

Ethical Issues in Code Enforcement:

PRO SE LITIGANTS, ADMINISTRATIVE LAW, & *EQUITABLE* RELIEF

Property Violation Fines in the City of Philadelphia

- Title 4, Section A-601 of the Philadelphia Code
  - A-601.1 Basic Fine = $300
  - A-601.2 Class II Offenses = $1,000
  - A-601.3 Class III Offenses = $2,000
  - A-601.4 Separate offense: Each day that a violation continues after issuance of a notice or order shall be deemed a separate offense.
  - A-601.5 Accrual of fines: Each day that a violation continues after the time for correcting the violation as stated in the initial notice of violation has passed, and where no timely appeal has been filed…shall be deemed a separate offense for purposes of determining the accrual of fines.

ABA Model Rule 1.13: Organization as a Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

….

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

City of Philadelphia Home Rule Charter

Article II: Legislative Branch

- Section 2-105, Employment of Counsel: "In the event the Law Department declines to advise or render legal services to the Council…whenever the Council is conducting an investigation relating to the executive and administrative branch…the Council may employ and fix the compensation of counsel of its own selection….In all other cases it shall obtain legal advice and services exclusively from the Law Department."

Article III: Executive and Administrative Branch - Organization

- Section 102: Mayor's Cabinet Includes City Solicitor
- Section 203: "The Mayor, with the advice and consent of a majority of all the members of Council, shall appoint the City Solicitor."

Article IV: Executive & Administrative Branch – Powers & Duties

- Chap. 4 Law Department:
  - Section 400(a) Legal Advice "It shall furnish legal advice to the Mayor, to the Council and to all officers, departments, board and commissions…"

Article IV: Executive & Administrative Branch Powers & Duties

Chap. 4 - Law Department

(a) Legal Advice. It shall furnish legal advice to the Mayor, to the Council and to all officers, departments, boards and commissions concerning any matter or thing arising in connection with the exercise of their official powers or performance of their official duties and except as otherwise expressly provided, shall supervise, direct and control all of the law work of the City.

(b) Litigation. The Department shall collect by suit or otherwise all debts, taxes and accounts…and it shall represent the City and every officer, department, board or commission in all litigation….

(d) Investigation and Law Enforcement. With the approval of the Mayor, the Department shall investigate any violation or alleged violation within the City of the statutes of the Commonwealth of Pennsylvania or the ordinances of the City which may come to its notice, and shall take such steps and adopt such means as may be reasonably necessary to enforce within the City such statutes and ordinances.

(e) Drafting and Codification of Ordinances. Upon request of the Council or of any councilmember, or of the Mayor, the Department shall prepare or assist in preparing any ordinance for introduction into the Council…

