

Effective Collaborations Between Legal Services and Community Economic Development

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Overview

- CED: overview and attributes
- Civil legal services: history and eligibility
- LISC Jacksonville Heirs Property Work
- St. Louis Neighborhood Advocacy
- Q&A

Overview of Community Economic Development

Third sector nonprofits focused on community stabilization and revitalization in underinvested low-wealth areas

- Basic human needs charities
- Housing and economic development
 - CDC - Community Development Corporation
 - CHDO - Cmty Housing Dev. Organization
 - CDFI - Cmty Development Financial Institution
- Grassroots community building, cultural placekeeping, small business associations
- Social justice systems change advocacy

CED Attributes

- Mission is improved health, safety, economic prosperity, quality of life
- Place-based in a neighborhood or region
- Grassroots staff and board leadership
- Resident-led planning and mobilization
- Trust building for collective action
- Conduit for investments from government, philanthropy, private sector
- Eager to engage community partners to bring solutions

Overview of Civil Legal Services

What is Legal Aid?

Civil legal aid is the assistance of counsel and legal advocacy for people living at or near poverty in legal matters that fall outside of the criminal justice system.

- Early 20th Century - Legal Aid Societies
 - “War on Poverty” Expansion
- Creation of Legal Services Corporation
 - 1980’s & 1990’s Cuts and Regulation
- Access to Justice - Pro Bono Expansion

The total amount allocated to the delivery of civil legal aid in the United States is around \$1.345 billion. The Legal Services Corporation (LSC) is the single largest funder of legal aid programs in the United States, providing about one-fourth of this funding. LSC is a federally-funded nonprofit corporation which makes grant awards to 134 grantees nationwide.



LISC Jacksonville and Legal Services: Community Engagement and Protecting Heirs Property Owners

Heirs Property Owners

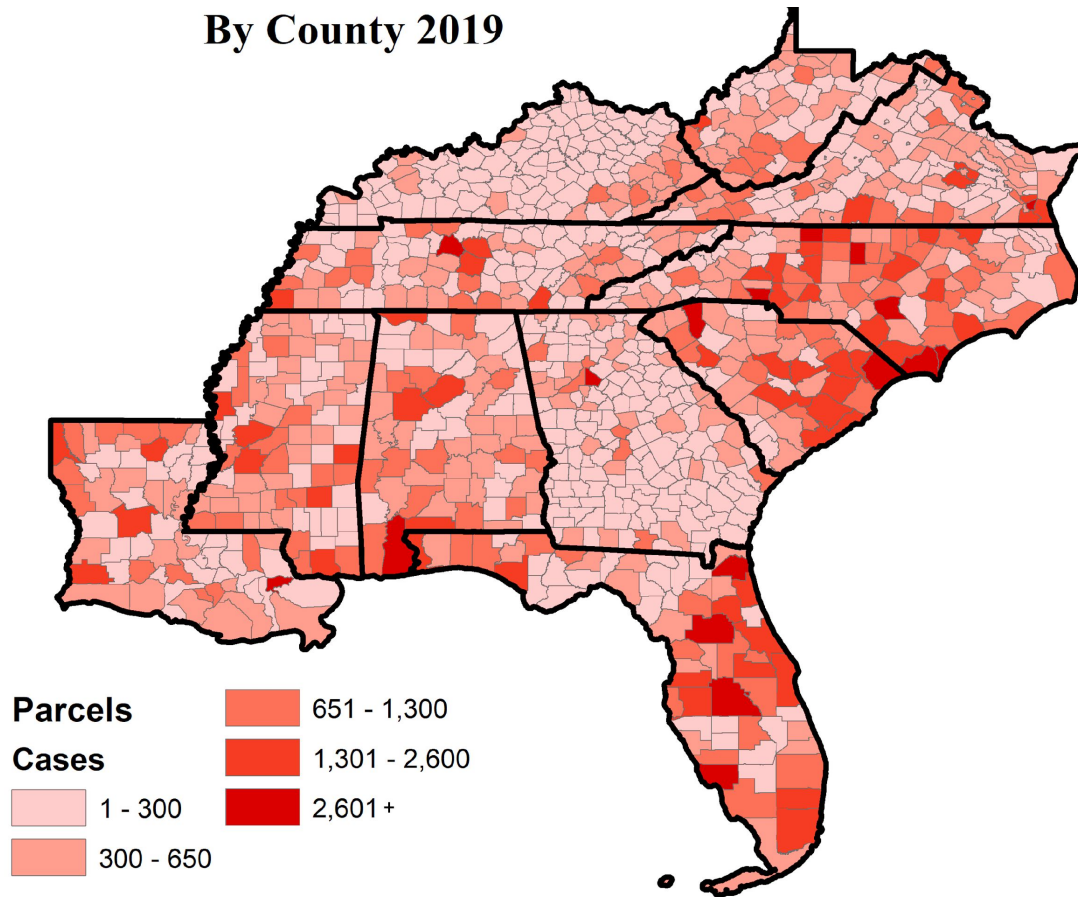
- Heirs Property
 - Family home that becomes jointly owned by descendants of deceased record title owner whose estate has not gone through probate or other title transfer process
- Heirs together own fractional interests in the home but title is unclear if not resolved thru probate court or by recorded deed automatically transferring title

Consequences for Heirs: Lack of Record Title

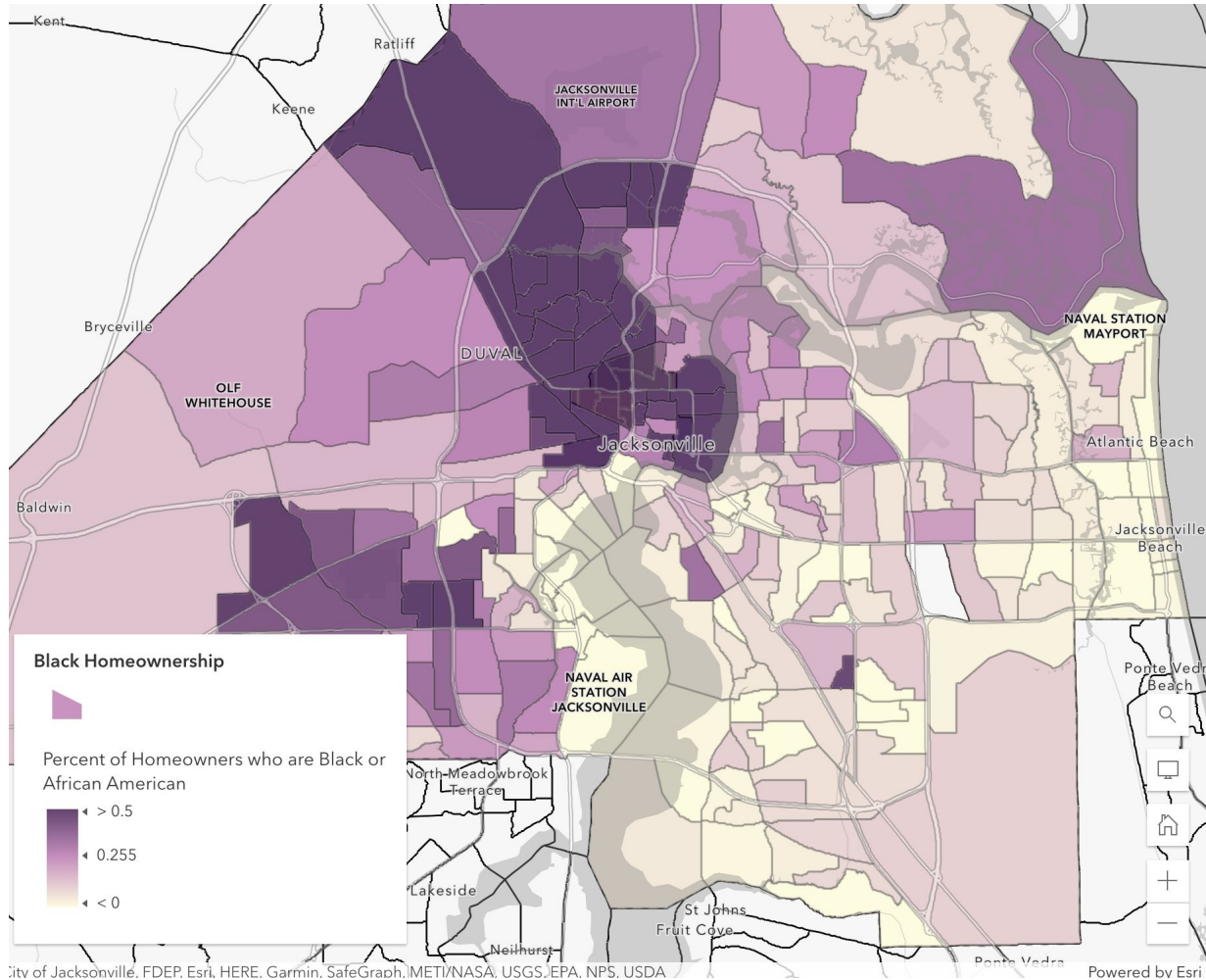
- Challenge to coordinate heirs' paying property taxes and maintaining the property
- No mortgage loan or building permit
- No government programs such as home repair or disaster relief
- Trouble selling the property

Parcels of Heirs' Property

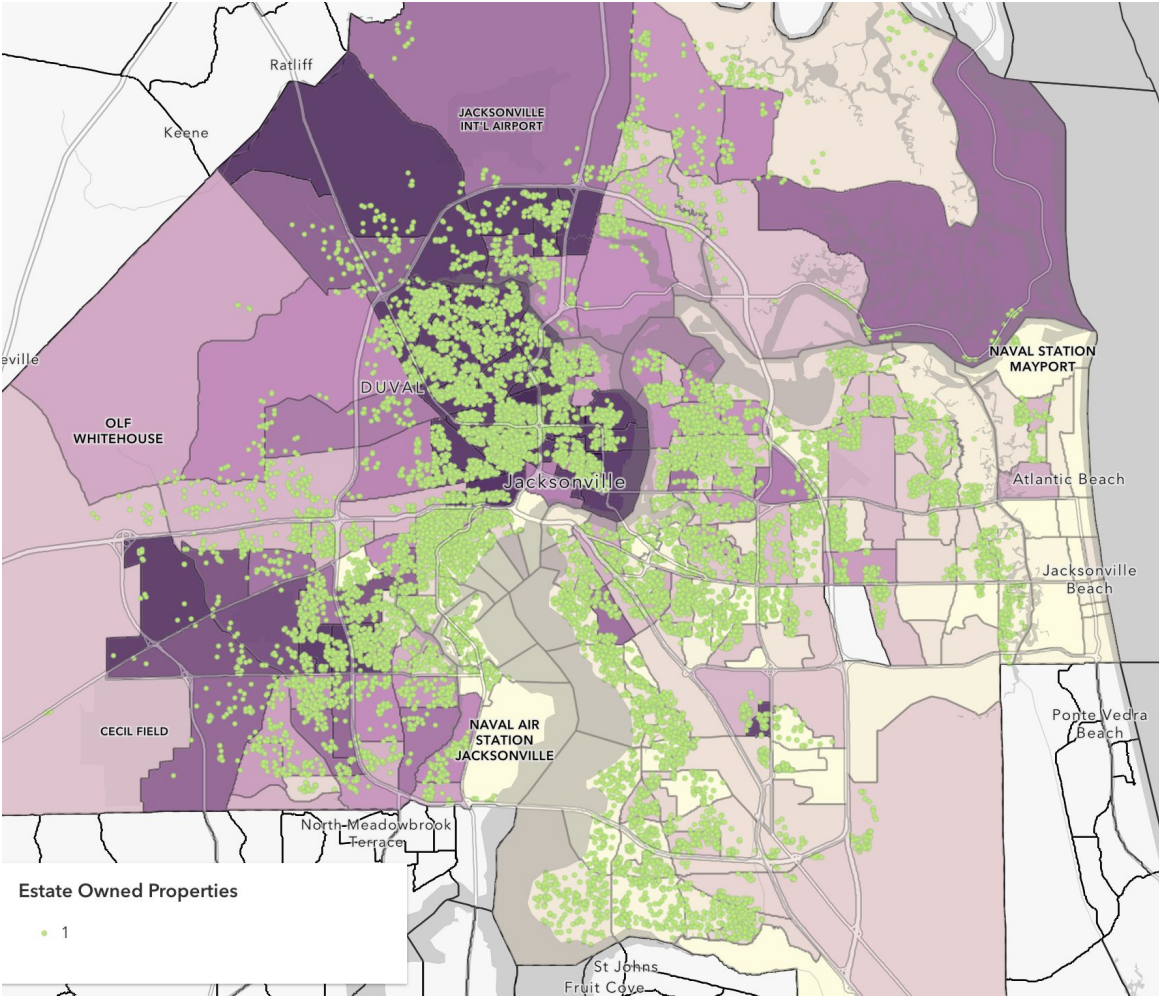
By County 2019



Jacksonville: Black Homeownership



Jacksonville: Estate-Owned Properties



Strategy



LISC & partners utilize data to identify neighborhoods



Residents and partners design interventions



LISC provides resources to support interventions



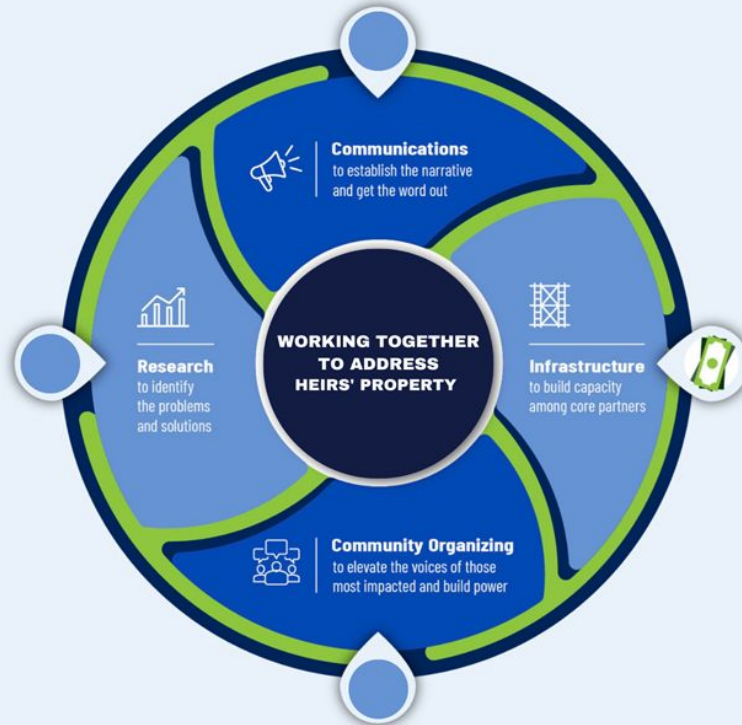
Ownership is preserved and equity gains accrued

LISC Heirs Property Ecosystem

*Driving systems change through
community empowerment*

- Collaboration among partners
- Neighborhood data research
- Resident engagement and education
- Free civil legal services
- Financial support for partner interventions

How Local Partners Can Build an Ecosystem to Address Heirs' Property



Examples of opportunities within the ecosystem include:

Research

- ✓ Community member input
- ✓ Data modeling
- ✓ Policy analysis
- ✓ Public polling

Community organizing

- ✓ Advocacy training
- ✓ Community outreach
- ✓ Mobilization

Infrastructure

- ✓ Organizational bandwidth
- ✓ Partnership building
- ✓ Staff time

Communications

- ✓ Media outreach
- ✓ Messaging
- ✓ Policymaker education
- ✓ Public education
- ✓ Narrative change

Questions to consider:

IN WHICH AREAS OF THE ECOSYSTEM CAN YOU MAKE A DIFFERENCE?

