

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
3 NYCRR 422**

Inspecting, Securing and Maintaining Vacant and Abandoned Residential Real Property

I, Maria T. Vullo, Superintendent of Financial Services of the State of New York, pursuant to the authority granted by sections 202 and 302 of the Financial Services Law and sections 1306, 1308, and 1310 of the Real Property Actions and Proceedings Law, do hereby promulgate Part 422 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

(Statutory authority: Real Property Actions and Proceedings Law, sections 1306, 1308 and 1310)

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Section 422.1 Preamble.

- (a) As enacted by Part Q of Chapter 73 of the Laws of 2016, Real Property Actions and Proceedings Law (“RPAPL”) Section 1308 requires certain holders of first lien mortgages to inspect, secure, and maintain vacant and abandoned one to four family residential real property and Section 1310 establishes a statewide vacant and abandoned property registry in the form of an electronic database to be maintained by the Department of Financial Services (the “Department”).
- (b) RPAPL Sections 1308(12) and 1310(4) authorize the Superintendent of Financial Services (“superintendent”) to issue the rules and regulations necessary to implement RPAPL Sections 1308 and 1310.
- (c) This Part establishes the rules necessary to implement RPAPL Sections 1308 and 1310.

Section 422.2 Definitions.

As used in this Part:

- (a) *mortgage* means a first lien upon residential real property as is commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of this state, together with the credit instrument or instruments, if any, secured thereby.
- (b) *mortgagee* means the holder of a mortgage secured by residential real property and may include the original lender under a mortgage, its successors and assigns, and includes all credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.
- (c) *assignee* means a current mortgagee if different from the original mortgagee.
- (d) *mortgage maintenance* means the continued ownership of a mortgage by the person or entity that originated that mortgage.
- (e) *mortgage origination* means for compensation or gain, either directly or indirectly, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan or a mortgagor as a mortgage loan.
- (f) *mortgage servicing* means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, subject to section 6-k of the Banking Law, title 3-A of article IX of the Real Property Tax Law or section 10 of 12 U.S.C. 2609. In the case of a reverse mortgage as referenced in section 6-h of the Banking Law, sections 280 and 280-a of the Real Property Law or 24 CFR 3500.2, servicing includes making payments to the borrower. The term includes making or holding a mortgage loan if such activities directly or indirectly include holding the mortgage servicing rights or having been delegated servicing functions for the mortgage loan.
- (g) *public official* means a member of the New York State legislature, a member of the elected governing body of a county, town, village or city, and in the city of New York, the city council, and the highest ranking elected executive official of a county, city, town or village.
- (h) *residential real property* means real property located in this state improved by any building or structure that is or may be used, in whole or in part, by not less than one nor more than four families, and shall include any building or structure used for both residential and commercial purposes where no more than twenty percent of the total appraised value is attributable to the commercial purpose.
- (i) *state or federally chartered bank, savings bank, savings and loan association, or credit union* means one of the following: (i) any corporation, organized under or subject to the provisions of article three of the New York Banking Law; (ii) any corporation organized under or subject to the provisions of Article 11 of the New York Banking Law; (iii) any

corporation organized under or subject to the provisions of Article six of the New York Banking Law, including stock-form savings banks; (iv) any corporation organized under or subject to the provisions of article ten of the New York Banking Law, including, but not limited to, stock-form savings and loan associations; (v) any national banking association organized pursuant to the National Bank Act of 1864, as amended, (12 USC § 21 et seq.); (vi) any federal savings association as such term is defined by the Federal Deposit Insurance Act, as amended, (12 USC § 1813(b)(2)); (vii) a federal branch and agency of a foreign bank, as such terms are defined by the International Banking Act of 1978, as amended (12 USC § 3101); or (viii) a federal credit union, as such term is defined by the Federal Credit Union Act, as amended (12 USC § 1752(1)).

- (j) *Servicer or mortgage loan servicer* means an individual or entity engaged in mortgage servicing.
- (k) *Vacant and abandoned* means residential real property as to which at least one of the following three conditions applies: (1) at three consecutive inspections of such property by the mortgagee or its agent, with each inspection conducted twenty-five to thirty-five days apart and at different times of the day, (i) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and (ii) the residential real property was not being maintained in a manner consistent with the standards set forth in New York property maintenance code chapter sections 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1; or (2) a court or other appropriate state or local governmental entity has formally determined, following due notice to the borrower at the property address and any other known addresses, that such residential real property is vacant and abandoned; or (3) each borrower and owner has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.

Section 422.3 Applicability and Exemption under RPAPL 1308.

