

The Public Interest

One of the greatest challenges facing government throughout the Commonwealth is to provide safe and affordable housing for all of our citizens. Recognizing the critical nature of this responsibility, the Attorney General's Office has been exploring ways in which it can play a role in promoting new ideas and partnerships to help meet this challenge. State municipalities and local community groups identify and responsible for the housing response to local housing issues. Any solution created must be consistent with local laws and regulations and through

I. BACKGROUND AND AUTHORITIES

programs and concepts in consultation with applicable agencies in order to develop a plan which can be more effectively regulated and used by local cities, towns and local community groups.

We have focused our initial research on one narrow aspect of the issue which presents particular financing and regulatory problems - how to deal with abandoned housing whether occupied or unoccupied, within communities and neighborhoods. While the goal is to create a comprehensive plan to carry out these goals, this report focuses on the regulatory and financing issues to avoid the cost of ownership and to address the obligation of maintaining the property, thereby insuring no one responsible for securing the up-keep, such compliance and

compliance of the residential building. Therefore we focus our attention with specific concerns in the abandoned housing study are relevant to housing on that issue. They are concerned that there is no available market for the purchase of property in foreclosure that is illiquid, with the property

"ABANDONED HOUSING TASK FORCE" PROJECT

The Problem Presented

One of the greatest challenges confronting communities throughout the Commonwealth is to provide safe and affordable housing for all of our citizens. Recognizing the critical nature of this responsibility, the Attorney General's Office has been exploring ways in which it can play a role in generating new ideas and partnerships to help meet this challenge. Since municipalities and local community groups primarily are responsible for the frontline response to residential housing issues, any solutions created must be amenable to implementation by, with and through them. It has been the Attorney General's goal to consider innovative uses of existing legal rights, programs and concepts in coordination with available resources in order to develop models which can be most effectively replicated and used by such cities, towns and local community groups.

We have focused our initial attention on one narrow aspect of the issue which presents particularly frustrating and complicated problems -- how to deal with abandoned housing, whether occupied or unoccupied, within communities and neighborhoods. What can be done when a landlord/owner, who is rarely an owner-occupier and often lives outside the jurisdiction, has chosen to avoid the costs of ownership and to abdicate the obligations of maintaining the property, thereby leaving no one responsible for assuring the up-keep, code compliance and security of the residential building?

Mortgagees and/or other creditors with security interests in the abandoned property usually are reluctant to foreclose on their liens. They are concerned that there is no available market for the purchase of property at foreclosure that, in all likelihood, does not comply with

significant building code requirements. Under such circumstances, a foreclosing creditor often must decide, as a practical matter, between waiving its claims and writing off all of its recoverable interests or, alternatively, purchasing the property itself and assuming all of the risks associated therewith. Faced with this all too common dilemma, creditors often choose to do nothing (i.e. the loan is written off and the security interest inventoried).

The municipality, which usually, but not always, may be owed property taxes on the parcel, often does not have the independent wherewithal either to restore the property or to demolish it. Code enforcement efforts against an illusive and non-cooperative target are usually inefficient and, ultimately, ineffective. The expedient fall-back is merely to board the building up in the hope (rarely achieved) of preventing future unauthorized access.

The true losers in this scenario are the occupants (if any), abutters and neighbors of the property who daily must face the impact of having a dangerously deteriorating property, which is subject to vandalism and use for illegal purposes, in the midst of an area in which they are committed to settle, live and invest. Besides the inherent physical risks presented, the emotional costs for the community of having to live with an eye sore and the negative impact on neighborhood pride and spirit are tremendous. No party claims or asserts responsibility for remedying the situation and yet, because of the title interests of the owner and the security interests of the creditors, concerned parties from the neighborhood are unable to gain control of the property to cure the problems themselves.

Throughout this stand-off, the abandoned housing, much of which conceivably could be restored as valuable, affordable housing stock, continues to deteriorate to the point where it can no longer be salvaged.

The use of the Receivership Statute to respond to the problems of abandoned housing is but one of the potential remedies available to deal with issues of distressed properties. It is not appropriate or available, however, in every situation. Rather, in certain circumstances it provides a creative and viable alternative which has specific limits and benefits. It should be viewed as part of an overall abandoned housing strategy which also includes, among other remedies, code enforcement efforts, nuisance suits, real estate tax and environmental takings, condemnation/demolition proceedings and asset forfeiture actions.

