

BOROUGH OF WEST NEWTON
WESTMORELAND COUNTY, PENNSYLVANIA
ORDINANCE NO. 2021-1

AN ORDINANCE OF THE BOROUGH OF WEST NEWTON, COUNTY OF WESTMORELAND, COMMONWEALTH OF PENNSYLVANIA, AMENDING ORDINANCE NO. 2016-2 CONCERNING THE REGISTRATION AND MAINTENANCE OF CERTAIN PROPERTIES THAT HAVE DEFAULTED MORTGAGES, ARE IN THE FORECLOSURE PROCESS, OR HAVE BEEN FORECLOSED UPON; AMENDING THE FREQUENCY OF REGISTRATION; AMENDING THE REGISTRATION FEE BY STANDARDIZING; AND PROVIDING FOR THE REGISTRATION AND MAINTENANCE OF VACANT PROPERTY BY OWNERS.

WHEREAS, the Council of the Borough of West Newton (hereinafter "Borough Council") desires to maintain a high quality of life for the citizens of the Borough of West Newton (hereinafter "Borough") through the maintenance of properties located in the Borough; and

WHEREAS, the Borough Council 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 Council recognizes an increase in the number of properties that have become vacant or abandoned as a result of the mortgage foreclosure process; and

WHEREAS, the Borough finds that the presence of vacant and abandoned properties as a result of mortgage foreclosures can lead to a decline in property value, create attractive nuisances and lead to a general decrease in neighborhood and community aesthetic; and

WHEREAS, the Borough Council concludes that it is in the best interests of the health, safety, and welfare of its citizens and residents to impose registration requirements of such properties located within the Borough; and

WHEREAS, the Borough Council recognizes that measures are necessary to hold property owners and mortgagees accountable and discourage the same from allowing properties to be abandoned, neglected or left unsupervised as a result of the foreclosure process; and

WHEREAS, the Borough is often challenged to identify and locate owners or mortgagees who can maintain the properties that have been affected by the foreclosure process; and

WHEREAS, the Borough Council desires to enact requirements in order to establish a property registration process that will identify a contact person to address safety and aesthetic concerns to minimize the negative impact and conditions that occur as a result of vacancy, absentee ownership, and the overall foreclosure process; and

WHEREAS, the Borough Council finds that the implementation of the requirements hereunder will help to protect the Borough from the negative impact and conditions that occur as a result of the foreclosure process and the lack of compliance with existing Borough regulations.

NOW THEREFORE, be it resolved by the Council of the Borough of West Newton:

SECTION 1: FOREGOING CLAUSES. The foregoing clauses are hereby ratified and confirmed as being true and correct and are made a part of this Ordinance upon adoption hereof.

SECTION 2: PURPOSE AND INTENT. It is the purpose and intent of the Borough Council to amend the process to address the threat to the health, safety, and welfare of citizens of the Borough in relation to the deterioration, crime and decline in property value that occurs as a result of vacancy, absentee ownership, and a lack of adequate maintenance and security of property with defaulted mortgages and vacant property. It is the Borough Council's further intent to have a registration requirement to identify, regulate, limit and reduce the number of such properties within the Borough and identify a contact person that shall be responsible for each such property.

SECTION 3: 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.

Accessible Property/Structure - means a property or structure that is readily accessible as a result of an unsecured door, window, gate, fence, wall, etc., or which is secured in an insufficient manner so as to easily be breached to allow access to the interior space by unauthorized persons.

Annual Registration shall mean twelve (12) months from the date of the first action that requires registration, as determined by the Borough, or its designee, and every subsequent twelve (12) 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 Code of Ordinances, the Borough's Zoning Code, and the Borough's Property Maintenance Code.

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 in repeated or gross violation of the Borough's Property Maintenance Code which cause a decrease in the value of neighboring properties; or
- c) Properties cited as a public nuisance pursuant to applicable 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 inspector, code enforcement officer, or other person authorized to enforce the applicable codes.

Default - shall mean that the mortgagor has not complied with the terms of the mortgage, promissory note, or other written evidence of debt which is secured by real property.

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 or dead vegetation; past due utility notices or disconnected utilities; accumulation of trash, junk or debris; abandoned vehicles or motorized equipment; the absence of furnishings or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers or mail; statements by neighbors, passers-by, delivery agents or government agents; or, the presence of boards over doors, windows or other openings.

Foreclosure - shall mean the legal process by which a mortgagee, or other lien holder, terminates a property owner's right of redemption to obtain legal and/or 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. The property manager must have a principle place of business within 30 driving miles of the Borough limits. At its sole discretion, the Borough or its designee may make exceptions to this requirement and allow a non-local property manager to be listed.

