

ORDINANCE NO. 3848

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKLIN TO ESTABLISH AND ADOPT THE MUNICIPAL POWERS AUTHORIZED BY THE STATE OF NEW JERSEY'S ABANDONED PROPERTY AND REHABILITATION ACT, N.J.S.A. 55:19-78 ET SEQ., AND RELATED STATUTORY PROVISIONS.

SUMMARY

An ordinance authorizing the Township of Franklin to establish an Abandoned Property List and establish and adopt specific municipal powers that are authorized to municipalities under the New Jersey Abandoned Property and Rehabilitation Act.

WHEREAS, the Council of the Township of Franklin, County of Somerset, State of New Jersey, strongly agrees with the State Legislature of the State of New Jersey that abandoned properties create a wide range of problems for municipalities, including but not limited to, the fostering of criminal activity, creating public health problems and otherwise diminishing the quality of life for residents and business operators in those areas; and

WHEREAS, the Council of the Township of Franklin strongly agrees with the State Legislature that abandoned properties diminish the property values of neighboring properties and have a negative effect on the quality of life of adjacent property owners, increasing the risk of property damage through arson and vandalism and discouraging neighborhood stability and revitalization; and

WHEREAS, the Council of the Township of Franklin strongly agrees with the State Legislature that, based upon the above, abandoned properties are presumptively considered to be nuisances, in view of their negative effects on nearby properties and the residents or users of those nearby properties; and

WHEREAS, the Council of the Township of Franklin strongly agrees with the State Legislature that the continued presence of abandoned properties in the Township of Franklin acts as a significant barrier to the Township's continued progressive development and revitalization; and

WHEREAS, the Council of the Township of Franklin strongly agrees with the State Legislature that it is the responsibility of the property owner to maintain their property in sound condition and prevent it from becoming a nuisance; and

WHEREAS, the Council of the Township of Franklin seeks to improve upon the success and effectiveness of the Township of Franklin Habitability Hearing Process, already in place pursuant to Chapter 94 of the Township Code of the Township of Franklin as well as Township Ordinance No. 3849, which permits the establishment of an "Abandoned Properties List," by way of expanding and

clarifying the tools available to the Township to strongly address the abandoned property problem.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Township of Franklin that the Code of the Township of Franklin is hereby amended to establish and adopt the municipal powers authorized by the State of New Jersey's Abandoned Property and Rehabilitation Act, *N.J.S.A. 55:19-78 et seq.*, and related statutory provisions, as follows:

SECTION I

CHAPTER 287 REHABILITATION OF ABANDONED PROPERTY

§287-1. Abandoned Property Criteria.

- A. Except as provided in *N.J.S.A. 55: 19-83*, any property that has not been legally occupied for a period of 6 months and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the Township Manager, or his Designee (both together throughout this Chapter referred to simply as the "Township Manager"), that:
- (1) The property is in need of rehabilitation in the reasonable judgment of the Township Manager and no rehabilitation has taken place during that same 6 month period; or
 - (2) Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least 6 months as of the date of a determination by the Township Manager pursuant to this section; or
 - (3) At least one installment of property tax remains unpaid and delinquent on that property as of the date of a determination by the Township Manager pursuant to this section; or
 - (4) The property has been determined to be a nuisance by the Township Manager in accordance with *N.J.S.A. 55:19-82* and may also be the subject to the Township of Franklin Habitability Hearing Process, pursuant to Chapter 94 of the Township Code, for one or more of the following reasons:
 - (a) The property has been found to be unfit for human habitation, occupancy or use pursuant to *N.J.S.A. 40:48-2.3*;
 - (b) The condition and vacancy of the property materially increases the risk of fire to the property and adjacent properties;

- (c) The property is subject to unauthorized entry leading to potential health and safety hazards; the owner has failed to take reasonable and necessary measures to secure the property; or the municipality has secured the property in order to prevent such hazards after the owner has failed to do so;
 - (d) The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure; or grounds have created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards; or
 - (e) The dilapidated appearance or other condition of the property materially affects the welfare, including the economic welfare, of the residents of the area in close proximity to the property, and the owner has failed to take reasonable and necessary measures to remedy the conditions.
- B. A property which contains both residential and non-residential space may be considered abandoned pursuant to *N.J.S.A. 55:19-78 et seq.* so long as two-thirds or more of the total net square footage of the building was previously legally occupied as residential space and none of the residential space has been legally occupied for at least 6 months at the time of the determination of abandonment by the Township Manager.

