

ARTICLE VI. - VACANT AND FORECLOSED PROPERTY

Sec. 36-410. - Short title.

This article shall be known as the "Cleveland Vacant and Foreclosed Property Ordinance."

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-411. - Findings and intent.

This article is adopted to address the interest of public health, safety and welfare.

- (1) The governing authority finds that there is a need to establish a foreclosure and vacant real property registry as a mechanism to protect property values in neighborhoods for all property owners.
- (2) Due to the lack of adequate maintenance and security of properties that are foreclosed or where ownership has been transferred after foreclosure, the property values and quality of life of neighboring properties are negatively impacted.
- (3) Improperly maintained and secured foreclosed properties can become a hazard to the health and safety of persons who may come on or near such properties and can adversely affect the aesthetic and economic attributes of communities. Difficulties also often arise in locating the person responsible for the condition of foreclosed real property. The governing authority finds that there is a substantial need directly related to the public health, safety and welfare to comprehensively address these concerns through the adoption of the provisions in this article.
- (4) This foreclosure and vacant real property registry will require owners and agents to provide the city with official information for contacting a party responsible for bringing foreclosed and vacant real property into compliance with applicable provisions of Municipal Code of Cleveland, Georgia.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-412. - Definitions.

Agent means an individual with a place of business in this state in which such agent, corporation or limited liability corporation, is authorized to accept inquiries, notices, and service of process on behalf of a vacant or foreclosed real property owner. The definition of "agent" shall have the same meaning as set forth in the O.C.G.A. § 44-14-14 should that definition differ from the definition in this article.

Foreclosed real property means improved or unimproved real property for which a county tax map and parcel number and/or a 911 address has been issued by a county or municipal corporation (for many foreclosed properties in Cleveland, there will be no record of a land disturbing permit) and is held pursuant to a judicial or non-judicial foreclosure of a mortgage, deed of trust, security deed, or other security instrument securing a debt or obligation owned to a creditor or a deed in lieu of foreclosure in full or partial satisfaction of a debt or obligation owed to a creditor or shall have the same meaning as set forth in O.C.G.A. § 44-14-14, should that definition differ.

Street address means the E911 address, where available, street or route address. Such term shall not mean or include a post office box. The definition of "street address" shall have the same meaning as set forth in O.C.G.A. § 44-14-14 should that definition differ from the definition in this article.

Vacant real property means real property that:

- (1) Is intended for occupying or habitation, has not been lawfully occupied or inhabited for at least 60 days, and has no evidence of utility usage within the past 60 days; or

- (2) Is partially constructed or incomplete, without a unexpired valid building permit.

Such term shall not include a building or structure containing multiple units with common ownership that has at least one unit occupied with evidence of utility usage. The definition of "vacant real property" shall have the same meaning as set forth in O.C.G.A. § 44-14-14 should that definition differ from the definition in this article.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-413. - Registration of vacant or foreclosed property.

- (a) Owner or agents of foreclosed real property or vacant real property, including, but not limited to, foreclosed real property and vacant real property which is also residential rental property, are required to register such property with the person designated by the Mayor and Council of the City of Cleveland within 30 days of such property becoming foreclosed or vacant real property by following the provisions of this section unless otherwise exempted by this article or state law.
- (b) Any such owner or agent of foreclosed real property or vacant real property located within the jurisdiction of the city is required to file with the person designated by the Mayor and Council of the City of Cleveland, a registration form in paper format. The Georgia Department of Community Affairs has developed a standard vacant or foreclosed real property registry form which the owner or agent shall use such form and the city shall only require use of such form. Such form shall only require submission of the following information:
 - (1) The real property owner's name, street address, mailing address, phone number, facsimile number, and e-mail address;
 - (2) The agent's name, street address, mailing address, phone number, facsimile number, and e-mail address;
 - (3) The real property's street address and current tax parcel number;
 - (4) The transfer date of the instrument conveying the real property to the owner and copy of said fully executed instrument; and
 - (5) At such time as it becomes available, recording information, including, but not limited to, deed book and page numbers, of the instrument conveying the real property to the owner.
- (c) Registration is required for all vacant or foreclosed real property unless otherwise exempted, pursuant to this Article, but is not required for vacant or foreclosed real property within 90 days of such real property's transfer by means of:
 - (1) Deed under power of sale or deed in lieu of foreclosure; or
 - (2) To the first subsequent transferee after the vacant real property has been acquired by foreclosure under power of sale pursuant to O.C.G.A. § 44-14-160, or acquired pursuant to a deed in lieu of foreclosure.
- (d) Any owner or agent required to register any vacant or foreclosed real property pursuant to this article or pursuant to Georgia law shall also be required to update the information specified in subsection (a) of this section within 30 days after any change in such required information regardless of whether the information provided to the registry was in the deed under power of sale or deed in lieu of foreclosure.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-414. - Foreclosed and vacant real property exemptions.

