extensive budget counseling, which promotes long-term sustainability. They are also provided information on multiple outside resources such as referrals for immediate needs including medical assistance, food stamps, employment opportunities and legal assistance. The purpose is to make homeowners aware of government and local agencies that may be available for help.

The housing counselor will then advocate for the homeowners with their lenders through the “loss mitigation process”, which is a formal application submitted to the bank requesting them to adjust the monthly payments to allow homeowners to begin repaying the mortgage. The goal of loss mitigation is to help borrowers obtain a financially sustainable solution to remain in their homes and avoid foreclosure, while helping reduce the



potential loss to the lender when a borrower is delinquent. Typically this is done through a loan modification, which often includes an interest rate reduction or an extension of the term of the mortgage. The counselor will act as an advocate for the homeowner throughout this process. This includes the initial submission of a loss mitigation package, following up with the lender on missing document requests, tracking the progress of the lender review, and getting answers to the myriad of questions homeowners often have during this time.

Lastly, if a homeowner is in an active foreclosure, the housing counselor will send a referral for free legal assistance for the homeowner. These referrals are sent to Empire Justice Center. Each week, Empire Justice Center attorneys sit down with attorneys from the Legal Aid Society of Rochester and the Volunteer Legal Services Project to review all cases that have been referred. The goal is to place as many referrals as possible with one of these three agencies, which will then provide individual legal representation for that homeowner throughout the foreclosure proceeding.

Connecting homeowners to local services before the legal foreclosure process begins is a pivotal moment that can lead to saving the home from foreclosure. Before a lender can begin foreclosure proceedings, they must send the homeowner a pre-foreclosure notice. A copy of this notice is also filed with the New York State Department of Financial Services (“DFS”). Once a homeowner receives this notice, the lender must wait at least 90 days before commencing a foreclosure action.

**“Connecting homeowners to local services before the legal foreclosure process begins is a pivotal moment that can lead to saving the home from foreclosure.”**

### **Recommendation**

**Form partnerships between municipalities and HUD-approved housing counseling specialists to perform outreach targeted specifically at homeowners in the early stages of mortgage default.**

Qualified housing counseling agencies can access the information filed with DFS and use this information to offer free help to homeowners during that 90-day period and before a legal action has begun. The Town of Irondequoit currently partners with the Housing Council at PathStone to reach out to homeowners facing imminent foreclosure. It has proven to be a very successful program because residents feel more comfortable when they realize that their town is encouraging the use of the local, professional and free services offered by the counseling agency. Monroe County and other municipalities can look into forming these partnerships, using Community Development Block Grant funding to cover the costs.

### **Recommendation**

**Seek continued funding for foreclosure prevention services, including legal services and housing counseling.**

One concern among Task Force members is the limited and declining resources for housing counseling and legal service agencies assisting homeowners. The agencies in Monroe County have a strong and cohesive system of services which benefit all parties in a foreclosure. Grants are offered through many sources to support this valuable work, but in the next several months one major source of funding will be ending and other sources of funding will have to be found.

## **Owner-Occupied Properties**

### **Sale of Non-Performing Loans**

When a homeowner falls behind on their mortgage there are many programs available to help the homeowner become current with their lender again. However some programs that should be available to homeowners who are behind in their mortgage payments are getting eliminated through the sale of mortgages where borrowers have missed several payments. These non-performing loan sales create an additional layer of financial incentive for lenders to abandon low value properties.

Nationwide, nearly 800,000 mortgages backed by HUD, Fannie Mae and Freddie Mac, are at risk of foreclosure. Fannie Mae and Freddie Mac are regulated by the Federal Housing Finance Agency (“FHFA”). New York State has the third largest percentage of non-performing and delinquent loans in the nation.<sup>5</sup> HUD and FHFA are attempting to limit losses they incur from these delinquent or non-performing loans, and have begun selling off thousands of these loans to private investors.

These sales to private equity firms and hedge funds are designed to reduce the costs and legal risks of distressed and foreclosed properties. HUD and FHFA sell these loans at a steep discount, thereby providing an opportunity for a new purchaser to review the borrower’s loan again, and determine whether foreclosure can be avoided. HUD and FHFA have imposed new loan modification requirements on the purchasers as a condition of sale, including prohibiting the new lender from proceeding to foreclosure sale for a certain number of months.

### **Recommendation**

**Advocate that low-value homes at risk of becoming vacant or abandoned should be excluded from HUD’s and FHFA’s loan sales programs, and encourage HUD and FHFA to establish a separate process for these properties that includes working with the Rochester Land Bank and local non-profits to preserve these homes as affordable housing.**

In May 2016, FHFA released a Non-Performing Loans report. Through May 2016, FHFA had sold over 41,000 loans, with New York State having the third highest percentage of any state. To date, only 8,800 of these loans have documented resolutions, with the vast majority of delinquent loans left unresolved.

Non-performing loans are sold in bundles that cover a variety of real estate markets, and buyers are required to take all loans in the bundle they have purchased. For

instance, an investor may buy a pool of 15,000 New York State loans, with only 30 of the properties being in Monroe County. This investor's focus will be on the loans secured by higher-valued properties downstate, which provide them a greater return on their investment. There is an incentive

for investors to abandon low or no value vacant properties in communities such as Rochester, or sell the notes to unsophisticated buyers who might also walk away from the note. The Task Force encourages and supports local housing agency and government efforts to monitor these loan sales to private investors, particularly in low-income neighborhoods. More public reporting regarding these sales would make this more effective.

HUD and FHFA should also be encouraged to take even more measures to ensure that note buyers are offering affordable loan modifications and principal reductions that keep people in their homes. Purchasers of these loans should also be required to maintain foreclosed and vacant properties to avoid deterioration of the house and grounds, and prevent the neighborhood blight that can follow.

### Recommendation

**Advocate for changes to HUD and FHFA loan sales programs so that investors are required to provide affordable loan modifications that include principal reduction or arrearage forgiveness for homeowners who owe more on their mortgage than the property is worth.**

### Recommendation

**Advocate for public reporting by HUD and FHFA of loan sales outcome data relating to the conduct of private buyers.**

## Owner-Occupied Properties

### “Right-Sizing”

Several municipalities in the County have experience population decline in recent years, and therefore have more housing units than households to fill them. Municipalities demolish fire-damaged or nuisance properties, but not enough to bring supply and demand into equilibrium. It is recommended that the City of Rochester and other municipalities with reduced populations study the need for a “right-sizing” plan that guides targeted initiatives to better balance the housing market and to ensure that new builds do not contribute to the further softening of neighborhood housing markets.

#### Recommendation

**Encourage the City of Rochester and municipalities with reduced populations to study the need for “right-sizing”.**

## Investor-Owned Properties

### Physical Deterioration of Rental Housing

Too many neighborhoods of concentrated poverty in Rochester are suffering from high levels of absentee ownership, value-stripping property flipping practices, increased transiency and high vacancies. These markets are depressed in part because they suffer from chronic oversupply and de facto rent control. The Monroe County Department of Human Service’s (“DHS”) shelter rate allowance has not increased since 2003. The flat DHS rental rate, an aging housing stock with higher maintenance costs, high tenant turnover and an oversupply of housing all contribute to collapsed market conditions and high vacancy rates.

