POST-PANDEMIC NUISANCE ABATEMENT

Presented By:
Curtis R. Wright
CWright@SilverWrightLaw.com

SILVER & WRIGHT LLP
Attorneys at Law

Code Attorney

I. Nuisance Abatement

II. Code Enforcement Law

III. Admin, Civil, Criminal

IV. Receiverships

V. Inspect/Abate Warrants

VI. Marijuana Enforcement

VII. Litigation Defense

VIII. Cost Recovery



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ADVISEMENTS

I. **Pro Bono**

II. **No Attorney-Client Relationship**

A. Must use your JDs attorney that can review all relevant evidence for actionable legal advice.

III. **Slides**

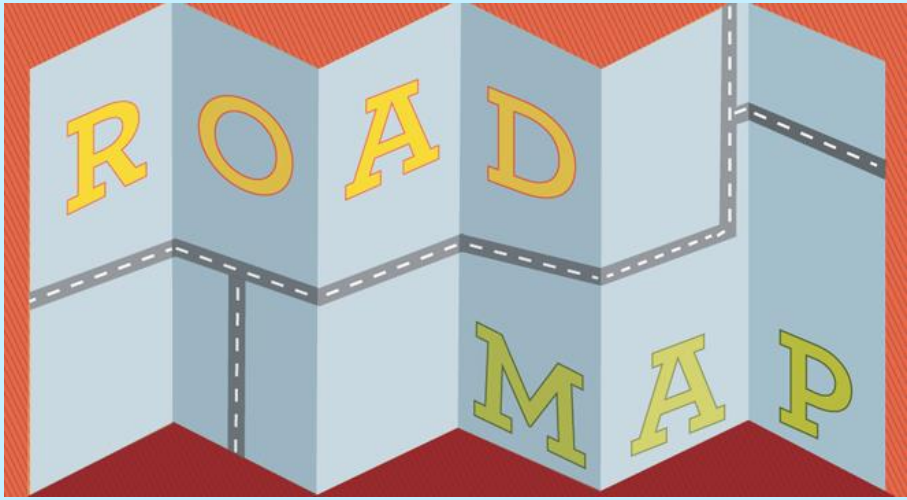
A. Talking points only.
B. Not all elements, factors, & exceptions.
C. Not legal advice.

IV. **General Principles of Law**

A. Discussions are not case specific.
B. Not all possible scenarios & exceptions.
C. Not legal advice.

AGENDA

I. COVID
II. Due Process
III. Privacy
IV. Admin Enforce
V. Criminal
VI. Civil
VII. Receiverships
VIII. Cost Recovery



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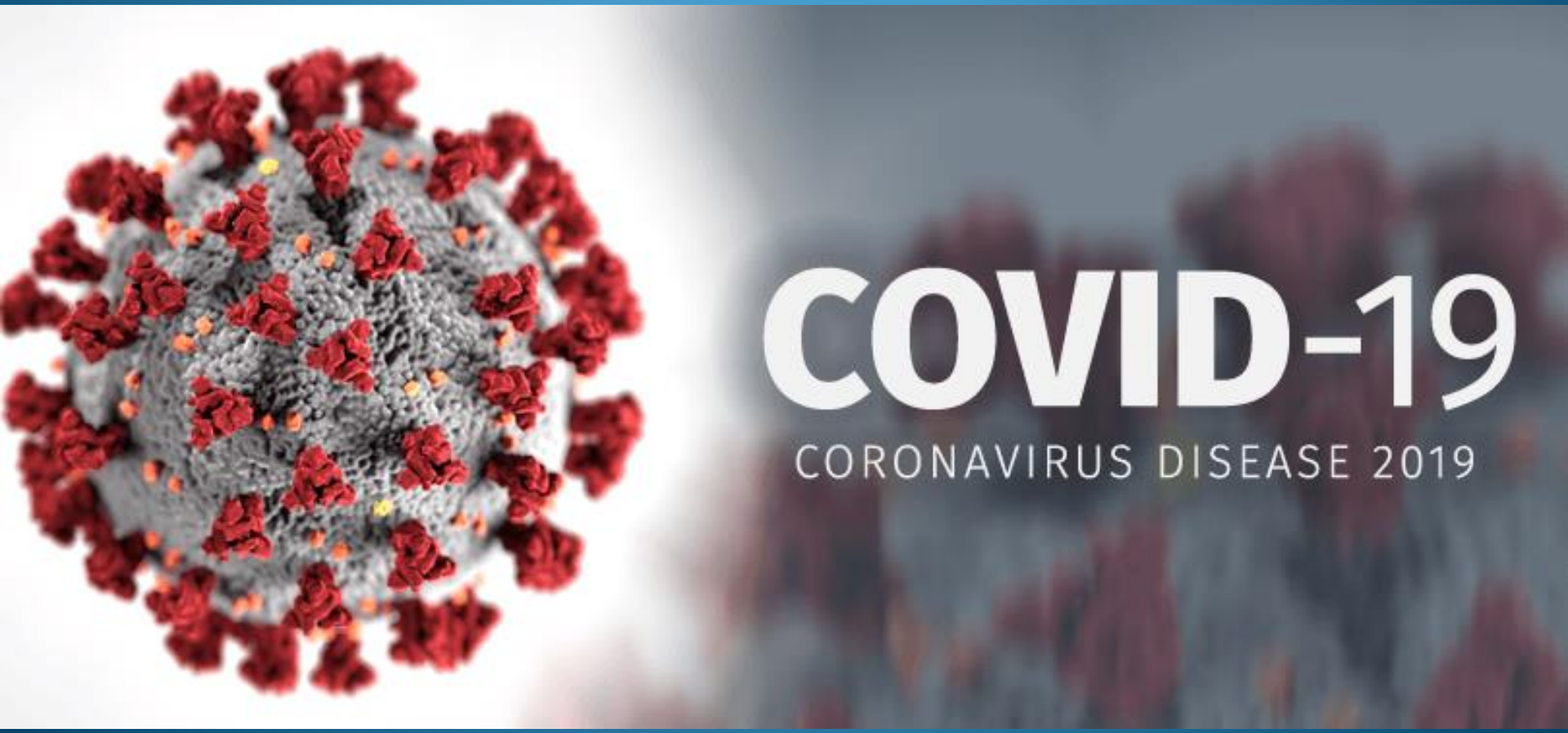
CORONAVIRUS



