

LEE COUNTY ORDINANCE NO. _____
(Abandoned/Vacant Property Registration Ordinance)

AN ORDINANCE RELATING TO AND ESTABLISHING REGULATIONS PERTAINING TO REGISTRATION OF ABANDONED AND VACANT IMPROVED REAL PROPERTY LOCATED IN UNINCORORATED LEE COUNTY, WHICH IS OR HAS BEEN THE SUBJECT OF MORTGAGE FORECLOSURE ACTIVITY; PROVIDING FOR RECITALS AND FINDINGS; TITLE; APPLICABILITY; PURPOSE AND INTENT; DEFINITIONS; PUBLIC NUSIANCE; INSPECTION AND REGISTRATION; MAINTENANCE REQUIREMENTS; SECURITY REQUIREMENTS; TRESPASS AFFIDAVITS; RESPONSIBILITY FOR COMPLIANCE; ENFORCEMENT AND VIOLATIONS; ADDITIONAL AUTHORITY FOR THIRD PARTY ADMINSTRATION; CONFLCITS OF LAW; SEVERABILITY; CODIFICATION AND SCRIVERNER'S ERRORS; AND AN EFFECTIVE DATE.

WHEREAS, mortgage foreclosure activity has serious negative implications for all communities trying to manage the resulting property vacancies, increases in crime and homelessness, and other problems that stem from the financial crisis; and

WHEREAS, foreclosed homes quickly succumb to the forces of nature and the elements, grass and weeds grow long, swimming pools become stagnant public health hazards, landscaping dies from lack of attention or grows out of control, windows break, exteriors suffer damage from normal wear-and-tear and vandalism, communities suffer, and these consequences have a negative impact first on neighboring residences and then on entire neighborhoods; and

WHEREAS, the conditions identified above negatively impact Lee County and blight neighborhoods; and

WHEREAS, Lee County is challenged to identify and locate owners or foreclosing parties responsible to correct negative impacts and maintain properties in the foreclosure process or that have been foreclosed; and

WHEREAS, Lee County finds neighborhoods should be protected from becoming blighted through the lack of adequate maintenance and security attributable to abandoned and vacant properties subject to mortgages that are in default; and

WHEREAS, a foreclosed property registration process is necessary for Lee County to strengthen code enforcement and neighborhood revitalization programs to provide greater safety, as well as correct the negative impacts and blighting conditions that occur as a result of the foreclosure activity; and

WHEREAS, Lee County intends to establish a registration process applicable to abandoned/vacant improved properties that are currently in the foreclosure process, have already been foreclosed upon, or will be in the foreclosure process in the future; and

WHEREAS, Lee County finds establishing a regulatory registration process will serve to promote and protect the general health, safety and welfare of the residents of Lee County.

NOW, THEREFORE, BE IT ORDAINED by the Lee County Board of County Commissioners:

SECTION ONE: RECITALS/ FINDINGS

The above recitals are true and correct and incorporated herein by reference as findings of the Board of County Commissioners.

SECTION TWO: TITLE

This ordinance is known and may be cited as, the “Lee County Abandoned/Vacant Property Registration Ordinance”.

SECTION THREE: APPLICABILITY

- (a) This ordinance is applicable in the unincorporated areas of Lee County.
- (b) This ordinance applies to abandoned/vacant improved property, located within unincorporated Lee County, which is in or has been in mortgage foreclosure, or where ownership has been transferred to a lender or mortgagee by any legal method.
- (c) This ordinance also applies to properties that were the subject of a foreclosure sale, prior to adoption of the ordinance, where title was transferred to the mortgagee/beneficiary of a mortgagee involved in the foreclosure, and to any properties transferred to the mortgagee under a deed in lieu of foreclosure.
- (d) Notwithstanding any other provisions to the contrary, this ordinance does not apply to:
 - (1) Any municipal, county, state or federal roads or highways.
 - (2) Any property under the ownership or control of a municipality, county state or federal government or agency thereof.
 - (3) Any unimproved lot.

SECTION FOUR: PURPOSE AND INTENT

(a) The purpose of this ordinance is to establish a registration process applicable to property within unincorporated Lee County that has been through, is going through, or will go through a mortgage foreclosure action.

(b) The intent of this ordinance is to

(1) Limit or reduce the deterioration of property sitting abandoned and vacant during or after the foreclosure process.

(2) Provide a mechanism to protect neighborhoods from becoming blighted through the lack of maintenance attributable to abandoned/vacant property.

