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ABANDONED AND VACANT PROPERTIES:
Using model ordinances and creative strategies

by

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INTRODUCTION

Vacant, abandoned buildings have a devastating effort on their surroundings and impose both social and economic costs on cities and their residents. The cost of maintaining vacant and abandoned buildings is high; coupled with the loss of revenues associated with these properties, it leads to severe fiscal drains on local government. Looking at a variety of scenarios and tracking in detail the actions that city of Chicago was required to take, Apgar and Duda concluded that when a property in foreclosure became vacant, and was not effectively secured and maintained by the owner or lender, the costs to the city could range from nearly $5400 to over $34,000 per property.[1] A recent study concluded that the annual cost to the city of Philadelphia to maintain its vacant properties was $20 million, including nearly $6 million in additional police and fire costs.[2]

Abandoned buildings also lead to loss in municipal tax revenues from the diminution of adjacent property values[3]. The same Philadelphia study found that proximity to vacant properties led to a loss of $3.6 billion in aggregate property value of single family homes alone. That translates into a loss of $137 million in property tax revenues to the city and school district, or roughly 12 percent of total property tax collections.

These are quantifiable effects that can be measured in every neighborhood where vacant properties exist. They are transcended, however, by the intangible effects of those properties. Not only do vacant properties undermine the vitality and quality of life of the city's neighborhoods, but they act as a barrier to the revitalization of areas where market demand might actually exist were it not for the presence of those properties, and as a disincentive for the regeneration of the city as a whole. In addition, their presence raises a powerful issue of social justice: Is it fair that lower-income households should

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[1] William C. Apgar, Mark Duda and Rochelle Nawrocki Gorey, *The Municipal Cost of Foreclosures: A Chicago Case Study* (Minneapolis: Homeownership Preservation Foundation, 2005).

[2] Econsult Corporation et al (2010). *Vacant Land Management in Philadelphia: The Cost of the Current System and the Benefits of Reform.* Prepared for the Redevelopment Authority of the City of Philadelphia and the Philadelphia Association of Community Development Corporations, p9.

[3] The loss of property tax revenues from abandoned buildings themselves is not the result of their being abandoned, but a corollary, reflecting the reasons that owners abandon their properties rather than maintain them and pay their taxes.

see their modest wealth diminished, their personal security compromised, and the prospects of their neighborhoods blighted, as a result of circumstances utterly outside their control? As summarized by the National Vacant Properties Campaign (now the Center for Community Progress), the cumulative effects of abandoned buildings on neighborhoods can be very destructive:

> With abandoned buildings comes social fragmentation. Individuals who live in communities with an increasing number of vacant buildings begin to feel isolated, weakening the community as a whole. A large number of vacant buildings in a neighborhood symbolizes that no one cares, increasing the likelihood that property values will continue to decline and that further abandonment will set in. In the case of vacant properties, the problem is out in the open, for all to see. The aesthetic impact of abandoned properties, while not easily quantified in dollars, is another cost.[4]

Not surprisingly, then, abandoned buildings consistently rank at or near the top of neighborhood problems identified by residents of lower-income neighborhoods. As Frank Ford of Cleveland's Neighborhood Progress Inc. puts it, "they want them down or rehabbed, but they don't care which."[5]

This presentation will focus on three areas where local governments are using creative ordinances or strategies to address these problems:

1. Vacant property registration ordinances
2. Creative strategies to deal with vacant and abandoned properties where owners fail to take responsibility for their properties
3. Creative approaches to dealing with properties in foreclosure

Each of these is discussed briefly below, with additional materials attached to this paper. Needless to say, this short paper does not represent a comprehensive or exhaustive exploration of these issues, but only an introduction or overview.

1. VACANT PROPERTY REGISTRATION ORDINANCES

A vacant property registration ordinance is simply that: an ordinance that requires owners of vacant property to register with the municipality, and provide the municipality with the ability to reach a representative of the owner and to serve notice on the owner as may be needed. A model vacant property registration ordinance is attached to this

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[4] National Vacant Properties Campaign (2005). *Vacant Properties: The True Cost to Communities*, Washington, DC: NVPC, p11

[5] Interview with Frank Ford, Neighborhood Progress, Inc., Cleveland, Ohio, Feb. 28, 2012

paper as **Exhibit 1**. That model ordinance also contains commentary with respect to the rationale for different provisions within the ordinance.

In addition to requiring contact information for the owner and, where appropriate, a local representative of the owner, the ordinance may contain a number of other potentially important provisions, including but not limited to:

(1) Requirements governing the maintenance of the property, such as boarding and securing the property; maintaining the grounds; and posting the owner's contact information on the property.
(2) Procedural requirements, including deadlines and penalties for non-compliance;
(3) Fees and fee waivers for properties in the process of rehabilitation.

The subject of fees can be controversial. The fee should bear a reasonable relationship to the costs imposed on the municipality by vacant properties; at a minimum, it should not exceed a reasonable estimate of those costs. Moreover, the funds collected should be used to help defray those costs.[6] Even if those criteria can justify a steep fee, the size of the fees should not be unduly punitive, particularly for owners who are still paying property taxes and making at least some effort to maintain their property.

In parallel with enacting such an ordinance, cities may also want to pursue strategies to ensure that owners actually register, since otherwise compliance may be haphazard and limited, defeating the purpose of the ordinance.[7] In addition to partnering with local neighborhood organizations and non-profits, cities can use their web sites to encourage residents to 'turn in' unregistered vacant properties.

New Jersey statutes offer a separate procedure, the creation of an official **abandoned property list** by the municipality, a procedure that requires publication and notice to owners, who are given the opportunity to seek removal of their property from the list on the grounds that it does not meet the statutory definition of abandoned property.[8]

The significance of the abandoned property list is that once a property has been placed on the list, the municipality may treat it differently from other properties with respect to the tax sale and tax foreclosure procedure, and may use the spot blight procedure (see 2(b) below) to take the property through eminent domain. Because of these possibilities,

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[6] The extent to which vacant property registration fees must satisfy various nexus tests that have been established both by statute and through case law in different states with respect to development impact fees and similar exactions has, to this author's knowledge, not been analyzed in detail. The Wilmington ordinance, including its aggressive fee schedule, was upheld by the Delaware courts; see *Adjile Inc. et als v. City of Wilmington*, Superior Court (November 2004),2004 WL 2827893,; *affirmed*, Delaware Supreme Court, 875 A2d 632 (2005)

[7] The attached model ordinance includes a paragraph designed to encourage the city to partner with local non-profits to identify and track down owners.