2018 Amendments to the Philadelphia Code

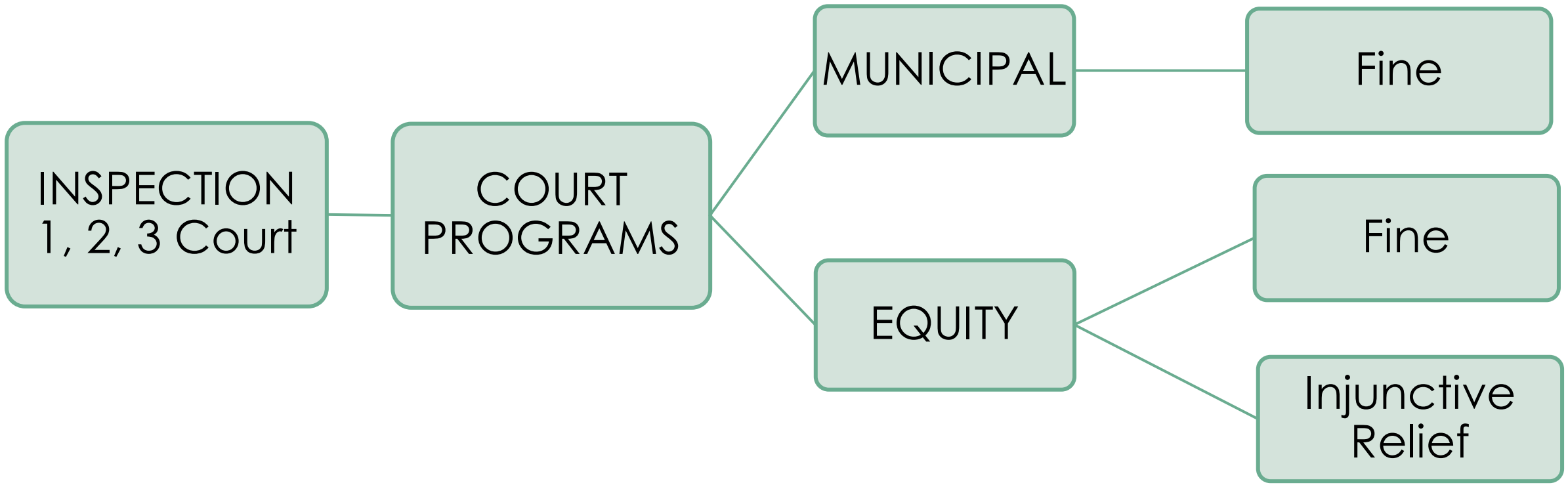
- Title 4, Section A-601 of the Philadelphia Code
  - A-601.1 Basic Fine = $300
    - ADDING Subsection (1) In addition to the Basic Fine, repeat violations of Section PM-301 ("General") or Section PM-302 ("Exterior Property Areas"), requiring more than one abatement of the same property in a twelve-month period, shall be subject to a penalty of one hundred dollars ($100) for each such repeat abatement action.
    - SECTION A-601 FINES

      A-601.1 Basic Fines: DELETING range of $150 to $300; ADDING all basic fines $300

      A-601.2 Fines for Class II offenses: DELETING range; ADDING all violators subject to the maximum

      A-601.3 Fines for Class III offenses: DELETING range; ADDING all violators subject to the maximum

What does enforcement look like?



ABA Model Rule 4.3: Dealing with Unrepresented Persons

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Snapshot of Philadelphia: Population

- Philadelphia is the 6th largest City
  - In 1950 the population was 2 million
  - By 2000, the population had dropped to 1.51 Million
  - Today the population is 1.6 million
    - Growth of 5.1% since the last census
    - Growth in the Collar Counties 3-7%
    - Growth in Pennsylvania as a whole 2.4%

Snapshot of Philadelphia: Income & Education

- Philadelphia's Median Household Income: $47,474
  - Median Household Income for the Collar Counties: $91,356
  - Median Household Income for the US: $68,703
  - Median Household Income for North Philadelphia $28,500
- High School Graduate or Higher, 25+: 84.7%
  - US is 88%
- Bachelor's Degree or Higher, 25+: 29.7%
  - US is 36%

Snapshot of Philadelphia: Poverty

- Philadelphia's Poverty Rate: 23.3%
- Philadelphia's Children in Poverty: 32%
- Philadelphians in Deep Poverty: 11.1%, which is more than 170,000 people (measured as at or below 50% of the Federal Poverty Line of $26,172, or $13,086)
- Philadelphia is the Poorest of the 10 Largest Cities in the US and the Only Big City with a Poverty Rate Above 20%

Snapshot of Philadelphia: Language

- Foreign Born Persons: 28.1%
- Median Foreign Born Age: 43 (33 for Native Born)
- Households with Language Other Than English Spoken at Home: 23.2%
- Philadelphia is a Sanctuary City
- Spanish, Urdu, Tamil, Malayalam, Hindi, Nepali, German, Italian