WHAT ARE THE GAPS?

HOW CAN YOU COLLABORATE WITH OTHERS TO ADDRESS THESE GAPS?

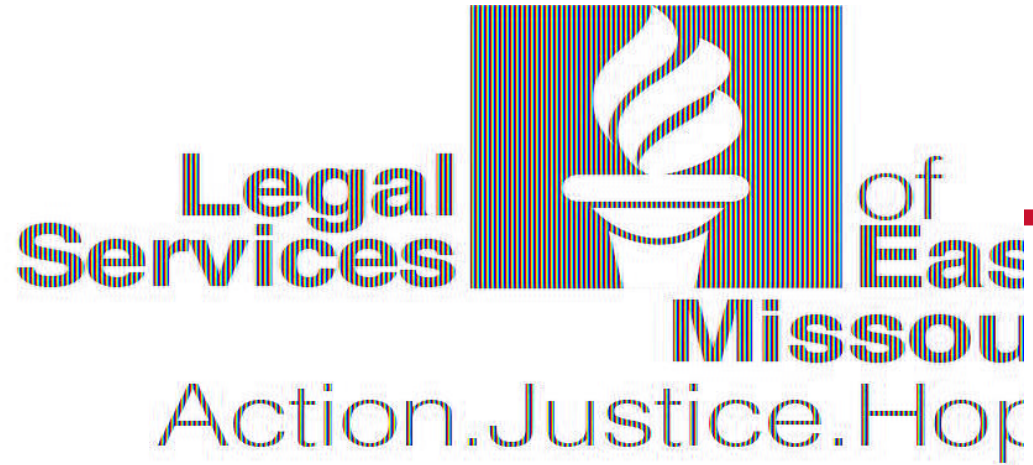
Mutual partners

Community organizations offer to legal aid:

- Prioritized neighborhood challenges
- Trust building with residents
- Referrals for delivering legal services

Legal aid offers to CEDs:

- Solutions to legal-related problems
- Trusted info about laws and procedures
- Advocacy support for policy changes



Neighborhood Advocacy

Peter Hoffman, Managing Attorney

City of St. Louis

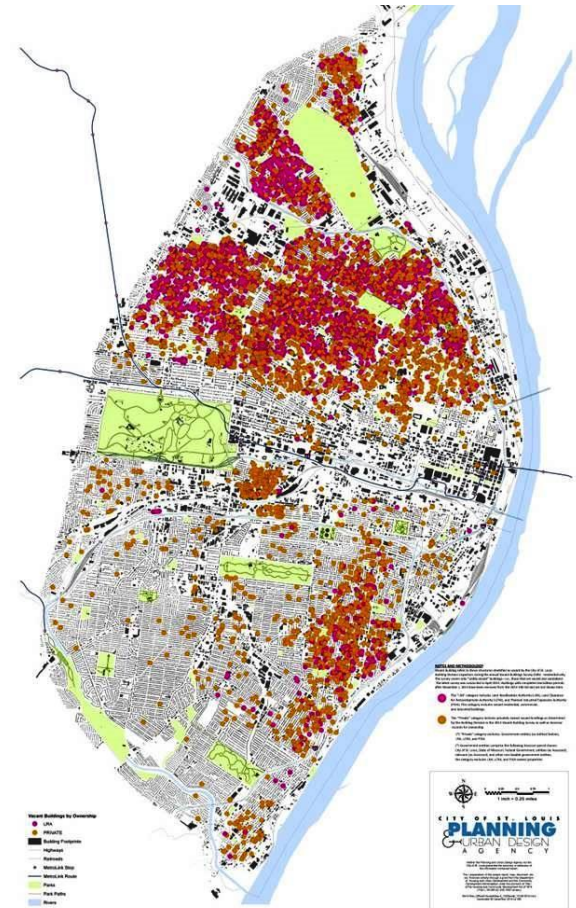
Vacant Property. Approx. 23,189 vacant parcels, half privately owned.

Causes of Disinvestment.

De-population/sprawl, foreclosure, aging population, public policy, predatory investors, redlining, etc.

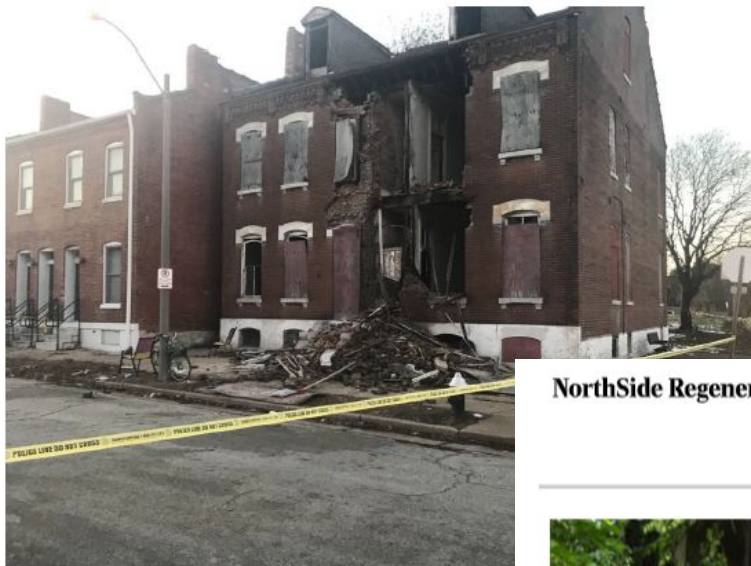
Effect of the Problem. Increased costs for city services, public health and safety concerns, decreased property values, lost tax revenues, decreased neighborhood pride.

Expense of the Problem. \$15 Million/year for demolition; \$10 Million/year in lot maintenance. \$4.9 Million/Year in lost property tax revenue.



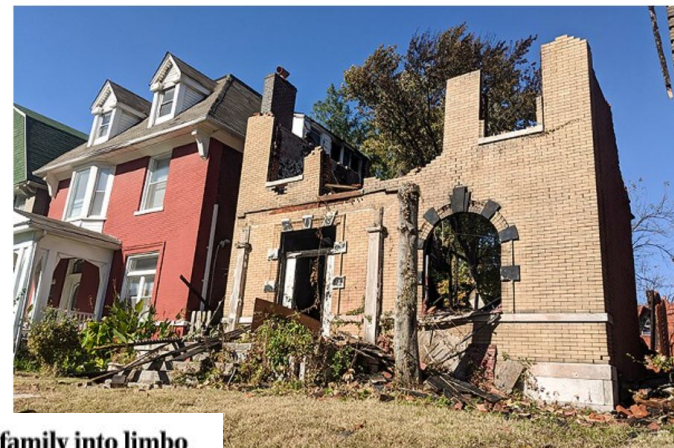
Two hurt when part of abandoned building collapses in north St. Louis

From staff reports
Nov 16, 2018



On This St. Louis Block, the Houses Keep Burning

Posted By Danny Wicentowski on Tue, Oct 22, 2019 at 1:59 pm



NorthSide Regeneration row house collapse puts family into limbo

Jacob Barker
May 27, 2021

DANNY WICENTOWSKI



Public vs. Private Tools

Government-Based Tools

- Code Enforcement
- Special Tax (Lien) Foreclosure
- Property Tax Foreclosure
- Land Banking/LRA

Private/Neighborhood Based Tools

- Collaboration and Advocacy
- Prevention
- Affirmative Litigation



Solutions: Stabilize, Strengthen, Transform!

Organizational Assistance. Assist community groups (neighborhood associations and small community development organizations) with legal organization (incorporation, tax exemption, bylaws, etc.).

Vacancy Prevention. Resolve title issues / assist homeowners prevent vacancy & protect family wealth by resolving heirs' property issues and assisting with transfer on death deeds.

Problem Property Litigation. Bring lawsuits on behalf of community groups and neighborhood associations in St. Louis City to compel the owners of vacant, run-down properties to sell or repair the property, or gain legal control of the property so repairs can be made.

Stabilize! Prevention & Anti-Displacement

Resident Services. Provide services to prevent property abandonment, support long-time residents, and avoid displacement. In partnership with community and pro bono volunteers, provide resources to neighborhoods through legal clinics and community education workshops.

Basic Estate Planning. Beneficiary Deeds and Powers of Attorney protect family wealth and prevent land loss and property abandonment.

Uncontested Heir Property Cases. Lack of estate planning or mistakes on recorded documents lead to title issues. Resolving title problems can help owners access home repair to preserve homeownership as a generational asset.

Property Tax Related Assistance. Support for City homeowners on property tax related matters like assessment challenges and property tax foreclosure defense.



Strengthen! Neighborhoods

STL NEIGHBORHOOD MAP

MAP LIST



Welcome to the map! ✕

We're mapping neighborhood associations, community development corporations, and community building organizations that have specific footprints in the St Louis metro area. (See our [definitions](#) to understand our criteria for inclusion.)

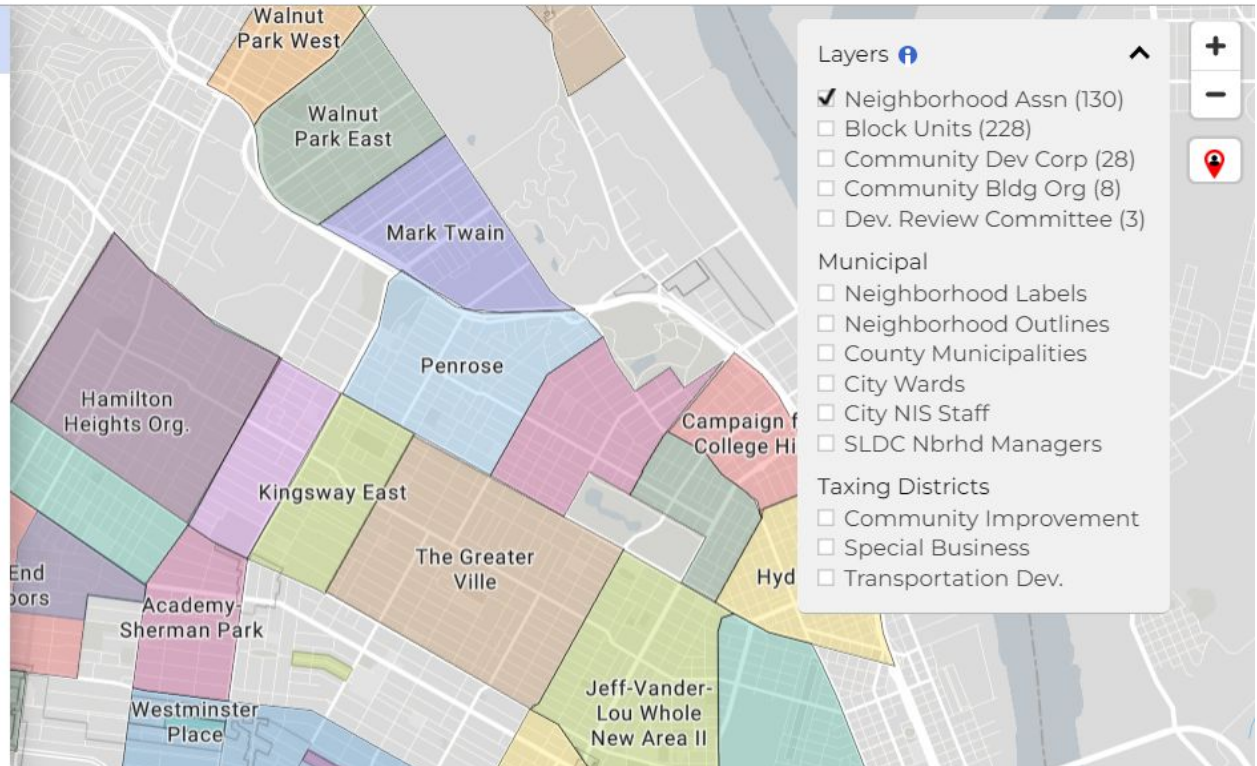
The map has been created to empower neighborhood residents to work collectively, encourage coordination and collaboration, and facilitate quality community engagement.

[Who created this map?](#) ▾

[How is the map maintained?](#) ▾

[Have an organization to add?](#)

[Comments or questions?](#) [Contact us](#)



Strengthen! Neighborhoods

Corporate Governance. Assist community groups (neighborhood associations and small community development organizations) with legal organization (incorporation, tax exemption, bylaws, etc.).

Community Benefit Agreements. Represent neighborhoods in negotiations with developers over community benefits.

Resident-Led Redevelopment Plans. Draft and negotiate redevelopment plans to provide tax abatement (freezes) in developing neighborhoods to prevent gentrification.

Planning, Zoning, and Licensing. Represent neighborhoods in administrative hearings opposing nuisance and predatory businesses (liquor stores, pawn shops, etc.)



Transform! Litigating Nuisances

Legal Intervention & Advocacy.

Community-driven supplement to municipal solutions (code enforcement, tax foreclosure, land banking).

When and Why?

- Privately Owned;
- Last resort;
- Code enforcement hasn't resolved problem (ex: deceased/absentee owner);
- Notice to owner hasn't resolved problem;
- Tax foreclosure not imminent;
- Rehab partner identified.



