

Research Brief

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

DIVISION OF LOCAL GOVERNMENT AND SCHOOL ACCOUNTABILITY

Cleaning It Up: The Foreclosure Problem and the Response of Local Governments

Summary

- In 2009, the New York State Legislature enacted Section 1307 in the Real Property Actions and Proceedings Law requiring foreclosing lenders to maintain vacant or abandoned properties. The law grants municipalities the right to enforce this requirement in court and to bring a court action to recoup certain costs of maintaining the property. This provision was enacted to help prevent neighborhood blight as vacant or abandoned properties fall into foreclosure status and could remain vacant or abandoned for extended periods of time. It was intended to supplement the powers a municipality may have under other laws and does not pre-empt or limit the municipality's rights or obligations under any local laws.
- In September 2011, the Office of the State Comptroller (OSC) surveyed local governments located in 23 counties with high foreclosure rates to gauge the level of awareness of this law. Survey responses indicated that 86 percent of respondents were unaware of the protections provided by Section 1307. At the same time, 40 percent of local officials agreed that homes in foreclosure were negatively affecting property values in their communities.
- Half of the respondents investigated citizen complaints, and 40 percent utilized local laws or ordinances to impose maintenance requirements on foreclosed properties. Of the local governments imposing maintenance requirements, 88 percent took administrative actions (e.g., hearings and/or notices of violation), 69 percent sent municipal employees to the property to perform lawn maintenance, and 50 percent utilized municipal employees to perform structural maintenance.
- Thirty-five percent of respondents reported having performed maintenance activities on foreclosed properties, with an average annual cost of \$924 per property. Applying this average cost per property to all municipalities in the surveyed counties results in an estimated cost ranging from \$15.1 million to \$28.6 million for 2010.
- Two-thirds of municipalities indicated that they have fully recovered the costs of property maintenance by using local laws or ordinances. The remaining respondents partially recovered costs or were unable to recover any costs. Municipalities with the greatest financial foreclosure maintenance burden were also the least successful in recovering costs associated with property maintenance.
- The results of this study indicate a need for greater communication and outreach regarding the provisions of Section 1307—particularly in those areas of the State that have been hit hard by foreclosures.