https://datausa.io/

Snapshot of Philadelphia: Housing Stock

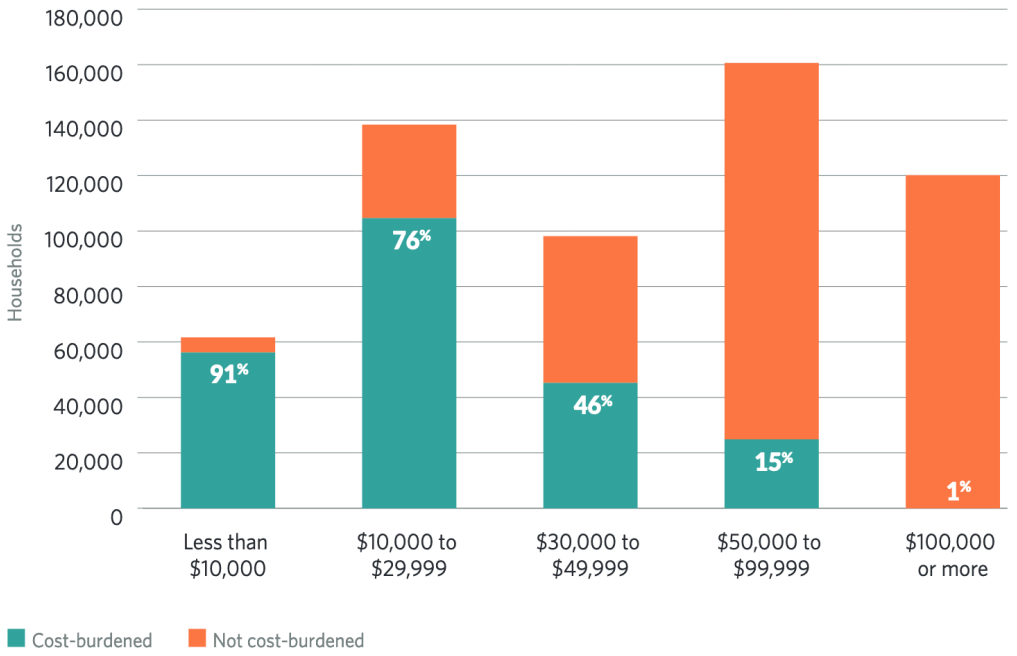
- Owner Occupied: 52%
- Median Monthly Owner Costs:
  - 60% with a Mortgage: $1,332
  - 40% without a mortgage $455
- Median Gross Rent: $1,042
  - 7% increase in the past decade
  - 29% in North Philadelphia
- Households that Are Cost Burdened: 40%,
  - 46% of Households in North Philadelphia are Cost Burdened

Cost Burdened: when a household spends 30% or more of its income on housing costs, including rent, mortgage payments, utilities, insurance, and property taxes

