ORDINANCE 2011-015

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY RELATING TO MORTGAGED REAL PROPERTY; CREATING ARTICLE XII OF CHAPTER 17 OF THE PALM BEACH COUNTY CODE (MORTGAGE FORECLOSURE REGISTRATION); PROVIDING FOR THE PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY OF THE ORDINANCE; REQUIRING INSPECTION AND REGISTRATION OF REAL PROPERTY MORTGAGES IN DEFAULT; PROVIDING FOR ANNUAL REGISTRATION FEES; PROVIDING FOR ENFORCEMENT; REQUIRING MAINTENANCE OF CERTAIN REAL PROPERTY BY MORTGAGEES; PROVIDING FOR SECURITY REQUIREMENTS; PROVIDING FOR POSTING OF PROPERTY; PROVIDING FOR ADDITIONAL AUTHORITY; PROVIDING PROVISIONS ARE SUPPLEMENTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CAPTIONS; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the present mortgage foreclosure crisis has serious negative implications for all communities trying to manage the resulting property vacancies, decreases in property values, lack of maintenance, and other problems that stem from the financial crisis; and

WHEREAS, foreclosed homes quickly succumb to the forces of nature and the elements, grass and weeds grow, swimming pools become stagnant public health hazards, landscaping dies from lack of attention or grows out of control, windows are broken, exteriors suffer damage from normal wear-and-tear and vandalism, communities suffer, and these consequences have a negative impact first on neighboring residences and then on entire neighborhoods; and

WHEREAS, the conditions identified above negatively impact Palm Beach County and blight neighborhoods; and

WHEREAS, Palm Beach County is challenged to identify and locate owners or foreclosing parties who can correct negative
impacts and maintain the properties that are in the foreclosure process or that have been foreclosed; and

WHEREAS, Palm Beach County finds that neighborhoods should be protected from becoming blighted through the lack of adequate maintenance and security of vacant properties or properties that are subject to mortgages that are in default; and

WHEREAS, Palm Beach County has adopted property maintenance codes to regulate standards for the interior and exterior of structures and the condition of property as a whole; and

WHEREAS, a foreclosed property registration process is necessary for Palm Beach County to provide a monitoring mechanism and additional enforcement for defaulted properties; and

WHEREAS, Palm Beach County finds that the registration process would include properties that have already been foreclosed upon, are currently in the foreclosure process, or may be in the foreclosure process in the future; and

WHEREAS, the Palm Beach County Board of County Commissioners has determined that the following additions to the County’s code will serve and contribute to promoting and protecting the general health, safety and welfare of the residents of the Palm Beach County.

NOW THEREFORE BE IT ORDAINED by the Board of County Commissioners of Palm Beach County, Florida:

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

Section 2. Mortgage Foreclosure Registration enacted. Title VI (Businesses, Trades and Occupations) is amended to add a new ARTICLE XII of Chapter 17 of the Palm Beach County Code (Mortgage Foreclosure Registration) to read as follows:

CHAPTER 17 - LICENSING, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS

ARTICLE XII. MORTGAGE FORECLOSURE REGISTRATION

Section 1. 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 unincorporated Palm Beach County, which property is in mortgage foreclosure, where ownership has been transferred to a
lender or mortgagee by any legal method or where property is deemed to be vacant or abandoned. It is further intended to establish a registration program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance or through abandoned and/or vacated properties which are subject to mortgages that are in default.

Section 2. Definitions.
The following words, terms and phrases, when used in this Ordinance, 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 Florida Building Code shall apply.

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

Default means that the mortgagee has filed a foreclosure action or 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 by letter or notice to property owner, by recording a lis pendens, by commencing foreclosure proceedings; or by any other actions demonstrating a breach of a security covenant on a property.

Enforcement officer means any fulltime law enforcement officer, building official, fire inspector or code enforcement officer employed by Palm Beach County.

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; or 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 as evidenced by the conditions set forth in the definition of "Evidence of Vacancy", above.

Section 3. Applicability.

This Ordinance applies to occupied or abandoned and/or vacant property which is in default located within unincorporated Palm Beach County, or which property is in or has been in mortgage foreclosure, or where ownership has been transferred to a lender or mortgagee by any legal method.

Section 4. Inspection and registration of real property by mortgagee holding mortgages in default.

(a) Within ten (10) days of the date any mortgagee declares its mortgage to be in default, the mortgagee shall register the real property with Palm Beach County Planning, Zoning & Building Department, or its designee, or the County's authorized representative. At the time of registration, a local property manager shall be designated to inspect, maintain and secure the real property subject to the mortgage in default. A registration is required for each property.

