

ORDINANCE #2022-30-OAB

AN ORDINANCE OF THE TOWNSHIP OF BERKELEY, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 10 OF THE BERKELEY TOWNSHIP CODE ENTITLED, "REGISTRATION OF FORECLOSING MORTGAGED PROPERTY AND VACANT PROPERTY" SO AS TO AMEND VARIOUS SECTIONS THEREOF

July 28, 2022

WHEREAS, P.L. 2021, Chapter 444 authorized municipalities to adopt ordinances to (1) create a property registration program for the purposes of identifying and monitoring residential and commercial properties within the municipality for which a summons and complaint in an action to foreclose on a mortgage has been filed;

(2) regulate the care, maintenance, security, and upkeep of the exterior of vacant and abandoned residential and commercial properties for which a summons and complaint in an action to foreclose has been filed; and

(3) impose property registration fees on the creditor of residential or commercial properties on an annual or semi-annual basis; and

WHEREAS, P.L. 2021, Chapter 444, provided that municipalities may adopt said ordinances but same must contain certain provisions and requirements; and

WHEREAS, Chapter 10, Registration of Foreclosing Mortgaged Property and Vacant Property, of the Township Code must be amended to comport with the new legislation.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Township of Berkeley, County of Ocean, State of New Jersey as follows:

SECTION 1. That the governing body hereby amends Chapter 10, Registration of Foreclosing Mortgaged Property and Vacant Property, so as to amend **§10-2, Definitions**, to add the following definitions:

ANNUAL REGISTRATION

One (1) year from the date of the first action that requires registration pursuant to this Chapter, and every subsequent year that the property is still a registerable property. The date of the initial registration may be different than the date of the first action that required registration.

CREDITOR

A mortgagee or an agent or assignee of a mortgagee, such as the servicer, who has filed a complaint in the Superior Court seeking to foreclose upon a residential or commercial mortgage. If the entity seeking to foreclose upon the residential or commercial mortgage changes as a result of an assignment, transfer, or otherwise after the filing of the foreclosure complaint in the Superior Court, the new entity shall be deemed the creditor for purposes of this ordinance. For purposes of this ordinance, a creditor shall not include the State, a political subdivision of the State, a State, county, or local government entity, or their agent or assignee, such as the servicer.

SECTION 2. That the governing body hereby amends Chapter 10, Registration of Foreclosing Mortgaged Property and Vacant Property, so as to amend **§10-2, Definitions**, to omit the terms "EVIDENCE OF VACANCY" and "SEMIANNUAL REGISTRATION" in their entirety. The following definition shall be added:

VACANT AND ABANDONED

In accordance with N.J.S.A. 40:48-2.12s3(b)(8), a property shall be considered vacant and abandoned if it is not legally occupied by a mortgagor or tenant, which is in such condition that it cannot be legally reoccupied, because of the presence or finding of *at least two* of the following:

- (a) overgrown or neglected vegetation;
- (b) the accumulation of newspapers, circulars, flyers, or mail on the property;
- (c) disconnected gas, electric, or water utility services to the property;
- (d) the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (e) the accumulation of junk, litter, trash, or debris on the property;
- (f) the absence of window treatments such as blinds, curtains, or shutters;
- (g) the absence of furnishings and personal items;
- (h) statements of neighbors, delivery persons, or government employees indicating that the property is vacant and abandoned;
- (i) windows or entrances to the property that are boarded up or closed off, or multiple window panes that are damaged, broken, and unrepaired;
- (j) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;

(k) a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;

(l) an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;

(m) the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;

(n) a written statement issued by a mortgagor expressing the clear intent of all mortgagors to abandon the property; or

(o) any other reasonable indicia of abandonment.

SECTION 3. That the governing body hereby amends Chapter 10, Registration of Foreclosing Mortgaged Property and Vacant Property, so as to amend **§10-5, Inspection and registration of real property under foreclosure**, in its entirety, as follows:

§10-5, Inspection and registration of real property under foreclosure

A. Any creditor or mortgagee filing a summons and complaint in an action to foreclose real property in the Township of Berkeley shall, in addition to the notice provided to the municipality pursuant to N.J.S.A. 46:10B-51 or N.J.S.A. 40:48-2.12s2, register the residential or commercial property with the Township's property registration program within 10 days of filing the summons and complaint in an action to foreclose, as a property in foreclosure and, as part of that registration:

- i. provide the Township with the information regarding the creditor required by N.J.S.A. 46:10B-51 or N.J.S.A. 40:48-2.12s2;
- ii. Appoint a property manager to inspect, maintain and secure the real property subject to the mortgage in foreclosure;
- iii. Provide the name of the creditor or mortgagee, the mailing address of the mortgagee, email address, telephone number and name of the property manager and said person's address, email address, and telephone number, regardless of whether it is occupied or vacant.