Figure 2

Household Cost Burden by Income in Philadelphia

Rates are highest for households with incomes below $30,000

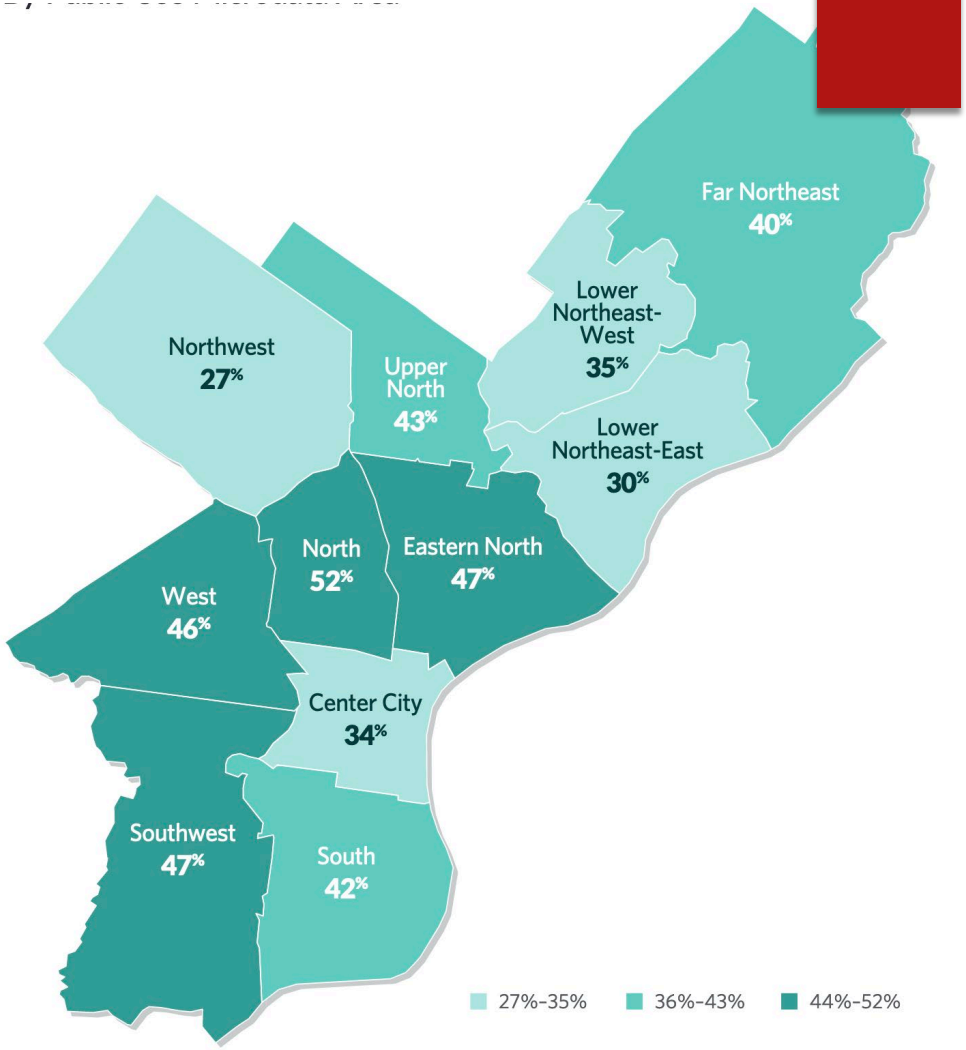


Sources: Pew analysis of U.S. Census Bureau, American Community Survey, Public Use Microdata Sample (2018 one-year estimates)

© 2020 The Pew Charitable Trusts

Owner Occupied

- Owner-Occupied: 52%
  - 40% Do Not Have Mortgages
    - 1 in 4 are valued at less than $70,000*
    - Roughly 38% or 48,000 households do not have mortgages and are headed by people with income less than $30,000
      - Half of this, or about 24,000, are households headed by a person over 64 years of age
- North Philadelphia
  - 52% of all owner-occupied are mortgage free



Source: Pew analysis of U.S. Census Bureau, American Community Survey, Public Use Microdata Sample (2018 one-year estimates)

© 2020 The Pew Charitable Trusts

TANGLED TITLE: Pew Charitable Trusts Findings

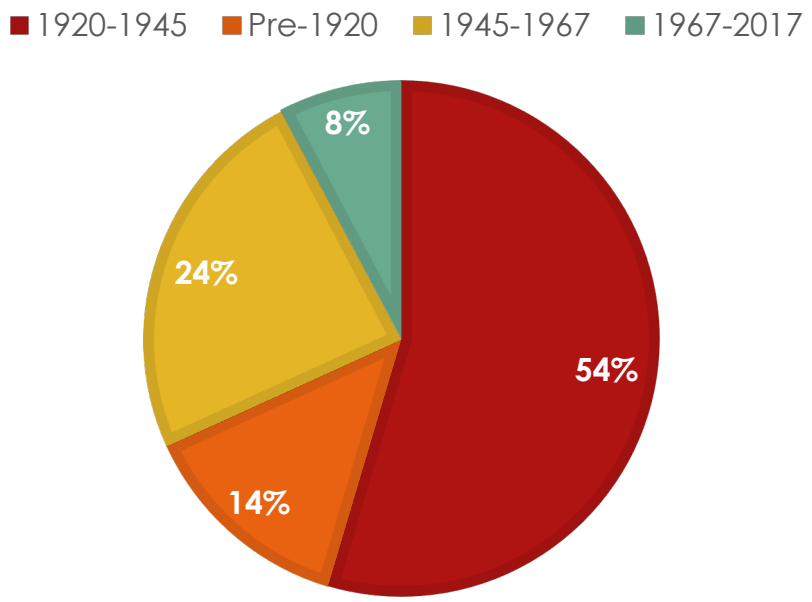
- Philadelphia has at least 10,407 tangled titles, affecting 2% of the city's 509,258 residential properties.
- Although the median assessed value of these homes—$88,800—is lower than the citywide median of $134,300, the properties are still collectively worth over $1.1 billion, representing a significant amount of family wealth.
- Neighborhoods most affected tend to be those with relatively low housing values, low incomes, and high poverty rates.
- The populations of the hardest-hit areas are predominantly Black, while those least affected are majority White.
- The cost of remedying a tangled title can be significant: about $9,200 for a home valued at the median of $88,800.
- Less than 20% of tangled titles in Philadelphia date from the year 2000 or earlier. The fact that tangled titles tend to be connected to more recent deaths, suggests that the issues tend to get resolved over time—either through the remedies outlined in the report or by losing the house to sheriff's sale or foreclosure.

