



Southampton Town Board

116 Hampton Road
Southampton, NY 11968

Meeting: 04/27/21 06:00 PM
Department: Town Attorney
Category: Local Laws
Prepared By: Sean Cambridge
Initiator: James Burke
Sponsors: Councilman Martel, Councilman Schiavoni
DOC ID: 36451

ADOPTED

TOWN BOARD RESOLUTION 2021-469

**Resolution of Adoption Enacting Town Code Chapter 262,
Entitled, "Registration of Foreclosure Mortgage Properties"**

WHEREAS, the Town Board of the Town of Southampton is considering enacting Town Code Chapter 262, Entitled, "Registration of Foreclosure Mortgage Properties"; and

WHEREAS, a public hearing was held by the Town Board of the Town of Southampton on April 13, 2021, at which time all persons either for or against said amendment were heard; and

WHEREAS, the Department of Land Management has advised the Town Board that this proposed local law is considered a "Type II Action" under 6 NYCRR Part 617.5, provisions of the New York State Environmental Quality Review Act (SEQRA) and Chapter 157 of the Town Code, and that no further review under New York Conservation Law, Article 8, is necessary; now therefore be it

RESOLVED, that Local Law No. 15 of 2021 is hereby adopted as follows:

LOCAL LAW NO. 15 OF 2021

A LOCAL LAW to consider enacting Town Code Chapter 262 entitled, "Registration of Foreclosure Mortgage Properties."

BE IT ENACTED by the Town Board of the Town of Southampton as follows:

SECTION 1. Legislative Intent.

The Town Board of the Town of Southampton seeks to protect the public health, safety, and welfare of the citizens of the Town of Southampton, and maintain a high quality of life for the citizens of the Town through the maintenance of structures and properties in the Town; and recognizes properties subject to foreclosure action or foreclosed upon (hereinafter referred to as "Registrable Properties") located throughout the Town lead to a decline in community and property value, create nuisances, lead to a general decrease in neighborhood and community aesthetic, create conditions that invite criminal activity, create life safety issues, and foster an unsafe and unhealthy environment.

While the Town Board has already adopted property maintenance codes to regulate building standards for the exterior of structures and the condition of the property as a whole, it further recognizes that, in the best interest of the public health, safety, and welfare, a more regulated method is needed to discourage Registrable Property Mortgagees from allowing their properties to be abandoned, neglected or left unsupervised. The Town Board 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 Town in order to discourage Registrable Property and Mortgagees from allowing their properties to be abandoned, neglected or left unsupervised.

Thus, The Town Board finds that the implementation of the following changes and additions will assist the Town in protecting neighborhoods from the negative impact and conditions that occur as a result of vacancy, absentee ownership, and lack of compliance with existing Town regulations and laws.

SECTION 2. Enactment.

The Town Board hereby enacts Chapter 262, entitled "Registration of Foreclosure Mortgage Properties", of the Southampton Town Code, by adding the underlined words as follows:

CHAPTER 262. REGISTRATION OF FORECLOSING MORTGAGE PROPERTIES.

§ 262-1. Purpose and Intent.

The Town Board of the Town of Southampton seeks to establish a process to address the deterioration, crime, and decline in value of Town neighborhoods caused by property with foreclosing or foreclosed mortgages located within the Town, and further identify, regulate, limit and reduce the number of these properties located within the Town. It has been determined that Owner-occupied structures are generally better maintained when compared to vacant structures, even with a diligent off-site property Owner. Structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintained, which contribute to blight, creation of life safety issues, declined property values, and have a negative impact on social perception of the residential areas where they are located. It is the Town Board's further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are in Foreclosure or Foreclosed, and to provide a mechanism to avert foreclosure actions through timely intervention, education, or counseling of property Owners.

§ 262-2. 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.

DEFAULT: 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.

ENFORCEMENT OFFICER: any law enforcement officer, building inspector, ordinance inspector, ordinance enforcement officer, fire marshal, town attorney's office investigator, or other person authorized by the Town to enforce the applicable code(s).

EVIDENCE OF VACANCY: 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 and/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; statements by neighbors, passers-by, delivery agents or government agents; and/or the

presence of boards over doors, windows or other openings in violation of applicable code.

FORECLOSURE OR FORECLOSURE ACTION: the legal process by which a Mortgagee, or other lien holder, terminates or attempts to terminate 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. The legal 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.

