



Senate Committee on Local Government
Tuesday, March 21, 2023, 9:30 AM
House Bill No. 2083

Michael Halpern, President MuniReg LLC
Testimony in Opposition

Chair McGinn and members of the Committee:

Thank you for allowing me the opportunity to offer testimony in opposition of HB 2083, which would prohibit municipalities from imposing certain fees and other requirements on vacant property.

Registry/Fees

Though the requirement prohibiting registration of vacant properties was stricken, a municipal registry without a registration fee and a penalty for non-compliance lacks the necessary “teeth” to provide value.

Municipal vacant (and foreclosure) property registration ordinances (VPRO) are utilized across the countries with proven success¹. Additionally, VPROs are a recommended strategy by the National League of Cities² and the Center for Community Progress³.

Theoretically, VPROs convert a reactive process into a proactive process. Across the country, municipal code enforcement is underfunded⁴. Significant time and effort are expended in identifying owners and interested parties⁵. These limited municipal resources should not be restricted from utilizing a productive tool, utilized in a significant number of communities⁶. In fact, the opposite is true; code enforcement should be armed with all available tools to protect their respective communities.

“If an owner of a vacant property finds \$300 too burdensome to pay, it’s unlikely they will invest the \$30,000 required to redo their roof and mechanical systems.”⁷

I am a firm proponent on reasonable fees⁸. Caps have been implemented in Georgia⁹ and New York State¹⁰. I respectfully suggest that option should be considered.

¹ Federal Reserve Bank of Atlanta *Foreclosure Externalities and Vacant Property Registration Ordinances*
<https://www.atlantafed.org/-/media/documents/research/publications/wp/2019/11/19/foreclosure-externalities-and-vacant-property-registration-ordinances.pdf>

² https://www.birminghamal.gov/wp-content/uploads/2017/08/8_managing-foreclosures-vacant-properties-mag-may12.pdf

³ <https://communityprogress.org/publications/revitalization-in-michigan/>

⁴ https://www.nysenate.gov/sites/default/files/article/attachment/final_investigative_report_code_enforcement_senator_skoufis_igo_committee.pdf

⁵ <https://www.munireg.com/when-three-to-six-months-turns-to-next-day/>

⁶ <https://safeguardproperties.com/vacant-property-registration/>

⁷ <https://www.greaterohio.org/blog/2021/11/30/from-the-archives-misconceptions-about-vacant-property-registries>

⁸ <https://www.munireg.com/registration-fees-2/>

⁹ [https://law.justia.com/codes/georgia/2014/title-44/chapter-14/article-1/section-44-14-14#:~:text=\(g\)%20A%20vacant%20or%20foreclosed,vacant%20or%20foreclosed%20real%20property](https://law.justia.com/codes/georgia/2014/title-44/chapter-14/article-1/section-44-14-14#:~:text=(g)%20A%20vacant%20or%20foreclosed,vacant%20or%20foreclosed%20real%20property)

¹⁰ <https://www.nysenate.gov/legislation/bills/2021/A3081>

Property Maintenance

The “Supplemental Note on House Bill No2083” states:

“The proponents generally stated that imposing fees on vacant properties infringes on the rights of a property owner to make decisions for their property. The proponents also stated that banks and other financial institutions are being considered as the owners of vacant properties and being assessed fees by cities before the financial institution can legally care for or sell the property.”

The first statement is misleading **and the second is factually inaccurate.**

The effect of inadequate property maintenance on surrounding properties and their owners is well documented¹¹. Recent studies have shown correlation between blight and gun violence¹² and in contrast, the positive impact maintenance actions can have on the reduction in said violence¹³. A simple Google search will demonstrate the frequency of fires and squatters at vacant properties. Hence, the need for strong maintenance codes.

Striking the proper balance is always difficult. The rights of the owners of vacant properties need to be protected, however they are no more equal than the rights of the owners of surrounding properties. Once again, hence the need for strong maintenance codes.

Regarding the second point, as I have not seen anything in the contrary specific to Kansas, the following general rules apply.

