Go Directly to Jail? Las Vegas Joins Other Jurisdictions in Imposing Burden of Upkeep of Vacant Properties on Lenders

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Lenders now face possible jail time if they fail to maintain vacant properties. Joining cities like Chicago, Illinois and Springfield, Massachusetts, the Las Vegas City Council passed an ordinance on December 7, 2011 that places the responsibility of maintenance of vacant properties securing loans in default or in foreclosure on lenders holding a first lien on the property. This action, which attempts to reduce blight caused by vacant homes, may be the beginning of a trend across the country. Worse yet for lenders, the ordinance contemplates jail time for the worst offenders.

The Las Vegas ordinance requires lenders to inspect each property in pending or actual default within fifteen days after a notice of default and, if vacant, to register the property and pay a $200 fee within ten days of the inspection. It further requires that lenders retain a property manager to perform any required upkeep, including building maintenance and repair and landscaping. The name and telephone number of the lender or the property manager must be posted on the property. The ordinance therefore puts lenders in a position of maintaining properties they do not even own if the owner/borrower vacates the property prior to a foreclosure or a deed-in-lieu. It likewise places lenders in the very difficult position of ascertaining vacancy status under circumstances that are not always altogether clear.

There is a maximum $1,000 fine or, incredibly enough, up to six months in jail for lender violations. The ordinance also permits enforcement by civil action. If the costs or fines are not paid, the city may place a lien on the property, preventing a sale of the property until they are paid. Upon the failure to maintain a property, the city can hire someone to fix and maintain the property and pass along the associated costs.

The city ordinances collectively raise a number of troubling legal and constitutional issues by imposing the responsibility for property maintenance and upkeep on a party that has a security interest in the property but is not the legal owner. The ordinances arguably ignore common law and statutory property rights and responsibilities by placing many of the traditional burdens of property ownership on lenders, rather than the owners of the property. It is the property owners, even if in default, who retain the associated legal rights of possession and responsibility for maintaining the property. In response to the Chicago ordinance, which was enacted last July, the Federal Housing Finance Agency, which oversees Fannie Mae and Freddie Mac, maintained that the costs imposed by the ordinance would increase payments that would ultimately have to be borne by the homeowners and would harm homeowners, including those seeking to avoid foreclosure.

Should you have any questions about these ordinances or need additional information, please contact the Director of the Firm's Financial Industry Group, **Richard E. Gottlieb**, at 312-627-2196, or **Arthur B. Axelson**, the author of this alert, at 202-906-8607.

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