- iv. identify the date the summons and complaint in an action to foreclose on a mortgage was filed against the subject property, the court in which it was filed, and the docket number of the filing; and
- v. identify whether the property is vacant and abandoned in accordance with the definition herein under §10-2.
- vi. Register a separate registration for each property subject to a filing a summons and complaint in an action to foreclose real property

B. Any mortgagee who holds a mortgage on real property located within the Township shall perform an inspection of the property upon default by the mortgagor as evidenced by the filing of a foreclosure action.

C. Property inspected pursuant to Subsection A above that remains in foreclosure shall be inspected every 30 days by the creditor or mortgagee. If an inspection shows a change in the property's occupancy status, the creditor or mortgagee shall, within 10 days of that inspection, update the occupancy status of the property registration.

D. If there is any change in the name, address, or telephone number for a representative, agent, or individual authorized to accept service on behalf of a creditor required to register pursuant to the property registration program following the filing of the summons and complaint, the creditor shall update the property registration program within 10 days of the change in that information;

E. A creditor filing a summons and complaint in an action to foreclose shall, if the registered property becomes vacant and abandoned as defined in § 10-2 after the property is initially registered with the Township, update the property registration with the Township to reflect the change in the property's status within 10 days of the inspection performed under Section C above.

F. A creditor filing a summons and complaint in an action to foreclose shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property if the property is vacant and abandoned at any time while the property is registered with the property registration program;

G. Any mortgagee or creditor located out-of-State shall be responsible for appointing an in-State representative or agent to act for the foreclosing creditor and shall provide the name and contact of said in-State representative or agent to the Township Administrator within 10 days of the appointment of same.

- H. At the time of initial registration, each registrant shall pay a nonrefundable annual registration fee of \$500 for each property that is required to be registered because a summons and complaint in an action to foreclose was filed by the creditor. Subsequent nonrefundable annual registrations of properties and fees in the amount of \$500 are due within 10 days of the expiration of the previous registration. An additional \$2,000 per property shall be assessed annually if the property is vacant or abandoned pursuant to § 10-2 when the summons and complaint in an action to foreclose is filed, or becomes vacant and abandoned pursuant to § 10-2 at any time thereafter while the property is in foreclosure. Said fees shall be deposited to a special account in the Township's department dedicated to the cost of implementation and enforcement of this chapter and fulfilling the purpose and intent of this chapter. None of the funds provided for in this section shall be utilized for the legal defense of foreclosure actions.
- I. If the mortgage and/or servicing on a property is sold or transferred, the new mortgagee is subject to all the terms of this chapter. Within 10 days of the transfer, the new mortgagee shall register the property or update the existing registration. The previous mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that mortgagee's involvement with the registrable property.
- J. If the mortgagee sells or transfers the registrable property in a non-arm's-length transaction to a related entity or person, the transferee is subject to all the terms of this chapter. Within 10 days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the mortgagee was at the time registration was required, including but not limited to unregistered periods during the foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous mortgagee will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that mortgagee's involvement with the registrable property.
- K. This section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the mortgagee as well as any

properties transferred to the mortgagee under a deed in lieu of foreclosure or by any other legal means.

- L. Properties subject to this section shall remain subject to the annual registration requirement and the inspection, security, and maintenance standards of this section as long as the property remains registrable.
- M. Failure of the mortgagee and/or property owner of record to properly register or to modify the registration to reflect a change of circumstances as required by this chapter is a violation of this chapter and shall be subject to enforcement by any of the enforcement means available to the Township.
- N. If any property is in violation of this chapter, the Township may take the necessary action to ensure compliance with and/or place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to bring the property into compliance.
- O. Registration of foreclosure property does not alleviate the mortgagee and/or owner from obtaining all required licenses, permits and inspections required by applicable code or state statutes. Acquisition of required licenses, permits and inspections or registration of rental property does not alleviate the requirement for the property to be registered under this section. The mortgagee and/or owner is expected to update the status of the property in the event of a mortgagee-managed rental.

SECTION 4. That the governing body hereby amends Chapter 10, Registration of Foreclosing Mortgaged Property and Vacant Property, so as to amend so as to amend **§10-8, Security requirements; posting of information**, so as to amend Section C, D & E as follows:

§10-8. Security requirements; posting of information

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- C. If a property is registrable and the property has become vacant or blighted, a property manager shall be designated by the creditor, mortgagee or owner to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this chapter and any other applicable laws.
- D. In addition to the above, the property is required to be secured in accordance with the applicable code(s) of the Township.

