

## **CRIMINAL PROSECUTION FOR DAMAGES TO PROPERTY SUBJECT TO A MORTGAGE**

Nothing is more disheartening than to enter OREO, post-foreclosure, and realize that a borrower has damaged the property or removed items such as furnaces; water heaters; sinks; cabinets; flooring; carpeting; light fixtures; toilets; windows; landscaping; and trees. The removal of these items can cause a drastic decline in the value of the property and can considerably delay the resale of the property while the property is repaired and removed items are replaced. Often times, borrowers damage property because they are angered that property is being lost to foreclosure. Other times, borrowers act upon the mistaken belief that they are entitled to remove anything that has any value and can be physically removed. As a preventative measure, it may be beneficial for lenders to remind borrowers that Minnesota law provides criminal penalties to anyone that damages and/or impairs the value of property subject to a mortgage.

Minnesota State Statute Section 609.615 makes it a crime to remove or damage real property, which is subject to a mortgage or contract for deed, with the intent to impair the value of the real property. The penalties for violating Section 609.615 can be severe. If the damage is \$300.00 or less, a borrower can be sentenced to up to 90 days in jail and can be ordered to pay a fine of up to \$1,000.00. If the damage is more than \$300.00, the borrower can be sentenced to up to 5 years in jail and a \$10,000.00 fine. In addition, borrowers found guilty of violating Section 609.615 can also be ordered to pay restitution to compensate the bank for the damages to the property.

The criminal prosecution is handled by the local police and/or sheriff and the local criminal prosecutor. Once a lender discovers the damage, the bank should immediately take pictures and contact the local police or county sheriff. The local police or county sheriff will prepare a report which will be forwarded to the local city or county prosecutor to determine if criminal charges will be filed. The prosecutor has the discretion to determine if criminal charges are warranted. If the prosecutor declines to file criminal charges, the bank still retains its ability to file a lawsuit against the borrower to recover the cost of the repairs to the property. In the event the prosecutor elects to file charges, the matter is handled like other crimes such as burglary or assault. In the criminal arena, the bank is the "victim" and has the right to be informed of, and involved in, the criminal prosecution.

Practically speaking, some prosecuting authorities are extremely busy and consider the damage to property in this context as a civil matter which can be pursued by the lender in civil court. However, in some instances, the local prosecutor can be compelled to file criminal charges and full restitution to the lender may be imposed as a condition of any plea bargain with the borrower.

Although ultimately, a violation of Section 609.615 may not result in the prosecution of the borrower, the existence of Section 609.615 can be used as a deterrent to ensure that borrowers are fully informed of the consequences prior to the commence of any foreclosure. Most borrowers are surprised to learn that the removal of a furnace could result in up to 5 years in jail and a \$10,000.00 fine.