



January 2009

With property values declining and foreclosures increasing, more and more homeowners are taking out their frustrations by removing fixtures or otherwise damaging their bank-owned homes before moving out. This is unethical, but it appears that these people generally suffer no consequences for their actions and others end up paying the price as homes continue to decline in value partly because “vandalized” homes depress the market further. This month’s article discusses the criminal and civil risks of purposely damaging a home before moving out.

THE COST OF RETALIATION

We have all heard about or read news reports of disgruntled homeowners who leave their properties in various states of disrepair following foreclosure and eviction. In some cases, angry homeowners purposely vandalize the property in “retaliation” for the foreclosure, and even go so far as to remove fixtures such as sinks, cabinets and toilets. It is widely reported how these actions cost mortgage companies thousands of dollars per property due to the diminished values. It is also reported how these actions affect all property owners by lowering the values of surrounding properties and causing lower appraisals when these damaged properties sell and their reduced sales prices are used in calculating comparable values.

What is not generally reported, however, is that anyone who damages a foreclosed property in retaliation against the mortgage company, may face criminal prosecution for those actions. In California, Penal Code §502.5 specifically prohibits removing fixtures “with the intent to defraud or injure” the mortgage holder after the property has been foreclosed. Removal of fixtures valued at more than \$100 constitutes a felony, and can result in a state prison sentence for a year or more. If the fixtures removed are worth less than a total of \$100, removal constitutes a misdemeanor, and can result in county jail imprisonment for up to one year and or a fine of up to \$1,000.00.

California law also permits the mortgage holder to sue in civil court to obtain a money judgment for any damage intentionally caused by the former homeowner. If a loan is for the purchase of residential property (a purchase-money loan), anti-deficiency statutes generally prevent the mortgage holder from suing for the difference between the amount owed by the purchaser and the amount recovered through the foreclosure process (the deficiency). Even if the loan is not a purchase-money loan, a non-judicial foreclosure allows the mortgage holder to recover the property only, and will not permit a lawsuit to

recover the deficiency. These rules, however, do not apply in a situation where the homeowner intentionally damages the property before leaving.

Under California law, anyone who damages property by “reckless, intentional or malicious” actions commits bad faith waste. Removing fixtures or vandalizing property is probably intentional and/or malicious, and would therefore qualify as bad faith waste. In such a situation, the mortgage company may bring a separate lawsuit to recover for the difference in the value of the property caused by the bad faith waste. This is a fairly complex area of law, and there are exceptions to this rule (for example, a mortgage holder who enters a full credit bid at the foreclosure sale may not be able to file a separate lawsuit for damages), but anyone who purposely damages the property in retaliation for the foreclosure may end up having to pay a judgment for that damage. If a mortgage company obtains a judgment for the damages, that judgment is valid for ten years, and may be renewed for additional ten year periods. Further, since the judgment would be for an intentional or malicious act, it may not be dischargeable in bankruptcy.

While it is easy to understand the anger and frustration of losing a home to foreclosure, particularly in these perilous economic times, the actions of those who express their anger by trashing their homes after the foreclosure cannot be condoned. Such actions affect everyone. Fewer people would resort to such actions, however, if they knew they faced significant risk of not only criminal prosecution but also of a civil judgment that could follow them the rest of their lives. Rather than sitting by and watching this happen, next time someone talks about retaliating against the mortgage company because of foreclosure proceedings, take an opportunity to educate them as to the potential greater cost involved.

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