PROTECTING CONSUMERS AND COMMUNITIES

PROPOSAL FOR STANDARDIZATION OF KEY DEFINITIONS, GUIDANCE, AND BEST PRACTICES FOR THE PRESERVATION AND MAINTENANCE OF VACANT & ABANDONED RESIDENTIAL PROPERTIES

JUNE 2017
Richard Cordray  
**Director**  
Consumer Financial Protection Bureau  
1625 Eye Street N.W.  
Washington, D.C. 20006  

Director Cordray,

With a membership comprising more than 80 percent of the mortgage servicing market, the National Mortgage Servicing Association (NMSA) is a nonpartisan organization driven by top-level executive representation from the nation’s leading mortgage servicing organizations for the purpose of effecting progress and change on the key challenges that face the mortgage servicing industry. By bringing together decision making executives from across the nation, the NMSA drives the conversation on shaping the American housing industry for the benefit of homeowners.

The concerns presented by the proliferation of vacant and abandoned residential properties are, at their core, consumer protection issues. These properties can potentially have a devastating effect on surrounding communities because they often become magnets for vandalism, squatting, and violent crime. In extreme cases, these properties have even led to the tragic loss of life. Surrounding properties can expect to experience a loss of value—a significant detriment to the primary source of wealth for many American families.

The NMSA stands ready to partner with all federal stakeholders in the development of common-sense solutions that alleviate the tremendous strain that vacant and abandoned properties place on our communities. Attached you will find a suggested framework to begin to address the problem. We appreciate the opportunity to continue the productive dialogue with the Consumer Financial Protection Bureau and look forward to working together towards a solution that protects the interests of the mortgage servicing industry and the consumers we serve.

Sincerely,

Ed Delgado  
**President & CEO**  
The Five Star Institute
EXECUTIVE SUMMARY

A. OVERVIEW

Vacant and abandoned residential properties hurt communities and families because these properties are the precursors for blight in a community. A vacant and abandoned property generally must go through exactly the same and often lengthy foreclosure process as a home that remains occupied by a consumer. The opportunity to cure the default, along with other timeline requirements must be met in order for the mortgage servicer to complete a lawful foreclosure.

The result is a period of vacancy that increases the likelihood that the property will fall into a state of disrepair, which has a demonstrable and detrimental effect on the consumer in the form of lower property values. Lower property values impact not only the consumer facing financial hardship, but also their neighbors and investors who may have an interest in loans secured by properties in the community. Current research estimates that property values of homes within a 1/8 mile radius of an abandoned property are diminished between one and eight percent when a property is abandoned. Assuming a median home value of $200,000, this depreciation can have an impact as high as $16,000 in lost value per household.

Research also shows that extended periods of vacancy encourage vandalism, squatting, and violent crime. The foreclosure process itself can lead to significant increases in violent crime rates; there are estimates that the foreclosure process leads to roughly a 19-percent increase in the number of reported crimes per year within 250 feet of a foreclosed home. Vacant and abandoned properties may very well play a large role in this trend.

A recently published report stated that a vacant and abandoned property causes losses of approximately $150,000 in the first year from lower property values ($133,000), an increase in crimes from theft and vandalism ($14,000), and costs incurred by the community’s fire and law enforcement authorities ($1,500), which are further exacerbated when the property is damaged by fire ($30,000). These losses are compounded in subsequent years while the property remains vacant and abandoned. These losses are driven by the loan being in foreclosure but also by the occupancy status of the property.

---


Scenes such as those recently depicted below are not uncommon of what develops as a result of vacant and abandoned homes. Policies to prevent such occurrences are urgently needed.

**Conditions that put consumers, neighbors, and the community at risk:**

- Unsecured pools and water features
- Broken or unsecured openings, doors or jambs, and windows and unsecured outbuildings
- Unkempt yards with growth exceeding six inches, including invasive or noxious weeds
- Overgrown shrubs or trees blocking walkways or sidewalks
- Damage to the roof that leads to water intrusion or the prolonged tarping of a roof that needs repairs
- Theft and vandalism of items on the exterior — air conditioning units, siding, gutters, and shutters
- Exterior trash and debris, including discarded personal property and vehicles
- Plywood or metal boarding
- Abandoned animals
Furthermore, individual state or local remedies are not effectively combatting the problem. While in some states there may be codification for expedited foreclosures, there is a disconnect between state and local governments that prevents clear lines of communication and a mutual understanding of the depth and breadth of the issue, thereby causing uneven treatment and disparate results. In the end, consumers and the communities are the ones who suffer.

The time for a uniform national standard on the identification and treatment of vacant and abandoned properties is now. Thereafter, expediting the disposition of these vacant and abandoned properties through the default lifecycle is critical to returning these properties to new property owners and homeowners for the benefit of the consumer, communities, servicers, and investors.