A typical mortgage instrument will contain what is often referred to as the “waste clause” or in the default mortgage servicing industry, “the mortgagee’s right to protect its collateral (interest)”¹⁴

In the February 2012 case of [Farinacci v. City of Garfield Heights](#), the US Court of Appeals for the Sixth Circuit considered the constitutional and tort claims that a borrower who had defaulted on her mortgage loan and was not living in her property brought against the City for entering the property and removing several cats from the premises.

The Sixth Circuit endorsed the district court’s conclusion that “[w]hen [the borrower] signed her mortgage, which included the property preservation provisions, she expressly assumed the risk that, if it became necessary to preserve the property, the bank might permit its agents and others to enter the house to effectuate that purpose.”

Typical municipal maintenance requirements address the health, safety, and security of a property. These are aligned with HUD/VA/Freddie Mac/Fannie Mae Guidelines¹⁵ for properties where they serve as an investor or insurer of the mortgage. Their respective guidelines **all** mandate the mortgage servicer (i.e. bank or non-bank servicer) conduct inspections and appropriate maintenance actions **prior to acquiring full ownership.**

These actions are also conducted on thousands of non-government backed loans (privately held mortgages) who realize the value as discussed below.

It is my sincere belief that the prior testimony that I have shown to be inaccurate was not intentional in any manner. Prior to founding MuniReg LLC, I spent 20 years at the nation’s largest mortgage field

¹¹ <https://www.munireg.com/understanding-the-true-costs-of-abandoned-properties-how-maintenance-can-make-a-difference/>
<https://www.americancityandcounty.com/2021/05/10/how-housing-and-property-conditions-can-affect-neighborhood-stability/>

¹² <https://www.munireg.com/study-determines-blight-remediation-impacts-firearm-violence-in-urban-neighborhoods/>

¹³ <https://www.munireg.com/jama-study-abandoned-house-repairs-reduced-nearby-gun-violence/>

¹⁴ <https://safeguardproperties.com/alerts/mortgagees-right-to-protect-its-collateral-interest/>

¹⁵ <https://www.namfs.org/servicing-guide-and-industry-links/>

services company that conducts inspections, maintenance, and repair actions in accordance with the aforementioned guidelines for its banking/mortgage servicing clients.

I have come across several instances where similar statements were made to elected bodies. I attribute it wholly to the disconnect between a) regional banks and national banks and b) mortgage originators and default servicing operations that often are not the same corporate entity.

Additionally, it has been relayed to me that smaller (non-national) banks even when allowed the right to protect its collateral often decline to take action (and risk municipal violations) in order to mitigate risk (i.e. trespass or conversion lawsuit).

In contrast to what was stated in prior testimony, proactive maintenance actions are occurring daily in Kansas and across the country, conducted by banks and their representatives. This is exactly what you, and all representatives of a local municipality would want. Every dollar spent by these entities is one less expended by local government.

The vacant home is the collateral on a mortgage, it would serve all banks well to promote reasonable municipal property maintenance requirements. It protects their collateral and protects the communities they serve.

There are exceptional circumstances that can and do impact banks' ability to take action, some clear cut (i.e. legal homeowner declares bankruptcy, files litigation, still reside in the property), some not so much (i.e. squatters). In contrast, there have been instances of local government having overly onerous requirements for banks and other owners, which occasionally extend to illegal.

Prohibiting local governments from requiring any maintenance is not the appropriate response.

Greater understanding of this niche arena along with reasonable common sense approaches and open dialogue is the key to efficiently address these issues.

Open and direct dialogue is the underlying purpose, and one need, for a strong VPRO.

I have spent over a decade of my professional career directly working to build these "bridges"¹⁶ while empowering local government¹⁷, specifically the often-overlooked code enforcement official.

MuniReg opposes House Bill No. 2083 and asks that the committee provide an unfavorable recommendation for this bill.

Thank you for your time and consideration,

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¹⁶ <https://dsnews.com/news/01-06-2016/safeguard-properties-receives-partnership-award-from-code-enforcement-agency>

¹⁷ <https://www.americancityandcounty.com/2020/02/26/municipal-leaders-should-improve-registration-programs-to-combat-property-blight/>