#### Foreclosure Limbo, Chapter 7 Bankruptcy and the False Fresh Start

Lou Jones Breakfast Club 3/9/2010

#### Problem:

On December 15, 2007 John and Mary Debtor came to the "fix all problems" law firm. John and Mary have fallen behind on real estate taxes owed to the municipality on both duplexes they own. They have not paid the mortgages for five months. The debtors live in the lower of Duplex 1 and an unemployed friend lives upstairs. Duplex 2 has angry tenants that have stopped paying rent and have called the building inspector to complain about ongoing plumbing issues.

Assume the debtors have no equity in the duplexes and are insolvent. Debtors want to file for bankruptcy and obtain a fresh start. The building inspector has issued notice to John and Mary to correct several deficiencies reported by the current tenant at Duplex 2.

On January 14, 2008 John and Mary file chapter 7 bankruptcy and subsequently receive a discharge. John and Mary list the city as a creditor for property taxes. On March 27, 2008 the mortgage lender obtained relief from the stay and abandonment and commenced a foreclosure of both duplexes. Lender received a default judgment of foreclosure in August 25, 2008, with a 6 month period of redemption. The lender has not noticed the properties for sale.

John and Mary have not paid 2006,2007, 2008, 2009 real estate taxes. On February 3, 2010, the city's collection attorney started an in personam action in state court to obtain money judgment and the right to garnish John's wages and intercept income tax refunds for outstanding back property taxes for 2006-2008. The city previously obtained a money judgment against John and Mary for building code violations.

- 1. Relevant Statutory Provisions relating to residential real estate and chapter 7 bankruptcy:
  - A. Exceptions from discharge.

#### Title 11 U.S.C. § 523

- (a) A discharge under section
- 1. 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—
- (1) for a tax or a customs duty—
- (A) of the kind and for the periods specified in section 507 (a)(3) or 507 (a)(8) of this title, whether or not a claim for such tax was filed or allowed

### Title 11 U.S.C. §507(a)(8) provides, in relevant part, that

1. (a) The following expenses and claims have priority in the following order:

. . . . .

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for —

. . . . .

**(B)** a property tax assessed before the case and last payable without penalty after one year before the date of the filing of the petition.

## B. In personam Tax Liability

- 74.53 Personal liability for delinquent taxes and other costs. (1) Recovery of TAXES AND COSTS AGAINST PERSONS. Except as provided in subs. (3) and (5), a county or a municipality may bring a civil action against a person to recover any of the following amounts that are included in the tax roll for collection and any of the amounts under pars. (b) and (c) that are not included in the tax roll for collection:
- (a) Delinquent real property taxes, special charges, special assessments and special taxes, not including amounts under pars. (b) and (c), that were delinquent during the period that the person owned the property.
- (b) The cost of razing and removing property and restoring the site to a dust-free and erosion-free condition incurred under s. 66.0413 (1) (br) 2.. (f). (g) or (i). (2) (d) or (4) or of filling an excavation incurred under s. 66.0427 if the person owned the property when the property was razed and removed and the site restored or the excavation was filled, or if the person owned the property while the order to raze the property was recorded in the register of deeds office.
- 2. Did John and Mary discharge any property taxes? Answer: no- they could have discharged 2006 if they would have filed chapter 7 bankruptcy after February 1, 2008.
  - A. Petition date? January 14, 2008.
  - B. On the petition date, which property taxes were delinquent "after one year"?
    -property tax is levied each year on January 31st.
    -property tax is delinquent 366 days after levy (i.e. February 1st).
  - On January 14, 2008 the most recent "delinquent property tax year" was the 2006 tax year levied on January 31, 2007 which became "delinquent" on February 1, 2008. The debtor should have waited until February 2<sup>nd</sup> to file.
- 3. What could John and Mary have done to limit liability for building code violations?
  - A. Evict the tenants and board up the building, thereby restricting code violations to exterior of premises. The lost rent pales in comparison to building code violations.
  - B. Communicate with the city inspector and do the cheap manual labor themselves.
  - C. Monitor the premises for break-ins.
  - D. If the municipality offers it the property owners should sign up for free electronic notice of violations.

<sup>&</sup>lt;sup>1</sup>City has to have population of more than 500,000.

- 4. Does a local ordinance shift responsibility for residential building maintenance from the debtor to the lender?
  - A. City of Milwaukee Ordinance 200-22.5. Maintenance of Abandoned Residential Properties Pending Foreclosure, was passed January 2009 and requires registration of pending foreclosures on abandoned property within 30 days of filing of the foreclosure. Secondly, the ordinance requires the lender to pay for exterior maintenance and monitoring. The Ordinance does not relieve the titled owner of responsibility, but the City of Milwaukee, is attempting to hold the lender responsible for the exterior condition of vacant residential units.