The Attorney General's Office, through its Abandoned Housing Task Force, has prepared this Manual to assist municipalities and community groups to successfully utilize the Receivership Statute with regards to abandoned housing. It presents a program which we believe conforms with the legal requirements of the statute, protects the due process rights of all parties involved and maximizes the scope and effectiveness of the receivership remedy.

Recommended Steps and Components of an Abandoned Housing Receivership Program

1. Municipalities and local community groups, working together, create an inventory of the abandoned housing in a target neighborhood.
2. The record titles of the subject abandoned properties are investigated in order to identify the current owners, to determine the outstanding liens against the properties and to establish the status of outstanding real estate tax payments and other municipal charges.
3. The identified abandoned properties are prioritized in accordance with an assessment of cost, potential impact and likelihood of success.
4. Notice is provided to the landlord/owner and creditors of record by a public agency or private individual with standing indicating that they intend to move for the appointment of a receiver to undertake the necessary renovations of the property. The preference and priority should always be to work with the owner and/or the existing creditors in order to work out a consensual solution for the situation, using either the Receivership Statute or through other available means if necessary, whereby they agree to do the required work on their own and at their own cost.
5. If a negotiated settlement cannot be achieved at this phase, suit can be filed in the Housing Court (or a local District Court) for the jurisdiction in which the subject property is located, seeking the appointment of a receiver. The receiver should be a local organization, individual, company (profit or non profit) or group with ties to the community. Preferably, the potential receiver should have some construction and/or renovation expertise (and/or property management experience if the housing is, or will be, occupied).
6. The appointed receiver serves as a general contractor for the renovation project

and should utilize local contractors, craftsmen, workers and suppliers whenever possible as part of a diversified work force. The Receivership Statute provides that the receiver may borrow funds to undertake the repairs, to grant mortgages on the property and/or assign the priority lien to its creditor(s). The receiver also may rent the property to new tenants once the code violations have been eliminated. Any rents collected from new or existing tenants may be used to offset the receiver's expenses.

7. Upon completion of the renovations, demand is made upon the absentee owner and all pre-existing creditors of record for immediate repayment of all outstanding expenses and charges. Thereafter, if payment is not forthcoming, the receiver, acting in concert with its own creditors, can foreclose on the property in order to pay off its own debts.

8. We hope that this process will result in the transfer of ownership of restored buildings to responsible owner-occupants. In order to eliminate the pre-existing security interests in the property, however, any foreclosure, whether by lien or mortgage, requires a public auction. Under these circumstances, there is no guarantee that either the prior owner or speculators will not tender a bid greater than the outstanding receiver's lien and in excess of the bids of any interested potential owner-occupiers. In such a case, at a minimum, the hazards associated with the abandoned housing will have been eliminated and the cost of repair recovered. It is possible, however, to provide incentives to owner-occupiers to bid on a property. For example, a non-profit receiver could agree to waive its fees, over and above its out-of-pocket expenses, in the event that the property is purchased at auction by an owner-occupier. Similarly, the municipality might agree to a reasonable repayment schedule for its outstanding tax lien if the successful bidder at the foreclosure sale turns out to be a bona fide owner-occupier.

KEYS TO A SUCCESSFUL ABANDONED HOUSING PROGRAM

The Attorney General's Task Force has identified a number of criteria which contribute to the potential success of an Abandoned Housing Recovery program within a community:

1. The relevant municipal officials (i.e. Legal Counsel, Community Development Office, Inspectional Services, Fire Department, Police Department, etc.) are working together to coordinate enforcement efforts.
2. The relevant community and neighborhood groups have been brought on board and made a meaningful part of the process.
3. Appropriate properties have been identified, taking into account, among other issues, cost effectiveness, neighborhood impact, nature of the health and safety hazards presented and existing community housing plans. The property should be capable of rehabilitation. It may be either occupied or unoccupied. In all events, however, there must be a threat to the health and safety of residential tenants, occupiers, neighbors or abutters.
4. A qualified and responsible receiver has been identified. A receiver may, for example, be a community development corporation, nonprofit corporations, private individuals, charities, developers, general contractors and/or government officials.
5. An appropriate funding source has been identified to finance the receivership (i.e. rental income, foundation grants, public federal, state or municipal programs and/or private investments).