MORTGAGEE: the creditor, including but not limited to, trustees; mortgage servicing 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; or any other person or entity with the legal right to foreclose on the Real Property, excluding governmental entities as assignee or owner.

OWNER: every person, entity, or Mortgagee, who alone or severally with others, has legal or equitable title to any Real Property as defined by this Chapter; has legal care, charge, or control of any such property; is in possession or control of any such property; and/or is vested with possession or control of any such property. The Property Manager shall not be considered the Owner.

PROPERTY MANAGER: any party designated by the Owner as responsible for inspecting, maintaining and securing the property as required in this Chapter.

REAL PROPERTY: any residential or commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the Town limits.

REGISTRABLE PROPERTY: any Real Property located in the Town, whether vacant or occupied, that is subject to an ongoing Foreclosure Action by the Mortgagee or Trustee, has been the subject of a Foreclosure Action by a Mortgagee or trustee and a judgement has been entered, 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 "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.

REGISTRY: a web-based electronic database of searchable real property records, used by the Town to allow Mortgagees the opportunity to register properties and pay applicable fees as required in this Chapter.

SEMI-ANNUAL REGISTRATION: six (6) months from the date of the first action that requires registration, as determined by the Town, or its designee, and every subsequent six (6) months the property is Registrable. The date of the initial registration may be different than the date of the first action that required registration.

UTILITIES AND SERVICES: any utility and/or service that is essential for a building to be

habitable and/or perform a service necessary to comply with all Town codes. This includes, but is not limited to, electrical, gas, water, sewer, lawn maintenance, pool maintenance, and snow removal.

VACANT: any parcel of land in the Town that contains any building or structure that is not lawfully occupied.

§ 262-3. Establishment of a Registry.

Pursuant to the provisions of Section 262 the Town, or its designee, shall establish a registry cataloging each Registrable Property within the Town, containing the information required by this Chapter.

§ 262-4. Inspection and Registration of Real Property under Foreclosure.

- (a) Any Mortgagee who holds a mortgage on Real Property located within Southampton Town shall perform an inspection of the property upon default by the mortgagor as evidenced by the filing of a Foreclosure Action.
- (b) Property inspected pursuant to subsection (a) above that remains in Foreclosure, shall be inspected every thirty (30) days by the Mortgagee or Mortgagee's designee. 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.
- (c) Within ten (10) days of the date any Mortgagee files a Foreclosure Action, the Mortgagee shall register the Real Property with the Southampton Town Registry, and, at the time of registration, indicate whether the property is Vacant, and if so shall designate in writing a Property Manager to inspect, maintain and secure the Real Property subject to the mortgage in Foreclosure when legally possible. A separate registration is required for each Registrable Property.
- (d) Initial registration pursuant to this section shall contain at a minimum the name of the Mortgagee, the mailing address of the Mortgagee, e-mail address, telephone number and name of the Property Manager and said person's address, e-mail address, and telephone number, regardless of whether it is occupied or vacant.
- (e) At the time of initial registration each registrant shall pay a non-refundable Semi-Annual Registration fee of five hundred dollars (\$500.00) for each Registrable Property. Subsequent non-refundable Semi-Annual Registrations of properties and fees in the amount of five hundred dollars (\$500.00) are due within ten (10) days of the expiration of the previous registration. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Defaulted properties, (3) post-closing counseling and Foreclosure intervention limited to Owner-occupied persons in Default, which may not include cash and mortgage modification assistance, and (4) for any related purposes as may be adopted in the policy set forth in this Chapter. Said fees shall be deposited to a special account in the Town's Department dedicated to the cost of implementation and enforcement of this Ordinance, 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.

- (f) 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 ten (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.
- (g) 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 ten (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.
- (h) If the Foreclosing or Foreclosed Property is not registered, or the registration fee is not paid within thirty (30) days of when the registration or renewal is required pursuant to this section, a late fee equivalent to ten percent (10%) of the Semi-Annual Registration fee shall be charged for every thirty-day period (30), or portion thereof, the property is not registered and shall be due and payable with the registration.
- (i) 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.
- (j) Properties subject to this section shall remain subject to the Semi-Annual Registration requirement, and the inspection, security, and maintenance standards of this section as long as the property remains Registrable.
- (k) 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 ordinance is a violation of this Chapter and shall be subject to enforcement by any of the enforcement means available to the Town.
- (l) If any property is in violation of this Chapter the Town 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 the property into compliance.
- (m) 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. Mortgagee and/or Owner is

expected to update the status of the property in the event of a Mortgagee managed rental.