Three Primary Causes of Action



Nuisance. Neighborhood Associations can seek court-compelled repairs, neighbors can ask for money damages.

Receivership. Community organization asks court for third party to be appointed control.



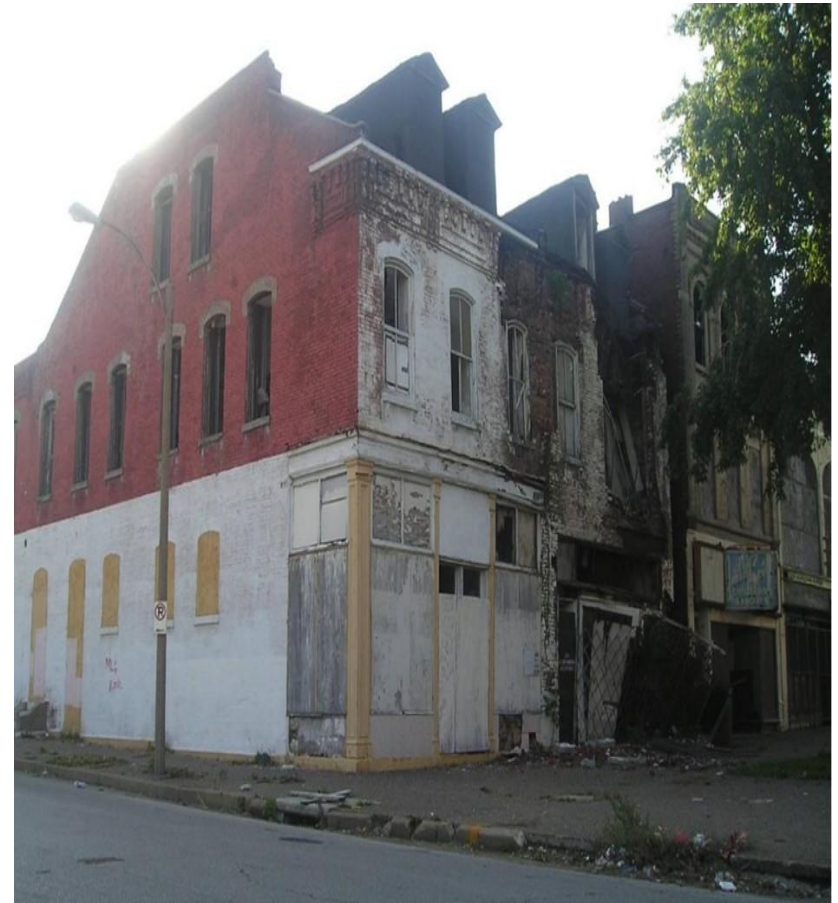
Abandonment. Allows nonprofit organizations to make court-supervised improvements to vacant nuisance property in exchange for clean title.

Commercial & Industrial Nuisance Litigation



Settlement Options

- Certificate of Occupancy/Compliance;
 - Enforced by Consent Decree/Agreement
 - Set Timelines for Improvements
 - Trigger Sale / Liquidated Damages Upon Breach
- **Donation**
- Sale to Neighborhood Approved Buyer
 - MOU w/ New Buyer
- **Demolition**



Recruiting Developers & Negotiating Benefits

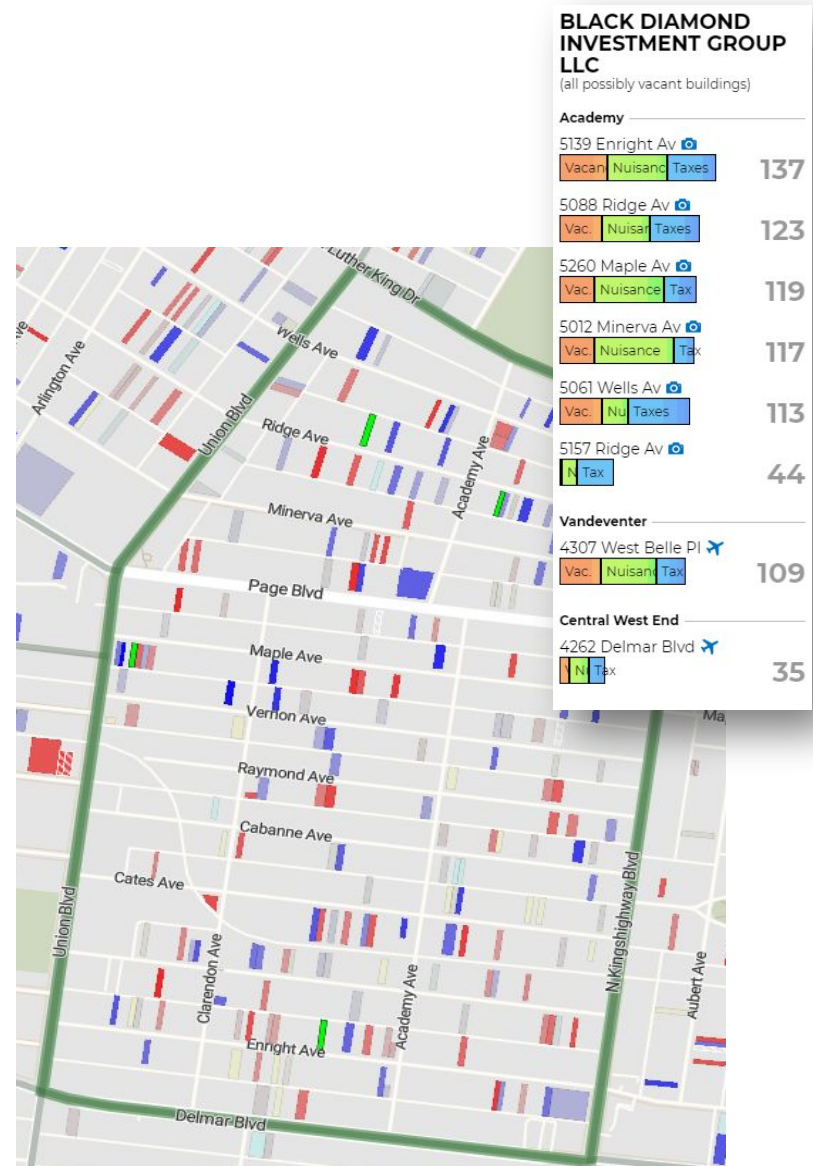
Finding a Rehab Partner:

- Funding;
- Experience;
- For Profit? Nonprofit? Individual?
- Homesteader? Flipper?
- Draw an MOU Outlining Expectations:
 - Affordable Housing?
 - High Speed Internet?
 - Timeline for Completion?
 - Residency Requirements?
 - Home Warranties/Inspections?



Litigation Strategies

- **Model Blocks;**
- **Focus Around Community Assets (schools, parks, churches, etc.);**
- **High Visibility Property (major corridor, long-standing nuisance, etc.);**
- **Bad Actor (owner of multiple vacant properties w/n neighborhood);**
- **Opportunities for Community Partners (negotiate community benefit agreements).**





Scaling Up: Neighborhood Based Pro Bono



FIVE Local Law Firms. Bryan Cave Leighton Paisner, Husch Blackwell, Thompson Coburn, Stinson, Lewis Rice

FIVE North City Neighborhoods. West End, Academy/Sherman Park, Old North St. Louis, Hyde Park, Fountain Park/Lewis Place

FIVE Year Commitment. Serving needs of neighborhood associations, community development corporations, and low-income residents in each neighborhood.

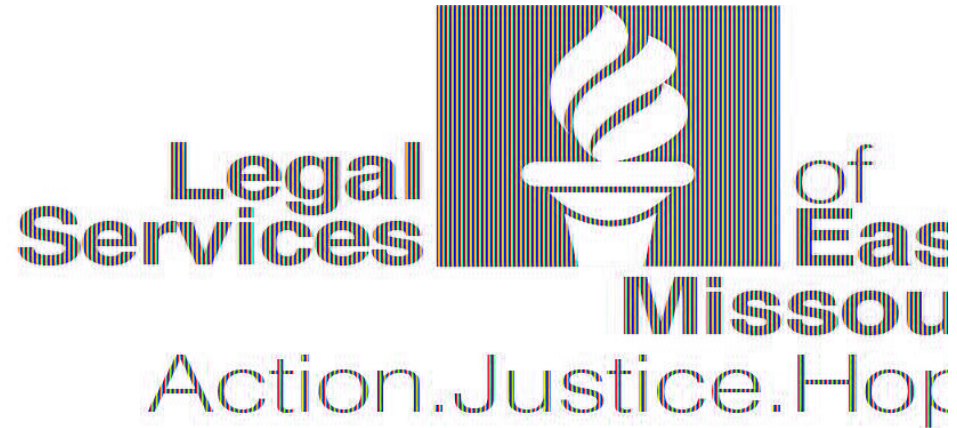
Takeaways / How to Get Started

- Where do our clients live? What does our data say? What are those neighborhoods like?
- Place-Based Partners? Move at the speed of trust. Show up. Non-Legal Work.
- Develop “Menu” of Services Around Common Theme. Can expand/contract over time. Set expectations. Include mix of transactional and litigation.
- Scale Through Place-Based Pro Bono – Consider Co-Counseling Model.



THANK YOU!

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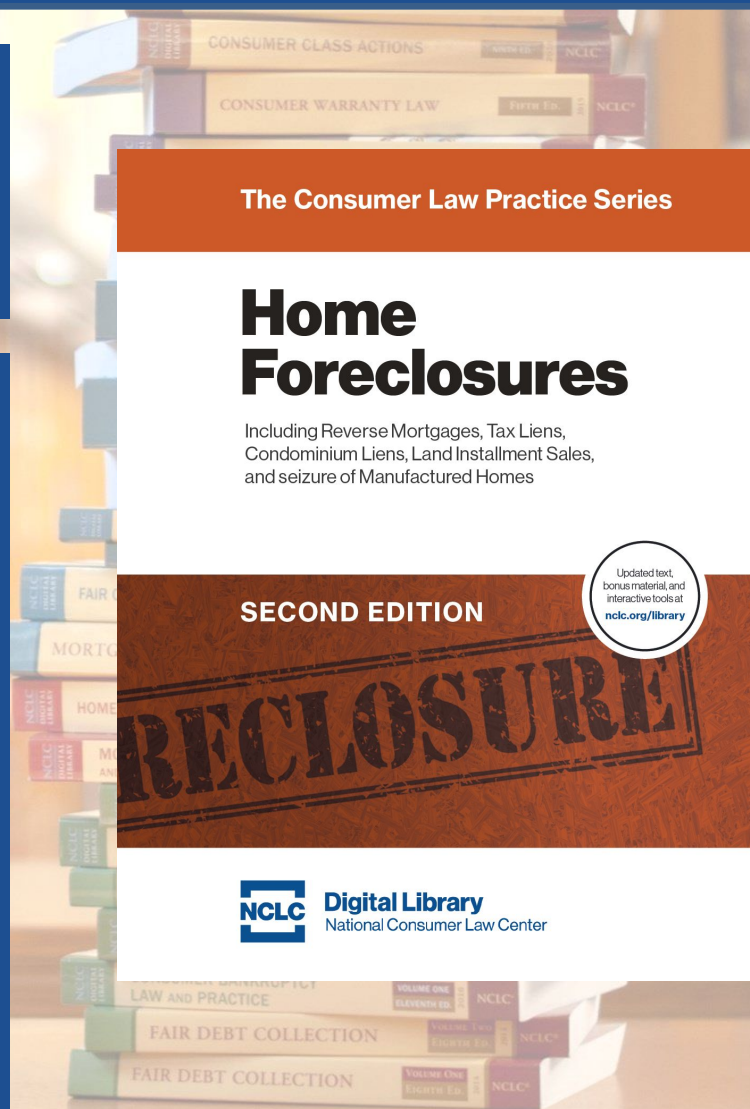
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A National Perspective on Vacant Property Receivership

Melanie B. Lacey

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Melanie Lacey (melanie.lacey@gmail.com) received her J.D. from Rutgers Law School in May 2016 and her B.A. from the University of North Carolina at Chapel Hill in 2010. Melanie worked on “conservatorship” projects during law school as a legal intern at Mt. Airy, USA, a community development corporation in Northwest Philadelphia. She would like to thank the former executive director of Mt. Airy USA, Anuj Gupta, Esq., and the current executive director, Bradley Copeland, for introducing her to this area of law and for encouraging her to research and write about it. Special thanks to Professor Adam F. Scales of Rutgers Law School for overseeing the directed research project that resulted in this article and to Clinical Professor James J. Kelly, Jr. of Notre Dame Law School for his feedback. The author is responsible for any errors. This article was originally submitted to the 2016 Law Student Writing Competition sponsored by the Forum on Affordable Housing and Community Development Law.

I. Abstract

This article examines the development of vacant property receivership laws¹ across the United States in order to compare provisions and identify best practices. A brief historical overview provides the constitutional basis for this area of law and describes how the expansion of housing codes gave rise to receivership as a legal remedy for combating blight. The evolution of receivership is discussed through analysis of laws enacted in New York and Ohio and the drafting of a model statute. Ultimately, this article highlights how the types of actionable properties, the number of parties with standing, the specificity of procedural requirements, and the breadth of financing options have increased with time. In addition, the diversity of existing legislation is illustrated through a national survey comparing laws in nineteen states.

II. Introduction

Blighted and abandoned houses affect every level of governance.² At the neighborhood level, these houses discourage interest from prospective buyers, reducing the value of well-maintained properties by thousands of dollars.³ At the city level, millions of dollars are lost annually through demolition expenses and unrealized tax revenue.⁴ Regionally, they perpetuate demographic trends that increase the need for federal assistance.⁵ However, beyond financial consequences, derelict houses adversely affect public health and safety by attracting criminal activity, creating fire risks, and presenting hazards to children.⁶ Many factors contribute to the problem. At the forefront are post-industrialization and subprime mortgage lending that caused high foreclosure rates in areas that now have low

1. Receivership is also known as “conservatorship” in the Commonwealth of Pennsylvania and “possession” in the State of New Jersey.

2. Jeffery Fraser, *The Cost of Blight: Vacant and Abandoned Properties*, PITTSBURGH Q. (Fall 2011), <http://www.pittsburghquarterly.com/index.php/Region/the-cost-of-blight.html> (accessed on Nov. 20, 2015) (“[T]he 2010 census reports that . . . 11 percent of the available housing throughout America stands vacant.”).

