§ 1308. Inspecting, securing and maintaining vacant and abandoned residential real property. Notwithstanding any other provision of law to the contrary, the following subdivisions of this section shall only apply to vacant and abandoned one to four family residential real property, and any duties and responsibilities so prescribed by this section shall only apply to the first lien mortgage holder. Vacant and abandoned residential real property shall be defined pursuant to section thirteen hundred nine of this article. For each calendar year this section shall not apply to state or federally chartered banks, savings banks, savings and loan associations, or credit unions which: (1) originate, own, service and maintain their mortgages or a portion thereof; and (2) have less than three-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year. For any state or federally chartered banks, savings banks, savings and loan associations, or credit unions which originate, own, service and maintain between three-tenths of one percent and five-tenths of one percent of the total loans in the state which they either originate, own, service, or maintain for the calendar year ending December thirty-first of the calendar year ending two years prior to the current calendar year, the application of this section shall be prospective only.

1. Subject to bankruptcy filings, cease and desist orders, threats of violence, or active loss mitigation efforts, within ninety days of a borrower's delinquency, the servicer authorized to accept payment of the loan shall complete an exterior inspection of the subject property to determine occupancy. Thereafter, throughout the delinquency of the loan, the servicer shall conduct an exterior inspection of the property every twenty-five to thirty-five days, at different times of the day.

2. If a borrower is delinquent and subject to property inspections pursuant to subdivision one of this section, the servicer shall secure and maintain the residential real property pursuant to subdivisions three, four, five, six, and seven of this section where the servicer has a reasonable basis to believe that the residential real property is

vacant and abandoned, as defined in section thirteen hundred nine of this chapter, and is not otherwise restricted from accessing the property.

3. Within seven business days of determining that the property is vacant and abandoned based on the criteria set forth in subdivision two of this section, the servicer shall post a notice on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant, and monitor the property for any change in occupancy or contact with the borrower, property owner or occupant, and monitor to ensure that the notice remains posted so long as the duty to maintain applies. The posted notice shall provide the servicer's toll free number or similar contact information.

4. If the posted notice is not responded to or persists for seven consecutive calendar days without contact with the borrower, property owner or occupant indicating that the property is not vacant or abandoned, or if an emergent property condition that could reasonably damage, destroy or harm the property arises, the servicer shall:

(a) in cases where the property contains two or more points of ingress or egress, replace no more than one door lock to provide subsequent access to the property;

(b) secure, replace or board up broken doors and windows;

(c) secure any part of the property that may be deemed an attractive nuisance including, but not limited to, a water feature that could create a drowning risk, refrigerator or freezer units, outbuildings, wells or septic tanks;

(d) take reasonable measures to ensure that pipes, ducts, conductors, fans and blowers do not discharge harmful gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate waste directly upon abutting or adjacent public or private property or that of another tenant;

(e) where appropriate, winterize the applicable plumbing and heating systems;

(f) provide basic utilities including, but not limited to, water, electricity, natural gas, propane and sewer service, as appropriate and when allowed by the local utility provider, that are needed for the

operation of a sump pump or dehumidifier, or when there are jointly owned or shared utilities with adjoining properties or units, except for turning off water service to prevent flooding or water leaks in the property, or when other utility service could reasonably create a hazard to the property or an unauthorized occupant or person entering the property;

(g) remove and remediate any significant health and safety issues, including outstanding code violations;

(h) take reasonable measures to prevent the growth of harmful mold;

(i) respond to government inquiries regarding property condition, subject to restrictions regarding financial privacy;

(j) ensure that the notice required to be posted in subdivision three of this section remains posted on an easily accessible part of the property that would be reasonably visible to the borrower, property owner or occupant so long as the duty to maintain applies; and

(k) pay homeowners' association, condominium common charges as defined in section three hundred thirty-nine-e of the real property law or cooperative fees as needed to maintain the property.

5. At no time shall a servicer remove personal property from the property unless:

(a) the personal property poses a significant health and safety issue; or

(b) there is an uncontested order to do so by a governmental entity.

