

Schedule A

Town of Penfield Draft Local Law

A LOCAL LAW TO AMEND PENFIELD TOWN CODE CHAPTER 260 (REGISTRATION OF DEFAULTED MORTGAGE AND VACANT PROPERTY)

Be it enacted by the Town Board of the Town of Penfield as follows:

Section 1. The Town of Penfield Town Board is amending Chapter 260 (Registration of Defaulted Mortgage and Vacant Property) to conform with a new law signed recently signed by the Governor that provides parameters and limitations on local municipalities' requirements for registering properties with defaulted mortgages.

Section 2. The following revisions, additions and deletions to Chapter 260 are proposed. New text is underlined and deleted text is marked with a strike-through.

§ 260-1 Title.

This chapter shall hereinafter be known and cited as the "Registration of Defaulted Mortgage and Vacant Property" ordinance of the Town of Penfield.

§ 260-2 Purpose and intent.

It is the purpose and intent of this chapter is to establish a process to address the deterioration, crime, and decline in value of Town of Penfield neighborhoods caused by propertyies with defaulted mortgages and properties that are vacant located within the Town. ~~and~~The regulations in this chapter are intended to identify, regulate, limit and reduce the number of these properties located within the Town. It has been determined that owner-occupied structures are generally better maintained when compared to vacant structures, even with a diligent off-site property owner. Vacant structures and/or structures owned by individuals who are economically strained and unable to meet their mortgage obligations with defaulted mortgages where notice of pendency has been filed are often not properly or diligently maintained, which contribute to blight, declined property values, and have a negative impact on social perception of the residential areas where they are located. It is the Town'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 vacant/abandoned or are in default or defaulted.

§ 260-3 Definitions.

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

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.

ENFORCEMENT OFFICER

Any law enforcement officer, building official, zoning inspector, code compliance officer, fire inspector, building inspector, or other person authorized by the Town of Penfield to enforce the applicable code(s).

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, passers-by, 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.

NOTICE OF PENDENCY

Is a filing permitted under CPLR Article 65, that gives public notice of a pending New York State or Federal lawsuit in which the parties dispute ownership, possession, enjoyment, or use of a particular piece of real estate.

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 Town limits.

REGISTRABLE PROPERTY

- A. Any real property located in the Town whether vacant or occupied, that is encumbered by a mortgage in default with notice of pendency filed with the Monroe County Clerk's Office because it 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
- B. Any property that is vacant for more than 30 days or any cancellation of utility or service required for legal occupancy under NYS Uniform Code, whichever occurs first.

REGISTRY

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

SEMIANNUAL REGISTRATION

~~Six months~~ Once a year from the date of the first action that requires registration, as determined by the Town, or its designee, and every subsequent year ~~six months~~. 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 Town 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 Town that contains any building or structure that is not lawfully occupied.

§ 260-4 Applicability and jurisdiction.

This chapter applies to properties that are in default in the Town of Penfield that are also subject to a Notice of Pendency. This chapter also applies to vacant properties in the Town of Penfield.
~~defaulted and vacant property within the Town of Penfield.~~

§ 260-5 Establishment of registry.

The Town of Penfield, or its designee, shall establish a registry cataloging each registrable property within the Town, containing the information required by this chapter.

§ 260-6 Inspection and registration of defaulted mortgage.