Thomas P. DiNapoli • State Comptroller



Introduction

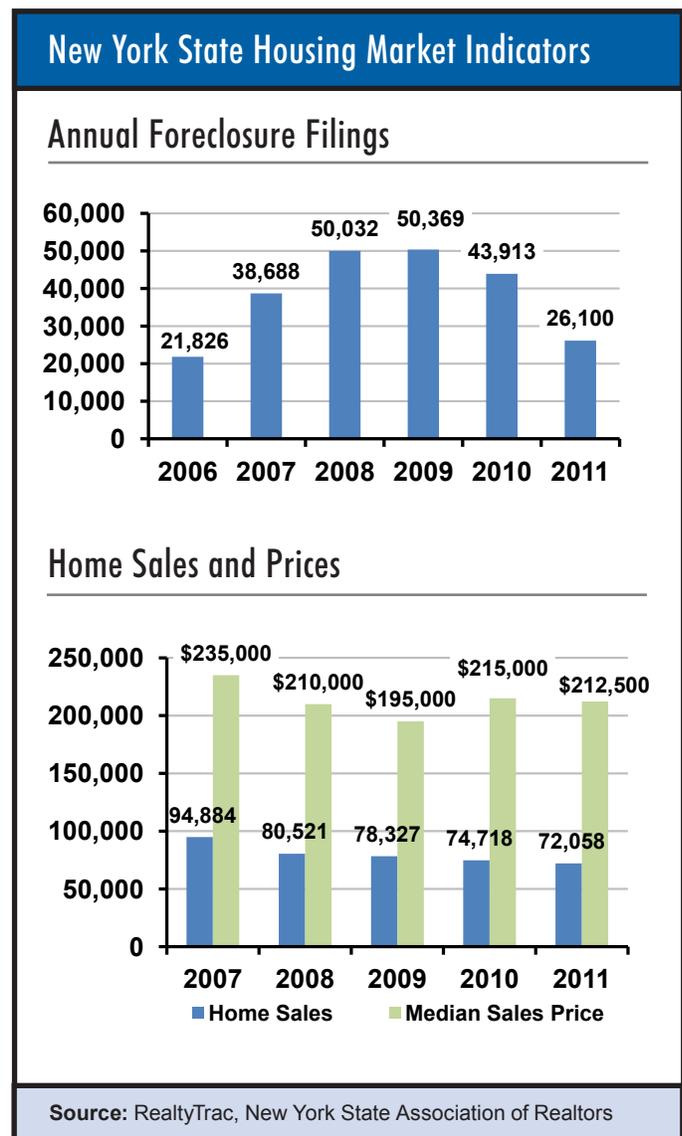
In many ways, local governments have been on the front lines of the economic downturn. Governments at the local level provide services to families requiring financial assistance, assist displaced families and maintain the infrastructure of a community in economic decline. As the foreclosure problem has become more widespread—a consequence of the collapse in the housing market—lawmakers across the United States have intervened to protect borrowers from losing their homes, or to modify banking practices to prevent a housing crisis in the future. New York State took additional steps designed to prevent neighborhood blight and help support property values as more properties moved into foreclosure status. In 2009, the State Legislature enacted a new law (Real Property Actions and Proceedings Law, Section 1307) that requires foreclosing lenders to maintain vacant or abandoned properties. In cases where the lender fails in its responsibility, the law also expressly authorizes local governments to bring court actions against foreclosing lenders. This report briefly describes the impact of the housing market crisis on New York State and highlights the results of a survey by the Office of the State Comptroller. The survey queried local officials to determine whether they are aware of the new law and, if so, to what degree they have utilized its provisions.

Foreclosures in New York State

Many localities have experienced a decline in property values as a result of the downturn in the housing market. Mirroring nationwide trends, New York State experienced a significant increase in residential foreclosures along with a decrease in property values and sales. The problem however, has been less severe in New York State than in many other states. Nationwide, foreclosures increased 300 percent from 2006 to 2010, while in New York State, foreclosures increased by just over 100 percent during the same period.

Although it was less severely afflicted overall, the State has been hit hard by foreclosures in some areas—particularly downstate regions where home prices are high. At the height of the housing crisis, owners of more than 50,000 New York properties were facing foreclosure each year. In 2010, this rate began declining, and continued to decline in 2011, although the decline may be attributable to new laws that have prolonged the foreclosure process rather than to an absolute decline in the number of foreclosures. This is an important point, because some of the housing market data suggest that the foreclosure crisis has yet to run its course, as a significant increase in new foreclosure filings is forecast for 2012.¹

The national rate of mortgage delinquency (payments more than 90 days past due) was 5.3 percent as of the third quarter of 2010,² and in New York State, eleven counties exceeded this rate. These hard-hit areas are mainly located in the downstate regions, and stand in stark contrast to some counties located in upstate New York, where the mortgage delinquency rate was less than 1 percent.



¹ February 2012 Foreclosure Market Report, RealtyTrac, Inc.

² U.S. Credit Conditions, Federal Reserve Bank of New York

Legislative Actions

In response to the foreclosure crisis, the State Legislature enacted a series of provisions to protect homeowners in 2008, which were further strengthened in 2009. Chapter 507 of the Laws of 2009 established new requirements related to the foreclosure process in New York State, including an expanded 90-day pre-foreclosure notice requirement for home loan borrowers, a foreclosure notice requirement to tenants, expanded mandatory settlement conference procedures and related requirements for lenders to report to the New York State Banking Department (now incorporated in the Department of Financial Services).