[8] The provisions governing creation of an abandoned property list are set forth in NJSA 55:19-55; the statutory definition of abandoned property appears in NJSA 55:19-81 through 83.

New Jersey municipalities that have created such lists have found that simply by placing properties on the list, some owners are motivated to rehabilitate their properties and restore them to use.

FOR MORE INFORMATION

Safeguard Properties Inc. maintains a web site that tracks vacant property registration ordinances around the United States. It can be accessed at http://www.safeguardproperties.com/Resources/Vacant_Property_Registration.aspx

2. CREATIVE STRATEGIES TO DEAL WITH ABANDONED PROPERTIES

While getting private owners to restore their properties is almost always the best course of action, there are many cases where municipal efforts to that end are unsuccessful. In such cases, a municipality which is actively seeking to tackle its problem property issues may find it necessary to take the property, or bring about its reuse directly. [9]

This section will provide a brief overview of three strategies that have been found effective in different communities to address abandoned properties where direct action by local government has proved necessary. Local officials in communities with vacant and abandoned properties should familiarize themselves with these strategies, as well as with other legal and practical tools that may be available to address these problems.

a. Receivership

Vacant property receivership is the power of the municipality[10] to seek an order from a court of competent jurisdiction giving them or a receiver whom they designate control over a vacant property for the purpose of putting it back into productive use. A number of states, such as Missouri, Illinois, New Jersey, Ohio and Pennsylvania, have statutes specific to vacant property, while others, such as Massachusetts and Indiana, have broadly written receivership statutes that apply to both occupied and vacant properties.[11] One of the most effective and widely used programs is in Baltimore, created through a local ordinance enacted under that city's broad home rule powers.

Two key issues that must be addressed in any receivership statute or program are (1) to make sure that the receiver has the tools he or she needs to move forward, including

[9] Or in some cases, its demolition, which is a different matter not specifically addressed in this paper.

[10] Some states, including Missouri and Illinois, grant this power to certain non-profit development entities.

[11] Somewhat confusingly, the same procedure is called 'possession' in the Illinois and New Jersey statutes, and 'conservatorship' in Pennsylvania.

control of the property and the ability to place liens on the property for receivership costs, which then take priority over existing liens; and (2) the ability to convey clear and marketable title to the property after the receivership, in the event that the owner fails to regain control of the property.

FOR MORE INFORMATION

An outstanding article that discusses vacant property receivership in general and the Baltimore program in particular is James J. Kelly, "Refreshing the Heart of the City: Vacant Building Receivership As a Tool for Neighborhood Revitalization and Community Empowerment." This article, which first appeared in the Journal of Affordable Housing, can be downloaded from the Center for Community Progress web site at http://www.communityprogress.net/refreshing-the-heart-of-the-city-resources-9.php.

Also see Alan Mallach, *Bringing Buildings Back: From Vacant Properties to Community Assets,* Montclair NJ: National Housing Institute, distributed by Rutgers University Press (2nd Edition 2010), pages 157 through 165

b. Spot blight eminent domain

Under most state laws, eminent domain can be used to take properties for public *use* in the literal sense, such as a park or road right-of-way, or for public *purposes* such as the elimination of blight through the process of urban renewal or redevelopment, a process that typically involves designation of a blighted area and adoption of a redevelopment plan. A number of states, however, have enacted what are known as *spot blight* taking or eminent domain statutes, which permit the use of eminent domain to take individual blighting properties in order to eliminate their blighting effect on the community. Such states include New Jersey, Ohio, Pennsylvania, Virginia, Tennessee and the District of Columbia. Such ordinances permit a more focused, surgical approach toward the problem of blighted properties, particularly where those properties are scattered within otherwise viable residential or non-residential areas where designation of a redevelopment area is problematic or inappropriate.

A common problem with carrying out spot blight takings is how to determine fair market value. This often results – because of the vagaries of the appraisal process – in cities paying substantial sums for properties that in reality have no *as is* value, since if rehabilitated, their market value would be less than the cost of rehabilitation, a not uncommon situation in many urban or other low value areas. Few appraisers have any real understanding of the actual market values in low value urban areas.

In order to address this problem, the New Jersey statute mandates that fair market value be determined by calculating the cost of rehabilitation[12] and comparing that cost

[12] If the property cannot be rehabilitated, the appraiser is required to substitute the cost of demolition and construction of a comparable building on the site for the cost of rehabilitation.

to the market value of a 'move-in' fully rehabilitated property "taking into account the market conditions particular to the neighborhood or subarea of the municipality in which the property is located." The statute further provides that if the costs exceed the resulting market value, "there shall be a rebuttable presumption in all proceedings […] that the fair market value of the property is zero and that no compensation is due the owner."[13] A discussion of spot blight taking under New Jersey law is attached to this paper as **Exhibit 2**. This procedure has been used on numerous occasions in New Jersey since enactment in 2004, and has never been challenged in the courts.

c. Tax foreclosure strategies

Many problem properties sooner or later become subject to tax sale or foreclosure[14] as a result of their owners' failure to pay property taxes. While state laws vary widely with respect to the ability of local governments to take title to properties through tax foreclosure, many provide some path to that end.

There is an inherent tension in tax foreclosure between the goal of realizing the most immediate revenues for local government and the goal of fostering the most beneficial reuse of vacant and problem properties. Experience has shown that when investors buy vacant and problem properties at tax foreclosure sales, making local government whole on its taxes, this often results in a 'revolving door' of neglect and vacancy, with the properties rarely being put back to productive use, and often re-appearing on tax sale lists a few years later.

It is often good policy for local government to use tax foreclosure as a means of taking title to problem properties, in order to be able to place them in the hands of responsible parties, and get them back into productive use. Although this may mean realizing less immediate revenue, the long-term benefits, including revenues realized, are likely to be far greater than if the property is allowed to go to an investor.

Whether this can be done, or how easily, varies widely depending on each state's laws. In recent years, as part of state legislation authorizing the establishment of municipal or county land bank entities, Michigan, Ohio and New York states have established specific procedures by which such entities can take title to properties through the tax foreclosure process. In a different vein, Maryland (for the city of Baltimore) and New Jersey have enacted laws which provide for a special tax foreclosure process for vacant or abandoned properties.[15] New York State authorized New York City to create a special tax foreclosure procedure for problem multifamily properties known as the Third

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[13] NJSA 55:19-102.

