

O: 2016 - 09

AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, AMENDING THE CODE OF THE TOWN OF PHILLIPSBURG IN ORDER TO ADD A NEW CHAPTER 448 ENTITLED *PROPERTIES, UPKEEP OF VACANT AND ABANDONED RESIDENTIAL PROPERTIES* TO THE CODE OF THE TOWN OF PHILLIPSBURG

WHEREAS, the Town of Phillipsburg regulates the maintenance of commercial and residential property within the Town by and through the Town Code; and

WHEREAS, the Legislature and the Governor of the State of New Jersey have enacted P.L. 2014, c.35, described as “[a]n Act concerning the maintenance of certain residential properties, supplementing chapter 48 of Title 40 of the Revised Statutes...” (the Act); and

WHEREAS, the Act authorizes the Town to adopt an ordinance for the purpose of regulating the care, maintenance, security, and upkeep of the exterior of vacant and abandoned residential properties for which a creditor has filed a summons and complaint in an action to foreclose; and

WHEREAS, the Act authorizes designated Town officials to issue notices to creditors that have filed a summons and complaint in an action to foreclose, if the public official determines that the property is vacant and abandoned and that the creditor has failed to provide for the care, maintenance, security, and upkeep of the exterior of the property; and

WHEREAS, the Act authorizes the Town to impose monetary fines and penalties for each violation of this ordinance and its respective provisions in the Town Code; and

WHEREAS, the Town wishes to amend the Town Code to enact the provisions of P.L. 2014, c.35; and

WHEREAS, the Town Council finds that it is in the best interests of the Town to amend the Town Code as hereinafter provided to enact the provisions of P.L. 2014, c.35.

NOW, THEREFORE BE IT ORDAINED as follows:

Section One.

The Town Code shall be amended and a new chapter, Chapter 448 shall hereinafter be adopted to provide as follows:

Chapter 448 PROPERTIES, UPKEEP OF VACANT AND ABANDONED RESIDENTIAL PROPERTIES.**§448-1 Purpose.**

The purpose of this chapter is to create a regulation regarding registration and maintenance of vacant and abandoned residential properties in foreclosure in accordance with the provisions of P.L. 2014, c.35.

§448-2 Definitions.

A. "Creditor" shall mean, consistent with section 3 of P.L. 2008, c.86, a State chartered bank, savings bank, savings and loan association or any credit union, any person required to be licensed under the provisions of the "New Jersey Residential Mortgage Lending Act," and any entity acting on behalf of the Creditor named in the debt obligation, including but not limited to, servicers.

B. "Vacant and Abandoned" residential property shall mean, consistent with section 1 of P.L. 2010, c.70 (C.2A:50-73), residential real estate for which a notice of violation has been issued pursuant to Section 10-12.3 of this Chapter and subsection b. of section 1 of P.L. 2014, c.35. Where a notice of violation has not been issued pursuant to Section 448-4 of this Chapter and subsection b. of section 1 of P.L. 2014, c.35, residential property shall be deemed "Vacant and Abandoned" where a mortgaged property is not occupied by a mortgagor or tenant as evidenced by a lease agreement entered into prior to the service of a notice of intention to commence foreclosure according to section 4 of the "Fair Foreclosure Act," P.L. 1995, c.244 and at least two of the following conditions exist:

- (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 residence 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, exists 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 any mortgagor expressing the clear intent of all mortgagors to abandon the property; and

(15) any other reasonable indicia of abandonment.

§448-3 Registration of Vacant and Abandoned Properties

A. A Creditor filing a summons and complaint in an action to foreclose on a Vacant and Abandoned property, or a Creditor who has previously filed a summons and complaint to foreclose on a residential property which subsequently becomes Vacant and Abandoned, shall within thirty (30) calendar days after the building becomes Vacant and Abandoned or within thirty (30) calendar days after assuming ownership of the Vacant and Abandoned property, whichever is later; or within ten (10) calendar days of receipt of notice from the Town, and annually thereafter, file a registration statement for such Vacant and Abandoned property with the municipal clerk on forms provided by the Town for such purposes. Any failure to receive notice from the Town shall not constitute grounds for failing to register the Vacant and Abandoned property.

B. Each Vacant and Abandoned property having a separate block and lot number as designated in the official tax maps of the Town shall be registered separately.

C. The registration statement shall include the name, street address, telephone number, and email address (if applicable) of a person twentyone (21) years or older, designated by the Creditor as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such Creditor in connection with the enforcement of any applicable code.

D. The registration statement shall include the name, street address, telephone number, and email address (if applicable) of the firm and the actual name(s) of the firm's individual principal(s) responsible for maintaining the Abandoned and Vacant property. The individual or representative of the firm responsible for maintaining the Abandoned and Vacant property shall be available by telephone or in person on a twenty-four-hour per day, seven-day per week basis. The two entities may be the same or different persons. Both entities shown on the statement must maintain offices in the State of New Jersey or reside within the State of New Jersey.

