

**BOROUGH OF OLD TAPPAN
ORDINANCE NO. 1159-20**

**AN ORDINANCE CREATING A NEW CHAPTER 191
OF THE CODE OF THE BOROUGH OF OLD TAPPAN
PERTAINING TO VACANT AND ABANDONED PROPERTY**

WHEREAS the failure to maintain vacant and abandoned properties is detrimental to the public health, safety and general welfare Borough residents, and an eyesore for surrounding neighbors; and

WHEREAS the Borough desires to eliminate these concerns by requiring owners and operators of vacant and abandoned property to maintain such properties.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Old Tappan, County of Bergen, and State of New Jersey, as follows:

Section 1. A new CHAPTER 191, entitled "ABANDONED AND/OR VACANT PROPERTY", shall be added to the Borough Code as follows:

§191-1. Abandoned property criteria

A. Except as provided in N.J.S.A. 55:19-83, any property that has not been legally occupied for a period of three (3) months may be deemed to be an abandoned property upon a determination by the Code Enforcement Officer, or such other public officer designated by or appointed by the Borough Administrator pursuant to N.J.S.A. 40:48-2.5, if at a minimum, any two or more of the following criteria are met:

(1) The property is in need of rehabilitation in the reasonable judgment of the Code Enforcement Officer, pursuant to N.J.S.A. 40:48-2.5, and no rehabilitation has taken place during that same three (3) month period.

(2) Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no rehabilitation has taken place during that same three (3) month period.

(3) At least one installment of property tax remains unpaid and delinquent on that property as of the date of determination.

(4) The property has been determined to be a nuisance by the Code Enforcement Officer, for one or more of the following reasons:

(a) The property has been found to be unfit for human

habitation, occupancy, or use pursuant to N.J.S.A. 40:48-2.3.

(b) The condition and vacancy of the property materially increases the risk of fire to the property and adjacent properties.

(c) The property is susceptible to unauthorized entry leading to potential health and safety hazards; the owner has failed to take reasonable and necessary measures to secure the property; or the municipality has secured the property in order to prevent such hazards after the owner has failed to do so.

(d) The presence of vermin or the accumulation of debris, uncut vegetation, or physical deterioration of the structure or grounds have created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards.

(e) The dilapidated appearance or other condition of the property materially affects the welfare, including the economic welfare, of the residents of the area in close proximity to the property, and the owner has failed to take reasonable measures to remedy the condition.

§191-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OPERATOR:

Any person, persons or entity who is not the owner, who has charge, care and control of a premises or part thereof, with or without the knowledge, consent or authority of the owner. "Operator" shall also include a creditor that has served a notice of intention to foreclose on a mortgage on a residential property and that property has become vacant before or after the filing of the intention to foreclose.

OWNER:

Shall include the title holder, any agent of the title holder having authority to act with respect to a vacant property and a creditor that has foreclosed on a vacant or abandoned property, or any other person or entity determined by the Borough of Old Tappan to have authority to act with respect to the property.

VACANT PROPERTY:

Any building used or to be used as a residence which is not legally occupied or at which substantially all lawful construction operations or residential occupancy has ceased and which is in such condition that it cannot legally be re-occupied without repair or rehabilitation, including but not limited to any property meeting the definition of abandoned property in N.J.S.A. 55-19-80 or §191-1 herein; provided, however, that any property where all building systems are in working order, where the building and grounds are maintained in good order, or where the building is in habitable condition, and where the building is being actively marketed by its owner for sale or rental, shall not be deemed vacant property for purposes of this chapter.

§191-3. Registration Requirements.**A. Notice of vacancy and abandonment; Registration of vacant and abandoned residential properties. Notice of Vacancy and Abandonment.**

Upon determination by the Code Enforcement Officer that a residential property is vacant and/or abandoned, the Code Enforcement Officer shall notify the Owner or Operator by registered mail or posting of notice in a noticeable place on the property of the determination and the requirements of this chapter. An Owner or Operator of the property determined to be vacant and/or abandoned can challenge that determination by appealing to the Borough Administrator within thirty (30) days after receipt of notice of the determination. The Borough Administrator shall schedule a hearing within thirty (30) days of receipt of the appeal. The sole ground for the appeal shall be that the property was neither vacant nor abandoned. The Owner or Operator of the property shall submit such affidavits with accompanying supporting documentation to rebut the determination by the Code Enforcement Officer. The Borough Administrator shall decide the appeal within ten (10) days of receipt of the proofs from each party and shall transmit a written decision to each party by certified mail, return

receipt requested.

