

Chapter 78A

DEFAULTED MORTGAGE AND VACANT PROPERTY, REGISTRATION OF

§ 78A-1. Purpose and intent; definitions.

- A. It is the purpose and intent of the Board of Trustees to establish a process to address the deterioration, crime, and decline in value of Village neighborhoods caused by property with defaulted mortgages located within the Village, and to identify, regulate, limit and reduce the number of these properties located within the Village. Vacant structures or structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintained, which contribute to blight, decreased property values, and have a negative impact on social perception of the residential areas where they are located. It is the Board of Trustee's further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are in default or defaulted, and to provide a mechanism to avert foreclosure actions through timely intervention, education, or counseling of property owners.
- B. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

DEFAULT — That the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

DEPLOYED — All current and active members of the Armed Forces, including those members serving in the reserves who have been moved into position for military action and stationed outside the Village.

ENFORCEMENT OFFICER — Any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector, building inspector, or other person authorized by § 5-1, Issuing officers, of the Village Code.

EVIDENCE OF VACANCY — 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 are not limited to: overgrown and/or dead vegetation; past-due utility notices and/or disconnected utilities; accumulation of trash, junk or debris; abandoned vehicles, auto parts and/or materials; the absence of furnishings and/or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers and/or mail; statements by neighbors, passersby, delivery agents or government agents; and/or the presence of boards over doors, windows or other openings in violation of applicable code.

FORECLOSURE OR FORECLOSURE ACTION — The legal process by which a mortgagee, or other lien holder, terminates or attempts to terminate a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. The legal process is not concluded until the property obtained by the mortgagee, lien

holder, or their designee, by certificate of title, or any other means, is sold to a nonrelated bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

MORTGAGEE — The creditor, including but not limited to, trustees; mortgage servicing companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement; or any other person or entity with the legal right to foreclose on the real property, excluding governmental entities.

OWNER — Every person, entity, or mortgagee, who alone or severally with others has legal or equitable title to any real property as defined by this chapter; has legal care, charge, or control of any such property; is in possession or control of any such property; and/or is vested with possession or control of any such property. The property manager shall not be considered the owner.

PROPERTY MANAGER — Any party designated by the owner as responsible for inspecting, maintaining and securing the property as required in this chapter.

REAL PROPERTY — Any residential or commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the Village limits.

REGISTRABLE PROPERTY —

- (1) Any real property located in the Village, whether vacant or occupied, that is encumbered by a mortgage in default, is subject to an ongoing foreclosure action by the mortgagee or Trustee, has been the subject of a foreclosure action by a mortgagee or trustee and a judgement has been entered, or has 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. The designation of a "default/foreclosure" property as "registrable" shall remain in place until such time as the property is sold to a nonrelated bona fide purchaser in an arm's length transaction or the foreclosure action has been dismissed and any default on the mortgage has been cured; or
- (2) Any property that is vacant for more than 30 days or any cancellation of utility or service, whichever occurs first.

REGISTRY — A web-based electronic database of searchable real property records, used by the Village to allow mortgagees and owners the opportunity to register properties and pay applicable fees as required in this chapter.

SEMI-ANNUAL REGISTRATION — Six months from the date of the first action that requires registration, as determined by the Village, or its designee, and every subsequent six months thereafter. The date of the initial registration may be different than the date of the first action that required registration.

UTILITIES AND SERVICES — Any utility and/or service that is essential for a building to be habitable and/or perform a service necessary to comply with all Village codes. This includes, but is not limited to, electrical, gas, water, sewer, lawn maintenance, pool maintenance, and snow removal.

VACANT — Any parcel of land in the Village that contains any building or structure that is not lawfully occupied.

VILLAGE — The Incorporated Village of Hempstead.

§ 78A-2. Applicability and jurisdiction.

This chapter applies to defaulted and/or vacant property within the Village.

§ 78A-3. Establishment of registry.

Pursuant to the provisions of Chapter 78A, the Village, or its designee, shall establish a registry cataloging each registrable property within the Village, containing the information required by this chapter.

§ 78A-4. Inspection and registration of defaulted mortgage.

- A. Any mortgagee who holds a mortgage on real property located within the Village shall perform an inspection of the property upon it being in default or defaulted by the mortgagor or prior to the issuance of a notice of default.
- B. Property inspected pursuant to Subsection A above that remains in default or defaulted shall be inspected every 30 days by the mortgagee or mortgagee's designee. If an inspection shows a change in the property's occupancy status, the mortgagee shall, within 10 days of that inspection, update the occupancy status of the property registration.
- C. Within 10 days of the date any mortgagee declares its mortgage to be in default or defaulted, the mortgagee shall register the real property with the Village Registry, and, at the time of registration, indicate whether the property is vacant, and if so shall designate, in writing, a property manager to inspect, maintain and secure the real property subject to the mortgage in default or defaulted. A separate registration is required for each defaulted property.
- D. Initial registration pursuant to this section shall contain at a minimum the name of the mortgagee, the mailing address of the mortgagee, e-mail address, telephone number and name of the property manager and said person's address, e-mail address, and telephone number.
- E. At the time of initial registration each registrant shall pay a nonrefundable semi-annual registration fee of \$500 for each defaulted property to the Village or its designee. Subsequent semi-annual registrations of defaulted properties and fees in the amount of \$500 are due within 10 days of the expiration of the previous registration. Said fees shall be used to offset the costs of registration and registration enforcement, code enforcement and mitigation related to defaulted properties, post-closing counseling and foreclosure intervention limited to owner-occupied persons in default, which may not include cash and mortgage modification assistance, and for any related purposes as may be adopted in the policy set forth in this chapter. Said fees shall be deposited to a special account with the Village's Treasurer dedicated to the cost of implementation and enforcement of this chapter, and fulfilling the purpose and intent of this chapter. None of the funds provided for in this section shall be utilized for the legal defense of foreclosure actions.

