

Overview of Municipal Vacant Building Registries

i. Introduction

As regions grow and populations migrate outside city centers, many municipalities are being confronted with a rise in vacant properties. To help combat this increase, some municipalities require the owners of vacant buildings to register their property. In most cases, the owner must register the property within 30 days of the property becoming vacant or face civil and criminal penalties and/or liens on the property. Nonetheless, the definition of “vacant,” the fees charged for registration, the section of the local code containing the ordinance (e.g., building code, public health code), and the enforcement mechanisms vary by ordinance. The discussion below provides a general overview of how vacant property registries operate, while the attached chart details the definition of “vacant,” the fees, the section of the code containing the registration requirements, and the enforcement mechanisms for municipalities that have vacant property registries.

ii. Definition of Vacancy

Identifying which buildings are vacant, and thus subject to registration, may be the most important consideration of a vacant property registration ordinance. Several of the vacant property registries provide a two-part test for determining if a property is “vacant.” First, many ordinances consider whether the property is “unoccupied.” For example, Albany, NY, defines “unoccupied” as “a building which is not being used for an occupancy authorized by the owner.” On the other hand, Binghamton, NY defines “unoccupied” as “a building or portion thereof which lacks the habitual presence of human beings who have a legal right to be on the premises.” In addition, Binghamton permits considerations like whether lawful activity has ceased, whether the building is empty or contains items of minimal value, and whether the building lacks utilities

or is subject to foreclosure in determining if a building is “unoccupied.”

Second, ordinances that consider if a building is “unoccupied” in determining vacancy often require satisfaction of an additional element. Such elements generally include whether the building is unsecured, whether it is secured by other than normal means, whether the fire department or housing department has determined the building to be unsafe or has issued violations, and whether the building is being illegally occupied. Some ordinances state that a building is vacant if it is unoccupied for over 30 days.

Notably, some ordinances do not provide a detailed test to determine if a building is vacant. For example, Chicago’s ordinance states that a building is vacant if it lacks the habitual presence of human beings. Nonetheless, Chicago’s ordinance provides factors for authorities to consider like the value and condition of the items in the building.

While most ordinances provide clear definitions for “vacant” and “unoccupied,” some do not. Surprisingly, it does not appear that any owners have challenged such ordinances, at least, in reported court cases. Thus, ordinances without such definitions may not be actively enforced.

iii. Fees

Most vacant property registry ordinances have registration fees that increase the longer the property is vacant. For example, the annual registration fee may be \$250 in year one, \$500 in year two, \$1,000 in year three, \$1,500 in year four, and \$2,000 in year five and beyond. Nonetheless, other ordinances maintain the same fee regardless of how long the property is vacant. For example, in Richmond, Virginia, the annual fee is a mere \$25, but in Minneapolis, the annual fee is \$6,000.

A few ordinances do not charge a registration fee. Nonetheless, such ordinances often provide that the municipality may charge the owners fees for regularly inspecting the property.

Few ordinances state how fees collected will be allocated. Thus, the registration fees collected may be placed in the municipality's general fund as opposed to being allocated for rehabilitation or enforcement efforts.

iv. Section of the Municipal Code featuring the Vacant Property Registry

For the most part, vacant property registries are included in a municipality's building code. Generally, the owners of vacant property must submit their contact information and provide a local agent for service of process. Several ordinances require the contact information for lienholders, as well.

Additionally, many ordinances require the owner to submit a "vacant building plan" when registering the property. A "vacant building plan" generally requires a plan for demolition or rehabilitation and a plan for securing the building. A few municipalities will only allow the owner to register the property for a specific period; then the owner must rehabilitate it or demolish it.

