

City of Lowell
Vacant and Foreclosing Properties Ordinance
Chapter 227 Sections 7-16
Planned Revisions

The Department of Planning and Development is working on the following revisions to the City of Lowell's existing Vacant and Foreclosure Properties Ordinance, Chapter 227 Sections 7-16 of the Lowell's Code of Ordinances. The original Ordinance was modeled after the City of Boston's and was enacted in July 2008.

In general the changes are meant to enhance compliance and responsible property management by foreclosing lenders and absentee owners by refining requirements and enhancing penalties for failure to comply.

Remove Unintended Penalties for Homeowners

Refine the registration requirement such as to shift the foreclosing property registration requirements to the lender. This will remove the unintended penalty left to homeowners able to workout the mortgage, when the lender failed to register during the foreclosing process and give the enforcing division the opportunity to dismiss or abate failure to register fines if the owner can prove the property is no longer subject to foreclosure.

Clarify and Expand Applicability to Vacant Properties Not Resulting from Foreclosure

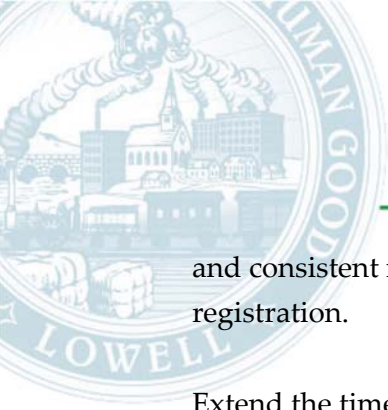
Properties may be vacant for a number of reasons including tenant turnover, preparation for sale, and foreclosure action. Currently the registration requirement is applicable to any property that is vacant, regardless of reason, for one or more days, if code violations are identified at the property.

Establish requirements for registration of all vacant properties if not legally occupied in the past 90 days, regardless of whether code violations are identified or not. The duration of time is sufficient to address conditions such as tenant turnover, while ensuring the City is aware of vacant properties before they become problem properties.

Improve Enforceability

Registration is currently required within seven days of notice to owners that foreclosing may be pursued. This is challenging to discover, and is typically the step in the process that initiates workout negotiations and halt foreclosure proceedings.

To address this, require registration when foreclosure action begins in Land or Superior Court, not when the owner is notified of delinquent payments. The court action is publically available, often begins with recording of a Notice of Intent at the Registry of Deeds and serves as a reliable



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and consistent manner from which to identify violations and compel compliance with registration.

Extend the timeline for registration to thirty days to allow sufficient time for workouts and negotiations between homeowners and lenders.

Advertising Foreclosure

Eliminate the posting requirement when the property is legally occupied. Homeowners and tenants required to put a sign on their front window indicating the owners are delinquent on mortgage payments is an unintended consequence and does not directly support compliance with minimum maintenance and management.

Enhance the Effectiveness and Responsive of Property Management

The City requires a local property manager be identified with registration; however the Ordinance does not currently set requirements for responsiveness, which is the key to property maintenance.

The City is finding larger banks already have a mechanism and at times more responsive management systems through central dispatching operations rather than identifying and contracting with “local” managers. These operations include 24-hour staffed phone banks with persons authorized and capable of dispatching immediate local response to inspect, secure, maintain and/or repair the property.

Make use of this by revising the property manager requirements to allow the primary contact for property management be outside of the 20-mile radius, provided it is staffed 24-hours per day with persons authorized to effect response to inspect, secure, maintain or repair within the timeframes recommended above.

Add a minimum response-time requirement for the property manager and adjust the property manager violation to address said responsiveness. Minimum response-time requirements to City initiated contact will be 24 hours if contacted by phone and seven days of receipt if contacted in writing. The fine for failure to respond in accordance with the requirements will be \$300 per offense.

ARTICLE II Vacant and Foreclosing Property (§ 227-7 — § 227-16)

[Adopted 7-8-2008 (§§ 5-121 to 5-131 of the 1988 Code)]

§ 227-7 Purpose.**A.**

It is the intent of this article to protect and preserve public safety, security, and quiet enjoyment of occupants, abutters, and neighborhoods by:

(1)

Requiring all residential, commercial, and industrial property owners, including lenders, trustees, and service companies, to properly maintain vacant and/or foreclosing properties; and

(2)

Regulating the maintenance of vacant and/or foreclosing residential, commercial, and industrial properties to prevent blighted and unsecured properties.

B.

The Building Commissioner, pursuant to MGL c. 143, § 3, the State Building Code, and the City of Lowell Zoning Ordinance, is hereby designated as the enforcement authority.

§ 227-8 Definitions.

When used in this article, unless a contrary intention clearly appears, the following terms shall have the following meanings:

CITY

City of Lowell.

COMMISSIONER

Building Commissioner.

DAYS

Consecutive calendar days.

FORECLOSING

The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

INITIATION OF THE FORECLOSURE PROCESS

Taking any of the following actions:

A.

Taking possession of a residential, commercial, or industrial property pursuant to MGL c. 244, § 1;

B.

Delivering the mortgagee's notice of intention to foreclose to the borrower pursuant to MGL c. 244, § 17B; or

C.

Commencing a foreclosure action on a property in either the Land Court or Middlesex Superior Court.

LOCAL

Within 20 driving miles of the property in question.

MORTGAGEE

The creditor, including but not limited to service companies, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests, or obligations under the mortgage agreement.