[14] State laws vary widely, with some states moving directly to tax foreclosure; i.e., sale of the property itself, while others provide for a tax lien sale, under which the lien on the property is sold, which may result in subsequent foreclosure proceedings. Similarly, they vary widely with respect to the manner in which sales take place, the nature of the bidding, the owner's right to redeem, etc.

[15] Maryland House Bill 743 (2000) and NJSA 55:19-101 (2004).

Party Transfer Program.[16] Even where state law does not provide a specific process for public sector 'capture' of tax liens or tax-delinquent properties, the statute may allow for some procedure by which that can take place, although it may be more complicated.

D. Additional note

While some states give their local governments broad latitude to enact ordinances under their police powers, most reserve some or all areas of authority to the state, and require that municipalities act within the framework of state statutes. This is particularly true with respect to such areas as tax foreclosure and the exercise of eminent domain. Municipal officials seeking to address their abandoned property problems, therefore, must not only be aware in detail of the provisions of state law, and the extent of their flexibility under state home rule or other statutes, but should be prepared to push for changes to the law to give them stronger tools to deal with their problems.

In recent years, effective advocacy efforts have led to important changes in the laws of many states, including Pennsylvania, New Jersey and Indiana. These changes have usually happened as a result of broad coalitions, in which local governments and non-governmental entities have collaborated to good effect.

3. DEALING WITH PROPERTIES IN MORTGAGE FORECLOSURE

An issue that has emerged as a serious problem in many cities in recent years is how to address the condition of properties where a mortgage foreclosure proceeding has been initiated, the property has become vacant or the owner of record has abandoned it[17], but title has not yet passed to the lender or a third party. In states with judicial foreclosure procedures[18] this is a particularly serious problem, since the period from initial filing to foreclosure sale is often protracted. In New Jersey and New York, it can be more than two years. It is often a problem in non-judicial states as well. The procedures in non-judicial states are not without delays; moreover, in recent years, faced with a backlog of delinquencies at one end and REO properties at the other, many banks have not moved

[16] Authorized by New York State Local Laws 37 and 69 (1996)

[17] Abandonment and vacancy in this case may not be the same thing, as in the case of an absentee-owned property whose owner has abandoned it, but which still contains sitting tenants.

[18] Judicial foreclosure procedures are those where the foreclosure must be filed with a court and cannot proceed to foreclosure sale until the court has acted, while non-judicial foreclosures are those in which the lender submits the foreclosure directly to an official authorized to sell the property at foreclosure or trustee sale. Twenty two states use judicial procedures as the primary way to foreclose: Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Vermont and Wisconsin. All others use non-judicial foreclosure.

as expeditiously as possible to complete foreclosures.

FOR MORE INFORMATION

Good sources of general information on vacant property tools and strategies include:

How Can Municipalities Confront the Vacant Properties Challenge?
Chicago, IL: Business and Professional People for the Public Interest
http://www.bpichicago.org/VacantPropertyResources.php
This includes both an introductory guide and a separate toolkit publication

Alan Mallach, *Bringing Buildings Back: From Vacant Properties to Community Assets,* Montclair NJ: National Housing Institute, distributed by Rutgers University Press (2nd Edition 2010), Part 2, pages 69 through 182

A good on-line resource is the Building America's Cities Toolkit of the Center for Community Progress
http://www.communityprogress.net/toolkit-pages-292.php

Organizations in a number of states have prepared guidebooks or other materials to help local officials and others understand the tools available to deal with problem properties under their state laws. Four good examples include:

Indiana
Abandoned Property in Indiana: Legal, Practical and Policy Effects of 2006 Statutory Amendments
http://www.indy.gov/eGov/City/DMD/Abandoned/Documents/PDF/INAbHTechnicalManual.pdf

New Jersey
Restoring Problem Properties: A Guide to New Jersey's Abandoned Property Tools
Housing & Community Development Network of New Jersey
http://data.memberclicks.com/site/hcdnnj/NJToolkitFINAL.pdf

Pennsylvania
Quick Guide: New Tools to Address Blight and Abandonment
Housing Alliance of Pennsylvania
http://www.housingalliancepa.org/resources/46

Texas
Texas Problem Property Toolkit
Community Development Clinic, University of Texas School of Law
https://www.utexas.edu/law/clinics/community/ProblemPropertiesTexasToolkit10web.pdf

Many lenders[19] make varying degrees of effort to maintain vacant properties during foreclosure, typically hiring national or local vendors to act on their behalf. Fannie Mae, Freddie Mac and the Federal Housing Administration spent nearly $1.2 *billion* in 2010 in payments to vendors to maintain properties.[20] At the same time, depending on the lender, the nature of the mortgage documents, and the perceived value of the property, lender practices vary widely. As a result, the idea of imposing an explicit legal obligation on lenders to maintain properties in foreclosure has become widespread.

It should be stressed that, as a general rule, contrary to some assertions by mortgage industry figures, *lenders and their agents are not subject to any legal barriers to their ability to enter and make reasonable repairs to vacant properties on which they hold mortgages.* The authority to do so is an explicit feature of every conforming Fannie Mae or Freddie Mac mortgage[21]. The only salient issue is whether government has the authority to *require* them to do so.

The first local ordinance imposing maintenance responsibilities on lenders during foreclosure is generally considered to be that of Chula Vista, California, which was enacted in 2007.[22] It represents an exercise of the police power under California law, which confers broad 'home rule' powers on local governments. Since then, it has been replicated in many California cities, as well as in some municipalities in other states,

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[19] The term lender in this context is inexact, because of the wide variety of entities who actually initiate the foreclosure on behalf of the entity holding the mortgage, which may or may not be (and usually is not) the entity that actually made the loan in the first place. It is used for simplicity here.

[20] U.S. Government Accountability Office, *Vacant Properties: Growing Number Increases Communities' Costs and Challenges* (November 2011), pages 31-32. This includes costs incurred both during the foreclosure process and after the foreclosure sale.