§287-2. Establishment of Abandoned Property List.

- A. The Township Manager shall identify abandoned property within the Township of Franklin for the purpose of establishing an Abandoned Property List. The Abandoned Property List shall include, for each abandoned property identified, the tax block and lot number, the name of the owner of record, if known, and the street address of the lot. The Township Manager may add properties to the Abandoned Property List at anytime, and may delete properties at any time when he or she finds that the property no longer meets the definition of an abandoned property.
- B. An abandoned property shall not be included on the Abandoned Property List if rehabilitation is being performed in a timely manner, as evidenced by building permits issued and diligent pursuit of rehabilitation work authorized by those permits. A property on which an entity other than the Township of Franklin has purchased or taken assignment from the Township of a tax sale certificate which has been placed on the Abandoned Property List may be removed if the owner of the certificate pays all municipal taxes and liens due on the property within 30 days after the property is placed on the List; provided, however, that if the owner of the certificate fails to initiate

foreclosure proceedings within 6 months after the property was first placed on the List, the property shall be restored to the Abandoned Property List in accordance with the provisions of *N.J.S.A. 55:19-103*.

- C. The Township Manager shall establish the Abandoned Property List and any additions or deletions thereto by authorizing the publication of the List in the official newspaper of the Township of Franklin, which publication shall constitute public notice, and, within 10 days after publication, shall send a notice, by certified mail, return receipt requested, and by regular mail, to the owner of record of every property included on the List. The published and mailed notices shall identify property determined to be abandoned setting forth the owner of record, if known, the tax lot and block number and street address. The Township Manager, in consultation with the tax collector, shall also send out a notice by regular mail to any mortgagee, servicing organization, or property tax processing organization that receives a duplicate copy of the tax bill pursuant to *N.J.S.A. 54:4-64(d)*. When the owner of record is not known for a particular property and cannot be ascertained by the exercise of reasonable diligence by the tax collector, notice shall not be mailed but instead shall be posted on the property in the manner as provided in *N.J.S.A. 40:48-2.7*. The mailed notice shall indicate the factual basis for the Township Manager's finding that the property is abandoned property as that term is defined herein and in *N.J.S.A. 55:19-54*, and shall specify the information relied upon in making such finding. In all cases a copy of the mailed or posted notice shall also be filed by the Township Manager in the Office of the Somerset County Clerk. This filing shall have the same force and effect as a formal notice under *N.J.S.A.2A:15-6*. The notice shall be captioned with the name of the Township of Franklin as "plaintiff" and the name of the property owner as "defendant", as though an action had been commenced by the Township against the owner.
- D. An owner or lien holder may challenge the inclusion of his property on the Abandoned Property List by appealing that determination to the Township Manager within 30 days of the owner's receipt of the certified notice or 40 days from the date upon which the notice was sent. An owner whose identity was not known to the Township Manager shall have 40 days from the date upon which notice was published or posted, whichever is later, to challenge the inclusion of a property on the Abandoned Property List. For good cause shown, the Township Manager shall accept a late filing of an appeal. Within 30 days of receipt of a request for an appeal of the findings contained in the notice, the Township Manager shall schedule a hearing for re-determination of the matter. Any property included on the List shall be presumed to be abandoned property unless the owner, through the submission of an affidavit or certification asserting that the property, can demonstrate that the property was erroneously included on the List. The affidavit or certification shall be accompanied by supporting documentation such as, but not limited to, photographs, repair invoices, bills and construction contracts. The sole ground for appeal shall be that the property in question is not abandoned property as

that term is defined herein and in *N.J.S.A.55:19-54*. The Township Manager shall decide any timely filed appeal within 10 days of the hearing on the appeal and shall promptly, by certified mail, return receipt requested, and by regular mail, notify the property owner of the decision and the reasons therefore.

