

P.L. 2021, c. 444

2020-2021 - Assembly, No. 2877 [Second Reprint]

Effective January 18, 2022¹

Concerns municipal property registration ordinances to address risk of blight.

An Act concerning property registration ordinances to address the risk of blight, revising various parts of the statutory law and supplementing Title 40 of the Revised Statutes.

1. (New section) The Legislature finds and declares that:

a. Although New Jersey has made great strides in addressing previous foreclosure crises, foreclosure continues to be an issue confronting residents and municipalities;

b. Properties in foreclosure proceedings can involve properties that are vacant and abandoned or have an increased risk of becoming vacant and abandoned during the foreclosure proceeding;

c. Vacant and abandoned properties in foreclosure create a greater risk of blight and can create a wide range of problems for the communities in which they are located. These problems can include fostering criminal activity, creating public health problems, depressing neighboring property values and reducing revenues for municipalities, and otherwise diminishing the quality of life for residents and business operators in those areas;

d. Because of the increased risk of blight created by properties in foreclosure, it is important that municipalities possess tools to identify such properties, monitor their status, and mitigate the risk that they become vacant and abandoned and, if vacant and abandoned, lead to blight. The costs of identifying, monitoring, and mitigating such risks can adversely impact a municipality's finances;

e. The State has enacted statutes intended to assist municipalities in addressing such risks, including requiring that municipalities receive notice of the initiation of a foreclosure action in court in connection with residential properties and authorizing a public officer in a municipality to take certain action against properties that have been abandoned for more than six months;

f. Although these State laws provide municipalities with certain tools to address blight and the risk of blight, the laws do not apply to all properties, enable municipalities to create a comprehensive way to identify, monitor, and address the risk of blight on all such properties within their jurisdictions, or address the costs to municipalities to do so;

¹ See Section 6 for important details.

g. A number of municipalities have adopted ordinances on an ad hoc basis to create property registration programs to identify, monitor, and address the risk of blight on residential and commercial properties within their jurisdictions; and

h. The Legislature finds such property registration programs provide a valuable tool to municipalities in confronting the risk of blight created by properties on which foreclosure proceedings have been initiated and such properties that become vacant and abandoned. The Legislature finds that it is in the State's interest for municipalities that operate such programs to do so with certain uniformity as part of the State's overall statutory scheme addressing the risk of blight.

2. (New section) a. (1) A creditor -serving a summons and complaint in an action to foreclose on a mortgage on commercial property in the State shall, within 10 days of serving the summons and complaint, notify the municipal clerk and the mayor or other chief executive officer of the municipality in which the property is located that a summons and complaint in an action to foreclose on a mortgage has been filed against the subject property. The notice shall contain the full name, address, and telephone number for the representative of the creditor who is responsible for receiving complaints of property maintenance and code violations and the full name and contact information for any person or entity retained by the creditor or a representative of the creditor to be responsible for any care, maintenance, security, or upkeep of the property. The notice may contain information about more than one property, and shall be provided by mail or electronic communication, at the discretion of the municipal clerk. In the event the creditor that has served a summons and complaint in an action to foreclose on a commercial property that is located out-of-State, the notice shall also contain the full name, address, and telephone number of an in-State representative or agent who shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property if it becomes vacant and abandoned. If the municipality has designated or appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal clerk shall forward a copy of the notice to the public officer or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code. The notice shall also include the street address, lot, and block number of the property.

If there is any change in the name, address, or telephone number for a representative, agent, or individual authorized to accept service on behalf of a creditor required to be provided in a notice pursuant to this paragraph following the filing of the summons and complaint, the creditor shall provide a notice to the applicable municipal clerk containing the updated name, address, or telephone number within 10 days of the change in that information.

