

Chapter 209. Vacant Property

[HISTORY: Adopted by the Mayor and Council of the Town of Elsmere as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. **76**.

Nuisance properties — See Ch. **145**.

Property maintenance — See Ch. **171**.

Tax delinquent property — See Ch. **206**.

Article I. Registration

[Adopted 8-12-2010 by Ord. No. 521]

§ 209-1. Purpose.

The purpose of this article requiring the registration of all vacant buildings, dwellings and structures, and the payment of registration fees is to assist the Town, and particularly the Code Enforcement Department in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the Town, to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of the Code of the Town of Elsmere, the health, sanitation, building and property codes, and any other applicable provisions of the State of Delaware.

§ 209-2. Definitions.

Definitions. For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:

BOARDED

A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or other durable material covering the space intended for such door or window.

[Amended 11-11-2010 by Ord. No. 524]

EXTERIOR MAINTENANCE AND MAJOR SYSTEMS

The safe, lawful and secure maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, the sidewalk and driveway, of any secondary building, dwelling or structure, if any.

[Amended 11-11-2010 by Ord. No. 524]

OCCUPIED

Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or any combination of the same; the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid Town business license; or the most recent, federal, state, or income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of a prerenal inspection.

OPEN

A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and/or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.

OWNER

An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section.

VACANT

A building or structure shall be deemed to be vacant if no person or persons actually currently conduct a lawfully licensed business, or lawfully reside or live in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants or tenant(s) on a permanent, nontransient basis.

§ 209-3. Applicability; registration statement required; fees.

- A. The requirements of this article shall be applicable to each owner of any building, structure, dwelling or apartment that shall have been vacant for more than 45 consecutive days and to each owner of a residential property consisting of one or more vacant dwellings that shall have been vacant for more than 45 consecutive days.
[Amended 11-11-2010 by Ord. No. 524]
- B. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the Town Manager. The registration fee as required by this article section shall be billed by the Finance Department and shall be paid by January 1 of each year. For purposes of this section, the following shall also be applicable:
- (1) If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the Secretary of State;
 - (2) If an estate, the name and business address of the executor of the estate;
 - (3) If a trust, the name and address of all trustees, grantors, and beneficiaries;
 - (4) If a partnership, the names and residence addresses of all partners with an interest of 10% or greater;
 - (5) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of 10% or greater;
 - (6) If an individual person, the name and residence address of that individual person.
- C. Local agent. If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith.

D. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open, or vacant and boarded, and shall be required whenever any building has remained vacant for 45 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent, or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering. The owner of the vacant property as of November 15 of each calendar year shall be responsible for the payment of the nonrefundable registration fee.

E. Notice.

[Added 3-14-2013 by Ord. No. 563^[1]]

(1) Additionally, upon every vacant property there shall be posted in a prominent location not more than 10 feet from the front and, if present, the rear entrances to the property, a notice which shall contain a minimum of the following information:

(a) The name and address of the person(s) legally responsible for the property.

(b) The name, address, and phone number of a local person or company which is authorized by whoever has legal authority over the property to address emergency situations which may occur at the property and who can physically be at the property within one hour of being notified of an emergency.

(2) The notice shall be no smaller than six inches by six inches and shall be protected from the elements so that it will not fade or otherwise become unreadable. At all times the person(s) legally responsible for the property shall ensure that the information contained on the notice is accurate and current.

[1] *Editor's Note: This ordinance also redesignated former Subsection E as Subsection F.*

F. Once each quarter the Finance Department shall bill 25% of the total amount due in accordance with the schedule set forth in § 209-3F(1). These billings shall occur on January 1, April 1, July 1 and October 1 of each year. The amount due at each billing shall be determined by the length of time the property has been vacant at the time of that particular quarterly billing.

[Amended 10-8-2015 by Ord. No. 605]

(1) Two hundred and fifty dollars for properties that are vacant for more than 45 days but less than one year.

(2) Five hundred dollars for properties that are vacant for at least one year but less than two years.

(3) One thousand dollars for properties that are vacant for at least two years but less than three years.

(4) Two thousand dollars for properties that are vacant for at least three years but less than five years.

(5) Three thousand five hundred dollars for properties that are vacant for at least five years but less than 10 years.

(6) Five thousand dollars for properties that are vacant for at least 10 years, plus an additional \$500 for each year in excess of 10 years.

§ 209-4. Appeals.

The owner shall have the right to appeal the imposition of the registration fees to the Town of Elsmere's Board of Adjustment.

