

To: Trustees and Beneficiaries of Deeds of Trust for Properties in the City Of Barstow

Trustees or beneficiaries of Deeds of Trust for properties located in the City of Barstow are subject to property maintenance requirements according to standards as set forth in the City of Barstow Municipal Code (in particular Chapter 6.28 and 6.38).

A new ordinance, No. 858-2010, requires the registration of vacant properties. Registration forms are available at the City of Barstow website at www.barstowca.org or at the City Hall Cashier located at 220 E. Mt. View Street, Barstow, CA 92311.

Please review the new ordinance (following pages), as there are other obligations which you may need to perform as beneficiary or trustee of a foreclosed property, particularly Section 6.28.090 (b).

Responsible parties shall cause the on-site inspection of any real property subject to registration pursuant to this Chapter to be inspected on a weekly basis and shall submit a written inspection report to the City Manager (or designee thereof) on or before the tenth (10th) day of each calendar month for which the real property remains vacant. The written report shall consist of, at a minimum, (i) the address of the real property being inspected, (ii) the dates of inspection, (iii) a description of unlawful conditions observed, and (iv) the actions taken or proposed to be taken by the responsible party to abate the unlawful conditions.

Registration forms must be turned in to the City Hall Cashier located at 220 E. Mt. View Street Barstow, CA 92311.

Inspection reports on vacant properties must be forwarded to Code Compliance in the Community and Economic Development Department at City Hall.

We thank you in advance for your attention to this matter. Should you have any questions or require additional information, please do not hesitate call Code Compliance staff members at (760) 255-5161.

Attached: Ordinance No. 858-2010

ORDINANCE NO. 858-2010
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BARSTOW
ADDING CHAPTER 6.38 – “ABANDONED AND VACANT PROPERTY
REGISTRATION AND MAINTENANCE”

6.38.010. Title. This chapter shall be known as the “Vacant Property Registration Ordinance” and may be so cited.

6.38.020. Purpose and Scope. It is the purpose and intent of the Barstow City Council, through the adoption of this chapter, to establish an abandoned and/or vacant property registration program as a mechanism to protect residential neighborhoods and commercial areas from becoming blighted through the lack of adequate maintenance and/or security of abandoned and vacant properties.

6.38.030. Definitions. For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them in this section:

- (a) “Abandoned” shall mean real property that is vacant and meets any of the following conditions: (1) is under a current notice of default; (2) is under a current notice of trustee’s sale; (3) is pending a tax assessor’s lien sale; (4) has been the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure; or (5) has been transferred under a deed in lieu of foreclosure.
- (b) “Accessible property” shall mean any property that is accessible through a gate, fence, wall, or other barrier that is broken, unlocked, unsecured, or otherwise missing or lacking.
- (c) “Accessible structure” shall mean a building or structure (as defined by the Building Code) that is unsecured in any manner that could allow access to the interior of the building or structure by unauthorized persons.
- (d) “Agreement” shall mean any agreement or written instrument which provides that title to real property shall be transferred or conveyed from one (1) owner to another in any manner (whether by sale, gift, exchange, transfer, partition, assignation, placement in a trust, or any other method).
- (e) “Assignment of rents” shall mean an instrument that transfers the beneficial interest under a deed of trust from one (1) lender or entity to another.
- (f) “Beneficiary” shall mean a lender or holder of a note secured by a deed of trust.

- (g) "City" shall mean the City of Barstow.
- (h) "Deed in lieu of foreclosure/sale" shall mean a recorded document that transfers ownership of a property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust.
- (i) "Deed of trust" shall mean an instrument by which an interest in title to real estate is transferred to a third party trustee as security for a real estate loan (and often used in California instead of a mortgage). This definition applies to any and all subsequent deeds of trust (e.g., second deed of trust, third deed of trust).
- (j) "Default" shall mean the failure to fulfill a contractual obligation, monetary or conditional.
- (k) "Distressed" shall mean a property that meets any of the following conditions: (1) is under a current notice of default; (2) is under a current notice of trustee's sale; (3) is pending a tax assessor's lien sale; (4) has been the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure; or (5) has been transferred under a deed in lieu of foreclosure.
- (l) "Evidence of vacancy" shall mean any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions shall include, but shall not be limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers, and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk, and/or other debris; the absence of window coverings such as curtains, blinds, and/or shutters; the absence of furnishings and/or personal items and/or commercial furnishings consistent with the permitted residential or commercial uses permitted within the zone of the real property; statements by neighbors, passersby, delivery agents, government employees that the property is vacant.
- (m) "Foreclosure" shall mean the process by which real property is sold at auction to satisfy a debt.
- (n) "Local" shall mean within fifteen (15) driving miles distance of the subject property.
- (o) "Notice of default" shall mean a recorded notice that a default has occurred under deed of trust and that the beneficiary intends to proceed with a trustee's sale and/or other foreclosure proceeding.