In addition, a new measure was enacted to help prevent neighborhoods—especially those with high rates of foreclosures—from experiencing blight. Specifically, Section 6 of the 2009 law added Real Property Actions and Proceedings Law Section 1307, creating a responsibility for foreclosing lenders to maintain property.³ Subdivision 3 of Section 1307 grants municipalities the right to enforce (in court) the obligation of the foreclosing lender to maintain the property, upon notice. The municipality may also recover costs incurred as a result of maintaining the property. This new provision is an important component of the legislation, deemed necessary to help prevent homes from falling into disrepair during the foreclosure process. According to RealtyTrac data, the foreclosure process took an average of 986 days to complete in New York State during the third quarter of 2011.

³ Section 1307 generally requires the plaintiff in a mortgage foreclosure action who obtains a judgment of foreclosure and sale with regard to a residential property that is either (1) vacant or (2) abandoned by the borrower but occupied by a tenant, to maintain the property until the ownership is transferred. Section 1307 expressly grants to the municipality in which the residential property is located the right to enforce the duty to maintain in court, upon notice to the foreclosing plaintiff. In addition, the municipality also has a cause of action in court against the foreclosing plaintiff to recover costs incurred as a result of maintaining the property. The authority under Section 1307 is in addition to any rights the municipality may have against the borrower under other laws for failure to maintain the property, and does not pre-empt, reduce or limit the municipality's rights or obligations with respect to property maintenance under any local laws.

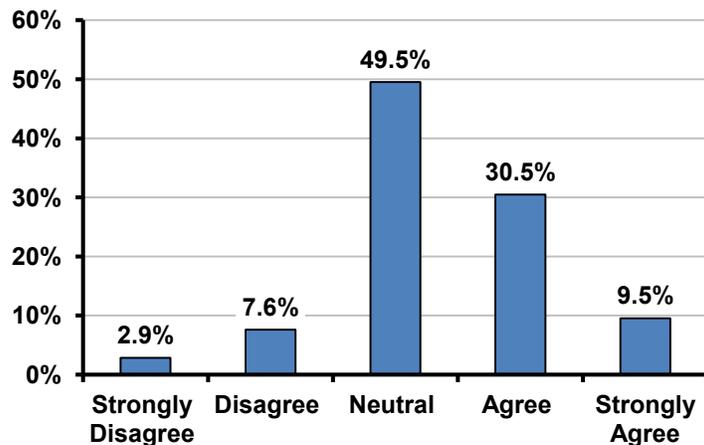
Impact of Foreclosures

It has been well established that having a high number of foreclosures in a community can negatively affect property values. Properties in foreclosure are often sold under distressed circumstances which drive down sale prices. Additionally, the prolonged foreclosure period means that these homes may lie abandoned for an extended period of time, increasing the likelihood that they fall into disrepair. This can contribute to neighborhood blight and devalue surrounding homes. These abandoned homes can also pose safety hazards if they become occupied by “squatters,” who may use unsafe means for heating and lighting once the power is shut down.

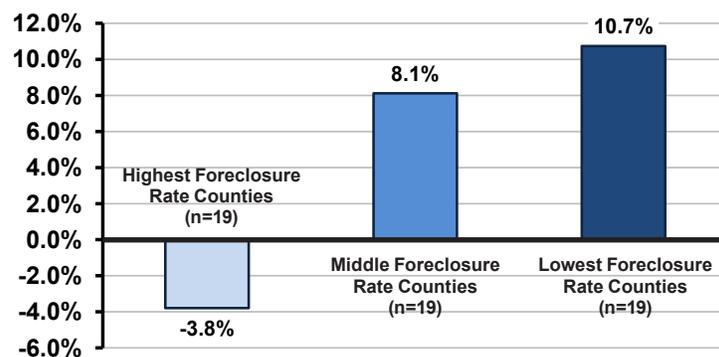
When asked if foreclosures are negatively affecting property values in their community, 40 percent of local officials agreed or strongly agreed. Responses to this question did not vary by region, or upstate/downstate location. Officials in cities, however, were significantly more likely than those in towns or villages to indicate that foreclosures were adversely affecting property values.

