

# **- CONSOLIDATED VERSION -**

## **BY-LAW #209** **TOWN OF SACKVILLE**

### **MAINTENANCE AND OCCUPANCY STANDARDS** **FOR RESIDENTIAL PROPERTIES BY-LAW**

The Council of the Town of Sackville enacts the following by-law under Section 94 of the *Municipalities Act, R.S.N.B. 1973, c. M-22*.

1. In this by-law:

“by-law enforcement officer” means a person appointed by the Council of the Town of Sackville to administer and enforce this by-law;

“Code” means The Residential Properties Maintenance and Occupancy Code approved by New Brunswick Regulation 84-86 under Section 93 of the *Municipality Act*.

“committee of council” means the By-Law Committee plus the Mayor and legal counsel when necessary.

“dwelling” means a building any part of which is used for the purposes of human habitation whether or not the building is in such a state of disrepair so as to be unfit for such purpose;

“dwelling unit” means one or more rooms located within a dwelling and used or intended to be used for human habitation by one or more persons;

“person” includes a corporation;

“property” includes premises, a building or a structure.

2. In sections 4, 5, 5.1, 7, 8 and 9 of this by-law, “owner” includes the person for the time being managing or receiving the rent for a property whether on the person’s own account or an agent or trustee of any other person or who would receive the rent if the property were let.
3. The Code, with the exception of sections 23(2) and subsections 25(1) to 25 (5) inclusive, is adopted and applies within the boundaries of the Town of Sackville.

4. Where a property is found to be in violation of the Code, the by-law enforcement officer may notify the owner or occupier of the property by notice in the form prescribed by Regulation which shall:

- a) be in writing;
- b) be signed by the officer;
- c) state that the property does not comply with the Code;
- d) state what must be done to comply with the Code;
- e) state the date before which the condition must be corrected;
- f) if an appeal may be brought under section 5.1, state the final date for giving notice of the appeal.

4.1 A notice referred to in section 4 shall be given

- a) if the person to be notified is an individual, by personal delivery on the individual or by posting the notice in a conspicuous place on the premises, building or structure, or
- b) if the person to be notified is a corporation, by personal delivery on an officer, director or agent of the corporation or on a manager or person who appears to be in control of any office or other place of business where the corporation carries on business in New Brunswick or by posting the notice in a conspicuous place on the premises, building or structure.

5. (1) Proof of the giving of notice in either manner provided for in section 4.1 may be by a certificate or an affidavit purporting to be signed by the officer referred to in section 4, naming the person to whom notice was given and specifying the time, place and manner in which notice was given.

(2) A document purporting to be a certificate under subsection (1) shall be

- a) admissible in evidence without proof of signature, and
- b) conclusive proof that the person named in the certificate received notice of the matters referred to in the certificate.

(3) In any prosecution for a violation of any provision of this by-law, where proof of the giving of notice is made as prescribed under subsection (1), the burden of proving that one is not the person named in the certificate or affidavit shall be upon the person charged.

(4) A notice given under section 4 and purporting to be signed by a by-law enforcement officer shall be

- a) received as evidence by any court in the Province without proof of the signature.
- a) proof in the absence of evidence to the contrary of the facts stated in the

notice, and

- b) in a prosecution for a violation of any provision of this by-law, proof in the absence of evidence to the contrary that the person named in the notice is the owner or occupier of the property in respect of which the notice was given.

