

**VACANT BUILDINGS AND BUILDINGS UNFIT FOR  
HABITATION, OCCUPANCY OR USE  
and VACANT PROPERTY REGISTRATION & FEE ORDINANCES**



# Local Ordinance Review:



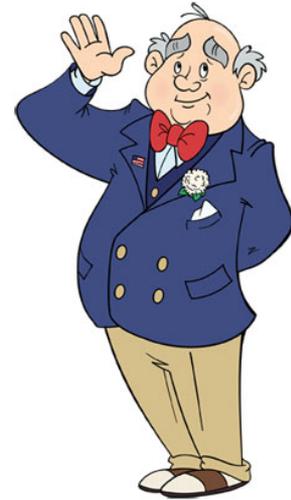
A review of your Municipality's Local Ordinances which may have been adopted in accordance with N.J.S.A. 40:48-2.3 through 2.12 is necessary.

Through the enactment of N.J.S.A. 40:48-2.3 through 2.12, the State Legislature has conferred upon a municipality the policing power to “repair, close or demolish, or cause or require the repairing, closing or demolition of,” any building or buildings which are “unfit for human habitation or occupancy, or use, due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitation facilities, or due to other conditions rendering such building or buildings, or part thereof, unsafe or insanitary, or dangerous or detrimental to the health or safety or otherwise inimical to the welfare of the residents of said municipality[.]” N.J.S.A. 40:48-2.3.

Strict compliance with the procedures relevant to notice, service of notice and hearings is required in all municipal proceedings. The following are the procedural steps that must be taken by the Municipality to ensure strict compliance with their Ordinance and the Statute:



Paul?



## Step #1:

A “Public Officer” must be designated or appointed to exercise the powers prescribed by the Ordinance.

N.J.S.A. 40:48-2.4 defines a “Public Officer” as “the officer, officers, board or body who is or are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinances and by P.L.1942, c. 112 (40:48-2.3 et. seq.).”

Notwithstanding any other provisions of the law to the contrary, nothing shall prevent a municipality from designating more than one public officer for different purposes provided by law.”

The “Public Officer” shall ultimately issue the Complaint, conduct the subsequent hearing and make the written determination as to the building’s “unfit(ness) for human habitation, use or occupancy”.



## Step #2:

A Complaint must be issued and served by the “Public Officer” (in accordance with the service requirements in Step #5) upon the owner of the property and “Parties in Interest” (mortgage holders and lienholders). The owner and parties in interest must be determined by obtaining a Title Search of the property.

## The Complaint must state the following:

- a) The charges against the owner/building and the basis for same;
- b) Notice that a hearing will be held before the Public Authority not less than 7 days nor more than 30 days from service of the Complaint;
- c) Notice that the owner/parties in interest have a right to file an Answer to the Complaint.

d) Notice that the owner/parties in interest have a right to appear in person at the hearing and provide testimony; and

e) That the rules of evidence prevailing in the courts shall not be controlling in the hearings before the Public Officer.



### Step #3:

A Hearing must take place before the designated “Public Officer”.

In accordance with due process, the owner of the building and the parties in interest must be afforded the opportunity to be present and defend against the charges contained in the Complaint at the hearing, the time and date of which is stated in the aforementioned Complaint.



The Legislature’s determination that a minimum of seven (7) days from the service of the Complaint to the hearing date is required for the owner and parties in interest to adequately prepare a defense satisfies the timely notice requirement inherent in due process. This hearing shall be heard before the designated “Public Officer”.



## Step #4:

A written statement and order must be served (in accordance with Step #5) upon the owner of the property and parties in interest after the Hearing.

Following the Hearing, if the Public Officer determines that the building is “unfit for human habitation or occupancy, or use,” a written statement of findings of fact in support of such determination must be served upon the owner and/or interested parties.

In addition, the Public Officer must issue and serve upon the owner and the “Parties in Interest”, an Order which indicates the following:



(a) requiring the repair, alteration or improvement of the said building to be made by the owner, within a reasonable time, which time shall be set forth in the order or at the option of the owner to vacate or have the said building vacated and closed within the time set forth in the order; and



(b) if the building is in such a condition as to make it dangerous to the health and safety of persons on or near the premises, and the owner fails to repair, alter or improve the said building within the time specified in the order, then the owner shall be required to remove or demolish the said building within a reasonable time as specified in the said order or removal.

N.J.S.A. 40:48-2.5(c)(1)-(2)



The Statute is clear that when the repairs have not been completed by the date set, the Order must state that the property is to be demolished.

The Order also must provide and state a reasonable time, after the deadline for repair, to permit the owner to remove or demolish the structure.