- E. The property owner may challenge an adverse determination of an appeal with the Township Manager pursuant to Subsection “D” of this section, by instituting, in accordance with the New Jersey Court Rules, a summary trial proceeding in the Superior Court, Somerset County. Such action shall be instituted within 20 days of the date of the notice of decision mailed by the Township Manager. The sole ground for appeal and new hearing before the Superior Court shall be that the property in question is not an abandoned property as that term is defined in *N.J.S.A. 55:19-54*. The failure to institute an action of appeal on a timely basis shall constitute a jurisdictional bar to challenging the adverse determination, except that, for good cause shown, the Court may extend the deadline for instituting the action.
- F. The Township Manager shall promptly remove any property from the Abandoned Property List that has been determined by him or on appeal not to be abandoned and may, in his discretion, remove properties from said list whenever he deems such removal appropriate under the circumstances.
- G. The Abandoned Property List shall become effective, and the Township of Franklin shall have the right to pursue any legal remedy with respect to properties on the List, at any time after at least 1 property has been placed on the List and following the expiration of the period for appeal with respect to that first property or upon the denial of an appeal brought by the property owner of that first property.
- H. The Township may also, in addition to and irrespective of the actions and limitations established by this Ordinance, continue to move forward with the Habitability Hearing Process established separately by Chapter 94 of the Township Code, whether or not the property involved in that process has also been placed on the Abandoned Property List.

§287-3. Interested Parties May Request Additions to the Abandoned Property List.

- A. Any interested party may submit a written request to the Township Manager asserting that any property within the Township of Franklin should be included on the Abandoned Property List. The written request must specify the street address and block and lot number of the property to be included, and the grounds for its inclusion. Within 30 days of receipt of any such request, the Township Manager shall provide a written response to the party, either indicating that the property will be added to the List or, if not, the reasons for not adding the property. For the purposes of this section, the term “interested

parties” shall include any resident of the Township of Franklin, any owner or operator of a business within the Township of Franklin or any organization representing the interests of residents, business owners or otherwise engaged in furthering the revitalization and improvement of the neighborhood in which the property is located.

- B. Any interested party may participate in a re-determination hearing regarding the inclusion of a property on the Abandoned Property List. Upon written request by any interested party, the Township Manager shall provide that party with at least 20 days’ notice of any such hearing. The party shall provide the Township Manager with notice at least 10 days before the hearing of its intention to participate, and the nature of the testimony or other information that is proposes to submit at the hearing.

§287-4. Removal of Property from Abandoned Properties List.

- A. An owner may request removal of their property from the Abandoned Properties List prior to sale of the tax sale certificate by paying all taxes and Township liens due, including interest and penalties, and:

- (1) by posting cash or a bond equal to the cost of remediating all conditions because of which the property has been determined to be abandoned pursuant to *N.J.S.A. 55:19-55* and by posting cash or a bond to cover the cost of any environmental cleanup required on the property, evidenced by a certification by a licensed engineer retained by the owner and reviewed and approved by the Township Manager, stating that the cash or bond adequately covers the cost of the cleanup; or

- (2) by demonstrating to the satisfaction of both the Township Manager and Township Council that the conditions rendering the property abandoned have been remediated in full; provided, however, that where the Township Manager finds that the owner is actively engaged in remediating the conditions because of which the property was determined to be abandoned, as evidenced by significant rehabilitation activity on the property, the Township Manager may grant an extension of time of not more than 120 days for the owner to complete all work, during which time no further proceedings will be taken against the owner or the property.

- B. If the owner has posted cash or a bond in order to have a property removed from the Abandoned Property List and the conditions because of which the property was determined to be abandoned have not been fully remediated within 1 year of the date of posting the cash or bond, or, in the case of a property which requires a remediation of any known, suspected or threatened release of contaminants, if the owner has failed to enter into a memorandum of agreement with the N.J. Department of Environmental Protection or an

administrative consent order, as the case may be, or if an agreement or order is in effect but the owner has failed to perform the remediation in conformance with the agreement or order, then the cash or bond shall be forfeited to the Township which shall use the cash or bond and any interest which has accrued thereon for the purpose of demolishing or rehabilitating the property or performing the environmental remediation. Any funds remaining after the property has been demolished, rehabilitated or cleaned up shall be returned to the owner.