- 5.1
- (1) An owner or occupier of premises or a building or structure who has been given a notice under section 4, other than a notice prepared under section 8, and who is not satisfied with the terms or conditions set out in the notice may appeal to the appropriate committee of council by sending a notice of appeal by registered mail to the clerk of the municipality within fourteen days after having been given the notice.
  - (2) A notice that is not appealed within the time referred to in subsection (1) shall be deemed to be confirmed.
  - (3) On an appeal, the committee of council shall hold a hearing into the matter at which the owner or occupier bringing the appeal has a right to be heard and may be represented by legal counsel.
  - (4) On an appeal, the committee of council may confirm, modify or rescind the notice or extend the time for complying with the notice.
  - (5) The committee of council shall provide a copy of its decision to the owner or occupier of the premises, building or structure who brought the appeal within fourteen days after making its decision.
  - (6) The owner or occupier provided with a copy of a decision under subsection (5) may appeal the decision to a judge of The Court of Queen's Bench of New Brunswick within fourteen days after the copy of the decision was provided to the owner or occupier on the grounds that
    - a) the procedure required to be followed by this Act was not followed, or
    - b) the decision is patently unreasonable.
  - (7) On the appeal, the judge of The Court of Queen's Bench of New Brunswick may confirm, modify or rescind the whole or any part of the decision of the committee of council, and the decision of the judge under this subsection is not subject to appeal.
  - (8) A notice that is deemed to be confirmed under subsection (2) or that is confirmed or modified by the committee of council under subsection (4) or a judge of The Court of Queen's Bench of New Brunswick under subsection (7), as the case may be, shall be final and binding upon the owner or occupier who shall comply within the time and in the matter specified in the notice.

- (9) An appeal does not prevent a further notice from being given under section 4.1 or from being prepared and signed under section 8 in relation to a condition referred to in the notice that is the subject of the appeal if there has been a change in the condition.
- 5.2 (1) In this section
- “land registration office” means the registry office for a county or the land titles office for a land registration district.
- (2) A notice given under section 4.1 may be registered in the appropriate land registration office and upon such registration, any subsequent owner of the premises, building or structure in respect of which the notice was given shall be deemed, for the purposes of section 7 and 8, to have been given the notice on the day on which the notice was given under section 4.1.
- (3) For the purposes of registering a notice under subsection (2), section 44 of the *Registry Act* and section 55 of the *Land Titles Act* do not apply.
- (4) Within thirty days after the terms of the notice have been complied with or a debt due to a municipality under subsection 7(1) or 8(5) or due to the Minister of Finance under subsection 10 (4)(c), as the case may be, is discharged, the municipality shall provide a certificate in the form prescribed by regulation to that effect to the person to whom the notice was given under section 4.1 or deemed to have been given under subsection (2), as the case may be, and the certificate shall operate as a discharge of the notice.
- (5) A person to whom a certificate is provided under subsection (4) may register the certificate in the appropriate land registration office, and, upon registration of the certificate, the appropriate registrar of the land registration office may cancel registration of the notice in respect of which the certificate as provided.
6. (1) A person who fails to comply with the terms of a notice under section 4.1 commits an offence punishable under Part II of the *Provincial Offences Procedures Act* as a category E offence and notwithstanding the provisions of any Act to the contrary, no judge of the Provincial Court may suspend the imposition of any penalty under this section.
- (2) Notwithstanding subsection 56(6) of the *Provincial Offences Procedure Act*, where a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (1) in relation to a notice given under section 4.1 with respect to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence shall be one thousand dollars.
- (3) Where an offence under subsection (1) continues for more than one day,

- (a) if the offence was committed by a person in relation to notice given under section 4.1 with respect to a dwelling or dwelling unit the person is leasing to another person,
  - (i) the minimum fine that may be imposed is the sum of
    - (A) one thousand dollars, and
    - (B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and
  - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for category F offence multiplied by the number of days during which the offence continues, and
- (b) in any other case,
  - (i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
  - (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.
- (4) The conviction of a person under this section does not operate as a bar to further prosecution for the continued neglect or failure on his or her part to comply with the provisions of this by-law and/or the Code.
- 7. (1) If a notice has been given under section 4.1, other than a notice prepared under section 8, and the owner or occupier does not comply with the notice, as deemed confirmed or as confirmed or modified by a committee of council or a judge under section 5.1, within the time set out in the notice, the municipality may, rather than commencing proceedings in respect of the violation or in addition to doing so, cause the work set out in the notice to be carried out or have the building or structure demolished, and the cost of carrying out such work, including any related charge or fee, is chargeable to the owner or occupier and becomes a debt due to the municipality.
- (2) For the purpose of subsection (1), the by-law enforcement officer who gave the notice in respect of the premises, building or structure and the employees of the municipality or other persons acting on behalf of the municipality may, at all reasonable times, enter upon the premises, building or structure in order to clean up or repair the premises or demolish the building or structure, as the case may be.

