The Ramblings of a Title Man

Zombie Titles in the United States

Any fan of horror or fantasy fiction has probably heard a story that included a zombie. Generally speaking, a "zombie" is a word loosely used to describe a monster created by reanimated human remains. The Oxford English Dictionary gives the origin of the word as West African. In the English language, the word "zombie" was first recorded in 1819 in a history of Brazil by the poet Robert Southey[1]. But regardless if you trace the history of the word back to European folklore of the 19th Century or even to Mary Shelly's Book *Frankenstein*, the word conjures up a mindless monster brought back from the dead.

When we talk about zombie titles in the United States, the term usually means that a lender has started the foreclosure process for a home, then dismissed or paused that foreclosure process, leaving the home in limbo and the borrower technically still the owner. Lenders are neither required to complete foreclosures nor take title to homes that are in default. When a lender starts a foreclosure, an assessment is made on the value of the home as well as the costs to hold title to the property and the expenses calculated to market it for sale. Many homes in foreclosure have other liens against them, including homeowners' association liens, tax liens and maintenance enforcement liens. If these liens are high, the incentive for a lender to take over the property is low. Furthermore, if the value of the home has fallen and the cost of marketing and selling the home will exceed what the home is worth, the lender may decide to write off the loan and not pursue foreclosure.

When a lender dismisses or pauses a foreclosure action, the borrower is likely the one with the most to lose. Borrowers who receive foreclosure notices may determine that they have so little equity or no means to save a home from foreclosure, and just move out of the home. Borrowers who abandon homes before the foreclosure process is complete become susceptible to zombie titles. Even after a borrower moves out, if a lender dismisses a foreclosure action, the title remains in the borrower's name, but often they mistakenly believe they have lost the home. Property assessments, liens and ordinance enforcement actions can all begin to pile up against the property. Furthermore, an abandoned home can attract crime or become a health hazard or worse, prevent other sales in the neighborhood from occurring.

At the peak of the "zombie housing crisis" in the third quarter of 2013, about 44,030 homes in the United States were considered "zombies" (halted foreclosure process with an absentee owner without knowledge they still owned the property). According to REALTORMag, this was reduced by 67 percent to more than 14,000 homes in the United States by the end of the third quarter of 2017[2]. The state of New York took action in 2016 to enact tougher laws to prevent banks from ignoring maintenance responsibilities on homes in the foreclosure process. Lenders have 90 days after a court order granting them permission to auction the property to hold such an auction, and the New York Department of Financial Services has the power to levy fines of up to $500 a day for uncorrected maintenance violations[3].

In 2023, zombie homes are very low by comparison. Of the 315,000 homes in some stage of foreclosure in the United States in the third quarter of 2023, Attom reports that only 8,800 of them are "zombies".

From the borrower's perspective, the ownership of a zombie title can be even more catastrophic, especially if they do not know about it. Several years later, the borrower may find out they still have title to a property that has accumulated liens and code violations and become a source of blight and decay in a neighborhood. In the vast majority of cases, the underlying debt for the mortgage is still owed and will remain on a borrower's credit until paid or discharged in bankruptcy. Relieving a borrower of this debt can take years of work and often times, necessitates bankruptcy.

But what should title professionals do when they are asked to close transactions involving zombie titles? There are three general rules for dealing with zombie titles:

- **First, treat the sale like a short sale**, obtaining specific instruction from the lender who halted the foreclosure process. Often times, there is a law firm also involved in the foreclosure process, and you may need to obtain a dismissal of the foreclosure case depending on state law.
- **Second, contact your underwriter to discuss any additional requirements.** Many underwriters have made the sale of a zombie title a transaction that requires specific underwriter approval to insure with title insurance.
- **Third and most importantly,** take all precautions regarding identity fraud. Zombie homes are easy targets for fraudsters who may attempt to sell a home with a bogus power of attorney or other fraudulent means.

A zombie home can be a significant negative factor on a neighborhood, depressing values of homes and making nearby sales difficult. Knowing how to process these titles and help clear them from your communities is what title professionals do. That is how the title industry helps protect property rights from zombie attacks!

"How quickly one accepts the incredible if only one sees it enough."
— Richard Matheson, *I Am Legend*, first published in 1954

1- www.wikipedia.org "zombie" accessed 11/13/2017
2- www.realtor.org "Fewer 'Zombie' Homes Haunt Neighborhoods" Daily Real Estate News | October 26, 2017
3- www.newsday.com "NY Combats zombie houses with laws taking effect Sunday" Newsday | December 30, 2016

DISCLAIMER: The opinions expressed herein are those of the author. Michael Holden and do not represent any company or organization. While the information presented is believed to be accurate, it should not be a substitute for legal advice, and readers are strongly encouraged to seek independent legal counsel.