§287-5. Sale of Restricted Tax Liens.

- A. Notwithstanding the provisions of *N.J.S.A. 54:5-19*, or the provisions of any other law to the contrary, if a property is included on the Abandoned Property List and the property taxes or other Township liens due on the property are delinquent for 6 or more quarters as of the date of expiration of the right to appeal the property's inclusion on the List, or, if an appeal has been filed, as of the date that all opportunities for appeal of inclusion on the List have been exhausted, then the tax lien on the property may be sold in accordance with the procedures of the "Tax Sale Law," *N.J.S.A. 54:5-1 et seq.*, on or after the 90th day following the expiration of that time of appeal or final determination on an appeal.
- B. The Township of Franklin may, at its option, require that the sale of the tax sale certificate or any subsequent assignment or transfer of a tax sale certificate held by the Township be subject to the express condition that the purchaser or assignee shall be obliged to perform and conclude any rehabilitation or repairs necessary to remove the property from the Abandoned Property List pursuant to *N.J.S.A. 55:19-55* and to post a bond in favor of the Township to guarantee the rehabilitation or repair of the property. The Township Manager may waive a requirement to post a bond imposed by the Township for any purchaser, assignee or transferee of a tax sale certificate that provides documentation acceptable to the Township Manager that the purchaser, assignee or transferee is a qualified rehabilitation entity as defined in *N.J.S.A. 55:19-80*. The cost of rehabilitation and repairs and the cost of the bond shall be added to the amount required to be paid by the owner for redemption of the property. The purchaser, assignee or transferee of the tax sale certificate who is required to rehabilitate and repair the property shall be required to file the appropriate affidavits with the tax collector, pursuant to *N.J.S.A. 54:5-62*, representing the amounts of monies expended periodically toward the rehabilitation or repair of the property. A purchaser, assignee or transferee shall be entitled to interest on the amounts expended, as set forth in the affidavits, at the delinquent rate of interest for delinquencies in excess of \$1,500 in effect for the time period when the amounts were expended, pursuant to *N.J.S.A. 54:4-67*. The tax sale certificate purchaser, assignee or transferee, with the authority of the Township of Franklin, shall be permitted to enter in and upon the property for the purposes of appraising the costs of rehabilitation and repair and to

perform all other acts required to guarantee the completion of the rehabilitation or repair of the property. No rehabilitation or repair work shall be commenced, however, until proof of adequate liability insurance and an indemnification agreement, holding the Township of Franklin harmless, has been filed with the Township Manager.

- C. If the Township of Franklin acquires the tax sale certificate for a property on the Abandoned Property List, then, upon 10 days' written notice to the property owner and any mortgagee as of the date of the filing of the notice pursuant to *N.J.S.A. 55:19-55*, the Township shall be permitted to enter upon the property and remediate any conditions that caused the property to be included on the Abandoned Property List. No remediation shall be commenced, however, if within that 10-day period the owner or mortgagee shall have notified the Township in writing that the owner or mortgagee has elected to perform the remediation itself. When the owner or mortgagee elects to perform the remediation itself, it shall be required to post bond in favor of the Township of Franklin in order to ensure performance. The amount and conditions of the bond shall be determined by the Township Manager.
- D. The cost of remediation incurred by the Township of Franklin, as so certified by the entity incurring the cost upon completion of the remediation, shall constitute a lien upon the property first in time and right to any other lien, whether the other lien was filed prior to, or after the filing of any lien by the Township, except for Township taxes, liens and assessments and any lien imposed pursuant to the "Spill Compensation and Control Act, *N.J.S.A. 58:10-23.11 et seq.*, together with any interest thereon. The certification of cost shall be filed and recorded as a lien by the entity incurring the cost with the Somerset County Clerk.
- E. The clearance, development, redevelopment, or repair of property being maintained as an abandoned property pursuant to this Ordinance shall be considered a public purpose and public use, for which the power of eminent domain may be lawfully exercised.

