

ORDINANCE O – 15 – 2023

**AN ORDINANCE OF THE MAYOR AND COMMITTEE OF THE TOWNSHIP OF ELK,
COUNTY OF GLOUCESTER, STATE OF NEW JERSEY AMENDING CHAPTER 79 ENTITLED “PROPERTY
MAINTENANCE” OF THE CODE OF THE TOWNSHIP OF ELK**

WHEREAS, the Mayor and Committee, Township of Elk, have determined that amendments to Chapter 79 entitled “Property Maintenance” are necessary; and

WHEREAS, in all other respects Chapter 79 entitled “Property Maintenance” shall remain in full force and effect.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Committee of the Township of Elk, in the County of Gloucester and State of New Jersey, and it is hereby enacted and ordained by the authority of same as follows:

Section 1.

Article II entitled “Vacant and Abandoned Residential Property” of Chapter 79 “Property Maintenance” shall be deleted in its entirety and replaced with the following language:

CHAPTER 79

Article II. Vacant and Abandoned Real Property.

§ 79-6. Purpose and Intent:

It is the purpose and intent of the Township of Elk to establish a process to address the increasing amount of abandoned, foreclosed or distressed real property located within the Township, and to identify, regulate, limit and reduce the number of abandoned properties located within the Township. It is the Township of Elk’s further intent to participate in registration program as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of abandoned and foreclosed properties.

§ 79-7. Definitions:

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

ABANDONED REAL PROPERTY - means any real property located in the Township of Elk, whether vacant or occupied, that is in default on a mortgage, has had a lis pendens filed against it by the Lender holding a mortgage on the property, is subject to an ongoing foreclosure action by the Lender, is subject to an application for a tax deed or pending tax assessor’s lien sale, or has been transferred to the Lender under a deed in lieu of foreclosure. The designation of a property as "abandoned" shall remain in place until such time as the property is sold or transferred to a new owner, the foreclosure action has been dismissed, and any default on the mortgage has been cured.

ACCESSIBLE PROPERTY/STRUCTURE - means a property that is accessible through a compromised/breached gate, fence, wall, etc. or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

APPLICABLE CODES - means to include, but not be limited to, the Township of Elk’s Zoning Code, the Township of Elk’s Code of Ordinances ("Township Code"), and the New Jersey Building 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 whose maintenance is not in conformance with the maintenance of other neighboring properties causing a decrease in value of the neighboring properties; or
- c) Properties cited for a public nuisance pursuant to the Township Code; 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 Township Codes.

CREDITOR – means a mortgagee or an agent or assignee of a mortgagee, such as the servicer, who has filed a complaint in the Superior Court seeking to foreclose upon a residential or commercial mortgage. If the entity seeking to foreclose upon the residential or commercial mortgage changes as a result of an assignment, transfer, or otherwise after the filing of the foreclosure complaint in the Superior Court, the new entity shall be deemed the creditor for purposes of this section. For purposes of this section, a creditor shall not include the State, a political subdivision of the State, a State, county or local government entity, or their agent or assignee, such as the servicer.

ENFORCEMENT OFFICER - means any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector or building inspector, or other person authorized by the Township of Elk to enforce the applicable code(s).

OWNER - means any person, legal entity or other party having any ownership interest whether legal or equitable, in real property. This term shall also apply to any person, legal entity or agent responsible for the construction, maintenance or operation of the property involved.

PROPERTY MANAGEMENT COMPANY - means an owner, agent, local property manager, property Maintenance Company or similar entity responsible for the maintenance of abandoned real property.

RESPONSIBLE PARTY – means the title holder of a vacant and abandoned property or a creditor responsible for the maintenance of a property pursuant to section 17 of P.L.2008, c.127 (N.J.S.A. 46:10B-51).

VACANT - means any building or structure that is not legally occupied.

§ 79-8. Applicability:

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to the Township of Elk above and beyond any other state, county or local provisions for same.

§ 79-9. Establishment of a Registry:

Pursuant to the provisions of Section 79-10, the Township of Elk or its designee shall participate in a registration program for the purpose of cataloging each abandoned and/or foreclosed property within the Township of Elk, containing the information required by this Article.

§ 79-10. Registration of Abandoned Real Property:

- A. The creditor filing a summons and complaint in an action to foreclosure shall, in addition to the notice provided to the municipality pursuant to N.J.S.A. 46:10B-51, register the residential or commercial property with the municipality's property registration program as a property in foreclosure and, as part of that registration: (a) provide the municipality with the information regarding the creditor required by paragraph (1) of subsection a. of section 17 of P.L..2008, c.127 N.J.S.A. 46:10B-51) or (b) identify the date the summons and complaint in an action to foreclose on a mortgage was filed against the subject property, the court in which it was filed, and the docket number of the filing; and (c) identify whether the property is

vacant and abandoned in accordance with the definition in the ordinance required by subparagraph E. of this subsection.

