

**BOROUGH OF FRANKLIN LAKES
ORDINANCE NO. 1952**

**AN ORDINANCE SUPPLEMENTING CHAPTER 135
“AFFORDABLE HOUSING” OF THE CODE OF THE
BOROUGH OF FRANKLIN LAKES TO ADD REQUIREMENTS
FOR RESIDENCY AND ENFORCEMENT REGULATIONS**

BE IT ORDAINED by the Mayor and Council of the Borough of Franklin Lakes, in the County of Bergen and State of New Jersey, as follows:

Section 1. Chapter 135 “Affordable Housing” of the Code of the Borough of Franklin Lakes is hereby supplemented by the addition of the following:

Article V Residency; enforcement

§ 135-18 Residency.

A certified household that purchases *or leases* a restricted ownership *or rental* unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner *or lessee* of a restricted ownership *or rental* unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year. Violations of this provision shall be subject to the applicable enforcement provisions of § 135-19.

§ 135-19 Enforcement of affordable housing regulations.

A. Bi-annual residency recertification.

- (1) Every two years, the administrative agent shall notify all owners *and lessees* of affordable units in the Borough that they must submit to the administrative agent the following documents so that the administrative agent may verify the compliance of the household to the residency requirement set forth in § 135-18.
 - (a) A municipal residency form, which may be amended from time to time, that requires each head of household to provide the name and age of every resident of the affordable unit, and to certify as to its accuracy.
 - (b) *For owners*, A copy of the property tax assessment for the affordable unit.
 - (c) A copy of a New Jersey driver's license for every member of the household who has been issued a current driver's license; or for every member of the household over the age of 16 who has not been issued a current New Jersey driver's license, an alternative identification, issued by the State of New Jersey, the federal government, or a school district, that clearly includes the address of the household member.
 - (d) A copy of two utility bills issued within the past four months for each of the

following services received: water, sewer, gas, electric, TV, phone and internet services provided to the unit.

- (e) A signed and notarized statement from every member of the household 18 years or older that the affordable unit is their primary residence; that they reside in the affordable unit 260 days or more during the course of each year; that no part of the affordable unit is leased to any other party for any purpose; that no persons outside of the household resides in the affordable unit or uses the unit address for their residency; and that they understand if they fail to comply with residency requirements, they will be subject to applicable fines or other legal remedies, including but not limited to foreclosure.
- (2) The owner *or lessee* shall have 60 days to provide the documentation requested, and shall be sent a second notification after 30 days from the date of the first notification. If the submission of documents is determined to be incomplete, the owner *or lessee* shall be so notified and given another 15 days to provide the recertification documentation. The owner *or lessee* shall be deemed to be in violation of this article if, after 90 days from the date of the first notice, the proper documentation has not been submitted or has revealed that the owner *or lessee* is not in compliance with the residency requirement.
- B. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an owner, developer or tenant, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- C. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the Borough may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
- (1) The Borough may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - (a) A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense.
 - (b) In the case of an owner *or lessee* who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough's Affordable Housing Trust Fund an amount equal to 150% of the gross

amount of rent illegally collected.

- (c) In the case of an owner *or lessee* who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
- (2) The Borough may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
- (a) The judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the Sheriff, at which time the very-low-, low- or moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage, any prior liens held by the Borough, and the costs of the enforcement proceedings incurred by the Borough, including attorney's fees, as long as that amount is not more than the maximum allowable restricted sales price at the time of foreclosure pursuant to N.J.A.C. 5:80-26.1 et seq. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
 - (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior lien upon the very-low-, low- or moderate-income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the Borough for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.
 - (c) Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very-low-, low- or moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. An owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the Borough may acquire title to the very-low-, low- or moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very-low-, low- or moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the very-low-, low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Borough, with such offer to purchase being equal to the maximum resale price of the very-low-, low- or moderate-income unit as permitted by the regulations governing affordable housing units.
- (f) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions governing affordable housing units until such time as title is conveyed from the owner.

Section 2. Repealer. All ordinances or parts of Ordinances inconsistent or in conflict with this Ordinance are hereby repealed as to said inconsistencies and conflict.

Section 3. Severability. If any section, part of any section, or clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Ordinance. The Governing Body of the Borough of Franklin Lakes declares that it would have passed the Ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section 4. Effective Date. This Ordinance shall take effect immediately upon passage and publication according to law.

APPROVED: _____
Charles J. X. Kahwaty, Mayor

ATTEST: _____
Gail M. Rulli, Borough Clerk

Introduced: 05-21-2024
Adopted: 06-18-2024