https://www.pewtrusts.org/en/research-and-analysis/reports/2021/08/how-tangled-titles-affect-Philadelphia

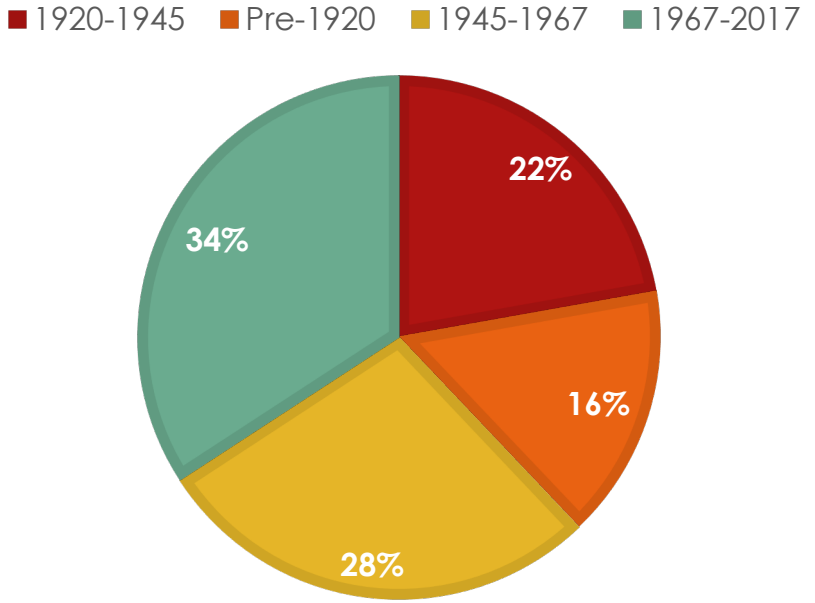
Repairs

- In 2019, 56% of Homeowners reported major repairs such as heating system upgrade or new roof in the last 2 years
  - Consistent across income groups, but:
    - High Income = saving
    - Low Income = forgoing repairs, abandoning projects in progress, or forging other needs to cover cost of home maintenance
- Tangled Title
  - No program assistance
  - No standing