3. *Hearing on H.B. 2188 Before the H. Urban Affairs Committee* at 5–6 (Pa. 2008) (Statement of Thomas C. Petrone, Chairman, H. Urban Affairs Comm.).

4. *Id.*

5. See *City of Detroit, Michigan*, Case No. 13-53846 (Bankr. E.D. Mich. 2016), <http://www.mieb.uscourts.gov/apps/detroit/DetroitBK.cfm> (Housing abandonment in Detroit is largely connected to the loss of automobile industry factory jobs. However, existing abandonment in turn encourages continued abandonment.)

6. *A Nuisance Law Approach to the Problem of Housing Abandonment*, 85:8 YALE L.J. 1130, 1132–33 (1976) (Problems created by abandonment include vandalism, criminal activity, fire hazards, and “aesthetic injuries,” leading to expectations of neighborhood deterioration that cause depressed real estate values, which precipitate further abandonment).

market demand.⁷ However, the profile of an absentee owner is diverse. In addition to financial institutions, one might be an unknowing beneficiary of an inheritance, a former occupant who walked away from a mortgage delinquent or unsellable home, a slumlord, or a real estate speculator.⁸

Vacant property receivership is a public nuisance proceeding that allows a third party⁹ to petition a court for the right to rehabilitate a derelict property.¹⁰ Receivership is a useful tool for addressing properties with tangled¹¹ or toxic titles,¹² “zombie” houses,¹³ and properties that compromise the vitality of down-turning or upcoming communities.

This article examines the development and proliferation of vacant property receivership laws throughout the United States. Part III provides legal and historical context by discussing the expansion of public nuisance law and housing codes. Part IV focuses on the introduction of receivership laws in New York and discusses how certain court cases defined the parameters of local property regulation. Part V describes how the purview of receivership transitioned from rental tenements to single-family houses and provides an overview of a model statute. Since the mechanics of these laws are uniform in most jurisdictions, Part VI provides a national survey that compares and contrasts provisions of the nineteen receivership laws currently in place across the country. Part VII concludes with best practices.

7. ALLAN MALLACH, BRINGING BUILDINGS BACK 5, 31–32 (2006).

8. This list provides examples of predominant groups, but it is not exhaustive.

9. Usually governmental entities or private parties that do not have an ownership interest in the property.

10. Most laws address houses that are simultaneously vacant and blighted for a period of time, such as one year.

11. Housing Alliance of Pennsylvania, *Conservatorship Handbook* 13 (2013). See also Philadelphia Department of Records, *Legal Problems with Home Ownership (Tangled Title)*, http://www.phila.gov/records/documentrecording/tangled_title.html (accessed on Mar. 3, 2016) (“Tangled title” refers to a series of problems that affect the sale of a property, such as locating heirs, recording mistakes, or gaps in ownership record.).

12. “Toxic title” refers to properties that are “encumbered with liens exceeding the current market value.” See Kermit J. Lind, *Perspectives on Abandoned Houses in a Time of Dystopia*, 33:3 PROB. & PROP. MAG. (May–June 2015), http://www.americanbar.org/publications/gp_solo/2016/may-june/real_property_trust_estate_law_perspectives_abandoned_houses_a_time_dystopia.html.

13. *Zombie Title*, INVESTOPEDIA, <http://www.investopedia.com/terms/z/zombie-titles.asp> (last visited Sept. 4, 2015) (“A zombie title is a title to real property that happens when a lender initiates foreclosure proceedings by issuing a notice of foreclosure and then unexpectedly dismisses the foreclosure [after the mortgagors abandon the property].”).

III. Birth of Public Nuisance Law and Housing Code Enforcement

A. General Background on Receiverships

Receivership is a legal remedy that becomes available under many types of litigation involving disputes over assets.¹⁴ The remedy entails a court-appointed party who gains custody of the assets-in-controversy in order to preserve and manage them during the course of the lawsuit. The receiver's appointment terminates when the court directs the final disposition of the assets.¹⁵ At termination, a court may direct a receiver to return the assets to the owner or sell them to satisfy debts. In the latter scenario, sale proceeds are distributed to creditors according to their priority.¹⁶

Within the context of public nuisances, the same logistics apply to the receivership process. Vacant property receivership laws create standing for municipalities and community members to sue property owners who are unwilling to rehabilitate chronically blighted properties.¹⁷ Therefore, public nuisance is the cause of action, abandonment and housing code violations are the basis for the action, and the property is the asset-in-controversy.¹⁸

Receivership laws fall under two formats. The "minority" format allows receivers to carry out title clearance before selling the property to a qualified entity that will perform the rehabilitation.¹⁹ Under this format,

14. Receivership Specialists, *Benefits of Appointing a Receiver*, <http://www.receivershipspecialists.com/court-receivers-benefits-of-appointing-a-receiver/> (last visited Aug. 27, 2015) ("Receivers are most commonly appointed over real estate but they can also be appointed over businesses, health and safety issues, environmental issues, family estates, government regulatory matters, and to enforce judgments.") See also RESTATEMENT (THIRD) OF PROPERTY: MORTGAGES (1997) (Receivership may be stipulated in mortgage agreements and triggered when a property is in default, the security is inadequate, and the mortgagor is committing waste.)

15. BLACK'S LAW DICTIONARY 1383 (10th ed. 2014).

16. PA. STAT. ANN. tit. 68, § 1110.

17. PA. STAT. ANN. tit. 68, § 1103.

18. PA. STAT. ANN. tit. 68, § 1104(b)(1).

19. See BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121 & S.C. CODE ANN. § 38-6; See also Joan Jacobson, *Receivership: The Key Strategy in Baltimore's Fight Against Vacants* (Abell Found. Nov. 2015) ("Baltimore, however, applies the legal strategy of receivership differently than other cities and states. While Baltimore's receiver is a conduit to sell court-appointed vacant properties to people who will renovate them, other cities use receivers to make the repairs before changing ownership.") [hereinafter Jacobson, *Receivership*]. See also James J. Kelly, Jr., *Refreshing the Heart of the City: Vacant Building Receivership as a Tool for Neighborhood Revitalization and Community Empowerment*, 13 J. AFF. HOUSING & CMTY. DEV. L. 210, 211 (2004) ("Properties are sold through a special auction at which only qualified, committed developers can bid . . .") [hereinafter Kelly, *Refreshing the Heart of the City*].

the receivership ends before the rehabilitation commences since the receiver is exclusively a seller. The “majority” format, which is discussed at greater length throughout this article, requires a petitioner to propose the appointment of a receiver that will directly manage the rehabilitation, which is overseen by the court, from start to finish. Here, the receivership ends after the rehabilitation is completed.

Both formats allow the appointment of a receiver only if a respondent-property owner or -lienholder fails to exercise its final opportunity to bring the property into code compliance.²⁰ Therefore, a court may not appoint a receiver if a respondent shows that it is willing and able to abate the violations.²¹ Furthermore, when receivership is granted, the receiver’s expenditures become a lien against the property. The lien under the minority format is composed of administrative expenses,²² whereas the lien under the majority format is composed of construction and litigation expenses. Although the former specifically seeks to facilitate transferral of ownership, both formats premise the sale on a lien foreclosure that is permitted only if the owner does not repay within a designated timeframe.

B. Public Nuisance Exception to the Takings Clause

While vacant property receivership may divest an owner of its property interest, it is distinct from condemnation and does not implicate the Takings Clause for several reasons. Primarily, receivership does not fall under any particular category of takings, and Supreme Court precedence has long established the validity of enforcement actions relating to properties that create public nuisances.

Three categories of takings are more obviously dissimilar than receivership. First, receivership does not constitute a direct condemnation²³ because it allows a property owner to “avoid . . . interference with his rights by demonstrating his prospective ability to renovate the property.”²⁴

20. At this point, the owners would have already ignored previous attempts to compel performance.

21. Jacobson, *Receivership*, *supra* note 19, at 3 (“In some cases the threat of litigation is enough to induce property owners to repair their buildings. They show up in court after years of neglect and plead to keep the houses by obtaining building permits and finally starting renovation.”).

22. See Kelly, *Refreshing the Heart of the City*, *supra* note 19, at 219 (such as the cost of preparing for sale).

23. See Joseph Y. Whealdon, *A Primer in Eminent Domain and Takings Law under the U.S. Constitution*, 101 PRACTICE SERIES (ABA Young Lawyers Div. 2011), http://www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series/primer_emanent_domain_takings_law_under_us_constitution.html (last visited Aug. 3, 2016) (The government exercises direct condemnations when it “admits that it wishes to take or has taken private property from an individual. It then brings the individual into court to obtain the property in exchange for just compensation.”).

24. Kelly, *Refreshing the Heart of the City*, *supra* note 19, at 19.

Conversely, owners may not prevent condemnation by carrying out specific acts; instead, they are generally limited to challenging the legitimacy of the asserted “public use”²⁵ or disputing the adequacy of the compensation offered. Second, receivership is not an inverse condemnation,²⁶ such as a regulatory taking, since it does not deprive an owner of its property by creating severe economic burdens that eliminate or greatly lower the value or usefulness of the property.²⁷ Rather, receivership seeks to restore economic value to the nuisance property and the surrounding area by inducing the owner to act or by enforcing repairs through an appointed receiver. Third, receivership does not constitute a “judicial taking”²⁸ because it does not deprive an owner of pre-existing, established rights²⁹ where ownership *duties*, in the form of compliance with housing codes, are being enforced.

Apart from these general conclusions, the opinions of hallmark cases established the right of the states to regulate property based on police power, as opposed to the Takings Clause.³⁰ Even before ratification of the Bill of Rights³¹ formally established the police power, the U.S. Supreme Court in 1788 held that compensation³² is not mandated when

25. U.S. CONST. amend. V (“... nor shall private property be taken for public use, without just compensation”). The 14th Amendment applies that same concept to all states.

26. See Whealdon, *A Primer in Eminent Domain*, *supra* note 23 (An inverse condemnation takes place “when a property was so burdened by regulation that the government should be forced to condemn the property by taking title to it and providing just compensation.” The Supreme Court has held that there “are three types of taking by inverse condemnation: physical, regulatory (categorical or non-categorical), and land-use exactions.”).

27. *Hotel & Motel Ass’n of Oakland v. City of Oakland*, 344 F.3d 959, 965 (9th Cir. 2003).

28. *Id.* (“Supreme Court case, a plurality of justices recognized that, theoretically, a taking could occur by an act of the judiciary”).

29. *Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.*, 130 S. Ct. 2592, 2602 (2010) (Scalia, J., plurality opinion, joined by Roberts, C.J., Thomas, J., and Alito, J.) (“Though the classic taking is a transfer of property by eminent domain, the Clause applies to other state actions that achieve the same thing, including those that recharacterize as public property what was previously private property. . . . This Court’s precedents provide no support for the proposition that takings effected by the judicial branch are entitled to special treatment, and in fact suggest the contrary.” [citations omitted]).

30. U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

31. FAQ: *Basic Facts About the Bill of Rights*, CONST. DAILY, <http://blog.constitutioncenter.org/2013/05/everything-you-ever-wanted-to-know-about-the-bill-of-rights/> (The Bill of Rights was ratified on December 15, 1791).

32. *Id. Respublica v. Sparhawk*, 1 U.S. 357, 362 (Pa. 1788) (“... And, having done it lawfully, there is nothing in the circumstances of the case, which, we think, entitles the Appellant to a compensation for the consequent loss. . . .”).

the state action serves to protect public safety.³³ *Respublica v. Sparhawk* involved the removal of private property that constituted “wartime articles,” which the court justified as a protective measure authorized by necessity.³⁴ Nearly one hundred years later, the *Sparhawk* “wartime exception,” based on necessity, was expanded to a “public nuisance exception,”³⁵ based on police power, through *Mugler v. Kansas*. *Mugler* involved an amendment to the Kansas constitution that prohibited the sale of alcohol; the legislature passed a law in 1885 that made places where liquor was manufactured or sold subject to abatement. The U.S. Supreme Court held that a state has a right to regulate property through an enforcement action when the property is used for illegal purposes that compromise public health and safety.³⁶ However, the public nuisance exception requires that the state action pass the rational basis standard of review.³⁷

Another notable distinction between receivership and condemnation is the underlying objective, especially in light of *Kelo v. New London*.³⁸ *Kelo* controversially involved the transfer of condemned property to a private

33. *Sparhawk*, 1 U.S. at 362 (holding that “Congress might lawfully direct the removal of any articles that were necessary to the maintenance of the Continental army, or useful to the enemy, and in danger of falling into their hands . . .” because “. . . the safety of the people is a law above all others”). See also Todd D. Brody, *Examining the Nuisance Exception to the Takings Clause: Is There Life for Environmental Regulations After Lucas*, 4 FORDHAM ENVTL. L. REV. 287, 288–89 (2011) [hereinafter Brody, *Examining the Nuisance Exception*].

34. *Id.*

35. Scott A. Reznack, Note, *Land Use Regulation and the Concept of Takings in Nineteenth Century America*, 40 U. CHI. L. REV. 854, 854, 859 (1973) [hereinafter Reznack, *Land Use Regulation*].

36. 123 U.S. 623 (1887) (“A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot [sic], in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the state that its use by any one, for certain forbidden purposes, is prejudicial to the public interests.”). See also Brody, *Examining the Nuisance Exception*, *supra* note 33, at 290.

37. See Kelly, *Refreshing the Heart of the City*, *supra* note 19, at 220 (Kelly discussed the constitutionality of vacant property receivership through its relationship with the nuisance exception: “As with tests of the police power against the Contracts Clause or the Equal Protection Clause, the nuisance exception to the Eminent Domain, or Takings, Clause requires that the governmental action under review survive both parts of a two-prong test. First, the public policy objective must involve a legitimate state interest within the scope of the police power. Second, the governmental action itself must have some logical means-end connection to the permissible policy goal.”)

38. 545 U.S. 469 (2005).

party as a means of carrying out a revitalization plan for the City of New London. However, the Supreme Court upheld the city's use of condemnation because the "public purpose"³⁹ requirement of the Takings Clause would be achieved through "... appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue."⁴⁰ Conversely, the benefits to the community that are achieved through receivership result from the objective of remedying a harm. Here, the sovereign right of states to regulate unlawful property use narrowly applies the quiet enjoyment principle that "no man should use his property to injure ... his neighbor."⁴¹ In addition, receivership is most often appointed over single structures, regardless of zoning,⁴² and is not an appropriate vehicle for large-scale development schemes. Therefore, the common ground of transferring ownership to a private party that is shared by both processes is qualified by these factors.

