

ORDINANCE NO. 2019-02

AN ORDINANCE OF WELLINGTON, FLORIDA’S COUNCIL AMENDING CERTAIN SECTIONS OF CHAPTER 72 OF THE CODE OF ORDINANCES ENTITLED “MORTGAGED REAL PROPERTY REGISTRATION” TO PROVIDE AN EXEMPTION TO THOSE ENTITIES IDENTIFIED IN 12 U.S.C. §4617(a)(7); PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the mortgage foreclosure crisis has serious negative implications for all communities trying to manage the resulting properties, increases in crime, homelessness, and other problems that stem from family financial crisis; and

WHEREAS, Wellington has determined local codes must be adopted to mitigate the negative impact of foreclosures; and

WHEREAS, foreclosed homes quickly become nuisances, grass and weeds grow, swimming pools become stagnant and create public health hazards, landscaping either dies or grows out of control, windows are broken, and exteriors suffer damage from normal wear-and-tear and vandalism, thus resulting in loss of property value on neighboring residences then on neighborhoods, and ultimately the entire community; and

WHEREAS, property maintenance codes to regulate community standards for the interior and exterior condition of structures have been adopted; and

WHEREAS, registration requires the personal contact information of the owner or other responsible party who may be personally liable for any violation of codes when such person is or was the person owning or managing, controlling, or acting as agent in regard to buildings or premises; and

WHEREAS, most mortgages contain clauses allowing mortgagees to enter onto the mortgaged property and prevent waste and correct or abate nuisances; and

WHEREAS, in the absence of the owner of the property, it is appropriate for Wellington to expect and demand the mortgagee exercise their powers and be responsible to inspect and maintain the mortgaged property if it is abandoned or vacant while the owner is in default on the mortgage; and

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

WHEREAS, Wellington finds that the mortgagee's registration of property subject

1 to a mortgage which is in default will establish a contact person for Wellington to address
2 concerns regarding the maintenance and security of the property; and
3

4 **WHEREAS**, Wellington finds that it is in the public interest to address safety and
5 aesthetic concerns and the economic order of Wellington to assure that property subject
6 to a mortgage in default or foreclosure will continue to be maintained and secured and
7 that blight will not occur.
8

9 **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE**
10 **VILLAGE OF WELLINGTON, FLORIDA:**
11

12 **SECTION 1:** The above recitals are true and correct and by this reference are
13 incorporated herein and made an integral part hereof.
14

15 **SECTION 2:** The Code of Ordinances of Wellington, Florida, is hereby amended
16 by enacting a new Chapter 72 "Mortgaged Real Property Registration" to read as follows:
17

18 **CHAPTER 72**

19 **MORTGAGE REAL PROPERTY REGISTRATION**

20
21
22 Sec. 72-1. - Purpose and intent.
23

24 It is the purpose and intent of this chapter to establish a process to mitigate the
25 number of deteriorating properties located within Wellington for which a public notice of
26 default or lis pendens has been filed, is in foreclosure, or where ownership has been
27 transferred to a lender or mortgagee by any legal method. It is further intended to establish
28 a registration program as a mechanism to protect neighborhoods from becoming blighted
29 through the lack of adequate maintenance of properties subject to mortgages that are in
30 default.
31

32 Sec. 72-2. - Definitions.
33

34 The following words, terms and phrases, when used in this chapter, shall have the
35 meanings ascribed to them, except where the context clearly indicates a different
36 meaning. Where the context will permit and no definitions are provided herein, the
37 definitions provided in the Florida Building Code shall apply.
38

39 *Accessible property* means a property that is accessible through a
40 compromised/breached gate, fence, wall, etc.
41

42 *Accessible structure* means a structure/building that is unsecured and/or breached in
43 such a way as to allow access to the interior space by unauthorized persons.
44

1 *Default* means that the mortgagee files a public notice of default on the mortgage. A
2 mortgage shall be considered in default at such time as the mortgagee declares said
3 mortgage to be in default, by recording a lis pendens.

4
5 *Enforcement officer* means any fulltime law enforcement officer, building official, fire
6 inspector or code enforcement officer employed by, contracted for, or servicing
7 Wellington.

8
9 *Evidence of vacancy* means any condition that on its own, or combined with other
10 conditions present would lead a reasonable person to believe that the property is vacant.
11 Such conditions may include, but not be limited to, overgrown and/or dead vegetation,
12 electricity, water or other utilities turned off, stagnant swimming pool, statements by
13 neighbors, passers-by, delivery agents or government agents, among other evidence.

14
15 *Foreclosure* means the judicial process by which a property, placed as security for a
16 mortgage loan, after a judicial process, is to be sold at an auction to satisfy a debt upon
17 which the borrower has defaulted.

18
19 *Local property manager* means an individual property manager, property
20 management company, property maintenance company or similar entity located within
21 Palm Beach County, designated by the owner or mortgagee which is responsible for the
22 maintenance of abandoned real property.