The Task Force recommends providing public assistance sufficient to enable families to pay rent up to Section 8 Fair Market Rents for the area through a shelter supplement program.<sup>6</sup> DHS recently submitted an application and was approved for a shelter supplement program from the State of New York. The proposal recognizes that a shelter supplement program will support landlord investors to improve the condition of their investment houses and help reduce turnover by incentivizing landlords to keep their properties in better condition.

#### Recommendation

**Support a shelter supplement program in Monroe County to better align the public assistance shelter allowance with Fair Market Rents.**

Monroe County DHS should also explore the benefits of reestablishing the Quality Housing Inspection (“QHI”) program. QHI’s were formerly required in the City of Rochester for any rental property owner who wanted to collect direct rent payments from Monroe County DHS for a unit being occupied by a recipient of Department of Social Services (“DSS”) financial assistance. The QHI program ensured that these rental units were safe and habitable. Proactive property maintenance programs like QHI ensure that rental properties are being maintained to minimal code standards, and therefore are less likely to become vacant and abandoned. This would be especially important in the towns

### Recommendation

**Require new landlords who purchase property from the City of Rochester for investment and rental purposes to attend a workshop at a local HUD-approved housing counseling agency.**

outside of the City of Rochester, where DSS-occupied rental units are otherwise not being inspected for health and safety hazards. Importantly, DHS should ensure that it has sufficient resources allocated to contract with qualified agencies who can conduct these inspections. This is necessary in order to avoid any undue delays in payments to landlords that would prevent a family from moving into or remaining in the property as tenants.

Investing in property and becoming a landlord is complicated. The rules and regulations of this business involve all levels of government and it is easy for a potential

investor to make a financially disastrous mistake. The members of the Task Force value the many responsible property investors in Monroe County who have taken the time to understand these rules.

For those people interested in becoming landlords, the Task Force believes they should participate in some basic training on what is required to be successful.

For instance, The Housing Council at PathStone offers an “Operating Rental Property” course which provides critical business tools for local landlords. When landlords understand the business, they are less likely to lose money and ultimately face the dilemma of abandoning their investment properties.



### Recommendation

**Consider reestablishing the Monroe County Department of Human Services Quality Housing Inspection program to ensure that all DSS recipients are provided safe and habitable housing.**

# 3. Identification and Maintenance of Vacancies

## Identifying Vacant and Abandoned Properties

### Vacant Property Registries

In order to minimize vandalism and damage that is typically associated with vacant structures, it is essential that a municipality become aware of the vacancy as soon as possible. Lenders in New York State are currently under no requirement to identify a property as being vacant, regardless of whether they know the house is vacant or how far behind the homeowner has fallen on their mortgage payments. The bulk of the responsibility to track vacant properties lies with the municipalities. Often, it is the neighbors who are the first to notice. Police and community officials may receive calls from frustrated neighbors who have noticed a house that has fallen into disrepair.

The City of Rochester has had a robust system in place for many years to identify new vacant properties. This includes accessing foreclosure filing information in the Monroe County Clerk's system and establishing relationships with the Monroe County Water Authority and energy suppliers. A report that indicates a foreclosure was filed or that there is no water or energy usage for a property does not mean that the property has become vacant. However, these reports can be used as a flag to then trigger a closer assessment.

Another tool used by over fifty municipalities throughout the State, including the towns of Irondequoit, Gates and Greece, has been the enactment of vacant property registry legislation. These laws vary, but typically require registration upon vacancy<sup>7</sup> or shortly thereafter.<sup>8</sup> Some also include requirements for a plan for future occupancy<sup>9</sup> and allow for the collection of fees associated with maintenance of the property.<sup>10</sup>

**“ The bulk of the responsibility to track vacant properties lies with the municipalities. ”**

The City of Rochester does not have a vacant property registry, but does have a Vacant Property Management Program. The City has created an area on its website mapping all current vacant properties, which can be found at <http://www.cityofrochester.gov/vacantsmap>.

## Identifying Vacant and Abandoned Properties

### New State Law Addressing Vacant and Abandoned Properties

In June of 2016, Governor Cuomo signed into law a series of additions and changes to New York's Real Property Actions and Procedures Law to combat the blight of vacant and abandoned properties in local communities. These changes will take effect on December 20, 2016 and have the potential to have a major impact on identifying vacant properties.

#### Recommendation:

**Work with the New York State Department of Financial Services to design and implement the new statewide Vacant and Abandoned Property Registry.**

When a borrower falls more than 90 days behind on their mortgage, banks will now be required to inspect the property to determine if it is vacant, and then must re-inspect the property every 25 to 30 days thereafter. Within seven days of determining a property is vacant, the bank must post a notice on the property stating who is responsible for maintenance, and giving a telephone number that neighbors and local government officials can call to report problems. If the homeowner does not contact the bank within seven days, the bank must then secure the property. Failure to meet these deadlines can result in fines against the bank of up to \$500 per day, per property.

The new law also requires lenders to report any properties determined to be vacant to the New York State Department of Financial Services ("DFS") within 21 days. DFS will maintain an electronic registry of vacant and abandoned properties across the state. Lenders, assignees, and/or mortgage loan servicers must register the following information and then report any material changes to DFS:<sup>11</sup>

1. The current name, address, and contact information for the entity responsible for maintaining the property;
2. Whether a foreclosure action has been filed on the property; and
3. The last known address for the mortgagor(s) of record.<sup>12</sup>

**“ It is unclear what effect the changes to state law will have on local registry requirements. ”**

Once the statewide registry is up and running, it will be imperative that local municipalities are easily able to extract information. This will allow local municipalities to track vacancies and make more educated decisions about how to address each property. On September 27, 2016, the Task Force submitted recommendations to DFS about the implementation of the new registry and will continue

to advocate with DFS to ensure the needs of Monroe County are heard. To see a copy of the letter submitted, see the Appendix to this report.

It is unclear what effect the changes to state law will have on local registry requirements. The new law specifically prohibits municipalities from imposing any duties “inconsistent” with the new state law,<sup>13</sup> but this still leaves many open questions. We do not know if this means municipalities can still permit local registries to contain information that is not required by the state registry (e.g., required re-occupancy plan), or if they can require private owners to pay penalties and other monetary

### **Recommendation:**

**Assist municipalities in effectively accessing and utilizing the information that will be available through the new statewide Vacant and Abandoned Property Registry.**

obligations. DFS recently released a draft of the rules and regulations surrounding the new law, and the Task Force plans to submit formal comments offering recommendations for improvement similar to what offered on September 27. The Task Force will monitor the long-term impact for local municipalities. Once the rules are in place, the Task Force intends to support local municipalities in learning to effectively use the new tools.

In addition to the new Vacant and Abandoned Property Registry, the new law has also created a statewide

hotline for neighbors, concerned citizens, agencies, or private businesses to report either the existence of or issues surrounding a vacant and abandoned property.

**A statewide hotline has been created for anyone to report vacant or abandoned properties in their neighborhood.**

**800-342-3736**

## Identifying Vacant and Abandoned Properties

### Information Sharing

Although a great deal of information about vacant properties is collected by a variety of different government agencies, this information is rarely shared. This leads to duplication of effort and wasted resources. For instance, the City of Rochester has developed tools to automatically download large amounts of data from the Monroe County Clerk's existing online database. This data can then be matched with properties already tracked by the City as vacant or experiencing other code enforcement issues. Prior to the establishment of the Task Force, County Clerk officials were not aware that the City was performing this regular download of data. Through Task Force meetings, the County Clerk was made aware that the data was in a format that required countless hours of cleanup by City employees before it could be used. Through the Task Force's efforts, the County Clerk's office has now begun working with City officials to automate these data reports and format the results to eliminate the need for extra work once the data is downloaded.