- (a) Subject to the provisions of subdivisions (b), (c), and (d) below, the obligations imposed by RPAPL 1308 shall apply to the mortgagee of every vacant and abandoned residential real property, irrespective of when the mortgage on the property was originated or became delinquent or when the property became vacant and abandoned.
- (b) 1. For each calendar year, the obligations imposed by RPAPL 1308 shall not apply during that calendar year to a mortgagee that is able to establish all of the following:
 - A. It is a state or federally chartered bank, savings bank, savings and loan association, or credit union;

- B. It engages in all of the following activities during that calendar year: mortgage origination, mortgage ownership, mortgaging servicing, and mortgage maintenance; and
 - C. It had less than three-tenths of one percent of the total loans in the state which the mortgagee either originated, owned, serviced, or maintained for the calendar year ending two years prior to the current calendar year.
 - 2. For purposes of subsection (C), above, whether a mortgagee had less than three-tenths of one percent of the total loans in the state during the calendar year ending two years prior to the current calendar year shall be calculated by *dividing* the number of mortgages issued in the state during that calendar year that the mortgagee originated, owned, serviced and/or maintained *by* the Total Number of Residential Real Property Mortgages Originated in the State During the Calendar Year Ending Two Years Prior To the Current Calendar Year.
 - 3. The “Total Number of Residential Real Property Mortgages Originated in the State During the Calendar Year Ending Two Years Prior To the Current Calendar Year” shall be determined by the superintendent, based on available data, and shall be published by the superintendent by November 15 of each year.
- (c) 1. The obligations imposed by RPAPL 1308 shall not apply to residential real property when the mortgage became delinquent before December 20, 2016, the effective date of RPAPL 1308, if a mortgagee is able to establish all of the following:
 - A. It is a state or federally chartered bank, savings bank, savings and loan association, or credit union;
 - B. It engages in all of the following activities during the calendar year: mortgage origination, mortgage ownership, mortgaging servicing, and mortgage maintenance; and
 - C. It had between three-tenths of one percent and five tenths of one percent of the total loans in the state which the mortgagee either originated, owned, serviced, or maintained for the calendar year ending two years prior to the current calendar year.
- 2. For purposes of subsection (C), above, whether a mortgagee had between three-tenths of one percent and five-tenths of one percent of the total loans in the state during the calendar year ending two years prior to the current calendar year shall be calculated by *dividing* the number of mortgages issued in the state during that calendar year that the mortgagee originated, owned, serviced and/or maintained *by* the Total Number of Residential Real Property Mortgages Originated in the State During the Calendar Year Ending Two Years Prior To the Current Calendar Year.

3. The “Total Number of Residential Real Property Mortgages Originated in the State During the Calendar Year Ending Two Years Prior To the Current Calendar Year” shall be determined by the superintendent, based on available data, and shall be published by the superintendent by November 15 of each year.
- (d) If, after being subject to the obligations imposed by RPAPL 1308, a mortgagee becomes exempt pursuant to subsections (b) or (c), then the obligations imposed by 1308 shall continue to apply to all residential real property that became vacant and abandoned before the mortgagee became exempt and for which the mortgagee continues to own the mortgage, and, if applicable, to residential real property that becomes vacant and abandoned after the mortgagee ceases to be exempt.
 - (e) The burden of proving an exemption pursuant to this Subdivision is upon the mortgagee claiming it. In order to establish an exemption from the requirements of RPAPL 1308, a mortgagee must submit to the superintendent by December 31 of the year preceding the calendar year in which the exemption is being sought, on the form required by the superintendent, a statement providing the basis for which the mortgagee satisfies all three requirements of the relevant subsection. The statement shall also identify all real property that, by application of subsection (d), will remain subject to the requirements in RPAPL 1308. If a mortgagee fails to timely provide the statement required by this subdivision, the mortgagee shall not satisfy the provisions of subdivision (b) or (c) for that calendar year.

Section 422.4 Vacant and Abandoned Property Reporting.

- (a) Within twenty-one business days of when a mortgagee or mortgage loan servicer of a property learns, or should have learned, that a property is vacant and abandoned, the mortgagee or mortgage loan servicer shall submit or cause to be submitted on the form prescribed by the Department the following information:
 1. the current name, address and contact information for the lender, assignee or mortgage loan servicer responsible for maintaining the subject property;
 2. whether a foreclosure proceeding has been commenced as to the subject property, and, if so, the date the proceeding was commenced and the status of the proceeding;
 3. the last known address and contact information for the mortgagor(s) of record; and
 4. any additional information requested by the superintendent.
- (b) A mortgagee or mortgage loan servicer of property learns, or should have learned, that a property is vacant and abandoned when the mortgagee or mortgage loan servicer knew or should have known one or more of the following:
 1. That three inspections of the subject residential real property conducted twenty-five to thirty-five days apart and at different times of the day indicated, or would have

indicated, that (i) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons were residing there; and (ii) the residential real property was not being maintained in a manner consistent with the standards set forth in New York property maintenance code chapter sections 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1;

2. That a court or other appropriate state or local governmental entity has formally determined, following due notice to the borrower at the property address and any other known addresses, that such residential real property is vacant and abandoned; or
 3. That each borrower and owner has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.
- (c) A mortgagee is required to exercise due diligence to learn of the matters set forth in subsection (b), above.
- (d) The information provided to the Department pursuant to this section will be included in the statewide vacant and abandoned property registry established by RPAPL Section 1310(1).
- (e) At the time of a filing with the Department pursuant to RPAPL 1306, the mortgagee or its agent shall state whether the relevant real property has been inspected and whether the mortgagee or any agent of the mortgagee has any reason to believe that the property is vacant and abandoned and the basis for that belief. The superintendent may prescribe the form for the submission of such information. All mortgagees subject to this requirement shall provide the quarterly reporting set forth in Section 422.5.