(2) Within 30 days following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), any creditor that has initiated a foreclosure proceeding on any commercial property that is pending in Superior Court shall provide to the municipal clerk of the municipality in which the property is located, a listing of all commercial properties in the municipality for which the creditor has

foreclosure actions pending by street address and lot and block number. If the municipality has designated or appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal clerk shall forward a copy of the notice to the public officer, or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.

b. If the owner of a commercial property vacates or abandons any property on which a foreclosure proceeding has been initiated or if a commercial property becomes vacant at any point subsequent to the creditor's filing the summons and complaint in an action to foreclose on a mortgage against the subject property, but prior to vesting of title in the creditor or any other third party, and the exterior of the property is found to be a nuisance or in violation of any applicable State or local code, the local public officer, municipal clerk, or other authorized municipal official shall notify the creditor or the representative or agent of an out-of-State creditor, as applicable, which shall have the responsibility to abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by State law or municipal ordinance. The municipality shall include a description of the conditions that gave rise to the violation with the notice of violation and shall provide a period of not less than 30 days from the creditor's receipt of the notice for the creditor to remedy the violation. If the creditor fails to remedy the violation within that time period, the municipality may impose penalties allowed for the violation of municipal ordinances.

c. If the municipality expends public funds in order to abate a nuisance or correct a violation on a commercial property in situations in which the creditor was given notice pursuant to the provisions of subsection b. of this section but failed to abate the nuisance or correct the violation as directed, the municipality shall have the same recourse against the creditor as it would have against the title owner of the property, including but not limited to the recourse provided under section 23 of P.L.2003, c.210 (C.55:19-100).

d. For the purposes of this section, "creditor" means a State chartered bank, savings bank, savings and loan association or credit union, any person required to be licensed under the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89), and any entity acting on behalf of the creditor named in the debt obligation including, but not limited to, servicers. For purposes of this section, a creditor shall not include the State, a political subdivision of the State, or a State, county, or local government entity, or their agent or assignee, such as the servicer

3. (New section) a. The governing body of any municipality may adopt ordinances to:

(1) create a property registration program for the purposes of identifying and monitoring residential and commercial properties within the municipality for which a summons and complaint in an action to foreclose on a mortgage has been filed;

(2) regulate the care, maintenance, security, and upkeep of the exterior of vacant and abandoned residential and commercial properties for which a summons and complaint in an action to foreclose has been filed; and

* (3) impose property registration fees on the creditor of residential or commercial properties, on an annual or semi-annual basis.

b. An ordinance adopted pursuant to subsection a. of this section shall:

(1) require that the creditor filing a summons and complaint in an action to foreclose shall, in addition to the notice provided to the municipality pursuant to section 17 of P.L.2008, c.127 (C.46:10B-51) or section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), register the residential or commercial property with the municipality's property registration program as a property in foreclosure and, as part of that registration: (a) provide the municipality with the information regarding the creditor required by paragraph (1) of subsection a. of section 17 of P.L.2008, c.127 (C.46:10B-51) or paragraph (1) of subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill); (b) identify the date the summons and complaint in an action to foreclose on a mortgage was filed against the subject property, the court in which it was filed, and the docket number of the filing; and (c) identify whether the property is vacant and abandoned in accordance with the definition in the ordinance required by paragraph (8) of this subsection;

(2) require, if there is any change in the name, address, or telephone number for a representative, agent, or individual authorized to accept service on behalf of a creditor required to register pursuant to the property registration program following the filing of the summons and complaint, the creditor shall update the property registration program within 10 days of the change in that information;

(3) require that the creditor filing a summons and complaint in an action to foreclose shall, if the registered property becomes vacant and abandoned in accordance with the definition in the ordinance required by paragraph (8) of this subsection after the property is initially registered with the municipality, update the property registration with the municipality to reflect the change in the property's status;

(4) require that the creditor filing a summons and complaint in an action to foreclose shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property if the property is vacant and abandoned at any time while the property is registered with the property registration program;

(5) require that a creditor located out-of-State shall be responsible for appointing an in-State representative or agent to act for the foreclosing creditor;

(6) identify any requirements that the municipality imposes on the creditor filing a summons and complaint in an action to foreclose on a property, that is or becomes vacant and abandoned, relating to the care, maintenance, security, and upkeep of the exterior of the property, including, but not limited to, any requirements to secure the property against unauthorized entry, post a sign affixed to the inside of the property and visible to the public indicating the name, address, and telephone number of the creditor or an out-of-State creditor's in-State representative or agent for the purpose of receiving service of process,

or acquire and otherwise maintain liability insurance by procuring a vacancy policy, covering any damage to any person or any property caused by any physical condition of the property while registered with the property registration program;

(7) identify any fees that may be imposed on the creditor in connection with the property registration program that are authorized pursuant to subsection e. of this section; and

