

ORDINANCE NO. 07-13

AN ORDINANCE OF THE CITY OF BEREА, KENTUCKY PROVIDING THAT THE CODE OF ORDINANCES OF THE CITY OF BEREА, KENTUCKY, BE AMENDED BY ESTABLISHING PROCEDURES FOR ABANDONED PROPERTY FOR PROPERTY LOCATED IN CITY LIMITS OF BEREА

BE IT ORDAINED by the City Council of the City of Bereа, Kentucky as follows:

SECTION 1

That the Code of Ordinances of the City of Bereа, Kentucky, be amended by adding the following section to be numbered Article V, Housing and Building Regulations, Section 71.010-71.509 – Procedures for Abandoned Property, such section to read as follows:

ARTICLE V: PROCUDURES FOR ABANDONED PROPERTY

71.500 FINDINGS AND PURPOSE.

- (A) It is the purpose and intent of the Bereа City Council, through the adoption of this Chapter, to establish an abandoned buildings registration program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

71.501 DEFINITIONS.

For the purpose of this chapter, certain words and phrases used in this chapter are defined as follows:

ABANDONED means a property that is vacant and is under a current Notice of Default and/or Notice of Lien Holder’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 lien holder 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 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.

CREDITOR means a federal or state chartered bank, savings bank, savings and loan association, or credit union, and any entity acting on behalf of the creditor named in the debt obligation, including but not limited to servicers.

DANGEROUS BUILDING means any building/structure that is in violation of any condition referenced in Chapter 4.44, 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 lien holder as security for a real estate loan. Used in Kentucky instead of a mortgage. This definition applied to any and all subsequent mortgages i.e. 2nd trust deed, 3rd trust deed, etc.

DEED IN LIEU OF FORECLOSURE/ SALE means a recorded document that transfers ownership of a property from the lien holder 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 Lien holder's Sale and/or pending Tax Assessor's Lien Sale or has been foreclosed upon by the lien holder or has been conveyed to the beneficiary/lien holder via a Deed in lieu of Foreclosure/sale.

EVIDENCE OF VACANCY means any condition that on its own, or combined with other condition 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 furnishing 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 lien holder (borrower) defaults.

LOCAL means within forty (40) road/driving miles distance of the subject property.

NEIGHBORHOOD STANDARDS 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 lien holder'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 Property Valuation Administration.

PROPERTY means any unimproved or improved real property, or portion thereof, situated in the city and includes the building or structures located on the property regardless of condition.

RESIDENTIAL BUILDING means any improved real property, or portion thereof, situated in the city, designed or permitted to be used for dwelling purposes, and shall include the building and structures located on such improved real property. This included any real property being offered for sale, trade, transfer, or exchange 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 assists 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.

LIEN HOLDER 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 lien holder as security for the payment of a debt.

VACANT means a building/structure that is not legally occupied.

Prior to filing a complaint of foreclosure or executing a deed in lieu of foreclosure on a residential property a creditor shall inspect the property to determine whether the property is vacant. If the property is vacant, the creditor shall, within five (5) days of when the complaint of foreclosure is filed or executing a deed in lieu of foreclosure is executed, register the property as a vacant property with City of Berea Codes Enforcement Office for the purpose of minimizing hazards to persons and property as a result of the vacancy.

If a residential property becomes vacant at any time after the creditor files a complaint of foreclosure or executes a deed in lieu of foreclosure, but prior to vesting of title in the creditor or a third party, the creditor shall, within five (5) days after obtaining knowledge of vacancy, register the property as a vacant property with the City of Berea Codes Enforcement Office for the purpose of minimizing hazards to persons and property as a result of the vacancy.

71.503 REGISTRATION

Any beneficiary/lien holder, who holds a deed of trust on a property located within City of Berea, shall perform an inspection of the property that is the security for the deed of trust, prior to filing a complaint of foreclosure or executing a deed in lieu of foreclosure. If the property is found to be vacant or shows evidence of vacancy, it is, by this Ordinance, deemed abandoned and the creditor shall, within five (5) days the complaint of foreclosure is filed or executing a deed in lieu of foreclosure is executed, register the property as a vacant property with the City of Berea Codes Enforcement Office for the purpose of minimizing hazards to persons and property as a result of the vacancy using the forms provided by the City of Berea Codes Enforcement Office.

If the property is occupied but remains in default it shall be inspected by the beneficiary/lien holder, or his designee, monthly until 1) The lien holder 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 lien holder shall, within five (5) days of that inspection, register the property with the City of Berea Codes Enforcement Office on forms provided by that department.