In his article *Refreshing the Heart of the City*, James J. Kelly, Jr. highlights that the understanding of the police power evolved "as the nature of governmental intervention expanded from prohibition of noxious activity to promotion of social goods."⁴³ While cases like *Mugler* laid the foundation for nuisance enforcement actions, the development of housing codes defined the scope of responsibilities for property owners. Defined responsibilities resulted in defined violations, facilitating an extension of the public nuisance exception to the protection of neighborhood vitality.

IV. Development of Rental Receiverships

A. Housing Codes Creating a Basis for Remedy

Housing codes establish minimum standards for the construction and maintenance of property, which serve to protect the health, safety, and welfare of residents.⁴⁴ They became necessary during the late nineteenth and early twentieth centuries in response to the poor condition of many tenement buildings in metropolitan areas.⁴⁵ For example, a housing shortage in New York resulting from World War I allowed landlords to neglect

39. *Id.* ("The Court has embraced a broader and more natural interpretation of public use as 'public purpose.'").

40. *Id.* ("Promoting economic development is a traditional and long accepted governmental function, and there is no principled way of distinguishing it from the other public purposes the Court has recognized.").

41. Reznack, *Land Use Regulation*, *supra* note 35, at 859. Under common law, those who possess real property are entitled to the quiet enjoyment of their land.

42. The Appendix (National Survey) discusses various jurisdictions that allow receivership over commercial and/or industrial buildings, in addition to residential buildings and houses.

43. *Id.*

44. DAVID LISTOKIN, LIZABETH ALLEWELT & JAMES J. NEMETH, *HOUSING RECEIVERSHIP: SELF-HELP NEIGHBORHOOD REVITALIZATION 1* (1985).

45. *Id.* See also MALLACH, *supra* note 7, at 49.

building upkeep without facing repercussions.⁴⁶ To protect the rights of tenants, New York passed its first housing code, spurring similar legislation in other states.⁴⁷

Following continuing disregard of the new regulations, receivership appeared as a remedy attached to the New York Multiple Dwelling Law of 1929, which created both housing codes and enforcement for violations.⁴⁸ Section 309(5) of the Multiple Dwelling Law gave city governments in the State of New York the authority to petition for receivership over buildings “to remove or remedy a nuisance . . . as known at common law or in equity jurisprudence. . . .”⁴⁹ Housing receivership initially addressed occupied, substandard dwellings with a focus on multi-unit rental properties.⁵⁰ In simpler terms, rental receivership was the predecessor to vacant property receivership. Thus, receivership became a tool through which local governments and, eventually private citizens, could bring legal actions to combat blight.

B. Overcoming Constitutional Challenges

Use of the Multiple Dwelling Law proved to be expensive, and New York City struggled to collect on repair costs since they operated similarly to mechanic’s liens.⁵¹ To assist with collection, the state legislature passed aggressive amendments that elevated the City’s liens to a super-priority status.⁵² However, one man’s solution became another man’s trouble. One year after enactment, the New York Court of Appeals⁵³ in *Central Savings Bank v. City of New York*, held that these amendments unlawfully subordinated preexisting mortgages and violated due process rights by notifying only the owner-occupants and omitting lienholders from the action.⁵⁴

46. Judah Gribetz & Frank P. Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254, 1263 (Nov. 1966) [hereinafter Gribetz & Grad, *Housing Code Enforcement*].

47. LISTOKIN et al., *supra* note 44, at 2 (New Jersey, Connecticut, Wisconsin, and Indiana.).

48. *Id.* at 2.

49. 37 N.Y. Sess. Laws 1929, ch. 713, § 309(5).

50. W. Dennis Keating, *Judicial Approaches to Urban Housing Problems: Study of the Cleveland Housing Court*, 19 URB. LAW. 345, 358 (1987) [Keating, *Judicial Approaches to Urban Housing Problems*].

51. Case Comment, *Prior Lien on Rents and Profits Upheld as a Method of Financing Repairs*: In re Dep’t of Bldgs., 63 MICH. L. REV. 1304, 1305 (1965) [hereinafter Case Comment, *Prior Lien on Rents*].

52. N.Y. Sess. Laws 1937, ch. 353(g) (stating that repair liens should “have priority over all other liens and encumbrances including mortgages, whether or not recorded previously”; doing so was essential to the government’s likelihood of actually collecting on these debts.).

53. The New York Court of Appeals is the highest court in the state.

54. 18 N.E.2d 151 (N.Y. 1938), *cert. denied*, 306 U.S. 661 (1939); *see also* Case Comment, *Prior Lien on Rents*, *supra* note 51 (The law deprived lienholders of the right to

The *Central Savings* decision caused rental receiverships to lay dormant for nearly thirty years.⁵⁵ However, these points of contention were resolved in 1962 through the passage of additional amendments,⁵⁶ which required the city to notify lienholders with a written order directing elimination of the nuisance within a specified time.⁵⁷ It also allowed respondents to “show cause” as to why a receiver should not be appointed and to contest the reasonableness of the expenses reflected in the lien.⁵⁸ The issue of abrogation⁵⁹ was mitigated but ultimately rendered moot.⁶⁰ Ultimately, these modifications endured to lay the groundwork for vacant property receivership.

C. Emergence of the Private Right of Action

While court cases like *Central Savings* retracted the scope of rental receivership in New York, a case in Illinois notably expanded it in other ways.⁶¹ In 1981, the Appellate Court of Illinois in *City of Chicago v. Westphalen* found in favor of a private right of action to petition for receivership. The court held that the city was permitted to jointly petition with neighbors of the property-in-controversy.⁶² Thereafter, other states

a fair hearing where they could contest the legality or propriety of that order, the right to contest the amount of the lien filed against the property, and an opportunity to intervene by making the repairs themselves. In addition, impairing the contract obligation owed to parties-in-interest because it subordinated preexisting liens, with the possibility of eliminating any lienholder’s vested interest upon foreclosure.)

55. Gribetz & Grad, *Housing Code Enforcement*, *supra* note 46, at 1265.

56. New York Multiple Dwelling Law of 1962, <http://www1.nyc.gov/assets/buildings/pdf/MultipleDwellingLaw.pdf>. See N.Y. Sess. Laws 1937, ch. 492.

57. Case Comment, *Prior Lien on Rents*, *supra* note 51 (quoting N.Y. Multiple Dwelling Law § 309(1)(e), (5)(a),(5)(c)(3)).

58. *Id.* (“in the event the nuisance is not properly removed, the department may apply to the [state] court for an order to show cause why a receiver should not be appointed”) (citing N.Y. Multiple Dwelling Law, § 309(5)(a)).

59. BLACK’S LAW DICTIONARY 7 (10th ed. 2014) (“To annul or annul or repeal [conditions of a contract.]”).

60. N.Y. Multiple Dwelling Law § 309(5)(e); see Richard J. Marco & James P. Mancino, *Housing Code Enforcement—A New Approach*, 18 CLEV.-MARSHALL L. REV. 368, 376 (1969). By attaching to the rents and profits and not to the “fee,” the receiver utilizes the owner’s income over a period of time to finance improvements to the property. However, this provision did not carry over to vacant property receivership because the Supreme Court subsequently interpreted the Contract Clause to permit modification of private contracts. See also *Energy Reserves Grp. v. Kansas Power & Light*, 459 U.S. 400, 411–13 (1983) (the state “must have a significant and legitimate purpose behind the regulation, such as the remedying of a broad and general social or economic problem.”).

61. *Cnty. Renewal Found., Inc. v. Chicago Title & Tr. Co.*, 255 N.E. 2d 908 (Ill. Ct. App. 1970); see also *City of Chicago v. Westphalen*, 418 N.E.2d 63 (Ill. Ct. App. 1981).

62. 418 N.E.2d 63 (Ill. Ct. App. 1981).

enacted laws that gave standing to private parties that are directly affected by the nuisance effects of the property condition.⁶³ This change was important because rental receiverships depended on community involvement since government intervention was often delayed and infrequent. Because rental receivership overcame these various hurdles, vacant property receivership has not faced constitutional challenges.

V. Evolution of Vacant Property Receiverships

A. From Blighted Rentals to “Zombie” Houses⁶⁴

The need for legislation creating “vacant” property receivership originated in Cleveland during the 1970s when the city started to face significant housing abandonment.⁶⁵ To alleviate court dockets and expedite a growing caseload relating to code enforcement, the state implemented one of the first housing courts in the country.⁶⁶ These cases predominantly involved one- and two-family houses that were absentee owned rather than multi-unit buildings.⁶⁷

While traditional code enforcement was problematic for occupied, urban tenement buildings, the problem was even worse for unoccupied, suburban houses in the Midwest. With the former, income from tenants could be redirected to responsible use.⁶⁸ Furthermore, rental receivership sought to remedy blight to prevent the displacement of tenants. In the latter scenario, the cause and effect were inverted because blight often followed abandonment and there were neither tenants nor structural requirements to trigger the purview of existing laws. Since code violations and tax delinquency often correlate, cities turned to tax sales as a strategy to recover lost revenue and generate responsible ownership.⁶⁹ However, the tax sale process presented shortcomings.⁷⁰ In particular, they often transferred title from delinquent owners to speculative buyers who had

63. LISTOKIN et al., *supra* note 44, at 118.

64. *Zombie Title*, INVESTOPEDIA, *supra* note 13.

65. Keating, *Judicial Approaches to Urban Housing Problems*, *supra* note 50, at 352–52 (Between 1970 and 1980, Cleveland lost one-quarter of its population.).

66. *Id.* at 347–48.

67. *Id.* at 352 (fifty-three percent; this was noteworthy because most receivership legislation addressed only tenement buildings, sometimes requiring a minimum number of units.)

68. Marco & Mancino, *Housing Code Enforcement*, *supra* note 60, at 376 (Properties eligible for rental receivership are “economically sound buildings.”).

69. LISTOKIN et al., *supra* note 44, at 118.

70. *Id.* at 11–12 (identifying reasons, such as (1) tax sales are not always applicable because some owners of abandoned parcels continue to satisfy property tax obligations, (2) the strategy is passive because it must wait for the property to become delinquent, (3) it is time-consuming, and (4) large-scale foreclosure in a municipality can impose significant management/operating demands).

no immediate improvement plans.⁷¹ Because tax sales and rental receivership could not address those properties,⁷² the City of Cleveland responded by demolishing thousands of abandoned houses.⁷³ In 1982, a local community development corporation sought an alternative to demolition.⁷⁴ The Union-Miles Development Corp. (UMDC) persuaded the newly formed housing court to appoint it as receiver over an abandoned, dilapidated house that interfered with ongoing development efforts in a particular neighborhood.⁷⁵ The property owner had died intestate, leaving distant heirs across the country who did not respond to repeated inquiries.⁷⁶ Because there was no applicable state law, the hearing was adjudicated under equity jurisdiction.⁷⁷ This project proved that the cost and complexity of equity receiverships could be prohibitive for the average community group.⁷⁸ Recognizing the potential of this legal process, the UMDC commissioned a national study of existing receivership legislation and programs, resulting in the drafting of a model statute.⁷⁹ This model statute guided the enactment of the first vacant property receivership law in the country, although the Ohio Legislature did not adopt all of the model provisions.⁸⁰

B. Model Receivership Statute

The national study⁸¹ identified trends, offered case studies, and aggregated best practices existing at the time for the purpose of drafting an

71. *Id.*

72. *Id.* at 358.

73. Kermit J. Lind, *Collateral Matters: Housing Code Compliance in the Mortgage Crisis*, 32 N. ILL. UNIV. L. REV. 445, 468 (2012) (Enforcing building and housing codes is ineffective when an institutional owner of an abandoned building merely pays court-imposed fines rather than repairing the building and correcting the violation.).

74. LISTOKIN et al., *supra* note 44, at 13 (Union-Miles Development Corp. (UMDC). With the support of local foundations, Cleveland residents forged a partnership with area banks to establish the UMDC in August 1980.).

75. *Id.*

76. Robert Jaquay, *Cleveland's Housing Court: A Grassroots Victory 25 Years Ago Paved the Way for a Reliable, Much Needed Institution*, SHELTERFORCE ONLINE (May/June 2005), <http://nhi.org/online/issues/141/housingcourt.html>.

77. LISTOKIN et al., *supra* note 44, at 24 (quoting *Union-Miles Proposes Receivership Remedy for Abandoned Buildings*, OHIO CDC NEWS 1 (Fall 1983)).

78. *Id.*

79. *Id.*

80. OHIO REV. CODE § 3767.41 (1984) (However, the 1984 Ohio receivership statute addresses only vacant properties and does not incorporate occupied tenement or rental properties, such the model ordinance.). See also LISTOKIN, *supra* note 44, at 133–38.

81. See LISTOKIN et al., *supra* note 44. This book is the product of the referenced national study.

effective model statute.⁸² The model statute concisely set forth the anatomy of receivership actions and delineated procedures. For example, receivership laws must dictate eligibility requirements for the property-in-controversy and the potential litigants as well as the duties and powers of the litigants when a court appoints a receiver. Receivership laws always require a petitioner who initiates the action and a designated receiver who obtains possession of the property in order to manage it and carry out repairs, although some laws allow for the receiver and petitioner to be the same person or entity. In addition, these laws always require service of notice to all parties that have an ownership interest, although the form of service may vary. The forum may be either administrative or trial court; however, all cases are bench trials. Receivership laws may stipulate timelines for each phase of the case or set forth a maximum duration, such as two years, for the receivership appointment. In sum, these laws usually include financing options, entitlement to fees or commission, recoupment methods, and whether judicial sale is an available option. However, the model statute omitted definitions, leaving intricate details to the discretion of the adopting jurisdiction or to the presiding judge.

C. National Survey

Nineteen states currently have receivership legislation.⁸³ Legislation may be adopted at the municipal or state level.⁸⁴ The consistent anatomy of these laws allows for a comparison of aspects, such as procedural and substantive requirements, scope, terminology, presumptions, and policy objectives. The discussion of these provisions also addresses some relevant collateral issues. The appendix summarizes key points and the article concludes with an overview of best practices.

1. Petitioner

The majority format⁸⁵ of receivership laws can be broken into two categories, based on who is allowed to bring a petition. Petitions may be public or private actions brought by individuals or organizations. Since

82. *Id.* at 115–21. The model statute is presented in Chapter Four, *Proposed Receivership Statutory and Administrative Recommendations*.