(8) define that a property shall be considered vacant and abandoned if it is not legally occupied by a mortgagor or tenant, which is in such condition that it cannot be legally reoccupied, because of the presence or finding of at least two of the following:

- (a) overgrown or neglected vegetation;
- (b) the accumulation of newspapers, circulars, flyers, or mail on the property;
- (c) disconnected gas, electric, or water utility services to the property;
- (d) the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (e) the accumulation of junk, litter, trash, or debris on the property;
- (f) the absence of window treatments such as blinds, curtains, or shutters;
- (g) the absence of furnishings and personal items;
- (h) statements of neighbors, delivery persons, or government employees indicating that the property is vacant and abandoned;
- (i) windows or entrances to the property that are boarded up or closed off, or multiple window panes that are damaged, broken, and unrepaired;
- (j) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
- (k) a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
- (l) an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
- (m) the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;
- (m) a written statement issued by a mortgagor expressing the clear intent of all mortgagors to abandon the property; or
- (o) any other reasonable indicia of abandonment.

c. An ordinance adopted pursuant to subsection a. of this section shall authorize a public officer, designated or appointed pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), or any other local official responsible for administration of any property maintenance or public nuisance code to issue a notice to the creditor filing the summons and complaint in an action to foreclose, if the public officer or other authorized municipal official determines that the creditor has violated the ordinance. In the case of a

violation for failure to provide care, maintenance, security, and upkeep of the exterior of vacant and abandoned property, such notice shall require the person or entity to correct the violation within 30 days of receipt of the notice, or within 10 days of receipt of the notice if the violation presents an imminent threat to public health and safety.

d. A municipality may contract with and set the compensation of a private entity, pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), to assist the municipality in the implementation and administration of the property registration program established pursuant to an ordinance adopted pursuant to subsection a. of this section. A county or county improvement authority may similarly contract with a private entity to assist the county or authority in the implementation and administration of a property registration system established for the use of a municipality with a property registration program established pursuant to an ordinance adopted pursuant to subsection a. of this section as well as for the use of the county or improvement authority. A local unit may delegate to such private entity any duties under the property registration program, including, without limitation, identifying properties located within the municipality that are subject to the registration requirements of the property registration program, maintaining and updating the property registrations for the municipality, communicating with the creditors or the in-State representative or agent appointed by creditors located out of State of such properties, invoicing and collecting payment from the creditors for such properties any fees authorized by the ordinance and subsection e. of this section, and monitoring compliance with the requirements of the ordinance. A local unit may conduct property registration services on behalf of a municipality pursuant to a shared services agreement subject to the "Uniform Shared Services and Consolidation Act," P.L.2007, c.63 (C.40A:65-1 et al.). Property registration fees imposed pursuant to subsection e. of this section and an ordinance adopted pursuant to subsection a. of this section shall be considered a municipal charge pursuant to the "tax sale law," R.S.54:5-1 et seq., regardless of whether the fees are being collected by a third-party entity or by the municipality directly. The Local Finance Board of the Department of Community Affairs may adopt rules and regulations pertaining to contracts, entered pursuant to this subsection, with third-party entities for the implementation and administration of a property registration program.

e. A municipality may impose an annual fee on a creditor required to register a property pursuant to an ordinance adopted pursuant to subsection a. of this section. The fee shall not exceed: (1) \$500 per property annually for any property that is required to be registered because a summons and complaint in an action to foreclose was filed by the creditor; and (2) an additional \$2,000 per property annually if the property is vacant or abandoned pursuant to the definition in the ordinance when the summons and complaint in an action to foreclose is filed, or becomes vacant and abandoned pursuant to the definition in the ordinance at any time thereafter while the property is in foreclosure. All such annual fees and the due dates thereof shall be identified in the ordinance adopted pursuant to subsection a. of this section.