The registration shall contain the name of the beneficiary/lien holder (corporation or individual), the direct street/office mailing address of the beneficiary/lien holder, a direct contact name and phone number for the beneficiary/lien holder and, in the case of a corporation or out of area beneficiary/lien holder, 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 lien holder 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 Ordinance must report any change of information contained the registration within ten (10) days of the change.

71.504 *MAINTENANCE REQUIREMENTS*

Properties subject to this section shall be, in comparison to the neighborhood standard, kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building material, and accumulation of newspapers, 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. 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 landscape 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 requirement of the State of Kentucky. Adherence to this section does not relieve the beneficiary/lien holder 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.

71.505 *SECURITY REQUIREMENTS*

Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

Vacated Building Maintenance Standards: A building shall be deemed adequately protected from intrusion by trespassers and from deterioration by the weather if :

- (1) *Building openings:* Doors, windows, areaways and other openings are weather tight and secured against entry by birds, vermin and trespassers. Missing or broken doors, windows and opening coverings are covered with at least ½” of CDX plywood, weather protected, tightly fitted to the opening and secured by screws or bolts.
- (2) *Roofs:* The roof and flashings are sound, tight, will not admit moisture, and drained to prevent dampness or deterioration in the walls or interior.

- (3) *Drainage:* The building gutters and downspouts are watertight and entire storm drainage system is adequately sized, installed in an approved manner, functional and discharged in an approved manner.
- (4) *Building Structure:* The building is maintained in good repair, structurally sound, free from debris, rubbish and garbage, and sanitary. Interior floors, walking surfaces and stairs are structurally sound, and interior walls and ceilings are free of loose or hanging plaster and finishes, so as not to pose a threat to the public health or safety.
- (5) *Structural Members:* The structural members are free of deterioration and capable of safely bearing imposed dead and live loads.
- (6) *Foundation walls:* The foundation walls are plumb, free from open cracks and breaks, and rat proof.
- (7) *Exterior Walls:* The exterior walls are free of holes, breaks, and loose or rotting materials. Exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.
- (8) *Decorative Features:* The cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features are safe, anchored, and in good repair. Exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.
- (9) *Structure Extensions:* All balconies, porches, canopies, marquees, signs, metal awnings, cornices, stairways, fire escapes, standpipes, exhaust ducts and similar features are in good repair, anchored, safe and sound. Exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.
- (10) *Chimneys and Towers:* Chimneys, cooling towers, smokestacks, and similar appurtenances are structurally safe. Exposed metal and wood surfaces are protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.
- (11) *Sidewalk Openings:* Yard walks, steps, and openings in sidewalks are safe for pedestrian travel.
- (12) *Accessory and Appurtenant Structures:* Accessory and appurtenant structures such as garages, sheds and fences are free from safety, health and fire hazards.
- (13) *Premises:* The premises on which a structure is located is clean, safe and sanitary, maintained free of weeds, junk cars, and litter, and does not pose a threat to the public health or safety.

The property shall be posted with the name and a 24-hour contact phone number of the local property management company. The posting shall be no less than 18"X24" 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 visible from the street to the front of the property but not readily accessible to vandals. Exterior posting must be constructed of and printed with weather resistant materials. The local property management company shall inspect the property every thirty (30) days to determine if the property is in compliance with the requirements of this chapter. Compliance with this inspection requirement shall not diminish the obligation of the registrant to perform regular maintenance that would be expected in between inspections, including but not limited to grass cutting and weed control.

71.505 ADDITIONAL AUTHORITY

In addition to the enforcement remedies established in this Ordinance, the City of Berea Codes Enforcement Office or his or her designee shall have the authority to require the beneficiary/lien holder/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 doors, windows 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.

71.506 FEES

The annual fee for registering an Abandoned Residential Property shall be sixty dollars (\$60.00) made payable to City of Berea and submitted to the City of Berea Codes Enforcement Office, 212 Chestnut Street, Berea, KY 40403, along with the required registration application. This registration fee and application are to be renewed annually by no later than January 31st of each year.

71.507 ENFORCEMENT/PENALTY

If a residential property becomes or remains vacant as provided in this ordinance, but prior to vesting of title in the creditor or any third party, and the Building Inspector determines the property is in violation of the City's Nuisance or Property Maintenance Ordinance, the Building Inspector shall notify the creditor of the violation by providing notice of the violation by certified mail, return receipt requested, to the person identified in the Registration Application, and shall require the creditor to correct the violation to the extent consistent with the terms of the mortgage.

71.508 APPEALS

Any person aggrieved by any of the requirements of this section may appeal insofar as such appeal is allowed to the Berea Board of Adjustments.

71.509 SEVERABILITY

Should any provision, section, paragraph, sentence or work 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 II

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

SECTION III

All ordinances and parts of ordinances in conflict herewith are hereby repealed. The ordinance shall be published according to law.