PHILADELPHIA



50 CITY AVERAGE



Age of Housing Stock

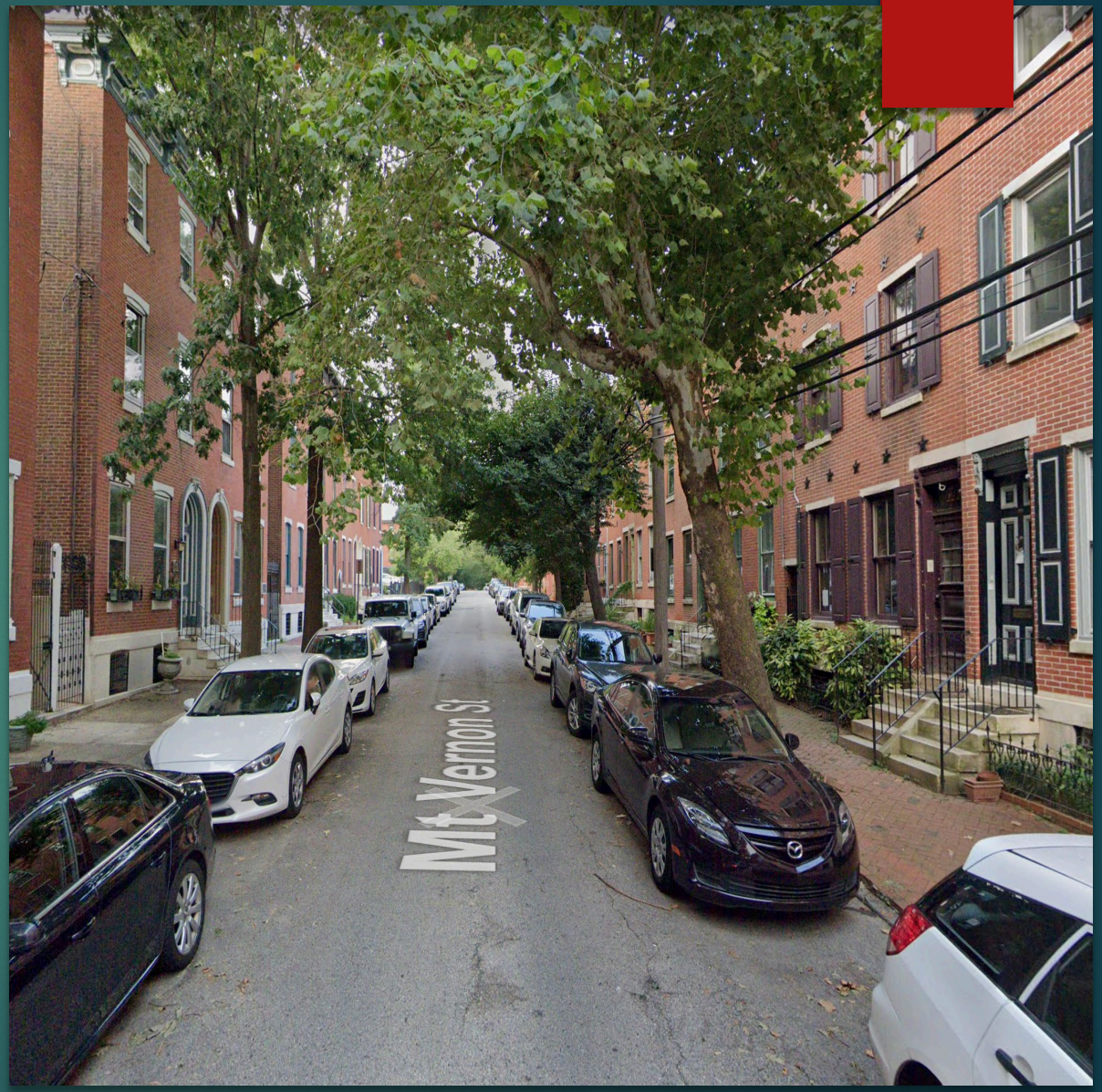
National Trust for Historic Preservation



ELFRETH'S ALLEY

A national historic landmark, the alley claims to be the oldest residential street. The houses were built between 1703 and 1836 and total 32.




Mt Vernon St

Dangerous Buildings 2020

- 326 Demolitions Performed (Private Demolition was around 500 in 2019)
- 158 Imminently Dangerous Buildings
  - Median Timeframe from ID Designation to Demolition: 128 Days
- 3,812 Unsafe Buildings



St. Bonaventure in Fairhill mid-demolition in 2013. The Edwin Forrest Durang-designed church was 120 years old. | Photo: Bradley Maule