§ 262-4. 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 pursuant to **Chapter 261** of the Southampton Town Code, and the New York State Uniform Fire Prevention and Building Code and the standards.
- (b) Registrable 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, of Registrable Property shall be maintained in accordance with pursuant to **Chapter 261** of the Southampton Town Code, the New York State Uniform Fire Prevention and Building Code and the standards, and all other applicable code(s) at the time registration is required.
- (d) Registrable 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. 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 of shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in **Article VI Chapter 123-40** of the Southampton Town Code, the New York State Uniform Fire Prevention and Building Code and the standards, and all other applicable code(s).
- (g) Failure of the Mortgagee, Owner, and transferees to properly maintain the property as required by this Chapter may result in a violation of the applicable code(s) and issuance of a notice of violation or citation in accordance with the Southampton Town Code.
- (h) Pursuant to a finding and determination by a court of competent jurisdiction, or Resolution of the Town Board, the Town may take the necessary action to ensure compliance with this section.
- (i) In addition to the above, the property is required to be maintained in accordance with the Southampton Town Code.
- (j) The Town Attorney's Office is designated to prosecute all violations of the New York State Uniform Fire Prevention and Building Code and Southampton Town Code in the

Southampton Town Justice Court

§ 262-5. Security Requirements.

- (a) Properties subject to this Chapter 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 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 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 Town.
- (e) When a property subject to this Chapter becomes Vacant, it shall be posted with the name and twenty-four (24) hour contact telephone number of the Property Manager. The Property Manager shall be available to be contacted by the Town 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 eighteen (18) inches by twenty-four (24) inches and shall be of a font that is legible from a distance of forty-five (45) feet. The posting shall contain the following language with supporting information:

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 _____.
- (f) The posting required in subsection (e) above shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so that it is visible from the street or if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visible from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.
- (g) Failure of the Mortgagee and/or property Owner of record to properly inspect and secure a property subject to this Chapter, and post and maintain the signage noted in this section, is a violation and shall be subject to enforcement by any of the enforcement means available to the Town. The Town may take the necessary action

to ensure compliance with this section, and recover costs and expenses in support thereof.

§ 262-6. Provisions Supplemental.

The provisions of this Chapter are cumulative with and in addition to other available remedies. Nothing contained in this Chapter shall prohibit the Town from collecting on fees, fines, and penalties in any lawful manner; or enforcing its codes by any other means, including, but not limited to, injunction, abatement, or as otherwise provided by law or ordinance.

§ 262-7. Public Nuisance.

All Registrable Property is at risk of being a public nuisance, or creating a life safety issue, and if vacant or blighted can constitute 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 Town.

§ 262-8. 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 Town Board or court of competent jurisdiction as soon as possible to address the conditions of the property. Nothing herein shall limit the Town from abating any nuisance or unsafe condition by any other legal means available to it.
- (b) Code enforcement, Town Board, the Sheriff, or court of competent jurisdiction 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 (b) Code enforcement, Town Board, the Sheriff, or court of competent jurisdiction may direct the Town 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 Town for the cost of temporarily securing the property, or of any abatement directed by the Sheriff, code enforcement officer, code enforcement, Council or special magistrate, within thirty (30) days of the Town sending the Mortgagee or Owner the invoice then the Town may lien the property with such cost, along with an administrative fee as determined in the Town's fee ordinance to recover the administrative personnel services. In addition to filing a lien the Town may pursue financial penalties against the Mortgagee or Owner.

- (e) The Town may contract with an entity to implement this Chapter, and, if so, any reference to the Enforcement Officer herein shall include the entity the Town contract with for that purpose.

§ 262-9. Immunity of Enforcement Officer.

Any Enforcement Officer or any person authorized by the Town 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 Chapter.

§ 262-10. Penalties.

