

ORDINANCE NO. 10-08

AN ORDINANCE OF THE FISCAL COURT OF MADISON COUNTY, KENTUCKY
ESTABLISHING REGISTRRTATION PROCEDURES FOR ABANDONED
RESIDENTIAL PROPERTY AS WELL AS MAINTENANCE RESPONSIBILITIES FOR
PROPERTY LOCATED IN LOCATED IN MADISON COUNTY, KENTUCKY

WHEREAS, the presence of vacant, abandoned residences can lead to neighborhood blight; and,

WHEREAS, the presence of vacant, abandoned residences can create an attractive public nuisance; and,

WHEREAS, the presence of vacant, abandoned residences can contribute to lower property values; and,

WHEREAS, the presence of vacant, abandoned residences can discourage potential buyers from purchasing a home adjacent to, or within neighborhoods with vacant, abandoned residences; and,

WHEREAS, many vacant, abandoned residences are often the responsibility of out of state or out of area lenders and trustees; and,

WHEREAS, in many instances, the lenders and trustees fail to adequately maintain and secure these vacant, abandoned residences; and,

WHEREAS, the Madison County Fiscal Court has the power to protect its residential neighborhoods from blight, decline and devaluation.

NOW THEREFORE, BE IT ORDAINED BY THE Madison County Fiscal Court as follows:

SECTION 1: shall read as follows:

PURPOSE

It is the purpose an intent of the Madison County Fiscal Court, through the adoption of this Ordinance, to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

DEFINITIONS

For the purposes of this Ordinance, certain words and phrases used are defined as follows:

“**Abandoned**” means a property that is vacant and is under a current Notice of Default and/or Notice of Trustee’s Sale, pending Tax Assessors Lien Sale and/or properties that have been the subject of foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

“**Accessible property**” means a property that is accessible through a compromise/breached gate, fence, wall, etc.

“**Accessible structure**” means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

“**Agreement**” means any agreement or written instrument, which provides that title to residential property, shall be transferred or conveyed from one owner to another owner after the sale, trade, transfer or exchange.

“**Assignment of Rents**” means an instrument that transfers the beneficial interest under a deed of trust from one lender/entity to another.

“**Beneficiary**” means a lender under a note secured by a deed of trust.

“**Buyer**” means any person, co-partnership, association, corporation, or fiduciary who agrees to transfer anything of value in consideration for property described in an agreement of sale, as defined in this subsection.

“**Dangerous building**” means any building/structure that is violation of any condition referenced in the Property Maintenance Code, Abatement of Dangerous Buildings.

“**Days**” means consecutive calendar days.

“**Deed of Trust**” means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. Used in Kentucky instead of a mortgage. This definition applies to any and all subsequent deeds of trust i.e.:2nd trust deed, 3rd deed, etc.

“**Deed in lieu of foreclosure/sale**” means a recorded document that transfers ownership of a property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust.

“**Default**” means the failure to fulfill a contractual obligation, monetary or conditional.

“**Distressed**” means a property that is under a current Notice of Default and/or Notice of Trustee’s Sale and/or pending Tax Assessor’s Lien Sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary/trustee via a Deed in lieu of Foreclosure/sale.

“**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 include but are not limited to, overgrown and/or dead vegetation, accumulation of newspapers, circulars, flyers and/or mail, past due utility notices and/or disconnected utilities, accumulation of trash, junk and/or debris, the absence of window coverings such as curtains, blinds and/or shutters, the absence of furnishings and/or personal items consistent with residential habitation, statements by neighbors, passerby, delivery agents, government employees that the property is vacant.

“**Foreclosure**” means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the trustor (borrower) defaults.

“**Local**” means within forty (40) road/driving miles distance of the subject property.

“**Neighborhood standard**” means those conditions that are present on a simple majority of properties within a three hundred (300) foot radius of an individual property. A property that is the subject of a neighborhood standard comparison, or any other abandoned property within the three hundred (300) foot radius, shall not be counted toward the simple majority.

“**Notice of Default**” means a recorded notice that a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee’s sale.

“**Out of area**” means in excess of forty (40) road/driving miles distance of the subject property.

“**Owner**” means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.

“**Owner of record**” means the person having recorded title to the property at any given point in time the record is provided by the Madison County Fiscal Court.

“**Property**” means any unimproved or improved real property, or portion thereof, situated in the city and includes the buildings or structures located on the property regardless of condition.

“Residential building” means any improved real property, or portion thereof, situated in the jurisdictional boundaries of Madison County Government, designed or permitted to be used for dwelling purposes, and shall include the buildings and structures located on such improved real property. This includes any real property being offered for sale, trade, transfer, or exchanges as **“residential”** whether or not it is legally permitted and/or zoned for such use.

“Securing” means such measures as may be directed by the Director of Planning and Development or his or her designee that assist in rendering the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/pad locking of gates, the repair or boarding of door, window and/or other openings. Boarding shall be completed to a minimum of the current HUD securing standards at the time the boarding is completed or required.

“Trustee” means the person, firm or corporation holding a Deed of Trust on a property.

“Trustor” means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

“Vacant” means a building/structure that is not legally occupied.

RECORDATION OF TRANSFER OF LOAN/DEED OF TRUST/ ASSIGNMENT OF RENTS

Within ten (10) days of the purchase and/or transfer of a loan/deed of trust secured by residential Property the new beneficiary/trustee shall record, with the Madison County Fiscal Court, an Assignment of Rents, or similar document, that lists the name of the corporation, and/or individual, the mailing address and contact phone number of the new beneficiary/trustee responsible for receiving payments associated with the loan/deed of trust.