OWNER

Every person, entity, service company, property manager or real estate broker who alone or severally with others has legal or equitable title to any property or has care, charge or control of any property in any capacity, including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or is a mortgagee in possession of any such property; or is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he/she were the owner. However, this article shall not apply to a condominium association created pursuant to MGL c. 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association. "Owner" also means every person who operates a rooming house or is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process.

PROPERTY

Any real residential, commercial, or industrial property, or portion thereof, located in the City of Lowell, including buildings or structures situated on the property. For purposes of this article, "property" does not include property owned or subject to the control of the City or any of its governmental bodies.

SECURING

Measures that assist in making the property inaccessible to unauthorized persons.

VACANT

Any property not currently legally occupied.

§ 227-9 Registration of property; notice of foreclosure.

A.

All owners shall register vacant and/or foreclosing residential, commercial, or industrial properties with the Building Commissioner on forms provided by the Commissioner. All registrations must state the owner's or agent's phone number and mailing address. The mailing address may not be a post office box. This registration must also certify that the property was inspected by the owner or agent and identify whether the property is vacant at the time of filing. If the property is vacant, the owner or agent shall designate and retain a local individual or local property management company responsible for securing and maintaining the property. This designation shall state the individual's or company's name, phone number, and local mailing address. The mailing address may not be a post office box. If the property is in the process of foreclosure, then the registration shall be filed within seven days of the initiation of the foreclosure process as defined in § [227-8](#) above. If the Commissioner determines that the property is vacant and that foreclosure proceedings have not been initiated, the registration must be received within 14 days of the Commissioner's first citation for improper maintenance.

B.

All property registrations are valid for one calendar year. An annual registration fee as provided in Chapter [150](#), Fees, shall accompany the registration form. Subsequent annual registrations and fees are due at least 30 days prior to the expiration of the previous registration and must certify whether the foreclosing and/or foreclosed property remains vacant.

[Amended 12-23-2008]

C.

Once the property is no longer vacant or is sold, the owner must provide proof of sale or written notice and proof of occupancy to the Building Commissioner.

§ 227-10 Maintenance requirements.

A.

Properties subject to this article shall be maintained in accordance with the relevant sanitary codes, building codes, and local regulations concerning external and/or visible maintenance. The owner, local individual or local property management company shall inspect and maintain the property on a monthly basis for the duration of the vacancy.

B.

The name and twenty-four-hour contact phone number of the local individual or property management company responsible for maintenance shall be affixed to the property. This sign shall be posted on the front of the property so it is clearly visible from the street. The Building Commissioner may, in his discretion, waive the posting requirement contained in this § [227-10](#), but only if:

[Amended 12-15-2009]

(1)

The property which is the subject of the foreclosure is occupied as a residential property.

(2)

The property owner, foreclosing mortgagee, or the lawful representative of either serves a written request upon the Building Commissioner to waive the posting. Such written request shall be made at the time the registration requirements under this article are otherwise being performed and shall specifically state the reason(s) for which the waiver is requested.

(3)

The requesting party has complied with all provisions of the article to which the property is otherwise subject.

(4)

The waiver, if granted by the Building Commissioner, shall be only for the period of time between the initiation of the foreclosure process as defined in this article and the completion of the foreclosure process by sale or otherwise.

(5)

In the event that the property which is the subject of the foreclosure proceeding is vacant at the initiation of foreclosure, as defined herein, or the property has become lender-owned as a result of the foreclosure proceeding, the posting requirements contained herein shall not be waived by the Building Commissioner.

C.

Adherence to this article does not relieve the owner of any applicable obligations set forth in City ordinances or regulations, covenant conditions and restrictions, and/or homeowners' association rules and regulations.

§ 227-11 Inspections.

The Commissioner or designee shall have the authority and the duty to inspect properties subject to this article for compliance and to issue citations for any violations. The Commissioner or designee shall have the discretion to determine when and how such inspections are to be made, provided that such policies are reasonably calculated to ensure that this article is enforced.

§ 227-12 Violations and penalties.A.

Failure to register with the Commissioner shall be considered a violation of this article and is punishable by a fine of up to \$300. Each week that such violation continues shall be considered a separate offense.

B.

Failure to identify the local individual or local property management company shall be considered a violation of this article and is punishable by a fine of up to \$300. Each week that such violation continues shall be considered

a separate offense.

C.

Failure to maintain the property shall be considered a violation of this article and is punishable by a fine of up to \$300. Each week that such violation continues shall be considered a separate offense. Any expenses incurred by the City of Lowell relative to securing or maintaining property shall be recoverable by placing a lien on the property.

§ 227-13 **Appeal.**

Any person aggrieved by the requirements of this article may seek an administrative appeal by making written application to the City Manager. The City Manager may designate a hearing officer to hear appeals pursuant to this article. Any person aggrieved by a final decision issued under this article by the City Manager may seek relief in any court of competent jurisdiction as provided by the laws of the commonwealth.

§ 227-14 **Applicability.**

If any provision of this article imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, bylaw, order, or policy then the provisions of this article control.

§ 227-15 **Regulatory authority.**

The Building Commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this article.

§ 227-16 **Implementation.**

The provisions of this article are effective immediately upon passage and all provisions shall be enforced immediately, but no monetary fine shall be imposed pursuant hereto until 90 days after passage.