Code Priorities

I. Public Safety

II. Health Official Orders

III. Opportunism

IV. Nuisance Abatement

V. Business As Usual

VI. Recession Blight Prevention



Enforcement Tools

I. Tech
II. Education
III. Warnings
IV. Fix-it Ticket
V. Admin Cite
VI. License Revocations
VII. Criminal Cite
VIII. Arrest



"Code Enforcement is not a new tool.
However, there is new urgency in deploying a code enforcement system as part of a comprehensive intervention strategy for communities dealing with post-COVID-19 realities."

TECH

I. Virtual Town Halls

II. Work From Home Equipment

III. App-Based Complaints

IV. CE Laptops & Smart Apps



V. Video Inspections & Verifications

VI. Digital Admin Cites

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Overview



Code Officers



I. **Law Enforcement**
   - A. Constitutional Obligations
   - B. Political Nature
   - C. Continuing Violations

II. **Community Interface**
   - A. Legitimacy & Collaboration

III. **Document & Gather Evidence**
   - A. Photos, Admissions, Deeds, Records, Notes

IV. **Identify Effective Remedies**
   - A. Willing-Able Matrix—Right Remedy for Right Case

Constitutional Obligations

I. **Due Process**
   A. Next Slide
   B. PDP v. SDP

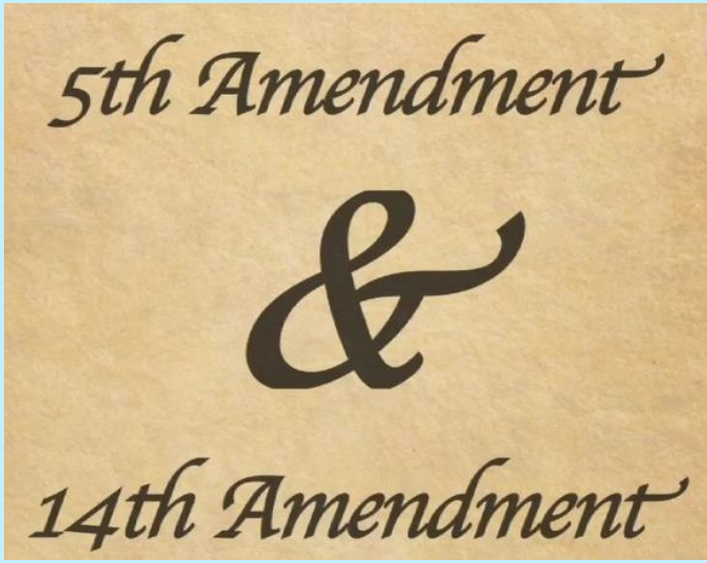
II. **Non-Discriminatory Enforcement**
   A. Selective v. Discriminatory
   B. Protected Classes
   C. SDP
   D. Allocation of Limited Resources

III. **Privacy Rights**
   A. Following Section

Due Process

I. **Notice**
   A. Violations
   B. Rights Affected
   C. Hearing Request Procedure
   D. Ex. NoV, Cease & Desist, N&O, Admin Order, Admin Cite

II. **Opportunity to Be Heard**
   A. Affirmative Hearing?
   B. Cross-Examine Witnesses



PRIVACY

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The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourth Amendment Application

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I. **Reasonable Expectation of Privacy**