B. OPPORTUNITIES AND SOLUTIONS

Through the standardization of servicing rules and best practices concerning the treatment of vacant and abandoned properties, regulators, investors, and the mortgage servicing industry have a unique opportunity to reduce the complexity in servicing these properties and modernize the outdated guidance and policies and to better serve the consumer through the articulation of a consistent and unambiguous policy. What follows is a description of six specific problems and issues, and the corresponding policy recommendations that would better protect and provide benefits to the consumer and community. For an in-depth discussion of NMSA’s proposed terms, please refer to content in the Appendix.

OPPORTUNITY #1 – DEFINITION OF KEY TERMS

There is no common or defined terms for the occupancy status of a residential property (e.g., occupied, vacant, abandoned, and unoccupied) provided in the servicing guidance from regulators or investors, and some terms used by the regulators or investors may not align with state and local definitions.

NMSA Recommendation
Establish a consensus across the industry for the definition of commonly used terms that describe the occupancy status of a loan in default, including those terms that describe property conditions of a vacant and abandoned property that requires remediation by the servicer and regulator or investor.

Consumer Benefit
Common terms and definitions will reduce the ambiguity and misunderstandings that may arise between stakeholders and would further improve how servicing guidance is applied to a property. Aligning such common terms will encourage the industry to engage communities, courts, and public officials to find common ground and create mutual benefits for the industry and consumer. Interagency agreement on these terms will also mitigate the risk of an erroneous assessment of vacancy for a property that is periodically unoccupied or seasonally occupied, or where the consumer’s financial hardship may make the visual determination of vacancy difficult for the servicer.

When there is a vacant and abandoned property in the neighborhood, consumers and communities will benefit when a servicer is promptly notified when the property has been vacated by an occupant, thereby allowing the servicer to secure, preserve, and protect the property from any potential deterioration in value.
OPPORTUNITY #2 – THE MORTGAGE SECURITY INSTRUMENT

Ambiguity exists regarding the rights, obligations, and expectations for the consumer, servicer, and regulator or investor under the existing mortgage security instruments, including the remediation of any language that may be contrary to existing lien theory laws.

NMSA Recommendation

Require the servicer to provide a separate written notification after default to the consumer that encourages the consumer to remain in the property until the default is resolved or cured, and remind the consumer of their obligation to maintain and protect the property, including compliance with any local housing and building code requirements or notices, and their obligation to budget and pay any outstanding bills, including utilities, municipal services, or homeowners’ association dues or assessments.

Under the mortgage security instrument terms and written correspondence at critical points in the collection and default process, remind the consumer to notify the servicer within thirty calendar days of their decision to vacate and abandon the property, or notify the servicer if the property will remain unoccupied, uninsured, or without utilities for a period of more than fifteen consecutive days while the consumer’s payments are delinquent.

A property that becomes vacant and abandoned, especially when doors and windows are boarded up, sends a stark, unequivocal signal to the neighbors and communities that the property will remain vacant for some time. Finding the right balance between a servicer being deemed a mortgagee in possession and the rights and protections afforded to the consumer who has vacated and abandoned the property will be a critical driver to mitigate the losses and impact to the consumer and the community, including those neighbors who may have an existing loan with the investor, are facing their own financial hardship from lower property values, or are seeking better financial terms in their home loan financing needs. Investors should quickly work to amend existing mortgage security instruments and align the terms with any existing lien theory laws or rulings, including the addition of a defined term for vacant and abandoned property to the mortgage security instrument and notifications by the consumer should they vacate and abandon their home.

Consumer Benefit

Taking these simple steps removes any ambiguity and confusion for the consumer regarding their desire to remain in their home while facing a financial hardship and throughout the default lifecycle. It also offers the servicer and consumer another opportunity to discuss their intentions and engage in potential remedies regarding the consumer’s financial hardship.

Furthermore, these steps encourage the consumer to notify the servicer if they must vacate the property because of their financial hardship, allowing them to perhaps avoid other penalties if the property is allowed to fall into disrepair. Moreover, the consumer may also benefit from situations when the value of the property could create an unexpected tax liability when the fair market value of the property is adversely impacted due to deteriorating property conditions, deferred maintenance, theft, and vandalism that are often encountered with a vacant and abandoned property.
**OPPORTUNITY #3 – PROPERTY INSPECTION REPORT**

Differences in the investor requirements and content of the property inspection report create fulfillment inefficiencies for the third-party service provider and prevent a common standard across the industry for assessing the condition of the property or calculating a change in the property’s condition.