## 5. Discussion topics.

- A. Could a chapter 7 debtor use 11 U.S.C. §362 (c)(4)(B) to request the court order the stay to take effect against a municipality to stay unnecessary penalties for non-compliance with pre-petition building code violation notices and thereby allow the debtor time to move for enforcement of a local ordinance requiring the lender to register and provide maintenance.
- B. Could a debtor answer a lender's motion for relief from stay with a consent to judgment of foreclosure and waiver of redemption period thereby eliminating costly state court delays. Could the debtor ask the court to order the lender to pay for boarding up the properties and force place insurance?
- C. Could a chapter 7 debtor move to absolutely assign or sell an interest in real estate in the bankruptcy court, thereby cutting off the ongoing liability of ownership? Would a 363 sale of the debtor's right, title and interest work?
- D. Could a bankruptcy court provide an order of surrender of all "right title and interest" which the debtor could provide to the municipal court as a defense to code violation proceedings on vacant buildings.
- E. Recommended web sites for home owners with delinquent mortgages.

  WHEDA Wisconsin Foreclosure Resource:

  http://www.wisconsinforeclosureresource.com/
  Homeownership Preservation Foundation:
  http://www.995hope.org/

# City of Milwaukee Maintenance of Abandoned Properties in Foreclosure Introduction

In January of 2009 the City of Milwaukee passed an ordinance regulating the maintenance of abandoned residential properties pending foreclosure and during foreclosure proceedings. The Department of Neighborhood (DNS) has established a process whereby parties with a mortgage lien interest in such properties are required to register the properties within 5 days after the properties are found to be abandoned. It is the responsibility of the lender to comply with the requirements of the ordinance.

The intent of this ordinance is to:

- 1. Reduce and prevent neighborhood blight
- 2. Correct conditions that threaten the health, safety and welfare of the public
- 3. Promote neighborhood stability and residential owner occupancy by preserving the condition and appearance of residential properties.
- 4. Maintain residential property values and assessments.

To view a Copy of the Ordinance click here -> Ordinance Section 200-22.5

# How the Public can help!

With the rapid onset of a foreclosure dramatic changes can happen on a property. The sudden disappearance of the occupants can destabilize the neighborhood. Neighbors can minimize this harm by helping to monitor the conditions around them. Early warning signs are the lack of lawn maintenance or snow shoveling, the buildup of mail or door flyers, the lack of window treatments or shades, etc. If you see windows knocked out, doors kicked in, or other signs of forcible entry, call DNS at 414-286-2268 with the address. You call can prevent further deterioration to the neighborhood and help protect your property value.

# What is required after the filing of foreclosure proceedings?

An inspection - The ordinance requires that a physical inspection of the property be made by the bank, lender or other financial institution, or its responsible agent or servicing company, within 30 days after the filing of foreclosure proceedings. One or more photographs shall be taken of the property, accurately portraying the condition of the exterior premises. Photographs shall be dated and preserved. Written records should be kept of any actions taken. Additional inspections are required at least once every 30 days thereafter until the property is no longer in default, or is sold at sheriff's sale, or is otherwise lawfully conveyed to a new owner.

# What is required when the inspection determines the property is abandoned?

Registration- If upon inspection the property is determined to be abandoned, the bank, lender, or other financial institution or its responsible agent or servicing company shall register the property with the Department of Neighborhood Services (DNS). Registration should be done within 5 days of finding the property to be abandoned. For the definition of "ABANDONED" click here-->Abandoned Definition. There is a \$35 fee for this registration. The information provided on the registration form will

allow DNS and other City departments to contact the lenders and/or their agents when action is required to secure, maintain and preserve the property.

To begin the registration, click here to jump to the bottom of the page.

#### What is required after the registration form is filed?

Ongoing Maintenance - The lender's responsibilities do not end with registration of the property. The ordinance requires ongoing maintenance throughout the foreclosure period. Maintenance includes, but is not limited to, assuring there are no accessible structures on the premises and assuring there are no conditions upon the property that present an immediate risk to the heath and safety of the public. This includes maintaining the public sidewalk free of snow and ice, cutting of overgrown vegetation (grass/trees), removal of nuisance trash, debris, vehicles, graffiti, etc.

#### REGISTRATION OF ABANDONED PROPERTY IN FORECLOSURE

Below are the links to documents and forms to complete the registration process. This registration is required within 5 days of the date the property is found to be abandoned. It is recommended that you read through the Instructions before you complete the registration form. When you have completed the form you will submit it to us via email. The follow applications utilize built-in instructions. Thus you will need Adobe's Acrobat Reader version 7.0.5 or higher. If you get a "Context Error" warning, go to the Adobe Web Site and download a free update. Click here->WWW.ADOBE.COM

Registration Form Instuctions - Detailed instructions for completing the registration form.