E. The registration shall remain valid for one year from the date of registration except for the initial registration which shall be valid through December 31st of the year in which it was filed. The Creditor shall be required to renew the registration annually as long as the building remains Vacant and Abandoned and shall pay a registration or renewal fee in the amount prescribed in Paragraph J. of this Section for each Vacant and Abandoned property registered.

G. The annual renewal shall be completed by January 1st each year. The initial registration fee shall be pro-rated for registration statements received less than ten (10) months prior to that date.

H. The Creditor shall notify the municipal clerk within thirty (30) calendar days of any change in the registration information by filing an amended registration statement on a form provided by the municipal clerk for such purpose.

I. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the Town against the Creditor.

J. Fee Schedule. The initial registration fee for each Vacant and Abandoned property under the provisions of this Section shall be five hundred (\$500.00) dollars. The fee for the first annual renewal shall be one thousand five hundred (\$1,500.00) dollars and the fee for the second annual renewal shall be three thousand (\$3,000.00) dollars. The fee for any subsequent annual renewal beyond the second renewal shall be five thousand 5 (\$5,000.00) dollars.

§448-4 Creditor Responsibility for Vacant and Abandoned Properties.

A. A Creditor filing a summons and complaint in an action to foreclose on a residential property within the Town shall be immediately responsible for the care, maintenance, security, and upkeep of the exterior of the property, after the property becomes Vacant and Abandoned as defined in this Chapter.

B. Where a Creditor is located out-of-State, the Creditor shall be responsible for appointing an in-State representative or agent to act on the Creditor's behalf for the purpose of satisfying the requirements of Paragraphs C and D of Section 448-3. Notice of said representative or agent shall be provided to the Town clerk in a manner that is consistent with subsection a. of section 17 of P.L. 2008, c.127 (the "Save New Jersey Homes Act of 2008"), and shall further include the full name and contact information of the in-State representative or agent.

§448-5 Notice.

A. Any public officer designated by the Town pursuant to Section 448-6 or authorized municipal official responsible for the administration of any property maintenance or public nuisance code shall be authorized to issue a notice to a Creditor that has filed a summons and complaint in an action to foreclose on a residential property within the Town, if the public officer determines that the Creditor has violated this Chapter by failing to provide for the care, maintenance, security, and upkeep of the exterior of the property. Where a Creditor is an out-of-State Creditor, the notice shall be issued to the representative or agent that has been identified by the Creditor pursuant to Section 448-4 of this Chapter and the Save New Jersey Homes Act of 2008.

B. The notice referenced in Paragraph A of this Section shall require the Creditor to correct the violation(s) within 30 days of receipt of the notice, or within 10 days of receipt of the notice if the violation presents an imminent threat to public health and safety.

C. The issuance of a notice pursuant to Paragraph A of this Section shall constitute proof that a residential property is "Vacant and Abandoned" for the purposes of this Chapter.

§448-6 Enforcement Officers.

The duty of administering and enforcing the provisions of this Chapter is conferred upon the municipal clerk, construction official, zoning officer, Town Police, and any other duly appointed representatives.

§448-7 Violations and Penalties.

A. A Creditor subject to this Chapter that is found by the municipal court of the Town, or by any other court of competent jurisdiction, to be in violation of the requirement to correct a care, maintenance, security, or upkeep violation cited in a notice issued pursuant to this Chapter shall be subject to a fine of \$1,500 for each day of the violation. Any fines imposed pursuant to this sub-section shall commence 31 days following the Creditor's receipt of the notice, except where the violation is deemed to present an imminent risk to the public health and safety, in which case any fines shall commence 11 days following receipt of the notice.

B. An out-of-state Creditor subject to this Chapter that is found by the municipal court of the Town, or by any other court of competent jurisdiction, 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. Any fines imposed on an out-of-state 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 (C.46:10B-51) for providing notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.

C. A Creditor subject to this Section that is found by the municipal court of the Town, or by any other court of competent jurisdiction, to be in violation of the requirement to register a Vacant and Abandoned property pursuant to Section 448-3 shall be subject to a fine not exceeding two thousand (\$2,000.00) dollars. Any fines imposed on a Creditor under this Paragraph shall commence 11 days following receipt of notice from the Town pursuant to Section 448-3(A)..

No less than 20 percent of any money collected by the Town pursuant to this Section shall be utilized by the Town for municipal code enforcement purposes.

Section 2.

Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

Section 3.

Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

Section 4.

Effective Date. This Ordinance shall take effect upon final passage and publication as provided by law.

ATTEST:

TOWN OF PHILLIPSBURG

VICTORIA L. KLEINER,
Municipal Clerk
DATED:

STEPHEN R. ELLIS
Mayor

CERTIFICATION

I, Victoria L. Kleiner, Municipal Clerk for the Town of Phillipsburg, do hereby certify that the foregoing is a true copy of an Ordinance duly adopted by the Town Council at their April 05, 2016 meeting.

VICTORIA L. KLEINER,
Municipal Clerk