

ORDINANCE NO. 2009-01

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO MORTGAGE REAL PROPERTY; AMENDING CHAPTER 49, TOWN CODE OF ORDINANCES; CREATING ARTICLE V, RELATING TO PROCEDURES FOR ABANDONED REAL PROPERTY; PROVIDING A PURPOSE, DEFINITIONS, APPLICABILITY, AND PENALTIES; PROVIDING PURPOSE AND INTENT, DEFINITIONS, AND APPLICABILITY; REQUIRING MORTGAGEE REGISTRATION RELATING TO REAL PROPERTY MORTGAGES IN DEFAULT; REQUIRING MAINTENANCE OF CERTAIN REAL PROPERTIES BY MORTGAGEES; PROVIDING SECURITY REQUIREMENTS; PROHIBITING OPPOSITION TO OR OBSTRUCTION OF A CODE ENFORCEMENT OFFICER; PROVIDING FOR THE IMMUNITY OF ENFORCEMENT OFFICERS; SETTING FORTH ADDITIONAL MAINTENANCE AND SECURITY REQUIREMENTS; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY AND INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Commission finds that due to a rise in mortgage foreclosures due to the national economic recession the Town's Code Enforcement Board may need to address numerous cases involving mortgaged property that has become vacant or abandoned due to mortgage foreclosure actions or properties subject to mortgages which are in default; and

WHEREAS, the Town Commission finds that abandoned properties, or property subject to a mortgage which is in default, often end up in situations causing neighborhood blight; and

WHEREAS, the Town Commission finds that neighborhoods should be protected from becoming blighted due to the lack of adequate maintenance and security of abandoned properties or properties subject to mortgages which are in default; and

WHEREAS, the abandonment of real property due to foreclosure or a default in a mortgage often ends in a situation in which mortgagees are left to tend for property and seldom closely supervise such property, thereby allowing the property to deteriorate;

WHEREAS, when a mortgagee declares a default in a mortgage which property has not been foreclosed upon, although the property owner may continue in occupancy of the real property, the property owner many times realizes it will soon lose title to the property, loses interest in maintenance of the property, and begins to treat the property as abandoned property that begins to deteriorate as to maintenance and security;

WHEREAS, the Town Commission finds that mortgagees have an interest in maintaining the abandoned real property or property subject to a mortgage which is in default; and

WHEREAS, the Town Commission finds that the mortgagee's registration of abandoned real property, or property subject to a mortgage which is in default, will

establish a contact person for the Town to address concerns regarding the maintenance and security of the real property; and

WHEREAS, the Town Commission finds that it is in the public interest to address safety and aesthetic concerns and the economic order of the community to assure that abandoned real property subject to a mortgage or property subject to a mortgage in default will continue to be maintained and secured and that blight will not occur.

BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:

SECTION 1. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a new article V. and Sections, to be numbered 49-50 and 49-51, which said article and sections reads as follows:

ARTICLE V. MORTGAGED REAL PROPERTY

§ 49-50. (reserved)

§ 49-51. PURPOSE AND INTENT.

It is the purpose and intent of the Town Commission to establish a process to limit and reduce the amount of deteriorating property located within the town, which property is subject to a mortgage which is in default. It is the Town Commission's further intent to specifically establish a defaulted mortgage registration program as a mechanism to protect neighborhoods from becoming blighted

through the lack of adequate maintenance and security of abandoned properties subject to a mortgage or properties subject to mortgages which are in default.

SECTION 2. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 49-52, which said section reads as follows:

§ 49-52. 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 that is vacant and is under a current notice of default and/or notice of mortgagee's sale, pending tax assessors lien sale and/or properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure or sale.

Default when used in reference to a mortgage in default means that the mortgage holder has decided to file a mortgage foreclosure action on the defaulted upon mortgage. A mortgage shall not be in default until such

time as the mortgagee declares said mortgage to be in default either in writing or by its actions, or commences foreclosure proceedings in a court of law.

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 not be limited to, overgrown and/or dead vegetation, electricity, water or other utilities turned off, stagnant swimming pool, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

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

Enforcement officer means any fulltime law enforcement officer, building official, fire inspector or code enforcement officer employed within the Town.

Vacant means any building/structure that is not occupied by human beings or inhabited.

SECTION 3. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a

Section, to be numbered 49-53, which said section reads as follows:

§ 49-53. APPLICABILITY.

This article shall be considered cumulative and not superseding or subject to any other law or provision for same, but shall rather be an additional remedy available to the Town above and beyond any other state, county and/or local provisions for same. This article relates to abandoned property and to property subject to a mortgage which has been determined by the mortgagee to be in default.

SECTION 4. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 49-54, which said section reads as follows:

§ 49-54. PENALTIES.

Violations of this article shall be subject to enforcement by the code enforcement board of the Town of Melbourne Beach, or a town code enforcement magistrate.

SECTION 5. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 49-55, which said section reads as follows:

§ 49-55. REGISTRATION OF REAL PROPERTY MORTGAGEES HOLDING MORTGAGES IN DEFAULT.

(a) Any mortgagee who holds a mortgage on real property located within the Town shall perform an inspection of the property that is the security for the mortgage, upon default by the mortgagor or prior to the issuance of a notice of default. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within ten (10) days of the inspection, register the property with the town manager, or said town manager's designee, on forms provided by the Town. Even though the real property may not be vacant, if the mortgage on the property is in default, not later than ten (10) days after the date that a default is declared by the mortgagee of the mortgage on a particular parcel of real property, the mortgagee shall register the property with the town manager, or said town manager's designee, on forms provided by the Town.