**NMSA Recommendation**

A common inspection report will improve the quality of the report, reduce the training needs for each inspector, encourage the adoption of mobile applications, and establish common industry standards. A derivative of Fannie Mae’s property inspection requirements (Form 30) and format should be utilized to consistently capture the discrete property condition attributes by all servicers and property inspection vendors. Regulators, investors, servicers, and property inspection vendors should collaborate to create a standard methodology and approach for assessing the condition of a property.

**Consumer Benefit**

The data and information captured in the recommended property inspection report broadly support the criteria used by the servicer, and the property preservation vendor to efficiently and effectively establish the early indicators of vacancy through a combination of property attributes and visual observations, and may reduce the time frames required to deem a property vacant, unoccupied, or abandoned.

The information derived from a common property inspection report, when combined with other loan information, will enhance the capabilities of the investor, servicer, and the property preservation vendor to effectively identify and remediate a material change (e.g., new or previously unreported theft or vandalism issue) in property condition or occupancy status. This approach may also help identify when any continued deferred maintenance at the property may exacerbate conditions that lead to claims of blight or neglect. This information also has the potential to demonstrate through the persistency of property conditions observed that the property could reasonably be deemed vacant and abandoned, enabling the servicer to quickly initiate processes and take actions in securing, preserving, and maintaining the property.

A common inspection form will encourage and broaden the adoption of mobile technology used to complete the inspection and demonstrate proof of service, while simultaneously improving the efficiency of the inspection service and the quality of the results. It will also provide near real-time information to the property preservation vendor and servicer to expedite the remediation of any emergent or urgent property conditions observed at the property.

**OPPORTUNITY #4 – PREMATURE INSPECTION OF PROPERTIES**

Inspecting a property when the consumer is delinquent but not yet in default (e.g., less than 60 days past due) usually yields very few tangible benefits and creates unnecessary complexity and costs, especially when the servicer and consumer should be engaged in resolving the delinquency and avoiding any future default.

**NMSA Recommendation**

Unless the servicer has been notified that the consumer has vacated the property, the servicer should commence the initial inspection of the property only after the loan has become 60 days past due and complete the initial inspection on or before the 75th day past due. Thereafter, while the loan remains delinquent, subsequent inspections should be completed every 25 to 35 calendar days after the previously completed inspection date, or more frequently as required by any authority having jurisdiction over the property.

**Consumer Benefit**

The recommendation reduces unnecessary property inspection expenses for all parties when the consumer is not seriously delinquent, or when there is a very low risk of an adverse material change in occupancy status, or when the servicer is likely at the highest point of engagement with the consumer for the resolution of the delinquency or impending default.
The use of modern mobile application technology and near real-time inspection order fulfillment will avoid unnecessary engagement with the consumer arising from a property inspection, reduce consumer complaints and dissatisfaction with unnecessary inspections, and improve the consumer’s experience with the servicer during any collection or home preservation engagements.

The cost of securing a property inspection provides the servicer and the investor with tangible benefits, especially if the property is reported as newly vacant and abandoned or the property conditions have material changed from the last inspection. When the servicer and investor are able to act quickly to address these conditions, the benefits from their actions may moderate or reduce the adverse impact to the consumer, the neighborhood, and the community. It is important to note these expenses and benefits from a property inspection should be ultimately borne by the investor given that these services are essential to preserving and protecting the value of the property.

**OPPORTUNITY #5 – SECURING TIME FRAMES**

The ideal time frame for securing the property prescribed by each investor may not provide sufficient time to mitigate the risk in undertaking this first important step when a property is believed to be vacant. Servicers are routinely confronted with claims of “mortgagee neglect” when a property is not secured in a prescribed time frame without the investor fully considering other factors or the financial hardship facing the consumer. Worse yet, when undertaken with haste to perhaps avoid a claim or allegation of mortgagee neglect, a servicer’s action to secure a consumer’s home when occupied only creates further hardship and unnecessary claims, litigation, or media attention for the servicer in their attempt to meet the expectations of the investor.

**NMSA Recommendation**

Investors, regulators, and servicers should jointly adopt or endorse a set of best practices to secure a consumer’s property when a loan is seriously delinquent and the consumer or occupants have vacated or abandoned the property. The investor and servicers should also work together to reach agreements as to the reasonable time frames to inspect and research the occupancy status of the property, and appropriately engage the consumer or any occupants who may be residing at the property prior to securing the property.

**Consumer Benefit**

Establishing a timeline with reasonable but clear-cut deadlines, obligations, and expectations for the disposition of a vacant and abandoned property will ultimately reduce the risk and minimize unintended consequences of prematurely securing a property and financial hardship for the consumer.

**OPPORTUNITY #6 – DIFFERENCES IN SERVICER GUIDANCE FOR INITIAL SERVICES**

Differences exist in each investor’s servicing guidance and requirements for a newly vacant and abandoned property, including how the property should be secured and the concurrent work and services required to fully address any property conditions that are in disrepair, and the subsequent preservation and maintenance of the property.

