

ORDINANCE NO. 2014-19

**ORDINANCE OF THE BOROUGH OF RED BANK,
COUNTY OF MONMOUTH, NEW JERSEY
REQUIRING MORTGAGEE REGISTRATION RELATING TO REAL PROPERTY
MORTGAGES IN DEFAULT, PROVIDING FOR REGISTRATION AND REQUIRING
MAINTENANCE FOR CERTAIN REAL PROPERTY BY MORTGAGEES**

Councilman DuPont offered the following ordinance and moved its adoption on final reading:

WHEREAS, the Borough of Red Bank recognizes that the current mortgage foreclosure crisis has serious negative implications for all communities trying to manage the resulting vacant properties, increases in crime, homelessness and other problems that stem from financial crisis; and

WHEREAS, foreclosed homes quickly deteriorate to the forces of nature and the elements, grass and weeds grow long, public health hazards can occur, landscaping dies from lack of attention or grows out of control, windows break and exteriors suffer damage from normal wear and tear and vandalism and communities suffer and the situation has a negative impact first on neighboring residences and then on entire neighborhoods; and

WHEREAS, the conditions identified above negatively impact the Borough of Red Bank and its neighborhoods; and

WHEREAS, the Borough of Red Bank is challenged to locate a party to correct negative impacts and maintain the properties that are in the foreclosure process or that have been foreclosed; and

WHEREAS, the Borough of Red Bank finds that neighborhoods should be protected from becoming blighted through the lack of adequate maintenance and security of abandoned and vacant properties subject to mortgages that are in default; and

WHEREAS, the Borough of Red Bank has already adopted property maintenance codes to regulate community standards for the interior and exterior of structures and the condition of property as a whole; and

WHEREAS, a registration process is necessary for the Borough of Red Bank to address safety and aesthetic concerns, as well as correct the negative impacts and blighting conditions that occur as a resolute of the foreclosure crisis; and

WHEREAS, the Borough of Red Bank finds that the registration would include properties that have already been foreclosed upon, are currently in the foreclosure process or will be in the foreclosure process in the future; and

WHEREAS, the Borough of Red Bank has determined that the following regulations promote and protect the general health, safety and welfare of the resident of the Borough of Red Bank;

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Red Bank as follows:

Section 1. The above recitals are true and correct and by this reference are incorporated herein and made an integral part hereof.

Section 2. Purpose and Intent. It is the purpose and intent of this ordinance to establish a process to limit and reduce the deterioration of property located within the Borough of Red Bank, which property is in foreclosure or where ownership has been transferred to lender or mortgagee by any legal method. It is further intended to establish a registration

program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance of abandoned and vacated properties subject to a mortgage or properties subject to mortgages that are in default. The registration process will require mortgagees to provide the Borough with the most up-to-date accurate data and information for contacting a responsible party to bring the property into compliance with this ordinance.

Section 3. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning. Where the context will permit and no definitions are provided herein, the definitions provided in the Borough of Red Bank Building Code or Ordinances shall apply.

“Abandoned Real Property” means real property that is vacant and/or is under a notice of default, notice of mortgagee’s sale, pending tax assessor’s lien sale and/or properties that have been the subject of a foreclosure sale where title or a lien is retained by the mortgagee and any properties transferred under the deed in lieu of foreclosure sale, a short sale or any other legal means.

“Default” means that the mortgagee files a foreclosure action or sends a notice of default on the mortgage. A mortgage shall be considered in default at such time as the mortgagee declares said mortgage to be in default either in writing, by recording a lis pendens, or by its actions, or commences foreclosure proceedings.

“Enforcement Officer” means any law enforcement officer, building official, zoning officer, building inspector, fire marshal, fire inspector or code enforcement officer employed by the Borough of Red Bank.

“Evidence of Vacancy” means any condition that, on its own or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to; overgrown and/or dead vegetation, electricity, water or other utilities turned off; stagnant swimming pool; statements by neighbors, passers-by, delivery agents or government agents.

“Foreclosure” means the judicial process by which a property, placed as security for a mortgage loan, after a judicial process, is to be sold at an auction to satisfy a debt upon which the borrower has defaulted.