- (3) A municipality or a person acting on its behalf is not liable to compensate an owner or occupier or any other person by reason of anything done by or on behalf of the municipality in the reasonable exercise of its powers under this action.
8. (1) In this section “**emergency**” includes a situation in which there is imminent danger to public safety or of serious harm to premises or to a building or structure.
- (2) If, upon inspection of a property under section 102.1 of the *Municipalities Act*, the by-law enforcement officer referred to in that section is satisfied that there is nonconformity with this by-law or the Code to such an extent as to pose an emergency, the by-law enforcement officer may prepare and sign a notice referred to in section 4 requiring the owner or occupier of the premises, building or structure in respect of which the notice is prepared to immediately carry out work to terminate the danger.
- (3) After having prepared and signed a notice referred to in subsection (2), the by-law enforcement officer may, either before or after the notice is given under section 4.1, take any measures necessary to terminate the danger giving rise to the emergency, and, for this purpose, the by-law enforcement officer who prepared the notice and the employees of the municipality or other persons acting on behalf of the municipality may, at any time, enter upon the premises, building or structure in respect of which the notice was prepared.
- (4) A municipality or a person acting on its behalf is not liable to compensate an owner or occupier or any other person by reason of anything done by or on behalf of the municipality in the reasonable exercise of its powers under this section.
- (5) The cost of taking measures under subsection (3), including any related charge or fee, is chargeable to the owner or occupier and becomes a debt due to the municipality.
- (6) If the notice was not given before measures were taken to terminate the danger, the officer shall give a copy of the notice under section 4.1 as soon as possible after the measures have been taken, and the copy of the notice shall have attached to it a statement by the officer describing the measures taken by the municipality and providing details of the amount expended in taking such measures.
- (7) If the notice was given before the measures were taken, the officer shall give a copy of the statement mentioned in subsection (6) in the same manner as a notice is given under section 4.1 as soon as practicable after the measures have been taken.
- (8) No person shall refuse entry to or obstruct or interfere with an officer referred to in subsection 7(2) or 8(3) who under the authority of that subsection is entering or attempting to enter premises or a building or structure.

- (9) A person who violates or fails to comply with subsection (8) commits an offence that is, subject to subsections (10) and (11), punishable under Part 11 of the *Provincial Offences Procedure Act* as a category F offence.
- (10) Notwithstanding subsection 56(6) of the *Provincial Offences Procedure Act*, where a person who is leasing a dwelling or dwelling unit to another person commits an offence under subsection (9) in relation to the dwelling or dwelling unit, the minimum fine that may be imposed by a judge under that Act in respect of the offence shall be one thousand dollars.
- (11) Where an offence under subsection (9) continues for more than one day,
- (a) if the offence was committed in relation to a dwelling or dwelling unit by a person who is leasing the dwelling or dwelling unit to another person,
- (i) the minimum fine that may be imposed is the sum of
- (A) one thousand dollars, and
- (B) the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues after the first day, and
- (i) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
- (b) in any other case,
- (i) the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues, and
- (ii) the maximum fine that may be imposed is the maximum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues.
9. (1) Where the cost of carrying out work becomes a debt due to a municipality under sections 7 and 8, an officer of the municipality may issue a certificate stating the amount of the debt due and the name of the owner or occupier from whom the debt is due.

- (2) A certificate issued under subsection (1) may be filed in The Court of Queen's Bench of New Brunswick and a certificate so filed shall be entered and recorded in the Court and when so entered and recorded may be enforced as a judgment obtained in the Court by the municipality against the person named in the certificate for a debt of the amount specified in the certificate.
  - (3) All reasonable costs and charges attendant upon the filing, entering and recording of a certificate under subsection (2) may be recovered as if the amount had been included in the certificate.
10.
  - (1) The cost of carrying out work under subsection 7(1) or of taking measures under subsection 8(5), as the case may be, and all reasonable costs and charges attendant upon the filing, entering and recording of a certificate under section 9(2) shall, notwithstanding subsection 72(2) of the *Workers' Compensation Act* and until paid, form a lien upon the real property in respect of which the work is carried out or the measures are taken in priority to every claim, privilege, lien or other encumbrance, whenever created, subject only to taxes levied under the *Real Property Tax Act* and a special lien under subsection 189(10).
  - (2) The lien in subsection (1)
    - (a) attaches when the work under subsection 4.1 is begun or the measures under subsection 8.3 are begun, as the case may be, and does not require registration or filing of any document or the giving of notice to any person to create or preserve it, and
    - (b) follows the real property to which it attaches into whose hands the real property comes.
  - (3) Any mortgagee, judgment creditor or other person having any claim, privilege, lien or other encumbrance upon or against the real property to which is attached a lien under subsection (1)
    - (a) may pay the amount of the lien,
    - (b) may add the amount to the person's mortgage, judgment or other security, and
    - (c) has the same rights and remedies for the amount as are contained in the person's security.
  - (4)
    - (a) Where a debt due to a municipality under subsection 7(1) or 8(5) remains unpaid in whole or in part and the Minister of Finance is of the opinion that the municipality has made reasonable efforts to recover the unpaid amount, the Minister of Finance shall, if the municipality requests him or her to do so before December 31 in any year, pay to the municipality the



