

BOROUGH OF BERLIN

ORDINANCE NO. 2016-19

AN ORDINANCE AMENDING CODE OF THE BOROUGH OF BERLIN TO BE ENTITLED, “REGISTRATION OF DEFAULTED MORTGAGE PROPERTY,” PROVIDING FOR PURPOSE, INTENT AND APPLICABILITY OF THE ORDINANCE REQUIRING THE REGISTRATION AND MAINTENANCE OF CERTAIN REAL PROPERTY BY MORTGAGEES; PROVIDING FOR PENALTIES AND ENFORCEMENT, AS WELL AS THE REGULATION, LIMITATION AND REDUCTION OF REGISTRABLE REAL PROPERTY WITHIN THE BOROUGH; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and Council of the Borough of Berlin (“Borough”) desires to protect the public health, safety and welfare of the citizens of the Borough and maintain a high quality of life for the citizens of the Borough through the maintenance of structures and properties in the Borough; and

WHEREAS, properties that are neglected and have unsecured, accessible structures have a negative impact on community value, create conditions that invite criminal activity, and foster an unsafe and unhealthy environment for children; and

WHEREAS, the continued mortgage foreclosure rates have serious negative implications for all communities trying to manage the consequences of properties that have defaulted mortgages, are in the foreclosure process, foreclosed upon and/or mortgagee owned; and

WHEREAS, properties with defaulted mortgages that are neglected and have unsecured, accessible structures have a negative impact on community value, create conditions that invite criminal activity, and foster an unsafe and unhealthy environment for children; and

WHEREAS, often times, the foreclosing party or property owners are often out of state, and there is no local contact for such a property, which makes it difficult to notice the proper party of the violations of the Borough Code, and to maintain the requisite level of maintenance and security on such structures or lots; and

WHEREAS, the Borough recognizes there are a large number of properties with defaulted mortgages and subject to foreclosure action or foreclosed upon, (hereinafter referred to as “registrable properties”) located throughout the Borough which lead to a decline in property value, create nuisances and lead to a general decrease in neighborhood and community aesthetic; and

WHEREAS, the Borough has already adopted property maintenance codes to regulate building standards for the exterior of structures and the condition of the property as a whole; and

WHEREAS, the Borough recognizes in the best interest of the public health, safety and welfare a more regulated method is needed to discourage registrable property owners and mortgagees from allowing their properties to be abandoned, neglected or left unsupervised; and

WHEREAS, the Borough has a vested interest in protecting neighborhoods against decay caused by registrable property and concludes that it is in the best interests of the health, safety, and welfare of its citizens and residents to impose registration requirements of registrable property located within the Borough to discourage registrable property owners and mortgagees from allowing their properties to be abandoned, neglected or left unsupervised; and

WHEREAS, the Borough desires to amend the Borough's Code in order to establish a property registration process that will identify multiple parties responsible to address safety and aesthetic concerns to minimize the negative impact and conditions that occur as a result of vacancy, absentee ownership and the foreclosure process; and

WHEREAS, upon passage, duly noticed public hearings, as required by law, will have been held by the Borough, at which public hearings all residents and interested persons were given an opportunity to be heard;

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Berlin, County of Camden, State of New Jersey finds that the implementation of the following changes and additions will assist the Borough in protecting neighborhoods from the negative impact and conditions that occur as a result of vacancy, absentee ownership and lack of compliance with existing Municipal regulations and laws as follows:

SECTION 1: That the foregoing "**Whereas**" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon the adoption hereof

SECTION 2: That the Borough does hereby amend the Borough of Berlin Code an Ordinance entitled "Registration of Defaulted Mortgage Property" to read as follows:

REGISTRATION OF DEFAULTED MORTGAGE PROPERTY

1. PURPOSE AND INTENT

It is the purpose and intent of the Borough to establish a process to address the deterioration, crime and decline in value of the Borough of Berlin neighborhoods caused by property with defaulted mortgages located within the Borough, and to identify, regulate, limit and reduce the number of these properties located within the Borough. It is the Borough's further intent to establish a registration requirement as a mechanism to protect neighborhoods from the negative impact and conditions that occur as a result of vacancy, absentee ownership, lack of adequate maintenance and security and will provide a method to expeditiously identify multiple parties and their contact person(s) for each property responsible for this protection.