[21] This section reads as follows:

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

[22] See http://www.chulavistaca.gov/city_services/development_services/Planning_Building/Building/Code_Enforcement/AbanResPropertyProg.asp

such as Florida, which grants its cities similar home rule authority. These ordinances have generated widespread compliance, although we are not aware of any formal court decisions on their validity. Whether such a local ordinance would pass muster in other states, however, would depend on the extent to which statutory and case law in that state allows municipalities discretion to enact ordinances under their police powers. This is a gray area in many states, although one can reasonably assume that in Dillon's Rule states like Virginia or North Carolina, municipalities would have a hard time arguing that they have the authority to enact such an ordinance.

As part of a larger bill addressing various foreclosure-related matters, the New Jersey Legislature enacted what is widely known as the Creditor Responsibility Law, which became effective early in 2010. This law, which is reproduced with commentary by the author as **Exhibit 3**, in effect adopts the principle that when a lender initiates a residential foreclosure, the lender has asserted its willingness to take responsibility for maintaining the property *in the event that it becomes vacant, or in the case of a rental property, is abandoned by its owner*.

Such ordinances, or actions under state law as in New Jersey, can become a valuable addition to the local arsenal of tools to enable them to deal with their problem properties.

EXHIBIT 1: MODEL VACANT PROPERTY REGISTRATION ORDINANCE[23]

AN ORDINANCE GOVERNING THE MAINTENANCE OF VACANT PROPERTIES IN THE CITY OF [NAME], ESTABLISHING REGISTRATION REQUIREMENTS AND LEVYING A REGISTRATION FEE ON OWNERS OF VACANT PROPERTIES

WHEREAS, the city of [NAME] contains many structures that are vacant in whole or large part; and

WHEREAS, in many cases the owners or other responsible parties of these structures are neglectful of them, and are failing to maintain them or secure them to adequate standard, or restore them to productive use; and

WHEREAS, many of these structures are in violation of state and local housing and property maintenance codes; and

WHEREAS, it has been established that vacant and abandoned structures cause severe harm to the health, safety and general welfare of the community, including diminution of neighboring property values, loss of property tax revenues, accumulations of trash and debris, increased risk of fire, and potential increases in criminal activity and public health risk; and

WHEREAS, the city of [NAME] incurs disproportionate costs in order to deal with the problems of vacant and

[23] This ordinance was prepared by Alan Mallach with particular reference to New Jersey statutes and practices. Others are welcome to use its provisions and language, but should be careful to adapt them to the statutory framework and practices of the state in which it is to be used.

COMMENTS

The findings are designed to establish the nexus that may be required under state statutes or case law for imposing the fee. Some states may require substantiation of the cost impact of vacant properties.

abandoned structures, including but not limited to police calls, fire calls and property inspections; and

WHEREAS, it is in the public interest for the city of [NAME] to establish minimum standards of accountability on the owners or other responsible parties of vacant and abandoned structures in order to protect the health, safety and general welfare of the residents of the city of [NAME]; and

WHEREAS, it is in the public interest for the city of [NAME] to impose a fee in conjunction with a registration ordinance for vacant and abandoned structures in light of the disproportionate costs imposed on the city by the presence of these structures;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF [NAME]:

(1) For purposes of this ordinance, the following terms are defined as set forth herein:

"Municipal officer" shall mean the Director of the Department of _____ or such official within that department as may be designated by the Director in writing.

"Owner" shall include the title holder, any agent of the title holder having authority to act with respect to a vacant property, any foreclosing entity that has filed a notice with the municipal clerk pursuant to the provisions of C.46:10B-51 (P.L.2008, c.127, Sec.17 as amended by P.L.2009, c.296), or any other entity determined by the public officer of the city of [NAME] to have authority to act with respect to the property.

"Vacant Property" shall mean any building or structure which is not at present legally occupied or at which all lawful business or construction operations or residential or other occupancy

The New Jersey statute cited here imposes legal responsibility on lenders initiating foreclosure for maintaining properties in the foreclosure process if they become vacant at any point subsequent to the initial foreclosure filing. Some states may bar municipalities from imposing these obligations on lenders prior to their taking title to a property.

New Jersey law provides a detailed definition of an abandoned property, which can be found in New Jersey Statutes Annotated (N.J.S.A) 55:19-81 through 83. Where no such state statutory definition exists, the ordinance should include a full, clearly understandable and easily executed, definition. have substantially ceased, and which is in such condition that it cannot legally be re-occupied without repair or rehabilitation, including but not limited to any property meeting the definition of abandoned property in N.J.S.A.55:19-80; provided, however, that any habitable property where all building systems are in sound working order, where the building and grounds are maintained in good condition, and [or] which is being actively marketed by its owner for sale or rental, shall not be deemed a vacant property for purposes of this ordinance.

These properties should not be subject to the registration requirement

(2) a. Effective on [DATE], the owner of any vacant property as defined herein shall, within 30 days after the building becomes vacant property or within 30 days after assuming ownership of the vacant property, whichever is later; or within 10 days of receipt of notice by the municipality, file a registration statement for such vacant property with the municipal officer on forms provided for that purpose by the municipal officer along with any fee required by this ordinance. Failure to receive notice by the municipality shall not constitute grounds for failing to register the property.

This section sets forth the key procedural elements of the ordinance.

b. Each property having a separate tax block and lot number shall be registered separately.

c. The registration shall include the information required under section (4) of this ordinance, the insurance certificate required under section (7) of this ordinance, as well as any additional information that the municipal officer may reasonably require.

d. The registration shall remain valid for one year from the date of registration. The owner shall be required to renew the registration annually as long as the building remains vacant property and shall pay a registration or renewal fee in the amount prescribed in section (5) for each vacant property registered.

e. The municipal officer may establish for purposes of efficient administration that all registrations shall be renewed by a single date in each year, which date shall be established by the municipal officer in which case the initial registration fee shall be pro-rated for registration statements received less than 10 months prior to that date.

f. i. Any owner of vacant property who plans to restore the property to productive use and occupancy during the twelve month period following the date of the initial registration of the property shall file a detailed statement of the owner's plans for restoration of the property with the registration statement and shall be exempt from payment of the registration fee, but shall comply with all other provisions of this ordinance. In the event that the property has not been restored to productive use and occupancy at the end of the twelve month period, the owner shall be liable for any fee waived. The municipal officer may extend the waiver of the registration fee for not more than one additional year in response to a written request by the property owner where the municipal officer finds that compelling conditions outside the owner's control made it impossible for the owner to restore the property within the initial twelve month period.

