

1 1. Physical deterioration and devaluation of the property is
2 occurring or has occurred;

3 2. There exists a risk to the health, safety or welfare of the
4 public, or any adjoining or adjacent property owners, due to
5 potential or actual acts of vandalism, loitering, criminal conduct
6 or the physical destruction or deterioration of the property; or

7 3. There exists a risk of additional legal process for
8 violation of law, ordinance, unpaid taxes or accrual of liens, the
9 plaintiff/mortgagee may seek a court order to protect and preserve
10 the property pending the disposition of the suit, action or
11 proceeding before the court.

12 B. A motion to protect and preserve an abandoned or vacated
13 property subject to a suit, action or proceeding to foreclose or
14 otherwise enforce the remedies in the mortgage, contract for deed or
15 deed of trust shall be filed and heard in accordance with court
16 rules and statutory civil procedures for motions. The court shall
17 not deny a plaintiff/mortgagee an order to protect and preserve a
18 property subject to foreclosure or enforcement of remedies in the
19 mortgage, contract or deed or deed of trust, unless the defendant
20 named in the litigation appears in person or through legal counsel
21 at the motion hearing and demonstrates to the satisfaction of the
22 court that the subject property is not abandoned or vacated, and is
23 not at risk of deterioration, devaluation, or additional legal
24 process. Further, the defendant must satisfy the court that he or

1 she personally, or by a designated representative, agrees to and is
2 capable of protecting and preserving the property during the pending
3 litigation before the court.

4 C. The plaintiff/mortgagee, after filing a motion to protect
5 and preserve property in the pending litigation before the court,
6 and having received from the court a date, time and location to hear
7 the motion, shall present a certified copy of the motion and hearing
8 notice to the sheriff in the county in which the property is
9 located. The sheriff, upon receiving a written request to post a
10 motion and hearing notice on a property within his or her
11 jurisdiction, shall within three (3) days of the receipt of such
12 request, physically inspect the subject property and determine
13 whether or not the property is abandoned or occupied. At the time
14 of the physical inspection of the property, the sheriff shall either
15 post a copy of the motion and hearing notice in a conspicuous place
16 on the property or shall physically serve an occupant of the
17 property as required by the provisions of this section. The sheriff
18 shall receive from the plaintiff/mortgagee a sheriff's service fee
19 of One Hundred Fifty Dollars (\$150.00) for the inspection of each
20 property and may designate a deputy or reserve deputy to perform the
21 inspection and posting or service specified in this section.

22 D. Upon physical inspection, if the sheriff determines the
23 property to be abandoned or vacated, the sheriff shall post the
24 required motion and hearing notice on the property and make a return

1 of inspection and posting to the plaintiff/mortgagee at the address
2 provided by the plaintiff/mortgagee. In the event, the property is
3 occupied or appears to be occupied in the judgment of the sheriff,
4 the sheriff shall attempt actual service of the motion and hearing
5 notice on an occupant of the property as provided for service of
6 summons, and if a person is not available to accept service or
7 cannot be found, the sheriff shall post the motion and hearing
8 notice in a conspicuous place on the property and make a written
9 return of inspection and service to the plaintiff/mortgagee at the
10 address provided by the plaintiff/mortgagee.

11 E. The sheriff's written return of inspection and posting or
12 return of inspection and service shall be made within three (3) days
13 of the date of actual inspection. The return shall be deposited
14 into the regular U.S. mail, postage prepaid, and the return document
15 shall certify that:

16 1. The motion and hearing notice was either served in person
17 upon an occupant of the property or physically posted on the
18 property and the exact date of service or posting;

19 2. A physical inspection and observation of the property was
20 conducted; and

21 3. In the best judgment and belief of the sheriff, or designee,
22 the property was abandoned and vacated or occupied by the
23 defendant/mortgagor or a lawful tenant or other person, and any
24 reason or belief for that determination.

1 F. The posting of the motion and hearing notice shall be deemed
2 proper service and sufficient notice to the defendant/mortgagor and
3 all occupants of the property for purposes of holding the hearing
4 and authorizing the court to issue an order to protect and preserve
5 the property pending disposition of the litigation before the court.
6 The court shall not require any additional or alternative
7 notification to the defendant/mortgagor or any occupant. Nothing
8 shall prohibit the plaintiff/mortgagee from notifying, or attempting
9 to notify, the defendant/mortgagor or any potential occupant of the
10 subject property in another manner. If the plaintiff/mortgagee
11 elects notification by publication in addition to the posting
12 required by this section, he or she shall publish a copy of the
13 motion and hearing notice at least twice in the fifteen-day period
14 immediately preceding the hearing date in a publication of general
15 circulation in the jurisdiction in which the property is located. A
16 copy of the motion and hearing notice shall be sent or delivered to
17 the defendant's legal counsel of record as required by court rule
18 and statutory civil procedure for notifying opposing counsel of
19 motions and hearings.

