Unfinished Foreclosures: When Banks Walk Away From Homes

by Justine Miller

Each year, all around the country, more homes are abandoned, leaving empty, decaying properties for cities to maintain or demolish. Banks starting foreclosures, but not finishing them, has led to abandoned homes all over the United States. This problem has been referred to by several names, including “Bank Walkaways,” “Abandoned Foreclosures,” and “Unfinished Foreclosures.” I will discuss the main causes and effects of bank walkaways, then recommend solutions, some of which are being tried. Finally, I will discuss what has been done locally to try to solve the problem, or at least mitigate some of the damage, of bank walkaways. Solving the problem of bank walkaways is vital because it could help alleviate a major housing problem facing many families, as well as save millions for their municipalities.

Causes

Banks may choose to walk away from foreclosing on certain properties for several reasons. One is the increase of foreclosures on cheaper real estate. The lower the value of the property, the more difficult it is for a bank to make any profit by foreclosing. “Abandoned foreclosures are increasing as mortgage investors determine that, at sale, they can’t recoup the costs of foreclosing, securing, maintaining and marketing a home, [so] they sometimes aren’t
fight to completing foreclosure actions.”¹ Banks sometimes fail to complete these foreclosures because they decide partway through the process that some of the homes are not worth the costs of finishing the foreclosure and selling the house.² This is because generally the longer a home sits empty, the more its value decreases.³

Banks are more likely to walkaway from a foreclosure that is put on hold. For example, bank processing of some foreclosures came “to a standstill for a time beginning in late 2010, over a scandal involving the improper verification of bank documents by so-called ‘robo signers.’”⁴ Some robo signers signed thousands of foreclosure documents each month. Due to the number of documents, they did not have time to check accuracy, “they only had enough time to sign them.”⁵ And consumer bankruptcies can put ongoing foreclosures on hold.⁶ When banks put a foreclosure on hold, it changes and greatly slows down the process, so if the house is abandoned by the homeowner its value could decrease rapidly. Again, the longer a home sits empty, the more its value decreases,⁷ so if a house sits empty for long enough while the foreclosure is paused, the value could decrease until the bank no longer wants to finish the foreclosure.

⁵ Brandon Rehkopf, Saving the American Dream in Ohio: Crafting Incentives and Disincentives to Promote a Responsible Foreclosure Process, 43 U. Tol. L. Rev. 437 at 462 (Winter 2012).
⁶ Megan O’Matz, John Maines, Neighborhoods Crumble as Thousands of Homes Sit in Legal Limbo, at 4.
Effects

Abandoned, vacant houses in the process of foreclosure can diminish the quality of life for the homeowners left behind. Vacant buildings attract crime. When vacant properties in foreclosure are not maintained, they could become hazardous to neighbors or their children playing outdoors. If a house is not maintained properly all sorts of health hazards could occur, for example mold could grow in or around the home, there could be glass from broken windows or swimming pools filled with dirty water. There have also been many cases where vacant homes have caught fire. Several gas explosions have even occurred at vacant properties due to vandals stealing pipes while the gas was still on. When a house is not being maintained lead paint could become exposed on siding, which could fall into the dirt, where kids might play in the yard. If not maintained, uncut lawns could attract bugs like fleas or ticks. These are just some of the ways unfinished foreclosures make it harder to find safe places to live.

These effects are most common in minority neighborhoods, since unfinished foreclosures disproportionately affect many African American neighborhoods around the country, including Chicago. In Chicago 71% of vacant unfinished foreclosures are located in communities where African Americans are the majority. This is likely the case in Buffalo as well. One reason that the problem is concentrated in minority communities is that they have been targeted by predatory

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9 Id.
10 Id.
11 Id. at 31.
13 Id. at 7.
lenders in the past.\textsuperscript{14} Predatory loans have higher interest rates so defaults and foreclosures are more likely. “Most of the properties are in lower-income, mainly minority neighborhoods – areas where people with poor credit and insufficient income secured high-cost, highly leveraged mortgages, and left when they couldn’t meet the payments.”\textsuperscript{15}

Bank walkaways cost cities millions in unpaid taxes, unpaid utility bills, nuisance abatement charges, maintenance, fire damage and demolition.\textsuperscript{16} The costs to cities from bank walkaways will probably continue to increase, since generally the longer a home sits empty, the more its value decreases.\textsuperscript{17} This decrease in value is due to deterioration, vandalism, copper theft, arson, and other crimes that occur at vacant homes. The longer that a property remains vacant, the more likely these problems are.\textsuperscript{18} The problem of vacant homes has become so bad that “in some areas of the country, advocacy groups have been formed to help homeless people illegally move into vacant properties.”\textsuperscript{19} Until the problem of unfinished foreclosure is dealt with more effectively, banks will continue to walk away from homes they have started foreclosing on, and the homes that have already been abandoned from this process will continue to degrade.