Abandoned Property Registration Form (DNS-20a).pdf - Form used to register abandoned property in foreclosure with DNS.

External Condition of Property form (DNS-20a1).pdf – Use this form if you need more space than what is provided in section 11 of the Registration form.

Action Plan Form (DNS-20a2).pdf - Use this form if you need more space than what is provided in section 13 of the Registration form.

Are you a bank now in sole ownership of a property following a foreclosure? Here are some step-bystep summaries of what you need to consider doing to keep your property in compliance with various DNS Code Enforcement programs. Step-By-Step help for Banks and Realtors.

Questions on the DNS APIF registration process? Call 414-286-3996.

# Other Help on Foreclosures Available

- Want help buying a foreclosed property?
- Want to find foreclosed property to buy in your neighborhood?
- · Are you a renter being forced out by a foreclosure in need of help?
- Are you at risk of losing your home to foreclosure?
- Are you living next to a problem foreclosed property and don't know who to call for help?

These and other helpful resourses are available at the City of Milwaukee's website on foreclosed property. Use your computer or visit any City of Milwaukee library to use a computer there and go to:

http://www.milwaukeehousinghelp.org/

Questions: E-mail nspinfo@milwaukee.gov

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withholding under this section shall be subject to a forfeiture of not less than \$100 nor more than \$2,000 whether the rental payments are tendered by or on behalf of the tenant occupying the premises at the time rent withholding is authorized or by, or on behalf of any subsequent or other tenant who occupies the premises during the existence of such rent withholding authorization. Each payment accepted shall constitute a separate violation.

b. Any tenant who willfully and maliciously uses or attempts to use this section to harass a lessor shall be subject to a forfeiture of not less than \$100 nor prore than \$2,000.

# 200-22.5. Maintenance of Abandoned Residential Properties Pending Foreclosure.

- 1. PURPOSE AND SCOPE. The purpose of this section is to establish an abandoned residential property registration program and to regulate the maintenance of abandoned residential properties by parties asserting a collateral or other legal or equitable interest in the property. This section is intended to reduce and prevent neighborhood blight, to ameliorate conditions that threaten the health, safety and welfare of the public, to promote neighborhood stability and residential owner occupancy by preserving the condition and appearance of residential properties, and to maintain residential property values and assessments. Nothing in this section shall be construed as waiving, relieving or otherwise excusing an owner of residential property from compliance with all applicable building codes and ordinances and the owner or owners shall at all times remain responsible and liable therefore.
  - 2. DEFINITIONS. In this section:
- a. "Abandoned property" or "abandoned premises" means a property that is vacant as the result of the relinquishment of possession or control by a mortgager or the mortgager's assigns whether or not the mortgager or mortgager's assigns have relinquished equity and title. Property may be deemed abandoned when there is evidence of conditions, taken separately or as a whole, that would lead a reasonable person to conclude that the property was abandoned including, but not limited to, evidence of overgrown or dead vegetation, accumulation of newspapers, circulars, flyers or mail, past due utility notices,

accumulation of junk, litter, trash or debris, absence of window treatments such as blinds, curtains or shutters, absence of furnishings and personal items, and statements by neighbors, delivery agents or similarly situated persons that the property is vacant.

- b. "Accessible Structure" means a building that is accessible through a compromised door, wall, window or similar structure and which is unsecured in a manner that allows access to interior space by unauthorized persons.
- "Agent" means a person, firm or other entity that, by agreement for payment of services, is responsible to a bank, lender, other financial institution or individual, for securing, maintaining, foreclosing upon or selling any residential property as the result of loan default or mortgage foreclosure proceedings whether or not the proceedings are judicial or initiated as the result of a power of sale clause in the mortgage document. In this section, agent does not include a servicing company. Except, however, an attorney shall not be deemed to be an agent if that attorney is retained solely to represent a bank, lender or other financial institution in connection with a foreclosure proceeding in a court of competent jurisdiction.
- d. "Financial institution" means any individual, firm, corporation or entity other than a lender or duly constituted bank that asserts a collateral interest in residential real property as the result of an assignment, sale or transfer of a mortgage or similar instrument.
- e. "Foreclosure" means the judicial process prescribed by ch. 846, Wis. Stats., and the process for non-judicial sale authorized by a power of sale clause in a mortgage document.
- f. "Mortgage" means a written instrument creating a lien on real property whereby the mortgager retains the interest that the mortgager had at the time of mortgage until that interest is divested by some later act.
- g. "Occupied property" or "occupied premises" means a premises on which any person over one year of age, including an owner or operator, lives, sleeps, cooks or otherwise maintains actual possession.
- h. "Servicing company" means an individual, firm or entity that, as a regular part of its business, provides services to the owner or holder of one or more mortgage liens which services may include collection of payments,

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#### 200-22.5-3 Administration and Enforcement

creation and administration of escrow and insurance accounts, assessment of late-payment charges, managing loss mitigation, and securing and managing foreclosed properties on behalf of the holder of a mortgage lien or the holder's attorney or agent.

