

[Bracketed] material is that portion being deleted
Underlined material is that portion being added

BILL NO. _____

SUMMARY – An Ordinance amending Title 11 of the Clark County Code by adding a new Chapter designated as Chapter 13 relating to registration of abandoned residential property.

ORDINANCE NO. _____
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 11 OF THE CLARK COUNTY CODE TO REQUIRE MORTGAGEES TO INSPECT, MAINTAIN, SECURE AND REGISTER ABANDONED PROPERTIES; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 11, Chapter 11.13, which shall be titled as Registration and Maintenance of Abandoned Residential Property is hereby added as follows:

11.13.010 Purpose and Findings

- (a) It is the purpose and intent of this Chapter to establish a program to reduce the amount of residential property located within the County in need of rehabilitation, in particular, residential property suffering from blight caused by the lack of adequate maintenance because of abandonment of occupation and maintenance responsibilities. The program includes a property registration requirement designed to assist in accomplishing the intent and purpose of this Chapter.
- (b) Pursuant to NRS 244.189, a board of county commissioners may exercise such

powers and enact such ordinances, not in conflict with the provisions of NRS or other laws or regulations of this State, as the board determines are necessary and proper for the rehabilitation of abandoned residential property.

(c) By enactment of the ordinance codified in this Chapter, the Clark County Board of County Commissioners has determined its provisions are necessary and proper for the rehabilitation of abandoned residential property.

(d) The presence of abandoned residences can lead to neighborhood decline, attract public nuisances, lower property values and can discourage potential buyers from purchasing homes adjacent to or in neighborhoods with abandoned residences.

(e) Abandoned residences quickly succumb to the forces of nature and the elements: grass and weeds grow long, swimming pools become stagnant, public health hazards arise, landscaping dies or grows out of control, windows break, exteriors suffer damage beyond normal wear-and-tear, vandalism occurs and communities suffer; all of which has a negative impact first on neighboring residences and then on entire neighborhood.

(f) Neighborhoods should be protected from becoming blighted through the lack of adequate maintenance and security of abandoned properties subject to mortgages that are in default.

(g) Registration of abandoned residential property subject to a mortgage which is in default will establish a contact person for the County to address concerns regarding the maintenance and security of the property, which to mortgagee's and the public's detriment is not readily ascertainable.

(h) Records of registration are public, but sensitive, as public disclosure of which properties are abandoned raises concerns of public safety as such properties may be

targeted for dangerous and illicit use and disclosure of such information should proceed with caution.

(i) It is in the public interest to address safety and aesthetic concerns and the economic order of the County to assure that abandoned residential property subject to a mortgage in default or foreclosure will continue to be maintained and secured and that blight not occur.

(j) Establishment of a contact person through registration, avoidance of civil penalties, supplemental provisions, and alternative judicial oversight provided herein constitute a substantial benefit to mortgagees.

(k) Mortgagees stand in a special relationship to abandoned residential properties giving them the ability to avoid harm through loan and security instrument covenants granting rights to them for the protection of their interest in abandoned residential properties, when such exists, and through the right to bring an action for receivership under NRS 107.100 or as otherwise provided by law.

11.13.020 Definitions

Unless the context otherwise requires, the following words and phrases used in this Chapter shall have the meanings ascribed to them:

(a) "Default," with respect to a mortgage, means that the obligor under the mortgage has breached or is in default of a repayment or other obligation in connection with that mortgage.

(b) "Foreclosure" means the process by which real property placed as security for the repayment of a loan is to be sold to satisfy the debt concerning which the borrower has defaulted.

(c) "Mortgage" means a first mortgage or other first-priority security interest in real property that is placed as security for the repayment of a loan, and includes a first deed of trust.

(d) "Mortgagee" means any person or firm who holds a first-priority mortgage or other first priority security interest in real property to secure a loan, whether as the mortgagee of a mortgage or the beneficiary of a deed of trust.

(e) "Notice of default event," with respect to a mortgage, means that a default regarding that mortgage has occurred and either:

(1) A notice of breach or notice of default and election to sell has been provided to the obligor thereof and has been recorded in the County Recorder's Office; or

(2) An action for judicial foreclosure has been commenced regarding that mortgage by the filing of a complaint or petition for foreclosure in a court of competent jurisdiction.