- F. If the defaulted mortgage and/or servicing on a property is sold or transferred, the new mortgagee is subject to all the terms of this chapter. Within 10 days of the transfer, the new mortgagee shall register the property or update the existing registration. The previous mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that mortgagee's involvement with the defaulted property.
- G. If the mortgagee sells or transfers the defaulted property in a non-arm's-length transaction to a related entity or person, the transferee is subject to all the terms of this chapter. Within 10 days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the mortgagee was at the time registration was required, including but not limited to unregistered periods during the foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous mortgagee will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that mortgagee's involvement with the defaulted property.
- H. If the defaulted property is not registered, or the registration fee is not paid within 30 days of when the registration or renewal is required pursuant to this section, a late fee equivalent to 10% of the semi-annual registration fee shall be charged for every thirty-day period, or portion thereof, the property is not registered and shall be due and payable with the registration.
- I. This section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the mortgagee as well as any properties transferred to the mortgagee under a deed in lieu of foreclosure or by any other legal means.
- J. Properties subject to this section shall remain subject to the semi-annual registration requirement, and the inspection, security, and maintenance standards of this section as long as the property remains defaulted.
- K. Failure of the mortgagee and/or property owner of record to properly register or to modify the registration to reflect a change of circumstances as required by this chapter is a violation of this chapter and shall be subject to enforcement by any of the enforcement means available to the Village.
- L. If any property is in violation of this chapter, the Village may take any necessary action to ensure compliance and/or place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to bring the property into compliance.

§ 78A-5. Inspection and registration of real property that is not subject to mortgage in default.

- A. Any owner of vacant property located within the Village shall, within 10 days after the property becomes vacant, or within 10 days after assuming ownership of the property, whichever is later, register the real property with the Village Registry.
- B. Initial registration pursuant to this section shall contain at a minimum the name of the owner, the mailing address of the owner, e-mail address, and telephone number of the owner, and if applicable, the name and telephone number of the property

manager and said person's address, e-mail address, and telephone number.

- C. At the time of initial registration, each registrant shall pay a nonrefundable semi-annual registration fee of \$500 for each vacant property. Subsequent semi-annual registrations of vacant properties and fees in the amount of \$500 are due within 10 days of the expiration of the previous registration. Said fees shall be used to offset the costs of registration and registration enforcement, code enforcement and mitigation related to vacant properties, and for any related purposes as may be adopted in the policy set forth in this chapter. Said fees shall be deposited to a special account with the Village's Treasurer dedicated to the cost of implementation and enforcement of this chapter, and fulfilling the purpose and intent of this chapter. Any owner of vacant property who is deployed upon sending the Village Clerk written notification of their deployment are hereby exempt from paying the semi-annual registration fee for their residence for the duration of their deployment.
- D. If the property is sold or transferred, the new owner is subject to all the terms of this chapter. Within 10 days of the transfer, the new owner shall register the vacant property or update the existing registration. The previous owner(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that owner's involvement with the vacant property.
- E. If the vacant property is not registered, or either the registration fee or the semi-annual registration fee is not paid within 30 days of when the registration or semi-annual registration is required pursuant to this section, a late fee shall be equivalent to 10% of the semi-annual registration fee shall be charged for every thirty-day period, or portion thereof, the property is not registered and shall be due and payable with the registration. This section shall apply to the initial registration and registrations required by subsequent owners of the vacant property.
- F. Properties subject to this section shall remain subject to the semi-annual registration requirement and the inspection, security, and maintenance standards of this section as long as the property is vacant.
- G. Failure of the owner to properly register or to modify the registration to reflect a change of circumstances as required by this chapter is a violation of this chapter and shall be subject to enforcement by any of the enforcement means available to the Village.
- H. If any property is in violation of this chapter, the Village may take any necessary action to ensure compliance and place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to bring the property into compliance.
- I. Properties registered as a result of this section are not required to be registered again pursuant to the defaulted mortgage property section.

§ 78A-6. Maintenance requirements.

- A. Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except 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.

- B. Registrable 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. Front, side, and rear yards, including landscaping, of registrable property shall be maintained in accordance with the Chapter 78 of the Village Code at the time registration is required.
- D. Registrable yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- E. Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- F. Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s).
- G. Failure of the mortgagee, owner, and transferees to properly maintain the property as required by this chapter may result in a violation of the applicable code(s) and issuance of a citation or notice of violation in accordance with the applicable code of the Village. Pursuant to a finding and determination by the Village Court, the Village may take the necessary action to ensure compliance with this section.
- H. In addition to the above, the property is required to be maintained in accordance with the applicable code(s) of the Village.