- i. "Vacant premises" means a building that is not lawfully occupied.
- INSPECTION OF RESIDENTIAL PROPERTY, a. Initial Inspection. Whenever a bank, lender or other financial institution shall directly, or through an agent or servicing company, initiates foreclosure proceedings upon residential real property, the bank, lender or other financial institution, either directly or through its agent or servicing company, shall cause a physical inspection to be made of the property not later than 30 days from the date of notice and in no event later than 30 days after the filing of foreclosure proceedings. One or more photographs shall be taken of the residential property accurately portraying the condition of the exterior premises. Photographs shall be dated and preserved.
- b. Periodic Inspections. Any bank, lender or financial institution, or its agent or servicing company, shall perform a re-inspection of a residential premises subject to foreclosure proceedings at least once every 30 days following the initial inspection until such time as the property is no longer in default as a result of agreement with the owner, or is sold at a sheriffs sale or is otherwise lawfully conveyed to a new owner. One or more photographs shall be taken at each re-inspection and shall be dated and preserved in the same manner as is required upon initial inspection.
- 4. REGISTRATION OF ABANDONED RESIDENTIAL PROPERTY. a. If, upon inspection of residential property required by sub. 3, it should be determined that the property is abandoned, the bank, lender, other financial institution or its responsible agent or servicing company, shall register the property in the name of the lien holder with the commissioner on a form prescribed by the commissioner that includes, but is not limited to, information identifying the location of the property, the last known owner or owners of the property, the date foreclosure proceedings were commenced and the docket number of the foreclosure action, a description of the external

- condition of the property and whether there is an accessible structure on the property. Registration information shall identify the agent or servicing company, if any, that is authorized by the lien holder to enter upon the property and to conduct repairs or maintenance as required in sub. 5-a.
- Registration of abandoned property b. shall be made within 5 working days of inspection. The fee for registration of abandoned residential property is prescribed in s. 200-33-47-a. If it should appear that the registration is filed 6 or more days after the inspection, a late fee will be charged as prescribed in s. 200-33-47-b. The registration form and fee may be transmitted electronically or by any other means to be determined by the commissioner. The registration shall be valid from the date the registration form is completed and filed with the commissioner if the registration fee is received by the commissioner within 7 days of receipt of the registration form. If the registration fee is not received within 7 days of receipt of the registration form, a late fee will be charged as prescribed in s. 200-33-47-b.
- c. The registration will be dissolved and considered void upon receipt by the commissioner of written evidence of a sale in foreclosure, redemption of the property by the lien holder or other transfer of the lien holder's interest. The commissioner may, in appropriate circumstances, provide for conversion of the registration required in this subsection to a registration of residential property as provided in s. 200-51.5.
- **5.** REGISTRANT DUTIES. a. The property maintenance duties of a registrant are limited to the following:
- a-1. Assuring that there are no accessible structures on the premises.
- a-2. Assuring that there are no conditions upon the property presenting an immediate risk to health and safety of the public including removing or abating fire hazards, removing or containing potentially toxic materials and explosives, securing the perimeters of swimming pools, ponds or other bodies of water, and maintaining public walkways and thoroughfares free from ice, snow, mud and other debris consistent with the requirements of par. c.
- b. A registrant shall include a statement in the registration form identifying any action taken or planned to be taken to

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comply with the requirements of par. a. From and after registration of the abandoned residential property, or from and after the time that registration is required to be made, and until the abandoned residential property has been sold at a sheriff's foreclosure sale or has otherwise been legally conveyed to a new owner, the commissioner may make a finding that the conditions of the residential premises constitute an immediate threat to the health, safety and welfare of the public and, upon such finding, may issue a written order to the registrant to abate the condition. If the registrant, or party with a duty to register, fails to comply with the order of the commissioner within 10 days, the registrant, or party with a duty to register, shall be held liable and punished in the same manner and to the same extent as the owner of the property if the unabated condition is found to be in violation of the following:

- b-1. Section 79-12. Littering of Premises. b-2. Section 79-13. Sidewalks to be Kept Clean.
- b-3. Section 80-13. Odors from Privy Vaults, Drains, Sewers.
- b-4. Section 80-17. Hay Fever Weeds, etc.
- b-5. Section 80-31. Breeding Place for Flies.
  - b-6. Section 80-49. Nuisance Vehicles.
  - b-7. Section 105-16. Icicles on Buildings.
- b-8. Section 214-11. Storing of Fuel in a Dwelling.
- b-9. Section 214-12. Securing of Pressurized Gas Cylinders.
  - b-10. Section 217-13-4. Locks.
- b-11. Section 236-41. Hazardous Substance Spills.
- b-12. Section 275-32-7. Vacant Structures; Boarding.
  - b-13. Section 275-35. Graffiti Abatement.
- b-14. Section 275-81-5 . Maintenance Of Premises.
  - b-15. Section 275-81-6. Rat Harborages.
- c. The minimum requirements of a registrant, or party with a duty to register, for preservation and protection of residential premises, absent a specific order of the commissioner to abate a condition of the

