

15-13

ORDINANCE NO. 13-18

AN ORDINANCE ESTABLISHING THE "ABANDONED PROPERTY REGISTRATION PROGRAM" APPLICABLE TO PROPERTY LOCATED IN UNINCORPORATED LEE COUNTY, WHICH IS OR HAS BEEN SUBJECT TO MORTGAGE FORECLOSURE ACTIVITY; PROVIDING FOR INCORPORATION OF RECITALS; TITLE; APPLICABILITY; PURPOSE AND INTENT; DEFINITIONS; REGISTRATION AND INSPECTION OF DISTRESSED REAL PROPERTY; POSTING REQUIREMENTS; MAINTENANCE REQUIREMENTS; VIOLATIONS AND ENFORCEMENT; CONFLICTS OF LAW; SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; REVIEW PROVISION; AND, AN EFFECTIVE DATE.

WHEREAS, the mortgage foreclosure crisis has precipitated 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, distressed homes quickly succumb to the forces of nature and the elements, grass and weeds grow, swimming pools become stagnant public health and safety 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 Lee County and blight neighborhoods; and

WHEREAS, Lee 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, Lee 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 the subject of mortgages in default; and

WHEREAS, Lee County has adopted property maintenance regulations establishing standards for the interior and exterior of structures as well as the condition of the property as a whole; and

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

WHEREAS, Lee 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 Lee County Board of County Commissioners has determined that the following additions to the County's codes and ordinances will serve and contribute to promoting and protecting the general health, safety and welfare of the residents of Lee County; and

WHEREAS, the Board of County Commissioners desires to enact an ordinance creating a property registration program.

NOW, THEREFORE, BE IT ORDAINED by the Lee County, Florida, Board of County Commissioners as follows:

SECTION 1: RECITALS

The above recitals are true and correct and incorporated herein as though fully set forth below.

SECTION 2: TITLE

This ordinance is known and may be cited as the "Abandoned Property Registration Program".

SECTION 3: APPLICABILITY

This ordinance is applicable in the unincorporated areas of Lee County.

SECTION 4: PURPOSE AND INTENT

The purpose and intent of this ordinance is to establish a process to limit and reduce the deterioration of property located within unincorporated Lee 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 distressed or deemed to be abandoned due to actions of a mortgagee. The further intent of this ordinance is to establish a registration program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance, or through distressed and/or abandoned properties that are subject to mortgages in default.

SECTION 5: DEFINITIONS

The following words, terms and phrases, when used in this ordinance, have the meanings set forth below, except where the context clearly indicates a different meaning.

Abandoned means any building or structure that is not lawfully occupied or inhabited as evidenced by overgrown and/or dead vegetation; electricity, water or other utilities turned off or otherwise non-operational; stagnant swimming pool; statements by neighbors, passers-by, delivery agents or government agents; or other conditions that would indicate the property is not lawfully inhabited.

Code Inspector means any law enforcement officer, building official, fire inspector, or code enforcement officer employed by Lee County; those authorized agents or employees of the County whose duty it is to ensure compliance with Lee County regulations.

Default means that the mortgagee has filed a foreclosure action or notice of default on the mortgage. A mortgage is considered in default at such time as the mortgagee declares the mortgage to be in default by letter or notice to the 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.

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

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

SECTION 6: REGISTRATION AND INSPECTION OF DISTRESSED REAL PROPERTY

(a) Registration. Within ten days of the date of taking an action that results in a property located in unincorporated Lee County qualifying as *distressed*, the mortgagee holding a mortgage must register the property that is the security for the mortgage. A registration, on the form proscribed by the County, is required for each property. Registration pursuant to this section must contain, at minimum, the name and mailing addresses of the mortgagee and local registered agent for purposes of service; and, the name of the local property manager along with the property manager's address, email address and 24-hour telephone number. A local property manager must be designated at the time the registration is filed and will be responsible for inspecting, securing and maintaining the property. The property manager named in the registration

must be located within 20 miles of Lee County and available to be contacted by the County, Monday through Friday between 8:00 a.m. and 5:00 p.m.

For property qualifying as *distressed property* prior to January 1, 2014, the mortgagee will have until January 10, 2014 to register in accordance with the requirements of this ordinance.

(b) Inspection. Within ten days of the date of taking an action that results in a property located in unincorporated Lee County qualifying as *distressed*, the mortgagee holding a mortgage on the property must have the property physically inspected.

- (1) If the property is occupied, but the property remains *distressed*, the mortgagee must register the property as "occupied" and must inspect the property quarterly until:
 - a. The property no longer qualifies as *distressed*; or
 - b. The property is found to be *abandoned*, in which case the mortgagee must update the property's status to "abandoned" within ten days of the last inspection.
- (2) Property that is found to be *abandoned* must be inspected at least every 60 days by the mortgagee or mortgagee's designee.
- (3) The mortgagee or mortgagee's designee must be able certify that each inspection has taken place and provide a copy of the results of each inspection if specifically requested by the County.

(c) Continuing requirement. Properties subject to this ordinance will remain under the registration requirement and the inspection, security and maintenance standards required under this ordinance as long as they remain *distressed properties*.