(b) Any mortgagee who holds a mortgage on real property located within unincorporated Palm Beach County shall perform an inspection of the property within five (5) days of the registration pursuant to subsection (a) above.

(c) Property inspected pursuant to subsection (b) above that is occupied but remains in default, shall be inspected quarterly by the mortgagee or mortgagee's designee.

(d) Property which is found to be vacant, or which shows evidence of vacancy shall be inspected at least every sixty (60) days by the mortgagee or mortgagee's designee.

(e) Registration pursuant to this section shall contain at a minimum the name of the mortgagee, the mailing address of the mortgagee, e-mail address and telephone number of the mortgagee, and the 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 property manager named in the registration shall be
located within twenty (20) miles of Palm Beach County and available
to be contacted by the County, Monday through Friday between 9:00
a.m. and 5:00 p.m., holidays and lunch hours excepted.

(g) 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.

(h) Properties subject to this section shall remain under the
registration requirement, and the inspection, security, and
maintenance standards of this ordinance as long as they remain
vacant or subject to having been declared by a mortgagee to be in
default.

(i) 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 ten (10) days of the change.

Section 5 - Annual Registration Fee

An annual registration fee in an amount approved by the Board
of County Commissioners, per property, shall accompany the
registration. Fees shall be deposited into a Special Revenue
Account, which account shall be for the purpose of enforcement of
the Palm Beach County Property Maintenance Code, the Florida
Building Code and other related property codes.

Section 6 - Enforcement

(a) Failure of the mortgagee and/or property owner of record
to properly register or to modify the registration from time to
time 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 Palm Beach
County.

(b) Pursuant to any judicial finding and determination,
including any administrative proceeding, that any property which is
in violation of this Ordinance, Palm Beach County may take the
necessary action to ensure compliance with and place a lien on the
property for the cost of the work performed, including an
administrative fee, to benefit the property and to bring it into
compliance.

(c) Failure of the mortgagee and/or property owner of record
to properly inspect and secure a property subject to this
Ordinance, 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 Palm Beach County. Pursuant to a finding and determination, Palm Beach County may take the necessary action to ensure compliance with this section, and recover costs and expenses in support thereof.

Section 7. Maintenance requirements.

Properties subject to this Ordinance shall be maintained in accordance with all relevant County regulations, including the County's Property Maintenance Code (Ordinance 2003-051, as amended).

Section 8. Security requirements.

(a) Properties 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 all windows, doors, gates and other openings of such size that will not allow a child or adult to access the interior of the structure and pool area, if any. Broken windows or doors shall be secured by reglazing or boarding.

Section 9 - Posting of Property

(a) When a property subject to this Ordinance becomes vacant or abandoned, "unless prohibited by recorded covenants and restrictions," it shall be posted with the name and twenty-four (24) hour contact telephone number of the local property manager. The posting shall be no less than 18 inches x 24 inches and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language, at a minimum, with supporting information:

THIS PROPERTY IS MANAGED BY ________________________________
AND IS INSPECTED ON A REGULAR BASIS.
THE PROPERTY MANAGER CAN BE CONTACTED
BY TELEPHONE AT ________________________________
OR BY EMAIL AT ________________________________

(b) The posting required in subsection (a) 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
Section 10. Additional authority.

(a) If an appropriate County code enforcement administrator 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 administrator may bring the violations before the County's code enforcement board or code enforcement special magistrate, or a court of competent jurisdiction as soon as possible 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 board or code enforcement special magistrate or a court of competent jurisdiction may direct the County to abate the violations and charge the mortgagee with the cost of abatement.

(c) If the mortgagee does not reimburse the County for the cost of abatement within thirty (30) days of the County sending the mortgagee the invoice, then the County may lien the property with the cost of abatement, along with any and all administrative fees allowed by law to recover the administrative personnel services.

Section 11. Provisions Supplemental.

Nothing contained in this Ordinance shall prohibit Palm Beach County from enforcing its codes by any other means, including, but not limited to, injunction, abatement or as otherwise provided by law or ordinance.

Section 12 Severability.

It is hereby declared to be the intention of Palm Beach County that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of a court of
competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 13. Captions.

The captions, part headings, and part designations in this Ordinance are intended for the convenience of users only and shall have no effect in the interpretation of the provisions of this Ordinance.

Section 14. Inclusion in the Codes of Laws and Ordinances

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 15. Effective Date.

The provisions of this ordinance shall become effective upon filing with the Department of State.
EFFECTIVE DATE: Filed with the Department of State on the 24th day of August, 2011.

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