The Task Force is exploring whether the City of Rochester and County Clerk's Office can share their unique technical abilities and database tools to perform similar data matching services for towns that express interest. Discussions between the Clerk's Office and the City's Office of Inspection and Compliance Services are currently underway in this regard.

In late 2015, the County entered a contract to upgrade its primary electronic database. This work predated the Task Force but provides a unique opportunity to implement new data sharing tools. Starting in May 2016, the County Clerk's office began sending a list of newly filed *lis pendens* to all Monroe County towns on a monthly basis. (A "*lis pendens*" is a document filed with the County Clerk prior to a foreclosure action being commenced, stating that there is a pending legal action related to the property in question.) In July of 2016, the Clerk's office began sending towns a monthly list of all final Judgments of Foreclosure and Sale that had been filed. This list allows municipalities to know who purchased a foreclosed home and provides a point of contact for the improvement process, if necessary.

#### **Recommendation:**

**Increase the sharing of technical abilities and database tools among the City of Rochester, the County Clerk's Office and other municipalities.**

## Maintaining Vacant and Abandoned Properties

### Maintenance by Municipalities

Once a property has been identified as vacant, it should be maintained to minimize the negative impact on the surrounding neighborhood until new ownership can be found. In the past, lenders have had no duty to maintain abandoned properties for which they held a mortgage. As previously described, this duty has therefore fallen on local code enforcement officials.

While code enforcement officials don't have direct control over the disposition of vacant property, they can indirectly impact those processes by having an active and ongoing involvement with the property. Code enforcement plays an important role in identifying potential issues, notifying homeowners of these violations, addressing structural and nuisance issues with the property, and recommending if other options are more appropriate for the vacant property.

It is therefore beneficial to have a system to schedule how often these properties are inspected and give inspectors the ability to record information about the properties' current condition. Code enforcement will mail a "Notice and Order" to the homeowner, which identifies the issue in question and provides a timeline within which it must be fixed. If the homeowner does not remedy the situation in the timeframe provided, code enforcement will then issue a ticket to the homeowner.



After the "Notice and Order" and ticket have been issued, the municipality then needs to establish an expedited means of legally resolving that issue. This can be done through Town Court proceedings, or municipalities can develop an alternative form of resolution such as the City of Rochester's Municipal Codes Violation Bureau (which is an extension of its Parking Violations Bureau).

Once a municipality creates an effective system for issuing code violations, it also needs to develop a process to remedy as many of these violations as possible. It is not always feasible to make substantial repairs to address the larger and more involved code violations. It is critically important to be able to remedy eyesores, like high grass, uncollected trash and debris, and to protect unsecured vacant structures. Correcting some of these smaller problems can make a tremendous difference in the overall aesthetic of a neighborhood.

In order to discourage owners from abandoning or not properly maintaining their properties, the Task Force recommends that municipalities explore denying permits (e.g., building permits, occupancy permits, and variances) to owners with delinquent real estate taxes, municipal claims or serious code violations on their properties.<sup>14</sup>

Regardless of which types of violations a municipality is able to remedy, it is important to be able to attach that applicable charge to the tax bill after failed collection attempts. This will ensure that the municipality is made whole for any expenses it may have incurred. Another method of discouraging non-

compliant property owners

would be to allow the placement of municipal liens on a delinquent property owner's other real property and personal assets, as well as against the property in question.<sup>15</sup>

While ticketing will often solve a code violation in owner-occupied homes, this does not always lead to solutions for vacant homes. For some vacant houses, code enforcement staff make recommendations to municipal officials that the building be declared "legally abandoned". This legal status is accomplished by bringing a "19-A Abandonment Action", which is further described later in this report.

### **Recommendation:**

**Allow municipalities to attach municipal liens against other real property and personal assets of a delinquent homeowner.**

### **Recommendation:**

**Explore the viability of municipalities denying permits to property owners with delinquent taxes, municipal claims or serious code violations.**

Finally, it is necessary for municipalities to have provisions in place to efficiently demolish buildings that are structurally unsafe.

Orders to demolish can be secured through the courts, or a municipality can develop a local law that sets up an administrative hearing process to bypass the court system.<sup>16</sup>



## Maintaining Vacant and Abandoned Properties

### Maintenance by Lenders

With the passage of new legislation in June 2016, New York is able to put some responsibility for maintenance back onto lenders. As previously discussed, banks will be required to inspect the property when a borrower falls more than 90 days behind on their mortgage. If a lender determines the property is vacant, they must report this to the New York State Department of Financial Services. The bank then will have an ongoing responsibility to maintain the property until title of the property is transferred to a new owner. Failure to maintain can result in a fine of up to \$500 per day, per property.<sup>17</sup> Task Force members are hopeful that the community will see improvements to neighborhoods as a result of these new obligations on lenders.

### NYS Abandoned Property Neighborhood Relief Act of 2016

In June of 2016, Governor Cuomo signed into law a series of additions and changes to New York's Real Property Actions and Procedures Law to combat the blight of vacant and abandoned properties by speeding up the identification, improvement and sale of the properties. These changes will take effect on December 20, 2016.

The new law imposes a pre-foreclosure duty on banks and loan servicers to inspect and maintain vacant properties. It creates a Vacant and Abandoned Property Statewide Registry and a hotline for community members to call and report such properties

#### **Lenders must inspect and secure properties**

- Banks will be required to inspect a property within 90 days of delinquency to determine whether or not it is vacant, and must continue to inspect every 25-30 days thereafter;
- Within seven days of determining a property is vacant, the bank must post a notice on the property stating that they are responsible for maintenance, and give a telephone number that neighbors and local government officials can call to report problems;
- If the homeowner does not respond to contacts from the bank within seven days, the bank must then secure the property and maintain it as the foreclosure process continues;
- Failure to meet these deadlines or maintain the vacant property will result in the bank incurring fines of \$500 per day, per property.

#### **Electronic Registry of Vacant and Abandoned Properties:**

- DFS will maintain an electronic list of vacant and abandoned properties, which will be available to municipalities.

#### **State Hotline to Report Vacant and Abandoned Properties**

- New Yorkers can call 1-800-342-3736 to report any vacant or abandoned properties or issues with those properties in the neighborhood.

# 4. Rehabilitation of Vacancies

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## Obtaining Title for Vacant Properties