(f) "Specified property" means any parcel of vacant residential real property within unincorporated Clark County, Nevada, that is subject to a mortgage and concerning which a notice of default event has occurred. For purposes of the inspection requirement set forth in section 11.13.030, below, and for that purpose only, the term also includes a parcel of real property that appears to be vacant. Once a parcel is determined not to be vacant or is no longer vacant, it shall not be considered "specified property" until it qualifies as such again under this definition.

(g) "Vacant," with respect to real property, and "vacant real property" mean real property and improvements that are not presently occupied by persons lawfully entitled thereto. The term does not include real property that is unoccupied by reason of the

temporary absence of lawful occupants who intend to return and resume occupancy.

11.13.030 Inspection and Registration

(a) Except as otherwise provided in section 11.13.070, below, any mortgagee who holds a mortgage on specified property shall inspect that property or cause it to be inspected in accordance with this Section. If the inspection reveals that the property is not being occupied by the mortgagor or by persons who are occupying the property with the mortgagor's consent, the mortgagee shall register the property with a system approved by the Chief of Code Enforcement. In connection with that registration, the mortgagee shall also designate in writing a property manager to inspect, maintain and secure the property. A separate inspection, registration and designation is required for each specified property.

(b) Registration pursuant to subsection (a) shall contain, at a minimum, the following information:

(1) The name and mailing address of the mortgagee, and the physical address of the mortgagee if the mailing address is a post office box.

(2) A direct contact name and phone number for purposes of contacting the mortgagee.

(3) The name, address, telephone number, facsimile number and email address of the property manager.

(4) The current disposition and occupancy status of the property.

(c) Any property manager designated pursuant to this Section must be located within Nevada and must be:

(1) A duly licensed property management company or property preservation company;

(2) A department or section of a mortgagee that is devoted to property management or preservation; or

(3) A service provider specifically employed by a mortgagee to provide property management or preservation within the County.

(d) The obligations listed in subsection (a) shall be fulfilled within the following time frames:

(1) The property inspection must occur no later than fifteen calendar days following the occurrence of the notice of default event regarding the property.

(2) The property registration and designation of a property manager must occur no later than ten calendar days after the inspection.

(e) With respect to each specified property, the mortgagee and its designated property manager shall be responsible for inspecting and maintaining the property on a monthly basis until the parcel no longer qualifies under the definition of "specified property."

(f) Records of registration shall not be placed on a searchable on-line database. Prior to making available for inspection or reproduction records of registration, in accordance with law, Clark County shall balance the public's right to know against the risk that the inspection or reproduction will endanger the public safety, including any limitation upon the request made by or acceptable to the requestor and any other particularized evidence of risk, keeping such records or portions thereof confidential only to the extent necessary to protect the public safety or otherwise required or permissible by law. Records of registration shall expeditiously be made available to law enforcement officers, providers of utilities and such other persons, as determined by the Chief of Code Enforcement as will facilitate the purposes of this Chapter.

11.13.040 Registration Fees

The County is authorized to charge a mortgagee, the actual cost to the County as determined and itemized by the County Manager, inclusive of overhead, a fee not to exceed two hundred dollars for each initial property registration required under this Chapter, and not to exceed a fee of fifty dollars for each modification to a registration, excluding modification to terminate the registration, for which there shall be no fee. Such registration fee is not in lieu of any other fee required by law, including but not limited to fees for recording notice of default.

11.13.050 Delegation of Registration Services

By means of contract, the County may assign and delegate to another person or entity the authority and responsibility to:

- (a) Effect, collect and maintain registrations under section 11.13.030; and
- (b) Collect registration fees under section 11.13.040.

11.13.060 Maintenance Standards

(a) Specified property shall be maintained in accordance with applicable codes and ordinances, including without limitation ordinances pertaining to dangerous buildings, solid waste, and nuisance abatement. Insofar as there is existing or previously existing landscaping, all visible landscaping in front and side yards shall be maintained to the neighborhood standard at the time registration was required. If no landscaping previously existed at the property in front and visible side yards, installation is not required under this section.

