§ 1309. Expedited application for judgment of foreclosure and sale for vacant and abandoned property. 1. The plaintiff in any foreclosure proceeding may make an application by notice of motion or order to show cause for a judgment of foreclosure and sale on the grounds that the subject property is vacant and abandoned. The motion or order to show cause shall include the last known address of the borrower and the property address. Notwithstanding subdivision (m) of rule thirty-four hundred eight of the civil practice law and rules no such application may be made until the defendant's time to answer the complaint in the foreclosure proceeding shall have expired. Such application shall be served on defendant, regardless of whether a defendant has filed an answer or appeared in the case. Such application shall: (a) state in bold letters, on the first page of the notice of motion or order to show cause: (i) "The plaintiff in this lawsuit has applied for an expedited judgment of foreclosure and sale of your property on the ground that it is vacant and abandoned"; (ii) "Your property may be foreclosed upon and sold without any further proceedings if you do not respond to this motion by or on the return date, which is ___"; (iii) "You have the right to stay in your property until a court orders you to leave"; and (iv) "You may respond to this motion by either submitting a written document or by appearing in court on the return date."; (b) be supported by affidavit and other proof, including but not limited to: (i) proof of ownership of the mortgage and the note, (ii) photographs evidencing that the subject property is vacant and abandoned as provided for under subdivision two of this section, and (iii) if available, utility company records or other documentation evidencing the vacant and abandoned status of the premises; (c) set forth, supported by documentary evidence, the sums alleged to be due and owing upon the subject mortgage and note, including the current principal balance and a detailed and itemized account of each fee, each cost, and a calculation of interest accrued; and (d) request that the court confirm the sums due and owing upon the subject mortgage and note without appointment of a referee. The court shall promptly send a notice to the defendant of the plaintiff's notice of motion or order to show cause for a judgement of foreclosure and sale on the grounds that the subject property is vacant and abandoned. The notice shall advise the defendant that the lender is asking the court to expedite a judgement of foreclosure and sale of his

or her property on the ground that it is vacant and abandoned and about the time and place of the court date. The notice shall be in a form prescribed by the courts, or, at the discretion of the courts.

2. (a) As used in this section, "vacant and abandoned residential property" means residential real property, as defined in section thirteen hundred five of this article, with respect to which the plaintiff has proven, by preponderance of the evidence, that it has conducted at least three consecutive inspections of such property, with each inspection conducted twenty-five to thirty-five days apart and at different times of the day, and at each inspection (i) no occupant was present and there was no evidence of occupancy on the property to indicate that any persons are residing there; and (ii) the residential real property was not being maintained in a manner consistent with the standards set forth in New York property maintenance code chapter 3 sections 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1.

(b) Residential real property will also be deemed vacant and abandoned if:

(i) A court or other appropriate state or local governmental entity has formally determined, following due notice to the borrower at the property address and any other known addresses, that such residential real property is vacant and abandoned; or

(ii) Each borrower and owner has separately issued a sworn written statement, expressing his or her intent to vacate and abandon the property and an inspection of the property shows no evidence of occupancy to indicate that any persons are residing there.

(c) Evidence of lack of occupancy shall include but not be limited to the following conditions: (i) overgrown or dead vegetation; (ii) accumulation of newspapers, circulars, flyer or mail; (iii) past due utility notices, disconnected utilities, or utilities not in use; (iv) accumulation of trash, refuse or other debris; (v) absence of window coverings such as curtains, blinds, or shutters; (vi) one or more boarded, missing or broken windows; (vii) the property is open to casual entry or trespass; or (viii) the property has a building or structure that is or appears structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons.

(d) Residential real property will not be deemed vacant and abandoned if, on the property:

(i) There is an unoccupied building that is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion;

(ii) There is a building occupied on a seasonal basis, but otherwise secure;

(iii) There is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute of which the servicer has actual notice;

(iv) There is a building damaged by a natural disaster and one or more owner intends to repair and reoccupy the property; or

(v) There is a building occupied by the mortgagor, a relative of the mortgagor or a tenant lawfully in possession.

3. In connection with an application for a judgment of foreclosure and sale on the ground that the subject property is vacant and abandoned, the court may require the plaintiff or an agent to appear to provide testimony in support of the application.

4. The court shall make a written finding as soon as practicable as to whether the plaintiff has proved that the property to be foreclosed upon pursuant to this section is vacant and abandoned pursuant to subdivision two of this section and, if the court determines that the property is vacant and abandoned, it shall set forth: (a) the evidence relied upon by the court in finding that the property is vacant and abandoned; (b) the evidence showing that the plaintiff is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner of same; and (c) the sums due and owing upon the subject mortgage and note after a review of the detailed and itemized account of each fee, each cost, and a calculation of interest accrued.

5. With respect to foreclosure actions brought pursuant to this section:

(a) A judgment of foreclosure and sale shall not be entered pursuant to this section if the mortgagor or any other defendant has filed an

answer, appearance, other written objection that is not withdrawn, or has otherwise demonstrated an intention to contest the foreclosure action.

(b) A denial of a judgment of foreclosure and sale pursuant to this section where the court does not find that the mortgaged property is vacant and abandoned shall not be deemed to be on the merits for purposes of any other proceeding with respect to such real property.

6. It shall be unlawful for a lender, assignee, mortgage loan servicer, or a third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer to enter residential real property that is not vacant and abandoned for the purpose of forcing, intimidating, harassing or coercing a lawful occupant of such residential property to vacate that property in order to render the property vacant and abandoned, or to otherwise force, intimidate, harass, or coerce a lawful occupant of residential real property to vacate that property so that it may be deemed vacant and abandoned, provided however, a lender, assignee, mortgage loan servicer, or a third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer who peacefully enters a vacant and abandoned property in order to render the property vacant and abandoned shall be immune from liability when such lender, assignee, mortgage loan servicer, third party agent or other person acting on behalf of a lender, assignee or mortgage loan servicer is making reasonable efforts to comply with this section.

7. The chief administrative judge of the courts shall adopt such rules as he or she deems necessary to expeditiously implement the provisions of this section.