6. A servicer who has determined a property to be vacant and abandoned and who has secured the same shall take reasonable and necessary actions to maintain the property until the earlier of the following events:

(a) an occupant of the property has asserted his or her right to occupy the property, or the servicer or its agents have received threats of violence;

(b) the borrower has filed for bankruptcy;

(c) a court has ordered the servicer to stop any maintenance of the property;

(d) a homeowners' association or cooperative has prevented the servicer from gaining access to or maintaining the property;

(e) the property has been sold or transferred to a new owner;

(f) the servicer or investor subject to the provisions of this section has released the lien on the property; or

(g) the mortgage note has been assigned, transferred or sold to another servicer.

7. Reasonable and necessary actions to maintain the property include, but are not limited to:

(a) ensuring that the property remains secure pursuant to subdivisions four, five and six of this section; and

(b) maintaining property in a manner consistent with the standards set forth in sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1 of the New York property maintenance code, to the extent that the mortgage servicer or its agents are able to obtain necessary or required permits or approvals.

8. (a) Violations of this section may be heard before a hearing officer or a court of competent jurisdiction. If it shall appear to the satisfaction of the hearing officer or the court, based on the preponderance of the evidence, that the mortgagee or agent of a mortgagee has violated this section, a civil penalty may be issued by the hearing officer or the court in the amount of up to five hundred dollars per day per property for each day the violation persisted.

(b) The superintendent of financial services may, as appropriate and in his or her sole discretion, pursue any suspected violation of this section. Before taking such action, the superintendent shall give the lender, assignee or mortgage loan servicer at least seven days' notice of the violation.

(c) In addition to the authority granted to the department of financial services, the municipality in which such residential real property is located, shall have the right to enforce the obligations described in this section in any court of competent jurisdiction after at least seven days' notice to the lender, assignee or mortgage loan servicer, unless the property requires emergency repairs to address a threat to public health, safety or welfare, in which case the municipality may enter and maintain the property to cure the emergency, provided however, notice shall be provided to the lender, assignee or

mortgage loan servicer as soon as practicable. Any municipality acting pursuant to this subdivision shall have a cause of action in any court of competent jurisdiction against the lender, assignee or mortgage loan servicer to recover costs incurred as a result of maintaining the property. Such entity shall provide the department of financial services with written notice at least ten days prior to bringing an action pursuant to this subdivision; provided, however, that failure to comply with this notice requirement shall not be a defense to the entity proceeding pursuant to this subdivision. The authority provided by this subdivision shall be in addition to, and shall not be deemed to diminish or reduce, any rights of the parties described in this section under existing law against the mortgagor of such property for failure to maintain such property. Any civil penalty imposed pursuant to paragraph (a) of this subdivision in an action brought by a municipality pursuant to this paragraph shall be retained by such municipality.

(d) The department of financial services is authorized and empowered to adopt such rules and regulations as may, in the judgment of the superintendent of financial services, be necessary for the effective implementation, administration, operation and enforcement of this section.

9. A servicer who peacefully enters a vacant and abandoned property in order to maintain pursuant to this section shall be immune from liability when such servicer is making reasonable efforts to comply with the statute.

10. The provisions of this section are subject to federal laws, court orders and investor and insurer guidelines.

11. For all state or federally chartered banks, savings banks, savings and loan associations, credit unions, or servicers for which the provisions of this section do not apply, pursuant to the opening paragraph of this section, any agreement between such state or federally chartered banks, savings banks, savings and loan associations, credit unions, or servicers and the department of financial services that is associated with the maintenance and repair of vacant and abandoned property shall remain in full force and effect between the

aforementioned parties for so long as the terms and conditions of such agreement remain in effect.

12. The department of financial services shall issue such rules and regulations necessary to implement the terms of this section, including but not limited to rules and regulations pertaining to the reporting of financial information that state or federally chartered banks, savings banks, savings and loan associations, or credit unions must provide to implement this section.

13. No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property as defined in section thirteen hundred nine of this article in a manner inconsistent with the provisions of this section that are related to maintenance as provided under subdivisions three, four, five, six and seven of this section, or establish related penalties nor other monetary obligations, with respect to a state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property.

No local law, ordinance, or resolution shall impose a duty to maintain vacant and abandoned property upon any state or federally chartered bank, savings bank, savings and loan association or credit union that originates, owns, services or maintains a mortgage related to such property for which the provisions of this section, pursuant to the opening paragraph of this section, do not apply.