

ORDINANCE NO. 3760

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKLIN, COUNTY OF SOMERSET, STATE OF NEW JERSEY, MORE PARTICULARLY CHAPTER 81, AFFORDABLE HOUSING.

SUMMARY

An ordinance amending the Code of the Township of Franklin, particularly Chapter 81, Affordable Housing, to add enforcement provisions consistent with COAH rules for non-compliance.

BE IT ORDAINED by the Township Council of the Township of Franklin in the County of Somerset, and State of New Jersey that the Code of the Township of Franklin is hereby amended as follows:

SECTION I

The Code of the Township of Franklin Chapter 181, Affordable Housing, is amended as follows to add new Section 81-11.1, Enforcement Provisions:

§81-11.1. Enforcement Provisions

- A. Upon the occurrence of a violation of any of the regulations governing low and moderate income units by an owner, developer or tenant of a low or moderate income unit, the Township of Franklin shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the Township of Franklin may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

- (1) The Township of Franklin may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the low or moderate income unit. If the owner, developer or tenant is found by the court

to have violated any provision of the regulations governing low or moderate units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- (a) A fine of not more than one thousand dollars (\$1000). Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing such units, payment into the Franklin Township Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing such units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
- (2) The Township of Franklin may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (a) Such judgment shall be enforceable, at the option of the Township of Franklin, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the Township of Franklin, including attorney's fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
 - (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the Township of Franklin for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Township of Franklin in full as aforesaid, the violating owner shall be personally responsible for and

to the extent of such deficiency, in addition to any and all costs incurred by the Township of Franklin in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, ~~such~~ *the* surplus, if any, shall be placed in escrow by the Township of Franklin for the owner and shall be held in ~~such~~ escrow for a maximum period of two years or until such earlier time as the owner ~~shall make~~ *makes* a claim ~~for such surplus~~ with the Township of Franklin for such. Failure of the owner to claim ~~such balance~~ *any surplus* within the two-year period shall automatically result in a forfeiture of such ~~balance~~ *surplus* to the Township of Franklin. Any interest accrued or earned on ~~such balance while being~~ *the surplus during the period it is* held in escrow shall belong to and shall be paid to the Township of Franklin, *regardless of* whether ~~such balance shall be~~ *the surplus is* paid to the owner or forfeited to the Township of Franklin.

- (c) Foreclosure by the Township of Franklin due to violation of the regulations governing low and moderate income affordable housing units shall not extinguish the restrictions of the regulations as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the low and moderate income unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the Township of Franklin may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing low and moderate income units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the Township of Franklin shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Township of Franklin, with such offer to purchase being equal to the maximum resale price of the low- and

moderate-income unit as permitted by the regulations governing low and moderate income units.

- (f) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing low and moderate income units until such time as title is conveyed from the owner.

SECTION II

Each clause, section or subsection of this ordinance shall be deemed a separate provision to the intent that if any such clause, section or subsection should be declared invalid, the remainder of the ordinance shall not be affected.

SECTION III

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed as the extent of such inconsistency.

SECTION IV

This ordinance shall take effect immediately upon adoption and publication according to law.

ORDINANCE NO. 3760

This is a true copy of an ordinance adopted by the Township Council, Township of Franklin, Somerset County, New Jersey.

Introduced:	May 27, 2008
Public Hearing:	June 24, 2008
Adoption:	June 24, 2008
Notice of Adoption:	June 30, 2008
Effective Date:	July 14, 2008

Ann Marie McCarthy, Township Clerk