The negative impact of foreclosures on property values is clearly evident in the data. In New York State, the counties with the highest rates of foreclosure were also found to have the greatest decreases in full property value. In the 19 counties with the highest foreclosure rates, property values declined by nearly 4 percent from 2008 to 2010, while for those with the lowest foreclosure rates, property values increased during the same two-year period.

OSC Survey Results: In our municipality, homes in foreclosure are adversely affecting property values...



Change in Property Value for Counties by Foreclosure Rate Category (2008 to 2010)



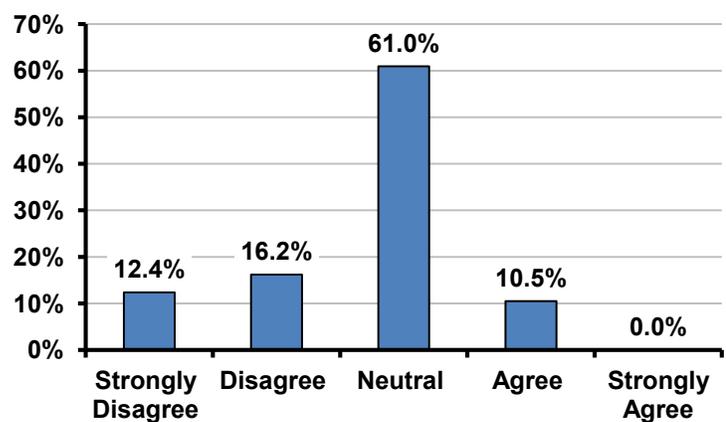
Lenders and Local Officials

Over 28 percent of local officials indicated that in many cases lenders were not meeting their obligations to maintain properties during the foreclosure process.

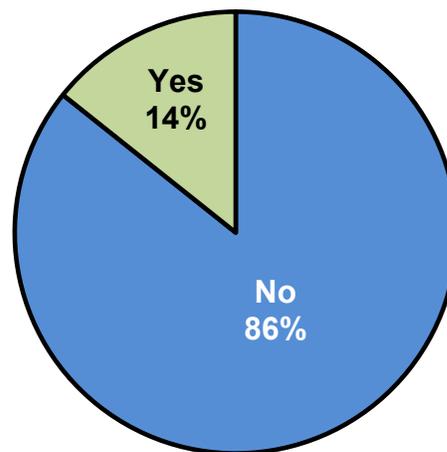
Despite the fact that many local officials indicated that foreclosures are a problem in their communities, most officials (86 percent) were not aware of the legal recourse available to them to enforce property maintenance and recoup related costs via Section 1307. City officials who responded to the survey were more likely to be aware of these provisions of the law than those in the other classes of government. However, even then, only one-third of the cities indicated awareness of the law—suggesting that improving communications about the rights of municipalities under Section 1307 is necessary.

Although officials in most localities were not aware of the new legal protections allowing them to take action against lenders who do not maintain properties in foreclosure, many have dealt with the impact of poorly maintained foreclosure properties in their communities. Over one-half of those responding indicated that they have investigated citizen complaints about foreclosure properties, and 40 percent imposed maintenance requirements through a local law or ordinance.

OSC Survey Results: Lenders are meeting their obligation to maintain residential properties in foreclosure for which they are responsible...