INVESTIGATIVE OUTLINE

- **REGISTRY OF DEEDS:**

- DETERMINE OWNERSHIP

- Obtain copy of most recent title/deed

- DETERMINE ENCUMBRANCES

- Mortgages

- Liens

- tax, municipal. utility

- **MUNICIPAL OFFICES:**

- ASSESSOR

- Current assessment

- Book and page reference points for deed search

- TAX COLLECTOR

- Taxes owed, liens

- Address where bill is sent (locate owner)

- **MUNICIPAL AGENCIES:**

- POLICE & FIRE

- Reports & statistics on calls for service to

- Particular address/property

- INSPECTIONAL SERVICES / HEALTH DEPARTMENT

- Reports/inspections pertaining to property

- **SITE VISIT / INSPECTION:**

- Conduct exterior inspection for obvious safety hazards
(i.e. fire damage, unsafe supports/railings, etc.)

- Interior inspection if accompanied by a local official

- Take photographs (A picture tells a thousand words!)

- **OTHER INVESTIGATIVE CHALLENGES:**

- Locating the owner - It is not likely the property will
be owner occupied. Efforts will have to be made to
locate a current address for the owner.

REMEMBER - Periodically update information (i.e.: look for change of ownership, change in encumbrances)

*40324 M.G.L.A. 111 § 127I

**MASSACHUSETTS
 GENERAL LAWS
 ANNOTATED
 PART I. ADMINISTRATION
 OF THE GOVERNMENT (CH.
 1-182)
 TITLE XVI. PUBLIC HEALTH
 (CH. 111-114)
 CHAPTER 111. PUBLIC
 HEALTH
 NUISANCES**

*Current through Ch. 105 of the 2007 1st
 Annual Session.*

**§ 127I. Enforcement of sanitary code;
 remedies; receiver**

Upon the filing of a petition to enforce the provisions of the sanitary code, or any civil action concerning violations of the sanitary code by any affected occupants or a public agency, whether begun in the district, housing or superior court, and whether brought under section one hundred and twenty-seven C or otherwise, the court may: issue temporary restraining orders, preliminary or permanent injunctions; order payment by any affected occupants to the clerk of court, in accordance with the provisions of section one hundred and twenty-seven F; or appoint a receiver whose rights, duties and powers shall be specified by the court in accordance with the provisions of this section.

Upon receipt of service of any petition in which the appointment of a receiver is sought, the owner shall provide to the petitioner, within three days, a written list of all mortgagees and lienors of record. At least fourteen days prior to any hearing in any such proceeding, the petitioner shall send by certified or registered mail a copy of the petition to all mortgagees and lienors included in the owner's list as well as to all other mortgagees and lienors of which the petitioner may be aware, and shall notify them of the time and place of the hearing. Upon motion of the petitioner, the court may order such shorter

periods of prior notice as may be justified by the facts of the case.

Whenever a petitioner shows that violations of the sanitary code will not be promptly remedied unless a receiver is appointed and the court determines that such appointment is in the best interest of occupants residing in the property, the court shall appoint a receiver of the property. Any receiver appointed under this paragraph may be removed by the court upon a showing that the receiver is not diligently carrying out the work necessary to bring the property into compliance with the code, or that it is in the best interest of any tenants residing in the property that removal occur.

No receiver shall be appointed until the receiver furnishes a bond or such other surety and provides proof of such liability insurance as the court deems sufficient in the circumstances of the case. Upon appointment, the receiver shall promptly repair the property and maintain it in a safe and healthful condition. The receiver shall have full power to borrow funds and to grant security interests or liens on the affected property, to make such contracts as the receiver may deem necessary, and, notwithstanding any special or general law to the contrary, shall not be subject to any public bidding law nor considered a state, county or municipal employee for any purpose. In order to secure payment of any costs incurred and repayment of any loans for repair, operation, maintenance or management of the property, the receiver shall have a lien with priority over all other liens or mortgages except municipal liens, and such lien priority may be assigned to lenders for the purpose of securing loans for repair, operation, maintenance or management of the property. No such lien shall be effective unless recorded in the registry for the county in which the property is located.

*40325 The receiver shall be authorized to collect rents and shall apply the rents to payment of any repairs necessary to bring the property into compliance with the sanitary code and to necessary expenses of operation, maintenance, and management of the property, including

insurance expenses and reasonable fees of the receiver, and then to payment of any unpaid taxes, assessments, penalties or interest. Any excess of income in the hands of the receiver shall then be applied to payments due any mortgagee or lienor of record.