§ 78A-7. Security requirements.

- A. Properties subject to these sections 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 or structure. Broken windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by reglazing of the window.
- C. If a property is registrable, and the property has become vacant or blighted, a property manager shall be designated by the mortgagee and/or owner to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this chapter and any other applicable laws.
- D. In addition to the above, the property is required to be secured in accordance with the applicable code(s) of the Village.

- E. When a property subject to this chapter becomes vacant, it shall be posted by the property manager or his/her designee with the name and twenty-four-hour contact telephone number of the property manager. The property manager shall be available to be contacted by the Village Monday through Friday between 8:30 a.m. and 4:15 p.m., legal holidays excepted. The sign shall be placed in a window facing the street and shall be visible from the street. The posting shall be no less than 18 inches by 24 inches and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language with supporting information:

THIS PROPERTY IS MANAGED BY _____.
 AND IS INSPECTED ON A REGULAR BASIS.
 THE PROPERTY MANAGER CAN BE CONTACTED
 BY TELEPHONE AT _____.
 OR BY E-MAIL AT _____.

- F. The posting required in Subsection E above 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 visible from the street to the front of the property but not readily accessible to vandals. Exterior postings shall be constructed of and printed with weather-resistant materials.
- G. Failure of the mortgagee and/or property owner of record to properly inspect and secure a property subject to this chapter, and post and maintain the signage noted in this section, is a violation and shall be subject to enforcement by any of the enforcement means available to the Village. The Village may take any necessary action to ensure compliance with this section and recover costs and expenses in support thereof.

§ 78A-8. Provisions supplemental.

The provisions of this chapter are cumulative with and in addition to other available remedies. Nothing contained in this chapter shall prohibit the Village from collecting on fees, fines, and penalties in any lawful manner; or enforcing its codes by any other means, including, but not limited to, injunction, abatement, or as otherwise provided by law or ordinance.

§ 78A-9. Public nuisance.

All registrable property is at risk of being a public nuisance and if vacant or blighted can constitute a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare, and safety of the residents of the Village.

§ 78A-10. Additional authority.

- A. If the enforcement officer has reason to believe that a property subject to the provisions of this chapter is posing a serious threat to the public health, safety, and

welfare, the code enforcement officer may temporarily secure the property at the expense of the mortgagee or owner, and may bring the violations before the code enforcement, Board of Trustees or Village Court as soon as possible to address the conditions of the property. Nothing herein shall limit the Village from abating any nuisance or unsafe condition by any other legal means available to it.

- B. The Village's Buildings Department, code enforcement, Board of Trustees or Village Court shall have the authority to require the mortgagee or owner affected by this section to implement additional maintenance and/or security measures, including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.
- C. If there is a finding that the condition of the property is posing a serious threat to the public health, safety, and welfare, then the Village's Buildings Department, code enforcement, Board of Trustees or Village Court may direct the Village to abate the violations and charge the mortgagee or owner with the cost of the abatement.
- D. If the mortgagee or owner does not reimburse the Village for the cost of temporarily securing the property, or of any abatement directed by the Village's Buildings Department, code enforcement officer, code enforcement, Board of Trustees or Village Court, within 30 days of the Village sending the mortgagee or owner the invoice, then the Village may place a lien on the property with such cost, along with an administrative fee as determined by the Village to recover the administrative personnel services. In addition to filing a lien, the Village may pursue financial penalties against the mortgagee or owner.
- E. The Village may contract with an entity to implement this chapter, and, if so, any reference to the enforcement officer herein shall include the entity the Village contracted with for that purpose.

§ 78A-11. Opposing, obstructing enforcement officer.

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the enforcement office in the discharge of duties as provided in this chapter shall be punishable as provided in the applicable code(s) or a court of competent jurisdiction.

§ 78A-12. Immunity of enforcement officer.

Any enforcement officer or any person authorized by the Village to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this chapter.

§ 78A-13. Violations unlawful.

Unless otherwise provided for in this chapter, a violation of this chapter is declared unlawful.

§ 78A-14. Amendments.

Registration fees and penalties outlined in this chapter may be modified by resolution, or an amendment to this chapter, passed and adopted by the Board of Trustees.

§ 78A-15. Severability.

It is hereby declared to be the intention of the Village that the sections, paragraphs, sentences, clauses, and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph, or section of this chapter 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 chapter.

§ 78A-16. Repealer.

All ordinances or parts of ordinances in conflict herewith are hereby repealed, and replaced.

§ 78A-17. Codification.

It is the intention of the Board of Trustees that the provisions of this code shall become and be made a part of the Village Code; and that the sections of this code may be renumbered or relettered to accomplish such intention; and the word "ordinance" may be changed to "section," "chapter," or such other appropriate word or phrase in order to accomplish such intentions.

§ 78A-18. Effective date.

This chapter shall become effective immediately upon adoption.