A few municipalities include vacant property registries in other areas of their codes like public health or nuisance abatement. Columbus, Nebraska, includes its vacant property registry in its Business Regulations. Unlike most cities that require registration with the building and housing inspector, Columbus, Nebraska, requires owners to register vacant properties with its police department. Accordingly, Columbus' ordinance may be more concerned with preventing drug houses than building preservation.

v. Enforcement

Vacant property registration ordinances provide a variety of enforcement mechanisms. Many of the registries provide civil penalties for failure to register. Often, a municipality will assess a penalty for each day the owner fails to register. Thus, an owner of a property in a

municipality with an ordinance that provides a \$100 per day penalty may be subject to a \$36,500 penalty if he fails to register for one year.

In addition to civil penalties, some ordinances permit municipalities to place a lien on the property for unpaid registration fees. Often, these liens are subject to interest. Further, some ordinances state that new owners are responsible for the unpaid fees of the previous owner.

A few ordinances provide misdemeanor criminal penalties for those who do not register their properties. Ordinances featuring criminal penalties feature fines that run as high as \$1,000 per day of non-compliance. Some ordinances provide imprisonment for less than one year. Notably, the criminal penalty ordinances often define “owner” broadly. Thus, the owner, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or corporation in control could be criminally liable for failing to register the property.

The actual enforcement of registration requirements is subject to debate. Research in legal databases did not reveal any cases where courts held individuals criminally liable for failing to register properties. Nonetheless, several Illinois courts have upheld the daily civil penalty for failure to comply with Chicago’s registration requirements. Regardless, judicial consideration of vacant property registries is quite rare, at least in reported decisions.

Further, very few municipalities have publicly discussed enforcement of their registration requirements. Nonetheless, in both Albany and Chicago, the vacant property registry is just one part of comprehensive plan for combating vacant properties. In Chicago, the Police, the Department of Buildings, the City Law Department, and the Department of Housing work together to ensure that vacant properties are registered and then try to force the owner to rehabilitate or transfer title of the property. In Albany, the Fire Department has assumed an active role in searching for vacant buildings and determining if rehabilitation or demolition is

more appropriate.

vi. State Vacant Property Registry Laws

Research did not reveal any state vacant property registries. Virginia appears to be the only state that specifically discusses vacant property registries. Virginia law provides that a city may charge a maximum of \$25 annually to defray the cost of vacant building registration. Richmond, Virginia, uses the state law as the basis for its registry program. Municipalities in other states appear to use the authority to enact local building, housing, and public safety ordinances granted to them by the state.

vii. Further Thoughts

Vacant property registry laws generally provide civil monetary penalties and/or liens for failure to register. A few registry laws provide criminal penalties, as well. In many cases, these penalties are redundant. Most building codes already include penalties for failing to maintain a property according to the local building code. A municipality may find it easier just to increase existing penalties for such violations rather than institute an additional program that it must administer.

Nonetheless, a vacant property registry could be useful in conjunction with a program that permits individuals and non-profit organizations to acquire abandoned property for rehabilitation. For example, a municipality could enact a law that requires owners of vacant properties to register the property and provide a plan for the property's rehabilitation or demolition. If the owner does not follow the rehabilitation or demolition plan within a grace period (e.g., three years), an individual or organization with a rehabilitation or demolition plan could file a petition to obtain title to the property. Further, if an owner fails to register a property within a specific time, he or she would not be subject to civil or criminal penalties, but the grace

period would not apply. Thus, anyone with a rehabilitation or demolition plan could file a petition to obtain the property at any time.

A registry of this sort could be very cost effective. Owners could register properties on a website, and the public could search the registry to see if a property has been registered. An owner who rehabilitates or demolishes a property can then enter building permit and inspection information to have the property removed from the registry. If an owner does enter this information within the grace period, the property would then be moved to a list of properties available to the public.

Finally, it must be noted that the definition of “vacant” in many existing registry laws could be applied to properties owned by the elderly or the infirmed who are receiving long-term treatment at inpatient facilities. The possibility of penalizing people who fail to register their properties in such situations hardly seems fair. Vacant property registry laws should be tailored to permit judicial discretion where the owner is experiencing unforeseen hardship.