2. DEFINITIONS

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Registrable Property – means,

- a) any real property located in the Borough, whether vacant or occupied, that is encumbered by a mortgage in default, is subject to an ongoing foreclosure action by the Mortgagee or Trustee, is subject to an application for a tax deed or pending tax assessor's lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

The designation of a "default/foreclosure" property as "registrable" shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm's length transaction or the foreclosure action has been dismissed and any default on the mortgage has been cured.

Accessible Property/Structure – means a property that is accessible through a comprised/breached gate, fence, wall, etc., or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Semi -Annual registration - shall mean 6 months from the date of the first action that required registration, as determined by the Borough, or its designee, and every subsequent 6 months. The date of the initial registration may be different than the date of the first action that required registration

Applicable Codes – means to include, but not be limited to, the Borough's Zoning Code, the Borough's Property Rehabilitation and Maintenance Code, Neighborhood Improvement Ordinance, Solid Waste Ordinance, Residential and Commercial Recycling Ordinance, and the State and County Building and Fire Codes.

Blighted Property – means:

- a) Properties that have broken or severely damaged windows, doors, walls, or roofs which create hazardous conditions and encourage trespassing; or
- b) Properties whose maintenance is not in conformance with the maintenance of other neighboring properties causing a decrease in value of the neighboring properties; or
- c) Properties cited for a public nuisance pursuant to the Borough Codes; or
- d) Properties that endanger the public's health, safety, or welfare because the properties or improvements thereon are dilapidated, deteriorated, or violate minimum health and safety standards or lacks maintenance as required by the applicable codes.

Enforcement Officer – means any Law Enforcement Officer, Building Official, Zoning Inspector, Code Enforcement Officer, Fire Inspector of Building Inspector, or other person authorized by the Borough to enforce the applicable code(s).

Default - shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

Evidence of vacancy - means any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; past due utility notices and/or disconnected utilities; accumulation of trash junk or debris; abandoned vehicles auto parts or materials; the absence of furnishings and/or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers and/or mail, or statements by neighbors, passers-by, delivery agents or government agents; or the presence of Boroughs over doors, windows or other openings in violation of applicable code.

Foreclosure - shall mean the legal process by which a mortgagee, or other lien holder, terminates a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. This definition shall include, but is not limited to, public notice of default, a deed-in-lieu of foreclosure, sale to the mortgagee or lien holder, certificate of title and all other processes, activities and actions, by whatever name, associated with the described process. The process is not concluded until the property obtained by the mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien

Local Property Management Company – means a property manager, property management company or similar entity responsible for the maintenance and security of registrable real property within 20 driving miles of the Borough limits. Upon review of credentials the Borough, or its designee, may allow a non-local property manager to be listed.

Mortgagee - means the creditor, including but not limited to, trustees; mortgage service companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement.

Owner – Owner means any person, firm, corporation or other legal entity who, individually or jointly or severally with others, holds the legal or beneficial title to any building, facilities, equipment or premises subject to the provisions of this chapter.

Property Management Company – means a local property manager, property maintenance company or similar entity responsible for the maintenance of registrable real property.

Real property - means any improved residential or commercial land, buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the Borough limits. Developed lots are considered improved land.

Rental Property - property that contains a single-family rental dwelling unit or multi-family rental dwelling units for use by residential tenants including but not limited to the following: mobile homes, mobile home spaces, town homes and condominium unit(s). A rental dwelling unit includes property that is provided to an individual or entity for

residential purposes upon payment of rent or any other consideration in lieu of rent, regardless of relationship between lessor and lessee

Vacant – means any parcel of land in the Borough that contains any building or structure that is not lawfully occupied or inhabited by human beings as evidenced by the conditions set forth in the definition of "Evidence of Vacancy" above which is without lawful tenant, or lawful occupant or without a certificate of occupancy.

