

ORDINANCE NO. 2009-25 FAILED 9/9/2009

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REGULATING THE MAINTENANCE OF ABANDONED FORECLOSING RESIDENTIAL PROPERTIES; AMENDING CHAPTER 11 OF THE CODE OF ORDINANCES OF THE TOWN; ADDING A NEW ARTICLE IV; CREATING NEW SECTIONS 11-50 THROUGH 11-63; PROVIDING FOR TITLE, PURPOSE AND DEFINITIONS; PROVIDING FOR REGISTRATION AND MAINTENANCE OF FORECLOSING PROPERTY; ~~PROVIDING FOR~~ ESTABLISHING SECURITY REQUIREMENTS; ~~PROHIBITING OBSTRUCTION OF ENFORCEMENT OFFICERS~~; PROVIDING FOR IMMUNITY OF ENFORCEMENT OFFICERS; PROVIDING FOR ADDITIONAL MAINTENANCE AND SECURITY REQUIREMENTS; PROVIDING SUPPLEMENTAL AUTHORITY FOR ENFORCEMENT; PROVIDING FOR INSPECTIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR ACTIONS BY THE TOWN IN THE EVENT OF NONCOMPLIANCE; PROVIDING FOR AN ASSESSMENT LIEN AND ENFORCEMENT; ~~PROVIDING~~ ESTABLISHING AN APPEAL PROCESS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE TOWN OF MALABAR CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, recent events in the housing market have led to a drastic rise in the number of foreclosed houses. In municipalities all over the nation, homes are being left empty as families are forced to move out. These homes are frequently retaken by banks, financial institutions and large real estate conglomerates that have little or no connection with the municipality in which they own property, and

**WHEREAS**, many of these homes are frequently vacated prior to the conclusion of the foreclosure process. Homes sit empty for months or years at a time awaiting foreclosure sale; often creating an attractive public nuisance. Some homes are in violation of multiple aspects of state law and local ordinances. The mortgagees are large financial institutions located out of state, making enforcement of the code very difficult, and

**WHEREAS**, these code violations include, among multiple other violations, unoccupied buildings susceptible to vandalism and/or open structures rendering them unsafe and dangerous, yards full of litter and trash, unlocked houses, overgrown grass and bushes, and unsecured swimming pools that are not only a threat to children but become breeding grounds for infectious insects such as mosquitoes, and

**WHEREAS**, this problem exists nationwide. Banks and other financial institutions are refusing to maintain properties, and code compliance officers have turned into investigators as they try to find out who the owners are and how to contact them to correct code violations; and

**WHEREAS**, the Town finds that there are a rising number of abandoned properties or properties subject to mortgages that are in default; and

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

**WHEREAS**, the Town Council finds that neighborhoods should be protected from becoming blighted through 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 up in a situation in which mortgagees are left to tend for property and seldom closely supervise such property, thereby allowing the property to deteriorate; and

**WHEREAS**, when the mortgagee declares a default in a mortgage which property has not been foreclosed upon, although the property owner may remain 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~~ and the property that may begins to deteriorate as to maintenance and security; and

**WHEREAS**, the Town Council 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 Council 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 Council 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 or property subject to a mortgage which is in default will continue to be maintained and secured and that blight will not occur.

**NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA**, as follows:

**SECTION 1.** A new Article IV is hereby added to Chapter 11 of the Code of Ordinances of the Town to read as follows:

**“Sec. 11-50. Title and Purpose.**

This Chapter shall be known as “The Town of Malabar Mortgage Registration Code”. It is the intent of this ordinance to protect and preserve public safety, security, and quiet enjoyment of

occupants, abutters, and neighborhoods by (i) requiring all property owners, including lenders, trustees, and service companies, to properly maintain ~~abandoned foreclosing~~ properties which are subject to this ordinance (ii) regulating the maintenance of ~~abandoned foreclosing~~, such properties to prevent blighted and unsecured buildings and structures.

**Sec. 11-51. Definitions.**

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates and requires a different meaning.

**ABANDONED REAL PROPERTY.** Real property is abandoned when i) mortgage foreclosure proceedings or tax sale has been initiated for that property, and the property is confirmed vacant, or ii) where the title was retained by the beneficiary of a mortgage involved in the foreclosure, or iii) 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 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 court.~~

**DAYS.** Consecutive calendar days.

**ENFORCEMENT OFFICER.** Any full time law enforcement officer, ~~building official, fire inspector~~ or code officer employed by the Town.

