

HB 235 - AS INTRODUCED

2019 SESSION

19-0165

11/04

HOUSE BILL                    **235**

AN ACT                    relative to foreclosure proceedings and pre-foreclosure notices.

SPONSORS:            Rep. Gomarlo, Ches. 12; Rep. Faulkner, Ches. 12; Rep. Abbott, Ches. 1; Rep. Swinburne, Ches. 10

COMMITTEE:        Judiciary

---

ANALYSIS

      This bill establishes requirements relative to foreclosing on vacant and abandoned residential real property.

-----

Explanation:        Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT relative to foreclosure proceedings and pre-foreclosure notices.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Subdivision; Mortgages of Realty; Foreclosure of Vacant and Abandoned Property.  
Amend RSA 479 by inserting after section 30 the following new subdivision:

## Foreclosure of Vacant and Abandoned Property

479:31 **Applicability.** This subdivision shall only apply to vacant and abandoned one to 4-family residential real property, and any duties and responsibilities so prescribed by this subdivision shall only apply to the first lien mortgage holder.

479:32 Exterior Visual Inspection Required. Subject to bankruptcy filings, cease and desist orders, threats of violence, or active loss mitigation efforts, within 90 days of a borrower's delinquency, the mortgagee authorized to accept payment of the loan shall complete a visual exterior inspection of the subject property to determine occupancy. Thereafter, throughout the delinquency of the loan, the mortgagee shall conduct an exterior inspection of the property every 25 to 35 days, at different times of the day.

479:33 Maintenance of Vacant and Abandoned Properties. When the mortgagee has a reasonable basis to believe, after 3 visual inspections completed pursuant to RSA 479:32, that the residential real property is vacant and abandoned, the mortgagee shall secure and maintain the property pursuant to RSA 479:34 and 35 if not otherwise restricted from accessing the property.

479:34 Posting of Notice. Within 7 business days of determining that the property is vacant and abandoned, the mortgagee shall post a notice on an easily accessible part of the property that would be reasonably visible to the borrower, property owner, or occupant, and monitor the property for any change in occupancy or contact with the borrower, property owner, or occupant, and monitor to ensure that the notice remains posted so long as the duty to maintain applies. The posted notice shall provide the mortgagee's toll free number or similar contact information.

479:35 Mortgagee Maintenance Obligations. If the posted notice is not responded to or persists for 7 consecutive calendar days without contact with the borrower, property owner, or occupant indicating that the property is not vacant or abandoned, or if an emergent property condition that could reasonably damage, destroy or harm the property arises, the mortgagee shall:

I. In cases where the property contains 2 or more points of ingress or egress, replace no more than one door lock to provide subsequent access to the property.

II. Secure, replace, or board up broken doors and windows.

III. Secure any part of the property that may be deemed an attractive nuisance including, but not limited to, a water feature that could create a drowning risk, refrigerator or freezer units,

**HB 235 - AS INTRODUCED**  
**- Page 2 -**

1 outbuildings, wells, or septic tanks.

2 IV. Take reasonable measures to ensure that pipes, ducts, conductors, fans, and blowers do  
3 not discharge harmful gases, steam, vapor, hot air, grease, smoke, odors, or other gaseous or  
4 particulate waste directly upon abutting or adjacent public or private property or that of another  
5 tenant.

6 V. Where appropriate, winterize the applicable plumbing and heating systems.

7 VI. Provide basic utilities including, but not limited to, water, electricity, natural gas,  
8 propane, and sewer service, as appropriate and when allowed by the local utility provider, that are  
9 needed for the operation of a sump pump or dehumidifier, or when there are jointly owned or  
10 shared utilities with adjoining properties or units, except for turning off water service to prevent  
11 flooding or water leaks in the property, or when other utility service could reasonably create a  
12 hazard to the property or an unauthorized occupant or person entering the property.

13 VII. Remove and remediate any significant health and safety issues, including outstanding  
14 code violations.

15 VIII. Take reasonable measures to prevent the growth of harmful mold.

16 IX. Respond to government inquiries regarding property condition, subject to restrictions  
17 regarding financial privacy.

18 X. Ensure that the required notice remains posted on an easily accessible part of the  
19 property that would be reasonably visible to the borrower, property owner, or occupant so long as  
20 the duty to maintain applies.

21 479:36 Removal of Personal Property Prohibited. At no time shall a mortgagee remove  
22 personal property from the property unless:

23 I. The personal property poses a significant health and safety issue; or

24 II. There is an uncontested order to do so by a governmental entity.

25 479:37 Discharge of Maintenance Obligations. A mortgagee who has determined a property to  
26 be vacant and abandoned and who has secured the same shall take reasonable and necessary  
27 actions to maintain the property until the earlier of the following events:

28 I. An occupant of the property has asserted his or her right to occupy the property, or the  
29 mortgagee or its agents have received threats of violence.

30 II. The borrower has filed for bankruptcy.

31 III. A court has ordered the mortgagee to stop any maintenance of the property.

32 IV. A homeowners' association or cooperative has prevented the mortgagee from gaining  
33 access to or maintaining the property.

34 V. The property has been sold or transferred to a new owner.

35 VI. The mortgagee or investor subject to the provisions of this subdivision has released the  
36 lien on the property.

37 VII. The mortgage note has been assigned, transferred, or sold to another servicer.

38 479:38 Right of Enforcement. The municipality in which the subject residential real property is

1 located may enforce the obligations described in this subdivision in any court of competent  
2 jurisdiction after at least 7 days' notice to the mortgagee, assignee, or mortgage loan mortgagee,  
3 unless the property requires emergency repairs to address a threat to public health, safety, or  
4 welfare, in which case the municipality may enter and maintain the property to cure the  
5 emergency, provided however, notice shall be provided to the mortgagee, assignee, or mortgage loan  
6 servicer as soon as practicable. Such municipalities shall have a cause of action in any court of  
7 competent jurisdiction against the mortgagee, assignee, or mortgage loan servicer to recover costs  
8 incurred as a result of maintaining the property. The authority provided by this subdivision shall  
9 be in addition to, and shall not be deemed to diminish or reduce any rights of the parties under RSA  
10 479 or other state or federal law.

11 479:39 Immunity from Liability. A mortgagee who peacefully enters a vacant and abandoned  
12 property in order to maintain pursuant to this subdivision shall be immune from liability when such  
13 mortgagee is making reasonable efforts to comply with this subdivision.

14 2 Effective Date. This act shall take effect 60 days after its passage.