

TOWNSHIP OF HAMILTON
COUNTY OF MERCER, NEW JERSEY

ORDINANCE

No. 23-026

1ST READING JUNE 20, 2023
2ND READING & PUBLIC HEARING JULY 18, 2023
WITHDRAWN _____ LOST _____

DATE TO MAYOR _____
DATE RESUBMITTED TO COUNCIL _____
DATE EFFECTIVE _____

APPROVED AS TO FORM AND LEGALITY

FACTUAL CONTENTS CERTIFIED TO BY

TOWNSHIP ATTORNEY

TITLE

ORDINANCE ESTABLISHING THE CODE OF THE TOWNSHIP OF HAMILTON, NEW JERSEY, PART II, GENERAL LEGISLATION, CHAPTER 365, REGISTRATION AND MAINTENANCE OF FORECLOSURE MORTGAGE PROPERTIES

Be It Ordained by the Council of the Township of Hamilton, in the County of Mercer and State of New Jersey, that the *Code of the Township of Hamilton, New Jersey, Part II, General Legislation*, as amended and supplemented, be further amended and supplemented as follows to establish Chapter 365, *Registration and Maintenance of Foreclosure Mortgage Properties*:

CHAPTER 365

REGISTRATION AND MAINTENANCE OF FORECLOSURE MORTGAGE PROPERTIES

§ 365-1 Purpose and intent.

This chapter is enacted to establish a process to address the deterioration, crime, and decline in value of Township neighborhoods caused by property with foreclosing or foreclosed mortgages located within the Township, and to identify, regulate, limit and reduce the number of these properties located within the Township. It has been determined that there exist within the Township, properties which are, or may become in the future, substandard with respect to structural integrity, equipment or maintenance or, further, that such conditions, including but not limited to: structural deterioration; lack of maintenance of exterior premises and vacant lots; infestation; and/or existence of fire hazards, constitute a menace to the health, safety, welfare and reasonable comfort of the citizens and inhabitants of the Township. It is further found and declared that, by reason of lack of maintenance and ensuing progressive deterioration, certain properties have the further effect of creating blighting conditions and that, if the same are not curtailed and removed, the aforesaid conditions will grow and spread. By reason of timely regulations and restrictions as herein contained, the growth of blight may be prevented and the neighborhood and property values thereby maintained, the desirability and amenities of dwellings and neighborhoods enhanced, and the public health, safety and welfare protected and fostered. A registration program is hereby established 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.

EXPLANATION: Matter underlined thus in this legislation is new matter.
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§ 365-2 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, public officer, building official, zoning inspector, code enforcement officer, fire inspector, building inspector, or other person authorized by the Township 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. This definition shall include, but is not limited to, a complaint and summons filed with respect to foreclosure on a mortgage, a lis pendens filed against it by the lender holding a mortgage on the property, 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 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.

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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 Township limits.

REGISTRABLE PROPERTY

Any Real Property located in the Township, 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 Township to allow Mortgagees the opportunity to register properties and pay applicable fees as required in this Chapter.

ANNUAL REGISTRATION

Twelve (12) months from the date of the first action that requires registration, as determined by the Township, or its designee, and every subsequent twelve (12) 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 Township codes. This includes, but is not limited to, electrical, gas, water, sewer, lawn maintenance, pool maintenance, and snow removal.

VACANT

As used in this Chapter shall mean any parcel of land in the Township that contains any building or structure that is not lawfully occupied or inhabited by human beings. A property also shall be deemed vacant if it is occupied without a valid,

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unexpired certificate of occupancy or other written authorization for occupancy as may be required by Applicable Laws.

§ 365-3 Applicability and jurisdiction.

This Chapter applies to Foreclosing or Foreclosed property within the Township.

§ 365-4 Establishment of a registry.

The Township, or its designee, shall establish a registry cataloging each Registrable Property within the Township, containing the information required by this Chapter.

§ 365-5 Inspection and registration of real property under foreclosure.