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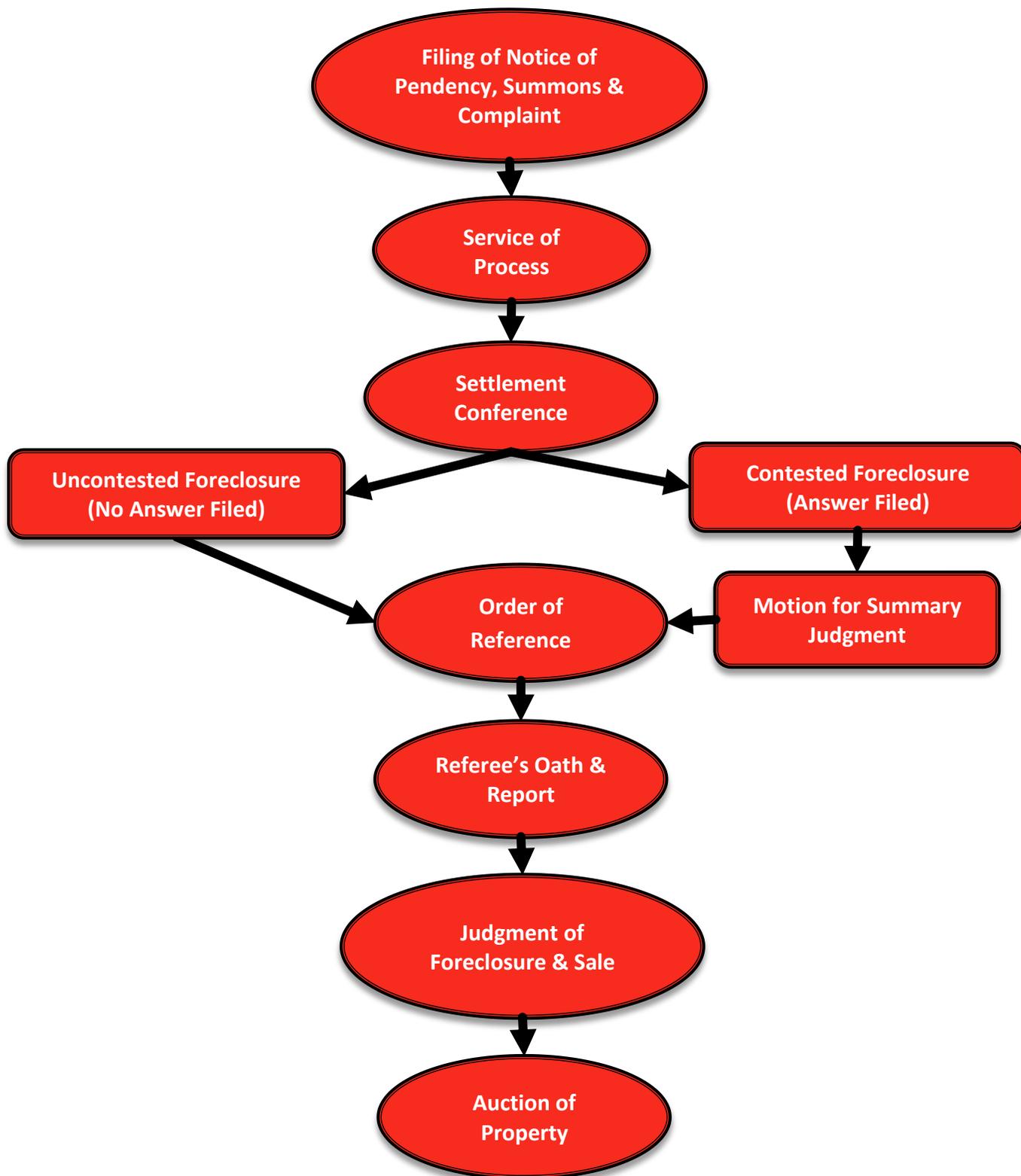
### Residential Mortgage Foreclosure

Once a house has been identified as vacant and abandoned, the goal is normally to transfer title of the underlying vacant property to a new owner. If the owner has taken out a mortgage on the property, they often have stopped making payments prior to the abandonment. In the majority of these situations, this results in a mortgage foreclosure action being brought in New York State Supreme Court. New York State is a judicial foreclosure state, meaning that the lender has to sue the borrower in court to enforce its rights. If the lender successfully completes the lawsuit, it obtains a judgment from the court that allows the property to be sold at an auction. The money received from the sale is used to repay the unpaid debt. The steps of the mortgage foreclosure process in New York State are outlined on the next page.

In certain situations lenders may decide not to pursue a foreclosure action in the courts. This often occurs with low-value properties, where lenders determine that the costs associated with a legal action will not be recouped through a foreclosure sale. In order to protect their legal rights, lenders in these situations have historically continued to pay the property taxes. This avoids the risk of the lender losing its security if the municipality moves forward with a tax foreclosure, and retains the lender's right to start its own foreclosure action at a later date if the market improves and the value of the property increases. Unfortunately, lenders opting to play this waiting game have historically taken little or no effort to maintain the home. Properties that fall into this category have been the source of many of the most troublesome vacancies for municipalities.

There is hope that this will change as a result of legislation signed in the summer of 2016 by Governor Cuomo. Lenders will now have a duty to inspect properties where the borrower has fallen more than 90 days behind on their mortgage payments. If they identify it as vacant, lenders will then have a legal duty to maintain that property until title is transferred to a new owner.

## New York Residential Mortgage Foreclosure Process



## Obtaining Title for Vacant Properties

### New Expedited Foreclosure Process for Vacant Properties

In April 2015, local discussions began regarding an expedited foreclosure process for vacant and abandoned houses in Monroe County. An ad hoc committee was formed by the Honorable Daniel Doyle, a local New York State Supreme Court Judge, and included court personnel, bank attorneys, and non-profit legal service attorneys representing homeowners. Over the next twelve months, several meetings were held to discuss the most efficient way to simultaneously speed up the foreclosure process while still protecting the rights of all parties. As this was to be a locally-developed rule, it could not remove any steps in the foreclosure process that are mandated by state law. Instead, a process was agreed upon that combined several steps – which typically took four months or more – into a single step that could be accomplished in one day.

Under this consolidated process, the court granted an Order of Reference to the lender and appointed a Referee at the same time. Then the court invited the appointed Referee into the courtroom to immediately calculate the amount due, which then allowed the court to grant a final Judgment of Foreclosure and Sale to the lender that same afternoon. To ensure that homeowners were being protected, the court added additional notifications to the homeowner that are not otherwise mandated under the current New York State foreclosure process.

By combining these steps, the expedited process was able to shorten the foreclosure process by at least four months. On June 8, 2016, the Supreme Court in Monroe County held its first expedited foreclosure court date for vacant and abandoned properties, with two local law firms participating. All parties agreed that the test cases had been successful, and the court planned to open up this process to all law firms in the fall of 2016. Lender attorneys were confident that the vast majority of their clients would utilize the locally-developed expedited process.

That plan changed in late June, when Governor Cuomo signed new legislation discussed previously in this report. The new legislation includes several provisions to address zombie properties, one of which specifically includes a new expedited foreclosure process for vacant and abandoned properties. The new statewide expedited process differs from a standard mortgage foreclosure, eliminating certain steps typically required and adding other protections that did not previously exist.

**“The new statewide expedited process differs from a standard mortgage foreclosure, eliminating certain steps typically required and adding other protections that did not previously exist.”**

The new statewide process must be offered in all counties across the state. It was therefore determined that having an additional Monroe County-specific expedited process could prove confusing to lenders and borrowers. As a result, at this time the Monroe County Supreme Court will not continue with the locally-developed process and will only offer the statewide expedited process created by this summer's legislation.

There are many uncertainties regarding the new statewide process, including how many lenders will utilize the process and much time the expedited process will actually save. The Task Force is concerned that the legislative process did not have input from local officials, and therefore may not be as tailored to the needs of Monroe County as hoped. The Task Force will be closely following this process as it is implemented locally, and will make any further recommendations as necessary.

### **Recommendation:**

**Monitor and support the effective implementation of the new statewide expedited foreclosure process.**

## **Obtaining Title for Vacant Properties**

### **Municipal Certification of Abandonment**

As part of the new statewide expedited process, the courts must determine if the property in question is in fact vacant. In making this determination, judges will often be asked to rely on affirmations from the bank attorneys and proof that several unsuccessful attempts were made to locate the owner. Some municipalities, such as the City of Rochester, will certify a property as vacant based on a thorough inspection process. Task Force members from the court system and from law firms representing both sides in foreclosure proceedings have suggested that expanding municipal certifications of abandonment would be helpful in growing the expedited foreclosure process.