3. APPLICABILITY

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to the Borough above and beyond any other State, County, or Borough provisions for same.

4. ESTABLISHMENT OF A REGISTRY

Pursuant to the provisions of this Code, the Borough, or its designee, shall establish a registry cataloging each Registrable Property within the Municipality, containing the information required by this Article.

5. REGISTRATION OF DEFAULTED MORTGAGE REAL PROPERTY

- a) Any Mortgagee who holds a mortgage on real property located within the Borough shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor. The Mortgagee shall, within ten (10) days of the inspection, register the property with the Code Enforcement Department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.
- b) Registration pursuant to this section shall contain the name, direct mailing address, a direct contact name, telephone number, and e-mail address for the Mortgagee/Trustee, and the Servicer, and the name and twenty-four (24) hour contact phone number of the local property management company responsible for the security and maintenance of the property who has the authority to make decisions concerning the abatement of nuisance conditions at the property, as well as any expenditure in connection therewith.
- c) Mortgagees who have existing registrable property on the effective date of this ordinance have 30 calendar days from the effective date to register the property with the Code Enforcement Department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is vacant or occupied.
- d) If the mortgage on a registrable property is sold or transferred, the new Mortgagee is subject to all the terms of this Article and within 5 days of the transfer register the property and pay a registration fee in accordance with this Article. Any previous unpaid semi-annual registration fees are the responsibility of the new Mortgagee or Trustee and are due and payable with their initial registration.
- e) If the Mortgagee owner of a foreclosed real property sells or transfers the property to a non-arm's length related person or entity, the transferee is subject to all the terms of this Article and within 5 days of the transfer register the property and pay a registration fee in

accordance with this Article. Any previous unpaid semi-annual registration fees are the responsibility of the new Registrable property owner and are due and payable with their initial registration.

- f) As long as the property is Registrable it shall be inspected by the Mortgagee, or designee, monthly. If an inspection shows a change in the property's occupancy status the mortgagee shall, within ten (10) days of that inspection, update the occupancy status of the property registration.
- g) A non-refundable semi-annual registration fee established by resolution by the Borough, shall accompany each registration pursuant to this section.
- h) All registration fees must be paid directly from the Mortgagee, Trustee, Servicer, or Owner. Third Party Registration fees are not allowed without the consent of the Borough and/or its authorized designee.
- i) Properties subject to this section shall remain under the semi-annual registration requirement, and the inspection, security and maintenance standards of this section as long as they are registrable.
- j) Until the mortgage or lien on the property in question is satisfied, or legally discharged, the desire to no longer pursue foreclosure, the filing of a dismissal of lis pendens and/or summary of final judgment and/or certificate of title, voluntary or otherwise, does not exempt any Mortgagee holding the defaulted mortgage, from all the requirements of this article as long as the borrower is in default.
- k) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.
- l) Failure of the Mortgagee to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement and any resulting monetary penalties.
- m) Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, the Borough may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

6. MAINTENANCE REQUIREMENTS

- a) Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
- b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.

- c) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.
- d) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- e) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s).
- g) Failure of the mortgagee and/or owner to properly maintain the property may result in a violation of the applicable code(s) and issuance of a citation or Notice of Violation in accordance with the applicable code of the Borough. Pursuant to a finding and determination by the Borough's Code Enforcement Borough, Special Magistrate or Hearing Officer, or a court of competent jurisdiction, the Borough may take the necessary action to ensure compliance with this section.
- h) In addition to the above, the property is required to be maintained in accordance with the applicable code(s) of the Borough.

7. SECURITY REQUIREMENTS

- a) Properties subject to these Sections shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- b) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.
- c) If a property is registrable, and the property has become vacant or blighted, a local property manager shall be designated by the 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 article, and any other applicable laws.

8. PUBLIC NUISANCE

All registrable property is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare and safety of the residents of the Borough.