§ 209-5. Waiver of registration fee.

A. A one-time waiver of the registration fee may be granted by the Town Manager based upon an application by the owner if the owner:

- (1) Demonstrates with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and
 - (2) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or
 - (3) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.
- B. Two-year waiver. Upon application by the owner and satisfaction of Subsection A(1), (2) or (3) above, the Town Manager may grant a two-year waiver of the registration fee if the owner meets the criteria for non-profit organizations as defined by Section 501(C)(3) of the Internal Revenue Code.

§ 209-6. Delinquent registration fees.

After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the Town, and the Town may commence a civil action to collect such the unpaid debt.

§ 209-7. Amendment of registration statement.

If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party, or agent for same to contact the Code Enforcement Department in writing within 30 days of the occurrence of such change and make it aware of the information that has changed.

§ 209-8. Inspection of property required.

[Added 11-11-2010 by Ord. No. 524]

The owner of any vacant property shall insure that the property is inspected at least weekly to ensure that the property is being maintained in a safe, secure and code compliant condition. Should evidence be found that indicates forced entry has been made to a vacant property, the police shall be notified immediately.

§ 209-9. Exceptions.

[Amended 11-11-2010 by Ord. No. 524]

This section shall not apply to:

- A. Any building owned by the United States, the State of Delaware, New Castle County, or the Town.
- B. Apartment houses as defined by Chapter 182, § 182-1, of the Code of the Town of Elsmere.

[Added 10-10-2013 by Ord. No. 572]

§ 209-10. Violations and penalties.

[Amended 11-11-2010 by Ord. No. 524]

The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building, to secure and maintain in a safe condition any vacant building, or to pay any fees required to be paid pursuant to the provisions of this article, within 30 days after they become due, shall constitute a violation punishable by a fine in the amount of not less than \$100 nor more than \$500 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100 is imposed, it shall not be subject to suspension or reduction for any reason.

§ 209-11. Relief.

[Added 7-11-2013 by Ord. No. 567]

- A. The owner of any property aggrieved by any part of this article may make a request to the Town Manager for relief from that part of the article.
- B. After hearing from the person(s) asking for the relief, the Town Manager may grant the requested relief, grant a mutually agreed-to modification to the article or deny the request.

Article II. Mortgage Defaults, Foreclosures, Tax Liens and Transfers

[Adopted 8-13-2015 by Ord. No. 599^[1]]

[1] *Editor's Note: This ordinance stated that registration and penalty fees outlined within may be modified by a resolution passed and adopted by Elsmere Council. This ordinance also stated that it is intended to work in conjunction with and not in conflict with Ch. 209, Art. I. Should the provisions of the two be inconsistent, the more restrictive provision shall apply.*

§ 209-12. Purpose and intent.

It is the purpose and intent of the Mayor and Council to establish a process to address the deterioration and blight of neighborhoods caused by an increasing amount of abandoned properties and properties with defaulted mortgages located within Elsmere, and to identify, regulate, limit and reduce the number of these properties located within Elsmere. It is Elsmere's further intent to establish a registration program for these properties as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of registrable property.

§ 209-13. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning.

ABANDONED PROPERTY

- A. Properties that are accessible properties or have broken or severely damaged windows, doors, walls, or roofs which create hazardous conditions and encourage trespassing; or
- B. Properties that have one or more exterior doors (other than a storm door) or one or more windows where there is a sheet or sheets of plywood or other durable material covering the space intended for such door or window; or
- C. Properties cited for a public nuisance pursuant to the Elsmere Code Chapter 145; or
- D. Properties that endanger the public's health, safety, or welfare because the properties or improvements thereon are dilapidated, deteriorated, or violate minimum health and safety standards or lack maintenance as required by the applicable codes.

ACCESSIBLE PROPERTY/STRUCTURE

A property that is accessible through a compromised/breached gate, fence, wall, etc., or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

ANNUAL REGISTRATION

Twelve months from the date of the first action that required registration, as determined by the Elsmere Code Enforcement Department, or its designee, and every subsequent 12 months. The date of the initial registration may be different than the date of the first action that required registration.

APPLICABLE CODES

Include, but are not limited to, the Elsmere Zoning Code, the Property Maintenance Code, and the state, county and Elsmere building and fire codes.

ENFORCEMENT OFFICER

Any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector or building inspector, or other person authorized by Elsmere to enforce the applicable code(s).

