

## Appendix D– Model Foreclosure Ordinance

The model foreclosure ordinance, drafted by the Georgia Municipal Association, is in the following pages.



*This model vacant and foreclosed real property ordinance is provided only for general informational purposes and to assist Georgia cities in identifying issues to address in a local vacant and foreclosed real property ordinance. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this model. This model ordinance has been developed to help cities protect property values within the city and to protect the health, safety and welfare of the citizens of the city. This model ordinance is specifically allowed by the provisions of O.C.G.A. § 44-14-14.*

## **Model Foreclosure and Vacant Real Property Registry Ordinance**

### **ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE BY THE MAYOR AND CITY COUNCIL FOR THE CITY OF \_\_\_\_\_ RELATING TO MORTGAGES, CONVEYANCES TO SECURE DEBT, AND LIENS; TO PROVIDE FOR VACANT AND FORECLOSED PROPERTY REGISTRIES; TO PROVIDE FOR DEFINITIONS; TO PROVIDE FOR GUIDELINES FOR VACANT AND FORECLOSED PROPERTY REGISTRIES; TO PROVIDE FOR EXEMPTIONS; TO PROVIDE FOR MAXIMUM FEES AND PENALITIES FOR REGISTRATION AND FAILURE TO REGISTER; TO PROVIDE FOR APPELLATE RIGHTS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

#### SECTION ONE

Chapter \_\_\_\_\_ of the Municipal Code of the City of \_\_\_\_\_ is amended by adding a new Article, to be numbered Article \_\_\_\_\_, which shall include the following language:

Article \_\_\_\_\_

Sec. \_\_\_\_\_. Short Title.

This Article shall be known as the “\_\_\_\_\_ Vacant and Foreclosed Property Ordinance.”

Sec. \_\_\_\_\_. Findings and Intent.

This ordinance is adopted to address the interest of public safety.

- (a) The governing authority finds that there is a need to establish a foreclosure and vacant real property as a mechanism to protect property values in neighborhoods for all property owners.
- (b) 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.

- (c) Improperly maintained and secured foreclosed properties can become a hazard to the health and safety of persons who may come on or near the property 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.
- (d) 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 \_\_\_\_\_, Georgia.

Sec. \_\_\_\_\_. Definitions.

- (a) 'Agent' means an individual with a place of business in this state in which he or she 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 Official Code of Georgia Annotated, Section 44-14-14 should that definition differ from the definition in this Article.
- (b) 'Foreclosed real property' means improved or unimproved real property for which a land disturbance permit has been issued by a county or municipal corporation and is held pursuant to a judicial or nonjudicial 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 the Official Code of Georgia Annotated, Section 44-14-14, should that definition differ.
- (c) 'Street address' means the 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 the Official Code of Georgia Annotated, Section 44-14-14 should that definition differ from the definition in this Article.
- (d) 'Vacant Real Property' means real property that:
- (1) Is intended for habitation, has not been lawfully 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 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 the Official Code of Georgia Annotated, Section 44-14-14 should that definition differ from the definition in this Article.

Sec. \_\_\_\_\_. Registration of Vacant or Foreclosed Property.

- (a) Owner or agents of foreclosed real property or vacant real property, including foreclosed real property and vacant real property which is also residential rental property, are required to register such property with the (name specifically identified officer or office) within thirty (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 (name specifically identified officer or office) a registration form in (paper/electronic format). If the Georgia Department of Community Affairs has promulgated a standard vacant or foreclosed real property registry form the owner or agent shall use such form and the city shall only require use of such form. If the Georgia Department of Community Affairs has not promulgated such form the city may create its own form, but 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 tax parcel number;
  - (4) The transfer date of the instrument conveying the real property to the owner; and
  - (5) At such time as it becomes available, recording information, including 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:
- (1) Pursuant to a 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 the Official Code of Georgia Annotated, Section 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 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.

Sec. \_\_\_\_\_. 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 the Official Code of Georgia Annotated, Section 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 contains the information specified in subsection (a) of this section;
  - (2) The deed is filed with the clerk of the superior court 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; and
    - (B) The entire deed under power of sale or entire deed in lieu of foreclosure.
- (c) **(State law, in O.C.G.A. § 44-14-14(l) allows the city to provide for further “exemptions from such registration” as those required by state law in this model ordinance. Since any exemptions a city may consider will vary from municipality to municipality no sample is provided for this subsection. However, cities are reminded to take into account constitutional considerations before implementing exemptions to make sure the exemption does not illegally give one group or class an advantage that other similarly situated groups or classes are not given. Any proposed exemption should be reviewed by the city attorney.)**
- (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.

Sec. \_\_\_\_\_. 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 by the **(name a specifically identified officer or office)** 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.

Sec. \_\_\_\_\_. 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 of the registry. Such fees shall not exceed **(\$100.00 per registration is the maximum allowed under**

**the state law. Alternatively, the city may choose to impose such fees via resolution and state “Such fee amount shall be set via resolution of the city council.”**

Sec. \_\_\_\_\_. Appeal Procedures.

- (a) Any owner or agent aggrieved of any determination or decision of the **(name specifically identified officer or office)** 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 thirty (30) days of the decision in question by filing with the **(name specifically identified officer or office)** a notice of appeal specifying the grounds thereof.
- (b) The **(name specifically identified officer or office)** 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 sixty (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 thirty-five (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 **(name specifically identified officer or office)** 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 **(name specifically identified officer or office)**, 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 **(name specifically identified officer or office)** appealed from by the owner or agent and may make such decision, requirement, or determination, as may be appropriate under the circumstances.

Sec. \_\_\_\_\_. 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.

Sec. \_\_\_\_\_. 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 codes, as defined in state law, or to define or declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. \_\_\_\_\_. 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 subsection (a), of Section \_\_\_\_\_, of this Article, Registration of Vacant or Foreclosed Property, may be fined up to **(The maximum allowed under state law is \$1,000.00 per occurrence)** per occurrence.

SECTION TWO

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION THREE

If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION FOUR

This ordinance shall become effective immediately upon its adoption by the City Council.

SO ORDAINED, this \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Mayor  
City of \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of Council