- A. Any Mortgagee who holds a mortgage on Real Property located within the Township shall perform an inspection of the property upon the filing of a Foreclosure Action or any evidence of an existing foreclosure action or lien holder has obtained ownership of the real property by the Mortgagee.
- 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 Township 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. A nonrefundable annual registration fee in the amount of \$500 per property shall accompany the registration form or website registration; and (2) an additional \$2,000 per property annually if the property is vacant or abandoned pursuant to the definition in the ordinance when the summons and complaint in an action to foreclose is filed, or becomes vacant and abandoned pursuant to the definition in the ordinance at any time thereafter while the property is in foreclosure. Said fees shall be used to offset the costs of: (1) registration and registration enforcement, (2) code enforcement and mitigation related to Foreclosure 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 other related purposes as may be adopted. None of the funds provided for in this section shall be utilized for the legal defense of Foreclosure Actions.

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- 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 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 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 Township.
- L. If any property is in violation of this Chapter the Township may take the necessary action to ensure compliance with and/or place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to 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

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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.

- N. Properties registered in accordance with the requirements within this Ordinance are not required to register under §146-13.

§ 365-6 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. 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 the 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 the 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 citation or notice of violation in accordance with the applicable code of the Township. Pursuant to a finding and determination by a court of competent jurisdiction, the Township 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 Township.

§ 365-7 Security requirements.

- A. Properties subject to this Chapter shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

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- 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. The Property Manager shall be available to be contacted by the Township Monday through Friday between 8:30 a.m. and 4:30 p.m., legal holidays excepted.
- D. 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 sign shall be placed on the interior of a window facing the street and shall be 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. 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. Exterior posting shall be constructed on and printed with weather-resistant materials.
- E. 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 Township. The Township may take the necessary action to ensure compliance with this section, and recover costs and expenses in support thereof. Exterior posting shall be constructed on and printed with weather resistant material.

§ 365-8 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 Township 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.

§ 365-9 Public nuisance.

All Registrable Property is at risk of being a public nuisance 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 Township.

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§ 365-10 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 assess the violations as soon as possible to address the conditions of the property. Nothing herein shall limit the Township from abating any nuisance or unsafe condition by any other legal means available to it.
- B. The Township 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 Township may 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 Township for the cost of temporarily securing the property or of any abatement within thirty (30) days of the Township sending the Mortgagee or Owner the invoice then the Township may lien the property with such cost, along with an administrative fee determined in the Township fee ordinance. In addition to filing a lien the Township may pursue financial penalties against the Mortgagee or Owner.
- E. The Township may contract with an entity to implement this Chapter, and, if so, any reference to the Enforcement Officer herein shall include the entity the Township contract with for that purpose.

§ 365-11 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.

- A. An out-of-State creditor subject to the notice and registration requirements of this Chapter, found to be in violation of the requirement to appoint an in-State representative or agent, shall be subject to a fine of \$2,500 for each day of the violation. The violation shall be deemed to commence on the day after the creditor's initial 10 or 30-day requirement to notify the Township of applicable foreclosure actions.
- B. A creditor subject to the notice and registration requirements of this Chapter, found to be in violation of any part of this ordinance, shall be subject to a fine of \$1,500 for each day of the violation. The violation shall be deemed to commence on the 31st day following the creditor's receipt of a notice of violation, or if deemed to present an imminent threat to public health and safety, on the 11th day following

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the creditor's receipt of such notice.

§ 365-12 Immunity of enforcement officer.

Any Enforcement Officer or any person authorized by the Township 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.

Any Ordinance or Ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

PRESIDENT

MUNICIPAL CLERK

RECORD OF VOTE													
First Reading							Second Reading						
COUNCIL	AYE	NAY	NV	AB	ORD	SEC	COUNCIL	AYE	NAY	NV	AB	ORD	SEC
PASQUALE "PAT" PAPER0, JR.	✓					✓	PASQUALE "PAT" PAPER0, JR.						
NANCY PHILLIPS	✓						NANCY PHILLIPS						
RICHARD L. TIGHE, JR.	✓						RICHARD L. TIGHE, JR.						
ANTHONY P. CARABELLI, JR.	✓				✓		ANTHONY P. CARABELLI, JR.						
CHARLES F. WHALEN	✓						CHARLES F. WHALEN						

X - Indicates Vote A.B. - Absent N.V. - Not Voting RES. - Moved SEC. - Seconded

REJECTED _____

JEFFREY S. MARTIN, MAYOR _____ DATE _____

APPROVED _____

RECONSIDERED BY COUNCIL _____ OVERRIDE VOTE - AYE _____ NAY _____