**NMSA Recommendation**

Reduce or eliminate the differences in regulator or investor expectations and guidance in the initial services to secure, winterize, preserve, and maintain a newly vacant and abandoned property, as well as the ongoing preservation and maintenance of the property until the property is liquidated or conveyed to the investor.

**Consumer Benefit**

Simplifying and modernizing investor guidance and expectations will reduce the allegations of blight from claims of servicer or investor neglect. Clearly positioning and communicating what are and will be the usual and customary preservation and maintenance practices after a property becomes vacant and abandoned will reduce claims of blight and neglect, including a better understanding of the roles and responsibilities of the investor and servicer by the consumer, and the elected and community officials who have authority or jurisdiction over the property.
This approach also simplifies how a property-preservation service provider will maintain the property—a single, consistent, and well-defined procedure, aligned across all investors, which in turn moderates or reduces the stigma on neighboring properties while the property remains vacant and abandoned.

The recovery of the residential housing market is well underway but there are many lessons learned from the last eight years. These recommendations and benefits specifically address vacant and abandoned properties but addressing the foreclosure inventory—particularly those loans secured by vacant and abandoned property—must become a key part of this important work. It is clear that vacant and abandoned properties are impeding a full economic recovery and neighborhood revitalization efforts, especially in neighborhoods and communities that have not experienced the rebound in housing enjoyed today by many communities.

Through the right actions, at the right time, and in the right way, the servicer and the investor may find tangible benefits in reducing the stigma surrounding vacant properties and the associated reduction in real estate tax revenues and property values, moderate or reduce the holding periods to sell a property, and where the consumer may be faced with unexpected consequences from trailing income tax liabilities, fines or penalties incurred after losing their home to a foreclosure, short sale, or deed in lieu.

To address this problem, state legislators and courts across the country are considering expedited foreclosure legislation as a promising solution—accelerating the adoption of legislation and court practices to expedite foreclosure actions on these vacant and abandoned properties is a critical success factor in these NMSA recommendations.

NMSA seeks to also lend its voice to this process, along with the work of our membership in the local and state mortgage and banking associations that have formulated and vetted proposed legislation as a starting point for our state legislators and policymakers. Engaging the right stakeholders to advance the concepts, principals, policies, rules, and regulations will aid legislators and officials from all backgrounds in crafting the right legislation, rules, or regulations that respect the rights of homeowners, while allowing vacant and abandoned properties to be rehabilitated for the benefit of communities, potential future homeowners, and the housing economy is critical in this discussion and our work.

C. CONCLUSION

The policies and practices described in this document represent commercially reasonable and practical time frames for the industry. These practices will lead to a material reduction in the frequency and severity of inquiries and complaints related to the premature securing of a property and will foster significant goodwill and satisfaction with our customers, consumer advocates, regulators, and elected officials by balancing the needs of the servicers, regulators, investors, communities, and the rights of consumers, property owners, or occupants.

While this document is tailored with a special emphasis on policy standardization between HUD and the GSEs, it also provides further background on this topic and rationale for these recommendations, including the benefits and value of the risk mitigation from a policy that carefully considers how a servicer deems a property vacant and proceeds with the securing of the property. In effect, these practices as proposed can be applied to the servicing of any vacant or abandoned property in the marketplace.
APPENDIX

ILLUSTRATIVE PROPERTY INSPECTION, SECURING, PRESERVATION, AND MAINTENANCE GUIDANCE

A commonsense policy for the treatment of vacant and abandoned properties would consist of uniform guidelines in two key areas: (a) the determination of occupancy status of the property and (b) securing a property that is deemed to be vacant and abandoned. The determination of the occupancy status without creating unnecessary risk for the occupant, property owner, servicer, and community is the critical starting point. Thereafter, a sound policy will provide consistent guidelines for appropriately securing the property; pursue the most prudent route for the preservation, maintenance, and liquidation of the property that appropriately balances the needs of all stakeholders; and ensure that the property becomes once again reoccupied in the most appropriate manner to support and meet the homeownership needs and standards of the community.

A policy narrowly focused on prescribed strict securing time frames that do not adequately balance the interests of the regulator or investor, the consumer (mortgagor) or occupant, the community, consumer advocates, and the servicer increases the risk and liability from claims of prematurely securing an occupied property. These challenges, issues, and problems only further compromise the industry’s effectiveness in pursuing our mutual mission to expand affordable homeownership, improve consumer satisfaction, and alleviate blight in communities. For these reasons, NMSA recommends that regulators carefully consider the risk-mitigation needs of the industry in today’s volatile environment when issuing any guidance or policy on this topic. With the foregoing in mind, NMSA recommends the following best practices and time frames for review and consideration in any forthcoming policy or servicing practice and guidance.