- B. If there is any change in the name, address, or telephone number for a representative, agent, or individual authorized to accept service on behalf of a creditor required to register pursuant to the property registration program following the filing of the summons and complaint, the creditor shall update the property registration program within ten (10) days of the change in that information.
- C. The creditor filing a summons and complaint in an action to foreclose shall, if the registered property becomes vacant and abandoned in accordance with the definition in the ordinance required by subparagraph E. of this subsection after the property is initially registered with the municipality, update the property registration with the municipality to reflect the change in the property's status.
- D. The creditor filing a summons and complaint in an action to foreclose shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property if the property is vacant and abandoned at any time while the property is registered with the property registration program. A creditor located out-of-state shall be responsible for appointing an in-state representative or agent to act for the foreclosing creditor.
- E. A property shall be considered vacant and abandoned if it is not legally occupied by a mortgagor or tenant, which is in such condition that it cannot be legally reoccupied, because of the presence or finding of at least two of the following:
 - 1. overgrown or neglected vegetation;
 - 2. the accumulation of newspapers, circulars, flyers, or mail on the property;
 - 3. disconnected gas, electric, or water utility services to the property;
 - 4. the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
 - 5. the accumulation of junk, litter, trash, or debris on the property;
 - 6. the absence of window treatments such as blinds, curtains, or shutters;
 - 7. the absence of furnishings and personal items;
 - 8. statements of neighbors, delivery persons, or government employees indicating that the property is vacant and abandoned;
 - 9. windows or entrances to the property that are boarded up or closed off, or multiple window panes that are damaged, broken, and unrepaired;
 - 10. doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
 - 11. a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
 - 12. an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
 - 13. the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;
 - 14. a written statement issued by a mortgagor expressing the clear intent of all mortgagors to abandon the property; or
 - 15. any other reasonable indicia of abandonment.
- F. Any creditor who holds a mortgage or equity lien on real property located within the Township of Elk shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor.
- G. If the property is occupied but remains in default, it shall be inspected by the creditor or his designee monthly until: (1) the mortgagor or other party remedies the default, or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the creditor shall, within ten (10) days of that inspection, update the property registration to a vacancy status on forms provided by the Township of Elk.
- H. For a property subject to a pending foreclosure action, the following annual registration fees shall accompany the registration form or website registration: (1) \$500 per property annually for any property that is required to be registered because a summons and complaint in an action to foreclose was filed by

the creditor; and (2) an additional \$2,000 per property annually if the property is vacant or abandoned pursuant to the definition in this Chapter when the summons and complaint in an action to foreclose is filed, or becomes vacant and abandoned pursuant to this Chapter at any time thereafter while the property is in foreclosure. On each anniversary date of the initial registration, the owner or creditor shall submit a renewal registration and fee.

- I. For a property which is not subject to a pending foreclosure action, the initial registration fee shall be \$500 for a vacant and/or abandoned property. The first renewal fee shall be \$750 if there is an outstanding property maintenance or code violation on a vacant and/or abandoned property that remains unabated at the time of renewal. All subsequent renewal fees shall be \$1,000 if there continues to be an outstanding property maintenance or code violation, or there exists a new violation on a vacant and/or abandoned property that remains unabated at the time of renewal.
- J. All registration fees must be paid directly from the Creditor, Servicer, Trustee, Owner, heir or transferee. Third Party Registration fees are not allowed without the consent of the Municipality and/or its authorized designee.
- K. Except as set forth in 79-10.I. above, this section shall also apply to properties that have 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.
- L. Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they remain abandoned, vacant or in default.
- M. Failure of the creditor and/or owner to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this Chapter is a violation of the Chapter and shall be subject to enforcement.
- N. Pursuant to any administrative or judicial finding and determination that any property is in violation of this Chapter, the Township of Elk may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

§ 79-11. Maintenance Requirements:

- A. Properties subject to this Article shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
- B. The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- C. Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.
- D. Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- E. Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- F. Pools and spas shall be covered or 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). A fence shall secure and prohibit access to the pool.

- G. The property shall be maintained free of mold, mildew, algae and/or moss on all exterior structures and buildings.
- H. Failure of the creditor 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 this Article and Chapter 47 and 79-1 et seq. of the Township of Elk's Code. Pursuant to a finding and determination by the Township's Code Enforcement Officer or a Court of competent jurisdiction, the Township of Elk 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 applicable Code(s).