§287-6. Special Tax Sale and Criteria for Bidders.

- A. The Township of Franklin may hold special tax sales with respect to those properties eligible for tax sale pursuant to *N.J.S.A. 54:5-19* which are also on the Abandoned Property List.

- B. The Township Manager, with the advice and consent of the Township Council, shall establish criteria for eligibility to bid on properties at the sale, which may include, but need not be limited to:
- (1) documentation of the bidder's ability to rehabilitate or otherwise reuse the property consistent with Township's plans and regulations; commitments by the bidder to rehabilitate or otherwise reuse the property, consistent with Township's plans and regulations;
 - (2) commitments by the bidder to take action to foreclose on the tax lien by a date certain; and
 - (3) such other criteria as the Township Manager, with the advice and consent of the Township Council, may determine are necessary to ensure that the properties to be sold will be rehabilitated or otherwise reused in a manner consistent with the public interest.
- C. The Township Manager, with the advice and consent of the Township Council, may establish minimum bid requirements for a special tax sale that are less than the full amount of the taxes, interest and penalties due, to help ensure that the properties will be rehabilitated or otherwise utilized in a manner consistent with the public interest.
- D. The Township Manager, with the advice and consent of the Township Council, may combine properties in said special tax sale into bid packages, and require that bidders place a single bid on each package, rejecting any and all bids on individual properties that are submitted.
- E. The Township Manager, with the advice and consent of the Township Council, may sell said properties subject to provision that, if the purchaser fails to carry out any commitment that has been set forth as a condition of sale or misrepresents any material qualification that has been established as a condition of eligibility to bid pursuant thereto, then the properties and any interest thereto acquired by the purchaser shall revert to the Township, and any amount paid by the purchaser at the special tax sale shall be forfeited to the Township.
- F. In the event there are 2 or more qualified bidders for any property or bid package in a special tax sale, the Township may designate the unsuccessful qualified bidder whose bid was closest to the successful bid, as an eligible purchaser. In the event that the selected purchaser of that property or bid package fails to meet any of the conditions of sale established by the Township pursuant and their interest in the property or properties reverts to the Township, the Township may subsequently designate the entity previously designated as an eligible purchaser as the winning bidder for the property or properties, and assign the tax sale certificates to that entity on the basis of that

entity's bid at the special tax sale, subject to the terms and conditions of the special tax sale.

- G. The Township of Franklin shall provide notice of a special tax sale pursuant to *N.J.S.A. 54:5-26*. The notice shall include any special terms of sale established by the Township pursuant to this section. Nothing shall prohibit the Township from holding a special tax sale on the same day as a standard or accelerated tax sale.

§287-7. Expedited Action to Foreclose Right of Redemption.

- A. When a person or entity other than the Township of Franklin acquires a tax sale certificate for a property on the Abandoned Property List at tax sale, the purchaser may institute an action to foreclose the right of redemption at any time after the expiration of just 6 months following the date of the sale of the tax sale certificate.
- B. When the Township of Franklin is the purchaser at tax sale of any property on the Abandoned Property List pursuant to *N.J.S.A. 54:5-34*, an action to foreclose the right of redemption may be instituted in accordance with the provisions of subsection b of *N.J.S.A. 54:5-77*.
- C. After the foreclosure action is instituted, the right to redeem shall exist and continue to exist until barred by the judgment of the Superior Court; provided, however, that no redemption shall be permitted except where the owner:
 - (1) posts cash or a bond equal to the cost of remediating the conditions because of which the property was determined to be abandoned pursuant to *N.J.S.A. 55:19-56*, as determined by the Court; or
 - (2) demonstrates to the Court that the conditions because of which the property was determined to be abandoned have been remedied in full.

§287-8. Abandoned Property Status During Expedited Foreclosure.