PERMITS 2020

Average Number of Permits per Building Inspector: 513

Building, Electrical, Plumbing, & Zoning Permits Issued: 52,360









ABA Model Rule 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

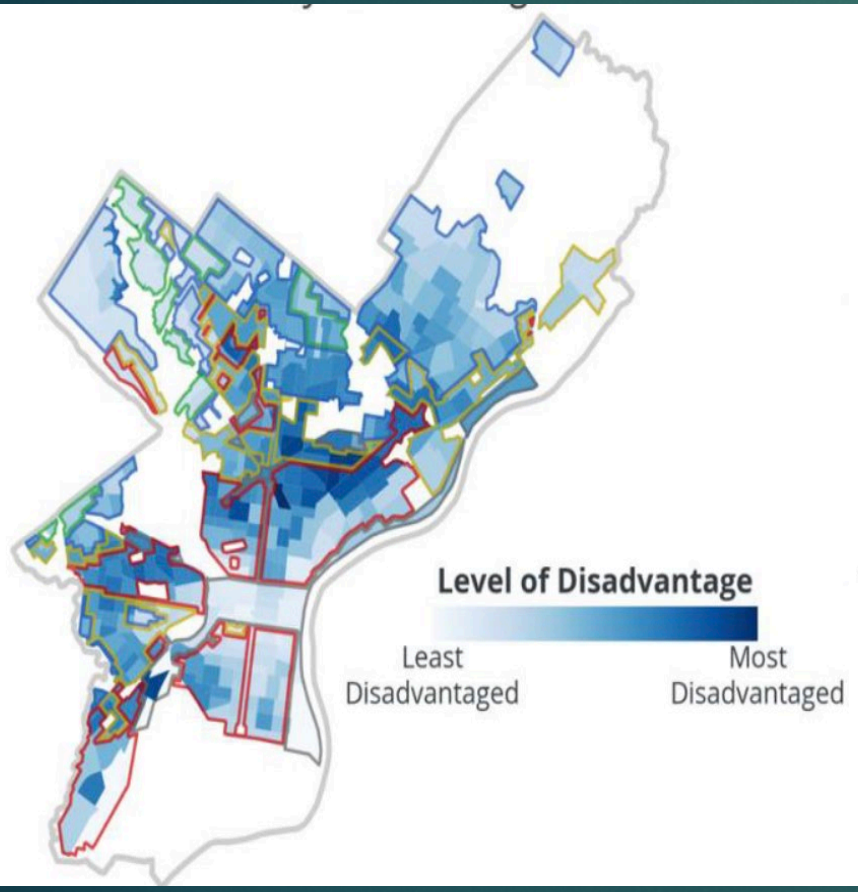


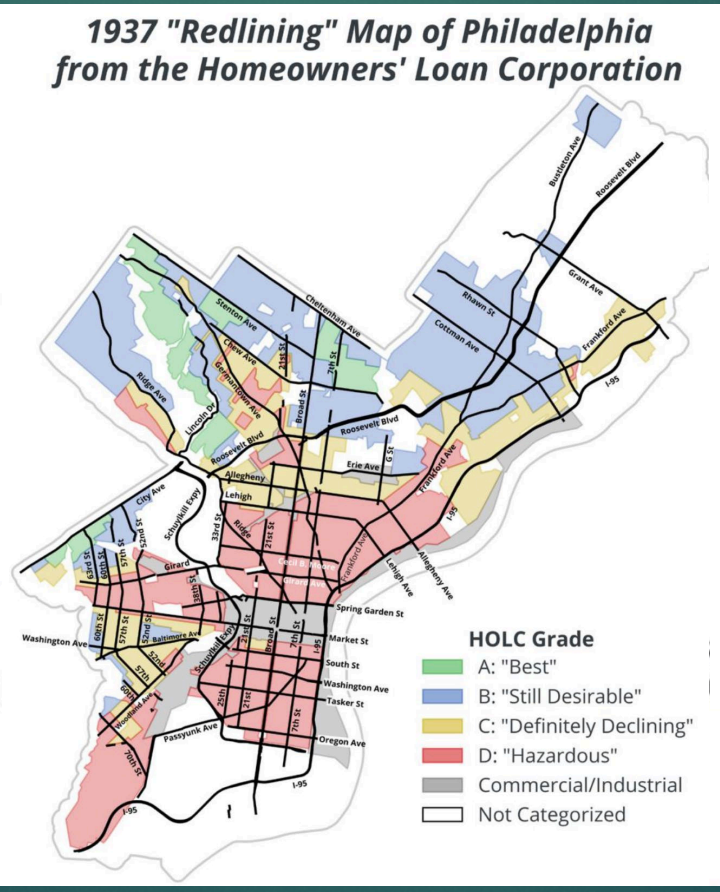
How is our Ethical Duty to Advise Impacted by our Role in a Democracy?