(3) Establish a means to find the current owner or entity in control of the abandoned/vacant property and obtain compliance with County regulations for maintenance and security of the property.

(4) Deter the criminal activity and vandalism that often accompanies abandoned/vacant property.

(5) Limit the opportunity to abandoned/vacant property to become a nuisance.

(6) Create a funding mechanism that may be used to maintain compliance with Lee County regulations regarding maintenance and security of property.

~~(6)~~(7) Assist law enforcement officers in the performance of their duties with respect to addressing trespass, squatting and criminal activity that may occur on abandoned/vacant property

SECTION FIVE: DEFINITIONS

The following words, terms and phrases, when used in this Ordinance have the meanings ascribed to them, except where the context clearly indicates a different meaning. Where the context will permit and no definitions are provided herein, the definitions provided in the Florida Building Code will apply.

Abandoned/vacant real property means any real property that is uninhabited and:

(1) under a public notice of default evidenced by the filing of a *lis pendens*; (2) is the subject of a pending mortgage foreclosure; (3) is the subject of a notice of mortgagee's sale or lien sale; (4) has been the subject of a mortgage foreclosure sale where title is retained by the mortgagee; or, (5) is property transferred under a deed-in-lieu of foreclosure sale, a short sale or other legal means.

Accessible means a property, structure or building that is unsecured or breached in such a way as to allow access by trespassers, criminal or other unauthorized persons.

Default means that the mortgagee has filed a foreclosure action or public notice of default on the mortgage. A mortgage will be considered in default at such time as the mortgagee declares the mortgage to be in default: (1) in writing; (2) by recording a *lis pendens*; (3) by commencing foreclosure proceedings; or, (4) by any other actions demonstrating a breach of a security covenant on a property.

Enforcement officer means any full-time law enforcement officer, building official, fire inspector or code enforcement officer employed by Lee County.

Evidence of vacancy means any condition, on its own or combined with other conditions present, which would lead a reasonable person to believe the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; electricity, water or other utilities turned off; stagnant swimming pool; or, statements by neighbors, passers-by, delivery agents or government agents.

Foreclosure means the judicial process by which a property, placed as security for a mortgage loan, is to be sold pursuant to judicial order at an auction to satisfy a debt upon which the borrower has defaulted.

Legally inhabited means a building that it occupied by a person or persons with the right to do so as evidenced by ownership of the fee title, a lease or other legally recognized entitlement to enter into, remain and use the building or structure.

Mortgagee means the creditor, including but not limited to, service companies, lenders in a mortgage agreement, and any agent or employee of the mortgagee, or any successor or assignee to the mortgagee's rights, interest or obligations under the mortgage agreement, the mortgagee or beneficiary of the mortgage foreclosure action obtaining title pursuant to a foreclosure sale. For purposes of this ordinance, real estate brokers and agents, solely marketing or selling real property on behalf of the mortgagee will not be deemed an agent or employee of the mortgagee.

Nuisance means any condition, including but not limited to, an abandoned, unsafe, unsecured residence, building, structure or real property with code violations that constitute a menace to life, property, public health or public welfare, or create a fire hazard; any conditions that may be injurious to the health, safety or welfare of the public; or, any conditions that constitute an attractive nuisance or otherwise endanger the public's safety while in the vicinity thereof.

Property management entity means a local property manager, property maintenance company, or similar person or entity responsible for the maintenance and security of abandoned/vacant real property.

Vacant means 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.

SECTION SIX: PUBLIC NUISANCE

All abandoned and vacant real property that is unmaintained or unsecured is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared necessary for the health, safety and welfare of Lee County residents and citizens.

SECTION SEVEN: INSPECTION AND REGISTRATION

(a) Any mortgagee holding a mortgage on real property located within unincorporated Lee County must perform an inspection of the property upon default by the mortgagor or prior to the issuance of a notice of default, the filing of a *lis pendens* or foreclosure action. If the property is found to be vacant or shows evidence of vacancy, it will be deemed vacant or abandoned; and, the mortgagee is required to register the property with Lee County Code Enforcement within ten days after the inspection.

(b) Property inspected pursuant to subsection (a) that is occupied or legally inhabited, but remaining in default, must be inspected by the mortgagee or the designee on a regular basis by the mortgagee or mortgagee’s designee. Regular inspections must continue on a monthly basis until the property is legally inhabited.

ADDITIONAL PROPOSED PROVISION (not agreed by staff)

(b) A mortgagee must register real property, which is the subject of a *lis pendens*, foreclosure action or other legal action filed to collect mortgage default payments, with Lee County within 10 days after the mortgagee takes action regarding the default.