- A. Any mortgagee who holds a mortgage on real property located within the Town that is subject to a Notice of Pendency shall perform an inspection of the property upon the filing of the Notice of Pendency. ~~it it being in default or defaulted by the mortgagor or prior to the issuance of a notice of default.~~
- (1) ~~B.~~ Property inspected pursuant to Subsection A above that remains subject to a Notice of Pendency ~~in default or defaulted~~ shall be inspected every 30 days by the mortgagee or other person responsible for the property. ~~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 when a Notice of Pendency is filed, the mortgagee on whose behalf the Notice of Pendency was filed ~~any mortgagee declares its mortgage to be in default or defaulted, the mortgagee~~ shall register the real property with the Town Registry, and, at the time of registration, indicate whether the property is vacant, ~~and~~ If so vacant, the mortgage shall designate in writing a property manager to inspect, maintain and secure the real property subject to notice of pendency. ~~the mortgage in default or defaulted~~. A separate registration is required for each Registerable Property ~~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 ~~semiannual~~ registration fee, as set forth in the Town's fee schedule, ~~in the amount of \$300 for each Registerable Property, defaulted property. Subsequent semiannual registrations of defaulted properties and fees in the amount of \$300 are due within 10 days of the expiration of the previous registration.~~ Said fees shall be used to offset the costs of: 1) registration and registration enforcement; 2) code enforcement and mitigation related to defaulted properties; and 3) for any related purposes as may be adopted in the policy set forth in this chapter. Said fees shall be deposited to an account within the Town's Finance Department dedicated to the cost of implementation and enforcement of this ordinance, and fulfilling the purpose and intent of this chapter.
- 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 semiannual 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.~~ H Properties subject to this section shall remain subject to the semiannual registration requirement, and the inspection, security, and maintenance standards of this section as long as the property remains defaulted.

~~K.~~ I 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 ordinance is a violation of this chapter and shall be subject to enforcement by any of the enforcement means available to the Town.

~~L.~~ J If any property is in violation of this chapter, the Town may take the necessary action to ensure compliance with 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.

§ 260-7 Inspection and registration of real property not subject to a mortgage in default.

A. Any owner of vacant property located within the Town 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 Town 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 ~~semiannual~~ registration fee, as set forth in the Town's fee schedule, in the amount of \$300 for each vacant property. Subsequent ~~semiannual~~ registrations of vacant properties and payment of fees ~~in the amount of \$300~~ are due within 10 days of the expiration of the previous

registration. Said fees shall be used to offset the costs of: 1) registration and registration enforcement; 2) code enforcement and mitigation related to vacant properties; and 3) for any related purposes as may be adopted in the policy set forth in this chapter. Said fees shall be deposited to an account within the Town's Finance Department dedicated to the cost of implementation and enforcement of this chapter ordinance, and fulfilling the purpose and intent of this chapter.

- D. Each individual property on the registry that has been registered for 12 months or more prior to the effective date shall have 30 days to renew the registration and pay the ~~\$75~~ \$300 semiannual registration fee. ~~Properties registered less than 12 months prior to the effective date shall renew the registration every six months from the expiration of the original registration renewal date and shall pay the \$300.~~
- E. 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.
- F. ~~If the vacant property is not registered, or either the registration fee or the semiannual registration fee is not paid within 30 days of when the registration or semiannual registration is required pursuant to this section, a late fee shall be equivalent to 10% of the semiannual 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.~~
- ~~G~~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.
- ~~H~~G Failure of the owner to properly register or to modify the registration to reflect a change of circumstances as required by this ordinance is a violation of this chapter and shall be subject to enforcement by any of the enforcement means available to the Town.
- ~~I~~—~~If any property is in violation of this chapter the Town may take the necessary action to ensure compliance with and place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to the property into compliance.~~
- ~~J~~H Properties registered as a result of this section are not required to be registered again pursuant to the defaulted mortgage property section.

§ 260-8 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 applicable code(s) 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 Town of Penfield. Pursuant to a finding and determination by the Town of Penfield, by an enforcement officer, Town Board, or a court of competent jurisdiction, the Town 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 Town.

~~§ 260-9 Maintenance secured upon commencement of foreclosure proceeding-~~

~~Any mortgagee who commences a foreclosure proceeding against a property located in the Town shall, in addition to all other requirements of this chapter, provide cash, a cash bond, or a letter of credit to the Town in a form acceptable to the Town, in the sum of \$10,000, to secure the continued maintenance of the property throughout the foreclosure proceeding and reimburse the Town for any expenses incurred in inspecting, securing, repairing and/or making said property safe by any legal means, including, but not limited to, demolition. The cash, cash bond, or letter of credit must be provided to the Town within 45 days of a foreclosure proceeding being commenced. The \$10,000 cash, cash bond, or letter of credit provided to the Town shall remain valid for a period of one year from the date of said cash, cash bond, or letter of credit being provided. A person, business, organization, bank or lender who has commenced a foreclosure proceeding shall, thereafter, annually provide the Town with cash, a cash bond, or a revised letter of credit in an amount that will cause the total sum being held by the Town to equal \$10,000. Such renewal shall be submitted prior to the expiration of the one year period and shall continue annually until the foreclosure proceeding is no longer pending and the structure that is the subject of the foreclosure proceeding is being lawfully occupied. At such time, all sums being held by Town under this section will be released to the mortgagee that provided the cash, cash bond, or letter of credit.~~

§ 260-9 ~~10~~ **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 re-glazing 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 Town of Penfield.
- E. When a property subject to this chapter becomes vacant, it shall be posted 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 Town Monday through Friday between 9:00 a.m. and 5:00 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 .