REGISTRATION

Any beneficiary/trustee, who holds a deed of trust on a property located within Madison County, shall perform an inspection of the property that is the security for the deed of trust, upon default by the trustor, prior to recording a Notice of Default with the Madison County Planning and Development Office. If the property is found to be vacant or shows evidence of vacancy, it is, by this chapter, deemed abandoned and the beneficiary/trustee shall, within ten (10) days of the inspection, register the property with the Director of Planning and Development or his or her designee on forms provided by the County.

If the property is occupied but remains in default it shall be inspected by the beneficiary/trustee, or his designee, monthly until 1) The trustor 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 trustee shall, within ten (10) days of that inspection, register the property with the Director of Planning and Development or his designee on forms provided by the County. In either case, the registration shall contain the name of the beneficiary/trustee (corporation or individual), the direct street/office mailing address of the beneficiary/trustee (no P.O. Boxes), a direct contact name and phone number for the beneficiary/trustee and, in the case of a corporation or out of area beneficiary/trustee, the local property management company responsible for the security, maintenance and marketing of the property. Registration fees will not be prorated.

An annual registration fee shall accompany the registration form. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations and fees are due January 1st of each year and must be received no later than January 31st of the year due. 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 deed of trust involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. Properties subject to this chapter shall remain under the annual registration requirement, security and maintenance standards of this section as long as they remain vacant. Any person, firm or corporation that has registered a property under this chapter must report any change of information contained in the registration within ten (10) days of the change.

MAINTENANCE REQUIREMENTS

Properties subject to this section shall be, in comparison to the neighborhood standard, kept free of weeds, dry bush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, accept 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. The property shall be maintained free of graffiti, tagging or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the structure. Visible front and side yards shall be landscaped and maintained to the neighborhood standard at the time registration was required. Landscape includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed especially for residential installation. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch, indoor-outdoor carpet or any similar material. Maintenance includes, but is not limited to regular watering, irrigation, cutting, pruning and mowing of required landscaped and removal of all trimmings. Pools and spas shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. In either case properties with pools and/or spas must comply with the minimum security fencing requirements of the State of Kentucky. Adherence to this section does not relieve the beneficiary/trustee or property owner of any obligations set forth in any Covenants Conditions and Restrictions and/or Home Owners Association rules and regulations which may apply to the property.

SECURITY REQUIREMENTS

Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons. Secure manner includes but is not limited to the closure and locking of windows, doors (walkthrough, sliding and garage) gates and any other opening of such size that it may allow a child to access the interior of the property and or structure(s). In the case of broken windows securing means the reglazing or boarding of the window. If the property is owned by a corporation and/or out of area beneficiary/trustee/owner, a local property management company shall be contracted to perform weekly inspections to verify that the requirements of this section, and any other applicable laws, are being met. The property shall be posted with name and a 24-hour contact phone number of the local property management company. The posting shall be no less than 18" X 24" and shall be of font that is legible from a distance of forty-five (45) feet and shall contain along with the name and 24-hour contact number the words "THIS PROPERTY MANAGED BY" and "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 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 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 visual from the street to the front of the property but not readily accessible to vandals. Exterior postings must be constructed of and printed with weather resistant materials. The local property

management company shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this chapter.

ADDITIONAL AUTHORITY

In addition to the enforcement remedies established in The Property Maintenance Code, the Director of Planning and Development or his or her designee shall have the authority to require the beneficiary/trustee/owner 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/all door, window or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of on-site security guard or other measures as may be reasonably required to arrest the decline of the property.

FEES

The fee for registering an Abandoned Residential Property shall be set by the Fiscal Court at a rate of \$60.00 per property.

ENFORCEMENT

Enforcement of this ordinance lies within the responsibilities of the Madison County Planning and Codes Enforcement Office.

VIOLATION/PENALTY

Violations of this chapter shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violates any portion of this section shall be subject to prosecution and/or administrative enforcement and subject to fines and penalties of not less than fifty (\$50.00) dollars and not more than one hundred (\$100.00) dollars per offense, each day of violation constitutes a separate offense.

SEVERABILITY

Should any provision, section, paragraph, sentence or word of this chapter be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this chapter shall remain in full force and effect.

SECTION 2: This ordinance shall be in full force and effect thirty (30) days from and after its passage, adoption and approval.

SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

DATE OF FIRST READING: November 29, 2010

MOTION BY: Larry Combs

SECONDED BY: Harold Botner

VOTE: YES NO

JUDGE, KENT CLARK ✓

MAGISTRATE LARRY COMBS ✓

MAGISTRATE ROGER BARGER ✓

MAGISTRATE WILLIAM TUDOR ✓

MAGISTRATE HAROLD BOTNER, JR. ✓

DATE OF SECOND READING: Dec 15, 2010

MOTION BY: Roger Barger

SECONDED BY: Harold Botner

VOTE: YES NO

JUDGE, KENT CLARK ✓

MAGISTRATE LARRY COMBS ✓

MAGISTRATE ROGER BARGER ✓

MAGISTRATE WILLIAM TUDOR ✓

MAGISTRATE HAROLD BOTNER, JR. ✓


MADISON COUNTY JUDGE EXECUTIVE

Attest:


MADISON COUNTY CLERK