(c) ~~After a foreclosure action is filed,~~ inspections of the property must continue after a *lis pendens* and/or foreclosure action is filed. If inspection reveals that the property is vacant, the mortgagee must register the property with Lee County Code Enforcement or its designee, within 10 days of the date the property is found to be abandoned/vacant.

(d) **REGISTRATION**. Registration pursuant to this section must include, at a minimum, the name, mailing address, e-mail address and telephone number for the mortgagee, the mortgagee’s chief executive officer and a local property manager. The mortgagee must also file a Trespass Affidavit with the Lee County Sheriff’s Office.

(e) The mortgagee, through its designated local property management entity will be responsible to inspect, secure and maintain the property. The property manager named in the registration must be located within Lee County and available to be

contacted by the County, Monday through Friday between 9:00 a.m. and 5:00 p.m., excluding holidays.

(f) FEE. Each initial registration must be accompanied by a fee in the amount set forth in the Lee County Administrative Code - External Fees and Charges Manual. A separate registration fee is applicable to each abandoned/vacant property.

An annual fee, as set forth in the Lee County Administrative Code, will be due on October 1st if the registered property remains vacant (legally uninhabited) as of September 1st.

Fees are payable to Lee County or its designee. All fees received will be deposited into the Lee County General Fund and may be used for the enforcement of Lee County regulations applicable to the maintenance of property.

(f) Properties that have been the subject of a foreclosure sale, prior to adoption of this ordinance, where title was transferred to the mortgagee/beneficiary of a mortgage involved in the foreclosure, ~~and to any properties transferred or~~ to the mortgagee under a deed in lieu of foreclosure, must inspect the property and register the property with Lee County if the property is not legally inhabited.

(g) Properties subject to this section will remain under the registration, inspection, security, and maintenance requirements of this ordinance as long as the property remains in the ownership/control of the mortgagee, subject to a claim by the mortgagee regarding default, or is not legally inhabited.

(h) Any person or other legal entity that has registered a property under this ordinance must report to the County or its designee, any change of information contained in the registration within ten days of the change.

(i) Failure of the mortgagee and/or property owner of record to properly register or modify a registration to reflect a change of circumstances as required constitutes a violation of this ordinance subject to enforcement by Lee County or its designee.

(j) Pursuant to a finding or determination that a property is in violation of this ordinance, Lee County may take the necessary action to ensure compliance and place a lien on the property for the costs associated with bringing the property into compliance in accordance with the procedures set forth in Lee County Ordinance 93-39, Section Three.

SECTION EIGHT: MAINTENANCE REQUIREMENTS

The Mortgagee is responsible for maintaining the registered property as follows:

(a) The exteriors of properties subject to this ordinance must be kept free of nuisance weeds; overgrown brush; dead vegetation; trash; junk; debris; building materials; any accumulation of newspapers, circulars, flyers, or notices, except those required by federal, State or local law; discarded personal items, including but not limited to, furniture, clothing, large and small appliances, and printed material; and, any other items that give the appearance that the property is abandoned.

(b) The property must 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 yard landscaping must be maintained in accordance with applicable County regulations and standards in effect at the time the registration was required. Landscape includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges, trees, decorative rock, bark, or artificial turf/sod designed specifically for residential installation. Landscape does not include weeds, gravel, broken concrete, asphalt, or similar material. Landscape maintenance includes, but is not limited to, watering, irrigation, cutting, pruning, trimming and mowing of required landscape and removal of all landscape trimmings, garbage, debris and other derelict material found on the property.

(d) Pools and spas must be maintained so the water remains free and clear of hazards, pollutants and debris, as well as mosquito breeding and vermin infestation. Pools and spas must be enclosed as required by law.

(e) In the event that the National Weather Service, National Hurricane Center or other appropriate weather agency declares a hurricane warning for any portion of Lee County, all materials, furnishings and equipment at the property must be secured, stored or removed so as not to create a safety hazard due to hurricane force winds.

SECTION NINE: SECURITY REQUIREMENTS

(a) Properties subject to this ordinance must be maintained in a secure manner so as not to be accessible to unauthorized persons. A “secure manner” means and includes, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child or adult to access the interior of the property or structure.

(b) Broken windows or doors must be secured by reglazing, replacement or boarding so as to meet all applicable laws, codes and regulations.