B. Registration. An Owner or Operator of a vacant and abandoned property shall file a certificate of registration with the Building Department within forty-five (45) days after receipt of notice that the property has been determined to be vacant and abandoned, or within thirty (30) days after the mortgagee assumes ownership or takes possession of a property already determined to be vacant and abandoned, whichever is earlier. A certificate of registration shall remain valid for one (1) year from the date of issuance and shall be renewed on an annual basis, if the property remains vacant and abandoned.

C. Form of Certificate of Registration. The certificate of registration shall be filed on forms prescribed by the Building Department and shall contain:

1. The name, street address, and telephone number of a person who resides or maintains an office within the State and who is either the Owner or Operator or an authorized agent designated by the Owner or Operator to receive notices and complaints of property maintenance and code violations on his/her/its behalf;

2. The name, street address and telephone number of the person or entity responsible for maintaining the property, if different; and

3. A certificate from a licensed insurance provider evidencing liability insurance within thirty (30) days after any change in the information required to be included thereon.

4. Consent of the Owner or Operator to the Code Enforcement Officer or his designee to enter the property for purposes of assuring it is being properly maintained.

D. Certificate of Registration Amendments. A Owner or Operator of a vacant and abandoned property shall file an amended Certificate of Registration within thirty (30) days after any change in the information required to be included thereon.

E. Certificate of Registration Fees. The following fees for a certificate of

registration shall be paid by the Owner or Operator:

1. \$250.00 for the initial registration fee;
2. \$250.00 for all annual renewals of the registration where there are no outstanding property maintenance or code violations at the time of the renewals; and
3. \$500.00 for annual renewal of the registration where there are outstanding property maintenance or code violations at the time of renewal.

§191-4. Security; notification, liability insurance.

Within thirty (30) days after the filing of a Certificate of Registration and until the property is re-occupied, the Owner or Operator of a vacant and abandoned property shall:

1. Enclose and secure the property against unauthorized entry; and
2. Post a sign affixed to the inside of the property and visible to the public indicating the name, address and telephone number of the mortgagee, any authorized agent designated by the mortgagee for the purpose of receiving service of process, and the person responsible for maintaining the property, or different from the mortgagee or authorized agent.

§191-5. Maintenance standards for vacant and abandoned properties

Vacant and abandoned properties shall be maintained by the Owner or Operator in accordance with Borough Code Chapter 97, "Brushes, Grass and Weeds", Chapter 190, "Property Maintenance", and Chapter 234, "Regulations of Trees and Shrubs". In addition, the Owner or Operator shall maintain the vacant and/or abandoned property as follows:

- a. The property shall be kept free of all nuisances and hazards, litter and debris.
- b. The property shall be kept free of accumulations of water, vegetation or other matter which might serve as a source of food or as a

harboring or breeding place for infestation.

c. Grass in the yard area shall be cut and maintained so as to prevent the grass from growing to exceed five (5") inches in height.

d. The exterior of every structure or accessory structure or other improvement on the premises shall be kept in good repair and all exposed surfaces subject to deterioration shall be protected against weathering or deterioration by a protective coating appropriate for the particular material involved as needed.

e. All exterior walls, roofs, windows, window frames, doors, door frames, sky lights, foundations, and other parts of the structure shall be maintained to keep water from entering the structure and to prevent excessive drafts or heat loss during cold or inclement weather and to provide a barrier against infestation. Damaged or badly worn materials shall be repaired or replaced and places showing signs of rot, leakage or deterioration or corrosion shall be treated or restored to prevent weathering or seepage.

f. Leaders and drainpipes shall be securely fastened to the building and maintained in good condition free of leaks and free of obstructions and shall direct storm waters into drainage systems or away from the foundation walls of the structure.

§191-6. Requirements of creditors or vacant or abandoned properties.