Section 422.5 Quarterly Reporting.

- (a) Every mortgagee that is not exempt from the obligations imposed by RPAPL 1308 shall file with the superintendent, on a form that may be prescribed by the superintendent, a quarterly report containing the following information:
1. Identification of all loans secured by a mortgage on residential real property held by the mortgagee where the borrower has been delinquent for 90 or more days;
 2. For each loan identified pursuant to subdivision (a)(1),
 - A. The date on which each inspection of the subject property to determine occupancy was conducted as required by RPAPL 1308(1), and the identity and employer of the person who performed the inspection.

- B. The date on which a determination was made that the subject property was vacant and abandoned.
 - C. The date on which the notice required by RPAPL 1308(3) was posted on the subject property.
 - D. Identification of all actions to secure and maintain the subject property that have been taken, the date each action was taken, the nature of each action, and the identity and employer of the person who performed each action.
 - E. Whether a foreclosure proceeding has been commenced as to the subject property, and if so, the date the proceeding was commenced and the status of the proceeding.
3. Any additional information requested by the superintendent.
- (b) The quarterly report shall be filed within 30 days of the end of the quarter to which the report pertains.

Section 422.6 Applicability of RPAPL 1310 Reporting Requirements.

The obligations imposed by RPAPL 1310 shall apply to both the mortgagee and the mortgage loan servicer of every vacant and abandoned residential real property located in the state, provided that only one filing shall in every case be required for each property.

Section 422.7 Federal Law and Federal Guidelines.

- (a) In accordance with RPAPL 1308(10), where a specific provision of RPAPL 1308 is directly inconsistent with a federal law, a court order, or an applicable provision in the investor or insurer guidelines issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the inconsistent provision of RPAPL 1308 shall not be applied to the mortgagee. Instead, the mortgagee's compliance with RPAPL 1308 shall be evaluated by reference to the applicable federal law, court order, or investor or insurer guidelines.
- (b) Where a specific provision of RPAPL 1308 imposes an obligation on a mortgagee that is greater than what is imposed by a provision in a federal law, a court order, or an applicable provision in the investor or insurer guidelines issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the specific provision of RPAPL 1308 shall not be deemed to be directly inconsistent with the federal law, the court order, or the provision in the investor or insurer guidelines.

- (c) Where a specific provision of RPAPL 1308 imposes an obligation on a mortgagee and there is no similar provision in a federal law, a court order, or an applicable provision in the investor or insurer guidelines issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the specific provision of RPAPL 1308 shall not be deemed to be directly inconsistent with the federal law, the court order, or the provision in the investor or insurer guidelines.

Section 422.8 Disclosure of Information Maintained in the Statewide Vacant and Abandoned Property Registry.

- (a) The information maintained in the statewide vacant and abandoned property registry shall be deemed and treated as confidential and shall therefore be exempt from disclosure pursuant to New York's Freedom of Information Law, Public Officer Law, Article 6.
- (b) The superintendent may, in his or her sole discretion, release any information in the statewide vacant and abandoned property registry if the superintendent determines that such disclosure is in the best interest of the public. All such information released pursuant to this section shall be treated as confidential by the receiving party and shall not be further disclosed by the receiving party without the written authorization of the superintendent.
- (c) Upon written request in the form prescribed by the Department, the superintendent shall release to a public official, as defined in this Part, the information maintained in the statewide vacant and abandoned property registry that is specific to the geographic scope of the public official's district or political subdivision. The superintendent may require, in addition to any agreements or certifications required by subdivision (d), that a public official certify, as a condition to receiving information maintained in the statewide vacant and abandoned property registry, that the release of the requested information furthers the purposes of Section 1307, Section 1310, or Article 18 of the RPAPL, or any other law, code, rule, regulation or ordinance that the superintendent determines to be related to Section 1307, Section 1310, or Article 18 of the RPAPL.
- (d) The superintendent may require any party receiving information maintained in the statewide vacant and abandoned registry pursuant to this section to execute, as a condition of receiving the information, a confidentiality agreement and/or periodic certifications affirming that the confidentiality of the information has been maintained.

Section 422.9 Enforcement.

RPAPL 1308 and 1310 and the rules in this Part will be enforced as provided under the RPAPL, the Financial Services Law and the Banking Law.

Section 422.10 Effective Date. This Part shall be effective on December 20, 2016.