



# Getting the Job Done: Innovative Tools & Strategies for Dealing With Vacant, Foreclosed & Abandoned Properties

Atlanta Regional Commission Community Planning Academy  
May 24, 2011

**Robert L. Walker**  
**Jenkins, Olson & Bowen, P.C.**  
**15 South Public Square**  
**Cartersville, Georgia 30120**  
**(770) 387-1373**  
**[rwalker@ga-lawyers.pro](mailto:rwalker@ga-lawyers.pro)**



# Common Problems

---

- Who owns the property?
- Who is responsible for the property?
- How to get results?

# Foreclosure

---

- The property is vacant, or...
- It is being occupied by a person who claims to no longer own the property.

# Code Enforcement Issues Brought About by Foreclosure

---

- Who owns the property?
- How does the code enforcement officials track the owner down?

# The Foreclosure Process

---

- Property owner gives a security deed to secure a debt (often, but not always, the purchase money for the property).
- Property owner defaults: fails to make payments.
- The security deed grants the lender the right to sell the property on the courthouse steps on the first Tuesday of the month.

# The Foreclosure Process, cont'd

---

- There is only a modest amount of notice required (newspaper advertisement).
- At the foreclosure sale, the lender, as the agent for the property owner, sells the property to the highest bidder.
- Highest bidder may be a new property owner, but it is often the bank itself.
- “Deed under power of sale”

# What is a short sale?

---

- A short sale is simply one where the lender allows property to sell for less than the amount due, and releases the debt.
- If the sale is to a third party, then it is really no different from any other sale.
- If the sale is back to the bank, then it is usually accomplished by a deed in lieu of foreclosure.
- Either way, it should not affect the CEO's enforcement procedure.



# Foreclosure and Confirmation

---

- Lender may either get a judgment on the promissory note first, or may first foreclose. It's the lender's election.
- This is the result of laws adopted as a result of the Great Depression, but it has been interpreted by the Courts in a way that seems very unjust.



# HARDBALL

---

If the lender gets a judgment first, then it can foreclose and keep going after the debt still owed. Even if the foreclosure brings little proceeds, the lender does not need to confirm the sale.

It is difficult for the debtor to challenge the foreclosure in this posture.

# If Lender Does Not Get a Judgment First....

---

- If a lender forecloses first, it can only go after the balance due if the foreclosure is confirmed in a judicial proceeding.
- Confirmed = brought fair market value.
- Debtor has a right to challenge the foreclosure for not bringing fair market value.

# The Foreclosure is Final...

---

- As soon as the deed under power of sale is signed and delivered.
- Usually within a few days of the foreclosure sale.
- Before that, the original owner still owns it.

# After the Foreclosure

---

- The original property owner
  - may leave willingly, or...
  - may continue to stay in the house as a holdover tenant.
  
- Unless the new owner chooses to have the old owner dispossessed, a Landlord-Tenant relationship is created.

# Who is responsible?

---

- Before the property is actually sold on the courthouse steps, the original property owner is still responsible.
- After the foreclosure, the new property owner (whether the bank or someone else) is responsible.
- If old owner holds over, then they would be responsible as a tenant.

# How do you determine and verify?

---

- Look at the deed records.
- Either in the deed room, or on the Superior Court Clerk's Authority website: [www.gsccca.org](http://www.gsccca.org)
- Form PT-61
- Tax assessor's office
- Secretary of State's office

# Potential New State Law – HB 110

---

- Allows local governments to adopt a limited and uniform registration requirement for vacant property.
- Preempts other local registration requirements



# Vacant Real Property under HB 110

---

- Real property that is intended for habitation, but has not been inhabited for 60 days, has no evidence of utility usage, and is not actively being marketed for sale or rent, or
- Partially constructed without a valid building permit, or
- Is held as a result of foreclosure.
- Excludes multi-family structures where any one unit is being inhabited.

# Registration Under HB 110

---

- Grantee of the foreclosure deed or deed in lieu of foreclosure and next subsequent transferee must give local government the following information:
  - owner's name, address, phone, fax, e-mail
  - agent's name, address, phone, fax, e-mail
  - vacant property's address
  - transfer date
  - recording info (deed book and page #)

# Registration Under HB 110, cont'd

---

- Owner has at least 60 days to file.
- If they notify the County and provide the recorded deed and information within 60 days, no fee.
- Otherwise, fee of no more than \$100.
- Penalties of no more than \$500 per month.

# HB 110 Would Not Be Self-Effectuating

---

- The local government is required to adopt an ordinance complying with the statute in order to enforce a vacant property registration requirement.
- Requires administrative procedures.

\*\*\*\*\*

# Effect of Enforcement Actions on Foreclosure

---

- An enforcement action will not necessarily stop a foreclosure, but should give a lender or prospective buyer pause, and may delay foreclosure.
- A lis pendens is appropriate when a civil action has been filed – will give the bank incentive to get the matter resolved.

# Effect of Foreclosure on Enforcement Actions

---

- Where a code enforcement action has resulted in a lien on the property, a foreclosure will wipe out the lien except where it predates the recording of the security deed.
- Code enforcement officials may have to refile or get the new owner named as a party.

# Additional Resources

---

- Federal Reserve Bank of Atlanta Community Foreclosure Mitigation Toolkit  
[http://www.frbatlanta.org/commdev/resources/community\\_foreclosure\\_mitigation\\_toolkit.cfm](http://www.frbatlanta.org/commdev/resources/community_foreclosure_mitigation_toolkit.cfm)
- Federal Reserve series – “Recovery, Renewal, Rebuilding”  
<http://stlouisfed.org/RRRSeries/>



# Additional Resources, cont'd.

---

- Mortgage Banker's Association Property Preservation Contacts

<http://www.mortgagebankers.org/files/PropertyPreservationList.pdf>

- Nationwide Survey of Vacant Property Registration Ordinances

<http://www2.safeguardproperties.com/vpr/city>