§ 79-12. Security Requirements:

- A. Properties subject to these Sections shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- B. A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by reglazing or replacing of the window.
- C. If a mortgage on a property is in default, and the property has become vacant or abandoned, a property manager shall be designated by the creditor to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this Article, and any other applicable laws.

§ 79-13. Public Nuisance:

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

§ 79-14. Violations and Penalties:

- A. An out-of-state creditor found by the municipal court of the municipality in which the property subject to the ordinance is located, or by any other court of competent jurisdiction, to be in violation of the requirement to appoint an in-state representative or agent pursuant to the ordinance shall be subject to a fine of \$2,500 for each day of the violation. Any fines imposed on a creditor for the failure to appoint an in-state representative or agent shall commence on the day after the 10-day period set forth in paragraph (1) of subsection a. of Section 17 of P.L.2008, c. 127 (N.J.S.A. 46:10B-51) or paragraph (1) of subsection a. of section 2 of P.L.2021, c. 444 (N.J.S.A. 40:48-2.12e.) for providing notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.
- B. A creditor found by the municipal court of the municipality in which the property subject to the ordinance is located, or by any other court of competent jurisdiction, to be in violation, excluding only a violation addressed by paragraph (1) of this subsection, of the ordinance shall be subject to a fine of \$1,500 for each day of the violation. Any fines imposed pursuant to this paragraph shall commence 31 days following receipt of the notice of violation, except if the violation presents an imminent risk to public health and safety, in which case any fines shall commence eleven (11) days following receipt of the notice.
- C. Any other owner or person(s) who shall violate the provisions of this Article shall be cited and fined by one or more of the following: imprisonment in the county jail or in any place provided by the municipality for the detention of prisoners, for any term not exceeding 90 days; or by a fine not less than \$500.00 or exceeding \$1,250.00; or by a period of community service not exceeding 90 days.

- D. Any person who is convicted of violating this Article within one year of the date of a previous violation of the same Section, and who was fined for the previous violation, shall be sentenced by a Court to an additional fine as a repeat offender. The additional fine imposed by the Court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of this Article, but shall be calculated separately from the fine imposed for the violation of this Article.

§ 79-15. Inspections for Violations:

Adherence to this Article does not relieve any person, legal entity or agent from any other obligations set forth in any applicable Code(s), which may apply to the property. Upon sale or transfer of title to the property, the owner shall be responsible for all violations of the applicable Code(s).

§ 79-16. 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 creditor and/or owner, and may bring the violations before a Court of competent jurisdiction as soon as possible to address the conditions of the property.
- B. The Code Enforcement Officer shall have the authority to require the creditor and/or owner of record of any property affected by this section, to implement additional maintenance and/or security measure including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.
- C. If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the Code Enforcement Officer may direct the Municipality to abate the violations and charge the creditor with the cost of the abatement.
- D. If the creditor does not reimburse the Township of Elk for the cost of temporarily securing the property, or of any abatement directed by the code enforcement board or special magistrate, within thirty (30) days of the Township sending the creditor the invoice, then the Township of Elk may lien the property with such cost, along with an administrative fee of \$800.00 to recover the administrative personnel services.

§ 79-17. Opposing, Obstructing Enforcement Officer; Penalty:

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the Code 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.

§ 79-18. Immunity of Enforcement Officer:

Any enforcement officer or any person authorized by the Township of Elk 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.

Section 2.

The remaining sections shall be renumbered accordingly.

Section 3. Severability.

Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 4. Repealer.

All prior Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistencies.

Section 5. When Effective.

This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

INTRODUCTION ROLL CALL VOTE						
COMMITTEE MEMBER	Motion	Second	AYE	NAY	ABSTAIN	ABSENT
Cowan						
Lucas						
Nicholson						
Rambo						
Sammons						

TOWNSHIP OF ELK

ATTEST:

Carolyn D. K. Sammons, Mayor

DEBORA R. PINE, Township Clerk

FINAL ADOPTION ROLL CALL VOTE						
COMMITTEE MEMBER	Motion to Adopt	Second	AYE	NAY	ABSTAIN	ABSENT
Cowan						
Lucas						
Nicholson						
Rambo						
Sammons						

NOTICE

The Ordinance published herein was introduced and passed upon first reading at a meeting of the Mayor and Committee of the Township of Elk, in the County of Gloucester and State of New Jersey, held on September 7, 2023. It will be further considered for final passage, after public hearing hereon, at a meeting of said Mayor and Committee to be held in the Township Municipal Building on October 5, 2023, at 7:00 P.M. During the week prior and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's office at the said Municipal Building, 680 Whig Lane, Monroeville, New Jersey, to the members of the general public who shall request the same.

DEBORA R. PINE, TOWNSHIP CLERK