The Task Force will be exploring the potential for expanding municipal certification and determining what factors or data points are most appropriate to use to establish if a property is vacant and abandoned. The Town of Irondequoit's existing registry, for example, uses such factors as owner affidavits and utility shutoff information. Task Force members believe that town building departments also have a great deal of useful data on file that could be used to make a stronger legal case for vacancy. However it is likely that there would be some work involved in pulling together information from disparate sources to make it useful to the court system. The Task Force, acting as a natural link between town governments and those implementing the expedited legal process, will be involved in this expansion going forward.

### **Recommendation**

**Explore the expansion of municipal certification of vacant and abandoned properties.**

## Obtaining Title for Vacant Properties

### Tax Foreclosure

Tax foreclosure is a necessary tool for the City of Rochester and Monroe County in the collection of delinquent taxes. It is also an important and effective method of moving vacant and abandoned properties back into the marketplace by transferring title from a delinquent owner to a new purchaser at the eventual auction of the foreclosure property. If there are other liens on the property (which can often be the case when a homeowner has defaulted on property taxes), a tax foreclosure will extinguish those liens and the buyer will obtain clean title to the property.<sup>18</sup> If there is a mortgage on the property and the mortgage holder does not take the necessary steps to pay the delinquent taxes during the tax foreclosure process, the mortgage will also be extinguished.

There are two different local tax foreclosure processes - one used by the City of Rochester to enforce City property taxes, and another used by Monroe County to enforce both County property taxes and all Town property taxes. These two methods of tax foreclosure create different hurdles to reoccupying the vacant properties. The property tax collection process in Monroe County is governed by a special state law called The Monroe County Tax Act. The individual towns of Monroe County do not have statutory authority to pursue tax foreclosures, and therefore have less control over the vacant properties in their communities. Monroe County annually sells varying amounts of its tax liens (the amount depends on the current budgetary needs) to third party collection companies. These tax liens are sold in bundles and at a discount based on the likelihood of the collection company's ability to collect the taxes.

**“ ... [tax lien] sales provide a onetime infusion of money to the County, this policy has an unintended consequence for neighborhoods in our community. ”**

While these sales provide a onetime infusion of money to the County, this policy has an unintended consequence for neighborhoods in our community. The County sells tax liens to collect revenue needed to balance the County budget. If other revenue streams are running at a surplus, County officials have held back on tax lien sales -- in effect, treating tax lien sales as a reserve to provide funds to the County when necessary.

While this policy provides the County with flexibility in budgeting, by not forcing action on these liens, it fails to consider the impact these properties have on neighborhoods -- particularly those with distressed properties. In many cases, high value liens are sold first, delaying action in lower value neighborhoods and causing some properties to sit vacant for an even longer period of time.

## Recommendation

**Encourage Monroe County to modify its tax lien sale policy to account for the impact that distressed properties have on neighborhoods and consider a policy similar to the City of Rochester's, which identifies properties that should be sold at foreclosure auctions.**

The Task Force recommends that Monroe County reexamine its current tax lien sale process in light of the community deterioration it can create when the third party lienholder or the County itself does not pursue a tax foreclosure on lower valued properties. If the County decided to more selectively choose which liens were best for sale and which properties needed more local review, the municipalities would have more options and better control over their neighborhoods.

The collection and enforcement of property taxes by the City of Rochester is specifically governed by the City Charter,<sup>19</sup> and results in a process known as an "in rem" tax foreclosure action that is very different than a typical mortgage foreclosure action. The City of Rochester's tax

foreclosure process begins each year on August 1st, when a list of properties more than 13 months delinquent on their City property taxes is generated. This list is reviewed by City of Rochester staff from the departments of Code Enforcement, Real Estate, Business Development and Environmental Quality, who determine which of these liens will be sold to American Tax Funding Services ("ATFS"). The City of Rochester has sold delinquent tax liens to ATFS since February 2009, although the number of liens sold has dropped significantly in the past two years as the City itself focuses on vacant and abandoned properties.<sup>20</sup>

The Rochester Land Bank Corporation ("The Land Bank"), a municipal corporation created by the City, then has the opportunity to review the list of the remaining properties. The Land Bank has the ability to make a "super bid" on any of these properties. The super bid is a legislatively-created tool that allows the Land Bank to purchase the property at a price equal to the total amount of all municipal liens and claims.

The City of Rochester also enters into licensing agreements with not-for-profits and other parties interested in utilizing vacant city lots for community gardens until such time as a buyer is found. These agreements typically run from April through November and are available on a first-come, first-serve basis. The remaining steps of the City's tax foreclosure process, with an approximate time frame, are outlined on the next page, and culminate with the sale of the property at auction. Property owners can attempt to work out a payment agreement with the City at any time prior to the auction. All payment agreements must be approved by Code Enforcement after assessment of all parcels owned by the property owner to ensure they are in good standing without any code violations.

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## City of Rochester Annual Tax Foreclosure Process

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<b>February</b>	<ul style="list-style-type: none"><li>• Treasury compiles list of properties with year-old delinquent taxes</li></ul>
<b>March</b>	<ul style="list-style-type: none"><li>• Treasury sends warning letter to property owners</li></ul>
<b>April</b>	<ul style="list-style-type: none"><li>• Law Department commences foreclosure action, files list with County Clerk's office</li></ul>
<b>April/May</b>	<ul style="list-style-type: none"><li>• Public notice of foreclosure published in newspaper</li></ul>
<b>August</b>	<ul style="list-style-type: none"><li>• Notification to property owners and lienholders</li></ul>
<b>September</b>	<ul style="list-style-type: none"><li>• Lienholders may redeem or file a Notice of Interest</li></ul>
<b>October</b>	<ul style="list-style-type: none"><li>• Treasury sends final foreclosure letter</li></ul>
<b>October</b>	<ul style="list-style-type: none"><li>• City obtains Judgment of Foreclosure and Sale</li></ul>
<b>October - November</b>	<ul style="list-style-type: none"><li>• Four consecutive legal notices for foreclosure sale published in newspaper</li></ul>
<b>November</b>	<ul style="list-style-type: none"><li>• Tax foreclosure auction - opening bid is amount of unpaid taxes; if City is the only bidder, City takes title</li></ul>

The current owner cannot bid on their own property if it goes to auction. Other than this restriction, there are currently no other criteria for buyer eligibility. Buyers are not required to make repairs on the property or obtain a Certificate of Occupancy. Some not-for-profit organizations will purchase vacant properties at auction for targeted acquisition and rehabilitation programs. These properties are usually acquired for rehabilitation and eventual sale to income-eligible owner occupants. However, it is apparent that the majority of vacant properties purchased from the City tax foreclosures are purchased with the intent to create rental housing. These purchasers tend to be individuals or for-profit entities.

### Recommendation

**Municipalities should explore the ability, benefits and disadvantages of prequalifying bidders for tax foreclosure sale.**

In order to better vet purchasers of tax-foreclosed properties at auction, the Task Force recommends exploring a municipality's ability to prequalify bidders for a tax foreclosure sale. This could potentially keep properties from cycling through the same problems.