Mortgagee - means the creditor, including but not limited to: lenders in a mortgage agreement; mortgage service companies; trustees; any successor in interest; any agent, servant, or employee of the creditor; 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.

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. The Property Manager shall not be considered the Owner.

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.

Registrable Property shall mean:

- a) Any real property located in the Borough, whether vacant or occupied, that is encumbered by a mortgage in default, as evidenced by a foreclosure filing, is subject to an ongoing foreclosure action by the Mortgagee or Trustee 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, including properties in said status at the time of the enactment of this Ordinance. 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.
- b) Any property that is vacant for more than thirty (30) days or any cancellation of Utility or Service, whichever occurs first.

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

Vacant - means any parcel of land in the Borough that contains any building or structure that is not lawfully occupied or inhabited by persons as evidenced by the conditions set forth in the above definition of "Evidence of Vacancy" and which is without a lawful tenant, occupant or certificate of occupancy. Vacant property does not mean property that is temporarily unoccupied while the residents are away on vacation, personal matters or business, or that is not intended by the owner to be left vacant, so long as the period does not exceed thirty (30) days.

SECTION 4: APPLICABILITY. These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather, shall be in addition to those remedies already available to the Borough.

SECTION 5: ESTABLISHMENT OF A REGISTRY. Pursuant to the above provisions of Section 2, the Borough, or its designee, shall establish a registry cataloging each Registrable Property within the Borough and containing the information required by this Ordinance.

SECTION 6: REGISTRATION OF PROPERTY IN DEFAULT ON A MORTGAGE.

- 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, as evidenced by a foreclosure filing, by the mortgagor. The Mortgagee shall, within ten (10) days of the inspection, register the property with the Borough, or its designee, on forms or as directed in another manner, 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 and 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) If the mortgage on a registrable property is sold or transferred, the new Mortgagee is subject to all the terms of this Ordinance and within ten (10) days of the transfer must register the property and pay a registration fee in accordance with this Ordinance. Any previous unpaid registration fees are the responsibility of the new Mortgagee or Trustee and are due and payable with their initial registration.
- d) 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 Ordinance and within ten (10) days of the transfer must register the property and pay a registration fee in accordance with this Ordinance. Any previous unpaid registration fees are the responsibility of the new property owner and are due and payable with their initial registration.
- e) 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.
- f) A non-refundable Semi-Annual registration fee in the amount of three hundred dollars (\$300.00) per property, shall accompany the registration form or website registration. Subsequent non-refundable Semi-Annual renewal registrations of properties and fees in the amount of three hundred dollars (\$300.00) 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 Borough'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.
- g) Each individual property on the Registry that has been registered for twelve (12) months

or more prior to the Effective Date shall have thirty (30) days to renew the registration and pay the non-refundable three hundred dollar (\$300.00) Semi-Annual Registration fee. Properties registered less than twelve (12) months prior to the Effective Date shall renew the registration every six (6) months from the expiration of the original registration renewal date and shall pay the non-refundable three hundred dollar (\$300.00) Semi-Annual Registration Fee.

- 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) 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.
- j) 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.
- k) Properties subject to this Ordinance shall remain under the semi-annual registration requirement, and the inspection, security and maintenance standards of this Ordinance for as long as they are registrable.
- l) 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 or summary of final judgment or certificate of title, voluntary or otherwise, does not exempt any Mortgagee holding the defaulted mortgage, from the requirements of this Ordinance as long as the borrower is in default.
- m) 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.
- n) 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 Ordinance is a violation of the Ordinance and shall be subject to enforcement and any resulting monetary penalties.
- o) Pursuant to any administrative or judicial finding and determination that any property is in violation of this Ordinance, the Borough may take the necessary action to ensure compliance and place a lien on the property for costs.

SECTION 7: INSPECTION AND REGISTRATION OF REAL PROPERTY THAT IS NOT SUBJECT TO A MORTGAGE IN FORECLOSURE

- a) Any Owner of Vacant property located within the Borough shall within ten (10) days after the property becomes Vacant, register the Real Property with the Borough Registry.