- A. If an entity other than the Township of Franklin has purchased or taken assignment from the Township of a tax sale certificate on a property that has not been legally occupied for a period of 6 months, that property shall not be added to the Abandoned Property List under the following limited circumstances:
 - (1) the owner of the certificate has continued to pay all Township taxes and liens on the property in the tax year when due; and
 - (2) the owner of the certificate takes action to initiate foreclosure proceedings within 6 months after the property is eligible for foreclosure pursuant to

either subsection a or subsection b of *N.J.S.A. 54:5-86*, as appropriate, and diligently pursues foreclosure proceedings in a timely fashion thereafter.

- B. A property used on a seasonal basis shall be deemed abandoned only if it meets any 2 of the additional criteria set forth in *N.J.S.A. 55:19-81*.
- C. A determination that a property is abandoned property under the provisions of this ordinance and *N.J.S.A. 55:19-78 et seq.*, shall not constitute a finding that the use of the property has been abandoned for purposes of municipal zoning or land use regulation.
- D. Upon the request of a purchaser or assignee of a tax sale certificate seeking to bar the right of redemption on an abandoned property pursuant to subsection b of *N.J.S.A. 54:5-86*, the Township Manager or the tax collector shall, in a timely fashion, provide the requester with a certification that the property fulfills the definition of an “abandoned property” according to the criteria established in *N.J.S.A. 55:19-81* and *N.J.S.A. 55:19-82*.
- E. Nothing in this ordinance shall preclude the Township from addressing concerns regarding the condition of the property through the Township of Franklin habitability hearing process, established by Chapter 94 of the Township Code, irrespective of any ongoing foreclosure proceedings.

§287-9. Summary Action for Control and Possession of Abandoned Property.

- A. A summary action or other action to transfer possession and control of abandoned property in need of rehabilitation to the Township of Franklin may be brought by the Township in the Superior Court, Somerset County. If the Court shall find that the property is abandoned and that the owner or party in interest has failed to submit and initiate a rehabilitation plan, then the Court may authorize the Township to take possession and control of the property and to develop its own rehabilitation plan for the property.
- B. Where the Township has been granted possession and control, the Township may commence and maintain those further proceedings for the conservation, protection or disposal of the property, or any part thereof, that are required to rehabilitate the property, recoup the cost and expenses of rehabilitation, and for the sale of the property; provided, however, that the Court shall not direct the sale of the property if the owner applies to the Court for reinstatement of control and possession of the property as permitted by *N.J.S.A. 55:19-92*.
- C. Failure by the owner, mortgage holder or lien holder to submit a plan for rehabilitation to the Township, obtain appropriate construction permits or, in the alternative, submit formal applications for funding the cost of rehabilitation to Local, State or Federal agencies providing such funding within

the initial 6 month period, shall be deemed clear evidence that the owner has failed to take any action to further the rehabilitation of the property.

- D. An owner may defend against a complaint filed pursuant to *N.J.S.A. 55:19-84* by submitting a plan for the rehabilitation and reuse of the property, which is the subject of the complaint and by posting a bond equal to 125% of the amount determined by the Township Manager or the Court to be the projected cost of rehabilitation.
- E. Any plan submitted by an owner to defend against a complaint shall be submitted within 60 days after the complaint has been filed, unless the Court provides the owner with an extension of time for good cause shown. A plan submitted by an owner pursuant to this section shall include, but not be limited to:
 - (1) A detailed financial feasibility analysis, including documentation of the economic feasibility of the proposed reuse, including operating budgets or resale prices, or both, as appropriate;
 - (2) A budget for the rehabilitation of the property, including sources and uses of funds, based on the terms and conditions of realistically available financing, including grants and loans;
 - (3) A timetable for the completion of rehabilitation and reuse of the property, including milestones for performance of major steps leading to and encompassing the rehabilitation and reuse of the property; and
 - (4) Documentation of the qualifications of the individuals and firms that will be engaged to carry out the planning, design, financial packaging, construction, and marketing or rental of the property.
- F. Where the Court approves the rehabilitation plan of the owner or other party in interest, then it may appoint the Township Manager to act as monitor of compliance and progress. If the owner fails to carry out any step in the approved plan, then the Township may apply to the Court to have the posted bond forfeited, to transfer possession of the building to the Township to complete the rehabilitation plan, and to grant authorization to use the bond proceeds for the rehabilitation. The owner or other party in interest shall provide bi-monthly reports to the Township Manager on its activities and progress toward rehabilitation and reuse of the property.
- G. If an owner is unsuccessful in defending against a complaint filed pursuant to *N.J.S.A. 55:19-84*), the mortgage holder or lien holder may seek to be designated in possession of the property by submitting a plan and posting a bond meeting the same conditions as set forth in *N.J.S.A. 55:19-87*. Their plan must be submitted within 60 days following the Court's rejection of the