following amounts at the same time as the first payment is made to the municipality under section 6 of the *Municipal Assistance Act* in the following year:

- (i) the unpaid amount of the debt; and
- (ii) interest on the unpaid amount of the debt
  - (A) calculated at the same rate as is applied in determining the amount of a penalty under subsection 10(3) of the *Real Property Tax Act*, and
  - (B) accruing from the day the municipality completes the work or measures in respect of which the debt arose to the day the municipality makes a request under this subsection for payment in respect of the debt.

(a) A municipality shall make a request under subsection (1) by submitting to the Minister of Finance a statement of the expenditures of the municipality that gave rise to the debt.

(b) Subject to paragraph (d), where a debt due to a municipality under subsection 7(1) or 8(5) in relation to work carried out or measures taken with respect to premises or a building or structure remains unpaid, in whole or in part, by the person liable to pay the debt and the Minister of Finance has made a payment under subsection (1) in respect of the debt.

- (i) any part of the debt that remains unpaid by the person liable to pay the debt becomes a debt due to the Minister of Finance, and
- (ii) the Minister of Finance shall collect the following amounts from the owner of the premises, building or structure in the same manner that taxes on real property are collected under the *Real Property Tax Act*.

(A) any part of the debt under subsection 7(2) or 8(5) that remains unpaid by the person liable to pay the debt; and

(B) interest on the unpaid part of the debt

§ calculated at the same rate as is applied in determining the amount of a penalty under

subsection 10(3) of the *Real Property Tax Act*, and

§ accruing from the day the municipality completes the work or measures in respect of which the debt arose to the day the municipality makes a request under subsection (1) for payment in respect of the debt.

- (c) Subject to paragraphs (e) and (f), section 7, section 10, except subsection 10(2), and sections 11, 12, 13, 14, 14.1, 15, 16, 19, 20, 24 and 25 of the *Real Property Tax Act* apply with the necessary modifications for the purposes of subsection (3).
- (d) Where the amounts referred to in paragraph (c) remain unpaid, those amounts and any penalty added to them under paragraph (d) constitute a lien on the real property in respect of which the work was carried out or the measures were taken, and the lien ranks equally with a lien under subsection 11(1) of the *Real Property Tax Act*.
- (e) Where the real property is sold under any order of foreclosure, order for seizure and sale, execution or other legal process or a power of sale under a debenture or mortgage or under subsection 44(1) of the *Property Act*, the amount of a lien referred to in subsection (5) constitutes a charge on the proceeds that ranks equally with a charge under subsection 11(1) of the *Real Property Tax Act*.

10. A municipality shall not proceed to demolish a building or structure under paragraph 7(1) unless it has a report from an architect, an engineer, a building inspector or the Fire Marshall that the building or structure is dilapidated or structurally unsound and such report is proof in the absence of evidence to the contrary that the building or structure is dilapidated or structurally unsound.

12.1 The by-law entitled By-Law No. 195, Maintenance and Occupancy Standards for Residential Properties By-Law enacted June 13, 2005 is repealed.

12.2 This by-law comes into force on the final passing thereof.

Read a first time this 11th day of February, 2008.

Read a second time this 11th day of February, 2008.

Read a third time and passed by Council this 10th day of March, 2008.

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Mayor

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Clerk