f. Notwithstanding the provisions of N.J.S.40A:5-15 to the contrary, any property registration fees imposed pursuant to subsection e. of this section and an ordinance adopted pursuant to subsection a. of this section and collected by a third-party entity contracted with pursuant to subsections d. and e. of this section shall be paid over to the municipality within a timeframe specified in the contract between the municipality and the third-party entity. Amounts collected by the third-party entity on behalf of the local unit shall be paid over in full to the local unit without any amount deducted as payment for services rendered by the third-party entity. Once the collected fees are paid over to the local unit, the officer charged with the custody of the general funds shall deposit all such funds within 48 hours after the receipt thereof to the credit of the municipality in its designated legal depository. A third-party entity shall collect and pay over to the municipality any interest and penalties, based upon the rate of interest and penalties fixed by the governing body of the municipality for late payment of property taxes, assessments, and other municipal charges pursuant to R.S.54:4-67, for late payment of the property registration fees imposed pursuant to subsection e. of this section and an ordinance adopted pursuant to subsection a. of this section. The third-party entity shall at least once a year, or as requested by the municipal tax collector, file a certification as may be required by the tax collector to enforce tax liens for all unpaid property registration program fees due and owing at the time the certification is filed.

g. (1) An out-of-State creditor subject to an ordinance adopted pursuant to subsection a. of this section found by the municipal court of the municipality in which the property subject to the ordinance is located, or by any other court of competent jurisdiction, to be in violation of the requirement to appoint an in-State representative or agent pursuant to the ordinance shall be subject to a fine of \$2,500 for each day of the violation. Any fines imposed on a creditor for the failure to appoint an in-State representative or agent shall commence on the day after the 10-day period set forth in paragraph (1) of subsection a. of section 17 of P.L.2008, c.127 (C.46:10B-51) or paragraph (1) of subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) for providing notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.

(2) A creditor subject to an ordinance adopted pursuant to subsection a. of this section found by the municipal court of the municipality in which the property subject to the ordinance is located, or by any other court of competent jurisdiction, to be in violation, excluding only a violation addressed by paragraph (1) of this subsection, of the ordinance shall be subject to a fine of \$1,500 for each day of the violation. Any fines imposed pursuant to this paragraph shall commence 31 days following receipt of the notice of violation, except if the violation presents an imminent risk to public health and safety, in which case any fines shall commence 11 days following receipt of the notice.

h. No less than 20 percent of any money collected pursuant to subsection f. or g. of this section or an ordinance adopted pursuant to subsection a. of this section shall be utilized by the municipality for municipal code enforcement purposes.

i. As used in this section:

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“Creditor” means a mortgagee or an agent or assignee of a mortgagee, such as the servicer, who has filed a complaint in the Superior Court seeking to foreclose upon a residential or commercial mortgage. If the entity seeking to foreclose upon the residential or commercial mortgage changes as a result of an assignment, transfer, or otherwise after the filing of the foreclosure complaint in the Superior Court, the new entity shall be deemed the creditor for purposes of this section. For purposes of this section, a creditor shall not include the State, a political subdivision of the State, a State, county, or local government entity, or their agent or assignee, such as the servicer.

“Local unit” means a municipality, a county, or a county improvement authority or other subdivision of a municipality or county.

4. Section 1 of P.L.2012, c.70 (C.2A:50-73) is amended to read as follows:

1. a. For the purposes of this section, "vacant and abandoned" residential property means residential real estate with respect to which the mortgagee proves, by clear and convincing evidence, that the mortgaged real estate is vacant and has been abandoned or where a notice of violation has been issued pursuant to section 3 of P.L.2021, c.444 (C.). Where a notice of violation has not been issued pursuant to section 3 of P.L.2021, c.444 (C.), real property shall be deemed "vacant and abandoned" if the court finds that the mortgaged property is not occupied by a mortgagor or tenant as evidenced by a lease agreement entered into prior to the service of a notice of intention to commence foreclosure according to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), and at least two of the following conditions exist:

- (1) overgrown or neglected vegetation;
- (2) the accumulation of newspapers, circulars, flyers or mail on the property;
- (3) disconnected gas, electric, or water utility services to the property;
- (4) the accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- (5) the accumulation of junk, litter, trash or debris on the property;
- (6) the absence of window treatments such as blinds, curtains or shutters;
- (7) the absence of furnishings and personal items;
- (8) statements of neighbors, delivery persons, representatives of a common interest community association, or government employees indicating that the residence is vacant and abandoned;
- (9) windows or entrances to the property that are boarded up or closed off or multiple window panes that are damaged, broken and unrepaired;
- (10) doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
- (11) a risk to the health, safety or welfare of the public, or any adjoining or adjacent property owners, exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;

(12) an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;

(13) the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;

(14) a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;

(15) any other reasonable indicia of abandonment.

b. For the purposes of this section, a residential property shall not be considered "vacant and abandoned" if, on the property:

(1) there is an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;

(2) there is a building occupied on a seasonal basis, but otherwise secure; or

(3) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

c. In addition to the residential mortgage foreclosure procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage debt secured by residential property that is vacant and abandoned may be brought by a lender in the Superior Court. In addition, a lender may, at any time after filing a foreclosure action, file with the court, in accordance with the Rules Governing the Courts of the State of New Jersey, an application to proceed in a summary manner because the residential property that is the subject of the foreclosure action is believed to be "vacant and abandoned"; provided, however, that this section shall not apply to a foreclosure of a timeshare interest secured by a mortgage.

d. (1) In addition to the service of process required by the Rules of Court, a lender shall establish, for the entry of a residential foreclosure judgment under this section, that a process server has made two unsuccessful attempts to serve the mortgagor or occupant at the residential property, which attempts must be at least 72 hours apart, and during different times of the day, either before noon, between noon and 6 P.M., or between 6 P.M. and 10 P.M.

(2) In addition to any notices required to be served by law or the Rules of Court, a lender shall, with any order to show cause served as original service of process or a motion to proceed summarily, serve a notice that the lender is seeking, on the return date of the order to show cause, or on the date fixed by the court, to proceed summarily for entry of a residential foreclosure judgment because the property is vacant and abandoned.

(3) When a property is deemed vacant and abandoned as herein defined, a lender shall not be required to serve the debtor with the notice to cure required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-58).

e. (1) The court may enter a final residential mortgage foreclosure judgment under this section upon a finding, (a) by clear and convincing evidence, that the residential property is vacant and abandoned as defined under subsection a. of this section, and (b) that a review of the pleadings and documents filed with the court, as required by the Rules of Court, supports the entry of a final residential mortgage foreclosure judgment.

(2) A final residential mortgage foreclosure judgment under this section shall not be entered if the court finds that:

(a) the property is not vacant or abandoned; or

(b) the mortgagor or any other defendant has filed an answer, appearance, or other written objection that is not withdrawn and the defenses or objection asserted provide cause to preclude the entry of a final residential mortgage foreclosure judgment.

f. If a final residential mortgage foreclosure judgment under this section is not entered on the original or adjourned return date of an order to show cause or the date fixed by the court to proceed summarily, the court may direct that the foreclosure action continue on the normal track for residential mortgage foreclosure actions for properties that are not vacant and abandoned and the notice to cure served with the order to show cause or the order fixing that date for the matter to proceed summarily shall be of no effect.

g. All actions brought to foreclose on real property pursuant to this section shall proceed in accordance with the Rules of Court.

h. Nothing in this section is intended to supersede or limit other procedures adopted by the Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation.

i. Nothing in this section shall be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law.

j. (1) Notwithstanding paragraph (3) of subsection a. of section 12 of P.L.1995, c.244 (C.2A:50-64) to the contrary, the sheriff shall sell the property within 90 days of the sheriff's receipt of any writ of execution issued by the court if:

(a) the court makes a finding in the foreclosure judgment that the property is vacant and abandoned;

or

(b) the court issues an order directing the sheriff to sell the property within 90 days, pursuant to the provisions of subsection k. of this section.

(2) If it becomes apparent that the sheriff cannot comply with the provisions of paragraph (1) of this subsection, the foreclosing plaintiff shall apply to the court for an order appointing a Special Master or judicial agent to hold the foreclosure sale, within 90 days of the date of application.

k. (1) Following issuance of a foreclosure judgment, in which the court did not make a finding that the property is vacant and abandoned, a foreclosing plaintiff may make application to the court for the property to be sold by the sheriff within 90 days of the date of application. The application shall include a certification that the mortgaged real estate is vacant and abandoned.

(2) Upon application that meets the criteria set forth in paragraph (1) of this subsection, the court shall issue an order directing the sheriff to sell the property in accordance with the provisions of subsection j. of this section. A hearing shall not be required unless the application is contested.²

(cf: P.L.2019, c.72, s.1)

5. Section 1 of P.L.2014, c.35 (C.40:48-2.12s) is repealed.

6. This act shall take effect immediately, except that municipalities that have existing ordinances that address property registration programs shall have until the first day of the seventh month next following the effective date of this act to amend their ordinances to the extent necessary to make them consistent with this act.