FORECLOSURE

The legal process by which a mortgagee, or other lienholder, terminates a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. This definition shall include, but is not limited to, public notice of default, a deed-in-lieu of foreclosure, sale to the mortgagee or lienholder, certificate of title and all other processes, activities and actions, by whatever name, associated with the described process. The process is not concluded until the property obtained by the mortgagee, lienholder, or their designee, by certificate of title, or any other means, is sold to a nonrelated bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

LOCAL PROPERTY MANAGEMENT COMPANY

A property manager, property maintenance company or similar entity responsible for the maintenance and security of registrable real property within 20 driving miles of Elsmere's limits. Upon review of credentials the Town Manager, or his designee, may allow a nonlocal property manager to be listed.

MORTGAGEE

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

OWNER

Any person, legal entity or other party having any ownership interest, whether legal or equitable, in real property. This term shall also apply to any person, legal entity or agent responsible for the construction, maintenance or operation of the property involved.

PROPERTY MANAGEMENT COMPANY

A local property manager, property maintenance company or similar entity responsible for the maintenance of registrable real property.

REAL PROPERTY

Any improved residential or commercial land, buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the limits of Elsmere.

REGISTRABLE PROPERTY

Any abandoned property (as defined in this article) or real property located in Elsmere, whether vacant or occupied, that is encumbered by a mortgage in default, is subject to an ongoing foreclosure action by the mortgagee or trustee, is subject to an application for a tax deed or pending tax lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a property as "registrable" shall remain in place until such time as the property is no longer abandoned or the foreclosure action has been dismissed and any default on the mortgage has been cured.

VACANT

Any building or structure that is not legally occupied. Occupants of properties subsequent to a foreclosure sale without a valid lease are considered illegal occupants.

§ 209-14. Applicability.

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to Elsmere above and beyond any other state, county or local

provisions for same.

§ 209-15. Establishment of registry.

Elsmere or its designee shall establish a registry cataloging each abandoned property or real property subject to foreclosure within Elsmere, containing the information required by this article.

§ 209-16. Registration of defaulted mortgage real property and abandoned property.

- A. Any mortgagee who holds a mortgage on real property located within Elsmere shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor. Any owner of any abandoned property shall perform an inspection of the property to determine if it is classified as abandoned. The mortgagee or owner of any abandoned property shall, within 10 days of the inspection, register the property with the Elsmere Code Office or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be abandoned or under foreclosure.
- B. Registration pursuant to this section shall contain the name, direct mailing address, a direct contact name, telephone number, and e-mail address for the owner of abandoned property, mortgagee, and the servicer, and the name and twenty-four-hour contact phone number of the local property management company responsible for the security and maintenance of the property.
- C. Mortgagees or owners who have existing registrable property on the effective date of this article have 30 calendar days from the effective date to register the property with the Code Enforcement Department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is abandoned or under foreclosure.
- D. If the mortgage on a registrable property is sold or transferred, the new mortgagee is subject to all the terms of this article and within five days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new mortgagee or trustee and are due and payable with their initial registration.
- E. If the owner of a foreclosed or abandoned real property sells or transfers the property to a non-arm's-length related person or entity, the transferee is subject to all the terms of this article and within five days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new registrable property owner and are due and payable with their initial registration.
- F. As long as the property is registrable it shall be inspected by the mortgagee, or designee, monthly. If an inspection shows a change in the property's occupancy status the mortgagee shall, within 10 days of that inspection, update the occupancy status of the property registration.
- G. A nonrefundable annual registration fee established by resolution of the Elsmere Council shall accompany each registration pursuant to this article.
- H. All registration fees must be paid directly from the mortgagee, trustee, servicer, or owner. Third-party registration fees are not allowed without the consent of Elsmere and/or its authorized designee.
- I. Properties subject to this article shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this article as long as they are registrable.
- J. Until the mortgage or lien on the property in question is satisfied, or legally discharged, the desire to no longer pursue foreclosure, the filing of a dismissal of lis pendens and/or summary of final judgment and/or certificate of title, voluntary or otherwise, does not exempt any mortgagee holding the defaulted mortgage from all the requirements of this article as long as the borrower is in default.

- K. Any person or legal entity that has registered a property under this article must report any change of information contained in the registration within 10 days of the change.
- L. Failure of the mortgagee or owner of abandoned property to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement and any resulting monetary penalties.
- M. Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, Elsmere may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

§ 209-17. Maintenance requirements.