E. When a property subject to this chapter becomes vacant, it shall be posted with the name, address and telephone number of the creditor or out-of-State creditor's in-State representative or agent for the purpose of receiving service of process. There shall also be posted the name of the Property Manager, email address and twenty-four-hour contact telephone number of the property manager. The property manager shall be available to be contacted by the Township Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays excepted. The sign shall be placed in a window facing the street and shall be visible from the street. The posting shall be no less than 18 inches by 24 inches and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language with supporting information:

CREDITOR (OR IF APPLICABLE, OUT-OF-STATE CREDITOR'S IN-STATE
REPRESENTATIVE OR AGENT):

CREDITOR'S ADDRESS: _____

CREDITOR'S TELEPHONE NUMBER: _____

THIS PROPERTY IS MANAGED BY _____

AND IS INSPECTED ON A REGULAR BASIS.

THE PROPERTY MANAGER CAN BE CONTACTED

BY TELEPHONE AT _____

OR BY EMAIL AT _____

SECTION 5. That the governing body hereby amends Chapter 10, Registration of Foreclosing Mortgaged Property and Vacant Property, so as to amend so as to amend **§10-11, Additional authority, Subsection A** as follows:

§10-11, Additional authority

A. If the Enforcement Officer has reason to believe that a property subject to the provisions of this chapter is posing a serious threat to the public health, safety, and welfare, the Code Enforcement Officer may temporarily secure the property at the expense of the mortgagee or owner and may bring the violations before the Code Enforcement,

Committee or Special Magistrate as soon as possible to address the conditions of the property. Nothing herein shall limit the Township from abating any nuisance or unsafe condition by any other legal means available to it. In the case of a violation for failure to provide care, maintenance, security, and upkeep of the exterior of vacant and abandoned property, such notice shall require the person or entity to correct the violation within 30 days of receipt of the notice, or within 10 days of receipt of the notice if the violation presents an imminent threat to public health and safety.

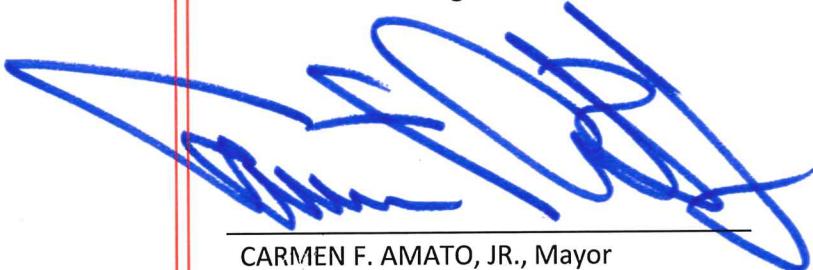
SECTION 6. That the governing body hereby amends Chapter 10, Registration of Foreclosing Mortgaged Property and Vacant Property, so as to amend so as to amend **§10-14, Violations and penalties** as follows:

§10-14, Violations and penalties

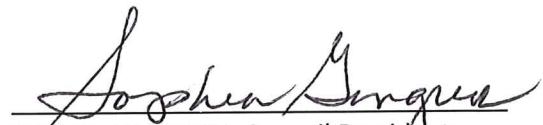
- A. A creditor or mortgagee found by the municipal court of the Township in which the property subject to the ordinance is located, or by any other court of competent jurisdiction, to be in violation, shall be subject to a fine of \$1,500 for each day of the violation. Any fines imposed pursuant to this paragraph shall commence thirty-one (31) days following receipt of the notice of violation, except if the violation presents an imminent risk to public health and safety, in which case any fines shall commence eleven (11) days following receipt of the notice.
- B. An out-of-State creditor found by the municipal court of the Township in which the property subject to the ordinance is located, or by any other court of competent jurisdiction, to be in violation of the requirement to appoint an in-State representative or agent pursuant to the ordinance shall be subject to a fine of \$2,500 for each day of the violation. Any fines imposed on a creditor for the failure to appoint an in-State representative or agent shall commence on the day after the 10-day period set forth in N.J.S.A. 46:10B-51 or N.J.S.A. 40:48-2.12s3 for providing notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.

SECTION 7. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.



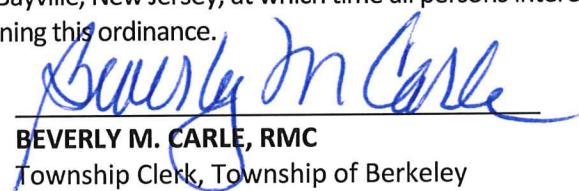
CARMEN F. AMATO, JR., Mayor



SOPHIA GINGRICH, Council President
JOHN BACCHIONE, Council Vice President

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a regular meeting of the Township Council of the Township of Berkeley, in the County of Ocean, State of New Jersey, held on July 25, 2022, and will be considered for second reading and final passage at the regular meeting of said Governing Body to be held on the 22nd day of August 2022, at 6:00 p.m., or as soon thereafter as this matter can be reached, at the meeting room of the Municipal Building located at 627 Pinewald-Keswick Road, Bayville, New Jersey, at which time all persons interested shall be given an opportunity to be heard concerning this ordinance.



BEVERLY M. CARLE, RMC
Township Clerk, Township of Berkeley