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## Obtaining Title for Vacant Properties

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### Abandonment Actions

In certain instances there may not be a mortgage on a property or as previously discussed, the mortgage holder may decide not to pursue a foreclosure action through the courts. If the homeowner or lender continues to pay the property taxes, then tax foreclosure is not an option to obtain or transfer title to this abandoned property.

In either of these situations, local governments have a powerful tool that can be used to put the property to more productive use. Through an Article 19-A Abandonment Action, a municipality can institute a special proceeding by which they can seek title to an abandoned dwelling. The City of Rochester has successfully obtained title to eight vacant properties through Abandonment Action Proceedings. This process can be a very efficient and effective tool to expedite the transfer of ownership. However, currently it can only be used if the property has been found to be unsecured. By amending the New York State Real Property Action and Proceedings Law to include any property that has been vacant for a certain period of time, municipalities could utilize Article 19-A Abandonment Actions to address many long-standing vacant structures.

### Recommendation

**Advocate for changes to NYS Real Property Law to allow municipalities to pursue Abandonment Actions against vacant properties that have serious zoning, housing, building or property maintenance code violations for more than a year.**

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## Obtaining Title for Vacant Properties

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### Sale and Donation of Properties

Obtaining title to a vacant property does not have to occur through a foreclosure. Sometimes the owner who has left the property will take steps themselves to sell the property for its full market value, a reduced price or will outright donate the property. The owner could also be an investor or an estate of a deceased homeowner looking for a way to get rid of the property. Many properties are abandoned, however, because the owner owes more than what the house is worth. In these cases, the only way to obtain title is to commence a foreclosure action.

After a successful foreclosure action, the bank will conduct an auction. If the house is not purchased by a third party at the auction, the bank will take title to the property. The lender's Real Estate Owned ("REO") department will actively market and sell bank-owned properties for the highest return. While desirable properties will sell quickly, other properties will continue to sit vacant while

the bank waits for a buyer. Similarly, if title to the property has reverted to HUD, Fannie Mae or Freddie Mac, they also have divisions that will market these properties.

### Recommendation

**Work with lenders to increase the numbers of donated and low-cost properties to local not-for-profits.**

In the past, several lenders such as Wells Fargo and Bank of America have donated properties to local not-for-profit organizations. In addition, the National Community Stabilization Trust (“NCST”) acts as a clearing house for participating lenders. NCST offers non-profit organizations a first look at certain REO properties offered at a modest discount. A number of national banks offer properties for sale through this program, but the numbers of homes sold in Monroe County through this program have been minimal to date.

The gold standard for donations and sale programs in Rochester predates the recession and has been in place since 2001. The U.S. Department of Housing and Urban Development’s Asset Control Area (“ACA”) program sells single-family properties at a discount to the City of Rochester in designated areas that meet one of the following requirements: a very low income area; an area with a high concentration of default or foreclosed assets; or an area that has a low home ownership rate.

ACA properties with an appraised value of \$25,000 or less may be purchased from HUD for \$100. All other properties sold under the ACA program are offered for sale at a minimum discount of 50 percent of the appraised property value. These properties are then slated either for rehabilitation and resale to owner-occupants or for demolition.

The donation or low-cost sale of vacant and abandoned properties to local not-for-profit agencies is an important tool in the fight to improve vacant and abandoned properties. The Task Force encourages lenders to increase the number of properties included in these programs.

## Transferring Title for Vacant Properties

### Rochester Land Bank

Recent changes in New York State law have led to a proliferation of land banks, which are not-for-profit corporations created by law and designed to purchase and improve land and vacant buildings. Once the property is purchased, the land bank returns the property to productive use. The primary focus of land bank operations is the “acquisition of real property that is tax delinquent, tax foreclosed, vacant, or abandoned ... and to eliminate the harms and liabilities caused by such properties.”<sup>21</sup>

### Recommendation

**Expand the Rochester Land Bank to include all municipalities within Monroe County.**

The Rochester Land Bank came into existence in 2013 and has grown rapidly, after receiving a nearly \$3 million grant from the New York State Attorney General’s Community Revitalization Initiative. These funds are part of \$20 million in mortgage settlement funds collected from the five largest mortgage lenders in New York State. The land banks have the power to execute a “super bid” in tax foreclosures. Through a super bid, the land bank can purchase a property before it goes to public auction and at a price equal to the total amount of all municipal claims and liens that were the basis for the judgment.

From the viewpoint of the Task Force, however, the Rochester Land Bank has one critical shortcoming – it can only operate and hold property in the City of Rochester. By comparison the Buffalo-area land bank covers not only the City of Buffalo, but also smaller cities, first-ring suburbs, and rural communities. Expanding the Rochester Land Bank to encompass all municipalities in Monroe County would allow greater opportunity to tackle vacant properties throughout the region.

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## Transferring Title for Vacant Properties

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### Community Land Trust

A community land trust is a private not-for-profit corporation created to acquire and hold land for the benefit of a community and to provide affordable access to land and housing for community residents. The concept was developed to encourage affordable resident ownership of housing and local control of land and other resources, and to attempt to meet the needs of residents least served by the prevailing market.

In Rochester, the Community Land Trust for Affordable Housing was established in the summer of 2016. As a 501(c)(3) not-for-profit with an all-volunteer board, the Land Trust is currently focusing on educating area agencies and lenders about its goals and understanding how best to work in conjunction with the Rochester Land Bank in acquiring properties and preserving them as affordable housing. The Land Trust will cover Monroe County, with plans for a staff and sufficient resources to govern smaller, more localized land trusts. The first Rochester neighborhood showing interest in creating its own land trust is the Beechwood Neighborhood. Other neighborhoods, towns and villages can also form a resident-controlled land trust and acquire title to properties in their areas.

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### Recommendation

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**Encourage the return of vacant housing to community-controlled institutions like community land trusts for rehabilitation.**

## Programs for Rehabilitating and Reoccupying Vacant Properties

### Rochester Housing Development Fund Corporation & HOME Rochester

In 2001, the Rochester Housing Development Fund Corporation (“RHDFC”) was created by the City of Rochester, Enterprise Community Partners and the Greater Rochester Housing Partnership (“GRHP”). GRHP provides asset management, financial aid, construction oversight, legal support, sales, and information management to the RHDFC. The City of Rochester provides operating support, homebuyer services, and contract management, while Enterprise Community Partners provides policy guidance and technical assistance to the RHDFC and its partners.

RHDFC purchases vacant properties in specific neighborhoods in the City of Rochester and facilitates the financing needed to purchase and renovate the properties through their HOME Rochester program. RHDFC acquires properties from a number of sources, primarily using properties from the ACA program and tax-foreclosed properties purchased from the RLBC. The properties are renovated and then sold to income-eligible first time buyers. Through RHDFC and HOME Rochester, over 700 properties have been purchased and renovated to date.

## Programs for Rehabilitating and Reoccupying Vacant Properties

### State of New York Mortgage Agency Revitalization Program

The Neighborhood Revitalization Program (“NRP”) is a state program administered by The State of New York Mortgage Agency (“SONYMA”) and is available in selected communities to assist homebuyers to purchase and renovate vacant houses. This program will provide a grant of up to \$20,000 to renovate a house once purchased by an eligible buyer. This grant can also be combined with other grant assistance programs for additional funding. Buyers must occupy the home as their principal residence once rehabilitation has been completed. In addition, buyers must qualify as income-eligible and must complete an approved homeowner-counseling program.