**FORECLOSURE.** The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

**INITIATION OF THE FORECLOSURE PROCESS.** Taking any of the following actions: (i) taking possession of real property; (ii) delivering the Mortgagee's notice of intention to foreclose to the borrower; or (iii) commencing a foreclosure action on a property in Brevard County Circuit or County Court.

**LOCAL.** Within twenty (20) driving miles distance of the property in question.

**MORTGAGEE.** The creditor, including but not limited to, service companies, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

**OWNER.** Every person, entity, service company, property manager or real estate broker, who alone or severally with others:

1) has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or

2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or

3) is a mortgagee in possession of any such property; or

4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or

5) is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, this ordinance shall not apply to either a Condominium Association created pursuant to Chapter 718, Florida Statutes; a Cooperative Association created pursuant to Chapter 719, Florida Statutes; or a Homeowner's Association created pursuant to Chapter 720, Florida Statutes, to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association. Owner also means every person who operates a rooming house; or

6) is a trustee who holds, owns or controls mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process.

**PROPERTY.** Any real property, or portion thereof located in the Town of Malabar, including buildings or structures situated on the property. For purposes of this ordinance only, property does not include property owned or subject to the control of the Town or any of its governmental bodies.

**SECURING.** Measures that assist in making the property inaccessible to unauthorized persons.

**TOWN.** The Town of Malabar, Florida.

**TOWN ADMINISTRATOR.** The Town Administrator of the Town of Malabar or other person(s) designated by the Town Administrator to carry out the enumerated responsibilities of the Town Administrator in this ordinance.

**VACANT.** Any building/structure that has been confirmed as is not unoccupied or uninhabited by humans beings ~~or is uninhabited~~.

**Sec. 11-52. Registration of Abandoned Foreclosing Properties; Duty to Provide Written Notice of Abandoned Residential Property.**

(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.~~ The inspection shall occur no less than 15 days from the date of mortgage default. Such mortgagee shall notify the Town in writing that such inspection has occurred and shall detail the overall condition of the property and

structures located thereon to the Town and shall also notify the Town whether the property appears to be occupied. If the property is appears to be vacant or abandoned or shows evidence of vacancy or abandonment, After receipt of such confirmation of inspection, the Town shall notify law enforcement and request that law enforcement inspect the property and confirm that whether there is evidence of vacancy or abandonment. If evidence of vacancy or abandonment is confirmed by law enforcement then such evidence of vacancy or abandonment shall be brought forth to the Town council for a public hearing to determine if there is a preponderance of evidence of vacancy or abandonment. The mortgagee and the owner shall be given no less than 10 days notice of the hearing by certified mail, return receipt requested, by posting in a conspicuous place on the property and by posting notice at Town Hall. Upon a finding of vacancy or abandonment by the Town Council, the mortgagee shall, within ten (10) days of notification of such evidence of vacancy or abandonment, register the property with the Building Department, on forms provided by the Town. Even though the real property may not be vacant or abandoned, if the mortgage on the property is in default then, 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 Building Department 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~~ fifteen (15) days of date that the mortgagee declares its mortgage on a particular parcel of real property to be in default, the mortgagee shall also 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.

(f) 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.

(g) 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.

(h) 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 enforcement officer.~~

### **Sec. 11-53. 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 in 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 of 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 enforcement officer.

### **Sec. 11-54. 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~~ shall 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: (XXX) XXX-XXXX

(e) 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 enforcement officer.~~

**Sec. 11-55. Opposing, obstructing enforcement officer; penalty.**

Whoever opposes obstructs or resists any enforcement officer, or any person authorized by the Town, in the discharge of duties as provided in this article, upon conviction may be punished as provided in Ordinance 2007-07 of the Town Code, or chapter 162, Florida Statutes.

**Sec. 11-56. Immunity of enforcement officer.**

Any enforcement officer, or any person authorized by the Town Administrator, 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.

**Sec. 11-57. Additional authority.**

The enforcement officer 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.

**Sec. 11-58. Supplemental Provisions.**

Nothing contained in this article shall prohibit the Town from enforcing its codes by any other means, including, but not limited to abatement as otherwise provided by Town code.

**Sec. 11-59. Inspections.**

The enforcement officer shall have the authority and the duty to inspect properties subject to this ordinance for compliance and to issue citations for any violations. The enforcement officer shall have the discretion to determine when and how such inspections are to be made, provided that its policies are reasonably calculated to ensure that this ordinance is enforced. However, under no circumstances shall an enforcement officer enter into any enclosed structure, or open any door, enclosure or gate to inspect the property. When necessary to obtain entry, the enforcement officer or designee, may institute the appropriate proceedings to obtain a search warrant or inspection warrant, whichever is necessary.