(c) If the Mortgagee is a corporation, partnership, or out-of-area mortgagee, a local property management entity must be engaged to perform monthly inspections to verify compliance with the requirements of this ordinance and other applicable regulations and laws and take all appropriate action to ensure the property remains in compliance.

(d) Properties subject to the provisions of this ordinance must be posted at all times with a sign meeting the following criteria:

- (1) No less than 18 by 24 inches
- (2) Use a text font that is clearly legible and visible from a distance of 45 feet
- (3) State the name, address and 24-hour contact phone number of the person or entity that is managing the property
- (4) Identify the name and contact information of the person to whom problems or concerns can be reported.
- (5) Be placed in a location that is clearly visible from the street and located on an interior window, secured to the exterior of the building or posted on a stake of sufficient size to support the sign. If the sign is placed in an exterior location it must be constructed and printed with weather resistant materials.

SECTION TEN: TRESPASS AFFIDAVIT

(a) At the time the mortgagee registers the abandoned/vacant property with Lee County, the mortgagee must also file a trespass affidavit with the Lee County Sheriff's Office.

(b) The purpose of the trespass affidavit is to provide the Lee County Sheriff with the authority to enforce the provisions of Florida Statutes ch. 810.

(c) Consistent with the provisions of Florida Statutes s.810.11(5), the property must be posted with "No Trespassing" signs as follows:

- (1) Signs must be posted no more than 500 feet apart and at each corner of the property, and be clearly visible from outside the property boundary.
- (2) The signs must include the words "no trespassing" in a letters not less than 2 inches high and identify the name of the mortgagee or entity executing the affidavit on behalf of the mortgagee.

(d) The affidavit must be renewed annually for as long as the property remains subject to the provisions of this ordinance.

SECTION ELEVEN: RESPONSIBILITY FOR COMPLIANCE

(a) The Mortgagee is the party responsible for compliance with the provisions of this ordinance.

(b) The property management entity is required to inspect the property no less than once a month, until the property is legally inhabited in accordance with all applicable laws, codes and regulations. The property manager is required to keep an inspection log and upon request by the County to produce the log, at no cost to the County, for inspection, review or copying.

(c) The Mortgagee's responsibility for compliance with this ordinance will continue until such time as the property subject to this ordinance is legally inhabited.

SECTION ELEVENTWELVE: ENFORCEMENT AND VIOLATIONS

(a) This ordinance will be enforced by Lee County Code Enforcement, or its designee, pursuant to the provisions set forth in Lee County Land Development Code Chapter 2, Article VII or any other legal means available to the County.

(b) Violations of this ordinance will be subject to fines as set forth in the Lee County Administrative Code or as determined by the Lee County Hearing Examiner or a County Court Judge.

(c) Nothing in this ordinance prevents Lee County from seeking abatement of violations of its regulations through alternative means such as the Unsafe Building Abatement Code, Lee County Lot Mowing ordinance or other applicable provisions or processes.

(d) In accordance with Florida Statutes ch. 162 and the Lee County Land Development Code, upon a finding and determination by the hearing Examiner or adjudication by the County Court, the County may take the appropriate and necessary corrective action to ensure compliance with this ordinance. In the event the County takes such corrective action, the County is entitled to recover all costs and expenses, including reasonable attorney's fee. Such costs and expenses will be recorded as a lien in favor of the County against the subject real property.

SECTION TWELVETHIRTEEN: ADDITIONAL AUTHORITY

A third party administrator may be engaged and designated by the County to administer and enforce the provisions of this ordinance including, but not limited to collection of fees. The third party administrator may also be authorized to process and serve citations on behalf of Lee County, pursuant to and in furtherance of, the provisions of this ordinance.

SECTION THIRTEENFOURTEEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION FOURTEENFIFTEEN: SEVERABILITY

It is the Board of County Commissioners= intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FIFTEENSIXTEEN: CODIFICATION AND SCRIVENER=S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or designee, without the need for a public hearing.

SECTION SIXTEENSEVENTEEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner made a motion to adopt the foregoing ordinance, seconded by Commissioner Hall. The vote was as follows:

JOHN E. MANNING _____
CECIL L PENDERGRASS _____
LARRY KIKER _____
TAMMARA HALL _____
FRANK MANN _____

Field Cod

DULY PASSED AND ADOPTED THIS day of , 2013.

ATTEST: LINDA DOGGETT, BOARD OF COUNTY COMMISSIONERS
CLERK OF COURTS OF LEE COUNTY, FLORIDA

Field Cod

BY: _____
Deputy Clerk

BY: _____
Chair

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney