

**“Town of Somerset By-law Concerning Vacant and Foreclosing Properties”
(Adopted May 16, 2011)**

I. Purpose and Intent

This By-law is adopted pursuant to Massachusetts General Laws chapter 40, section 21, and the powers granted to the Town by the state Home Rule Amendment as reasonable regulations designed to protect the health, safety, and welfare of the residents of Somerset. As has been proved by examples within the Town of Somerset and elsewhere, vacant and foreclosing properties are at greater risk of deterioration, pest infestation, fire, criminal trespass, and resulting public health violations and therefore pose a significant danger to the health, safety, and welfare of Somerset citizens and require increased monitoring and inspection by Somerset officials. The purpose of this By-law is to require that the Town be notified of these vacant and foreclosing properties and to compensate the Town for the costs associated with monitoring and inspecting such vacant properties.

II. Definitions

For purposes of this By-law:

“Board of Health” shall mean the duly-elected Board of Selectmen of the Town of Somerset, sitting as the Board of Health.

“Days” shall mean consecutive calendar days.

“Foreclosing” shall mean the process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

“Initiation of the Foreclosure Process” shall mean taking possession of a residential, commercial, industrial, or mixed use property pursuant to M.G.L. chapter 244, section 1, publishing a first foreclosure notice of such a property pursuant to M.G.L. chapter 244, sec. 14, or commencing a foreclosure action on such a property in Land Court or Superior Court.

“Mortgagee” shall mean the creditor and/or lender in a mortgage agreement, including but not limited to service companies and any agent, servant or employee of a mortgagee, or any successor-in-interest and/or assignee of a mortgagee’s rights, interests, or obligations.

“Owner” shall mean: every person, entity, service company, property manager or real estate broker who alone or severally with others has legal or equitable title to any property or has care, charge or control of any real property in any capacity, including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of an estate or the holder of legal title; or, is a mortgagee in possession of such property; or is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property, or is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of this By-law as if he or she were the owner, however, this By-law shall not apply to a condominium association created pursuant to M.G.L. chapter 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association. “Owner” shall also mean every person who operates a rooming house or is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process.

“Property” shall mean any real property, or portion thereof, located in the Town of Somerset, including but not limited to all buildings or structures thereon.

“Vacant property” shall mean residential, commercial, industrial, or mixed use real property that has not been lawfully occupied and maintained, actively marketed for rental, or under active construction for a continuous period of forty-five (45) days or more, or, notwithstanding the foregoing, any residential, commercial, or mixed use property in which more than half of the exterior windows or doors of a building are broken, boarded, or without a functioning locking mechanism.

III. Registration

A. Within forty-five (45) days after a property becomes vacant or the initiation of the foreclosure process, whichever is earlier, each owner of such vacant or foreclosing property shall register said property with the Board of Health by providing that department, on a form created by the Board, with the name, address and telephone number of each owner of the property, the street address of the property, and the Assessor’s map and lot number for the property. Registration shall be accompanied by the fee as set forth below.

B. If none of the owners are at an address within the Commonwealth of Massachusetts, then the registration shall also include the name, address, and telephone number of a person who resides within Massachusetts and is authorized to accept service of process on behalf of the owners, and who shall be designated as a responsible local agent, both for purposes of notification in the event of an emergency affecting public health, safety and welfare and of service of any and all notices issued pursuant to this By-law and other laws and regulations of the Commonwealth and the Town.

C. The failure to register a vacant or foreclosing property in a timely fashion shall be a violation of this By-law.

D. Subsequent to initial registration, it shall be the duty of the owner or agent in charge to notify the Board of Health of any change in the status of the building or the information provided within thirty (30) days of the occurrence of said change. Once the property is no longer vacant or is sold, the owner must provide proof of sale or written notice of occupancy to the Board.

IV. Registration Fees

A. The following fees are adopted pursuant to Massachusetts General Laws chapter 40, section 22F, adopted at the May 18, 2009, Somerset Annual Town Meeting.

B. Within forty-five (45) days after a property becomes vacant or the initiation of the foreclosure process, whichever is earlier, each owner of such vacant or foreclosing property shall, in addition to registering said property, pay to the Board of Health a registration fee to cover the administrative costs of monitoring such vacant or foreclosing property. Said initial fee paid shall be pro-rated based on the amounts set forth below to reflect the remaining portion of the initial year in which payment is made (e.g. if the property is registered on July 1 in any year, the fee for that year shall be fifty per cent (50%) of the fee set forth below). On or before each December 31st thereafter, each owner of such vacant or foreclosing property shall pay to the Board of Health the applicable annual registration fee, as set forth below, to cover the administrative costs of monitoring such vacant or foreclosing property for the coming year. Payment of such annual registration fees shall not be pro-rated or subject to partial refund.