owner's plan, unless the Court provides the mortgage holder or lien holder with an extension of time for good cause shown. If the Court approves any such mortgage holder or lien holder's plan, it shall designate that party to be in possession of the property for purposes of ensuring its rehabilitation.

- H. The mortgage holder or lien holder, as the case may be, shall provide bi-monthly reports to the Court and the Township Manager on its activities and progress toward rehabilitation and reuse of the property. If the mortgage holder or lien holder fails to carry out any material step in the approved plan, then the Township Manager shall notify the Court, which may order the posted bond forfeit, grant the Township possession of the property, and authorize the Township to use the proceeds of the bond for rehabilitation of the property.
- I. Any sums incurred or advanced for the purpose of rehabilitating the property by a mortgage holder or lien holder granted possession of a property, including Court costs and reasonable attorney's fees, may be added to the unpaid balance due to that mortgage holder or lien holder, with interest calculated at the same rate set forth in the note or security agreement; or, in the case of a tax lien holder, at the statutory interest rate for subsequent liens.
- J. If no mortgage holder or lien holder meets the conditions of *N.J.S.A. 55:19-88*, then the Township may submit a plan to the Court which conforms with the provisions of *N.J.S.A. 55:19-87*. Such plan shall designate whether the Township or a qualified rehabilitation entity shall undertake the rehabilitation plan in accordance with the provisions of *N.J.S.A. 55:19-90*.

§287-10. Township Rehabilitation or Designation of Qualified Rehabilitation Entity.

- A. The Township Manager, with the advice and consent of the Township Council, may designate a qualified rehabilitation entity for the purpose of exercising the Township's rights, where that designation will further the rehabilitation and reuse of the property consistent with Township's plans and objectives.
- B. Regardless of whether the Township exercises its rights directly or the Township Manager designates a qualified rehabilitation entity pursuant to this section, while in possession of a property, the Township shall maintain, safeguard, and maintain insurance on the property. Notwithstanding the Township's possession of the property, the owner of the property shall not be relieved of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner.
- C. The Court may approve the borrowing of funds by the Township of Franklin to rehabilitate the property and may grant a lien or security interests with priority over all other liens or mortgages other than municipal liens. Prior to granting this lien priority, the Court must find as follows:

- (1) the Township sought to obtain the necessary financing from the senior lien holder, which declined to provide such financing on reasonable terms;
 - (2) the Township sought to obtain a voluntary subordination from the senior lien holder, which refused to provide such subordination; and
 - (3) lien priority is necessary in order to induce another lender to provide financing on reasonable terms. No lien authorized by the Court shall take effect unless recorded with the Clerk of Somerset County.
- D. Where the Township has designated a qualified rehabilitation entity to act on its behalf, the qualified rehabilitation entity shall provide bi-monthly reports to the Township Manager on its activities and progress toward rehabilitation and reuse of the property. The Township or qualified rehabilitation entity, as the case may be, shall provide such reports to the Court as the Court determines to be necessary. If the Court finds that the Township or its designee have failed to take diligent action toward rehabilitation of the property within 1 year from the grant of possession, then the Court may request that the Township to designate another qualified rehabilitation entity to exercise its rights, or if the Township fails to do so, may terminate the order of possession and return possession and control of the property to its owner.
- E. The Township of Franklin shall file a Notice of Completion with the Court, and shall also serve a copy on the owner and any mortgage holder or lien holder, at such time as the Township has determined that no more than 6 months remain to the anticipated date on which rehabilitation will be complete. This notice shall include an affidavit of the Township Manager, attesting that the rehabilitation is anticipated to be completed within 6 months, and a statement setting forth the actions as it plans to undertake consistent with the plan.