- A. Properties subject to this article shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
- B. The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- C. Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable code(s) at the time registration was required.
- D. Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- E. Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- F. Pools and spas shall be maintained so the water remains free and clear of pollutants and debris, have pool covers and security fencing and shall comply with the regulations set forth in the applicable code(s).
- G. Failure of the mortgagee and/or owner to properly maintain the property may result in a violation of the applicable code(s) and issuance of a citation or notice of violation in accordance with the applicable code of Elsmere. Pursuant to a finding and determination by Elsmere's code enforcement officer, magistrate or a court of competent jurisdiction, Elsmere may take the necessary action to ensure compliance with this article.
- H. In addition to the above, the property is required to be maintained in accordance with the applicable code(s) of Elsmere.

§ 209-18. Security requirements.

- A. Properties subject to these sections 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 animal to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by reglazing of the window.
- C. If a property is registrable, a local property manager shall be designated by the mortgagee or owner to perform the work necessary to bring the property into compliance with the applicable code(s), and the

property manager must perform regular inspections to verify compliance with the requirements of this article, and any other applicable laws.

§ 209-19. Public nuisance.

All abandoned property is hereby declared to be a public nuisance, the abatement of which is hereby declared to be necessary for the health, welfare and safety of the residents of Elsmere.

§ 209-20. Inspections for violations.

Adherence to this article does not relieve any person, legal entity or agent from any other obligations set forth in any applicable code(s), which may apply to the property.

§ 209-21. Additional authority.

- A. If the enforcement officer has reason to believe that a property subject to the provisions of this article is posing a serious threat to the public health, safety and welfare, the code enforcement officer may temporarily secure the property at the expense of the mortgagee and/or owner, and may bring the violations before the magistrate as soon as possible to address the conditions of the property.
- B. The code enforcement officer or magistrate shall have the authority to require the mortgagee or owner affected by this article to implement additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.
- C. If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the code enforcement officer may have Elsmere abate the violations and charge the mortgagee or trustee or owner with the cost of the abatement.
- D. If the owner or mortgagee does not reimburse Elsmere for the cost of temporarily securing the property, or of any abatement directed by the code enforcement officer or magistrate, within 30 days of Elsmere sending the owners, mortgagee or trustee the invoice, then Elsmere may lien the property with such cost, along with an administrative fee as determined in Elsmere's fee ordinance, to recover the administrative personnel services. In addition to filing a lien, Elsmere can pursue financial penalties against the mortgagee.

§ 209-22. Opposing, obstructing enforcement officer; penalty.

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the enforcement office in the discharge of duties as provided in this article shall be punishable as provided in the applicable code(s) or a court of competent jurisdiction.

§ 209-23. Immunity of enforcement officer.

Any enforcement officer or any person authorized by Elsmere to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this article.

§ 209-24. Enforcement; violations and penalties.

- A. Enforcement. The requirements of this article may be enforced as follows:
 - (1) By citation for civil penalties pursuant or to appear in Justice of the Peace Court;

- (2) By an action for injunctive relief, civil penalties, or both, through a court of competent jurisdiction;
 - (3) By exercise of Elsmere's powers of eminent domain, or by condemnation and demolition, or by the nuisance abatement process;
 - (4) By revocation or temporary suspension of necessary permits and/or certificates or occupancy and/or licenses; and
 - (5) By any other process permitted at law or equity, such as but not limited to those set forth in § 204-26 of the Code of the Town of Elsmere. The use of one enforcement process or theory does not preclude Elsmere from seeking the same, different, or additional relief through other enforcement methods.
- B. Separate offenses. A violation of this article shall constitute a separate offense for each day it shall continue or recur. Each condition which exists in violation of this article is a separate violation.
- (1) Each day a property remains unregistered when required to be registered by this article is a separate offense for each day it shall continue or recur.
 - (2) Each day a property is not inspected as required by this article is a separate offense.
 - (3) Each day a property is not secured as required by this article is a separate offense.
 - (4) Each day a condition violating the Town's minimum housing codes or property maintenance codes exists on a property subject to registration under this article is a separate offense.
- C. Persons responsible for violations. The owner, mortgagee, trustee or servicer, as those terms are defined in this article, and their duly authorized officers, employees or agents employed in connection therewith who have assisted in the commission of the violation or failed to perform as required by the article, shall be guilty of the violation.
- D. The Town Manager shall have the authority to waive the assessment of any penalty or to delay the implementation of any fines, fees or penalties due under this chapter of the Code when he finds what he determines to be valid reason(s) to do so.
- [Added 3-9-2017 by Ord. No. 623]