**Sec. 11-60. Enforcement and Penalties.**

Violations of this ordinance may be either cited, reported and considered pursuant to the provisions of Article VII of Chapter 2, Malabar Code of Ordinances, or may be remedied as provided in Sections 11-61 and 11-62 below. Each day a violation continues shall be considered a separate offense.

**Sec. 11-61. Town actions in the event of noncompliance.**

(a) If the Town's enforcement officer determines that the condition of the property presents an immediate threat to the health safety and welfare of the citizens of the Town, he may cause a notice of such noncompliance to be delivered to owner and/or mortgagee of the property of which such noncompliance exists. Such notice shall provide 30 days a reasonable time determined by the enforcement officer in which the noncompliance in question shall be corrected.

(b) If the noncompliance is not corrected within the time set forth in the notice provided by the enforcement officer, the Town shall have the right and authority, but not the obligation, to cause such violation to be corrected with the use of Town personnel or private contractors. In such event, the Town shall pay the costs of such correction, and the enforcement officer shall submit an invoice for such costs to the owner and/or occupant of the property to whom the original notice of noncompliance was addressed.

**Sec. 11-62. Assessment for ~~Lien for~~ costs incurred by the Town; Lien and foreclosure of lien.**

(a) If the Town submits an invoice for the correction of a violation which has been determined to be an immediate threat to the health, safety and welfare of the citizens of the Town to an owner and/or mortgagee of property, and such invoice remains unpaid for a period of thirty



(30) days after the date of such invoice, the Town ~~Administrator~~ Council shall assess the costs and which assessment, when made, shall be considered a lien upon the property and such lien cause shall to be recorded in the public records of Brevard County a sworn statement showing the cost and expenses for the work which was the subject of the invoice and showing the amount, the date, place and legal description of the property on which such work was done. Such costs may include, but is not limited to, the abatement costs to cure the violation, all administrative, legal, postal and other incidental and indirect costs incurred by the Town.. The recording of such sworn statement shall constitute a lien on the property described therein, to the extent permitted by law, for the amount due as set forth in the invoice, plus interest at the legal rate from the date of the invoice. A copy of such ~~recorded statement~~ lien shall be furnished to the mortgagee and property owner and/or occupant to whom the original notice of noncompliance was addressed.

(b) If the amount set forth in the recorded statement is not paid within thirty (30) days of the date of recording, the Town shall have a right to bring legal action to foreclose the lien pursuant to chapter 173 of the Florida Statutes or may bring any other action to enforce the Town's right to reimbursement for the costs of correcting a violation herein. Such legal proceedings shall be brought in the manner fixed by law for the foreclosure of mortgages or collection of monies owed and the Town shall be entitled to an award of attorney's fees and court costs in addition to all other sums recovered in such proceeding.

(c) In the alternative, the Town may collect all such liens assessed pursuant to section 197.3632, Florida Statutes.

(d) The lien upon the property shall be superior to all other liens, except the lien for taxes.

### **Sec. 11-63. Appeal.**

Any person aggrieved by the requirements of this ordinance may seek an administrative appeal to the Town Administrator. Any person aggrieved by a final decision issued under this ordinance by the Town, and after appeal to the Town Administrator, may seek relief in any court of competent jurisdiction as provided by the laws of this state.”

**SECTION 2.** All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

**SECTION 3.** It is the intention of the Town Council of the Town of Malabar that the provisions of this Ordinance shall be made a part of the Town of Malabar Code of Ordinances.

**SECTION 4.** If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the Town Council of the Town of Malabar that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the Town Council would have enacted the valid constitutional portions thereof.

**SECTION 5.** The provisions within this ordinance shall take effect immediately upon the enactment date.

The foregoing Ordinance was moved for adoption by Council member Vail. The motion was seconded by Council member Borton and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton	<u>Nay</u>
Council Member Brian Vail	<u>Nay</u>
Council Member Steve Rivet	<u>Nay</u>
Council Member Jeffrey (Jeff) McKnight	<u>Nay</u>
Council Member Patricia "Pat" Dezman	<u>excused</u>

This ordinance was then declared to be FAILED this 9 day of Sept, 2009.

TOWN OF MALABAR

BY: \_\_\_\_\_

First Reading: 8/03/09  
Second Reading: 8/17/09 cont on 9/9/2009

ATTEST: \_\_\_\_\_  
Debby Franklin  
Town Clerk/Treasurer

Approved as to form and content:

\_\_\_\_\_  
Karl W. Bohne, Jr., Town Attorney