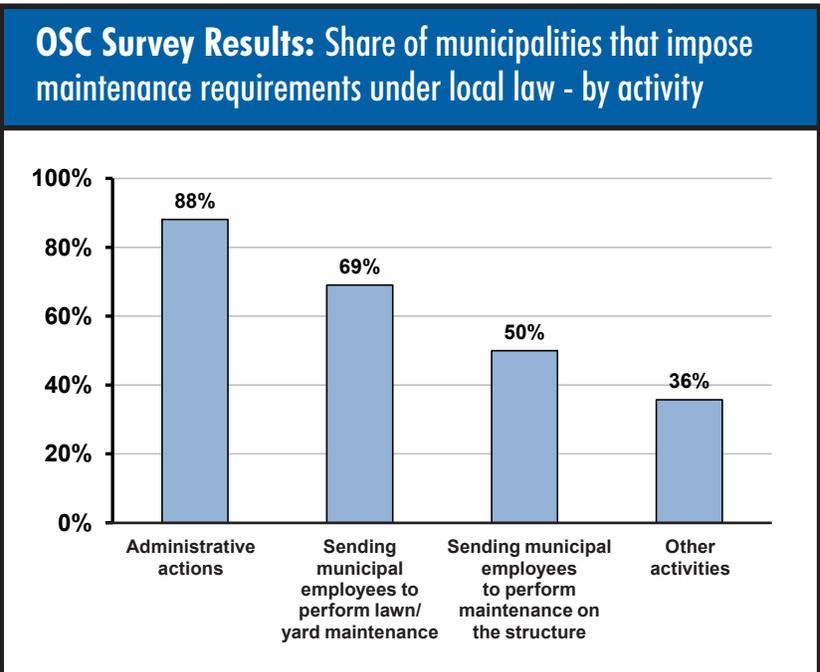
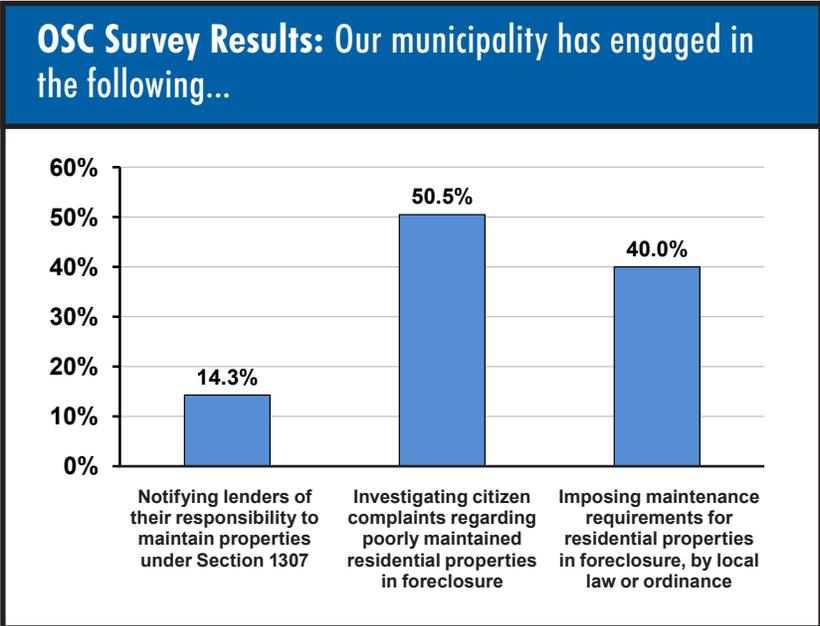


OSC Survey Results: Prior to this communication, were you aware of the authority of a municipality under Section 1307?



Cities reported being more heavily engaged in property-maintenance activities than other classes of government. For example, cities were 1.5 times more likely to notify lenders in foreclosure proceedings of their responsibility to maintain properties, and cities were twice as likely to be engaged in the investigation of complaints and the imposition of maintenance requirements via local law or ordinance.

Imposing maintenance requirements via a local law or ordinance typically begins with some type of administrative action, such as issuing appearance tickets, compliance notices, etc. In many cases, once the property owners receive the official notice, they do what is necessary to bring the home up to code with no further action required on the part of the municipality. If these administrative actions do not result in compliance, local officials typically have a process that grants them the authority to perform or contract for the necessary maintenance. The resulting cost is usually recouped by placing tax liens on the property. Nearly 70 percent of responding local governments that impose maintenance requirements indicated that municipal employees are sent to the property to perform yard maintenance, and half perform maintenance on the structure of the home.



Local governments also responded that they performed work that went above and beyond that involved in typical lawn care, including removal of rubbish and abandoned vehicles, securing windows and doors or boarding up windows, cleaning gutters to prevent water damage, and even undertaking emergency demolition of unsafe structures.