This provision exempts properties with a detailed plan for restoration and reuse from the fee. It does NOT exempt them from the registration requirement, since it is important to have these properties in the system for information purposes, whatever the owner's plans.

ii. Where the owner is an entity experienced in rehabilitation or redevelopment of vacant properties, and where the property subject to this ordinance is being held for a project of rehabilitation or redevelopment consistent with municipal plans and ordinances, and where by

In many cases, where large or multiple properties are involved, the difficulties of putting together financing, obtaining environmental clearances, etc. may delay rehabilitation. The ordinance should provide flexibility to deal with these realities.

virtue of financing, market or other conditions that project may require more than one year for realization, the municipal officer may extend the waiver of the registration fee on an annual basis without limitation upon written request by the owner as long as the municipal officer finds that the owner is making reasonable progress toward completion of the project. The owner shall provide municipal officer with such documentation, which may include plans, financing applications, applications for land use approval or other evidence of progress.

g. The owner shall notify the municipal officer within 30 days of any change in the registration information by filing an amended registration statement on a form provided by the municipal officer for such purpose.

h. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the city against the owner or owners of the building.

(3) At any time after filing a registration statement or a renewal of a registration statement, the owner of any vacant property shall provide access to the city to conduct exterior and interior inspections of the building to determine compliance with municipal codes, on reasonable notice to the property owner or the designated agent.

(4) a. The registration statement shall include (i) the name, street address, e-mail address and telephone number of a natural person 21 years of age or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such owner or owners in connection with the

enforcement of any applicable code; and (ii) the name, street address, e-mail address and telephone number of the firm or individual responsible for maintaining the property. The individual or a representative of the firm responsible for maintaining the property shall be available by telephone or in person on a 24 hour per day, seven day per week basis. The two entities may be the same or different persons. Both entities shown on the statement must maintain offices in the state of New Jersey or reside within the state of New Jersey.

b. An owner who is a natural person and who maintains offices in the state of New Jersey or resides within the state of New Jersey may designate him or herself as agent or as the individual responsible for maintaining the property.

c. By designating an authorized agent under the provisions of this section the owner consents to receive any and all notices of code violations concerning the registered vacant property and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the registered building by service of the notice or process on the authorized agent. Any owner who has designated an authorized agent under the provisions of this section shall be deemed to consent to the continuation of the agent's designation for the purposes of this section until the owner notifies the municipal officer in writing of a change of authorized agent or until the owner files a new annual registration statement.

This provision and the following one are designed to reduce the problems that municipal code officials experience is serving notice on absent property owners.

d. Any owner who fails to register a vacant property under the provisions of this ordinance shall further be deemed to consent to receive, by posting at the building, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

(5) a. The registration and renewal fee for each building shall be as follows:

Initial registration	
First renewal	
Second renewal	
Any subsequent renewal	

b. All funds collected from registration and renewal fees under this section shall be deposited in a dedicated trust fund to be used exclusively to address vacant and problem properties, including but not limited to inspection, nuisance abatement, securing and boarding, maintaining property information systems, and reasonable administrative and legal costs associated with any of the above.

(6) The owner of any structure that has become vacant property, and any person responsible for maintaining any such building that has become vacant, shall within 30 days of the structure becoming vacant or 30 days of the owner taking title to the property shall:

(1) Enclose and secure the structure as provided in the applicable codes of the city of [NAME] or as set forth in rules and regulations adopted by the municipal officer to supplement those codes.

(2) Ensure that the grounds of the structure, including yards, fences, sidewalks, walks and driveways, are well-maintained and kept free from trash or debris.

(3) Post a sign affixed to the structure with the name, address and telephone number of the owner and the owner's authorized agent for the purpose of service of process, and the name, address and telephone number of the entity responsible for maintenance of the

There is considerable difference of opinion between cities with respect to what an appropriate annual fee should be, and whether it should increase on an annual basis if the property remains vacant, an approach pioneered by Wilmington Delaware. Municipalities should avoid, however, imposing high fees that are designed to be punitive rather than corrective in nature.

It is important to remember that as a fee, rather than a tax, there should be a clear nexus between the funds collected and their use to mitigate the problems associated with vacant properties. These funds should not be a roundabout way of enhancing the municipal general fund. In some states, to do so would be to invite litigation that might invalidate the ordinance.

Sections 6 and 7 set forth the substantive obligations imposed on owners to maintain the property and maintain insurance on the property. The ordinance gives the responsible municipal official the authority to expand on these obligations by adopting rules and regulations.

property, which may be the same as the owner or authorized agent. If the structure is set back from the street the sign may be posted on a well-secured post or stake in the front yard of the property. The sign shall be at least 18' x 24' in dimension, shall include the words "to report problems with this building, call…", and shall be placed in a location where it is clearly legible from the nearest public street or sidewalk, whichever is nearer; and

(4) Maintain the structure in a secure and closed condition, keep the grounds in a clean and well-maintained condition, and ensure that the sign is visible and intact until the building is again occupied or demolished or until repair or rehabilitation of the building is complete.

(7) The owner of any vacant property shall acquire or otherwise maintain liability insurance, in an amount of not less than $300,000.00 for buildings designed primarily for one to four unit residential use and not less than $1,000,000.00 for any other building, including but not limited to buildings designed for multifamily, manufacturing, storage or commercial uses, covering any damage to any person or any property caused by any physical condition of or in the building. Any insurance policy acquired or renewed after the building has become vacant shall provide for written notice to the municipal officer within 30 days of any lapse, cancellation or change in coverage. The owner shall attach evidence of the insurance to the owner's registration statement. Any registration statement submitted that does not include such evidence shall not be deemed to be a valid registration.

(8) a. The city of [NAME] shall establish an on-line registry of all properties registered with the city under this ordinance, which shall include a procedure by which citizens

Section 8 is designed to help ensure that as many of the city's vacant properties as possible do indeed register. To that end, it provides a means to enlist citizens, non-profit organizations

can provide the municipal officer through electronic means with information on unregistered properties that may be subject to this ordinance.

b. The city of [NAME] may enter into agreements with qualified non-profit and civic entities to assist the city to enforce this ordinance, including but not limited to identifying unregistered properties that may be subject to this ordinance, and may provide for payment to such entities of a percentage of the fees collected from the owners of properties identified and registered as a result of the actions of such entities.