**Recommendations**

Implementation of five recommendations could reduce the problems caused by walkaways. First, there should be a time limit on completing foreclosures once the process has


\textsuperscript{15}Howard Goodman, Bank Walkaways Lead to Neighborhood Blight, Florida Center for Investigative Reporting (May 1, 2012), available at http://fcir.org/2012/05/01/bank-walkaways-lead-to-neighborhood-blight/.


\textsuperscript{18}Id.

\textsuperscript{19}Id.
begun. If banks don’t finish the foreclosures they start, within the time limit, they should lose their interest in the home, and not be allowed to foreclose later. Under this approach, once banks start foreclosures they would need to either finish the foreclosure with a sheriff’s sale or extinguish their mortgage on the property. This would incentivize banks to only start foreclosures they intend to complete. An Ohio state representative is advocating this idea by drafting a bill that would “require lenders or mortgage service companies to take foreclosed properties to sheriff sale within a certain time or see their mortgage lien erased.” Currently, homeowners who know about the unfinished foreclosure are sometimes afraid to fix the home because they worry that if the bank finds out about the increased value, they will finish the foreclosure. This motivates homeowners to stop repairing the home and abandon it. Under this approach, if banks fail to complete the foreclosures they start, those banks would lose their liens and mortgages, which would encourage homeowners to fix and sell the property without a lien, instead of abandoning their homes.

Second, banks should be required to get updated valuations of properties before they start foreclosures. Then they would know whether it will be worth proceeding with the foreclosure, or if they should not bother, because the value of the property is so low. Only two out of six lenders said they always obtained updated valuations before starting foreclosures. These updated valuations are necessary to minimize unfinished foreclosures. The banks updated

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20 Brandon Rehkopf, Saving the American Dream in Ohio: Crafting Incentives and Disincentives to Promote a Responsible Foreclosure Process, 43 U. Tol. L. Rev. 437, 467 (Winter 2012).
23 Id.
valuations should account for local taxes owed and fines for code violations.\textsuperscript{24} Realistic updated valuations are especially necessary before banks start foreclosures because “The decision making takes place three states away from the collateral, and they don’t have a clue about the condition of the property.”\textsuperscript{25}

Third, both banks and homeowners should both required to register vacant properties on centralized registries, so the various government agencies can identify these properties and know when they become vacant and can keep better track of the properties and their maintenance. This is already the case in some communities\textsuperscript{26} but this practice should become universal. Government offices should also coordinate and share the data on the vacant buildings among all the government entities to keep these lists updated and make enforcement more efficient.\textsuperscript{27} Better vacant building registries would help municipalities enforce maintenance before these properties decay too far to be salvageable.

Fourth, homeowners facing foreclosure should be encouraged to give lenders a deed in lieu of foreclosure, and banks should be encouraged to accept them. A deed in lieu of foreclosure saves banks time and money and they receive the property in better condition.\textsuperscript{28} Also borrowers are released from the debt and may not have to worry about a deficiency judgment.\textsuperscript{29} The main disadvantage to the lender is they receive the property with the junior liens attached, which

\textsuperscript{24} Id.
\textsuperscript{26} Id.
\textsuperscript{29} Id.
would be eliminated in a foreclosure.\textsuperscript{30} If more homeowners gave banks deeds in lieu of foreclosure when abandoning properties, it would reduce the problem of bank walkaways because the banks would become responsible for the properties much faster.

Fifth, banks should be responsible for upkeep when they start a foreclosure and the house becomes vacant. Several states and municipalities have been legislating solutions to hold banks responsible for property maintenance during foreclosures on vacant homes. For example Milwaukee passed an ordinance in 2009 that requires lenders to maintain properties during the foreclosure process.\textsuperscript{31} In 2009 New Jersey passed a bill which states that “if a property goes vacant at any time after filing a foreclosure, the foreclosing lender shall be responsible for code violations to the same extent as if they were the owner.”\textsuperscript{32} New York State also passed a similar law which makes banks responsible for maintenance only after receiving a foreclosure judgment. I will discuss this New York law in more detail later.

Local governments can use public nuisance laws to force banks to maintain vacant properties they have started foreclosing on. “Public nuisance is one of the oldest common law torts and grants people the right of ‘quiet enjoyment’. Such suits are brought on behalf of the public, alleging that the defendant caused an unreasonable interference with the health, safety and peace of comfort of the general public.”\textsuperscript{33} Several cities have sued banks for failing to upkeep houses in different stages of foreclosure under public nuisance law. For example,

\footnotesize{\textsuperscript{30} Id.}
Cleveland sued 21 banks under public nuisance law in 2008. In City of Cleveland v. Deutsche Bank the city alleged that it now has entire streets, blocks and neighborhoods of abandoned homes that have become eyesores, fire hazards, and targets for looters and criminals.\(^{34}\)

