

O-05-23

**AN ORDINANCE AMENDING CHAPTER 231, ARTICLE V OF THE REVISED
GENERAL ORDINANCES OF THE BOROUGH OF WHARTON, COUNTY OF
MORRIS, STATE OF NEW JERSEY**

BE IT ORDAINED by the Governing Body of the Borough of Wharton that Chapter 231 Property Maintenance, Article V Registration of Vacant and Foreclosing Properties of the revised general ordinances of the Borough of Wharton are hereby amended as follows:

Chapter 231. Property Maintenance

Article V. Registration of Vacant or Foreclosing Properties

§ 231-33. Purpose.

The provisions of this chapter protect and preserve the public health, safety and welfare and security and quiet enjoyment of residents and neighborhoods by requiring all property owners, including lenders, trustees and service companies to properly maintain vacant and/or foreclosing properties, and regulate the maintenance of vacant and/or foreclosing properties in order to prevent blighted and unsecured properties.

§ 231-34. Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When consistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

BOROUGH

The Borough of Wharton.

CREDITOR

The creditor having a right of foreclosure, including but not limited to the holder of a mortgage on a property, and any agent, servant or employee of the creditor, a loan servicing company, or any successor in interest and/or assignee of the creditor's rights, interests or obligations under the document granting foreclosure rights.

DAYS

Consecutive calendar days.

FORECLOSING

The legal process by which the creditor of a title holder of a parcel of property, which has been placed as collateral or security for a financial obligation, seeks to divest the title holder of his rights to the property and have the property sold at a sheriff's sale to satisfy the debt after the title holder defaults on the aforesaid financial obligation.

NONRESIDENTIAL PROPERTY

Any commercial, industrial and mixed-use real estate, or portion thereof, located in the Borough of Wharton, including improvements thereon.

NUISANCE

A. Any nuisance known at common law or inequity jurisprudence or as provided by the statutes of the State of New Jersey or the ordinances of the Borough.

B. Any attractive nuisance which may prove detrimental to the health or safety of children, whether in a building, on the premises of a building or upon an unoccupied lot. This includes, but is not limited to: abandoned wells, shafts, basements, excavations, abandoned iceboxes, refrigerators, motor vehicles, boats, any structurally unsound fences or structures, lumber, trash, fences, debris or vegetation, such as poison ivy, oak or sumac, which may prove to be a hazard for inquisitive minors.

C. Physical conditions dangerous to human life or detrimental to health of persons on or near the premises where the conditions exist.

D. Insufficient ventilation or illumination in violation of this Code.

E. Inadequate or unsanitary sewage or plumbing facilities in violation of this Code.

F. Unsanitary conditions or anything offensive to the senses or dangerous to health in violation of this Code.

G. Fire hazards.

OWNER

Any person who, alone or jointly with several others, shall have legal or equitable title to any premises, with or without accompanying actual possession thereof, or who shall have charge, care or control of any property unit as owner or agent of the owner, including but not limited to a lessee, executor, executrix, administrator, administratrix, trustee, receiver or guardian of the estate or as a foreclosing mortgagee or mortgagee in possession, regardless of how that possession was obtained. Any person who is a lessee subletting or assigning any part of any property or property unit shall be deemed to be co-owner with the lessor and shall have joint responsibility over the portion of the premises sublet or assigned by said lessee.

PROPERTY

Any real estate, including residential, commercial, industrial and mixed-use, or portion thereof, located in the Borough of Wharton, including any improvements thereon.

RESIDENTIAL PROPERTY

Any property that contains one or more dwelling units used, intended or designed to be occupied for living purposes.

SECURITY

Measures taken to ensure that the property is inaccessible to unauthorized persons.

VACANT **OR ABANDONED**

A property shall be considered vacant or 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.

§ 231-35. Registration of vacant **or abandoned** properties; designation of responsible individual.

A. All owners of vacant residential property must register such vacant properties with the Borough of Wharton Housing and Zoning Officer within 10 days of such property becoming vacant. The registration must be renewed annually as set forth below for as long as the property remains vacant.

B. All owners of vacant nonresidential property must register such vacant properties with the Borough of Wharton Housing and Zoning Officer within 30 days of such property becoming vacant. The registration must be renewed annually as set forth below for as long as the property remains vacant.

C. Owners of vacant properties shall designate an individual or property management company responsible for the security and maintenance of the property. The individual or property management company responsible for the security and maintenance of the property shall have an office located in New Jersey within twenty-five miles of the property.

D. The registration required by this section must contain the following information:

- (1) The owner's name, telephone number, and mailing address. The mailing address may not be a post office box.
- (2) The street address and tax map designation (lot and block) of the property.
- (3) Whether the property is residential, nonresidential, commercial or mixed-use.
- (4) The name, telephone number, e-mail address and mailing address of an individual or property management company located in the State of New Jersey which is responsible for the security and maintenance of the property. The mailing address may not be a post office box.
- (5) A statement from the owner certifying that the property was inspected as required by this chapter.
- (6) Proof of utility (gas, electric, water) connections or disconnections.
- (7) Proof of insurance meeting the requirements of Section 7(c) of this Ordinance.