A. CONDUCTING PROPERTY INSPECTIONS

The property inspection order and inspection of a property shall take place as soon as practical after taking reasonable and appropriate actions, steps, analysis, or research to assess the following:

» The last known loan and occupancy status, including factors or servicing attributes that would be used to suppress the property inspection order in the servicer’s servicing system of record;

» Any applicable or reasonable regulator or investor requirements or expectations necessary to conduct the property inspection;

» The likelihood that the consumer’s delinquency will not become a default;

» Any known and relevant engagement with the mortgagor or occupants that would be necessary to deem the property occupied, vacant, unoccupied, or abandoned; and

» Subsequent actions to post the property, and to peacefully enter and secure an unoccupied or abandoned property in a reasonable and practical time frame will fulfill the servicer’s responsibility for a visual property inspection in determining whether the property is occupied, vacant, unoccupied, or abandoned, and the timely securing of the property thereafter.

Furthermore, the obligations, roles, and responsibilities in performing the property inspection or establishing the occupancy status of a property or the securing of the property under this policy shall not be construed through any security instrument provision, terms, or other provisions under any regulator or investor servicing guideline to deem the servicer to be a property owner prior to a completed foreclosure judgment, nor shall the servicer in their actions be deemed or have responsibility as a landlord, leaseholder, or to hold other interests in the property except to the extent of the lien securing the note.

When the property inspection results disclose conditions that would have an obvious material and detrimental impact to the value of the property or repairs arising from urgent or emergent conditions, then the servicer may remind the mortgagor of their obligation to maintain the property as described in the mortgage security agreement. Although the servicer may take any action under the applicable sections of the mortgage security agreement, including the order for a property inspection, the servicer does not have to do so and it is not under any duty or obligation to do so, and it is the policy that the servicer shall not be responsible or liable for not taking any action authorized under the applicable sections of the mortgage security agreement.
The initial inspection of the property may be ordered at any time after the loan payment becomes delinquent, provided that the completed inspection shall meet the expectations or requirements of this policy or the regulator or investor guidelines, or at other times as deemed reasonable and appropriate under this policy. An initial inspection will be an inspection of a property that has not been previously inspected in the previous 25 to 35 calendar day period.

The subsequent inspection of the property will continue until the loan is no longer delinquent or subject to any applicable criteria or logic for the inspection of the property, or the property is sold or conveyed to a third party or the regulator or investor or servicer, or has been suppressed given a change in loan status, and each subsequent property inspection shall generally be completed every 25 to 35 calendar days after the previously completed inspection, unless a known emergent condition exists, or specific regulator or investor servicing guidelines or local ordinances provide or require otherwise.

When the regulator or investor guidelines or a servicing agreement are not explicit regarding the time frames for the initial or subsequent property inspection, the provisions of this policy, including the decision or logic for inspection orders or suppression of any property inspection order, shall generally be aligned with the usual and customary practices for loans serviced and owned by the servicer.

Without the provisions to suppress a property inspection under this policy, then the servicer may be unnecessarily exposed to financial, legal, regulatory, safety, and reputational risk. For example, if the servicer ordered its service provider to complete an exterior or interior inspection of a property where the mortgagor has subsequently filed a bankruptcy petition, such actions may violate the automatic stay and subject servicer or its service provider to legal and economic sanctions.

Similarly, if the mortgagor (or the occupants) has demanded that the servicer discontinue its inspection activity at his or her property or has otherwise communicated threats of violence, there is a serious risk that the service provider’s health and safety may be at risk if the property inspection was attempted without adequate consideration. As soon as practical after the suppression conditions (e.g., a material change in the loan status) are no longer present or relevant, the initial and subsequent property inspections may be resumed if the property remains delinquent and serviced by the servicer.

Under this policy, the suppression logic for when an property inspection would not be ordered or the criteria for ordering a property inspection shall be developed, documented, maintained, and controlled in accordance with the usual and customary written documentation and standards for similar servicing activities and processes, and shall not be a requirement of this policy to be contained in the policy.

**B. DETERMINING THE OCCUPANCY STATUS OF A PROPERTY**

NMSA believes that a commercially reasonable time frame for establishing the occupancy status and securing a property should be driven by the servicer or the mortgagee assessing the many factors that influence the determination of occupancy status of the property.

An exterior visual inspection (which may include a door knock to see if anyone is residing at the property for the sole purpose of establishing the occupancy) of the property will be ordered by the servicer after a loan becomes delinquent, unless the inspection is suppressed due to the unique status of the loan.

The servicer will continue to order subsequent and recurring inspections to determine the occupancy status of the property, to monitor and assess the observable conditions of the property, and to initiate actions based on any change in the loan or occupancy status of the property that is deemed to be vacant, abandoned, or unoccupied, unless otherwise prohibited by law or regulation. The occupancy status of the property would include occupancy by the mortgagor, the mortgagor’s tenant, or any occupant unknown to servicer or the mortgagor.