“Cleveland claimed the banks propagated ‘toxic sub-prime mortgages’ within its borders that resulted in widespread foreclosures.\(^{35}\) The city claimed damages including the costs of maintaining and demolishing foreclosed properties, and decreased tax revenues from depreciated property values of affected homes and surrounding real estate. This case was moved to Federal Court, and later dismissed by the U.S. District Court of Ohio for preemption.\(^{36}\)

**Local Efforts in to Mitigate Problems Caused by Walkaways**

Solving the problem of unfinished foreclosures is especially important in the Buffalo area. Buffalo has the highest rate of vacant housing in New York State and is among the top 5 cities in the United States in number of vacant properties.\(^{37}\) There were about 10,000 vacant properties in the City of Buffalo as of 2008,\(^{38}\) but only some of these are from unfinished foreclosures. The problem of unfinished foreclosures is particularly troublesome in Buffalo and other “Rust Belt” cities because of low property values.\(^{39}\)

There have been a few ways people in Buffalo have attempted to solve the problem of bank walkaways. The City of Buffalo has filed several separate Housing Court actions against

\(^{34}\) Id.


\(^{36}\) Id.


banks for failing to maintain houses they started foreclosing on. The City alleged that letters banks send to homeowners threatening to boot them from their houses show that the banks have asserted control over properties and are therefore responsible for maintaining the properties under property maintenance codes.

The City of Buffalo also started a large public nuisance action, similar to the Cleveland lawsuit, against banks to recoup some of the City’s losses for abandoned foreclosure homes that it demolished. In The City of Buffalo v. ABN AMRO Mortgage Group Inc., et al., the City sued 37 banks for failing to upkeep 57 vacant homes they received foreclosure judgments for, and some of which they actually took title to. The City of Buffalo alleges that the banks started foreclosure proceedings and once the homeowners abandoned their homes, “the lenders allowed the structures to fall into decay and cause all related issues such as lowering property values, criminal activities and sometimes arsons.” The City alleged that these abandoned foreclosed homes created a public nuisance and that the banks violated local ordinances requiring maintenance of the homes. This case did not include all of the abandoned foreclosures in the City of Buffalo. The City only sued some banks responsible for select homes that needed to be demolished because their condition was so bad. The City is seeking to recover for the costs of

40 Id.
41 Id.
42 Complaint, City of Buffalo v. ABN AMRO Mortgage Group Inc., et al., No. 2008002200 (N.Y. Sup. Ct. February 20, 2008)
43 High Profile Matters, City of Buffalo, Law Department, available at http://www.ci.buffalo.ny.us/Home/City_Departments/LawDepartment/HighProfileMatters.
abatement, including demolition, at an average cost of $16,000 per house.\textsuperscript{46} This case is still ongoing in New York State Supreme Court. Five of the banks sued in this case have already settled with the City of Buffalo.\textsuperscript{47} Claims against several of the banks were dismissed on summary judgment, some were dismissed with prejudice and some without prejudice, because the wrong banks were named and because of other issues.\textsuperscript{48} Claims against Bank of America and Citigroup were dismissed on summary judgment.\textsuperscript{49} The original complaint tried to recover against the defendants “jointly and severally” but the court did not allow that,\textsuperscript{50} and the City agreed to dismiss the counts seeking to hold the lenders jointly and severally liable.\textsuperscript{51} An amended complaint was then filed in 2009.\textsuperscript{52}

Two years after Buffalo sued ABN AMRO New York State passed a law requiring lenders to maintain abandoned properties in foreclosure after obtaining a foreclosure judgment. Real Property Actions and Proceedings Law § 1307 makes lenders responsible for maintaining properties that are vacant, or abandoned by the mortgage holder but occupied by a tenant, after

\textsuperscript{48} Order, City of Buffalo v. ABN AMRO Mortgage Group Inc., et al., No. 2008002200 (N.Y. Sup. Ct. Jan. 15, 2009)
\textsuperscript{50} Order, City of Buffalo v. ABN AMRO Mortgage Group Inc., et al., 08-02200, No. 2008002200 (N.Y. Sup. Ct. January 15, 2009)
obtaining a judgment of foreclosure and sale until the recording of a referees deed after a sale.\textsuperscript{53} This new law will help cities in New York sue banks in the future to force them to maintain these foreclosure homes, but only after the banks have won foreclosure judgments. If homes are already abandoned and in poor repair, banks might decide not obtain foreclosure judgments to avoid responsibility under this law. So while New York law is progress toward holding banks responsible, banks can still start foreclosures and not finish them without being responsible for maintenance. They can just avoid getting foreclosure judgments.

\textbf{Conclusion}

Overall bank walkaways have a devastating effect on certain areas and the people that live there. The legislation and lawsuits that have taken place to try to solve this problem are progress in the right direction, but they are not enough. Because it is a fairly recent phenomenon, the results of these new efforts are still unknown. Professionals and experts in this area need to do more research to find more effective and universal solutions to the bank walkaway problem.

\textsuperscript{53} McKinney’s R.P.A.P.L. § 1307 (McKinney 2009).