C. For properties that are **less than one-half (1/2) acre in size**, the annual registration fee shall be based on the duration of the vacancy as of December 31st of the year in which such fee is due, according to the following schedule:

Properties vacant for less than one year:	\$ 250.00
Properties vacant for one year or more, but less than two years:	\$ 500.00
Properties vacant for two years or more, but less than three years:	\$1,000.00
Properties vacant for three years or more:	\$2,000.00

D. For properties that are **one-half (1/2) acre or more in size**, the annual registration fee shall be based on the duration of the vacancy as of December 31st of the year in which such fee is due, in accordance with the following schedule:

Properties vacant for less than one year:	\$ 500.00
Properties vacant for one year or more, but less than two years:	\$1,000.00
Properties vacant for two years or more, but less than three years:	\$2,000.00
Properties vacant for three years or more:	\$3,000.00

E. A failure to pay the registration fee in a timely manner shall be a violation of this By-law and the full fee shall be deemed an assessment resulting from that violation, resulting in a lien on the property to be collected in accordance with chapter 59 of the Massachusetts General Laws. In addition, failure to pay said fee could result in the denial, revocation, or suspension of other licenses or permits pursuant to Massachusetts General Law chapter 40, section 57, and the Town's "By-law Authorizing Denial or Revocation of Local License or Permit for Nonpayment of Local Taxes, Fees, or Other Charges in the Town of Somerset" (adopted at the May 20, 2002, Annual Town Meeting).

V. Billing Statement

On or before November 15th of each calendar year, the Board of Health shall send a billing statement, setting forth the required registration fee, to each owner of a vacant or foreclosing property. Notwithstanding the foregoing, the registration fee set forth in section IV above shall be due and payable on or before December 31st of each year regardless of the delivery or receipt of such a billing statement.

VI. Appeal

Any owner assessed a registration fee under this By-law shall have the right to appeal the imposition of such fee to the Somerset Board of Health upon the filing of an application in writing no later than fifteen days after mailing of the billing statement under appeal. The appeal request shall be accompanied by a non-refundable fifty dollar (\$50.00) filing fee. Such an appeal shall be limited solely to the issues of whether the property is vacant or foreclosing, how long the property has been vacant or foreclosing, and the size of the property. The owner shall have the burden of proof on appeal. Upon the proper filing of an appeal, payment of the registration fee shall be stayed pending the outcome on appeal. If the decision is adverse to the owner, the payment shall be due within ten (10) calendar days after issuance of the decision of the Board of Health.

VII. Maintenance/Securing Requirements

A. Properties subject to this By-law shall be maintained in accordance with the relevant sanitary codes, building codes, and state and local laws, by-laws and regulations, including but not limited to those concerning external and/or visible maintenance. The owner or designated agent shall inspect and maintain the property on a monthly basis for the duration of the vacancy, said maintenance to include timely mowing of lawns and other vegetation control, pest control, protection from criminal trespass, and prevention of deterioration.

B. All vacant property must be locked and/or otherwise adequately secured (including but not limited to the repair and/or boarding up of any broken doors and windows) so as to prevent unauthorized access into a building.

C. The name and twenty-four hour contact phone number of the local individual or entity responsible for maintenance shall be affixed to the property. This sign shall be posted on the front of the property.

D. Adherence to this By-law shall not relieve the owner of any other applicable obligations set forth in local By-laws or regulations, covenant conditions and restrictions, and/or homeowner's association rules and regulations. The provisions of this By-law are in addition to, and not in lieu of, any and all other applicable federal, state, and local laws and regulations.

F. In addition to the remedies provided herein, the failure to maintain and secure vacant and foreclosing properties adequately may result in direct action by the Town in accordance with M.G.L. chapter 111, sections 122-125A, 127A-127I, 129, 130, and 131, M.G.L. chapter 139, section 1-3B, M.G.L. chapter 143, sections 6-14, M.G.L. chapter 148, section 5, and other applicable provisions of law and regulation, such actions including but not limited the following: removal, abatement, destruction, and/or prevention of conditions deemed to constitute nuisances, sources of filth or causes of sickness; demolition, removal, repair, and/or cleaning of any structure which fails to comply with standards of fitness for human habitation or other applicable laws or regulations so as to endanger or materially impair the health or well-being of the public; and, obtaining court-ordered warrants, injunctive relief, and orders of abatement. In accordance with applicable law and regulation, all costs incurred by the Town in taking such action shall constitute a debt to the Town and a lien upon the property in question.

VIII. Inspections/Enforcement

A. The Board of Health or its designees shall have the authority to inspect properties subject to this By-law for compliance and to issue citations for any violations. The Board or its designees shall have the discretion to determine when and how such inspections are to be made, provided that such policies are reasonably calculated to ensure that this article is enforced.

B. Any person or entity violating this By-law by failing to register a vacant or foreclosing property, failing to pay the registration fee, or otherwise, shall be subject to a fine or civil penalty of up to three hundred dollars (\$300.00) for each offense and each day of continued violation shall constitute a separate offense. Such fine or penalties shall be in addition to and not in lieu of any other fines, penalties, or remedies provided in applicable state and local law, by-law and/or regulation for violation of such laws, by-laws and/or regulations. Subject to Town Meeting authorization, the Board of Health shall have the right to enforce this By-law pursuant to the non-criminal disposition procedures set forth in the Somerset Non-criminal Disposition By-law and Massachusetts General Laws chapter 40, section 21D.

IX. Severability

If any provision of this By-law is declared invalid or unenforceable, the other provisions herein shall not be affected, but shall continue in full force and effect.

A true copy attest:

Dolores Berge, Town Clerk