

## Supreme Judicial Court Invalidates Local Laws Governing Maintenance of Abandoned/Foreclosed Properties

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Municipalities often struggle with the public health risks and visual blight caused by abandoned or derelict buildings. These problems can become more pronounced during periods of economic downturn when higher rates of foreclosure exist and mortgage holders such as banks or other lending institutions are often forced to leave properties vacant.

While there are enforcement mechanisms available for a municipality to address properties posing imminent or actual health hazards, such mechanisms address only the results of property neglect. In an effort to require abandoned or foreclosed buildings to be minimally maintained, some municipalities have adopted bylaws or ordinances imposing on mortgagee banks legal responsibility for property maintenance. On December 19, 2014 the Massachusetts Supreme Judicial Court (“SJC”), in Easthampton Savings Bank v. City of Springfield, 470 Mass. 284 (2014), invalidated two such ordinances adopted by the City of Springfield, finding that they were preempted by state law.

In 2011 the Springfield City Council enacted two ordinances aimed at mortgagees in possession of property. The first ordinance required a mortgagee bank that had initiated foreclosure proceedings to engage in mediation with the mortgagor to attempt to resolve the mortgage dispute. If the parties were unable to resolve this dispute after good faith negotiations, the mortgagee bank could proceed with foreclosure. The Council could also impose a fine of \$300 per day for failure to engage in such mediation. The second ordinance required an “owner”, defined to include a mortgagee initiating foreclosure, to register vacant property with the City and perform certain minimal maintenance on that property, including, for example, securing windows and doors, removing trash and hazardous materials, procuring liability insurance, and posting a \$10,000 bond to cover City expenses for enforcement or maintenance if the owner failed to comply with these requirements.

Although the City prevailed in federal District Court against the plaintiff banks, the banks appealed and the First Circuit Court of Appeals certified two questions to the SJC to determine whether the ordinances were preempted by state law. The SJC found that both ordinances exceeded the City’s Home Rule authority, at least in part. The court held that the mediation ordinance conflicted with G.L. c.244 where that statute strictly and completely governs the process by which mortgagees may initiate foreclosure and includes an informal mediation process, particularly where the City could fine the lender for not engaging in mediation. The Court concluded that the ordinance was preempted by G.L. c.244, and thus was invalid.

Although the SJC found that the foreclosure ordinance did not conflict with G.L. c.244, it did find the ordinance to be inconsistent with requirements under the State Sanitary Code, G.L. c.111, §§127A-127N and related regulations. The SJC first concluded that the ordinance requirements for remediating hazardous materials were inconsistent with G.L. c.21E. The Court concluded further that the ordinance's definition of "owner" was broader than the statutory definition and improperly assigned liability to a mortgagee likely exempt from liability under G.L. c.21E. The SJC also found that the ordinance's requirement that a mortgagee post a bond, a requirement not found in the State Sanitary Code, was inconsistent with the Code and therefore preempted.

In summary, this SJC decision effectively limits municipal efforts to creatively impose on a mortgagee affirmative duties and liability for minimal maintenance of property when a borrower has defaulted or is absent. It is evident that mortgagees have both the means and the apparent inclination to challenge local bylaws or ordinances attempting to impose on mortgagees affirmative obligations in excess of that required by state law. Communities contemplating regulation of vacant or abandoned properties must avoid the provisions the SJC found exceeded local authority and seek other ways to provide for minimal maintenance of vacant property.

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