(p) "Out-of-area" shall mean not within fifteen (15) driving miles distance of the subject property.

(q) "Owner" shall mean any person having legal or equitable title or any interest in any real property.

(r) "Owner of record" shall mean the person having title to the property at any given point in time as recorded with the San Bernardino County Recorder's Office.

(s) "Person" shall mean and include any individual, partnership of any kind, corporation, limited liability company, association, joint venture or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons. "Person" also includes any public entity or agency that acts as an owner in the City.

(t) "Personal property" shall mean property that is not real property, and includes, without limitation, any appliance, article, device, equipment, item, material, product, substance or vehicle.

(u) "Real property" shall mean any improved or unimproved real property owned by any person and/or any building, structure, or other improvement thereon, or any portions thereof.

(v) "Responsible party" shall mean any person that has title to or control over real property. "Responsible party" includes, but is not limited to, owners, owners of record, beneficiaries, lien holders, trustees, servicing companies, real estate agents, and property management companies, as well as any person acting on behalf of another responsible party.

(w) "Securing" shall mean and include such measures as may be directed by Community and Economic Development Director (or designee thereof) that assist in rendering real property inaccessible to unauthorized persons, including, but not limited to, the repair of fences, walls, and other barriers, chaining or pad locking of gates, and/or the repair or boarding of doors, windows, and/or other openings. The boarding of any window, door, or other opening shall be completed to a minimum of the current United States Department of Housing and Urban Development (HUD) securing standards at the time the boarding is completed or required and shall be consistent with the requirements of this chapter.

(x) "Trustee" shall mean the person holding a deed of trust on real property.

(y) "Trustor" shall mean a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

(z) "Vacant" shall mean real property and any building or structure thereon that is not legally occupied.

SECTION 6.38.040. RECORDATION OF TRANSFER OF LOAN/DEED OF TRUST. Within ten (10) calendar days following the purchase or transfer of a loan or deed of trust secured by real property, the new beneficiary and trustee shall record with the San Bernardino County Recorder's Office an assignment of rents or similar document that lists the name of the person purchasing or acquiring the loan or deed of trust and the mailing address and contact number of the new beneficiary and trustee responsible for receiving payment associated with the loan or deed of trust. This requirement shall not apply to the sale or transfer of a property when such sale or transfer does not include the sale or transfer of any loan or deed of trust associated with such property.

SECTION 6.38.050. REGISTRATION; FEES.

(a) Any beneficiary and trustee who holds a deed of trust on real property located within the City of Barstow shall, prior to recording a notice of default, perform an inspection of said real property. If the property is found to be abandoned or shows evidence of vacancy (as these terms are defined by this chapter), the beneficiary and trustee shall register the real property with the City, on City-approved forms, within ten (10) calendar days of the inspection.

(b) If the property is occupied at the time of the initial inspection but remains in default, it shall be inspected by the beneficiary and trustee every subsequent calendar month until: (1) the trustor or other party remedies the default, or (2) the foreclosure is completed and ownership is transferred to a new owner who is not the former beneficiary or trustee, or 3) the real property is found to be vacant or shows signs of vacancy, at which time the beneficiary and trustee shall register the real property with the City within ten (10) calendar days of said inspection.

(c) The beneficiary and trustee shall register with the City any real property which becomes vacant or shows evidence of vacancy after a foreclosure where the title was transferred to the beneficiary of a deed of trust involved in the foreclosure and any property which becomes vacant or shows evidence of vacancy after being transferred under a deed in lieu of foreclosure/sale. Registration shall be filed on City-approved forms within ten (10) calendar days of the inspection demonstrating the vacancy or the evidence of vacancy.

(d) The registration forms shall contain data deemed necessary by the City Manager (or designee thereof). At a minimum, the following information is required:

(1) Name and street/office address (not a P.O. Box) and, if different, the mailing address of the beneficiary and trustee;

(2) A direct contact name and telephone number for the person handling the deed of trust and/or foreclosure;

(3) The name, street address, telephone and facsimile number of a local property management company responsible for the security, maintenance, and marketing of the real property;

(4) A statement of intent which provides the following information:

(i) The expected period of vacancy;

(ii) A detailed plan for the regular maintenance of the real property during the period of vacancy;

(iii) A time-table for the lawful re-occupancy of the real property, or for the rehabilitation or demolition of the structures thereon.

(e) The registration (including the statement of intent) shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations and fees shall be due January 1st of each year and must be received by the City no later than January 31st of the year due.