- A. Any person who violates any provision of this chapter shall be guilty of a violation and shall, upon conviction, be subject to the imposition of a fine in accordance with the following schedule for each violation. Each day that a violation continues shall be deemed a separate offense.
- B. Violations of this chapter shall be punishable by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 15 days, or both, for each violation. In addition to any fines imposed, anyone convicted pursuant to this section shall be required to pay a mandatory blight mitigation surcharge of \$100. The blight mitigation surcharge shall be paid to the clerk of the court or administrative tribunal that rendered the conviction. Within the first 10 days of the month following collection of the mandatory surcharge, the collecting authority shall then pay such money to the Town Comptroller, who shall deposit such money in accordance with the provisions of § 8-6.1A of the Code.
- C. Any second or subsequent conviction for a violation of this chapter within an eighteen-month period shall be considered a violation and shall be punishable by a fine of not less than \$1,000 nor more than \$5,000 or a term of imprisonment not to exceed 15 days, or both. An individual convicted hereunder shall not be subject to the mandatory blight mitigation surcharge discussed in § 262-11A above.
- D. When authorized by a duly adopted resolution of the Town Board, the Town Attorney may pursue any and all actions in law or equity, including but not limited to actions for compensatory damages; civil penalties; to compel compliance, or to restrain by injunction violations of the standards enumerated in § 261-1.
- (1) Each day of a continuing violation of § 262 shall be subject to an escalating civil penalty as follows: \$150 for the first day of violation or any part thereof, \$250 for the second day of violation or any part thereof, and \$500 for the third day of violation or any part thereof and for all subsequent days of violation.
- (2) Civil penalties may be recovered in any action or proceeding brought by the Town Attorney in any court of competent jurisdiction or before a duly appointed hearing officer whenever permitted by law.
- (3) Up to 100% of the monies recovered under Town Code § 261-2C shall be paid

into the Town-Wide Blight Mitigation Reserve Account, with the remainder thereafter to be used for any other lawful purpose, including placement into the Water Quality Protection Fund.

(4) Any civil penalty imposed shall be in addition to any fine and/or imprisonment as a result of a criminal prosecution provided for under this section or any state or local law.

(5) Anyone convicted for violation of this chapter shall be liable for any direct costs incurred by the Town as a result of the violation(s).

§ 262-12. Amendments.

Registration fees and penalties outlined in this chapter may be modified from time to time by a duly adopted Town Board resolution.

SECTION 3. Authority.

The Town Board may adopt local laws providing for violations of ordinances pursuant to NYS Town Law §135, as well as Municipal Home Rule Law §§10(1)(i), 10(1)(ii)(a)(11), 10(1)(ii)(a)(12), and 10(1)(ii)(d)(3).

SECTION 4. Severability.

If any section or subsection, paragraph, clause, phrase or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provisions so adjudged to be invalid or unconstitutional.

SECTION 5. Effective Date.

This local law shall take effect upon filing with the Secretary of State pursuant to Municipal Home Rule Law.

AND BE IT FURTHER RESOLVED, that the Town Clerk is hereby directed to publish the following Notice of Adoption:

NOTICE OF ADOPTION

PLEASE TAKE NOTICE that, after a public hearing was held by the Town Board of the Town of Southampton on April 13, 2021 at 1:00pm, the Town Board, at their meeting of April 27, 2021 at 6:00pm, adopted LOCAL LAW NO. 15 OF 2021 as follows: "A LOCAL LAW enacting Town Code Chapter 262 entitled, "Registration of Foreclosure Mortgage Properties."

Copies of the local law, sponsored by Councilman Martel, and cosponsored by Councilman Schiavoni, are on file in the Town Clerk's Office, Monday through Friday, from 8:30 a.m. to 4:00 p.m

BY ORDER OF THE TOWN BOARD
TOWN OF SOUTHAMPTON, NEW YORK
SUNDY A. SCHERMEYER, TOWN CLERK

Financial Impact

None

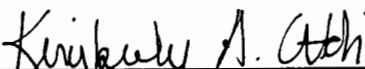
RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rick Martel, Councilman
SECONDER:	Tommy John Schiavoni, Councilman
AYES:	Schneiderman, Lofstad, Martel, Bouvier, Schiavoni

State of New York)
 County of Suffolk)
 Office of the Clerk of the)
 Town of Southampton, NY)

ss.:

This is to certify that I, Kimberly A. Ottati, Deputy Town Clerk of the town of Southampton, in the said county of Suffolk, State of New York, have compared the foregoing copy of the resolution with the original resolution now on file in this office, and which was passed by the Town Board of the Town of Southampton in said County of Suffolk, on April 27, 2021 and that the same is a correct and true transcript of such original resolution and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town ***this 6th day of August, 2021.***



 Kimberly A. Ottati, Deputy Town Clerk of the Town Board
 Town of Southampton, Suffolk County, NY