“Vacant” means any building or structure that is not lawfully occupied or inhabited by human beings as evidenced by the condition set forth in the definition of “Evidence of Vacancy” above.

Section 4. Applicability. This ordinance relates to abandoned real property and/or vacant property and/or property that shows evidence of vacancy that is or has been subject to a mortgage determined by the mortgagee to be in default.

Section 5. Registration of real property mortgagee holding mortgages in default.

A. Any mortgagee who holds a mortgage on real property located within the Borough of Red Bank shall perform an inspection of the property upon default by the mortgagor or prior to the issuance of notice of default. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed vacant or abandoned and the mortgagee shall, within fifteen (15) calendar days of the inspection, register the property within the Borough of Red Bank. If the property was not vacant at the time of default but becomes vacant sometime thereafter, the mortgagee shall register the property with the Borough of Red Bank, no later than fifteen (15) calendar days after the date the mortgagee discovers or is notified the property in default is vacant.

B. If the property is occupied but remains in default, it shall be inspected monthly by the mortgagee or mortgagee’s designee.

C. Registration. 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 local property manager and said person’s address, e-mail address and telephone number. The local property manager shall be responsible to inspect, secure and maintain the property. The local property manager named in the registration shall be available to be contacted by the Borough Monday through Friday between 9:00 am and 5:00 pm, except recognized Borough holidays. The local property manager shall respond to any report of a violation of this ordinance or the violations of any other Borough ordinances within 24 hours of notice. The mortgagee shall pay an initial registration fee to the Borough of Red Bank through the Borough Clerk’s Office in the amount of \$125.00 which shall be valid for one (1) full year from date of payment and shall pay a renewal fee for each year thereafter in the amount of \$125.00 until such time as the foreclosure action is completed and the real property is sold to a third party in an arm-length transaction and proof of same is provided to the Borough.

D. A separate registration is required for each property that is subject to this Ordinance.

E. 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.

F. Properties subject to this section shall be under an annual registration requirement as long as they remain vacant or subject to having been declared by a mortgagee to be in default.

G. Any person or other legal entity that has registered a property under this ordinance must report any change of information contained in the registration within fifteen (15) calendar days of the change.

H. Failure of the mortgagee and/or property owner of record to properly register or to revise from time to time the registration to reflect a change of circumstances as required by this ordinance is a violation of this ordinance and shall be subject to enforcement by any of the enforcement means available to the Borough of Red Bank.

I. Pursuant to a finding and determination that any property is in violation of this ordinance or any other ordinances of the Borough of Red Bank the Borough may take the necessary action to ensure compliance with its ordinance and place a lien on the property for the cost of the work performed to benefit the property and to bring it into compliance, which lien may be assigned to either the entity that performs the work or arranges to have the work performed.

J. Registration of the property will no longer be required upon the occurrence of either of the events set forth below. There will not be a refund of any registration fee already paid to the Borough.

(i) The property is transferred from the mortgagee to a third party in an arm's length transaction and proof of the transfer is provided to the Borough;

(ii) The property becomes occupied and evidence of occupancy is provided to the Borough. If the property subsequently becomes vacant or shows evidence of vacancy prior to transfer of the property as contemplated in paragraph (J)(i) above, registration of the property will again be required.

Section 6. Maintenance requirements.

A. Properties subject to this ordinance shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any 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 or any other items that give the appearance that the property is abandoned or not being properly maintained. Weeds, overgrown brush or dead vegetation, broken windows, broken doors or broken entrance locks are also prohibited.

B. The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior made paint that matches the color of the exterior structure. Yards shall be landscaped and maintained pursuant to the standards set forth in this ordinance and all other ordinances of the Borough. Landscaping shall include but not be limited to grass, ground cover, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential, commercial or industrial installation as applicable.

C. Maintenance shall include, but not be limited to cutting and mowing of required landscape and removal of all trimmings and weeds.

D. Pools and spas shall be kept in working order so that pool and spa water remains free and clear of pollutants and debris, the water clarity shall be such that the lowest part of the swimming pool or spa can be seen from the pool or spa deck and the water quality shall be such that it does not create a breeding ground for mosquitoes or other insects.

