

# **Bond Case Briefs**

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## **Zombie Foreclosures and the Crucial Role of Judges.**

Clouded property titles invite neighborhood blight. Simple steps by the courts can produce huge results.

In February, RealtyTrac reported that one in four U.S. foreclosures are “zombies”: homes where the owner has vacated the property but the lender isn’t proceeding diligently to end the case and so hasn’t taken ownership. With the title clouded, neither the lender nor the owner maintains the parcel, so it falls into disrepair and becomes a blighting influence on the neighborhood.

The hardest-hit states include California, Florida, Illinois New Jersey, New York and Ohio, but zombies can be found everywhere. While some states have laws shortening the foreclosure process for an abandoned parcel, the fix that’s needed isn’t solely one for legislatures. The courts also play a crucial role. Improved judicial supervision of mortgage-foreclosure cases can prevent zombies, lessen blight and strengthen neighborhoods.

Judges can take simple steps to net huge neighborhood-improving results by exercising the court’s power to control court dockets and manage cases. They can, for example, ensure that lenders’ lawyers who file foreclosure cases move them along to completion by requiring periodic scheduling conferences to ensure progress. Courts adopting these steps will be reinforcing the rules of professional conduct that all lawyers must follow anyway under the American Bar Association’s Rules of Professional Conduct: to diligently advance lawsuits to completion and refrain from acting in a way that causes harm to others.

So why do so many foreclosures still move so slowly that they leave zombies scattered across so many of our neighborhoods? While each state’s mortgage-foreclosure law is unique, there are commonalities: the lender’s lawyer files a foreclosure complaint, the lender gets a judgment of foreclosure, and the judgment starts a redemption period in which the owner can pay off the loan to stop the foreclosure. If the owner doesn’t redeem, the parcel gets scheduled for auction or sheriff’s sale and the property is sold to the high bidder.

Note the anomaly. Unlike other litigation, in which the judgment ends the case, in mortgage-foreclosure litigation there are post-judgment steps to accomplish before the case can come to a true end. Judges in foreclosure cases must make sure that those post-judgment steps actually happen, and that they happen as quickly as possible.

Lenders and their mortgage-servicing companies would seem to have incentives to bring foreclosure cases to induce loan payoff. Many times, however, filing the case doesn’t achieve that goal. This is especially so in distressed urban neighborhoods where home values and conditions have declined. In those situations, it’s unlikely that bidders at an auction will offer an amount to reasonably minimize the lender’s losses from missed mortgage payments. Lenders don’t want to add to their inventories more bank-owned parcels that they have to maintain, repair, manage and try to sell. So some lenders let cases linger, zombie-izing the properties.

It is at this point, in the post-judgment, post-redemption period, when a court can and should step in.

The court should require the lender to advance the case and schedule the post-judgment auction sale. If no one wishes to bid, then the court should make the lender dismiss the case and satisfy the mortgage to finalize the case and remove the litigation cloud on the title, leaving the defendant/owner clearly responsible for the parcel. One way or another, the lender that invokes the judiciary by filing a foreclosure lawsuit must be held accountable by the court to finish the case.

Courts in Milwaukee County, Wis., and Cuyahoga County, Ohio, are among those that are working aggressively to make that happen, mandating periodic scheduling conferences to ensure that foreclosure cases advance and don't stall. It works. "We move properties fast," says Judge Nancy Margaret Russo of Cuyahoga County's Common Pleas Court. "Neighborhoods are safer."

Clearly, improved judicial supervision of mortgage-foreclosure cases can prevent zombie foreclosures, lessen blight and strengthen neighborhoods. Simple steps, huge results.

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