(d) Change in status. Any person or other legal entity that has registered a property under this ordinance must report a change to the status of the property or information contained in the registration within ten days of the change.

SECTION 7: ANNUAL REGISTRATION FEE

An annual registration fee in an amount approved by the Board of County Commissioner must be paid upon registration of each *distressed* property.

SECTION 8: POSTING REQUIREMENTS

(a) When a property subject to this ordinance becomes abandoned, it must be posted with the name and the 24-hour contact telephone number of the mortgagee's local property manager, unless such posting is prohibited by recorded covenants and

restrictions. The posting must be no less than 18" x 24" and must be of a font that is legible from a distance of 45 feet. The posting must contain the follow language, at 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 must 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. Exterior posting must be weather-resistant.

SECTION 9: MAINTENANCE REQUIREMENTS

(a) Properties subject to this ordinance must be maintained in accordance with all relevant County regulations, including but not limited to provisions contained in Chapter 2 *Administration*, Chapter 6 *Building Regulations*, Chapter 10 *Development Standards*, and Chapter 34 *Zoning* of the Lee County Land Development Code; as well as Lee County Ordinances 93-23 *Lot Mowing* and 93-39 *Nuisance Accumulation*.

(b) Properties subject to this ordinance must be kept free of overgrown vegetation and/or brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices (except those required by federal, state or local law), abandoned vehicles, 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*.

(c) The property must 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.

(d) Front, side and rear yards, including landscaping, must be maintained.

(e) Pools and spas must be maintained so that the water remains free and clear of pollutants and debris. Pools and spas must comply with all requirements of the Lee County regulations and Florida Building Code, as amended from time to time.

(f) Properties subject to this ordinance must be maintained in a secure manner so as to not be accessible to unauthorized persons or open to the elements. A "secure manner" means and includes, but is not limited to, the closure and locking of all windows, doors, gates and other openings of such size that will allow a child or adult to

access the interior of the structure and pool area, if any. Broken windows and doors must be secured by reglazing or boarding.

SECTION 10: VIOLATIONS AND ENFORCEMENT

(a) Violations. Violations of this ordinance include, but are not limited to, the following:

- (1) Failure of mortgagee and/or property owner of record to properly register or modify the registration to reflect a change of information as required.
- (2) Failure of mortgagee and/or property owner of record to properly inspect, secure or properly maintain distressed or abandoned property.
- (3) Failure of the mortgagee and/or property owner of record to properly post and maintain required signs.

(b) Fines. Violations of this ordinance will be subject to fines as set forth in the Lee County Administrative Code or as determined by the Lee County Hearing Examiner or a County Judge.

(c) Enforcement. The provisions of this ordinance will be enforced by Lee County Code Enforcement or its designee pursuant to the provisions set forth in the Lee County Land Development Code Chapter 2, Article VII or any other legal means available to the County.

(d) Cost recovery. In accordance with Florida Statutes ch. 162, and the Lee County Land Development Code, upon a finding and determination by the Hearing Examiner or adjudication by the County Court, the County may take the necessary corrective action to ensure compliance with this ordinance. In the event the County takes corrective action, the County is entitled to recover all costs and expenses, including reasonable attorney fees; and, to record a lien in favor of the County against the subject real property.

SECTION 11: CONFLICTS OF LAW

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION 12: SEVERABILITY

It is the Board of County Commissioners' intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further

declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION 13: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance", can be changed to "section", "article", or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or designee, without the need for a public hearing.

SECTION 14. REVIEW PROVISION

On or before February 1, 2015, Code Enforcement will provide the Board with a report regarding the registration program. This report will provide information regarding (1) the number of registrations processed by the County; (2) the number of code enforcement citations or notices of violation issued to obtain compliance with the registration requirement; (3) the number of citations or notices issued to obtain compliance with the maintenance standards imposed by the ordinance; (4) the number of assessments recorded under LDC Chapter 6, LCOs 93-23 and 93-39 to achieve compliance on property that is otherwise subject to the registration program; and, (5) assessment of the overall effectiveness of the registration program based upon comments from the citizenry, staff observations etc.

SECTION 15: EFFECTIVE DATE

This ordinance will take effect on January 1, 2014.

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Commissioner Manning made a motion to adopt the foregoing ordinance, seconded by Commissioner Pendergrass. The vote was as follows:

JOHN E. MANNING	Aye
CECIL L PENDERGRASS	Aye
LARRY KIKER	Aye
TAMMARA HALL	Absent
FRANK MANN	Aye

DULY PASSED AND ADOPTED THIS 24th day of September, 2013.

ATTEST: LINDA DOGGETT
CLERK OF COURT

By: Inoa J. Perce
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: [Signature]
Cecil L Pendergrass, Chair

APPROVED AS TO FORM:

By: [Signature]
Office of the County Attorney





FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

September 27, 2013

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Lisa Pierce, Deputy Clerk

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated September 26, 2013 and certified copy of Lee County Ordinance No. 13-18, which was filed in this office on September 27, 2013.

Sincerely,

A handwritten signature in cursive script that reads "Liz Cloud".

Liz Cloud
Program Administrator

LC/elr