23
24 *Mortgagee* means any party holding a mortgage interest regardless of their priority.

25
26 *Public property* means canals, all waterways, lands and improvements owned by a
27 governmental body or any governmental agency including but not limited to easements
28 and rights-of-way, but excluding the campus of any institution of the state university
29 system.

30
31 *Residential building* means any improved real property or portion thereof, situated in
32 the city, designed or permitted to be used for dwelling purposes, and shall include the
33 buildings and structures located on such improved real property.

34
35 *Vacant* means any building or structure that is not lawfully occupied or inhabited by
36 human beings.

37
38 Sec. 72-3. - Applicability.

39
40 This chapter relates to property subject to a mortgage that has been determined by
41 the mortgagee to be in default. This chapter shall be considered cumulative and is not
42 superseding or subject to any other law or provision for same, but shall rather be an
43 additional remedy available to Wellington above and beyond any other state, county
44 and/or local provisions for same.

1
2
3 Sec. 72-4. - Penalties.
4

5 Unless exempted by 12 U.S.C. §4617(a)(7), any person who shall violate the
6 provisions of this chapter shall, upon conviction, be punished as provided in Section 1-12
7 of Wellington's Code of Ordinances, as applicable. In addition, any violation of this section
8 may be enforced by Wellington's Special Master as provided in Chapter 2, Article IV, of
9 Wellington's Code of Ordinances.
10

11 Sec. 72-5. - Registration of real property mortgagee holding mortgages in default.
12

- 13 (a) Any mortgagee who holds a mortgage on real property located within Wellington shall
14 within ten days of a recording of lis pendens by the mortgagee, register the property
15 with Wellington.
16
- 17 (b) Registration pursuant to this section shall contain at a minimum the name of the
18 mortgagee, the mailing address of the mortgagee, e-mail address, and telephone
19 number and name of the local property manager and said person's address, e-mail
20 address, and telephone number. The local property manager shall be responsible to
21 inspect, secure and maintain the property. The property manager named in the
22 registration shall be located within Palm Beach County and available to be contacted
23 by Wellington, Monday through Friday between 9:00 a.m. and 5:00p.m., holidays and
24 lunch hours excepted.
25
- 26 (c) The village council shall establish, by resolution, fees for the registration and re-
27 registration requirements required by this article. Except as provided by 12 U.S.C.
28 §4617(a)(7), said fees shall be based on the reasonable estimated cost of
29 administering the provisions of this article and shall be due and payable at the time
30 of registration or re-registration. The fee schedule may be based on the size and type
31 of property being registered. The registration shall be renewed 12 months from the
32 initial registration date annually. Wellington may assign and delegate the collection of
33 such fee to an independent contractor, as noted on the registration form.
34
- 35 (d) Any person or other legal entity that has registered a property under this chapter must
36 report any change of information contained in the registration within ten days of the
37 change.
38
- 39 (f) Inspections and obligations of properties subject to this section shall remain in place
40 so long as the mortgagee is involved in a foreclosure action. At such time that a
41 foreclosure action is completed the mortgagee shall notify Wellington or its designee
42 of the new owner's name and mailing address.
43
- 44 (g) Failure of the mortgagee and/or property owner of record to properly register or to
45 revise from time to time the registration to reflect a change of circumstances as
46 required by this chapter is a violation of the Codes of Wellington and may result in a

1 citation by the Code Compliance Division. Pursuant to a finding and determination by
2 the special master that any property is in violation of Wellington's ordinances,
3 Wellington may take the necessary action to ensure compliance with its ordinance.
4 Except as provided by 12 U.S.C. §4617(a)(7), such steps may include placing a
5 lien(s) on the property for the cost of the work performed to benefit the property and
6 to bring it into compliance, which lien may be assigned to either the entity that
7 performs the work or arranges to have the work performed.
8

9 Sec. 72-6. - Maintenance requirements.
10

11 Any mortgagee who holds a mortgage on real property located within Wellington and
12 subject to this chapter shall take all reasonable actions including to obtain permission
13 from the Courts, if necessary, to secure and maintain properties as outlined in sections
14 72-6 and 72-7:
15