(9) The municipal officer may issue rules and regulations for the administration of the provisions of this ordinance.

(10) a. Any person who violates any provision of this ordinance or of the rules and regulations issued hereunder shall be fined not less than $500.00 and not more than $1,000.00 for each offense. Every day that a violation continues shall constitute a separate and distinct offense. Fines assessed under this chapter shall be recoverable from the owner and shall be a lien on the property.

b. For purposes of this section, failure to register within 30 days after a building becomes vacant property or within 30 days after assuming ownership of a vacant property, whichever is later; or within 10 days of receipt of notice by the municipality, failure to provide correct information on the registration statement, failure to comply with the provisions of sections (6) or (7) of this ordinance, or such other matters as may be established by the rules and regulations of the municipal officer shall be deemed to be violations of this ordinance.

(11) This ordinance shall become effective upon publication as provided by law.

and neighborhood associations to help the city track down unregistered vacant properties.

EXHIBIT 2:
AN INTRODUCTION TO SPOT BLIGHT TAKING UNDER NEW JERSEY LAW

Alan Mallach

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1. Defining spot blight taking

Spot blight taking is the use of governmental eminent domain powers to take individual properties that are blighted in themselves and are likely to be having a blighting effect on surrounding properties, in order to make them available for productive reuse. As such, it is distinguished from taking under urban renewal or redevelopment, where the use of eminent domain to take individual properties is triggered by an overall plan for redeveloping a larger area, and those properties are being taken in order to further that overall plan. Spot blight taking may only take place where it is explicitly authorized by state law or (in the case of Baltimore) by local ordinance under a broad home rule grant of power. Many states, including Virginia, Tennessee, Pennsylvania, Ohio and New Jersey have enacted laws authorizing spot blight taking. While a few of these laws allow spot blight taking of occupied blighted properties, most – including New Jersey - limit spot blight taking to vacant or abandoned properties.[24] New Jersey's statute is unique, however, in mandating a particular procedure for establishing fair market value in spot blight takings.

2. *Spot blight taking under New Jersey law*

(A) *Overview.* Spot blight taking became part of New Jersey law with the enactment of the Urban Redevelopment Act, N.J.S.A.55:19-20 et seq. in 1996. The specific language authorizing spot blight taking appears in Section 37 of the act (C. 55:19-56(c)(2)). It provides that eminent domain can be used with respect to any property that has been placed on a **municipal abandoned property list**[25] at any point beginning 60 days after the end of the statutory period for appeal of inclusion of the property on the list, in order to make possible "the clearance, development, redevelopment, or repair of property being maintained as an abandoned property."

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[24] The New Jersey statute has a limited exception for mixed-use structures which may contain an occupied non-residential use such as a ground floor retail store, but where (1) two-thirds or more of the total floor area of the structure is residential space; and (2) the residential space is vacant and meets the abandonment criteria of N.J.S.A.55:19-81.

[25] In order to be placed on a municipal abandoned property list, the property must meet certain criteria spelled out in the statute; see N.J.S.A. 55:19-81 for the specific criteria. Generally speaking, the property may not have been legally occupied for six months and must meet at least one of a number of additional criteria. The property does not actually go on the list until the list has been published, the owner has been given the opportunity to appeal designation, and the time period for appeal has expired (or the appeal has been denied).

The procedures governing taking are set forth in the New Jersey Eminent Domain Act, N.J.S.A.20:3-2 et seq. New Jersey eminent domain procedure, as in many other states, follows the 'quick-take' model of eminent domain. Whether or not the parties have agreed on compensation, the public entity using the procedure takes title by filing a declaration of taking with the court and depositing its proposed compensation amount with the clerk of the court (C.20:3-17 to 19).[26] As a result, even though subsequent proceedings may take place to determine the amount of compensation due the property owner, the local government gains title to the property and extinguishes all outstanding liens and other interests far more quickly than under any other New Jersey legal procedure, typically between four to six months from initial notice to the property owner.[27] Clearly, however, the process is simpler and more satisfactory to all parties if they have agreed on the compensation in advance of filing the declaration of taking.[28]

The Abandoned Properties Rehabilitation Act, P.L.2003, c.210 (N.J.S.A.55:19-78 et seq.) enacted in January 2004 added a significant element to the use of spot blight taking by providing a specific method for determining fair market value in such proceedings, in contrast to typical eminent domain proceedings where, in essence, the method of setting fair market value was left to the discretion of each party's appraiser, guided by appraisal practice guidelines and case law. Requiring this particular method, as described below, was prompted by the widespread recognition that the most commonly used appraisal methods; e.g., use of comparable sales and adjustment factors, were simply not meaningful with respect to abandoned properties in weak market inner-city areas, where private market activity was at best inadequate, and at worst nonexistent, so that true comparables were realistically unavailable.

(B) *Procedure for determining fair market value*. Under C.55:19-102, fair market value in spot blight takings is to be determined by a comparison between the value of the property *placed back into reuse after rehabilitation or reconstruction* and the cost of taking the property from its 'as-is' condition to the

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[26] The only exception to this rule is where the condemnee brings a legal challenge to the authority of the condemnor to use eminent domain or seeks to void the action on the grounds of procedural deficiencies by the condemnor. This is not likely to arise in a properly conducted spot blight taking, since (in contrast to the use of urban renewal as the grounds for taking) the statutory criteria for use of spot blight taking, including the definition of an abandoned property, are very clear and relatively unsusceptible to different interpretations. Moreover, by virtue of the process of placing the property on the abandoned property list, the owner has already received substantial due process protections.

[27] If the municipality has taken title, and a subsequent proceeding leads to a determination that the compensation due the former owner is greater than the amount previously deposited with the court, the municipality must pay the additional amount.

[28] The question may arise: if the parties agree on compensation, why then is an eminent domain proceeding necessary? The principal reason to conduct an eminent domain proceeding in those cases is to ensure that liens and interests are extinguished in the process of title conveyance, something that does not happen with voluntary conveyances.

point where it can be reused. This method of valuation is based on the fundamental economic principle that the value of the as-is building (or the land, if the building cannot be restored and must be demolished) is the residual amount remaining between the return to the property owner once the building has been put into usable condition, and the cost of realizing that return. Thus, if a building is worth $100,000 after rehabilitation and the cost of rehabilitation (including soft costs, profit, etc.) is $75,000, the residual value is $25,000. A chart laying out the key steps in this procedure appears on the following page.