The Order must set forth a proposed demolition date should the owner fail to arrange for demolition within the reasonable time after failure to complete the repairs set forth in the Order.





\*The Courts have held that where the municipality's intention and right to remove or demolish is not clear, whether due to delayed enforcement or a dispute about the adequacy of a repair made, a second complaint and hearing is required prior to demolition. Hepner, supra, 115 N.J. Super. at 161-63; Gamba, supra, 395 N.J. Super. at 151.

## Step #5

Any Complaint or Order issued by a “Public Officer” pursuant to an Ordinance adopted in accordance with N.J.S.A. 40:48-2.3, et. seq., shall be served upon persons (owners and/or parties in interest) either personally or by registered mail.



If the whereabouts of such persons is unknown and the whereabouts cannot be ascertained by the Public Officer in the exercise of due diligence, the Public Officer shall make an affidavit to that effect (Affidavit of Due Diligence), and then the service of such Complaint or Order upon such persons may be made by publishing the same once in a newspaper printed and published in the municipality, or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the building is located. N.J.S.A. 40:48-2.7.

## Sheriff's Sale

By virtue of a Writ of Execution issued out of the Court of Common Pleas of Bradford County, to me directed and delivered, I will expose to Public Sale at the Bradford County Courthouse in Towanda, PA on

**Wed., Oct. 25, 2017**

at 10:00 o'clock in the forenoon

the following described property to wit:

**LEGAL DESCRIPTION**  
ALL that certain lot, piece or parcel of land situate, lying and being in the Township of Wyalusing, County of Bradford and Commonwealth of Pennsylvania, bounded and described as follows:  
**BEGINNING** at a point on the center of the public road, through which said point the line between lands now or formerly of Ira Brown and George W. Lung would pass if produced; thence North twenty-eight (28) degrees West sixteen (16) rods to fence corner; thence North forty (40) degrees East ten (10) rods to fence corner; thence South fifty-five (55) degrees East one hundred and fifty (150) feet more or less to center line of said public road in a Southwesterly direction to the place of beginning and containing one and one-fourth (1 1/4) acres more or less, having erected thereon a house and garage.  
**BEING** the same premises conveyed to Richard Woodruff and Barbara Woodruff, his wife by Linda M. Labor, single by Deed dated May 22, 2013 to be recorded immediately prior hereto.  
**TITLE TO SAID PREMISES VESTED IN** Richard Woodruff and Barbara Woodruff, his wife, by Deed from Linda M. Labor, single, Dated 05/22/2013, Recorded 05/24/2013, Instrument No. 201309366.  
Tax Parcel: 61-115.03-015-000-000.  
Premises Being: 106 South Browntown Road, Wyalusing, PA 18853-7782.  
**Notice:** To all parties in interest and claimants - A schedule of distribution will be filed by the Sheriff not later than thirty (30) days after sale and distribution will be made in accordance with the schedule unless exceptions are filed thereto within ten (10) days thereafter.

Seized and taken into execution at the suit of JP MORGAN CHASE BANK vs. RICHARD WOODRUFF & BARBARA WOODRUFF.

**Clinton J. Walters, Sheriff**

Sheriff's Office, Towanda, PA 4,11,18oct,c

Additionally, a copy of the Complaint or Order shall be posted in a conspicuous place on premises affected by the Complaint or Order. A copy of such Complaint or Order shall be duly recorded or lodged for record with the county recording officer of the county in which the building is located.



**VERY IMPORTANT!!!**  
**Evidence of service of**  
**the Complaint and Order**  
**MUST be retained.**

Determinations that need to be made prior to issuing the Complaint:

- a.) Which “Public Officer” will be issuing the Complaint, conducting the hearing and making the determination as to “unfit[ness] for human habitation, use or occupancy?
- b.) What are the exact issues with the property?  
Although the statute does not explicitly state that any and all issues with the property need be identified in the initial Complaint, it would be my recommendation that they be detailed in the Complaint.

Show Details

The purpose of the Complaint and Hearing Process is to give those with an interest in the property “adequate advance notice that affords them the opportunity to contest the charge of unfitness of the structure or to make necessary repairs, and, if demolition is required, to make the necessary arrangements, in a manner and at a cost satisfactory to them. Garden State Land Co. v. City of Vineland, 368 N.J. Super. 369, 378 (App. Div. 2004).



It is a concern that a property owner could contest a Public Officer's Complaint for repairs and/or demolition on the grounds that the Complaint did not provide sufficient notice of the alleged damages, unsafe, unsanitary or otherwise unfit condition of the property, which inhibited the owner's ability to adequately defend the Complaint.