(f) Persons required to register real property pursuant to this chapter shall keep such property registered and shall comply with all security and maintenance requirements of this chapter and the whole of the Barstow Municipal Code for the entire time such property remains vacant or shows evidence of vacancy. Persons required to register real property pursuant to this chapter shall also report any change of information contained in the registration within ten (10) calendar days of the change.

(g) When real property subject to registration pursuant to this chapter becomes occupied or title is transferred to another responsible party, the beneficiary and trustee or prior responsible party shall notify the City Manager (or designee thereof) in writing within ten (10) calendar days of the property's occupancy or the transfer of title.

(h) In such instance where title to an abandoned or vacant real property has been transferred to another responsible party, the responsible party shall re-register the real property with the City on City-approved forms within ten (10) calendar days of the transfer. Re-registration forms shall contain, at a minimum, all of the information required by Section 6.38.040(d).

SECTION 6.38.060 INSPECTION AND REGISTRATION OF PREVIOUSLY ABANDONED REAL PROPERTY. Any beneficiary and trustee who holds a deed of trust on real property located within the City of Barstow, which property is distressed (as defined by this chapter) on the effective date of the ordinance codified in this chapter, shall, on or before December 1, 2010, perform an inspection of the real property that is the security of the deed of trust. If the real property is found to be vacant or shows evidence of vacancy, the beneficiary and trustee shall register the real property with the City, on City-approved forms, within ten (10) calendar days of the inspection.

SECTION 6.38.070. PROPERTY MAINTENANCE REQUIREMENTS. Real property subject to the registration requirements of this chapter shall be maintained in a neat, clean, and healthful condition at all times. The following conditions shall not comport to a neat, clean, and healthful condition in accordance with Chapter 6.28 of the Barstow Municipal Code and shall be explicitly prohibited:

- (a) Buildings or structures with graffiti, tagging, or other markings, or graffiti, tagging, or other markings that have not been completely removed or painted over with a color matching the exterior of the remaining portion of the building or structure;
- (b) Accumulations of lumber, junk, trash, debris, construction material, household furniture, appliances, clothing, or discarded, unused, or abandoned personal property on exterior portions of the real property;
- (c) Accumulations of newspapers, circulars, flyers, notices, or other printed material that give the appearance that the property is vacant (except those required by federal, state, or local law);
- (d) Vegetation which is overgrown, dead, decaying, or otherwise that is not adequately trimmed, pruned, cut, fertilized, watered, or replaced;
- (e) Swimming pools, spas, or other bodies of water that are not maintained in such a manner as to be free and clear of pollutants or debris, or that are maintained in such a manner as to be likely to harbor mosquitoes, insects, or vector, including, but not limited to, water that is clouded or green, water

containing bacterial growth, algae, insect larvae, insect remains, or animal remains; or swimming pools that are not secured and/or maintained;

(f) Accessible property or accessible structures not secured as required by the Barstow Municipal Code.

Nothing contained within this chapter relieves a responsible party from complying with any other obligation set forth in any applicable "Covenants, Conditions, and Restrictions and/or Homeowners' Association rules and regulations, or with any other provisions of the Barstow Municipal Code.

SECTION 6.38.080. SECURITY REQUIREMENTS.

(a) Real properties that are subject to registration pursuant to this chapter (and buildings or structures thereon) shall be secured within seventy-two (72) hours of becoming abandoned, vacant, or showing evidence of vacancy, in a manner to prevent access by unauthorized persons, including but not limited to the closure, locking, and/or boarding of windows, doors, gates, or other openings of such a size that it may allow a child to access the interior of the real property and/or buildings or structures located thereon (including garage structures or detached accessory structures).

(1) No window, door, or other opening shall be boarded without prior written approval of the City Manager (or designee thereof) and when such approval has been granted, the boarding of any window, door, or other opening shall be completed to a minimum of the current United States Department of Housing and Urban Development (HUD) securing standards at the time the boarding is completed or required and shall be consistent with the requirements of this chapter.

(i) The factors that shall be considered in determining whether the boarding of windows, doors, or other openings include, but are not limited to:

A. Whether the window, door, or other opening is visible to the public vantage;

B. The difficulty of adequately securing the window, door, or other opening in another manner so as to prevent unauthorized entry;

C. The length of time the real property has been abandoned or vacant; and

D. The length of time the real property is expected to remain abandoned or vacant (as indicated in any statement of intent on file with the City).

(b) Responsible parties for any real property subject to registration pursuant to this chapter shall submit a "letter of agency" or other similarly entitled authorization) to the Barstow Police Department every thirty (30) calendar days and post "No Trespassing" signs as required and approved by the City so that the Barstow Police Department is authorized to remove and/or arrest all unauthorized persons from the property.