premises, shall be consistent with the rules, regulations and other requirements published by the Federal Housing Administration (FHA) of the United States Department of Housing and Urban Development for the preservation and protection of single-family residential properties secured by FHA loans as those requirements may be amended by FHA mortgagee letters or otherwise, and as applied by the FHA to the state of Wisconsin including guidelines related to winterization and heating systems. Under these guidelines, debris removal shall be deemed to include snow and ice removal, the elimination of weeds and other plant growths in s. 80-17. The commissioner may require a registrant, or party with a duty to register, to repay the department the reasonable costs incurred by the department related to abatement of conditions that are subject to FHA guidelines identified in this paragraph or which are subject to an order under par. b and threaten the health, welfare and safety of the public.

- d. A registrant shall maintain written records, including photographs, of any re-inspection required by sub. 3-b that identifies any change in condition of the abandoned real property requiring correction under pars. a. and b, and identifying actions taken or planned to assure compliance. Written records of re-inspection shall be made available to the commissioner or commissioner's designee upon request.
- e. A registrant, or registrant's agent or servicing company, shall provide notice to the commissioner, in a manner to be prescribed by the commissioner, within 15 working days, of any agreement executed by the lawful owner with the party or parties asserting a mortgage lien interest curing or otherwise forgiving default of the mortgage lien, or within 15 days of a sheriff's sale in foreclosure or other sale or lawful conveyance of the abandoned residential property, and declaring that registrant is no longer responsible for inspection of the registered property or for securing or maintaining the property. Upon receipt of the notice required in this paragraph, the commissioner shall dissolve the registration.
- **6.** PENALTIES. a. Failure to Inspect. Any person, firm, bank, lender, financial institution or an agent or servicing company that fails its duty to inspect or re-inspect residential property under

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sub. 3 shall, upon conviction, forfeit not less than \$250 nor more than \$1,000, together with the cost of the action, and in default of payment thereof may be imprisoned in the house of correction or county jail of Milwaukee county not less than 10 days nor more than 40 days.

- b. Failure to Register. Any person, firm, bank, lender, financial institution or an agent or servicing company that fails its duty to register abandoned residential property under sub. 4 shall, upon conviction, forfeit not less than \$500 nor more than \$2,000, together with the cost of the action, and in default of payment thereof may be imprisoned in the house of correction or county jail of Milwaukee county not less than 20 days nor more than 80 days.
- c. Failure to Secure and Maintain. Any person, firm, bank, lender, financial institution or an agent or servicing company having a duty to register abandoned residential property that fails its duty to secure and maintain the property under sub. 5-a and b shall, upon conviction, forfeit not less than \$350 nor more than \$1,500, together with the cost of the action, and in default of payment thereof may be imprisoned in the house of correction or county jail of Milwaukee county not less than 14 days nor more than 60 days.
- d. Failure to Maintain Records or Provide Written Notice. Any person, firm, bank, lender, financial institution or responsible agent or servicing company that fails to maintain records required in sub. 5-d or to provide the notices required in sub. 5-e shall, upon conviction, forfeit not less than \$100 nor more than \$500, together with the cost of the action, and in default of payment thereof may be imprisoned in the house of correction or county jail of Milwaukee county not less than 4 days nor more than 20 days.
- 200-23. Notice to Buyer of Code Violations. Any owner selling property must give notice to any prospective purchaser of the existence of any notice of violation of plumbing, electrical or other state or city building codes and if the current tenant is withholding rent under s. 200-22.

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# STEP BY STEP ACTIONS FOR PROPERTIES MOVING FROM PREFOREGLOSURE INTO A NEW OWNER'S HANDS (BANK or CORPORATION)

If you are a realtor handling a sale of a property that was foreclosed on. Here are some simplified steps to follow to make sure you've followed all of the various programs that might impact your transaction. The following is the proper sequence to follow after a property is assigned ownership to a bank or new owner emerging out of pre-foreclosure proceedings.