Additionally, most of the local governments that enforce property maintenance perform administrative activities, yard maintenance and structural maintenance in one manner or another. Roughly half indicated that they are engaged in all three activities. Cities were nearly twice as likely to send municipal employees to the property to perform maintenance activities after administrative actions failed than towns or villages—indicating that maintenance of foreclosure properties may pose more of a challenge in urban settings.

The Costs of Maintenance

It is difficult to quantify the full range of costs associated with poorly maintained foreclosure properties. As discussed earlier, these homes can deteriorate as they remain vacant, pulling down the values of surrounding homes. By the time foreclosed homes return to the market, they are often in much worse condition. For these reasons, localities have a clear interest in ensuring that these properties are kept in good condition.

Local officials were asked about the costs related to maintenance of foreclosure properties in 2010, including the costs of investigating citizen complaints and taking administrative actions as well as maintenance activities. In general, the costs varied from less than \$100 per property to as much as \$8,000 per property. When municipalities performed maintenance activities on foreclosed properties, the average cost of these activities was \$924 per property.

In response to a survey question asking how many foreclosure properties were maintained by the municipality in 2010, one-third of respondents indicated that maintenance activities were performed, and for some small localities, only a single property was maintained. Some larger cities and towns that responded indicated that the amount of maintenance activity was extensive—exceeding 1,000 properties for the year.

Based on the responses to this survey and the average costs of maintaining foreclosed properties, municipalities in the highest-foreclosure counties (excluding New York City) likely spent millions of dollars on these efforts in 2010. Extrapolation of the data suggests a range between \$15.1 million and \$28.6 million spent on maintenance.

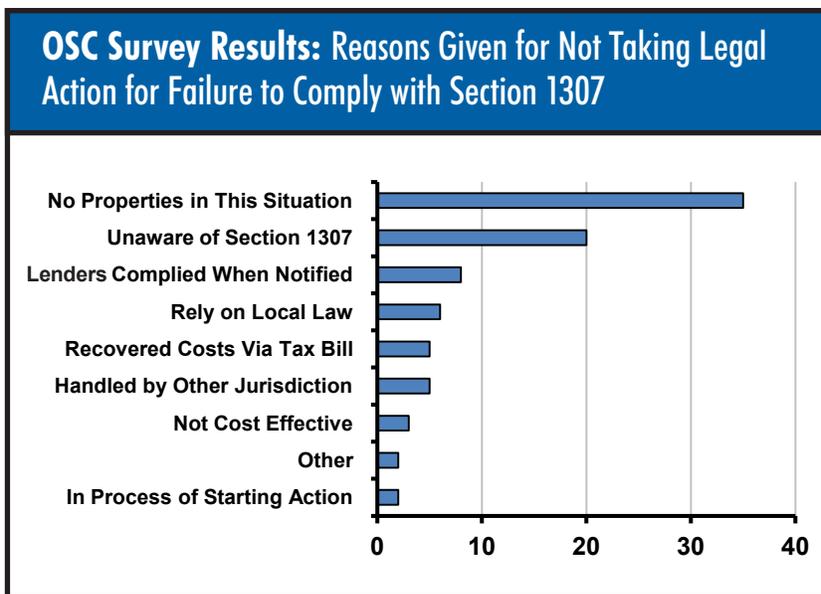
Taking Legal Actions

When local governments have taken legal action against those responsible for failing to maintain foreclosure properties, they have generally utilized local authority. Only 12 percent of local officials indicated that they have taken legal action for Section 1307 violations, while 31 percent indicated that they have taken legal actions against responsible parties for violations of a local law or ordinance. These findings suggest that while a large number of localities have not had to address foreclosure maintenance issues, the majority of localities that have done so have tended to use local procedures. Section 1307 appears to be an underused resource that could be helpful to those localities coping with foreclosure maintenance problems.