An authorized third-party service provider may be delegated the authority to order and perform more frequent property inspections based on any applicable provisions of a local ordinance or requirements communicated to the third-party service provider by the servicer.
The policy for conducting a property inspection may also include the exterior visual inspection of the property, if the servicer has reasonable information that the value of a property may be in jeopardy because of its observable condition. This policy includes but is not limited to the impact from a local disaster, material-deferred maintenance by the mortgagor, obvious and conspicuous economic obsolescence, an event that would be covered by hazard or flood insurance, or relevant statements by the mortgagor regarding the property condition or the occupancy status, or the actual receipt of a building code violation or similar notice by the servicer and the mortgagor.

An interior visual inspection may be ordered after the property has been deemed unoccupied and abandoned and secured by the servicer, unless the inspection is suppressed due to the status of the loan or a change in the occupancy status. This inspection includes the visual inspection of interior rooms, basements, attics, and crawl spaces, including an assessment of any change in occupancy (e.g., the property has recently been rented out or perhaps is now reoccupied after being previously secured by the servicer).

Under this policy and prior to deeming the property vacant and securing the property, a servicer would seek and solicit a response from the consumer (mortgagor), any authorized third party, the property owner, or the occupants of the property through the “first time vacant” notice that has been posted (or mailed to) the property. The time frames for posting the “first time vacant” notice at a presumed vacant or unoccupied property will not be less than 10 calendar days after the property could be reasonably deemed vacant from the most recent property inspection report or other information available to the servicers. Only after the expiration of the “first time vacant” notice, and after considering any engagement with an interested party or the current loan status, would the securing of the property then be deemed reasonable and practical.

Under this policy, the servicer and its authorized third-party service providers may make reasonable entry to the property in order to inspect the property. To the extent allowable under the terms of the mortgage security instrument or applicable law, if servicer has reasonable cause, it retains the right but not the obligation to inspect the interior of improvements on the property, and provided that servicer has given the mortgagor or the occupant notice at the time of or prior to such an interior inspection specifying such reasonable cause, or to secure, preserve, and protect the property (e.g., arising from emergent or urgent conditions as described below), if the property is deemed to be vacant and abandoned.

Further, the terms “vacant, unoccupied, and abandoned” are not synonymous in the context of a property inspection, local ordinances, and state statutes, and the following terms will be generally applied as it relates to a property inspection and the servicer’s order for a property inspection, or the decision to secure the property:

- **Occupied** shall describe a property where and when a person is deemed to be persistently residing at the property, and such persons may include but are not limited to the mortgagor, the mortgagor’s tenants or occupants known or unknown by servicer or the mortgagor, whether lawfully authorized or not by the mortgagor (e.g., squatters) to reside at the property, or the occupancy is granted by a court order or authority having jurisdiction over the property;
- **Unoccupied** denotes the lack of habitual presence of the mortgagor, a tenant, or occupants at the property, including evidence through a notice posted or order given by an authority having jurisdiction over the property that states the property is uninhabitable or should not be occupied;
- **Vacant** shall describe a property that is materially empty or devoid of personal property, excluding any interior or exterior trash, debris, or garbage, or any remaining personal property that has de minimis monetary value;
- **Abandoned** denotes the mortgagor, a tenant, or occupants who through their actions or statements are no longer residing at the property, and have generally given up claims, possession, and rights; and, given no designation as to the possessor or successors in interest to the property, including but not limited to the mortgagor’s failure to:
  - Maintain the utilities (e.g., electricity, natural gas, oil, or water services) that would be reasonably required to render the property fit for human habitation;
  - Pay real estate taxes or property insurance or to be in default of any such payments, including homeowners’ association assessments or dues; or
• Take the appropriate and timely remediation of building-code violations or conditions of health and safety observed at the property, including but not limited to any condemnation or demolition notice by an authority having jurisdiction over the property that remains persistent and without any known or actual remediation to cure such conditions by the property owner or the mortgagor; or
• When the authority having jurisdiction has prescribed the criteria, specific indicia or other requirements for the servicer or official to deem the property to be vacant or abandoned, including when such conditions are associated with an expedited foreclosure proceeding or action provided by statute or court ruling.