Once the sheriff sale concludes and the winning entity is a bank or corporation, a Property Recording Application should be completed. Here is a link with the details. Note the \$35 fee doubles if not completed within 15 days of the sale, transfer or conveyance of the property.

http://www.milwaukee.gov/PropertyRecording

The second possible requirement may be Code Compliance if the property is a one or two family home. If the bank remains the owner, a Certificate of Code Compliance (CCC) will be required as is the requirement for any absentee owner. If the property is located in one of six Code Compliance areas of the city, a CCC is required. If owner occupied and the home is located outside of the CCC areas, no certificate is required. Here is the link on the Code Compliance program. Note the \$90 fee doubles if not completed within 15 days of the sale, transfer or conveyance of the property.

http://www.milwaukee.gov/CodeCompliance

From the date of the sale and/or transfer, the clock begins with regards to qualifying for Vacant Building Registration (VBR) program. If the property is unsold, remains in the bank's name and remains vacant, they have 30 days from the transfer or conveyance before the requirements of VBR kick in. Here are the details of that program.

http://www.milwaukee.gov/DNS/VBR

On the 31st day from the date of sale, the bank should register the vacant building under the VBR program with DNS. No fee is paid at this time. After the application is received, an inspection date will be set to inspect the property for code violations. Following that inspection, the property will be monitored by DNS to see that it is still vacant. If it is sold, or a permit is taken out for restoration, or one of the other exemptions listed in the VBR ordinance apply, nothing more is required except the usual property maintenance. Otherwise the property must remain secured, insured and maintained to the standards of the VBR program.

If after the inspection and the building remains vacant for six months, a \$250 fee will be charged and another 6-month monitor period will begin with the corresponding fees at the end of that 6-month period. This process will apply until the building is sold and the new owner takes control of the property.

All of the respective forms and applications for these various programs are located on the DNS Forms page.

http://www.milwaukee.gov/dns/forms

Check lists that includes the items the inspectors will be looking for are listed on the DNS Documents page.

http://www.milwaukee.gov/dns/documents

## Milwaukee's New Vacant Building Code

For many years, Milwaukee's code allowed an owner to keep a building vacant and boarded as long as it was reasonably well maintained. However, a boarded building sends a negative signal about a community. These buildings can attract criminal activity. Often the buildings must be re-boarded at city expense and can make it difficult for neighbors next door to get fire insurance. The presence of a boarded building can bring down the value of other properties in the area.

Effective January 1, 2010, the City's new Vacant Building Registration (VBR) ordinance Chapter 200-19 of the Milwaukee Code of Ordinances (MCO) takes effect. The new VBR ordinance requires owner (s) of residential and commercial property left vacant for 30 days or more to register the property with the Department of Neighborhood Services (DNS) and take steps toward assuring the property is secure, properly maintained and not creating a hazard for the surrounding community.

#### What buildings are impacted?

This code applies to all residential and commercial buildings that have been vacant for more than 30 days. The following properties are exempt from the VBR requirements:

- A property currently in foreclosure and subject to the requirements of the City's Preforeclosure
   Ordinance Chapter 200-22.5 MCO. Note: Properties which have cleared the foreclosure process and
   are still vacant are required to comply with the VBR ordinance and register the building with DNS.
- A property that is undergoing an active renovation or rehabilitation and all required permits have been obtained.
- A property that is vacant as a result of a natural disaster and covered by emergency response requirements issued by the commissioner.
- A residential single family home or owner-occupied 2-family property that has been used as a residence by the owner for a period of at least 3 months within the previous 9 months and the owner intends to resume residing at the property.
- Residential condominium and rental units in buildings whose vacancy rate does not exceed 95%.
- A property that is currently part of an estate that is in probate and is not subject to bankruptcy provided the personal representative or executor resides in one of the 7 county areas as defined in Chapter 200-51.5-2-j MCO.

#### What do property owners need to do?

If your property is vacant and meets the vacant building registration requirements, you must:

- Enclose and secure the building. See maintenance and board-up requirements.
- Maintain the building in a secure and closed condition until the building is again occupied or demolished.
- The owner of any vacant building shall within 30 days after the building becomes vacant or within 30 days after assuming ownership, whichever is later, file a registration statement for each such building with the department on forms provided by the department. There is no registration fee for the first 6 months. Registrations must be renewed every 6-months until the building is reoccupied.
- The owner shall renew the registration every 6 months as long as the building remains vacant and shall pay a registration renewal fee as prescribed in Chapter 200-33-64 MCO for each registered building.
- · Acquire or otherwise maintain liability insurance in an amount not less than \$300,000 for buildings

# Milwaukee's New Vacant Building Code

For many years, Milwaukee's code allowed an owner to keep a building vacant and boarded as long as it was reasonably well maintained. However, a boarded building sends a negative signal about a community. These buildings can attract criminal activity. Often the buildings must be re-boarded at city expense and can make it difficult for neighbors next door to get fire insurance. The presence of a boarded building can bring down the value of other properties in the area.

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#### What buildings are impacted?

