



## City Officials Guide to Vacant Residential Properties

Abandoned and vacant residential properties have become a major problem for cities across the United States affected by the rise in mortgage foreclosures. In Kentucky, a record 20,000 properties had foreclosure starts in 2009, up from 18,000 in 2008 according to the Mortgage Bankers Association. The trend is expected to continue for the foreseeable future.

City governments experience both direct and indirect costs when foreclosed properties become vacant properties. Direct costs include increased policing, maintenance, and regulatory costs. Indirect costs include decreased property values, reduced property tax revenues, and unpaid fees for water, gas, and electricity.

Tools are available to assist Kentucky cities address the impact of vacant residential properties on their communities.

### **1. Model ordinance requiring registration of vacant residential properties.**

The costs to city governments caused by vacant residential properties largely occur in the lag time between when an owner leaves a home in foreclosure and title to the property is vested in a third party.

Many U.S. cities have passed ordinances requiring creditors with a security interest in vacant residential property to register the property with the city government in order to improve oversight and maintenance of the property.

The Kentucky League of Cities has prepared a model ordinance requiring inspection and registration of vacant residential properties similar to ordinances adopted by other U.S. cities to encourage maintenance and preservation of vacant residential properties.

The ordinance requires creditors to inspect residential property prior to filing a complaint of foreclosure or executing a deed in lieu of foreclosure to determine whether the property is vacant. If the property is vacant, the creditor is required to register the property as vacant with the city government in which the property is located on the same day the complaint of foreclosure is filed or deed in

### **City Ordinances Examples Available**

KLC maintains a large collection of municipal ordinances from cities around the state and country. Model ordinances on popular topics such as code enforcement, animal control, alcohol licensing, occupational license tax and zoning are all available for KLC members to use as a guide when drafting local legislation. Please note that all ordinances should be reviewed by your city attorney before enactment.

To request a specific model ordinance or to share your ordinances with other KLC members, please contact the legal staff at 1-800-876-4552.



lieu of foreclosure is executed, or, subsequently, if the property becomes vacant prior to conveyance to a third party.

The city may notify the creditor of a registered property if the property is determined, during the period of vacancy and prior to conveyance to a third party, to be in violation of an ordinance regulating a nuisance and require the creditor to correct the violation to the extent consistent with the terms of the mortgage. Mortgages permit creditors to enter vacant property that is the subject of a mortgage to preserve the property and prevent deterioration.

Interested city officials may obtain a copy of the model ordinance or request additional information by contacting the Kentucky League of Cities at 1-800-876-4552.

## **2. Combine code enforcement boards and nuisance code enforcement boards (an option for first through third class cities)**

Many Kentucky cities have established code enforcement boards pursuant to KRS 65.8801-65.8839 for review and prosecution of code violations including violation of nuisance codes. Other Kentucky cities have established nuisance code enforcement boards pursuant to KRS 82.700-KRS 82.725 for review and prosecution of nuisance code violations.

Code enforcement boards established pursuant to KRS 65.8802-65.8839 have broader authority than nuisance code enforcement boards established pursuant to KRS 82.700-KRS 82.725 which are limited only to review and prosecution of nuisance code violations. For this reason code enforcement boards established pursuant to KRS 65.8802-65.8839 are preferred by many Kentucky cities.

There is, however, an advantage to prosecution of nuisance code violations by a nuisance code enforcement board. Violations enforced pursuant to KRS 82.700-82.725 permit fines, penalties, charges, and fees imposed because of the violation to have priority over all other liens on the property except state, county, school board and city taxes pursuant to KRS 82.720. On the other hand, the code enforcement board statutes do not provide for lien priority. Use of the lien priority provision available to nuisance code enforcement boards permits recovery of costs incurred by cities for preservation and maintenance of vacant residential properties such as mowing lawns, trimming shrubs, boarding up windows, clearing trash, and removing dilapidated structures.

