

Nuisance Abatement of Vacant Properties
Innovative uses of civil receivership

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Local governments have long standing authority to abate public nuisances. Depending on state law and local ordinances, cities and counties can generally file court actions or hold administrative hearings to compel the cleanup of the property. If the owner ignores these administrative or court orders, the local government can abate the nuisance with city crews or private contractors and then assess the cleanup costs against the property.

Vacant Property Impacts: nuisance abatement powers are critical when addressing the community impacts caused by vacant and abandoned properties—the long term, unoccupied structures that pose threats to the public’s general health, safety and welfare. Buildings that are open and unsecured are ideal magnets for crime, trash, and vermin. Such nuisances drain local government resources and adversely impact the quality of life of nearby residents. Vacant properties can easily spread throughout a neighborhood if they are not effectively addressed. Abatement can include removing all trash and debris, repairing, boarding, and even demolishing the structure.

Complexities of Abating Vacant Properties: Local governments have more and more difficulty abating vacant properties. Owners often live out of state as they speculate on vacant properties as real estate investments. Owners are now much more sophisticated about hiding from their fundamental ownership duties. The foreclosure crisis, bankruptcy filings, and predatory lending also contribute to the abandonment of homes and apartment buildings. Some properties have been abandoned for decades as heirs failed to probate their title to undervalued real estate. Such complexities make it hard for building and housing inspectors to track down and then convince owners to cleanup their properties. Local governments need a wide array of code enforcement strategies to prevent and abate these public nuisances.

Innovative Uses of Civil Receivership: A growing number of local governments are using receivership as an effective code enforcement tool against vacant properties. Receivership is a specialized civil remedy that allows a judge to appoint a special agent of the court to oversee the repair, abatement, or demolition of vacant properties. Courts of general jurisdiction in most states can appoint receivers to minimize waste, preserve assets, and maintain properties in safe and habitable conditions. Several states, such as New Jersey, Ohio, and California have enacted special receivership statutes that apply to substandard housing and vacant properties. The National Vacant Properties Campaign is currently working with nonprofit organizations in Los Angeles, Louisiana, and Pennsylvania to fashion new receivership laws and ordinances. Receivership provides local governments and nonprofit development organizations with a powerful tool to abate these pernicious public nuisances.

Receivership Respects Private Property Rights: Nuisance abatement and receivership are vastly different from eminent domain. The initial appointment of a receiver by a court does not change the ownership of the property. A receiver's primary goal is to merely abate those nuisance conditions caused by derelict, abandoned and vacant properties. Under close supervision of the court, the receiver can incur costs to repair, board, or in rare cases demolish the abandoned structure. Throughout the entire receivership process the owners (if they can be found) can participate in court decisions to minimize costs and even take their own abatement actions with guidance from the court. If the owner fails to repay the abatement costs, most state laws permit the filing of a nuisance lien that could result in foreclosure and eventual sale of the vacant property. In every case eminent domain seeks to acquire ownership of the property for public uses or public benefits (depending on state recent state laws in light of the *Kelo* decision).

Ohio's Receivership Law for Vacant Properties

Section 3767.41 of the Ohio Revised Code authorizes a municipality, nonprofit housing development corporation, or nonprofit organization to file a civil court action that seeks the appointment of a receiver to take control of a substandard or abandoned building. The plaintiff must provide sufficient evidence that the property's conditions create a public nuisance—a relatively easy task in the case of most abandoned buildings and vacant properties. The court can then issue a civil injunction or abatement order that gives the property owner or responsible party a reasonable opportunity to abate the public-nuisance conditions before the court appoints a receiver.

If the owner fails to comply with the abatement order or fails to respond to the lawsuit (e.g., if the owner cannot be found), the court can appoint a receiver, who can then make the necessary repairs to rehabilitate or secure the property. Because the receiver's costs have a higher lien priority than do existing mortgages and encumbrances on the property, the law requires that all parties who have a financial interest in the property get notice of the civil action and appointment of the receiver. Before the owner can legally reclaim the property, he or she would need to pay the receiver's repair costs and associated liens. Otherwise, the receiver costs could be assessed against the property and the judge could foreclose and sell the property to the local government or CDC.

Implementation of Receivership Strategy: Beyond the enactment of the receivership law, local governments and communities should also ensure they have the resources and staff to effectively implement and administer an effective nuisance abatement-receiver program:

- Create a special civil nuisance SWOT team to investigate and prepare receivership cases for vacant properties;
- Train local government attorneys and inspection staff on civil nuisance actions and receivership; collect model pleadings from other municipal law offices;
- Build a local network of public and nonprofit organizations that can act as receivers.