E. The owner shall have a continuing duty to notify the Borough of any changes to the information contained in the registration between registration cycles.

F. The Borough of Wharton Housing and Zoning Officer may promulgate forms on which the information in the registration must be provided.

G. The owner must notify the Borough of Wharton Housing and Zoning Officer if, at any time subsequent to registration as a vacant property, the property is no longer vacant, and provide proof that the property is no longer vacant.

H. Upon the effective date of this chapter, the owner of any currently vacant property and a creditor pursuing a pending foreclosure shall have 30 days within which to comply with the provisions of this chapter.

§ 231-36. Registration fees for vacant **or abandoned** properties.

A. The initial registration fee for a vacant **or abandoned** residential property shall be \$500 and must accompany the registration form. The initial registration shall be valid for the remainder of the calendar year in which the property is registered. Renewals for subsequent calendar years shall run from January 1 to December 31, and payment of the renewal registration fee shall be due by January 15 of the relevant year. **Registration fees and renewal fees will not be prorated or refunded.** Each annual renewal shall be \$500. An additional \$2,000 per property annually shall be required, if the property becomes vacant or abandoned, as per the definition of same in this Ordinance, at the time of or at any time subsequent to the filing of a summons and complaint in an action to foreclose.

B. No fee shall be charged at the time **a creditor** registers vacant **or abandoned** nonresidential property with the Borough. If a tenant is not secured for the registered vacant **or abandoned** nonresidential property within six months of the date of registration of the vacant **or abandoned** nonresidential property, an initial registration fee of \$500 shall be charged to the **creditor**. The initial registration shall be valid for the remainder of the calendar year in which the property is registered. Renewals for subsequent calendar years shall run from January 1 to December 31, and payment of the renewal registration fee shall

be due by January 15 of the relevant year. Registration fees and renewal fees will not be prorated or refunded. **Each annual renewal shall be \$500. An additional \$2,000 per property annually shall be required, if the property becomes vacant or abandoned, as per the definition of same in this Ordinance, at the time of or at any time subsequent to the filing of a summons and complaint in an action to foreclose.**

C. No governmental agency shall be required to pay the initial or renewal registration fee.

§ 231-37. Registration of foreclosing properties; designation of responsible individual.

A. A creditor serving a summons and complaint in an action to foreclose on a mortgage or other lien against any property in this Borough, including but not limited to residential property, shall, within 10 days of serving the summons and complaint, file a registration with the Borough of Wharton Housing and Zoning Officer, **and within 30 days a listing of all commercial properties for which the creditor has foreclosure actions pending.** The registration must be renewed as set forth below until title to the property has been transferred to a new owner or the foreclosure action is dismissed. A creditor who takes title to a vacant property shall then be required to register as an owner of such vacant property, and to renew such registration for as long as the property remains vacant.

B. If the property is vacant or the creditor is located outside the State of New Jersey, the creditor must designate an individual or property management company responsible for the security and maintenance of the property. The individual or property management company responsible for the security and maintenance of the property shall have an office in New Jersey located within twenty-five miles of the property.

C. The registration shall contain the following information:

- (1) The creditor's name, telephone number, e-mail address and mailing address. The mailing address may not be a post office box.
- (2) The street address and tax map designation (lot and block) of the property for which foreclosure has been sought.
- (3) Whether the property is residential, nonresidential, commercial or mixed-use.
- (4) The name, telephone number, e-mail address and mailing address of a designated representative of the creditor who is located in the State of New Jersey and is responsible for receiving complaints of property maintenance and code violations for that property. The mailing address may not be a post office box.
- (5) If the property is vacant, the name, telephone number, and mailing address of an individual or property management company located in the State of New Jersey which is responsible for the care, maintenance, security and upkeep of the property. The mailing address may not be a post office box.
- (6) If the property is vacant, a statement from the creditor certifying that the property was inspected as required by this chapter.
- (7) If the property is vacant, proof of utility (gas, electric, water) connections or disconnections.

D. The creditor shall have a continuing duty to notify the Borough of any changes to the information contained in the registration between registration cycles.

E. The Borough of Wharton Housing and Zoning Officer may promulgate forms on which the information in the registration must be provided.

F. Pursuant to N.J.S.A. 40:48-2.12s.c.(1), an out-of-state creditor's failure to appoint an in-state representative or agent for residential properties is subject to fines set forth in Section 10b of this Ordinance.

G. Once the foreclosure action has terminated, either through dismissal or transfer of title, the creditor must provide proof of such termination, sale, transfer or occupancy to the enforcement authority within 30 days of sale, exchange or transfer.

§ 231-38. Registration fees for foreclosing properties.

A. The initial registration fee shall be \$500 and must accompany the registration form. The initial registration shall be valid for the remainder of the calendar year in which the property is registered. Renewals for subsequent calendar years shall run from January 1 to December 31, and payment of the renewal registration fee shall be due by January 15 of the relevant year. Registration fees and renewal fees will not be prorated or refunded. *Each annual renewal shall be \$500. An additional \$2,000 per property annually shall be required, if the property becomes vacant or abandoned, as per the definition of same in this Ordinance, at any time subsequent to the filing of a complaint in an action to foreclose.*

B. No governmental agency shall be required to pay the initial or renewal registration fee.

§ 231-39. Maintenance requirements.