Nothing in this section shall be deemed to relieve the owner of property of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner, nor shall appointment of a receiver suspend any obligation the owner or any other person may have for payment of taxes, of any operating or maintenance expense, or of mortgages or liens, or for repair of the premises.

The receiver shall be liable for injuries to persons and property to the same extent as the owner would have been liable; however, such liability shall be limited to the assets and income of the receivership, including any proceeds of insurance purchased by the receiver in its capacity as receiver. The receiver shall in no instance be personally liable for actions or inactions within the scope of the receiver's capacity as receiver. No suit shall be brought against the receiver except as approved by the court which appointed the receiver. Nothing herein shall be construed to limit the right of tenants to raise any counterclaims or defenses in any summary process or other action regarding possession brought by a receiver.

The remedies set forth herein shall be available to condominium unit owners and tenants in condominium units. Whenever used in this section, the term "petitioner" shall include a condominium unit owner or tenant, the term "owner" shall include a condominium association, the terms "mortgagees" and "lienors" shall include mortgagees and lienors of individual condominium units, and the term "rents" shall include condominium fees. The receiver shall have the right to impose assessments upon individual condominium units for payment of expenses incurred in the exercise of his powers, which liens shall have priority over all other liens and mortgages, except municipal liens.

The receiver shall file with the court and with all parties of record, on a bimonthly basis, an accounting of all funds received by and owed to the receiver, and all funds disbursed, and shall comply with such other reporting requirements mandated by court, unless, for cause shown, the court determines that less frequent or less detailed reports are appropriate; provided that said notice shall not be less than five days.

CREDIT(S)

Added by St.1965, c. 898, § 3. Amended by St.1992, c. 407, § 10.

<General Materials (GM) - References, Annotations, or Tables>

*40326

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

St.1965, c. 898, § 3, was approved Jan. 7, 1966.

St.1992, c. 407, § 10, approved Jan. 14, 1993, rewrote the section, which prior thereto read:

"Upon appointment such receiver shall post such bond as may be deemed sufficient by the court, shall forthwith collect all rents and profits of the property as the court shall direct and use all or any of such funds, or funds received from the commonwealth as hereinafter provided, to enable such property to meet the standards of fitness for human habitation. A receiver shall have such powers and duties as the court shall determine, including the right to evict for nonpayment of rent. A receiver may be a person, partnership or corporation."

REFERENCES

CROSS REFERENCES

Dwellings unfit for human habitation, appointment of a receiver, see c. 111, § 127B.

RESEARCH REFERENCES

Treatises and Practice Aids

14 Mass. Prac. Series § 3.7, District Court and Boston Municipal Court -- Generally.

14 Mass. Prac. Series § 3.8, District Court and Boston Municipal Court -- Equity Jurisdiction.

33 Mass. Prac. Series § 11:12, Remedies for Breach of Covenant of Habitability.

33 Mass. Prac. Series § 11:18, Covenant to Repair.

34 Mass. Prac. Series § 23:1, Creation and Jurisdiction of Housing Courts.

34 Mass. Prac. Series § 21:47, Injunctive Relief -- Habitability.

34 Mass. Prac. Series § 21:59, Equitable Relief Under the State Sanitary Code.

34 Mass. Prac. Series § 21:60, Tenant's Petition Under State Sanitary Code -- Form.

34 Mass. Prac. Series § 22:57, Condominiums and Landlord-Tenant Relationship.

14A Mass. Prac. Series § 9.38, Receivership.

14B Mass. Prac. Series § 12.61, Receivership.

*40327 14B Mass. Prac. Series § 15.118, Tenant Remedies for Defective Conditions -- Injunctive Relief and Rent Receivership.

33A Mass. Prac. Series § 18:2, Implied Warranty of Habitability.

33A Mass. Prac. Series § 13:34, Actions for Damages for Breach of Contract.

33A Mass. Prac. Series § 16:44, Withholding Rent Because of Uninhabitable Conditions or Violation of State Sanitary Code.

36A Mass. Prac. Series § 29:31, State Sanitary Code.

36A Mass. Prac. Series § 29:55, Direct Enforcement of Sanitary Code--Injunctive Relief.

36A Mass. Prac. Series § 29:56, Direct Enforcement of Sanitary Code--Receivership.