Therefore, prior to the issuance of the Complaint, a thorough inspection check should be performed in order to determine all of the dangerous and unsafe conditions of the structure, so that they can be accurately detailed in the Complaint.

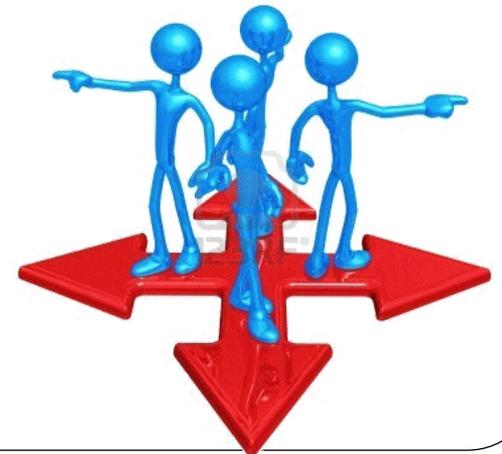


What happens if you fail to follow the proper procedure?

# Vacant Property Registration & Fee Ordinances:

- Vacant Property Registration and Fee Ordinances are facing a number of legal challenges.
- In two of the pending lawsuits, one emanating from Atlantic City and the other from Monroe Township and Pitman, the Plaintiffs are the holders of the tax sale certificate and they have claimed that the local Ordinances should not apply to them as they are neither the owners nor the mortgage companies for the properties. The Ordinances arguably do not cover holders of tax sale certificates.

- The second issue raised in these lawsuits that have been filed is that the municipalities do not have the power to enact such Ordinances. The challengers argue that there had been a bill pending in the Legislature that, if passed, would have granted municipalities the authority to enact these types of Ordinances. That bill, however, did not become law.
- The municipalities argue that the power to enact these type of Ordinances is derived from the general police power that permits municipalities to enact Ordinances for the health, safety and welfare of the residents.
- To date, the Courts have not made any final decisions on these issues.



# Future lawsuits are coming!!!

## Issue #1:

These lawsuits will challenge the amount of the fees. As you are aware, municipalities are not supposed to make a profit on fees. Fees are imposed to pay for costs of services rendered. Excessive fees, those in excess of the actual costs associated with the provision of services, are often invalidated. The rationale is that a municipality can impose taxes to raise revenue but should not raise revenue through the imposition of fees. Generally, in order to justify a fee, a municipality must be able to show that the direct and/or indirect costs that are associated with the service approximate the amount of the fee imposed. As the amount of the fee increases, so too does the court's scrutiny.



## Example:

A fee of \$50.00 for the cost of administration will receive far less scrutiny than a fee of \$5,000.00. Municipalities should begin to make some effort to attempt to quantify the costs associated with monitoring vacant properties. The analysis could include the costs of inspection, police time, fire department time, staff time as well as any other costs. Ultimately, it may be extremely difficult to justify a fee in the thousands of dollars.



## Issue #2:

The imposition of fees based upon the time duration that the property is vacant will be raised. If there is a challenge to the escalation of fees over time, the Courts would likely want to see empirical data to support the notion that the actual costs to the municipality increase the longer the property remains vacant. It is unlikely that this data exists.





**Issue #3:** Is it reasonable that a purchaser of a home that has been vacant for some period of time should have to pay the vacancy fee at a rate associated with the duration of the vacancy?

**Example:**

If a home had been vacant for three years, and the current yearly fee is \$5,000.00 per year, and if a person purchased the home in year four, should the new purchaser have to pay the \$5,000.00 per year or should the fee be reduced to the first year rate as it would be the first year of occupancy? Alternately, should there be any fee at all if the new owner is diligently attempting to fix the property and make it ready for occupancy?

# Get Ready!!!

It is simply a matter of time before these challenges are made. The risk to the municipality is that the challenges are made not only individually but by a class action. If a class action type of lawsuit were filed, the plaintiff would be representing not only himself but also a group of plaintiffs who are similarly situated. The class would not have to agree initially for the lawsuit to be filed. If the Court ultimately certified the class, the value of the claims against the municipalities would rise exponentially.



# Are these claims covered?

There will definitely be coverage issues if these lawsuits are filed and it is likely that many of the claims contained in the Complaints will be deemed to be uncovered.

The expenses of this litigation would be very high which would include the attorney's fees to defend and the refunding of the fees the municipality has collected. Obviously, the impact on the budget would be significant.

**REJECTED  
INSURANCE  
CLAIM**

# Recommendation

I would encourage those municipalities who have adopted these type of Ordinances to immediately review the Ordinances and the issues raised in the matters currently being litigated with your Municipal Solicitor in order to determine the appropriate enforcement of the Ordinance in the future.





# Questions