§287-11. Petition for Reinstatement of Control and Possession by Owner.

- A. An owner may petition for reinstatement of the owner's control and possession of the property at any time after 1 year from the Court's removal of possession, but no later than 30 days after the Township of Franklin has filed a Notice of Completion with the Court or, in the event the Notice of Completion is filed within less than 1 year of the grant of possession, within 30 days after the Township has filed said Notice.
- B. The Court may allow additional time for good cause if that additional time does not materially delay completion of the rehabilitation, place undue hardship on the Township or affect any of the terms or conditions under which the Township has applied for or received financing for the rehabilitation of the property.

- C. If the owner fails to petition for the reinstatement of control and possession of the property within 30 days after the Township has filed a Notice of Completion or, in any event, within 2 years after the initial grant of possession, or if the owner fails to meet any conditions that may be set by the Court in granting a reinstatement petition, the Court may grant the Township title or authorize the Township to sell the property, subject to the provisions of *N.J.S.A. 55:19-96*.

§287-12. Procedure for Township to Place Liens, Obtain Title and Sell Property.

- A. The Township Manager, with the approval of the Court, may place a lien on the property to cover any costs of the Township in connection with any proceeding under *N.J.S.A. 55:19-78 et seq.* incurred prior to the grant by the Court of an order of possession, which may include costs incurred to stabilize or secure the property to ensure that it can be rehabilitated in a cost-effective manner. Any such lien shall be considered a Township lien for the purposes of *N.J.S.A. 54:5-9*, with the rights and status of a Township lien pursuant thereto.
- B. Where the Township seeks to gain title to the property, it shall purchase the property for fair market value on such terms as the Court shall approve, and may place the proceeds of sale in escrow with the Court.
- C. The Court may authorize the Township of Franklin to sell the building free and clear of liens, claims and encumbrances, in which event all such liens, claims and encumbrances shall be transferred to the proceeds of sale with the same priority as existed prior to resale in accordance with the provisions of this section, except that municipal liens shall be paid at settlement. The proceeds of the purchase of the property shall be distributed as set forth in *N.J.S.A. 55:19-97*.
- D. Upon approval by the Court, the Township shall sell the property on such terms and at such price as the Court shall approve, and may place the proceeds of sale in escrow with the Court. The Court shall order a distribution of the proceeds of sale after paying Court costs in the order of priority set forth in *N.J.S.A. 55:19-97*.
- E. With the exception of the holding of special tax sales pursuant to *N.J.S.A. 55:19-101*, the remedies available under *N.J.S.A. 55:19-78 et seq.* shall be available to the Township with respect to any abandoned property, whether or not the Township has established an Abandoned Property List and whether or not the property at issue has been included on any such list.

§287-13. Powers of Construction Code Official Not Affected.

No provision of this Chapter shall be construed as restricting or otherwise abrogating the enforcement and other powers of the Township's Construction Code Official under the New Jersey Uniform Construction Code, including without limitation N.J.S.A. 52:27D-123 et seq., and N.J.A.C. 5:23-1.1 et seq. (collectively, the "Code"). The provisions of this Chapter shall be construed as consistent with the enforcement and other powers of the Township's Construction Code Official under the Code.

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 ordinance inconsistent with this ordinance are hereby repealed as to the extent of such inconsistency.

SECTION IV

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

ORDINANCE NO. 3848

THIS IS A TRUE COPY OF AN ORDINANCE ADOPTED BY THE TOWNSHIP COUNCIL,
TOWNSHIP OF FRANKLIN, SOMERSET, NJ

INTRODUCED: September 8, 2009

PUBLIC HEARING: October 13, 2009

ADOPTED:

NOTICE OF FINAL ADOPTION:

EFFECTIVE DATE:

ANN MARIE McCARTHY, TOWNSHIP CLERK

