

Real Estate Advisory

October 20, 2010

DeKalb County Foreclosure Registry Ordinance

On July 27, 2010 the DeKalb County Commission passed an Ordinance amending Chapter 18 of the DeKalb County Code ("Code") by adding a new Foreclosure Registry Program to the Code. Effective October 27, 2010, the ordinance imposes registration and maintenance requirements on any creditor or mortgagee ("transferee") that retains real property after a foreclosure sale including acquiring title by a deed-in-lieu of foreclosure.

The DeKalb Ordinance extends to all real property (residential and commercial) situated in the unincorporated areas of DeKalb County, Georgia ("County") regardless of condition, and requires that any foreclosed real property be registered with the County within 30 days of the transfer of title. In its present form, the Ordinance does not state the governmental entity that is responsible for administering the property registry and allows any law enforcement officer to enforce the Ordinance.

For each foreclosed real property, the transferee must pay a registration fee equal to \$175.00 and provide the County with (a) its official contact information (including a name, title, street address, telephone number and electronic mail address), (b) its local property agent's official contact information (including a name, title, street address, telephone number and electronic mail address) and (c) the address of the foreclosed property (including parcel identification number). To be deemed a 'local property agent' or a 'local transferee' you must be located in Clayton, DeKalb, Fulton, Henry or Rockdale county. If the transferee is local, then it may serve as its own property agent. In addition, all transferees that are subject to the Ordinance must report any change in contact information to the County within 15 days. Any violation of the Ordinance is deemed to be a strict liability offense and subjects a transferee that violates the Ordinance to a fine of \$1,000.00 per day, per real property, not to exceed \$100,000.00 per real property per year.

In 2008, the City of Albany, Georgia passed an ordinance requiring owners of vacant property to register after receiving notice from the City. The Albany Ordinance, on its face, appears less severe than DeKalb County's ordinance and is tailored to making the property safe. Except for DeKalb County and the City of Albany, no other municipalities in Georgia have enacted ordinances requiring registration of foreclosed properties. However, the Cities of Atlanta and Peachtree City are considering similar ordinances targeting vacant and foreclosed properties within their boundaries. In addition, numerous municipalities in other states have enacted ordinances similar to (and in most cases more detailed than) the DeKalb Ordinance, including, without limitation, Los Angeles (Los Angeles Municipal Code Section 164.00), Fresno (Fresno Municipal Code Section 10-620), Oakland (Oakland Municipal Code Chapter 8.54) and San Bruno (San Bruno Municipal Code Chapter 5.26). The variances between the ordinances that have passed are substantial.

CONTACTS

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The extent to which certain provisions of the Ordinance, as written, are enforceable under state and federal law may be questionable, and it is therefore possible that such provisions will be susceptible to legal challenge. Nonetheless, beneficiaries, trustees and any others affected by the Ordinance may wish to consult with legal counsel to understand their obligations under the Ordinance and the best practices to achieve compliance.

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