The GRHP works with local governments to identify vacant properties and eligible buyers to apply for grant funding, including NRP grants. GRHP will also work with buyers to create specifications for the rehabilitation of the property and put the package out to bid. SONYMA will pay for the improvements once GRHP inspects the property and certifies that the work is completed.

#### Recommendation

**Seek participation from all municipalities in the Neighborhood Revitalization Grant Program.**

One of the Task Force’s first meetings resulted in the expansion of NRP beyond the City to include the inner-ring suburbs of Brighton, Gates and Irondequoit.

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## Programs for Rehabilitating and Reoccupying Vacant Properties

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### Community Restoration Fund

SONYMA will administer the new Community Restoration Fund (“CRF”), which was legislatively created in June 2016 to assist New York homeowners facing mortgage foreclosure. SONYMA will purchase defaulted mortgage notes from other lenders. Through the CRF program, SONYMA will then have the ability to forgive a portion of the loan’s principal balance. In cases where homes are vacant, the CRF program will offer a mechanism to “expeditiously complete a foreclosure” and work with land banks, Community Development Financial Institutions, and other local not-for-profits to rehabilitate properties and resell them to new buyers. The Task Force will be closely following the rollout of the CRF program, and will make any further recommendations as necessary.

# 5. The Way Forward

## Recommendations

What follows is a comprehensive list of the current recommendations of the Task Force; however, the work of the Task Force is far from complete. It is pivotal to consider how to implement the recommendations identified in this report. Some recommendations will be implemented directly through the work of the Task Force, while other recommendations will be supported by the Task Force but implemented through other key members of the community. The Task Force plans to act as a central repository for expert knowledge about this topic.

In order to make these recommendations a reality, funding must be sought for a part-time staff member to support Task Force activities, outreach and data collection. This staff member would assist in identifying properties that are eligible for Neighborhood Revitalization Program funding through the Greater Rochester Housing Partnership and any other programs that support the reduction of vacant

and abandoned properties in the county. Regardless of who takes the lead on these efforts, Monroe County as a community must work together to have a positive impact on this complicated issue. The Task Force members appreciate the input received so far and look forward to continuing the conversation in the coming months.

### Recommendation

**Continue the work of the Task Force and seek funding to expand its scope and outreach.**

**This is a complex problem that requires feedback and community input. Please submit any ideas to:**

**(585) 753-1698**

**[vacantproperty@monroecounty.gov](mailto:vacantproperty@monroecounty.gov)**

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## Recommendations

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### Prevention of Vacancies

1. Form partnerships between municipalities and HUD-approved housing counseling specialists to perform outreach targeted specifically at homeowners in the early stages of mortgage default. (Page 5)
2. Seek continued funding for foreclosure prevention services, including legal services and housing counseling. (Page 6)
3. Advocate that low-value homes at risk of becoming vacant or abandoned should be excluded from HUD's and FHFA's loan sales programs, and encourage HUD and FHFA to establish a separate process for these properties that includes working with the Rochester Land Bank and local non-profits to preserve these homes as affordable housing. (Page 6)
4. Advocate for public reporting by HUD and FHFA of loan sales outcome data relating to the conduct of private buyers. (Page 7)
5. Advocate for changes to HUD and FHFA loan sales programs so that investors are required to provide affordable loan modifications that include principal reduction or arrearage forgiveness for homeowners who owe more on their mortgage than the property is worth. (Page 7)
6. Encourage the City of Rochester and municipalities with reduced populations to study the need for "right-sizing". (Page 8)
7. Support a shelter supplement program in Monroe County to better align the public assistance shelter allowance with Fair Market Rents. (Page 8)
8. Consider reestablishing the Monroe County Department of Human Services Quality Housing Inspection program to ensure that all DSS recipients are provided safe and habitable housing. (Page 9)
9. Require new landlords who purchase property from the City of Rochester for investment and rental purposes to attend a workshop at a local HUD-approved housing counseling agency. (Page 9)

### Identification and Maintenance of Vacancies

10. Work with the New York State Department of Financial Services to design and implement the new statewide Vacant and Abandoned Property Registry. (Page 11)
11. Assist municipalities in effectively accessing and utilizing the information that will be available through the new statewide Vacant and Abandoned Property Registry. (Page 12)

12. Increase the sharing of technical abilities and database tools among the City of Rochester, the County Clerk's Office and other municipalities. (Page 13)
13. Explore the viability of municipalities denying permits to property owners with delinquent taxes, municipal claims or serious code violations. (Page 15)
14. Allow municipalities to attach municipal liens against other real property and personal assets of a delinquent homeowner. (Page 15)

## **Rehabilitation of Vacancies**

15. Monitor and support the effective implementation of the new statewide expedited foreclosure process. (Page 20)
16. Explore the expansion of municipal certification of vacant and abandoned properties. (Page 20)
17. Encourage Monroe County to modify its tax lien sale policy to account for the impact that distressed properties have on neighborhoods and consider a policy similar to the City of Rochester's, which identifies properties that should be sold at foreclosure auctions. (Page 22)
18. Municipalities should explore the ability, benefits and disadvantages of prequalifying bidders for tax foreclosure sale. (Page 24)
19. Advocate for changes to NYS Real Property Law to allow municipalities to pursue Abandonment Actions against vacant properties that have serious zoning, housing, building or property maintenance code violations for more than a year. (Page 25)
20. Work with lenders to increase the numbers of donated and low-cost properties to local not-for-profits. (Page 26)
21. Expand the Rochester Land Bank to include all municipalities within Monroe County. (Page 26)
22. Encourage the return of vacant housing to community-controlled institutions like community land trusts for rehabilitation. (Page 27)
23. Seek participation from all municipalities in the Neighborhood Revitalization Grant Program. (Page 28)