C. ADDITIONAL CLARIFYING DEFINITIONS CRITICAL TO A VACANT AND ABANDONED PROPERTY

Emergent Property Conditions represent an immediate threat to the life or health of the property owner, occupants, neighbors, or any Authority Having Jurisdiction (“AHJ”) who may have to enter the property; or, property conditions created from a material hazard peril (e.g., fire, flood, earthquake, hurricane, tornado, hail, environmental contamination, structural failure, landslide or earth movement, or explosion). Emergent property conditions must be immediately remediated to prevent the situation from worsening, and in some conditions, if the further deterioration of property conditions cannot be prevented and only be palliated by remediation at some later time (e.g., demolition of the property after fire damage), such conditions are generally covered under a property owners’ hazard insurance policy or a servicer/lender-placed insurance policy. The remediation of emergent conditions could be performed by the property owner, or an AHJ, or the servicer, if authorized by the property owner or AHJ, and provided that any such actions are terms defined in the mortgage security agreement.

Urgent Property Conditions represent no immediate threat or danger to life or health of the property owner, occupants, neighbors, or any AHJ who may have to enter the property, and are not associated with a material hazard peril, but may arise from neglect by the mortgagor or occupants, illegal conversions or remodeling of the property, violations of building codes, or depreciation, deferred maintenance, or economic obsolescence of the property or any improvements. An urgent property condition is a state in which there is immediate need for action, a critical situation of haste, or needs prompt attention for fear it may worsen; and further, when the AHJ may impose a fine, penalty, assessment, or lien for the property owner’s failure to remediate the condition in a timely manner.

D. SECURING THE VACANT AND ABANDONED PROPERTY

NMSA believes that the following policies and practices represent the commercially reasonable and practical time frames and best practices for the industry, and serve the needs and expectations of the consumer (mortgagor), any occupants of the property, and the community or authorities having jurisdiction over the property.

The securing of a vacant property or units in a property should take place as soon as is practical after the servicer has taken commercially reasonable and appropriate actions to assess any relevant engagement with the mortgagor or occupants that would be necessary to deem the property vacant, unoccupied, and abandoned by the mortgagor or the occupants. Further, the servicer’s subsequent actions to post signage at the property and peacefully enter and secure a vacant, unoccupied, and abandoned property in a reasonable and practical time frame should fulfill the servicer’s responsibility for a visual inspection.

» A pre-sale (prior to the foreclosure sale date) property should be secured within 15 calendar days following the expiration of a “first time vacant” notification and/or posting of the property, and the servicer deems the property vacant. Such postings or notices will be made for a period of not less than 10 calendar days (the “expiration period”) given the jurisdiction or other factors (e.g., difference between mailing address and property address, last known contact with customer, the exterior condition of the property, the time of year or weather conditions, the risk of claims from trespassing, theft, or vandalism, etc.).

» A pre-sale property may not be deemed “first time vacant” if relevant factors would preclude the securing of the property. Such factors would include a cease and desist order or demand by the mortgagor or occupant, a posted “No Trespassing” notice, any customer contact and confirmation of their responsibilities to maintain the property.
any active bankruptcy action, any protections afforded under Servicemembers Civil Relief Act, or indications that the occupants or the mortgagor are in the process of relocating or vacating the property or reoccupying the property, or a court ruling establishing occupancy status of the property. In these cases, these properties will not be posted with the “first time vacant” notice, but will be periodically monitored at least once every 35 calendar days by the servicer to ascertain the occupancy status through any change in loan status or customer engagement, any needed preservation or maintenance of the property based on the most recent property inspection report, or to make a decision to start the securing process based on emergent conditions.

» A post-sale (after the foreclosure sale date, including any applicable redemption or confirmation periods) property should be secured no later than 10 calendar days after the property becoming “first time vacant,” if such vacancy was created by a court-ordered lockout or following relocation of the occupant in conjunction with financial assistance. This shortened period would be subject to any reasonable accommodations given to the occupants to recover personal property, compliance with any property registration ordinances, and the allowances for appropriate disposition of personal property that may remain at the property.

» A post-sale property that becomes vacant while subject to an active eviction proceeding or after previously deemed to be occupied should be secured within 15 calendar days following the expiration period of a “first time vacant” notification and posting of the property. Such notice or posting will be made for a period of not less than 10 calendar days (the “expiration period”) given the jurisdiction or other factors, including but not limited to the occupant’s response to any eviction proceeding, or other factors (e.g., last date of engagement with customer or occupant; exterior condition of the property; time of year or adverse weather conditions; the risk claims and allegations of trespassing, theft, and vandalism; or the need to pursue a personal property eviction prior to securing the property).

The time frames necessary to undertake these reviews take into account a servicer’s capacity to reasonably review and evaluate each securing decision. Each property and loan presents many unique factors and conditions that require reasoned judgment and may also require outreach to the vendor or internal or external entities who may be engaged with the customer or the occupant of the property. Moreover, time frames may be impacted by external factors, such as when a vendor must identify and assign a subcontractor with the appropriate personal and professional qualifications to assess and monitor the occupancy status of the property and complete the securing work, or whether a situation requires the presence of a law enforcement officer or an independent third party to avoid issues or claims of trespass, conversion, theft, or vandalism.