A. A judgment or secured creditor, or the holder of a lien on a vacant or abandoned property, who files a summons and complaint in an action to foreclose on such judgment, security interest or lien, shall be responsible for the care, maintenance, security, and upkeep of the vacant and abandoned residential property to the same extent as an Owner or Operator, and if said creditor is located out-of-state, shall be responsible for appointing an in-state representative or agent to act on its behalf.

B. The Code Enforcement Officer, or any other local official designated by the Borough Administrator for administration of any property maintenance or public nuisance code, may issue a notice to the creditor filing the summons and complaint in an action to foreclose, if the public officer or other authorized municipal official determines that the creditor has violated any provision of this chapter by failing to provide for the care, maintenance, security, and upkeep of the vacant and/or abandoned property in the manner required of Owners and Operators set forth in this Ordinance. Such notice shall include a description of the conditions that gave rise to the violation any obligation under this Chapter and shall provide a period of not less than thirty (30) days from the date of the notice of the violation in which to cure the violation, unless the violation presents an imminent threat to public health and safety, in which case, it must be cured within twenty-four (24) hours or as soon as possible, but in no event longer than seven (7) days from the date of the notice.

C. Any creditor whose principal place of business is located outside of the State of New Jersey who has served a summons and complaint in an action to levy on a judgment or foreclose on a security interest or lien on a residential property, shall provide to the Borough the full name and contact information of its in-state representative or agent, within the ten (10) day period as required by N.J.S.A. 46:10B-51, which contains the full name and contact information of an in-state representative or agent who shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property if it becomes vacant and/or abandoned.

D. The issuance of a notice pursuant to this section shall constitute proof that the property is "vacant and abandoned" for the purposes of P.L. 2012 c. 70 (N.J.S.A. 2A:50-73).

§191-7. Violations and penalties.

A. Except as otherwise provided in §191-6 above, any Owner or Operator or creditor who or which shall violate any of the provisions of this chapter shall, upon conviction in the Old Tappan Municipal Court, or any such other court having jurisdiction, be sentenced to a penalty not exceeding \$1,000.00 or imprisonment for a term not exceeding thirty (30) days, or both. Each day that a violation persists shall be deemed a separate offense and subject to the penalty provisions of this chapter.

B. Any out-of-state creditor subject to the provisions of this section who is found by the Old Tappan Municipal Court, or by any other court of competent jurisdiction, in violation of the requirement of this section to appoint an in-state representative or agent pursuant to this chapter shall be subject to a fine of up to \$2,500.00 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 ten (10) day period as required by N.J.S.A. 46:10B-51 et seq. for providing notice to the Borough that a summons and complaint in an action to foreclose on a mortgage has been served.

C. For purposes of this chapter, failure to file a registration statement within thirty (30) calendar days after assuming ownership of a vacant property, whichever is later, or within ten (10) calendar days of receipt of notice by the municipality and failure to provide correct information on the registration statement, or failure to comply with the provisions contained herein shall be deemed to be violations of this chapter.

§191-8. Self Help. The Borough may, after thirty (30) days written notice to the Owner or Operator or creditor who has failed and/or refused to register or maintain the vacant or abandoned property as required herein, perform such work as may be

necessary to ensure that the property conforms to the requirements set forth herein. Such work shall be performed by the Borough on behalf of the Owner or Operator or Creditor who shall reimburse the Borough for all amounts expended plus ten (10%) percent of the cost thereof for administration. Any amount so paid shall constitute a municipal lien of the property as defined in N.J.S.A. 54:5-2.

§191-9. Construction. In any case where the maintenance obligations of this Chapter impose a stricter or higher standard than any other ordinance, law or regulation of the Borough or the State of New Jersey, then the standards set forth herein shall apply but if the maintenance standards set forth herein impose a lower or lesser obligation than any other ordinance, law or regulation of the Borough or State of New Jersey, then the higher maintenance standard of such other ordinance, law or regulation shall apply. All ordinances or parts of ordinances inconsistent or in conflict with this Ordinance are hereby repealed as to said inconsistencies and conflicts.

Section 2. Severability.

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Old Tappan declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section 3. Effective Date.

This Ordinance shall take effect immediately upon passage and publication according to law.