(b) For purposes of this section:

(1) "Landscaping" includes without limitation grass, turf stain, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. The term does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch (unless applied in conjunction with reseeded of turf areas), indoor-outdoor carpet or any similar material.

(2) "Maintenance of landscaping" includes without limitation regular watering, irrigation, staining, re-staining, cutting, pruning and mowing of required landscaping and removal of all trimmings.

(c) Pools and spas located on specified property shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. In either case, pools and spas must comply with the minimum security requirements applicable to pools and spas within the County.

(d) Specified property shall be maintained in a secure manner so as not to be accessible to unauthorized persons. Doors of all kinds, windows, gates and other openings that make the property accessible must be closed and locked so that a key, keycard, tool or special knowledge is necessary to gain access. Broken windows must be reglazed or boarded in accordance with applicable County standards.

(e) Except as otherwise provided in section 11.13.070, compliance with this section with respect to any specified property shall be the joint responsibility of the mortgagee and the property owner.

11.13.070 Safe Harbors

A mortgagee's obligation under this Chapter regarding inspection and maintenance of a specified property shall be waived by the Chief of Code Enforcement, or the Chief's

designee, if the mortgagee can demonstrate to the satisfaction of the Chief or designee that:

(a) The mortgage documents expressly prohibit the mortgagee and its agents from entering the property for those purposes;

(b) The mortgage documents do not authorize such entry in order to protect the mortgagee's interests in the property and there is a reasonable possibility, based on articulable evidence, that the mortgagee does not have actual or tacit consent, including but not limited to evidence that:

(1) The obligor under the mortgage or an authorized occupant of the premises will report as a trespass an entry on the premises by or on behalf of a mortgagee; and

(2) The obligor under the mortgage will assert against the mortgagee, whether in a foreclosure proceeding or otherwise, a claim that such entry is a breach of the mortgage documents or constitutes an illegal or unauthorized entry on the property; or

(c) The mortgagee or its agent has commenced or been made a party to, and shall prosecute with due diligence, an action by which the property shall be maintained by a judicially empowered and accountable receiver or trustee pursuant to NRS 107.100, Title 11 of the U.S.C., 12 U.S.C. 4617(b)(16) or as otherwise provided by law.

11.13.080 Waiver of Civil Penalties

For any period during which the mortgagee and its agents in compliance with this Chapter with respect to a specified property, compliance with Chapter 11.14 is waived and no civil penalties shall accrue in rem thereunder.

11.13.090 Supplemental Provisions

(a) Nothing in this Chapter:

(1) Requires a mortgagee or its agent or employee to violate any criminal law or ordinance or any court order, or to violate an automatic stay in a bankruptcy proceeding.

(2) Creates a duty or obligation that is owed to, or runs in favor of, any person other than the County and those officers, employees or agents who are acting in the County's behalf.

(3) Creates or implies a cause of action in favor of, or available to, any person other than the County or the State of Nevada.

(b) No act by a mortgagee or its officers, employees, agents or contractors in compliance with this Chapter, and no omission of an act required by this Chapter on the part of a mortgagee or its officers, employees, agents or contractors, shall be deemed or interpreted to:

(1) Make the mortgagee, for any purpose, a "mortgagee in possession" of property subject to a mortgage.

(2) Create a duty or obligation that is owed to, or runs in favor of, any person other than the County and those officers, employees or agents who are acting in the County's behalf.

(3) Create or imply a cause of action in favor of, or available to, any person other than the County or State of Nevada.

(4) Create, imply or suggest liability in tort on the part of a mortgagee or its officers, employees, agents or contractors, unless the act or omission would be actionable and result in such liability independent of, and notwithstanding the provisions of this Chapter.

(c) Nothing contained in this ordinance shall prohibit the County from enforcing its codes by any other means, including, but not limited to, injunction, abatement or as otherwise provided by law.

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the _____ day of _____, 2012.

PROPOSED BY: COMMISSIONER CHRIS GIUNCHIGLIANI

PASSED on the _____ day of _____ 2012.

AYES: _____

NAYS: _____

ABSTAINING: _____

ABSENT: _____

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By: _____
SUSAN BRAGER, Chair

ATTEST:

DIANA ALBA, County Clerk

This ordinance shall be in force and effect from and after the _____ day of
_____ 2012.

