

Court says lender can't change your locks because you missed a payment

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FILE - In this July 2, 2008, file photo, a bank-owned home is seen for sale in Sacramento, Calif. Consumer groups say a recent ruling from the Washington state Supreme Court could have a broad effect on how some mortgage companies respond when homeowners miss payments. (AP Photo/Rich Pedroncelli, File)

SEATTLE (AP) — Laura Jordan came home from work one day to find herself locked out. She had missed two mortgage payments, and the company servicing her loan had changed the locks without warning.

In a ruling this month, the Washington Supreme Court found that action illegal — a decision that clears the way for a federal class-action case that Jordan brought on behalf of at least 3,600 borrowers in the state, and one that could have broad ramifications on how some lenders respond when homeowners miss payments.

"This is criminal trespass and theft, and it should be treated as such," said Sheila O'Sullivan, executive director of the Northwest Consumer Law Center. "There's no basis for them to walk in and change the locks on a person's home until they have foreclosed. It's an important ruling."

The mortgage industry is wrestling with the significance of the 6-3 ruling, which found that provisions standard in mortgage documents around the country conflict with state law. The provisions allow for lenders to change locks, winterize homes or take other steps to preserve the value of properties that are in default or abandoned.

In a friend-of-the-court-brief, the Federal Home Loan Mortgage Corporation — better known as Freddie Mac — highlighted the importance of such provisions in maintaining its collateral and avoiding blight that might harm property values in a neighborhood.

But the court held that they violate state law, which prohibits lenders from taking possession of property before foreclosure. The court addressed the question at the request of a federal judge in Spokane, who is overseeing the class action.

Washington appears to be the first state in the nation that has invalidated the provisions, the plaintiffs' lawyers say, and consumer advocates say other states could follow suit or that the ruling could inspire additional class-action lawsuits.

In Jordan's case, Dallas-based Nationstar Mortgage hired a vendor to inspect her Wenatchee property in 2011 after she missed a couple mortgage payments in 2011. The vendor posted a notice on the door saying the property was "unsecure or vacant," prompting the company to have the locks changed. Jordan, a dental hygienist, argues that she was still living there, and that when she got home from work, she found herself locked out. The new key to the house was in a lock-box, and she had to call Nationstar to get the combination to retrieve it.

"She could no longer access her home without going through Nationstar," Justice Susan Owens wrote for the majority. "This action of changing the locks and allowing her a key only after contacting Nationstar for the lockbox code is a clear expression of control."

Nationstar said it was evaluating whether to ask the court to reconsider to narrow the impact of the decision. A spokesman for Freddie Mac said the organization would not comment on the ruling.

"For many years, we have followed standard industry practices regarding property preservation," Nationstar said in an emailed statement. "Particularly if broadly construed, the decision will likely hamper loan servicers' efforts to maintain abandoned properties and avoid blight in Washington communities."

The Northwest Consumer Law Center, which works with financially troubled borrowers to help them modify their loans or otherwise retain their properties, argued that the real reason Nationstar was quick to change locks was to prompt people to move out — making it more likely that foreclosure would proceed uncontested. Several borrowers whose locks were changed said their properties were incorrectly deemed abandoned, and that they believed they had no right to remain once the locks were changed.

Clay Gatens, a Wenatchee lawyer who represents the plaintiffs, said that if properties are truly abandoned and at risk, under Washington law lenders do have a quicker alternative to foreclosure, which can take months. That's to have a court appoint a receiver, he said.

Gatens said he's seeking damages that include the fair rental value of the class members' properties between the time the locks were changed and the time the foreclosures were eventually completed — a period that typically spanned eight to 10 months, meaning damages could easily reach into the tens of millions of dollars, he said.

"You have all this egregious behavior," he said. "These folks are in economic distress. They don't know what's happened — they just know their home's been broken into and the locks have been changed, which prompts them to move. This ruling has got broad, broad ramifications in Washington to stop this practice, but I think it will have national impact as well."