- b) Initial registration pursuant to this section shall contain at a minimum the name of the Owner, the mailing address of the Owner, e-mail address, and telephone number of the Owner, and if applicable, the name and telephone number of the Property Manager and said person's address, e-mail address, and telephone number.
- c) At the time of initial registration each registrant shall pay a non-refundable Annual Registration fee of three hundred dollars (\$300.00) for each Vacant property. Subsequent non-refundable Annual renewal registrations of Vacant properties and fees in the amount of three hundred dollars (\$300.00) 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 Vacant properties, and (3) 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 Borough's Department dedicated to the cost of implementation and enforcement of this Ordinance, and fulfilling the purpose and intent of this Chapter.
- d) If the property is sold or transferred, the new Owner is subject to all the terms of this Chapter. Within ten (10) days of the transfer, the new Owner shall register the Vacant property. Registration of the property is not transferrable.
- e) If the Vacant property is not registered, or either the registration fee or the Annual Registration fee is not paid within thirty (30) days of when the registration or Annual Registration is required pursuant to this section, a late fee shall be equivalent to ten percent (10%) of the Annual Registration fee shall be charged for every thirty (30) day period, or portion thereof, the property is not registered and shall be due and payable with the registration. This section shall apply to the initial registration and registrations required by subsequent Owners of the Vacant property.
- f) 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 is Vacant.
- g) Failure of the Owner 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 Borough.
- h) If any property is in violation of this Chapter, the Borough may take the necessary action to ensure compliance with and place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to the property into compliance.
- i) Properties registered as a result of this section are not required to be registered again pursuant to the Foreclosure mortgage property section.

SECTION 8: 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, trees, 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). All pools shall be covered with a properly installed pool cover.

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 Enforcement Officer or a court of competent jurisdiction, the Borough may take the necessary action to ensure compliance with this Ordinance.

- g) In addition to the above, the property is required to be maintained in accordance with the applicable code(s) of the Borough.

SECTION 9: SECURITY REQUIREMENTS.

- a) Properties subject to this Ordinance 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 or secured by boarding in a manner approved by the Borough's Enforcement Officer.
- 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

Ordinance, and any other applicable laws.

SECTION 10: PUBLIC NUISANCE. All registrable property is hereby declared to be a public nuisance, the abatement of which is pursuant to the police power in the interest of the health, welfare and safety of the residents of the Borough.

SECTION 11: INSPECTIONS FOR VIOLATIONS. Adherence to this Ordinance 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.

SECTION 12: ADDITIONAL AUTHORITY.

- a) If the enforcement officer has reason to believe that a property subject to the provisions of this Ordinance 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 Magistrate as soon as possible to address the conditions of the property.
- b) The Magistrate shall have the authority to require the Mortgagee or Owner affected by this Ordinance, 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 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 for such costs. In addition to filing a lien the Borough can pursue financial penalties against the Mortgagee or Owner.

SECTION 13: OPPOSING, OBSTRUCTING ENFORCEMENT OFFICER; PENALTY.

Whoever opposes obstructs or resists any enforcement officer or any person authorized by the Borough in the discharge of duties as provided in this Ordinance shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00) per day, with each day constituting a separate violation, or as otherwise provided by applicable code(s).

SECTION 14: IMMUNITY OF ENFORCEMENT OFFICER. Any enforcement officer or any person authorized by the Borough to enforce the provisions of this Ordinance shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed herein.

SECTION 15: ENFORCEMENT AND PENALTIES.

- A. Enforcement - The requirements of this ordinance may be enforced as follows:
 - 1) By citation for a summary offense.
 - 2) By an action for injunctive relief, civil penalties, or both, through a court of competent jurisdiction;
 - 3) By exercise of the Borough's powers of eminent domain, or by condemnation and demolition pursuant to the Pennsylvania Eminent Domain Code the Pennsylvania Borough Code, or by the nuisance abatement process;
 - 4) By revocation or temporary suspension of necessary permits and/or certificates or occupancy and/or licenses; or
 - 5) By any other process permitted at law or equity.
- 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 building 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 this Ordinance shall be guilty of the violation.

SECTION 16: AMENDMENTS. Registration and Penalty Fees outlined in this Ordinance may be modified by amendment of this Ordinance, passed and adopted by the Borough Council.

SECTION 17: 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 18: REPEALER. All ordinances or parts of ordinances in conflict herewith, are and the same are hereby repealed.

SECTION 19: CODIFICATION. It is the intention of the Borough Council, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances.

SECTION 20: EFFECTIVE DATE. This Ordinance shall take effect ten (10) days after final passage.

ORDAINED AND ENACTED into law by the Council for the Borough of West Newton this 8th day of MARCH 2021.

ATTEST:

BOROUGH OF WEST NEWTON



Pamela Humenik, Secretary



Charles Krasnovich,
Council President

Examined and approved this 8th day of MARCH 2021.

By: _____,

Mary Popovich, Mayor