- 16 (a) Properties subject to this chapter shall be kept free of weeds, overgrown brush,
17 dead vegetation, trash, junk, debris, building materials, any accumulation of
18 newspapers, circulars, flyers, notices, except those required by federal, state, or
19 local law, discarded personal items including, but not limited to, furniture, clothing,
20 large and small appliances, or any other items that give the appearance that the
21 property is abandoned or not being properly maintained. Weeds, overgrown
22 brush or dead vegetation over the height limitations imposed by Wellington's
23 Codes are prohibited.
24
- 25 (b) The property shall be maintained free of graffiti or similar markings by removal or
26 painting over with an exterior grade paint that matches the color of the exterior
27 structure. Yards shall be landscaped and maintained pursuant to the standards
28 set forth in the Code. Landscaping shall include, but not be limited to, grass,
29 ground cover, bushes, shrubs, hedges or similar plantings, decorative rock or
30 bark or artificial turf/sod designed specifically for residential, commercial or
31 industrial installation, as applicable. Landscaping shall not include weeds, gravel,
32 broken concrete, asphalt or similar material.
33
- 34 (c) Maintenance shall include, but not be limited to, watering, irrigation, cutting and
35 mowing of required landscape and removal of all trimmings and weeds.
36
- 37 (d) Pools and spas shall be kept in working order so that pool and spa water remains
38 free and clear of pollutants and debris. Pools and spas shall comply with the
39 enclosure requirements of Wellington's Codes and the Florida Building Code.
40
- 41 (e) Failure of the mortgagee and/or property owner of record to properly maintain the
42 property is a violation of the Code of Ordinances of Wellington and may result in
43 the issuance of a citation by the Code Compliance Division. Pursuant to a finding
44 and determination by the special master, Wellington may take the necessary
45 action to ensure compliance with its ordinances and place a lien(s) on the

property and, except as provided in 12 U.S.C. §4617(a)(7), may assign it as provided herein.

Sec. 72-7. - Security requirements.

- (a) Properties subject to this chapter 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 reglazing or boarding.
- (c) If a mortgage on the property is in default on the property and 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 Code of Ordinances and the local property manager must perform bi-weekly inspections to verify compliance with the requirements of this section, and any other applicable laws or codes of Wellington.
- (d) When the property becomes vacant or abandoned, it shall be posted with the name and 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:

THIS PROPERTY IS MANAGED BY (Name of Local Property Manager). TO REPORT PROBLEMS OR CONCERNS CALL (Telephone number of Local Property Manager).
- (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 posing in a location that is at all times visual 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) The local property manager shall inspect the property on a bi-weekly basis to ensure that the property is in compliance with this section. Upon the request of Wellington, or its authorized representative, the local property manager shall provide a copy of the inspection reports to the Code Compliance Division.
- (g) 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 chapter and shall result in the issuance of a notice of violation by

1 a code compliance officer. Pursuant to a finding and determination by a special
2 master, Wellington may take the necessary action to ensure compliance with this
3 section, and except as provided in 12 U.S.C. §4617(a)(7), may place a lien(s) on
4 the property and assign it as provided herein.
5

6 Sec. 72-8. - Additional authority.
7

8 Wellington's Code Compliance Manager, designee, or Wellington's authorized
9 representative shall have authority to require the mortgagee and/or owner of record of
10 any property affected by this section, to implement additional maintenance and/or security
11 measures including, but not limited to, securing any and all door, window or other
12 openings, employment of an on-site security guard, or other measures as may be
13 reasonably required to help prevent further decline of the property.
14

15 Sec. 72-9. - Adoption of rules; expenditure of funds; declaration of municipal purpose.
16

17 The manager, consistent with his/her assigned duties and authorities under the
18 Charter, including those duties and authorities relating to emergency situations, is
19 authorized and empowered to adopt rules and regulations and expend Wellington funds
20 as may be reasonably necessary and available to carry out the terms of this section, the
21 expenditure of such funds being declared a proper municipal purpose.
22

23 Sec. 72-10. - Supplemental provisions.
24

25 Nothing contained in this chapter shall prohibit Wellington from enforcing its codes by
26 any other means, including, but not limited to, injunction, abatement or as otherwise
27 provided by Code.
28

29 **SECTION 3.** Should any section, paragraph, sentence, clause, or phrase of this
30 Ordinance conflict with any section, paragraph, clause or phrase of any prior Wellington
31 Ordinance, Resolution, or Municipal Code provision; then in that event the provisions of
32 this Ordinance shall prevail to the extent of such conflict.
33

34 **SECTION 4:** Should any section, paragraph, sentence, clause, or phrase of this
35 Ordinance be declared by a court of competent jurisdiction to be invalid, such decision
36 shall not affect the validity of this Ordinance as a whole as a whole or any portion or part
37 thereof, other than the part so declared to be invalid.
38

39 **SECTION 5:** This Ordinance shall become effective immediately upon adoption of
40 the Wellington Council following second reading.
41

42
43 (The remainder of this page left intentionally blank.)
44
45
46
47

PASSED this _____ day of _____, 20____ upon first reading.

PASSED AND ADOPTED this _____ day of _____, 20____ on second and final reading.

WELLINGTON

	FOR	AGAINST
BY: _____ Anne Gerwig, Mayor	_____	_____
_____ Michael Drahos, Vice Mayor	_____	_____
_____ John McGovern, Councilman	_____	_____
_____ Michael Napoleone, Councilman	_____	_____
_____ Tanya Siskind, Councilwoman	_____	_____

ATTEST:

BY: _____
Chevelle D. Nubin, Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____
Laurie S. Cohen, Village Attorney