83. The analyzed group of laws include enacted and proposed laws. Receivership bills in North Carolina and Oklahoma died in 2013 and 2015, respectively. I do not discuss these bills in this section, however, they are included in the Appendix. See HB 1666 of 2015 (Oklahoma); HB 912 of 2011 (North Carolina). Amendments to the receivership law in Missouri failed in 2015; the original law addresses only rental receivership. See SB No. 391 of 2015, amending §441.500, 570, 590, 641 (Missouri).

84. Some states only have one city that adopted vacant property receivership ordinances.

85. This refers to laws that require the receiver to rehabilitate the property as opposed to those that require the receiver to facilitate title clearance and a sale.

virtually all receivership laws give standing to government entities, the categories relate to the presence or absence of the private right of action. For example, some jurisdictions still do not allow private actions.

Ten jurisdictions give standing exclusively to municipalities, which are represented by a designated official.⁸⁶ Under this scheme, owners receive a final notice of their violations and the government's intention to institute proceedings. Defending against public actions tends to be more difficult because the grounds are presumed to be accurate based on the prolonged failure of owners to address citations. Therefore, owners have the burden to disprove a claim that is akin to nuisance *per se*.⁸⁷ When owner-respondents assert unsuccessful objections or defenses, they are enjoined to make repairs before they are subjected to the receivership. If the owner fails to make repairs and a receiver is appointed, the owner will have an opportunity to reassume possession by paying the receiver's lien.

There are more filings in jurisdictions with initiatives that utilize this law in a quasi-public format, allowing municipalities to recommend private organizations for the receivership appointment.⁸⁸ However, jurisdictions that offer dual standing to public and private parties are more likely to see private actions. In Philadelphia, conservatorship⁸⁹ petitions are usually filed by community development corporations rather than by the city.⁹⁰ Illinois is the only jurisdiction where actions are exclusively private.⁹¹ Despite the greater likelihood of private filings when there is no formal initiative, the private right of action does not always garner popularity. There are jurisdictions where vacant property receivership, much like rental receivership, lies dormant.⁹² Presumably, those states have prioritized other methods of revitalization that address blight on a larger scale, such as condemnation and land banks. Alternatively, at the ordinance level, if the text is broad in scope and relies heavily on common law or equity, the process may be cumbersome and intimidating. Generally, state statutes are more nuanced, establishing distinct parameters and procedures that provide stronger guidance for petitioners.

86. CAL. HEALTH & SAFETY CODE § 17980; LA. REV. STAT. § 40:600.31–44; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; MASS. GEN. LAWS ch. 16, § 111-127I; N.J. STAT. ANN. § 55:19-85[b]; OHIO REV. CODE ANN. § 3767.41; OR. REV. STAT. § 105.430–.450; S.C. CODE ANN. § 38-6; VA. CODE ANN. § 15.2-907.2; WIS. STAT. § 823.23.

87. Therefore, the conduct creating the statute is specifically prohibited by law and is not established on a factual basis.

88. See BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; MASS. GEN. LAWS ch. 16, § 111-127I; OHIO REV. CODE ANN. § 3767.41.

89. Pennsylvania uses the term “conservatorship” instead of “receivership.”

90. Based on an evaluation of all conservatorship filings between January 2009 and July 2015.

91. 310 ILL. COMP. STAT. § 50 (permitting “organizations” but mentioning the role of localities).

92. E.g., IOWA CODE § 657A.

Nine private-action jurisdictions authorize petitioning by nonprofit corporations if they are “qualified” or “certified,” but only if housing redevelopment is one of their “purposes for existence.”⁹³ This purpose is reflected in the organization’s articles of incorporation, which are provided to the court as an exhibit to the petition. Similarly, proof of nonprofit status is provided through a tax exemption certificate. These entities have standing based on proximity requirements, such as being situated within the municipality or within a specified radius.⁹⁴ Private actions typically place the burden of proof on the petitioner to establish that the property falls within the purview of the law and that the petitioner belongs to the class of parties that the law seeks to protect. Private action laws also favor upholding the owner’s property interest and typically afford owners with more opportunities to abate the conditions than they would receive under public actions.

Private individuals may also petition for receivership in certain jurisdictions based on geographic proximity. Three jurisdictions allow neighboring homeowners to bring petitions.⁹⁵ In those instances, the right to petition is based upon the direct effect of the nuisance property on the neighbor’s quiet enjoyment, health, safety, and property value. Ohio is the only jurisdiction that allows tenants to bring petitions since the law is hybrid, accounting for both rentals and vacant properties.⁹⁶ Moreover, the other three jurisdictions with hybrid laws do not allow tenant-petitioners.⁹⁷ Therefore, Ohio has the only vacant property receivership law that extends the private right to petition to non-property owners.

Only two states allow lienholders to petition for receivership,⁹⁸ whereas lienholders usually have an opportunity to “intervene” while a trial is underway or after a receiver is appointed. These lienholders, which are usually financial institutions, petition against former owner-occupants, mortgagors, and other lienholders. However, a financial institution is unlikely to use vacant property receivership as a way to manage abandoned houses since abandonment often results from initiated or looming mortgage foreclosure.⁹⁹ Instead, most mortgage contracts provide an option for mortgage receivership during the pendency of the

93. 310 ILL. COMP. STAT. § 50; IND. CODE ANN. § 36-7-9-20; IOWA CODE § 657A; KAN. STAT. ANN. § 12-1750, 12-1756ag; OHIO REV. CODE ANN. § 3767.41; PA. STAT. ANN. tit. 68, §§ 1101 et seq.; R.I. GEN. LAWS ANN. § 34-44 (2013); TENN. CODE ANN. § 13-6-106; TEX. LOC. GOV’T CODE ANN. § 7-214.003.

94. PA. STAT. ANN. tit. 68, §§ 1101 et seq. (requiring a five-mile radius).

95. IOWA CODE § 657A; PA. STAT. ANN. tit. 68, §§ 1101 et seq.; R.I. GEN. LAWS ANN. § 34-44; OHIO REV. CODE ANN. § 3767.41. Most often, this distance is 500 feet.

96. OHIO REV. CODE ANN. § 3767.41.

97. CAL. HEALTH & SAFETY CODE § 17980; OHIO REV. CODE ANN. § 3767.41; TEX. LOC. GOV’T CODE ANN. § 7-214.003; WIS. STAT. § 823.23. However, rental receivership actions are not commonly brought, and many people do not know that these laws exist.

98. PA. STAT. ANN. tit. 68, §§ 1101 et seq.; TENN. CODE ANN. § 13-6-106.

99. *Zombie Title*, INVESTOPEDIA, *supra* note 13.

foreclosure to prevent disgruntled occupants from destroying the property or causing waste.¹⁰⁰ Ultimately, if a financial institution fails to exercise its contractual right to mortgage receivership and does not maintain the property in anticipation of resale, it is unlikely to petition for vacant property receivership as well. In practice, the right of a lienholder to petition allows joint filing with individual and non-profit petitioners as a way to access financing from a party that already has a vested interest. Financing is discussed in Part V.B.7.

2. Property

Properties are eligible for vacant property receivership based on such criteria as zoning; the physical condition of the property; and occasionally, a minimum duration for those conditions. For example, residential properties are always eligible for receivership. However, four jurisdictions provide that mixed-use properties are also eligible,¹⁰¹ three allow commercial properties,¹⁰² two allow industrial properties,¹⁰³ and two jurisdictions do not specify zoning.¹⁰⁴ The ambiguous laws have purview over “buildings” or “structures,” creating an inference that zoning limitations do not exist.¹⁰⁵ Access beyond residential zoning obviously opens more opportunities to assist communities. For example, introducing new businesses can create employment in depressed areas and provide willing investors with corresponding tax credits.

To qualify for receivership, most jurisdictions require properties to meet two or more adverse physical conditions. Most often, the benchmarks are vacancy and proof that a property is a public nuisance and unsafe.¹⁰⁶ The terms “abandoned,” “vacant,” and “unoccupied” are used interchangeably across the country. Furthermore, three jurisdictions specify a minimum duration for the vacancy.¹⁰⁷ However, Pennsylvania defines a

100. RESTATEMENT (THIRD) OF PROPERTY: MORTGAGES (1997). However, this option is typically exercised for houses with higher property values.

101. IOWA CODE § 657A; N.J. STAT. ANN. § 55:19-85[b]; OHIO REV. CODE ANN. § 3767.41; R.I. GEN. LAWS ANN. § 34-44.

102. KAN. STAT. ANN. §§ 12-1750, 12-1756ag; PA. STAT. ANN. tit. 68, §§ 1101 et seq.; VA. CODE ANN. § 15.2-907.2.

103. PA. STAT. ANN. tit. 68 §§ 1101 et seq.; VA. CODE ANN. § 15.2-907.2.

104. BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; IND. CODE ANN. § 36-7-9-20.

105. BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; IND. CODE ANN. § 36-7-9-20.

106. Six jurisdictions specify that the vacant building must be “unsafe” or “dangerous.” See KAN. STAT. ANN. § 12-1750, 12-1756ag; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; IND. CODE ANN. § 36-7-9-20; IOWA CODE § 657A; MICH. COMP. LAWS SERV. § 125.535; S.C. CODE ANN. § 38-6.

107. 310 ILL. COMP. STAT. § 50; PA. STAT. ANN. tit. 68, §§ 1101 et seq.; N.J. STAT. ANN. § 55:19-85[b] (Illinois and Pennsylvania require at least twelve months of abandonment while New Jersey requires a minimum of six months).

property as “abandoned” based on the simultaneous presence of five factors, including the absence of “legal occupants” for twelve months.¹⁰⁸ Therefore, unlike mortgage foreclosures, squatters do not enjoy protections under receivership laws.¹⁰⁹ Furthermore, a squatter’s use of the property for illicit activities further triggers the policy objective of protecting public safety.¹¹⁰ The unfortunate caveat to seeking receivership over properties where illegal activities take place is the greater risk of vandalism or robbery during construction or after rehabilitation.

As previously discussed, how petitioners meet the “public nuisance” threshold varies by jurisdiction. Four jurisdictions require that a property be placed on an official list of blighted properties prior to the petition filing.¹¹¹ Many jurisdictions allow the petitioner to establish the grounds for receivership by identifying housing code violations. Violations may be officially cited by an inspector or proven with photographs and lay testimony.

In addition to these criteria, receivership laws consider whether the respondents exhibit disinterest in the subject property. For example, a few jurisdictions require or consider whether there is tax delinquency and its duration.¹¹² Laws often proscribe eligibility of properties that are listed for sale or subject to foreclosure prior to the filing of a petition.¹¹³ The premise of this exclusion is that open proceedings indicate that conditions may be abated in the near future. However, some jurisdictions allow foreclosure and tax sales to be commenced after the filing of the petition, which intercepts the hearing or even the receivership appointment.¹¹⁴ Interception is usually seen in public-action jurisdictions, perhaps because the same parties stand to benefit.

108. PA. STAT. ANN. tit. 68, §§ 1105(d)(1-5).

109. Statutes and case law generally do not address squatters. However a receiver’s legal possession of property gives it the legal right to eject trespassers in the same manner as an owner. The method used would presumably depend upon the local rules and laws.

110. This is not to be confused with “civil forfeiture,” which allows the government to seize personal and real property that are suspected of being used in criminal activity. The presence of squatters would also implicate the policy basis of receivership if their presence compromises health and safety as the result of illicit activity, vermin, etc.

111. LA. REV. STAT. § 40:600.31–.44; N.J. STAT. ANN. § 55:19-85[b]; TENN. CODE ANN. § 13-6-106; WIS. STAT. § 823.23.

112. N.J. STAT. ANN. § 55:19-85[b] (New Jersey requires a minimum of one term of tax delinquency); KAN. STAT. ANN. § 12-1750, 12-1756ag (Kansas requires a minimum of two years of tax delinquency); PA. STAT. ANN. tit. 68, §§ 1101 et seq. (Pennsylvania may use tax delinquency as a consideration, but it is not mandatory for qualification).

113. See PA. STAT. ANN. tit. 68, §§ 1101 et seq. Pennsylvania amended its conservatorship law to bar commencement of foreclosure after a petition is filed and while a case is open.

114. KAN. STAT. ANN. § 12-1750, 12-1756AG; IND. CODE ANN. § 36-7-9-20.

Many jurisdictions also articulate an objective for their receivership law. For example, Massachusetts seeks to address foreclosed residential homes.¹¹⁵ Literature from the website of the state's attorney general provides that the associated receivership grant serves "to help communities mitigate the impact of the foreclosure crises" and to "help revitalize distressed neighborhoods and communities that have suffered the impact of foreclosure clusters. . . ."¹¹⁶ Other laws articulate the advancement of policies such as preserving the supply of housing¹¹⁷ or historical properties,¹¹⁸ creating affordable housing,¹¹⁹ and reducing burdensome costs to taxpayers.¹²⁰

3. Receiver

While eligibility to petition is strict, the standards for receivers are often more generous. Most jurisdictions specify who can be a receiver by setting qualifications or defining eligible parties.¹²¹ Generally, a petitioning municipality or nonprofit organization may recommend itself as a receiver.¹²² However, some laws permit or require a petitioner to recommend a third party.¹²³ A recommended third party may be a nonprofit organization, an entity, or a person that is qualified with redevelopment experience.¹²⁴ It would not be acceptable to create a company for the purpose of carrying out the project because courts usually consider the track record of previous projects. Several jurisdictions, including Baltimore and New Jersey, use a selection process based on a certified list of companies that have been predetermined to be qualified, experienced, and capable.¹²⁵ Five jurisdictions cite lienholders as eligible

115. MASS. GEN. LAWS ch. 16, § 111-127I.

116. See Office of the Mass. Att'y Gen., *Abandoned Housing Initiative Receivership Fund, Grant Overview*, <http://www.mass.gov/ago/about-the-ago/ago-grants/ahifund.html> (accessed June 27, 2016).