SECTION 6.38.090. LOCAL PROPERTY MANAGEMENT REQUIRED.

(a) Responsible parties for any property subject to registration pursuant to this chapter shall retain the services of a local property management company that shall be responsible for the security, maintenance, and marketing of the real property. The retention of a local property management company shall not relieve other responsible parties of their obligations, duties, or responsibilities. Responsible parties shall provide in writing the name and telephone number of the local property management company to adjoining neighbors in case of emergency or other issues that arise in connection with the subject property.

(b) Responsible parties shall cause the on-site inspection of any real property subject to registration pursuant to this chapter to be inspected on a weekly basis and shall submit a written inspection report to the City Manager (or designee thereof) on or before the tenth day of each calendar month for which the real property remains vacant. The written report shall consist of, at a minimum, (1) the address of the real property being inspected, (2) the dates of inspection, (3) a description of any unlawful conditions observed, and (4) the actions taken or proposed to be taken by the responsible party to abate the unlawful conditions.

(c) Responsible parties shall cause the abatement of any unlawful condition existing on real property subject to registration pursuant to this chapter within forty-eight (48) hours of observing or of being notified of the unlawful condition. Nothing in this chapter relieves any responsible party of the need to obtain approvals, permits, and/or licenses as otherwise required by the Barstow Municipal Code.

SECTION 6.38.100. ADDITIONAL REQUIREMENTS; APPEAL.

(a) In addition to the specific maintenance and security requirements provided in this chapter, the City Manager, the Police Chief, and/or the Fire Chief (or designees thereof) shall have the authority to require responsible parties for real property subject to registration pursuant to this chapter to

implement additional maintenance and security measures in order to effectuate the purpose of this chapter, including, but not limited to, the installation of security lighting, increasing the frequency of on-site inspections, employment of an on-site security guard, and/or posting of additional signage at the subject property.

(b) In accordance with the requirements, procedures, and provisions of 6.30 of the Barstow Municipal Code, any responsible party may request a hearing before the City Manager (or designee thereof) in order to challenge or appeal the imposition of any additional maintenance and/or security requirements pursuant to this section. Notwithstanding the provisions of 6.30 of the Barstow Municipal Code, nothing contained within this chapter authorizes a hearing or appeal to the Planning Commission or the City Council, and the decision of the City Manager (or designee thereof) following a timely appeal shall be final and binding.

SECTION 6.38.110. VIOLATIONS AND PENALTIES.

(a) Notwithstanding any other provision of the Barstow Municipal Code to the contrary, any person who causes, permits, or suffers a violation of any provision of this chapter, or who fails to comply with any obligation or requirement of this chapter, is guilty of a misdemeanor violation punishable in accordance with Chapter 1.01.110 of the Barstow Municipal Code and is also subject to administrative citations in accordance with Chapter 6.30 of the Barstow Municipal Code.

(b) Each person shall be guilty of a separate offense for each and every day, or part thereof, during which a violation of this chapter, or of any law or regulation referenced herein, is allowed, committed, continued, maintained or permitted by such person, and shall be punishable accordingly.


(c) This chapter does not exclusively regulate the use, maintenance, and security of real and/or personal property within the City, and the remedies provided in this chapter are in addition to other remedies and penalties authorized by the Barstow Municipal Code, or by the laws of the State of California or of the United States.

SECTION 6.38.120. SEVERABILITY. If any section, subsection, paragraph, sentence, clause or phrase of this chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have adopted this chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

Section 3. Effective Date. This Ordinance is adopted by the City Council and shall take effect 30 days after approval by the City Council. This Ordinance and the City Clerk's certification, together with proof of publication, shall be entered in the Book of Ordinances of the City Council.

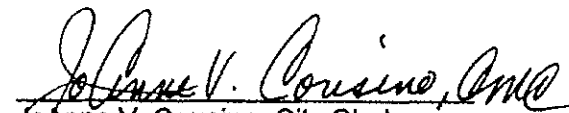
Section 4. Filing. The City Clerk shall file a certified copy of this Ordinance as required by law and be entered in the Book of Ordinances of the Council of this City.

PASSED, APPROVED AND ADOPTED, this 16th day of February, 2010



Joe D. Gomez Mayor

ATTEST:



JoAnne V. Cousino, City Clerk




I, JoAnne V. Cousino, City Clerk of the City of Barstow, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Barstow held on the 1st day of February, 2010, and was adopted at its regular meeting of February 16th, 2010, by the following vote:

AYES: Council Members Silva, Saenz and Hailey and Mayor Pro Tem Hackbarth-McIntyre

NOES: Mayor Gomez

ABSENT: None

ABSTAINED: None



JoAnne V. Cousino
City Clerk