This code applies to all residential and commercial buildings that have been vacant for more than 30 days. The following properties are exempt from the VBR requirements:

- A property currently in foreclosure and subject to the requirements of the City's Preforeclosure Ordinance Chapter 200-22.5 MCO. Note: Properties which have cleared the foreclosure process and are still vacant are required to comply with the VBR ordinance and register the building with DNS.
- A property that is undergoing an active renovation or rehabilitation and all required permits have been obtained.
- A property that is vacant as a result of a natural disaster and covered by emergency response requirements issued by the commissioner.
- A residential single family home or owner-occupied 2-family property that has been used as a residence by the owner for a period of at least 3 months within the previous 9 months and the owner intends to resume residing at the property.
- Residential condominium and rental units in buildings whose vacancy rate does not exceed 95%.
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If your property is vacant and meets the vacant building registration requirements, you must:

- Enclose and secure the building. See maintenance and board-up requirements.
- Maintain the building in a secure and closed condition until the building is again occupied or demolished.
- The owner of any vacant building shall within 30 days after the building becomes vacant or within 30 days after assuming ownership, whichever is later, file a registration statement for each such building with the department on forms provided by the department. There is no registration fee for the first 6 months. Registrations must be renewed every 6-months until the building is reoccupied.
- The owner shall renew the registration every 6 months as long as the building remains vacant and shall pay a registration renewal fee as prescribed in Chapter 200-33-64 MCO for each registered building.
- Acquire or otherwise maintain liability insurance in an amount not less than \$300,000 for buildings

designed primarily for residential use and not less than \$1,000,000 for any other building, including, but not limited to, buildings designed for manufacturing, industrial, storage or commercial uses. The liability insurance shall provide covering for any damage to any person or any property caused by any physical condition of or in the building. Evidence of this insurance shall be available at the request of the commissioner.

#### What Does it Cost to Register?

Each vacant building registration certificate shall be issued and shall be valid for 6 months from the date the certificate is issued. There is no fee for the first 6 month registration period. If the building remains vacant longer than 6 months, the owner must renew their vacant building registration and pay a renewal fee of \$250. Each subsequent registration renewal will cost \$250 provided the owner has properly maintained the property and there are no outstanding code violations. Properties with outstanding code violations will be subject to an escalating renewal fee of \$500. Registration fees for properties in violation of the requirements of this ordinance at subsequent renewals will be charged a fee in increasing increments of \$250 up to \$1000. Vacant building inspection fees shall be charged against the real estate and shall be assessed and collected as a special charge.

#### How do I register my vacant property?

The registration form can be found at the Department of Neighborhood Services web site at:

#### www.city.milwaukee.gov/dns

Simply go to the Forms and Applications page to print the application. More detailed instructions are also posted on the site with the form. Any questions regarding this program or building related issues can be answered by calling (414) 286-2286 or visiting the DNS offices at 841 N. Broadway, RM 105 or 4001 S. 6th St., First Floor.

#### Owner must provide access for an inspection

Following reasonable notice, the department of Neighborhood Services inspector will conduct an interior and exterior inspection of the vacant building to determine compliance with this ordinance. A minimum of one inspection will be conducted during the initial registration period and each subsequent rental period. Owners are required to provide access to the interior of the building for these inspections. Maintenance is required after registration is filed. In addition to any other applicable requirements, vacant buildings shall comply with the following requirements;

#### **Building Security Standards**

All vacant building openings shall be closed and secured, using methods and materials so as to comply with the requirements of Chapter 275-32-7 MCO.

- If a building has been vacant for 6 months or longer, or upon any renewal of the registration statement, the building owner shall implement and provide proof satisfactory to the department that in addition to complying with the security standards, the building remains secured. If the building fails to be secured as determined by the commissioner or the commissioner's designee, then the building shall be boarded in accordance with Chapter 275-32-7 MCO.
- If the owner has provided proof that a building is secured and based on an inspection by the department the building is found to be in violation, the commissioner shall send by first class mail a written notice of the violation to the person responsible for day-to-day supervision and management of

the building or to the authorized agent for service of process or to the owner of record.

• Within 30 days of the mailing of the notice of violation, the owner shall be required to either comply with the board up requirements in Chapter 275-32-7 MCO or restore the building to a secured state and also install and maintain a working alarm system. The alarm system shall connect to all areas of the building subject to unauthorized human entry, including but not limited to, all exterior doors, windows or other readily accessible openings. The alarm system shall, upon detecting unauthorized entry, send an automatic signal to a licensed alarm business that has 24-hour live operators who will monitor the system and contact the building owner or designated agent.