(b) If the property is occupied but remains in default, it shall be inspected by the mortgagee or said mortgagee's designee monthly until the mortgagor or other party remedies the default,

(c) Within ten (10) days of date that the mortgagee declares its mortgage on a particular parcel of real

property to be in default, the mortgagee shall register the real property with the Town and at the time of registration shall designate in writing to the Town a local (located within Brevard County) property manager to inspect, maintain and secure the real property subject to the mortgage in default.

(d) Registration. Registration pursuant to this section shall contain the name of the mortgagee; the direct mailing address of the mortgagee, e-mail address, and telephone number; the name of the local contact person and said contact person's address, e-mail, and telephone number. The local property manager shall be responsible for the inspection, security and maintenance of the property. The local contact person named in the registration shall be located within Brevard County and available in Brevard County Monday through Friday between 9:00 a.m. and 5:00 p.m., holidays and lunch hours excepted, to be contacted by the Town. The Town is prohibited from charging for any registration or a modification of registration.

(e) 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.

(g) Properties subject to this section shall remain under the annual registration requirement, inspection, security, and maintenance standards of this section as long as they remain vacant or subject to having been declared by a mortgagee to be in default.

(h) Any person or other 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.

(i) Failure of the mortgagee and/or property owner of record to properly register or to revise from time to time the registration to reflect a change of circumstances as required by this article is a violation of the Town code and may result in a citation by the Town's code compliance division. Pursuant to a finding and determination by the Town's code enforcement board or special magistrate, the Town may take the necessary action to ensure compliance with this section.

SECTION 6. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 49-56, which said section reads as follows:

§ 49-56. 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 included, 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 or not being properly maintained.

(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) Yards shall be landscaped and maintained pursuant to the standards set forth this Code.

(1) "Landscaping" 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, commercial or industrial installation, as applicable. "Landscaping" shall not include weeds, gravel, broken concrete, asphalt or similar material.

(2) "Maintenance" shall include, but not be limited to, watering, irrigation, cutting, and mowing of required landscape and removal or all trimmings.

(d) Pools and spas shall be kept in working order so that pool and spa water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of this code and the Florida Building Code, as amended from time to time.

(e) Failure of the mortgagee and/or property owner of record to properly maintain the property is a violation of the Town code and may result in citation by the Town's code compliance division. Pursuant to a finding and determination by the Town's code enforcement board or special magistrate, the Town may take the necessary action to ensure compliance with this section.

SECTION 7. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 49-57, which said section reads as follows:

§ 49-57. SECURITY REQUIREMENTS.

(a) Properties subject to this article 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 and/or structure. Broken windows shall be secured by reglazing or boarding of the window.

(c) If a mortgage on property is in default and has become vacant or abandoned property, a local property manager shall be designated to perform, and the local property manager or mortgagee contact person must perform weekly inspections to verify compliance with the requirements of this section, and any other applicable laws or Town ordinances.

(d) At such time that the property becomes abandoned property, it shall be posted with the name and 24-hour contact phone number of the local property manager. The posting shall be no less than 18 inches x 24 inches, and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language:

THIS PROPERTY IS MANAGED BY:_____

TO REPORT PROBLEMS OR CONCERNS CALL:_____

The posting shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the

exterior of the building/structure facing the street to the front of the property so that it is visible from the street or if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visual from the street to the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.

(f) Failure of the mortgagee and/or property owner of record to properly inspect and secure the property, and post and maintain the signage noted in this section, is a violation of this code and may result in a citation by the Town's code compliance division. Pursuant to a finding and determination by the Town's code enforcement board or special magistrate, the Town may take the necessary action to ensure compliance with this section.

SECTION 8. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 49-58, which said section reads as follows:

§ 49-58. OPPOSING, OBSTRUCTING ENFORCEMENT OFFICER;

PENALTY.

Whoever opposes, obstructs or resists any enforcement officer, or any person authorized by the town manager, in the discharge of duties as provided in this article, upon conviction may be punished as provided in section 1-99 of the Town Code, or chapter 162, Florida Statutes.

SECTION 9. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 49-59, which said section reads as follows:

§ 49-59. IMMUNITY OF ENFORCEMENT OFFICER.

Any enforcement officer, or any person authorized by the town manager, shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this article.

SECTION 10. That the Town Code of the Town of Melbourne Beach, Florida, is hereby amended by adding a Section, to be numbered 49-60, which said section reads as follows:

§ 49-60. ADDITIONAL AUTHORITY.

The town manager shall have authority to require the mortgagee and/or owner of record of any property affected by this section, to implement additional maintenance and/or security measures including, but not limited to, securing

any and all door, window or other openings, employment of an on-site security guard, or other measures as may be reasonably required to prevent a decline of the property.

SECTION 11. Severability/Interpretation Clause. That it is hereby declared to be the intention of the Town Commission that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code. That in interpreting this ordinance, underlined words indicate additions to the existing text and ~~stricken through~~ words indicate a deletion from existing text.

SECTION 12. Ordinances in Conflict. That all ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 13. Effective Date. That this Ordinance shall become effective immediately upon its adoption in accordance with the Town Charter.

That this Ordinance was passed on first reading at a regular meeting of the Town Commission on the 21st day of January, 2009, and adopted on the second and final reading

at a regular meeting of the Town Commission on the 18th day
of February, 2009.

By: _____
Rita A. Karpie, Mayor

ATTEST:

Tina Hoffkins, Town Clerk

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