9. INSPECTIONS FOR VIOLATIONS

Adherence to this article does not relieve any person, legal entity or agent from any other obligations set forth in any applicable code(s), which may apply to the property.

10. ADDITIONAL AUTHORITY

- a) If the enforcement officer has reason to believe that a property subject to the provisions of this article 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 applicable hearing officer as soon as possible to address the conditions of the property.
- b) The Code Enforcement Borough, Special Magistrate or Hearing Officer shall have the authority to require the Mortgagee or Owner affected by this section, to implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.
- c) If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the code enforcement Borough or special magistrate may direct the Borough to abate the violations and charge the Mortgagee or Owner with the cost of the abatement.
- d) If the Mortgagee or Owner does not reimburse the Borough for the cost of temporarily securing the property, or of any abatement directed by the code enforcement officer or magistrate, within thirty (30) days of the Borough sending the Mortgagee or Owner the invoice then the Borough may lien the property with such cost, along with an administrative fee as determined in the Borough's fee ordinance to recover the administrative personnel services. In addition to filing a lien the Borough can pursue financial penalties against the Mortgagee or Owner.

11. OPPOSING, OBSTRUCTING ENFORCEMENT OFFICER; PENALTY

Whoever opposes obstructs or resists any enforcement officer or any person authorized by the enforcement office in the discharge of duties as provided in this chapter shall be punishable as provided in the applicable code(s) or a court of competent jurisdiction.

12. IMMUNITY OF ENFORCEMENT OFFICER

Any enforcement officer or any person authorized by the Borough to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this article.

13. ENFORCEMENT AND PENALTIES

A. Enforcement - The requirements of this ordinance may be enforced as follows:

- 1) By an action for injunctive relief, civil penalties, or both, through a court of competent jurisdiction;

- 2) By condemnation and demolition pursuant to this Code, or by the nuisance abatement process;
 - 3) By revocation or temporary suspension of necessary permits and/or certificates or occupancy and/or licenses;
 - 4) By any other process permitted at law or equity; and
 - 5) Use of one enforcement process or theory does not preclude the Borough from seeking the same, different, or additional relief through other enforcement methods.
- B. Separate offenses. A violation of this ordinance shall constitute a separate offense for each day it shall continue or recur. Each condition which exists in violation of this ordinance is a separate violation.
- C. Each day a property remains unregistered when required to be registered by this ordinance is a separate offense for each day it shall continue or recur.
- D. Each day a property is not inspected as required by this ordinance is a separate offense.
- E. Each day a property is not secured as required by this ordinance is a separate offense.
- F. Each day a condition violating the Borough's minimum housing codes or property maintenance codes exists on a property subject to registration under this ordinance is a separate offense.
- G. Persons responsible for violations. The, Owner, Mortgagee, Trustee or Servicer as those terms are defined in this ordinance, and their duly authorized officers, employees or agents employed in connection therewith who has assisted in the commission of the violation or failed to perform as required by the ordinance shall be guilty of the violation.
- H. Each and every violation shall carry a fine in the amount of five hundred (\$500.) dollars.

SECTION 3: AMENDMENTS

Registration and Penalty Fees outlined in this article may be modified by an Amending Ordinance, passed and adopted by the Borough.

SECTION 4: SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5: REPEALER

All ordinances or parts of ordinances in conflict herewith, are and the same are hereby repealed.

SECTION 6: CODIFICATION

It is the intention of the Borough, that the provisions of this Ordinance shall become and be made a part of the Borough of Berlin Code; and that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 7: EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication as required by law.

BOROUGH OF BERLIN

By: James Bilella, Mayor

ATTEST:

Lois Sahina, Acting Borough Clerk

I, Lois Sahina, Acting Borough Clerk of the Borough of Berlin, hereby certify the foregoing to be a true and correct copy of an Ordinance adopted by the Mayor and Borough Council at their meeting of _____, in the Municipal Building, 59 South White Horse Pike, Berlin, New Jersey.