#### Lot Maintenance Standards

Lot standards include the lot the building stands on and the surrounding public way and shall meet the following:

- All grass and weeds on the premises including abutting sidewalks, gutters and alleys shall be kept below 9 inches in height and all dead or broken trees, tree limbs or shrubbery shall be cut and removed from the premises.
- Any public-sidewalk adjoining the lot shall be shoveled clear of snow so as to comply with Chapter 79 -13 MCO.
- Junk, rubbish, waste and any material that creates a health, safety or fire hazard, including but not limited to any mail or flyers that have been delivered to the building, shall not be permitted to accumulate on any portion of the exterior lot of the building.
- No portion of the lot nor any structure, vehicle, receptacle or object on the premises shall be maintained or operated in any manner that causes or produces any health or safety hazard or permits the premises to become a rodent harborage or is conducive to rodent harborage.
- . The lot shall be maintained so that water does not accumulate or stand on the ground.
- · All fences and gates shall be maintained in sound condition and in good repair.

#### **Exterior Maintenance Standards**

The exterior of the building shall be enclosed, secured and maintained to meet the following:

- Foundations, basements, cellars and crawlspaces shall be maintained in sound and watertight condition adequate to support the building and protected against the entry of rodents or other animals.
- Exterior walls shall be free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain or dampness to the interior portions of the walls or the interior spaces and shall be protected against the entry of rodents or other animals.
- Exterior windows and doors shall be maintained in sound condition and good repair and prevent rain from entering the building, or the opening shall be secured in accordance with Chapter 275-32-7 MCO. The windows and doors shall be equipped with hardware for locking and the locking mechanism shall be maintained in properly functioning condition. All points of possible ingress and egress shall be secured to prevent unauthorized entry.
- The roof shall be adequately supported and maintained in weathertight condition; the gutters, downspouts, scuppers and appropriate flashing shall be in good repair and adequate to remove the water from the building.
- · Chimneys and flues shall be kept in sound, functional, weathertight condition and in good repair.
- Every outside stair or step shall be maintained in sound condition and in good repair; every porch, stoop, deck, veranda, balcony and walk shall be maintained in sound condition for its purpose.

#### Interior Maintenance Standards

Interior of any building shall be maintained in accordance with the following:

- It is prohibited to accumulate or permit the accumulation of junk, trash, debris, boxes, lumber, scrap
  metal or any other materials that may produce any health, fire or safety hazard, or provide harborage
  for rodents or other animals.
- Every foundation, roof, floor, wall, stair, ceiling or other structural support shall be safe and capable of supporting the loads associated with normal usage and shall be kept in sound condition and repair.
- Any plumbing fixtures shall be maintained with no leaking pipes, and all pipes for water shall either be completely drained or heated to resist being frozen.
- Every exit door shall be secured with an internal deadbolt lock, or with a locking mechanism deemed equivalent or better by the department, and every exit door shall be capable of being opened from the inside easily and without the use of a key or special knowledge.
- Interior stairs shall have treads and risers that have uniform dimensions, are sound, securely fastened and have no rotting, loose or deteriorating supports.
- Every owner shall be responsible for the extermination of insects, rodents and other vermin in or about the premises.

#### Can I Suggest an Alternate Plan?

Upon written application by an owner or an owner's agent, the commissioner may approve a modification of any provision of this section, including the requirement for inspections and fees, provided the spirit and functional intent of the section will be observed and the public health, welfare and safety will be assured. The decision of the commissioner concerning a modification shall be made in writing and the application for a modification and the decision of the commissioner concerning such modification shall be retained in the permanent records of the department.

Vacant Building Registration Application (DNS-18A).pdf This is the form to be filed 30 days after a building goes vacant unless exempt as described in the Milwaukee Code of Ordinances (200-51.7) The cost to register is free and covers a 6 month period. If the building remains vacant an inspection will be made and a fee will be charged. Each subsequent 6 month period of vacancy will trigger an inspection and fee. Owners are required to maintain the interior and exterior in a safe and sanitary manner. For more details see the Vacant Building Registration brochure DNS-29A. WARNING-This is a LEGAL size brochure.

Vacant Building Frequently Asked Questions-Got a question? We've got answers to the most commonly asked questions.

Vacant Building Inspection Checklist-Learn what the inspector will be looking for.

Vacant Building Ownership Registration Ordinance- 200-51.7 - Read the details of the ordinance in Chapter 200-51.7 Subchapter 8 of the City of Milwaukee Code of Ordinances. Ordinance 200-51.7 begins on page 56 of this PDF document.

# Other DNS Programs Building Owners Should be aware of

All non-owner occupied property in Milwaukee is required to be registered with the **Property Recording Program**. The owner's contact information or their agent, must be on file within 15 days of the sale or transfer of the property's title. For information call Property Recording at 414-286-8569.

Do you own residential rental property? You may be required to register the ownership if in certain parts of the City. Call 414-286-2268 to inquire about the Residential Rental Inspection program.

If selling a property you may be required to have a Code Compliance check before the property is sold. Call the Code Compliance section at 414-286-3838.

Make your buildings talk to you! Register them for free on E-notify at www.city.milwaukee.gov. E-mails will be sent to you any time code related matters involve your property. Be the first to know when something happens.

Last Update

2/26/2010

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