Local government officials who indicated that foreclosures were a problem in their communities also reported that legal action (of all kinds) was initiated more than twice as frequently as compared to those localities that were not as severely affected by foreclosures. In fact, 38 percent of the localities indicated that they did not have any foreclosure properties which warranted legal action. This is consistent with the nature of the foreclosure problem in New York State—some localities are hit hard by foreclosures, while others face issues related to foreclosure

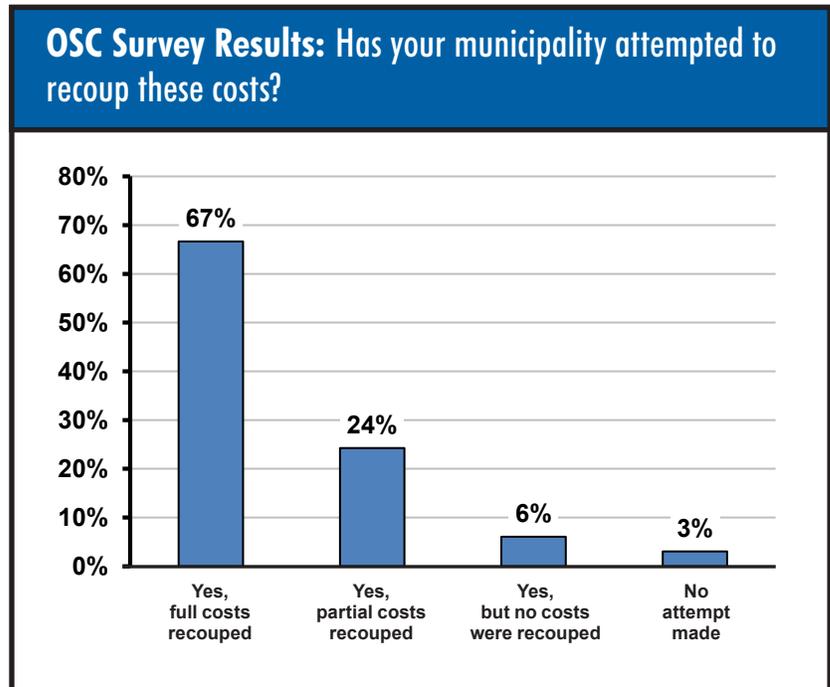
much less frequently, if at all. For those hit hardest, the legal protections of Section 1307 could be an important component of the effort to maintain the quality of their communities.

In addition, the legal requirement in and of itself can promote compliance. In many cases, local officials indicated that when notified, the responsible parties complied with the requirements (whether under Section 1307 or a local law or ordinance), thereby alleviating the need for additional work and expense on the part of the municipality.



Recovering Costs

Local governments that responded to the survey reported that even though they were largely unaware of Section 1307, they have been quite successful in recovering the costs associated with the maintenance of foreclosure properties. Of those localities indicating that they spent money in 2010 enforcing maintenance standards, over two-thirds have fully recouped the costs associated with property maintenance. In nearly 61 percent of the cases, localities have attempted to recover costs using remedies other than Section 1307, such as placing a lien on the property.



For the one-third of respondents that have not been able to recover costs fully, Section 1307 can provide an additional mechanism for doing so. This is important, because among the responding localities that have been the most burdened with property maintenance activities (those maintaining over 50 properties in a single year), less than one-half have been able to fully recoup their costs.

Conclusion

Section 1307 was enacted to help protect property values and prevent neighborhood blight by requiring foreclosing lenders to maintain vacant or abandoned properties during the foreclosure process. However, many local officials are not aware of the provisions of the law.

The results of this survey indicate a need for greater communication and outreach regarding current laws and responsibilities. For the law to have a noticeable impact, local officials need to be made aware of Section 1307 provisions, lenders must be made aware of their additional responsibilities to maintain foreclosed properties, and all parties should be made aware that timely maintenance is the most efficient way to preserve property values.

We will continue to use the resources of the Office of the State Comptroller to provide information and assistance to local governments via our website, publications and training initiatives.

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