

Through the Back Door....Improper Vacancy Inspections

By Charles R. Gallagher III, Esquire¹

Banks, lenders and servicers have become more creative in their collection practices with regard to mortgage defaults and foreclosure litigation. Almost all mortgages include a provision known as the “preservation” which permits the lender to confirm whether the home is occupied for the purposes of securing their asset in the event of abandonment. A typical preservation states as follows:

Preservation, Maintenance and Protection of the Property and Inspections.

Lender or its agent may make reasonable entries upon and inspections of the property. If it has reasonable cause, Lender may inspect the interior of the improvements on the property. Lender shall give borrower notice at the time of or prior to such interior inspection specifying such reasonable cause.

Under another clause of the mortgage a lender may take possession of the property where the home is abandoned, which states as follows:

Protection of Lenders in the Property and Rights Under this Security Instrument

Securing the property includes, but is not limited to, entering the property to make repairs, change the locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions and have utilities turned on or off.

However, lenders are using this right for the purposes of intimidation and collection. Case in point, a client foreclosure contacted me on my cell phone on a Friday evening frantic after an encounter with a lender’s property inspector before the holiday season. The inspector came out to the home and spoke with our client stating, “So, how are you going to tell your kids about being kicked out of your home on Christmas?” The inspector then represented that the foreclosure sale was going to occur in two days and that they would have to find a new place to stay. These statements were all the more shocking given the fact that the bank had counsel, had notice that we represented the clients, and were actually late in responding to our discovery and our Counterclaim. The

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lender had only just filed the initial foreclosure Complaint and had not responded to our Motion to Dismiss.

Since the meeting was after the close of business on a Friday, the inspector thought his misrepresentations would not be revealed until Monday and a weekend of stress would intimidate our client. On speaking with the client we confirmed that no such sale existed and that the lender had they failed to respond to our pleadings. When I attempted to call the inspector on his cell phone that night, he did not answer or respond to my voicemail. After advising the bank's attorney of their inspector's actions, we referred the matter to the state attorney general for a fraud investigation.

So homeowners in foreclosure need to be vigilant and attentive for suspicious individuals lurking around their home and asking questions. Other clients have reported that the bank requested that they make an inspection of the home, taking far longer than needed to simply verify that the homeowner resides there. On these protracted "inspections" the inspector will engage the homeowner, sometimes playing "good cop," and misrepresenting the extent of the banks collection rights.

While the bank has a legitimate right to confirm occupancy, homeowners can fight back with a few simple tips. So that the right to a vacancy inspection is not triggered, we confirm in writing to the lender that our client resides in the property full time. However, in the event that an inspector comes to your door, we advise our clients to: (1) confirm they are represented by counsel, (2) provide the inspector our business card, (3) confirm that they reside in the home full time, (4) refrain from engaging the inspector in any substantive discussion. Armed with that knowledge, the lender's rights under the vacancy provision are terminated and the inspector no longer has a legitimate reason to remain on the property. In some rare instances, where the inspector becomes belligerent clients have had to contact law enforcement in order to issue a no trespass warning to the inspector.