A. Properties subject to the requirements of this chapter must be maintained in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The owner, creditor, local individual or local property management company, as appropriate, must inspect the property twice a month for the duration of the vacancy or foreclosure as appropriate.

B. In addition to, and not in lieu of, meeting all other applicable federal, state, and local laws, ordinances, rules and regulations, owners, creditors, local individuals or local property management companies must maintain property that is subject to this chapter as follows:

(1) Property shall be kept free of accumulated snow and ice, weeds, dry brush, dead vegetation, trash, junk, debris, building materials, unregistered vehicles, any accumulation of newspapers, circulars, flyers, notices (except those required by law), and discarded personal items including but not limited to furniture, clothing, large and small appliances, printed material or any other items giving the appearance that the property is vacant.

(2) Property shall be kept free of graffiti, tagging, or similar markings. In the event that any graffiti, tagging, or similar markings are placed on the property, it/they shall either be

removed or painted over with an exterior-grade paint matching the color of the portion of the structure where the graffiti, tagging, or similar marking was placed.

(3) Front yards, rear yards, and side yards of properties subject to the requirements of this chapter shall be landscaped and maintained to neighborhood standards. Landscaping and maintenance shall include, but are not limited to, care of grass, mulch, decorative rock, artificial turf/sod specifically designed for residential or commercial installation, or other ground cover, bushes, shrubs, hedges, trees, or similar plantings, removal or repair of gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch, indoor-outdoor carpet or any similar material, in addition to regular watering, irrigation, cutting, pruning and mowing of required vegetation and removal of all trimmings.

(4) Any pool, spa, or other standing body of water shall either be kept in working order so the water remains clear and free of growth, pollutants, and debris, and does not become a harborage for vermin or insects or drained and kept dry. In either case, properties with pools or spas must comply with the security fencing requirements of the Borough.

C. The owner of any vacant property shall acquire and maintain liability insurance covering injury or damage to any person or any property in not less than \$300,000 for residential buildings, and \$1,000,000 for nonresidential buildings or property.

D. The owner shall be responsible for property maintenance. However, if the owner of a property vacates or abandons any property on which a foreclosure proceeding has been initiated or if a property is or becomes vacant at the time of or at any point subsequent to the creditor's filing the summons and complaint in an action to foreclose on a mortgage against the subject property, but prior to vesting of title in the creditor or any other third party, and the property is found to be a nuisance or in violation of any applicable state or local code, the enforcement authority shall notify the creditor, which shall have the responsibility to abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by state law or Borough ordinance. The enforcement authority shall include a description of the conditions that gave rise to the violation with the notice of violation and shall provide a period of 30 days (or 10 days if the violation presents an imminent threat to public health and safety) from the creditor's receipt of the notice for the creditor to remedy the violation. The issuance of a notice of violation pursuant to this section shall constitute proof that a property is "vacant and abandoned" for the purposes of N.J.S.A. 2A:50-73. If the creditor fails to remedy the violation within that time period, the **Borough** may impose the penalties allowed for the violation of municipal ordinances pursuant to Section 10 of this Ordinance against the creditor to the same extent as they could be imposed against the owner of the property.

E. Adherence to this chapter does not relieve the owner or creditor of obligations set forth in any other statute, regulation, ordinance, or other source of authority or obligation.

§ 231-40. Inspections.

The enforcement authority shall have the authority to inspect the properties subject to this chapter for compliance and to issue summonses for any violations.

§ 231-41. Borough's authority to abate and impose lien.

Nothing contained herein shall prevent the Borough from taking action to abate a nuisance or correct a violation where the owner or creditor, as applicable, has failed to abate the nuisance or correct the violation on a vacant property or a property in foreclosure after notice and the opportunity to abate or correct. In such situations, the Borough may impose a lien against the property for costs to correct the violation or abate the nuisance. Such lien shall hereafter form part of the taxes next to be assessed and levied upon said lands, the same to bear interest at the same rate as such taxes to be collected and enforced by the same officers and in the same manner as such taxes.

§ 231-42. Governmental entities exempt.

No governmental entity shall be required to register under this chapter. However, nothing contained herein shall be construed as granting exemption to the governmental entity from property maintenance or other obligations imposed by any other statute, regulation, or ordinance.

§ 231-43. Severability.

If any provision or portion of a provision of this chapter is held to be unconstitutional, preempted by federal or state law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the chapter shall not be invalidated.

§ 231-44. Repealer.

A. All ordinances or parts of ordinances which are inconsistent with any provisions of this chapter are hereby repealed as to the extent of such inconsistencies.

B. If any section, subsection, sentence, clause, phrase, or a portion of this chapter 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.

First Reading: March 27, 2023

Second Reading: April 10, 2023

ATTEST:

**Gabrielle Evangelista,
Borough Clerk**

BOROUGH OF WHARTON

**WILLIAM J. CHEGWIDDEN,
MAYOR**