117. N.J. STAT. ANN. § 55:19-85[b].

118. PA. STAT. ANN. tit. 68, §§ 1101 et seq.; TEX. LOC. GOV'T CODE ANN. § 7-214.003.

119. IOWA CODE § 657A; IND. CODE ANN. § 36-7-9-2; PA. STAT. ANN. tit. 68, §§ 1101 et seq.

120. PA. STAT. ANN. tit. 68, §§ 1101 et seq.

121. MALLACH, *supra* note 7, at 60.

122. Illinois permits "organizations" to be petitioners and receivers; however, the law does not mention any division of state government as a potential party to the matter. "Organization" is defined as "any Illinois corporation, agency, partnership, association, firm or other entity consisting of two or more persons organized and conducted on a not-for-profit basis with no personal profit inuring to anyone as a result of its operation which has among its purposes the improvement of housing." See 310 ILL. COMP. STAT. § 50.

123. However, Virginia does not allow the municipality to recommend third parties. See VA. CODE ANN. § 15.2-907.2.

124. *Id.*

125. BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; N.J. STAT. ANN. § 55:19-85[b].

receivers that organize and manage rehabilitation, attaching the receiver's lien to the pre-existing mortgage.¹²⁶ In addition, South Carolina allows appointment of "licensed and bonded general contractors."¹²⁷

4. Notice

Receivership laws require petitioners to notify all legal owners of the action. The steps that a petitioner must take to notify said parties are usually uncomplicated. Twelve jurisdictions require certified or return receipt mail and a posting on the property,¹²⁸ whereas four permit use of regular mail.¹²⁹ Most jurisdictions require publication as a means of alternative service when an owner or lienholder cannot be identified or located. However, two jurisdictions require publication as the primary means of notice.¹³⁰ For example, New Jersey requires that properties be added to a list that must be published for ten days.¹³¹ There are also requirements concerning the type of periodical or newspaper, and the number of editions in which the list must be advertised. Only a handful of jurisdictions require personal service.¹³² In conjunction with these details, there are procedural timelines for notifying a respondent before a petition is filed or before a hearing is scheduled.

5. Respondent's Duties and Powers

The respondents' right to intervene may be limited after the receiver is appointed.¹³³ When this limitation is not present, respondents who failed to comply with an injunction or voluntarily commence repairs may subsequently present a rehabilitation plan and attest to their ability to carry it out. Usually by default, the court must allow legal owners to exercise this right.¹³⁴ However, following such an arrangement, four jurisdictions require respondents to post bond and repay the petitioner's

126. IOWA CODE § 657A; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; OHIO REV. CODE ANN. § 3767.41; PA. STAT. ANN. tit. 68, § 1101 et seq.; R.I. GEN. LAWS ANN. § 34-44.

127. S.C. CODE ANN. § 38-6.

128. CAL. HEALTH & SAFETY CODE § 17980; IOWA CODE § 657A; KAN. STAT. ANN. 12-1750, 12-1756AG; LA. REV. STAT. § 40:600-44; MASS. GEN. LAWS ch. 16, § 111-127I; N.J. STAT. ANN. § 55:19-85[B]; OHIO REV. CODE ANN. § 3767.41; PA. STAT. ANN. tit. 68, §§ 1101 et seq.; S.C. CODE ANN. § 38-6; TENN. CODE ANN. § 13-6-106; TEX. LOC. GOV'T CODE ANN. § 7-214.003; VA. CODE ANN. § 15.2-907.2.

129. IND. CODE ANN. § 36-7-9-20; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; OR. REV. STAT. § 105.430-450; WIS. STAT. § 823.23.

130. 310 ILL. COMP. STAT. § 50; N.J. STAT. ANN. § 55:19-85[B].

131. N.J. STAT. ANN. § 55:19-85[B].

132. MICH. COMP. LAWS SERV. § 125.535; OHIO REV. CODE ANN. § 3767.41; R.I. GEN. LAWS ANN. § 34-44 (2013).

133. CAL. HEALTH & SAFETY CODE § 17980; VA. CODE ANN. § 15.2-907.2 (owners cannot intervene).

134. This time period may be statutory or at the court's discretion.

legal fees.¹³⁵ Even during receivership, respondents have the right to participate in court decisions that may minimize the receiver's costs, particularly when they desire to regain possession by repaying the receiver's lien.¹³⁶ However, when jurisdictions disallow intervention, willful violations by respondents constitute contempt that is punishable with sanctions.¹³⁷

6. Receiver's Duties and Powers

When appointed, receivers are awarded temporary possession of the property to make repairs, pay operational costs, and enter contracts for labor and financing. Six jurisdictions require receivers to make payments toward preexisting mortgages during the appointment.¹³⁸ With possession, a receiver has a right to physically enter the property to assess the damage and develop a final improvement plan.¹³⁹ Given that unconsented entry may well constitute trespass prior to the appointment of the receiver,¹⁴⁰ receivers rarely begin with information as to what improvements are needed and how much they will cost.¹⁴¹

Most jurisdictions permit demolition when the cost of rehabilitation exceeds the cost of building a new structure, but preservation is usually favored. In ten jurisdictions, receivers must submit periodic status reports to the court and respondents during construction.¹⁴² The frequency of reports ranges from every twenty days, monthly, quarterly, annually, or at the court's discretion.¹⁴³ Following rehabilitation, some laws allow receivers to hold the property to collect rents in order to recover expenses. This is generally recommended rather than mandated. However, four jurisdictions require the collection of rent for a specified period as the primary source of recoupment before a property may be sold to satisfy remaining lien

135. IND. CODE ANN. § 36-7-9-20; 310 ILL. COMP. STAT. § 50; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; PA. STAT. ANN. tit. 68, §§ 1101 et seq.

136. Joseph Schilling, *Nuisance Abatement of Vacant Properties: Innovative Uses of Civil Receivership* at 2, POL'Y BRIEF (Feb. 2006).

137. CAL. HEALTH & SAFETY CODE § 17980; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121.

138. 310 ILL. COMP. STAT. § 50; IOWA CODE § 657A; KAN. STAT. ANN. § 12-1750, 12-1756ag; OHIO REV. CODE ANN. § 3767.41; R.I. GEN. LAWS ANN. § 34-44 (2013); TENN. CODE ANN. § 13-6-106.

139. PA. STAT. ANN. tit. 68, §§ 1106.

140. Apart from consent, the Fourth Amendment permits building officials to enter legally with a warrant or probable cause. *See* U.S. CONST. amend. IV.

141. MALLACH, *supra* note 7 at 64.

142. PA. STAT. ANN. tit. 68, §§ 1101 et seq.; S.C. CODE ANN. § 38-6; N.J. STAT. ANN. § 55:19-85[B]; CAL. HEALTH & SAFETY CODE § 17980; 310 ILL. COMP. STAT. § 50; MASS. GEN. LAWS ch. 16, § 111-127I; LA. REV. STAT. § 40:600.31-44; KAN. STAT. ANN. § 12-1750, 12-1756AG; TENN. CODE ANN. § 13-6-106; OR. REV. STAT. § 105.430-450.

143. *See* Appendix.

balances.¹⁴⁴ The latter format allows for greater payment toward preexisting mortgagees at the time of sale since the receiver would have already satisfied a large part of its investment through rental income.

7. Financing and Compensation

Financing options for receivership vary widely. Only eight jurisdictions mention the possibility of local grants.¹⁴⁵ Instead, the majority permit the receiver to apply for public and private loans from financial institutions.¹⁴⁶ In addition, some receivership laws indicate that a receiver may obtain court permission to issue notes and certificates.¹⁴⁷ However, the position of the receiver's lien varies significantly. Four jurisdictions make the receiver's lien superior to state taxes,¹⁴⁸ whereas eleven jurisdictions make it superior to preexisting mortgages and liens.¹⁴⁹ The remaining jurisdictions do not specify an order, creating an inference that local recording acts determine the outcome. Under this scenario, the filing of a *lis pendens*, which is usually required, preserves the receiver's lien position should any new liens arise.¹⁵⁰ In addition to financing the rehabilitation, most receivership laws compensate the receiver for its work. Ten jurisdictions are ambiguous about the actual amount, leaving the figure to the court's discretion or consistent with standards provided under local

144. S.C. CODE ANN. § 38-6 (two years); VA. CODE ANN. § 15.2-907.2 (two years); BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121 (no longer than 5 years); MASS. GEN. LAWS ch. 16, § 111-127I (two years).

145. S.C. CODE ANN. § 38-6; N.J. STAT. ANN. § 55:19-85[B]; CAL. HEALTH & SAFETY CODE § 17980; LA. REV. STAT. § 40:600.31-44; MASS. GEN. LAWS ch. 16, § 111-127I (partnership fund); TEX. LOC. GOV'T CODE ANN. § 7-214.003; VA. CODE ANN. § 15.2-907.2 (abatement program); IND. CODE ANN. § 36-7-9-20 (unsafe building fund).

146. WIS. STAT. § 823.23; MASS. GEN. LAWS ch. 16, § 111-127I; LA. REV. STAT. § 40:600.31-44; CAL. HEALTH & SAFETY CODE § 17980; 310 ILL. COMP. STAT. § 50; N.J. STAT. ANN. § 55:19-85[B]; OR. REV. STAT. § 105.430-450; PA. STAT. ANN. tit. 68, §§ 1101 et seq.; S.C. CODE ANN. § 38-6.

147. N.J. STAT. ANN. § 55:19-85[B]; PA. STAT. ANN. tit. 68, §§ 1101 et seq.; R.I. GEN. LAWS ANN. § 34-44 (2013); S.C. CODE ANN. § 38-6; IND. CODE ANN. § 36-7-9-20; IOWA CODE § 657A; MICH. COMP. LAWS SERV. § 125.535; TENN. CODE ANN. § 13-6-106.

148. OHIO REV. CODE ANN. § 3767.41; S.C. CODE ANN. § 38-6 (possibly); TEX. LOC. GOV'T CODE ANN. § 7-214.003 (possibly); VA. CODE ANN. § 15.2-907.2.

149. IND. CODE ANN. § 36-7-9-20; IOWA CODE § 657A; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; MASS. GEN. LAWS ch. 16, § 111-127I; MICH. COMP. LAWS SERV. § 125.535; N.J. STAT. ANN. § 55:19-85[B]; OR. REV. STAT. § 105.430-450; PA. STAT. ANN. tit. 68, §§ 1101 et seq.; R.I. GEN. LAWS ANN. § 34-44 (2013); TENN. CODE ANN. § 13-6-106; WIS. STAT. § 823.23.

150. CAL. HEALTH & SAFETY CODE § 17980; 310 ILL. COMP. STAT. § 50; KAN. STAT. ANN. § 12-1750, 12-1756AG; LA. REV. STAT. § 40:600.31-44 (third in line, following taxes and preexisting mortgages).

mortgage receivership rules governing compensation.¹⁵¹ Six jurisdictions provide a particular percentage, which is applied to either the total construction costs or to the sale price;¹⁵² two jurisdictions provide compensation through interest on the receiver's notes and certificates.¹⁵³

8. Discharge and Sale

A court may terminate receivership in two ways. First, a receiver may move to terminate the appointment after rehabilitation is complete. Second, respondents may move to terminate the receivership during its pendency by showing that the receiver has failed to meet court-ordered requirements. Failure to meet requirements can relate to missing a project milestone or carrying out construction in a manner that is inconsistent with the order.

A receiver must obtain permission from the court to sell a property. Most jurisdictions allow the receiver to sell after rehabilitation is complete or after the receiver has been in possession of the property for a stipulated time period.¹⁵⁴ In order to qualify, the receiver must have complied with all aspects of the approved rehabilitation plan. In addition to the receiver's lien, a respondent who wishes to keep the property often must satisfy pre-existing mortgage and tax arrears. When the respondent cannot or does not repay, the property may be sold with marketable title in order to satisfy the lien. However, Baltimore and South Carolina allow for the sale of the property before rehabilitation commences to an experienced entity or person that expresses a commitment to start improvements immediately after the sale.¹⁵⁵ Per the "minority format," this sort of receivership serves to facilitate the transfer of ownership.

In both instances of conveyance, receivership laws stipulate either private sale¹⁵⁶ or public auction.¹⁵⁷ Public auction usually requires advertisement in a newspaper for a set number of days. Respondents are able to bid, and they are entitled to a right of redemption after the sale. Receivers

151. N.J. STAT. ANN. § 55:19-85[B]; CAL. HEALTH & SAFETY CODE § 17980; 310 ILL. COMP. STAT. § 50; IND. CODE ANN. § 36-7-9-20; IOWA CODE § 657A; KAN. STAT. ANN. § 12-1750, 12-1756AG; LA. REV. STAT. § 40:600.31-44; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; MASS. GEN. LAWS ch. 16, § 111-127I; MICH. COMP. LAWS SERV. § 125.535.

152. OR. REV. STAT. § 105.430-.450; PA. STAT. ANN. tit. 68, § 1101 et seq.; S.C. CODE ANN. § 38-6; TENN. CODE ANN. § 13-6-106; TEX. LOC. GOV'T CODE ANN. § 7-214.003; WIS. STAT. § 823.23.

153. OHIO REV. CODE ANN. § 3767.41; R.I. GEN. LAWS ANN. § 34-44.

154. Virginia-2 years; South Carolina-2 years; Missouri-5 years; Massachusetts-2 years; Kansas-2 years. See Appendix.

155. BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; S.C. CODE ANN. § 38-6.

156. LA. REV. STAT. § 40:600.31-44; PA. STAT. ANN. tit. 68, §§ 1101 et seq.

157. IND. CODE ANN. § 36-7-9-20; IOWA CODE § 657A; BLDG., FIRE & RELATED CODES OF BALTIMORE CITY § 121; MASS. GEN. LAWS ch. 16, § 111-127I; S.C. CODE ANN. § 38-6; VA. CODE ANN. §15.2-907.2.

may bid as well, and their lien is credited toward the purchase. Alternatively, Texas provides that the property must be sold to the state's land bank.¹⁵⁸ Private sale can take place only with the consent of all respondents or by a court order. A rehabilitated property is usually resold at fair market value to the receiver or a third party who has demonstrated an ability to maintain the property. The intent of the parties is a prevalent consideration since the laws serve to prevent recurrence of the circumstances that made receivership necessary.¹⁵⁹ Therefore, participation is limited to parties who are "injured," but also to parties who are ready and willing to restore the property and the surrounding area. To better serve this end, some laws provide continued jurisdiction by the court to oversee the property for one year after rehabilitation is completed.