20 G. The motion posted or served shall be in the form and style
21 recognized for pleadings filed in the official court case, and shall
22 contain the name of the parties, court case number, the date, time
23 and place of the hearing, and a statement directing the
24 defendant/mortgagor or any occupant of the property to appear in

1 person, or through legal counsel, or be deemed to have abandoned and
2 vacated the property.

3 H. No hearing shall be held on a motion to protect and preserve
4 the property subject to a suit, action or proceeding to foreclose or
5 enforce remedies in the mortgage, contract for deed or deed of
6 trust, unless at least fifteen (15) days has passed from the date of
7 posting or service of the motion and hearing notice. At the
8 hearing, the court shall hear testimony of the parties present,
9 including any person who claims to be an occupant or tenant of the
10 property and who is not a named litigant in the pending litigation
11 before the court. The testimony shall include inquiry into the
12 property's previous and current condition and the reasons or beliefs
13 supporting or objecting to a determination that the property is
14 abandoned or vacated. The court shall review the sheriff's written
15 return of inspection and posting or the return of inspection and
16 service. The court shall not require the presence of the
17 defendant/mortgagor or defendant's legal counsel to grant an order
18 authorizing the plaintiff/mortgagee to take action to protect and
19 preserve the subject property pending the disposition of the
20 litigation before the court.

21 1. If the defendant/mortgagor, or an occupant or tenant,
22 appears in person or through legal counsel, and the court is
23 satisfied that the defendant, or person, is physically residing in
24 the property, or if not occupying the property is willing and able

1 to properly protect and preserve the property pending the litigation
2 before the court, the motion shall be denied. However, the court
3 shall enter an order requiring the person to protect and preserve
4 the property under such conditions and the court may determine.
5 Failure of the person to comply with the court order to protect and
6 preserve the property shall be contempt of court.

7 2. If the defendant/mortgagor, or an occupant or tenant, fails
8 to appear in person, and there exists no compelling reason why the
9 defendant/mortgagor, or person, could not appear in person, and the
10 property appears to be deteriorating or at risk of deteriorating as
11 a result of abandonment, vandalism or any unlawful or intentionally
12 malicious act, the court shall enter an order directing the
13 plaintiff/mortgagee to take action to protect and preserve the
14 property pending and in anticipation of foreclosure or other
15 enforcement of remedies in the mortgage, contract for deed or deed
16 of trust.

17 3. Upon issuance of an order to protect and preserve property,
18 the court shall direct the plaintiff/mortgagee to inventory, or
19 cause to be inventoried by an independent person, any personal
20 property remaining on or about the subject property and to file such
21 inventory in the court case file.

22 I. When a court order is issued to protect and preserve
23 property, the plaintiff/mortgagee shall be authorized to take, and
24 shall take, possession and secure the property pending and in

1 anticipation of foreclosure or other enforcement of remedies in the
2 mortgage, contract for deed or deed of trust. The taking of
3 possession of the property authorized by court order as specified in
4 this section shall create a bailment with the plaintiff/mortgagee
5 serving as bailee. The bailee shall be liable for the safekeeping
6 of all property, both real and personal, until reclaimed by the
7 bailor or otherwise ordered by the court. A writ of assistance
8 shall be required if any person is found to be residing in or on the
9 property subsequent to the notice and hearing and issuance of the
10 court order to protect and preserve the property.

11 J. An order issued to protect and preserve property pursuant to
12 the provisions of this section may be vacated and set aside at any
13 time by the court upon motion by the defendant/mortgagor, or
14 occupant or tenant, and satisfactory proof that the property is not
15 or was not abandoned or vacated, or was leased or rented and
16 lawfully occupied by a person other than the defendant/mortgagor at
17 the time of issuance of the order, provided, the property was not
18 subjected to intentional malicious acts by the defendant, or person,
19 to deface, destroy or devalue the property.

20 K. A motion filed, or court order issued, to protect and
21 preserve the property as provided in this section shall not alter,
22 modify, relinquish or release any right, title or interests of any
23 party in or to any property, or alter, modify, relinquish or release
24 any party's position, standing, claims, defenses or objections in

1 the suit, action or proceeding pending before the court to foreclose
2 or enforce any remedy in the mortgage, contract for deed or deed of
3 trust.

4 SECTION 2. This act shall become effective November 1, 2011.

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6 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND
7 FINANCIAL SERVICES, dated 04-14-2011 - DO PASS, As Amended.
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