E. Failure of the mortgagee and/or property owner of record to properly maintain the property is a violation of this ordinance and all other ordinances of the Borough and may be subject to enforcement by any of the enforcement means available to the Borough of Red Bank. Pursuant to a finding and determination, the Borough of Red Bank may take the necessary action to ensure compliance with its ordinances and place a lien(s) on the property as provided herein.

Section 7. Security requirements.

A. Property subject to this ordinance 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 or adult to access the interior of the property and/or structure. Broken windows shall be secured by re-glazing or

replacement.

C. If a mortgage on the property is in default and the property has become vacant or abandoned, a local property manager shall be designated by the mortgagee to perform the work necessary to bring the property into compliance with the Borough ordinances and the local property manager must perform weekly inspections to verify compliance with the requirements of this section and any other applicable laws or ordinance of the Borough of Red Bank.

D. When the property becomes vacant or abandoned, it shall be posted with the name and twenty-four (24) hour contact telephone number of the local property manager. 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 8-1/2 inches by 11 inches and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language:

THIS PROPERTY IS MANAGED BY _____ AND IS INSPECTED ON A
REGULAR BASIS.

THE PROPERTY MANAGER CAN BE CONTACTED BY TELEPHONE AT
_____ OR BY EMAIL AT _____

E. The posting 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.

F. Failure of the mortgagee and/or property owner of record to properly inspect and secure the property and post and maintain the signage noted in this section is a violation of this ordinance and shall be subject to enforcement by any of the enforcement means available to the Borough of Red Bank. Pursuant to a finding and determination, the Borough of Red Bank may take the necessary action to ensure compliance with this section and place a lien on the property as provided herein.

Section 8. Additional authority.

A. If the Borough's Enforcement Officer has reason to believe that a property subject to the provisions of this Ordinance is posing a serious threat to the public health, safety and welfare, the Code Enforcement Officer may bring the violations before the Borough Municipal Court to address the conditions of the property.

B. 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 Code Enforcement Officer or Municipal Court Judge may direct the Borough to abate the violation and charge the mortgagee with the cost of the abatement.

C. If the mortgagee does not reimburse the Borough for the cost of abatement within thirty (30) days of the Borough sending the mortgagee the invoice, then the Borough may lien the property with the cost of abatement along with an administrative fee in the amount of twenty (20) percent of the cost of the abatement.

Section 9. Supplemental provisions. Nothing contained in this ordinance shall prohibit the Borough of Red Bank from enforcing its ordinances by any other means including, but not limited to, injunction, abatement or as otherwise provided by such other ordinances.

Section 10. Fines or Punishment. Any person, firm, corporation or entity who violates any provision of this ordinance shall be subject to the following fines or punishment:

A. Upon conviction of a first offense, a fine not exceeding \$250.00;

B. Upon conviction of a second offense, a fine not exceeding \$500.00;

C. Upon conviction of a third offense, a fine not exceeding \$1,000.00 and/or a term of imprisonment for a period not to exceed ninety (90) days and/or a term of community service not to exceed ninety (90) days.

Section 11. Separate violation. Each day that a person, firm, corporation or entity is in violation of this ordinance shall be deemed a separate and distinct violation.

Section 12. All ordinances or parts thereof which are inconsistent with the provision of this ordinance are hereby repealed to the extent of such inconsistency.

Section 13. In any section, subsection, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decisions all not affect the remaining portions of this ordinance which shall remain in full force and effect.

Section 14. This ordinance shall take effect ten (10) days after final passage and

publication in the manner prescribed by law.

Seconded by Councilman Murphy and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Councilman Murphy	(x)	()	()	()
Councilwoman Burnham	(x)	()	()	()
Councilwoman Horgan	(x)	()	()	()
Councilwoman Lewis	(x)	()	()	()
Councilman Zipprich	(x)	()	()	()
Councilman DuPont	(x)	()	()	()

Dated: November 5, 2014

First Reading/Introduction: October 8, 2014
Second Reading/Public Hearing: November 5, 2014
Adoption: November 5, 2014

I hereby certify the above to be a true copy.

Pamela Borghi

Pamela Borghi, Municipal Clerk