Do you need more information about Code Enforcement Boards? Order a copy of the *KLC Local Government Code Enforcement Handbook* for detailed information about city ordinances, ordinance enforcement, the enforcement process and code enforcement officers. Members can order this publication for \$15. Contact the KLC legal staff at 1-800-876-4552 for more information.



Because of the lien priority advantage available to nuisance code enforcement boards, the Kentucky League of Cities recommends that cities currently prosecuting nuisance code violations pursuant to KRS 65.8801-65.8839 consider combining their code enforcement board with a nuisance code enforcement board in order to obtain the advantage of lien priority.

The procedures for operation of a code enforcement board and a nuisance code enforcement board are very similar with three main differences. The nuisance code enforcement board statutes in KRS 83.700 define “local government” to mean “a consolidated local government or a city of the first, second, third, or fourth class.” Thus, a nuisance code enforcement board may be established only by a city of the first to fourth class whereas a code enforcement board may be established by a city of any class.

Additionally, unlike code enforcement boards, KRS 82.700 and 82.710 permit the appointment of a hearing officer by a nuisance code enforcement board and KRS 82.720 requires any appeal of an order issued by a nuisance code enforcement board to be filed with the district court within seven days of the board’s determination. In contrast, any appeal of an order issued by a code enforcement board must be filed with the district court within 30 days and the code enforcement board statutes do not specifically provide for appointment of a hearing officer.

Therefore, if a city elects to establish a combined code enforcement board and nuisance code enforcement board, the above differences must be recognized when drafting a combined ordinance and prosecuting violations of its nuisance code.

### **3. Increase taxation of vacant properties.**

A third tool available to assist Kentucky cities address the impact of vacant residential properties in their communities is by increased taxation.

KRS 92.305 permits any city of the second to the sixth class which finds and declares that there exists abandoned urban property as defined in KRS 132.012 within the city, or which finds that there exists blighted or deteriorated property pursuant to KRS 99.705-99.730, to levy a separate rate of taxation on abandoned urban property pursuant to KRS 132.012.

KRS 132.012 permits the legislative body of any city to levy a rate of taxation on abandoned urban property higher than the prevailing rate of taxation on other real property in the city. Thus, the prevailing rate established by KRS 132.027 does not apply to the rate of taxation on property determined to be abandoned urban property.

“Abandoned urban property” is defined by KRS 132.012 as “any vacant structure or vacant or unimproved lot or parcel of ground in a predominantly developed urban area which has been vacant or unimproved for a period of at least one (1) year and which:



- (a) Because it is dilapidated, unsanitary, unsafe, vermin infested, or otherwise dangerous to the safety of persons, it is unfit for its intended use; or
- (b) By reason of neglect or lack of maintenance has become a place for the accumulation of trash and debris, or has become infested with rodents or other vermin; or
- (c) Has been tax delinquent for a period of at least three (3) years; or
- (d) Is located within a development area established under KRS 65.7049, 65.7051, and 65.7053 [tax increment financing].”

The purpose of KRS 92.305 is to spur rehabilitation of dilapidated urban properties or, alternatively, to give cities more incentive to foreclose on unpaid tax liens because the amount of unpaid taxes is higher.

An increased tax rate may also be levied by any city of the second to the sixth class if it determines there exists “blighted or deteriorated property” as defined in KRS 99.705. A vacant property review commission established pursuant to KRS 99.710, or another department or agency of city government, must determine which properties within the city qualify as blighted or deteriorated as defined in KRS 99.705 prior to levying a higher tax.

Section 157 of the Kentucky Constitution establishes maximum tax rates for units of local government. The maximum rate for cities with populations over 15,000 is \$1.50 per \$100 of taxable property. For cities 10,000-14,999, the maximum rate is \$1.00 per \$100. For cities up to 9,999, the maximum tax rate is \$0.75 per \$100.

Please contact the KLC member legal department at 1-800-876-4552 for more information about vacant residential properties or other legal concerns.