This procedure is straightforward and logical in concept, but not as easy in execution. Many appraisers are not well-versed in calculating rehabilitation or construction costs, let alone the total costs associated with the process, including profit or development fee, permit fees, marketing costs, and the like. Similarly, while the act requires that a determination be made whether the building is to be rehabilitated or demolished and a new building constructed on the site, it provides little guidance as to how that determine is to be made, a matter that is also usually outside the expertise of an appraiser.

As a result, in order to conduct a responsible appraisal under this procedure, one must find a (rare) appraiser who is expert in these matters; or, more likely, require that the appraiser consult with qualified individuals, in particular experienced developers of inner-city properties or municipal housing officials who can provide the appraiser with the necessary information to conduct an appraisal under the statute.[29]

If, as in the example above, the post-rehabilitation or reconstruction value *is greater than* the cost of rehabilitation, the fair market value is clearly defined as the difference between the two. If the post-rehabilitation or reconstruction value *is less than* the cost of rehabilitation, the property actually has a negative value. Rather than require the owner to pay the municipality to take the property off his hands, however, the statute specifies that in such cases “there shall be a rebuttable presumption …that the fair market value of the abandoned property is zero, and that no compensation is due the owner.”

[29] It is less appropriate for an appraiser to consult with a general contractor, since most contractors are only familiar with the construction or hard costs of a project, which may represent 75% or less of the total cost that needs to be factored into the appraisal. Moreover, if the appraisal results in a negative value for the land; i.e., meaning that the property will require public subsidy in order to be sold after rehab or new construction, the appraisal needs to take into account any cost factors that will be triggered by the use of public subsidy funds, such as Davis-Bacon wages.

SCHEMATIC PROCEDURE FOR DETERMINING FAIR MARKET VALUE IN SPOT BLIGHT TAKINGS

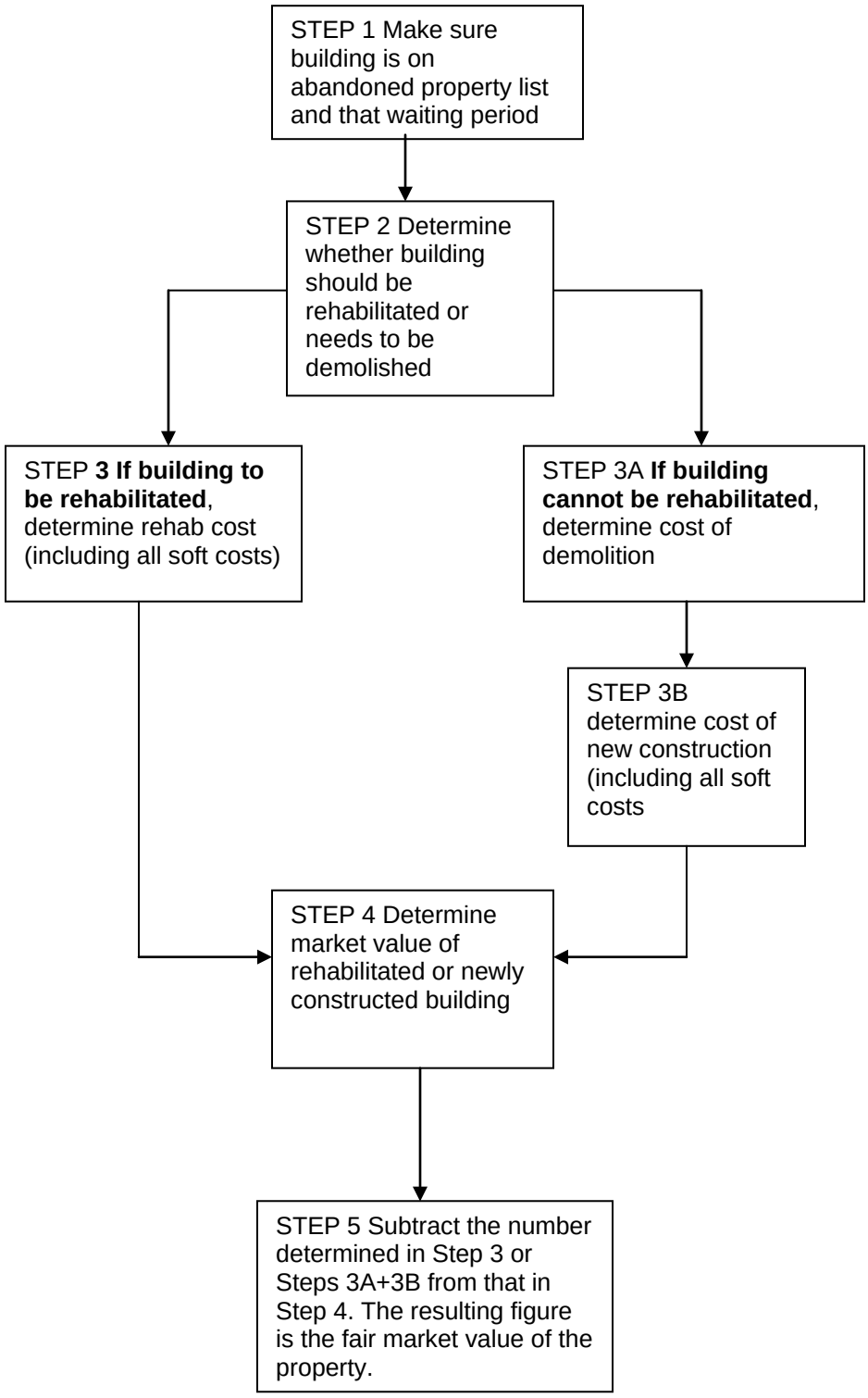


EXHIBIT 3

The New Jersey Creditor Responsibility Law:
A powerful tool for local governments and neighborhoods

New Jersey has given local governments a strong tool to ensure that properties in foreclosure will be maintained and do not blight their neighborhoods and drain municipal resources. This short paper provides local officials, CDC staff and others with a summary of the provisions of the new Creditor Responsibility Law.[30]

Why do we need the Creditor Responsibility Law?