THE PROPERTY MANAGER'S ADDRESS .

AND IS INSPECTED ON A REGULAR BASIS .

THE PROPERTY MANAGER CAN BE CONTACTED:

BY TELEPHONE AT .

OR BY EMAIL 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 posting 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 Town. The Town may take the necessary action to ensure compliance with this section, and recover costs and expenses in support thereof.

§ 260-10 ~~44~~ 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 Town 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.

§ 260-11 ~~42~~ 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 Town of Penfield.

§ 260-12 ~~43~~ 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 enforcement officer may temporarily secure the property at the expense of the mortgagee or owner, and may bring the violations before the Town Board or a court of competent jurisdiction as soon as possible to address the conditions of the property. Nothing herein shall limit the Town from abating any nuisance or unsafe condition by any other legal means available to it.
- B. The enforcement officer, Town Board or a court of competent jurisdiction 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 enforcement officer, Town Board or a court of competent jurisdiction may direct the Town of Penfield 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 Town of Penfield for the cost of temporarily securing the property, or of any abatement directed by the enforcement officer, Town Board or a court of competent jurisdiction, within 30 days of the Town sending the mortgagee or owner the invoice then the Town may lien the property with such cost, along with an administrative fee as determined in the Town of Penfield to recover the administrative personnel services. In addition to filing a lien the Town may pursue financial penalties against the mortgagee or owner as prescribed by law.
- E. The Town may contract with an entity to implement this chapter, and, if so, any reference to

the enforcement officer herein shall include the entity the Town of Penfield contracts with for that purpose.

§ 260-13 14 Opposing, obstructing enforcement officer; penalty.

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

§ 260-14 15 Immunity of enforcement officer.

Any enforcement officer or any person authorized by the Town 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.

§ 260-15 16 Administration, enforcement and penalties.

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

- A. This chapter shall be administered and enforced by the Town Board and/or the enforcement officer by taking any and all actions prescribed for corrections of violations and for noncompliance of the provisions of this chapter or any other applicable requirements of law. Such actions shall include, but not be limited to, issuing appearance tickets to designated person(s) to appear in a local criminal court in connection with the alleged violation of this chapter or any order made thereunder pursuant to the New York State Criminal Procedure Law.
- B. Penalties for offenses. Any person who fails to comply with any provision of this chapter or fails to comply with any notice, order or directive of the Town of Penfield after expiration of the time for compliance set forth in any such notice, order or directive of the Town shall, upon conviction be punished by a fine of not more than \$1,000 or by imprisonment not to exceed 15 days, or both, for such violation. In the event of any failure to so comply, each and every day that such violation continues shall constitute a separate offense, and the penalties prescribed above shall be applicable to each such separate offense.
- C. Penalties for offenses under § 260-9, "Maintenance secured upon commencement of foreclosure proceeding." Any person, business, organization, bank or lender who fails to comply with § 260-9 shall, upon conviction, be punished by a fine of not more than \$5,000 or by imprisonment not to exceed 15 days, or both, for such violation. In the event of any failure to so comply, each and every day that such violation continues shall constitute a separate offense, and the penalties prescribed above shall be applicable to each such separate offense.

§ 260-17 Amendments.

~~Registration fees and penalties outlined in this chapter may be modified by either resolution, administrative order, or an amendment to this chapter, passed and adopted by the Town.~~

Section 3. Severability

The invalidity of any word, section, clause, paragraph, sentence, part, or provision of this Local Law shall not affect the validity of any other part of this Local Law, which can be given effect

without such part or parts.

Section 4. Effective Date

This local law shall take effect immediately upon filing in the office of the Secretary of State of New York as provided by law.