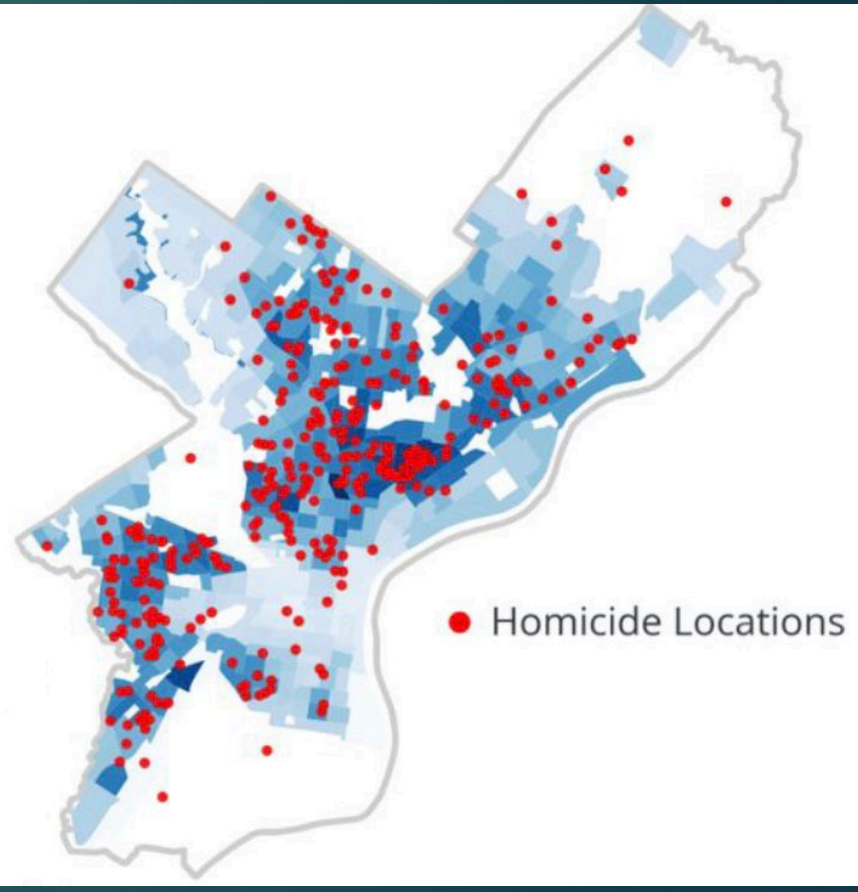
Disposition? Municipal Court Program February 2017- April 2020

All Cases - All	Disposition		Complied		# Judgments
Dismissed-NS	3553	37%	384	11%	
DJ	3745	39%	788	21%	3728
SDE	1589	17%	1321	83%	
JBA	220	2%	132	60%	202
Judgment	59	1%	28	47%	43
WWP	378	4%	155	41%	
Total	9544		2808	29%	3973

Does the Answer to the Last Question Change Over Time?







Policy vs. Legal Advice: Where is the line?

How much data can we pull between Referral and Court?

First Amendment Principle

Ninth Circuit Court of Appeals Tailwinds (apologies to those within the 9th Circuit)

Witnesses

Resources: We Connect Multiple Actors

EQUITY

See for Yourself

Philly is a great City. Today we talked about a lot of its challenges (and didn't even mention football). Philadelphia is also a wonderful place to live, visit, study, investigate the past, and see what is coming next!

