

Introduced by: Ms. Diller  
Date of introduction: May 8, 2018

**ORDINANCE NO. 18-049**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 14 (“FINANCE AND TAXATION”) REGARDING PREQUALIFICATION OF PURCHASERS AT TAX SALES**

**WHEREAS**, vacant premises consume code enforcement and public safety resources and have a deleterious effect on communities by attracting crime, decreasing the value of surrounding properties, and impeding the revitalization of distressed neighborhoods; and

**WHEREAS**, New Castle County employs an integrated strategy to reduce the negative effects of vacancy that includes: (1) registration of vacant premises and the imposition of fees that increase with the length of vacancy; (2) regular inspection of vacant premises and abatement of code violations; and (3) collection of unpaid code enforcement fees through the monition process; and

**WHEREAS**, ameliorating the negative effects of vacancy through the monition process will occur only if the purchaser acquires the vacant premises with the intention of transforming it into a productive use; and

**WHEREAS**, if a purchaser at a monition sale has failed to pay taxes when due or has failed to maintain the condition of other real property the purchaser owns in New Castle County, it is reasonable to conclude that the purchaser is unlikely to invest in and improve the condition of additional property and is instead speculating on neighborhood improvement based upon the investments and efforts of others; and

**WHEREAS**, New Castle County, along with other local governments, the Delaware Department of Justice, the Delaware State Housing Authority, and nonprofit housing organizations have collaborated to seek additional tools for local governments to address blight and vacancy; and

**WHEREAS**, based upon this collaborative effort, the General Assembly enacted legislation, codified at 9 *Del. C.* § 8726, that enables County Council to require prequalification of any purchaser seeking to acquire right, title and interest in property brought to sale through the monition method; and

**WHEREAS**, it is the intent of this Ordinance to require prequalification if so stated in the public notice of sale; and

**WHEREAS**, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of New Castle County).

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

Section 1. *New Castle County Code* Chapter 14 (“Finance and Taxation”), is hereby amended by adding the material below, all of which shall be considered underscored.

**ARTICLE 13. PREQUALIFICATION OF PURCHASERS AT TAX SALES**

**Sec. 14.13.001. Prequalification required.**

A. Provided notice of the public sale requires prequalification, any purchaser seeking to acquire the right, title and interest in a property that has been made available at public sale through New Castle County’s monition authority shall provide proof of prequalification to the Sheriff prior to:

1. bidding on such property at the public sale; or
2. acquiring the right, title and interest in such property through the assignment of a successful bid after the public sale.

B. *Required certifications.* All purchasers shall certify, that either directly or through an affiliated entity, such purchaser does not own any interest in any real property in New Castle County that:

1. is subject to any state or political subdivision lien identified in *25 Del. C. § 2901(a)* in excess of \$1,000; or
2. has been vacant for at least 18 consecutive months and such property is not subject to a valid building permit or pending land use application.

C. *Definitions.*

1. Affiliated entity means:
  - a. any entity that is under common control with the purchaser; or
  - b. any person or entity who directly or indirectly holds any beneficial or ownership interest in the purchaser of 5% or greater.
2. Purchaser means:
  - a. any person or entity seeking to acquire the right, title and interest in the property by placing a bid during the public sale;
  - b. any person or entity seeking to acquire the right, title and interest in the property through payment of the bid price to the Sheriff upon placing the successful bid;
  - c. any person or entity seeking to acquire the right, title and interest in the property through assignment of the rights and liabilities acquired by another purchaser.

D. *Status exemption.* A purchaser shall not be required to provide the certifications required in subsection B if a person authorized by the organization certifies the purchaser is:

1. an organization that has been building, rehabilitating, and providing affordable housing units within the state for at least five years and has tax-exempt status pursuant to Internal Revenue Code section 501(c)(3);
2. a community development corporation as defined in 42 U.S.C. § 9802; or
3. a land bank organized pursuant to 31 *Del. C.* § 4703.

E. Certifications shall be made under penalty of perjury by the purchaser or a person authorized by the purchaser.

1. If the purchaser is a business entity, the person completing the application shall certify that he or she has authority to make the certifications required herein on behalf of the business entity.

F. A purchaser shall comply with all bidder registration requirements and public sale procedures established by the Sheriff.

**Sec. 14.13.002. Prequalification application.**

A. *General.* All purchasers shall complete a prequalification application on the form prescribed by the Chief Financial Officer.

B. *Bid-purchase.* A purchaser seeking to acquire an interest in a property at a public sale shall complete a bid-purchase application.

1. *Bid requirements.* During the public sale's bidder registration process, the purchaser shall submit a prequalification application that contains required certifications and any other information required by the Chief Financial Officer.
  - a. The purchaser shall also comply with the purchase requirements or shall agree to comply with such requirements at the time of bid payment.
  - b. Acceptance of a purchaser's duly-executed application containing all bid requirements shall constitute a bidder certificate and shall be sufficient to place bids.
2. *Purchase requirements.* Prior to or at the time a purchaser submits payment of the successful bid to the Sheriff, the purchaser shall provide the application fee and any other information required by the Chief Financial Officer necessary to determine the veracity of required certifications including:

- a. the identity of all affiliated entities of the purchaser; and
  - b. the address or tax parcel number of all properties located in New Castle County in which the purchaser and any affiliated entities own an interest.
3. Failure to submit the purchase requirements prior to or at the time of payment of the bid may result in the forfeiture of the successful bid and the immediate return of the property to the auction.
  4. One bid-purchase application shall be required for each public sale and shall be sufficient for all properties purchased at such sale.
- C. *Assignment.* A purchaser seeking assignment of the rights and liabilities of a successful bid shall submit an assignment application to the Chief Financial Officer at least ten (10) business days before the date the sale is scheduled to be confirmed by the Superior Court.
1. It shall be in the Chief Financial Officer's discretion to accept an assignment application that is not submitted timely if accepting the application does not materially affect the County's ability to review the application and issue the assignment certificate prior to the sale's confirmation.
  2. Upon verification of the certifications and payment of the required application fee, the Chief Financial Officer shall provide an assignment certificate to the purchaser.
  3. The Sheriff shall not allow assignment without proof that an assignment certificate has been issued by the Chief Financial Officer.
  4. Assignments must occur prior to the property sale's confirmation.
- D. *Status.* A purchaser seeking a status certificate shall submit a status application. Such application shall only be submitted by organizations eligible for a status exemption.
1. Section 501(c)(3) organizations shall provide proof of tax-exempt status.
  2. A status certificate shall be sufficient for all prequalification purposes. Such purchaser shall provide a status certificate prior to bidding on a property at public sale or seeking assignment of a property from a prequalified purchaser.
  3. A status certificate shall remain valid unless there is a change in the organization's status that is inconsistent with the certifications provided on the application.

**Sec. 14.13.003. Fees.**

The Chief Financial Officer may charge a fee that reflects the cost of certifying verifications and issuing a certificate.

- A. The fee for a timely filed application shall be \$50.00. There shall be an additional \$100 fee for any assignment application that is deemed late.
- B. There shall be no fee for a status application if such organization has been engaged in building, rehabilitating, and providing affordable housing units within New Castle County within the preceding five (5) years or is a land bank organized pursuant to 31 *Del. C.* § 4703.

**Sec. 14.13.004. Violations and penalties; Approval or disapproval of sale.**

A. It shall be a violation of this Article to fail to provide required information, to provide false, inaccurate or incomplete information, or to make false certifications on any application. False certifications may be referred to the Delaware Department of Justice for criminal prosecution.

B. The Chief Financial Officer may disapprove a sale due to a violation of this Article. In such cases, the purchaser shall be responsible for all costs incurred by New Castle County in the monition process plus a \$500.00 Sheriff's fee. All such costs shall be deducted from the funds paid to the Sheriff at the sale before any balance is returned to the purchaser.

**Sec. 14.13.005. Notice and review.**

A. Notice shall be provided to any purchaser who has been denied a prequalification certificate or where the Chief Financial Officer is seeking payment of costs due to a purchaser's violation of this Article. The notice shall:

- 1. be in writing;
- 2. describe the action taken and the basis for the action; and
- 3. be delivered electronically or via first class mail to the address provided on the application.

B. A purchaser may request reconsideration of the action noticed if the purchaser believes it was made in error. Such request shall:

- 1. be in writing and contain a statement and supporting documentation explaining why it is believed the action taken was in error; and
- 2. be submitted within ten (10) days of the date of notice of action, unless additional time is granted by the Chief Financial Officer for good cause shown by the purchaser.

C. The Chief Financial Officer may approve or disapprove a sale for any public purpose. Notice shall be required only if a sale was disapproved for a violation of this Article and the Chief Financial Officer is seeking the payment of costs from the purchaser. The purchaser may seek reconsideration of the payment of costs only.

Section 2. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they are in conflict with the provisions of this ordinance.

Section 3. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance is found to be unconstitutional or void, all applicable former ordinances, resolutions or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 4. The provisions of this Ordinance shall not be deemed to nullify any provisions of local, state, or federal law except as stated in Sections 1 and 2 above.

Section 5. This Ordinance shall become effective immediately upon its adoption by County Council and approval of the County Executive or as otherwise provided in 9 Del. C § 1156.

Adopted by County Council of  
New Castle County on: 5/22/18

  
President of County Council  
of New Castle County

Approved on: June 1, 2018

  
County Executive  
New Castle County

**SYNOPSIS:** This Ordinance implements the authority provided to New Castle County by the 149<sup>th</sup> General Assembly through adoption of House Bill No. 187 as amended by House Amendment No. 1 and House Amendment No. 2 that was signed into law on September 7, 2017 (now encoded in 9 Del. C. § 8726). This Ordinance allows the County to require that purchasers of property at tax sales and assignees of tax sale bids certify that they do not have a record of failing to maintain other real property in which they own an interest, and do not have outstanding liens owed to governmental entities in excess of \$1,000 on such other property.

This Ordinance provides for three types of prequalification certificates. First, a bid-purchase certificate is required by any person seeking to bid on a monition property at a Sheriff's Sale. There are two parts to a bid-purchase application: 1) bid requirements and 2) purchase

requirements. All bidders must complete and submit the bid requirements. A bidder may defer the submission of the purchase requirements until such bidder holds a successful bid and submits the bid price to the Sheriff. The bid-purchase application fee is part of the purchase requirements and will be charged only to those with a successful bid. Only one bid-purchase application is required per auction. Second, an assignment certificate is required by any person acquiring a bid from a prequalified purchaser. Since assignment must occur prior to the Superior Court's confirmation of the sale, an application must be submitted ten business days prior to the date of confirmation to allow sufficient time for application review. A late application may be accepted if the Chief Financial Officer determines there is sufficient time to review the application. There will be an increased fee for an assignment application deemed late to account for additional staff time to process the application on an expedited basis. A separate assignment application is required for each property. Third, a status certificate may be issued to certain non-profits engaged in providing affordable housing, community development corporations, and land banks. The status certificate does not expire unless that status of the organization changes and it may be used for bidding, purchasing, and assignment purposes. There will be no application fee charged to status organizations that have been active in New Castle County within the last 5 years since its development and construction activity will be readily known and processing an application will require little staff time.

**FISCAL NOTE:** This Ordinance has no discernable fiscal impact.