## **The Way Forward**

24. Continue the work of the Task Force and seek funding to expand its scope and outreach. (Page 30)

# 6. Endnotes

- <sup>1</sup> Cui , Lin, *Foreclosure, Vacancy and Crime*, Department of Economics, University of Pittsburgh, November 1, 2010, at 23.
- <sup>2</sup> Klein, Sen. Jeffrey D.; Funke, Sen Rich; Robach, Sen. Joseph. *Devaluing Monroe County: How Zombie Properties Impact Homeowners*, June 2016.
- <sup>3</sup> See “The Benefits of Pre- Purchase Homeownership Counseling”, Working Paper, April 2013. Gabriela Avila, Hoa Nguyen, Peter Zorn, available at [http://www.freddiemac.com/news/blog/pdf/benefits\\_of\\_pre\\_purchase.pdf](http://www.freddiemac.com/news/blog/pdf/benefits_of_pre_purchase.pdf), and “Pre-Purchase Counseling Outcome Study: Research Brief, Housing Counseling Outcome Evaluation”, U.S. Department of Housing and Urban Development May 2012, available at. [https://www.huduser.gov/portal//publications/pdf/pre\\_purchase\\_counseling.pdf](https://www.huduser.gov/portal//publications/pdf/pre_purchase_counseling.pdf).
- <sup>4</sup> “Pre-Purchase Counseling Outcome Study: Research Brief Housing Counseling Outcome Evaluation” Prepared for U.S. Department of Housing and Urban Development May 2012. Available at [https://www.huduser.gov/portal//publications/pdf/pre\\_purchase\\_counseling.pdf](https://www.huduser.gov/portal//publications/pdf/pre_purchase_counseling.pdf).
- <sup>5</sup> Sarah Edelman, Michele Zonta and Shiv Rawla, “Protecting Communities on the Road to Recovery, Why Strong Standards are Critical for the Distressed Asset Stabilization Program”, June 2016, available at <https://cdn.americanprogress.org/wp-content/uploads/2016/06/27153616/CommunitiesLeftBehind-report.pdf>.
- <sup>6</sup> The Fair Market Rents, determined by the U.S. Department of Housing and Urban Development, “means the rent . . . for units of varying sizes (by number of bedrooms), that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.” See 24 CFR 888.111.
- <sup>7</sup> See, e.g., City Code of the City of Beacon § 92-8, available at <http://www.ecode360.com/15152596?#15152596>.
- <sup>8</sup> See, e.g., City Code of the City of Newburgh § 121-3, available at <http://ecode360.com/10871088>.
- <sup>9</sup> See, e.g., Village Code of the Village of Medina § 234-4, available at <http://ecode360.com/30392479>.
- <sup>10</sup> See, e.g., Town Code of the Town of Huntington § 156-64, available at <http://ecode360.com/15584611?highlight=registration#15584664>.
- <sup>11</sup> New York State Real Property Actions and Proceedings Law § 1310(3).
- <sup>12</sup> *Id.*
- <sup>13</sup> New York State Real Property Actions and Proceedings Law § 1310(5).
- <sup>14</sup> See, e.g., 53 Pa.C.S.A. § 6131, available at: [https://govt.westlaw.com/pac/Document/NEA26A67019C811E0AE95E4306A4631CF?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Document/NEA26A67019C811E0AE95E4306A4631CF?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).
- <sup>15</sup> See, e.g., PA 53 Pa.C.S.A. § 6111 and 6112, available at [https://govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=NA0AAD2D0190711E08BFD95F9861B5D27&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/pac/Browse/Home/Pennsylvania/UnofficialPurdonsPennsylvaniaStatutes?guid=NA0AAD2D0190711E08BFD95F9861B5D27&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)).
- <sup>16</sup> See New York State Town Law §130.
- <sup>17</sup> New York State Real Property Actions and Proceedings Law § 1310.
- <sup>18</sup> Federal tax liens are an exception to this rule and will not be extinguished through a tax foreclosure.
- <sup>19</sup> See City of Rochester Charter, available at <http://ecode360.com/28971895>.
- <sup>20</sup> As the purchaser of these delinquent tax liens, ATFS has the right to either attempt to collect the debt from the property owner or to begin a foreclosure proceeding in New York State Supreme Court.
- <sup>21</sup> See [http://esd.ny.gov/businessprograms/data/nyslbp/landbankact\\_article16npl.pdf](http://esd.ny.gov/businessprograms/data/nyslbp/landbankact_article16npl.pdf) for the full legislative intent for the creation of New York’s land banks.

# 7. Appendix

## Letter Sent to New York Department of Financial Services



### Office of the County Clerk Monroe County, New York

**Adam J. Bello**  
County Clerk

**Jeffery L. McCann**  
Deputy County Clerk

September 27, 2016

Maria T. Vullo  
Superintendent of Financial Services  
New York State Department of Financial Services  
One State Street  
New York, NY 10004-1511

Dear Superintendent Vullo:

As co-chairs of the Monroe County Vacant and Abandoned Property Task Force, we are writing to provide our recommendations on the implementation of the newly created Statewide Vacant Property Registry under CPLR Sec. 1310. In April of this year we convened the Task Force, which includes members from all sectors of our community who are connected to this serious problem in our county. One of the primary goals of the task force is to ensure that members of our community effectively communicate and support each other's work as it relates to vacant and abandoned properties. The additional tool of the Vacant Registry could be enormously beneficial to our efforts in addressing these properties, but only if it is implemented in a way that supports the work already being done locally on the ground. Please consider the following list of recommendations as you implement the use of the database.

**1. Define "Public Officials"** – As DFS drafts the regulations supporting CPLR Sec. 1310, we recommend "public officials" to be defined so that it allows inclusion of a range of offices and departments under the umbrella of a municipality. Without an inclusive definition of "public official," most municipalities will have just a handful of employees with access to this data. In a municipality such as the City of Rochester (with 2,400 vacant structures), this is simply not a feasible solution. Departments such as code enforcement and police should also be included in the definition, in light of the frequent issues they face related to vacant and abandoned properties. It is not feasible for just one staff person or even a few people to have access to this potentially useful information when you have a city that is dealing with more than 2,400 privately owned vacant structures and more than half of them have had foreclosures filed against them. If these departments are able to have direct access to the data, we believe local municipalities will have greater success at utilizing the data effectively.

**2. Create a User-Friendly Electronic Database** – Municipalities need to be able to easily access and extract data from the Vacant Registry. The City of Rochester hopes to use the data to supplement their ongoing efforts to enforce code violation issues that are typically associated with these vacant properties. In addition, a municipality may want to assess how many properties a particular bank has in its inventory. This could be for the purpose of engaging them about the condition of those properties, taking action against them in bulk form, or to report that information to the state. Regardless of the reason, municipal workers must be able to extract data out of the system in an efficient manner, and not be required to search each property individually.

We recommend that the data be extractable in either Microsoft Excel or Microsoft Access database format, with searchable fields such as the parcel ID number (ideally) and separate fields for the address line such as street number, street name, street type, and direction. Fields such as these will allow staff to run the data against currently existing

municipal database's, and will identify and add useful information to for city's dealing with the problems caused by these vacant and abandoned structures.

**3. Include Additional Data Points** - CPLR 1310 identifies several data points that must be included in the registry, which we feel will be tremendously valuable. One such filed that will be collected is the lender's address. Municipal leaders have spoken to the Task Force about how difficult it can be to find the proper address to use for lenders in relation to legal actions. We therefore recommend the lender's address be specifically defined as the lender's corporate address which can be used for legal service of an enforcement action.

In addition, we have identified several data points that we feel should also be included. The statute currently states that lenders must report when a house is subject to a foreclosure proceeding. We recommend that they should also be required to report when there has been an entry of final judgment in the foreclosure action, and when a sale has been finalized on a house subject to the foreclosure action. This will enhance tracking mechanisms that local municipalities are using to track vacant and abandoned properties.

Lastly, we know that many lenders will use a third-party property maintenance company to actually maintain the property. We therefore recommend that the name and contact information of these property preservation companies should be provided. This would be an enormous benefit to local municipalities, who often need to contact these companies with questions about the property.

**4. Distribute the Fees Awarded Back to the Municipalities** - In the case of a successful enforcement action where civil penalties were collected against the offending mortgagee or agent of the mortgagee, we recommend that a significant portion of those fees be returned to the local municipality. This will help support the work municipalities must conduct as a direct result of the violations.

**5. Include Local Stakeholders** – We encourage DFS to reach out to the knowledgeable stakeholders around the state who will be the primary beneficiaries of the data in the Vacant Registry. The City of Rochester and various community members of Monroe County have a depth of knowledge about the issues surrounding the handling of vacant and abandoned properties and how it impacts them locally. They can offer valuable insight to DFS as you develop and implement the registry. We want to support the work DFS is doing in this field and believe we can help to ensure that the data in the Vacant Registry is effectively used.

Thank you for your consideration on these recommendations and we look forward to an opportunity to continue to support this effort.

Sincerely,



Adam J. Bello  
Task Force Co-Chair  
Monroe County Clerk



Rebecca Caico, Esq.  
Task Force Co-Chair  
Empire Justice Center