In New Jersey, the process from foreclosure filing to sheriff's sale is long, often taking 18 months or longer. During that period it is not unusual for owners to abandon their properties. In the case of single family homeowners, the house is left empty. In the case of rental properties, if the owner walks away, the tenants remain in place without the ability or authority to maintain their buildings. Until now, with the owner unavailable and unwilling to take responsibility, local governments had no one to hold responsible for these problem buildings. The building could sit empty, or tenants could find themselves without heat or other essential services, for months or years.

The Creditor Responsibility Law changes this situation. Now, if a property becomes vacant during the foreclosure proceedings, or if the owner of rental property abandons a building with tenants in place during foreclosure proceedings, the local government can require the *entity initiating the foreclosure* (the creditor) to take responsibility for the property. For purposes of maintaining property abandoned by its owner, the creditor is deemed to have the same responsibility as the entity that holds title to the property.

How does the Creditor Responsibility Law work?

All creditors must notify the municipal clerk each time they initiate a foreclosure proceeding on a residential property. That way, each municipality can create a data base of all residential properties in foreclosure in the community. The notice must include contact information for an in-state entity that will accept service on behalf of the creditor, and for an entity responsible for receiving complaints about the property.

If at any point after the foreclosure proceeding has begun the local government finds that the property has been abandoned by its owner, responsibility devolves to the creditor. At that point, if there is a nuisance condition or a code violation on

[30] N.J.S.A. 46:10B-51 et seq. initially enacted as Chapter 127, Public Laws of 2008; amended by Chapter 296, Public Laws of 2009 signed into law on January 17, 2010. The term 'creditor responsibility law' is a descriptive term, and is not an official designation of the legislation.

the property, the appropriate municipal official may notify the creditor, who must "abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by State law or municipal ordinance."

If the municipality issues an order to a creditor to fix a violation or abate a nuisance, and the creditor fails to do so and the municipality has to spend funds to correct the problem, the municipality can not only put a lien on the property but can go after any other asset of the creditor to obtain repayment, just as if the creditor were the title holder under existing law.[31]

Making the Creditor Responsibility Law work

Municipalities using the Creditor Responsibility Law need to have a way to keep track of properties, and find out when properties in foreclosure have been abandoned by their owners, and thus become subject to the provisions of the law. While municipalities may not have the resources to keep track of the status of properties on which they receive notices, they can enlist partners – community development corporations, neighborhood organizations, block clubs, crime watch groups, tenant organizations, and citizens – to help out.

Municipalities can set up a data base for this information, and as notices are received, add them to the data base. The data base can be put on the municipality's web site, so citizens and others can see if a vacant property in their neighborhood is on the data base. The city can also send out periodic mailings to community-based organizations with lists of properties. Then, as organizations and individuals see that particular properties are empty or neglected, they can report those properties to the city, which can then follow up and issue citations to the creditor listed on the notice.

Municipalities can also use the information directly. Using the notices, they can identify which creditors are foreclosing on a large number of properties in the municipality, and reach out to those creditors to get them to undertake a proactive property maintenance program. By mapping the properties in the notices, they can find out where they have clusters of properties in foreclosure, and work with local CDCs or civic associations to mount efforts to maintain or gain control of those properties.

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[31] N.J.S.A 55:19-100 provides that "with respect to any lien placed against any real property pursuant to the provisions of section 1 or section 3 of P.L.1942, c.112 (C.40:48-2.3 or C.40:48-2.5) or section 1 of P.L.1989, c.91 (C.40:48-2.3a) or any receiver's lien pursuant to P.L.2003, c.295 (C.2A:42-114 et al.), the municipality shall have recourse with respect to the lien against any asset of the owner of the property if an individual, against any asset of any partner if a partnership, and against any asset of any owner of a 10% interest or greater if the owner is any other business organization or entity recognized pursuant to law." The Creditor Responsibility Law makes this recourse available to municipalities with respect to creditors as well as owners.

Full text of N.J.S.A. 46:10B-51, the New Jersey Creditor Responsibility Law

a. (1) A creditor serving a summons and complaint in an action to foreclose on a mortgage on residential property in this State shall, within 10 days of serving the summons and complaint, notify the municipal clerk of the municipality in which the property is located that a summons and complaint in an action to foreclose a mortgage has been filed against the subject property. The notice shall contain the name and contact information for the representative of the creditor who is responsible for receiving complaints of property maintenance and code violations, may contain information about more than one property, and shall be provided by mail or electronic communication, at the discretion of the municipal clerk. If the municipality has appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), the municipal clerk shall forward a copy of the notice to the public officer or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.

In the event that the property being foreclosed is an affordable unit pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), then the creditor shall identify that the property is subject to the "Fair Housing Act."

The notice shall also include the street address, lot and block number of the property, and the full name and contact information of an individual located within the State who is authorized to accept service on behalf of the creditor. The notice shall be provided to the municipal clerk within 10 days of service of a summons and complaint in an action to foreclose a mortgage against the subject property.

(2) Within 30 days following the effective date of P.L. 2009 c.296, any creditor that has initiated a foreclosure proceeding on any residential property which is pending in Superior Court shall provide to the municipal clerk of the municipality in which the property is located, a listing of all residential properties in the municipality for which the creditor has foreclosure actions pending by street address and lot and block number. If the municipality has appointed a public officer pursuant to P.L.1942, c.112 (C.40:48-2.3-15 et seq.), the municipal clerk shall forward a copy of the notice to the public officer, or shall otherwise provide it to any other local official responsible for administration of any property maintenance or public nuisance code.

b. If the owner of a residential property vacates or abandons any property on which a foreclosure proceeding has been initiated or if a residential property becomes vacant at any point subsequent to the creditor's filing the summons and complaint in an action to foreclose a mortgage against the subject property, but prior to vesting of title in the creditor or any other third party, and the property is found to be a nuisance or in violation of any applicable State or local code, the local public officer, municipal clerk, or other authorized municipal official shall notify the creditor, which shall have the responsibility to abate the nuisance or correct the violation in the same manner and to the same extent as the title owner of the property, to such standard or specification as may be required by State law or municipal ordinance.

c. If the municipality expends public funds in order to abate a nuisance or correct a violation on a residential property in situations in which the creditor was given notice pursuant to the provisions of subsection b. of this section but failed to abate the nuisance or correct the violation as directed, the municipality shall have the same recourse against the creditor as it would have against the title owner of the property, including but not limited to the recourse provided under section 42 of P.L.2003, c.210 (C.55:19-100).