Securing a property should take place as soon as commercially reasonable and practical, while taking into account the inherent risk of prematurely securing a property that is presumed to be vacant solely from visual property inspection results. The risk factors that should be considered include, but are not limited to:

» Compliance with any applicable state or local ordinances;
» Any relevant and recent engagement with the customer or occupant or an authorized third party, including any relevant change in loan status that would alter the decision to inspect, secure, preserve, or maintain the property;
» The property type and whether access has been granted or authorization has been given to secure the property, including time to reasonably seek or solicit any response from our customer, an authorized third party, successors in interest, or the occupants of the property by the mortgagor or other parties (e.g., homeowners’ association) who may have a controlling interest in the property;
» Seasonal or weather considerations;
» Any known emergent or urgent conditions at the property; and
» The potential risk from allegations or claims of conversion, trespassing, theft, or vandalism by the occupant or the mortgagor, including claims of taking “possession” of the property prior to a foreclosure judgment or court order.
E. INITIAL PRESERVATION AND MAINTENANCE OF A NEWLY VACANT AND ABANDONED PROPERTY

Servicer should complete the following services within fifteen (15) calendar days from the date the property is deemed to be vacant and abandoned:

» Rekey or replace the lock set for one secondary or primary door to the residence or each unit, leaving at least one other door secured with the original lock set or key when practical;
» Control access to the secured entrance through the use of a unique key code or a lockbox placed at the door;
» Post a notice stating the property has been secured and provide a point of contact for access or escalation of any property condition issues;
» Secure any detached structures that could become an attractive nuisance, including the garage door;
» Assess the need for any utility services required to preserve and maintain the property;
» Board openings other than doors and windows where appropriate; use polycarbonate clear boarding (rather than plywood or metal boarding) when appropriate to secure windows or reglaze, repair, or replace any windows or doors that cannot be secured, including the repair of exterior doors and jambs that have been vandalized; and
» Secure, cover, and initially treat any pool, hot tub, spa, or water feature that could become an attractive nuisance or infested with insects or vermin.

Remediate exterior property conditions through any of the applicable services:

» Removal of exterior trash and debris, including any obvious hazard materials;
» Relocation of personal property to the backyard, garage or outbuildings;
» Perform any initial applicable seasonal maintenance;
» Repair defective or leaking roof, chimney caps, flashing, fascia and soffit areas;
» Clean gutters and repair existing downspouts;
» Repair damage of pre-existing handrails, steps, decks and railings; and
» Remove or cover any graffiti.

Remediate interior property conditions through any of the applicable services:

» Removal of trash and debris, including dead animals;
» Removal of any spoiled food or waste, and clean the refrigerator and freezer;
» Clean toilets and bathroom fixtures;
» Complete any appropriate winterization services (regardless of season) to prevent any future freeze damage and pressure test the water system or water based heating systems;
» Cap exposed wires, or utility, gas, water, or sewer lines;
» Assess the need for any pest extermination services;
» Repair, replace or plug-in any sump pump located in a basement or crawl space;
» Assess and remediate the source of any moisture or accumulation of water or leaks, including any discoloration that would indicate the presence of mold or mildew; and
» Install new or provide power to any existing smoke detectors.

During the initial inspection of a newly secured vacant and abandoned property, the servicer or its service provider will use date-stamped photographs, labels, or notations in the completed work order to document the presence of any property conditions arising from a fire, flood, earthquake, hurricane, tornado, boiler explosion, or neglect and deferred maintenance by the consumer or occupants; any actual or pre-existing conditions that could reasonably lead to a violation of a building, health, or safety code; posted notices by an authority having jurisdiction over the property; any personal property found on the interior or exterior of the property; and any deferred maintenance from the mortgagor or occupant neglect, including unfinished renovations, repairs, or restorations of the property.
F. ONGOING PRESERVATION AND MAINTENANCE OF THE VACANT AND ABANDONED PROPERTY

The servicer or its service providers should continue to monitor, preserve, maintain, and protect the property throughout the default life cycle or the conveyance of the property to the regulator or the investor or new owner. These services include, but are not limited to the following:

» Perform any of the usual and customary seasonable maintenance, including more frequent (or less) services as required by the community, weather conditions, or property features;

» Monitor the property for any new building code violations;

» Routinely inspect the interior of the property to identify any emergent or urgent property conditions, including any hazard events;

» Monitor the property for any change in occupancy status;

» Through the posting of a notice at the property, capture, triage, remediate, and document any property condition inquiries, complaints, or code violations at the property; and

» Provide reasonable access to the consumer (property owner), appraisers, real estate professionals, inspectors, or authorities having jurisdiction over the property to conduct any evaluations or assessments of the property conditions.