- (a) Registration or payment of any administrative fees of foreclosed real property pursuant to this article and Georgia law is not required of transferees as described in subsection (b) of this section.
- (b) Any transferee who acquires any real property by foreclosure under power of sale pursuant to O.C.G.A. § 44-14-160 or acquires any real property pursuant to a deed in lieu of foreclosure and:
 - (1) The deed under power of sale or deed in lieu of foreclosure, to such transferee, contains the information specified in subsection (a) of this section;
 - (2) The deed, to such transferee, is filed with the Clerk of the Superior Court of White County, Georgia within 60 days of the transfer; and
 - (3) Proof of the following is provided to the office or the officer in charge of the city foreclosed real property registry:
 - a. A filing date stamp or receipt showing payment of the applicable filing fees for said filing instrument to said clerk's office; and
 - b. A true and correct copy of the deed under power of sale or entire deed in lieu of foreclosure.
- (c) *City exemptions.* Any owner or authorized agent, which has vacant or foreclosed property within the city's water and sewer service area, that holds an active utility account with the City of Cleveland Utility Department for water and/or sewer services will not be required to register the property under this ordinance as long as all information is current with the account. An active utility account is an utility account that is billed monthly for water and/or sewer charges, payable to the City of Cleveland.
- (d) Any owner or agent required to register any vacant or foreclosed real property pursuant to this article or to Georgia law shall also be required to update the information specified in subsection (a) of this section within 30 days after any change in such required information regardless of whether the information provided to the registry was in the deed under power of sale or deed in lieu of foreclosure.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-415. - Removal from registry.

- (a) Any owner or agent of a vacant or foreclosed real property may apply to the city to remove a vacant or foreclosed real property from the city registry at such time as the real property no longer constitutes a vacant or foreclosed real property.
- (b) Any application for removal allowed under subsection (a) of this section shall be granted or denied, in writing, person designated by the Mayor and Council of the City of Cleveland, within 30 days, and if no such determination is made within 30 days then the application for removal from the registry shall be deemed granted. Removal of a property from the registry shall not bar such property from being again placed on the registry if such property fails to conform with the requirements of this article.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-416. - Administrative fees.

Any owner or agent of a vacant or foreclosed real property which is required to be registered with the city under this article shall be required to make a payment for administrative fees that reasonably approximate the cost to the city of the establishment, maintenance, operation, and administration, including but not limited to code enforcement, of the registry. A fee of \$50.00 is required for each registration for the cost of the establishment, maintenance, operation and administration, including but not limited to code enforcement. Such fee amount shall be set via resolution of the city council.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-417. - Appeal procedures.

- (a) Any owner or agent aggrieved of any determination or decision of the person designated by the city pursuant to section 36-413 hereof, or the city, in the administration of this article may appeal to the municipal court of the city. All appeals hereunder must be taken within 30 days of the decision in question by filing with the such person designated pursuant to section 36-413 hereof a notice of appeal specifying the grounds thereof.
- (b) The person designated pursuant to section 36-413 hereof shall forthwith transmit to the notice of appeal and all the papers constituting the record upon which the action appealed was taken to the municipal court clerk who shall schedule an appeal hearing within 60 days following the date the appealing party submits its completed written appeal with subsection (a) above.
- (c) The municipal court judge may call for further information to be provided within the next 35 days following the hearing, and may continue the hearing for the purpose of receiving such information or for such other proceedings and reasons as the municipal court judge deems appropriate.
- (d) An appeal shall stay all proceedings in furtherance of the action appealed from unless the person designated pursuant to section 36-413 hereof certifies to the municipal court, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed except by order of the municipal court judge on notice to the person designated pursuant to section 36-413 hereof, and on due cause shown.
- (e) The municipal court judge may, in conformity with the provisions of this article, reverse or affirm, in whole or in part, or modify the decision, requirement, or determination of the person designated pursuant to section 36-413 hereof appealed from by the owner or agent and may make such decision, requirement, or determination, as may be appropriate under the circumstances.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-418. - Administration.

- (a) The foreclosure and vacant real property registry is subject to the Open Records Act of the State of Georgia and the city may make such registry information available online.
- (b) Registration information shall be deemed prima facie proof of the statements contained therein in any court proceeding or administrative enforcement proceeding in connection with the enforcement of this chapter.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-419. - Nuisances.

Nothing in this article shall be construed to impair, limit, or preempt in any way the power of the city to enforce any applicable provisions of the ordinances and Municipal Code of the City of Cleveland, or any provisions of state or federal law enforceable by said city, or to impair, limit or preempt in any way the power of the city to define or declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(Ord. No. 2012-09, § 1, 8-6-2012)

Sec. 36-420. - Penalties.

Any owner or agent required to register a vacant or foreclosed real property under this article who fails to register or fails to update the information specified in section 36-413(a) of this article, registration of vacant or foreclosed property, may be fined up to the maximum allowed under state law, \$1,000.00 per occurrence.

(Ord. No. 2012-09, § 1, 8-6-2012)