VI. Best Practices

Receivership finds greater success when there are formal governmental programs that allow for the appointment of private receivers from a list of qualified entities. However, the right of neighbors and other interested parties to bring petitions ensures attention to more neglected properties. For example, the private right of action can address situations that affect a limited group of people, which may not garner the broader attention of a municipality. As for financing, the availability of grants permits the filing of more actions and "democratizes" participation. Similarly, access to a certified list of potential receivers in private-action jurisdictions would provide unaffiliated petitioners with reliable resources and relieve them of the task of establishing the qualifications of a proposed receiver to a court.

Jurisdictions that blend rental and vacant property receivership cause confusion around the purpose of the law or the possibility that one purpose may overshadow the other. This is particularly problematic given that rental receivership is no longer in wide use.¹⁶⁰ Furthermore, jurisdictions that allow private citizens to establish a factual basis for code violations where official violations are absent allow more properties to be addressed, irrespective of bureaucratic shortcomings.

Having clear definitions for qualifying properties helps to ensure that fewer claims will be rejected and promotes judicial economy. Clear definitions also ensure a consistent benchmark and lessen the likelihood of irregular standards within a state. While some jurisdictions rely on local definitions through incorporation of other laws, Pennsylvania's statute

158. TEX. LOC. GOV'T CODE ANN. § 7-214.003.

159. MALLACH, *supra* note 7, at 62.

160. *Id.* at 49 ("Legal obstacles often arise from the inadequacy of state statutory provisions, and practical obstacles include uncertainty about financial exposure and the difficulty of finding qualified receivers.").

serves as an example of a legislation that was drafted with clear and thorough requirements.

Requiring respondents to post bond encourages serious efforts to challenge a claim and minimizes bad faith disruptions in private actions that generally favor the owner's right to intervene. Alternatively, progress reports are an important way for courts to oversee the receiver's work. However, monthly submissions may be too frequent if an average project takes between nine months and two years to complete.¹⁶¹ Instead, quarterly reports should suffice unless a court finds closer management to be necessary. In addition, the payment of pre-existing mortgages during the course of receivership only serves to enlarge the receiver's lien. Instead, allowing receivers to rent the property after rehabilitation, but before the judicial sale, allows the receiver to better recoup its investment before splitting limited sales proceeds. This arrangement is beneficial when the property has substantial tax arrears since the priority status of the taxes can compromise payment to the receiver. It also promotes greater repayment of mortgages, which often bear the brunt of the deal.

Providing that tax sales and foreclosures may not commence after filing a petition is important to judicial economy and effective revitalization. Given that many target properties have been abandoned for several years, it is also practical to provide strict injunction or action deadlines to the respondents. In addition, giving the respondents a right of redemption after the property is sold creates greater risk to the project and makes it less attractive to third party buyers.

Finally, it is worthwhile to have clear guidance concerning the receiver's compensation. A clear definition allows the receiver to better analyze its cost exposure and gauge whether it is suited for the project. Leaving the compensation at the court's discretion creates too much room for irregularity. However, establishing a formal calculation, based on a maximum dollar amount or a percentage, may remove some of the mystery that currently dissuades participation in some states.

In conclusion, these best practices have contributed to the success of receivership laws across the country. Adoption of these successful practices may better empower ready and able parties to seize an opportunity to make a difference at the neighborhood level.

161. This statistic is based on the average duration of conservatorship litigation in Pennsylvania between 2008–2014, when properties were conserved.

Appendix

Jurisdiction/ Statute	Property	Petitioner	Receiver	Notice	Duties	Financing	Priority	Sale	Receiver's Fee
California CAL. HEALTH & SAFETY CODE § 17980	Residential vacant or occupied, violations	Gov't	Nonprofit; CDC	Notice of violations by certified mail 30 days prior to filing petition	Monthly report; owner cannot intervene	Receiver posts bond, grants, loans, collect rent and apply to repair costs	Not specified	No; law does not authorize forced sale for judgment lien	Same as foreclosure receiver
Illinois 310 ILL. COMP. STAT. § 50	Residential, unoccupied for 1 year	Nonprofit	Petitioner	File affidavit with clerk, publication, mail w/in 10 days of ads	File annual report; pay taxes, pre-receivership installments; must create low-income housing for at least a 10 year period	Owner posts bond, loans	Not specified	No; receiver petitions for judicial quitclaim deed if owner takes no action to regain possession after 2 yrs	Court determined
Indiana IND. CODE ANN. § 36-7-9-20	Unsafe building, vacant	Gov't; designated person; nonprofit	Nonprofit any capable person	Certified or return receipt mail 60 days notice of conditions before filing	Collect and use existing or future income for repairs	Owner posts bond, receiver notes & certificates w/interest; "Unsafe Building Fund"	Second to taxes	Auction, FMV with permission, foreclosure within 2 years of default	Same as foreclosure receiver
Iowa IOWA CODE §§ 657A; 657A.10A	Residential, mixed-use, abandoned or dangerous or unsafe	Gov't; nonprofit; landowner w/in 500 ft	Lienor; nonprofit	Personal service or certified mail, then post notice conspicuously on building & publication	Pay pre-receivership mortgage & lien installments; OR title conveyance	Bond, receiver notes w/interest	Not specified, note must be recorded when issued	Same manner as actions to foreclose mortgages	Same as foreclosure receiver

Continued

Jurisdiction/ Statute	Property	Petitioner	Receiver	Notice	Duties	Financing	Priority	Sale	Receiver's Fee
Kansas KAN. STAT. ANN. §§ 12-1750; 12-1756ag	Residential, commercial w/2 yr tax de- linquency, abandoned, un- safe, dangerous	Gov't; nonprofit	Gov't nonprofit	Certified or regis- tered mail 20 to 60 days be- fore filing petition	File annual re- port, pay taxes and pre- receivership lien installments (sub- ject to tax sale); subsequent pur- chaser must oc- cupy for 2 yrs	Not specified	Not specified; judicial deed extinguishes existing inter- ests, but receiv- ership is subject to tax sale	No; receiver pe- titions for judi- cial deed no ac- tion to regain possession by owner prior to completion of rehabilitation	Court determined
Louisiana LA. REV. STAT. § 40:600.31-44	Residential, offi- cially desig- nated as blighted & listed on "blighted housing list"	Gov't	Gov't; quali- fied rehab entity	Registered or cer- tified mail to se- cured parties who have 45 days to present alternate plan or object	Quarterly reports, 6 months to start substantial work	No bond, grants, loans f/local gov't, collect rent and apply to repair costs	Not specified; lien must be recorded	Receiver petitions to sell, FMV	Not specified
Massachusetts MASS. GEN. LAWS ch. 16, §111-1271	Residential, foreclosed, abandoned, dis- tressed	Attorney General Office	Nonprofit, individual, or private company	Certified or regis- tered mail 14 days prior to any hearing	Bimonthly re- ports, manage & collect rent for 2 years post-rehab	Bond, housing partnership fund, AHI re- ceivership fund" & loans	Second to taxes	Auction, owner/lienor may tender offer	"Reasonable fees of receiver"
Maryland BUILDING, FIRE, AND RELATED CODES OF BALTIMORE CITY § 121	Vacant, unsafe structure	Gov't	Gov't; qualified en- tity; lienholder	Regular or certified mail to last known ad- dresses after filing petition and be- fore appointment	Title clearance; or rehabilitation* – file accounting, 5 yr timeline; owner prohibited f/intervention	Lienholder must bond; apply rent to expenses for 2 yrs. post- rehab	Second to taxes	Auction, FMV OR owner pays	Not specified
Michigan MICH. COMP. LAWS SERV. § 125.535	Residential, occupied or un- occupied, un- safe, nuisance	Gov't	Gov't, competent person	Serve complaint and summons	Not specified	Bond at court discretion, apply rents to expenses, re- ceiver certifi- cates	Second to taxes	Foreclose on lien, according to court order	Not specified

Missouri SB No 391 of 2015, amending §§ 441.500, 570, 590, 641 (pending)	Residential, unoccupied, occupied, violates housing code	Gov't; housing corp; neighborhood assoc.	Petitioners, lienor; licensed attorney, RE broker	Regular mail 60 days before filing application	Quarterly reports; owner must intervene within 1 year	Lienholder must bond; revenue from operation, loans, receiver's certificates	Yes; expressly before taxes	Auction to highest bidder, FMV by judicial quit claim deed	"Reasonable remuneration for receiver's time"
New Jersey N.J. STAT. ANN. § 55:19-85[b]	Residential & mixed-use, abandoned (unoccupied for 6 months), public nuisance, unpaid taxes	Gov't	Gov't designated entity	Establish property on "abandoned property list" by publication, and w/in 10 days, notice by certified mail	Quarterly reports	Grants, loans, certificates	Second to taxes	Owner of certificates can initiate foreclosure within 6 months after rehab	"reasonable development fee" consistent w/N.J. Dep't of Community Affairs or N.J. Housing & Mortgage Finance Agency
North Carolina HB 912 of 2011 (failed)	Greensboro; vacant building, structure or dwelling	Gov't	Gov't; qualified person	Regular and certified mail 10 days before filing petition	Apply rent to expenses, manage & collect rent 2 years post rehab	Lienholder must bond; loan from approved lender	Second to taxes	Auction, FMV, deed in lieu of foreclosure	Lesser of 5% of sale profits or \$100,000
Ohio OHIO REV. CODE ANN. § 3767.41	Residential, mixed-use, public nuisance, occupied or unoccupied	Gov't; nonprofit; landowner w/in 500 ft; tenant	Lienor; nonprofit; qualified property manager	Certified mail, personal service, or residence service 60 days before filing	Pay pre-receiver-ship mortgage & lien installments	Bond; issue notes w/mortgage bearing interest	Yes; expressly before taxes	Per subsidized housing; court ordered sale 3 days after completion	Interest from receiver's notes
Oklahoma HB 1666 of 2015 (pending)	Residential, single or multi-family, neglected, abandoned	District attorney	Qualified person or entity	*DA institutes action if person/entity presents signatures from 100 or 51% landowners w/in 1 sq/mile	Report monies received & indicate need for loan	Bond MAY be required, apply rent to expenses, and relief determined by court	Not specified	Not specified	Not specified

Continued

Jurisdiction/ Statute	Property	Petitioner	Receiver	Notice	Duties	Financing	Priority	Sale	Receiver's Fee
Oregon OR. REV. STAT. §§ 105.430-450	Residential, public nuisance	Gov't	Housing au- thority; urban re- newal agency; non- profit; local agency	Regular mail 60 days before filing application	All expenditures reviewed by the court for reason- ableness and necessity; fre- quency of report- ing not specified	No bond; apply rent to expenses, pub- lic or private loans, must pay pre-receivership mortgage/lien installments	Second to taxes	Not specified	Admin fee at hourly rate approved by court OR at a rate of 15% of total cost of abatement
Pennsylvania PA. STAT. ANN. tit. 68, §§ 1101 et seq.	Residential, commercial, in- dustrial, aban- doned, nuisance	Gov't; non- profit; neighbor w/in 2,000 ft; lienor	Gov't; nonprofit; lienholder	Certified or regis- tered mail w/in 30 days of filing	Submit initial and final rehabilita- tion plan, periodic reports at courts discretion	Lienholder- owner posts bond, receiver uses public or private loans	Second to taxes	FMV	Greater of \$2,500, adjusted upward by 2% each year, or a 20% markup of ex- penses
Rhode Island R.I. GEN. LAWS ANN § 34-44	Residential, mixed-use, abandoned, public nuisance	Gov't; neigh- boring land- owner; non- profit w/in 200 ft	Lienholder; nonprofit; qualified property manager	Personal, resi- dence service for summons 20 days before hearing	Pay pre-receiver- ship mortgage installments	Bond; receiver notes & certifi- cates or mortgage	Second to taxes; must record re- ceiver's note w/in 60 days	Court ordered sale 3 days after completion	Interest from re- ceiver's notes & same commission as foreclosure re- ceiver
South Carolina S.C. CODE ANN. § 38-6	Residential, unoccupied, unsafe, dilapidated	Gov't	Nonprofit; qualified enti- ty or indi- vidual; li- censed & bonded GC	Regular mail in- dicating intent to file 60 days prior to filing to ad- dress on tax roll	Progress reports every 45 days, 2 year timeline; OR title clearance	Bond; grants, loans, receiver's notes	Possibly before taxes	Auction, FMV, receiver may bid & use lien as credit	Not to exceed 10% of costs and ex- penses incurred in repairs or demolition
Tennessee TENN. CODE ANN. § 13-6-106	Residential, cer- tified public nuisance	Gov't; non- profit; lien- holder; neighbor	Gov't; nonprofit	Registered return receipt or certi- fied mail after fil- ing, conspicuous posting on build- ing, & publication	Report every 60- days, Pay pre- receivership mortgage & lien installments	Bond MAY be required; re- ceiver's note or mortgage	Second to taxes	Foreclose after 180 days	Not to exceed 10% of total costs of abatement or \$25,000

Texas TEX. LOC. GOV'T CODE ANN. § 7-214.003	Residential, single- or multi- family, hazardous	Gov't; certified nonprofit	Qualified in- dividual or entity	Certified mail re- garding viola- tions 30 days prior to filing to address on tax roll	Pay taxes, full re- porting after re- pairs complete;	Bond MAY be required if property > 100k; grants, loans	Possibly before taxes	Sold to land bank, auction, foreclose after 180 days	10% of costs and expenses
Virginia VA. CODE ANN. § 15.2-907.2	Residential, commercial, in- dustrial, derelict	Gov't	Gov't	Notice of viola- tions by certified mail prior to action	Not specified, 2 year timeline;	Real estate abatement programs	Yes; on par with taxes	Auction, publi- cation for 4 weeks	Lien is collectable in the same manner as delinquent real es- tate taxes
Wisconsin WIS. STAT. § 823.23	Residential, oc- cupied or unoc- cupied, de- clared public nuisance	Gov't	Housing au- thority, CDC, nonprofit, qualified per- son or company	Regular mail, disclose intent to file 60 days prior	Apply rent to ex- penses, pay taxes, penalties & assessments	No bond; pub- lic & private loans	Second to taxes	Sell to satisfy lien, manner not specified	Hourly rate ap- proved by court or at rate of 20% of total costs of abatement

* Section 121.8 of the Baltimore ordinance provides that, "If no qualified person with an ownership interest requests appointment to rehabilitate or demolish the property, or if an appointee is dismissed, the court must then appoint a receiver of the property for the purpose of rehabilitating and managing the property, demolishing the property, or selling it to a qualified buyer." However, the City of Baltimore exclusively uses the last option, which is the previously described "minority format" of title-clearance sales.