II. **Government Agent**

III. **Criminal Investigation Intent**

IV. **No Warrant Exception**

   A. Consent
   B. No REP
   C. Imminent Danger
   D. Personal Safety
   E. Destruction of Evidence



APPLICATION

I. Police? Sheriffs?

II. Marshals? FBI?

III. CIA?

IV. Inspectors?

V. Government Agents?

VI. Private Citizens?



SCENARIOS

I. **Abandoned House?**

II. **Home?**
   A. Co-Occupants?
   B. Guests?

III. **Curtilage?**

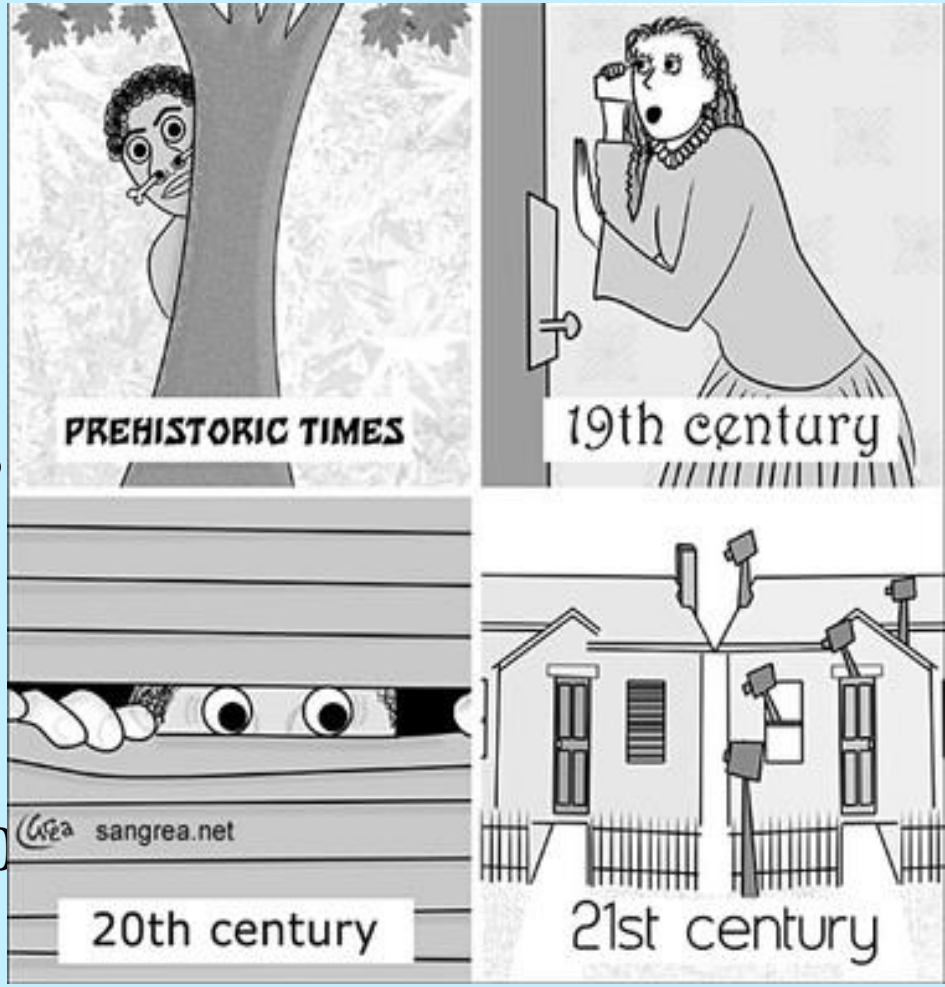
IV. **Ladder? Selfie-Stick?**

V. **Public View?**

VI. **Helicopter? Drone?**

VII. **Thermal Imaging?** (2013)

VIII. **Car: GPS? Chalk?**



CONSEQUENCES

I. **Exclusionary Rule**
   A. Fruit of the Poisonous Tree
   B. Inevitable Discovery
   C. Independent Source

II. **Civil Rights Lawsuit**
   A. Individual & City
   B. Damages & Attorneys' Fees

III. **Service Record**





WARRANTLESS INSPECTIONS



Warrant Exceptions

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I. **No REP**
II. **Consent**
   A. Apparent Authority
   B. Voluntary & Intelligent
   C. Revocable
III. **Waiver**
IV. **Plan View**
V. **Public Places**
VI. **Open Fields**
VII. **Safety / Danger**
VIII. **Evidence Destruction**





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WARRANTS



CODE WARRANTS

I. Inspect -v- Search
II. Abate -v- Seize
III. Public Safety -v- Criminal Investigation
IV. Due Process
V. Warrant Application
VI. Notice
VII. Execution
VIII. Warrant Return



Privacy Rights

I. Discussion

II. Questions

III. Anecdotes

IV. Hypotheticals





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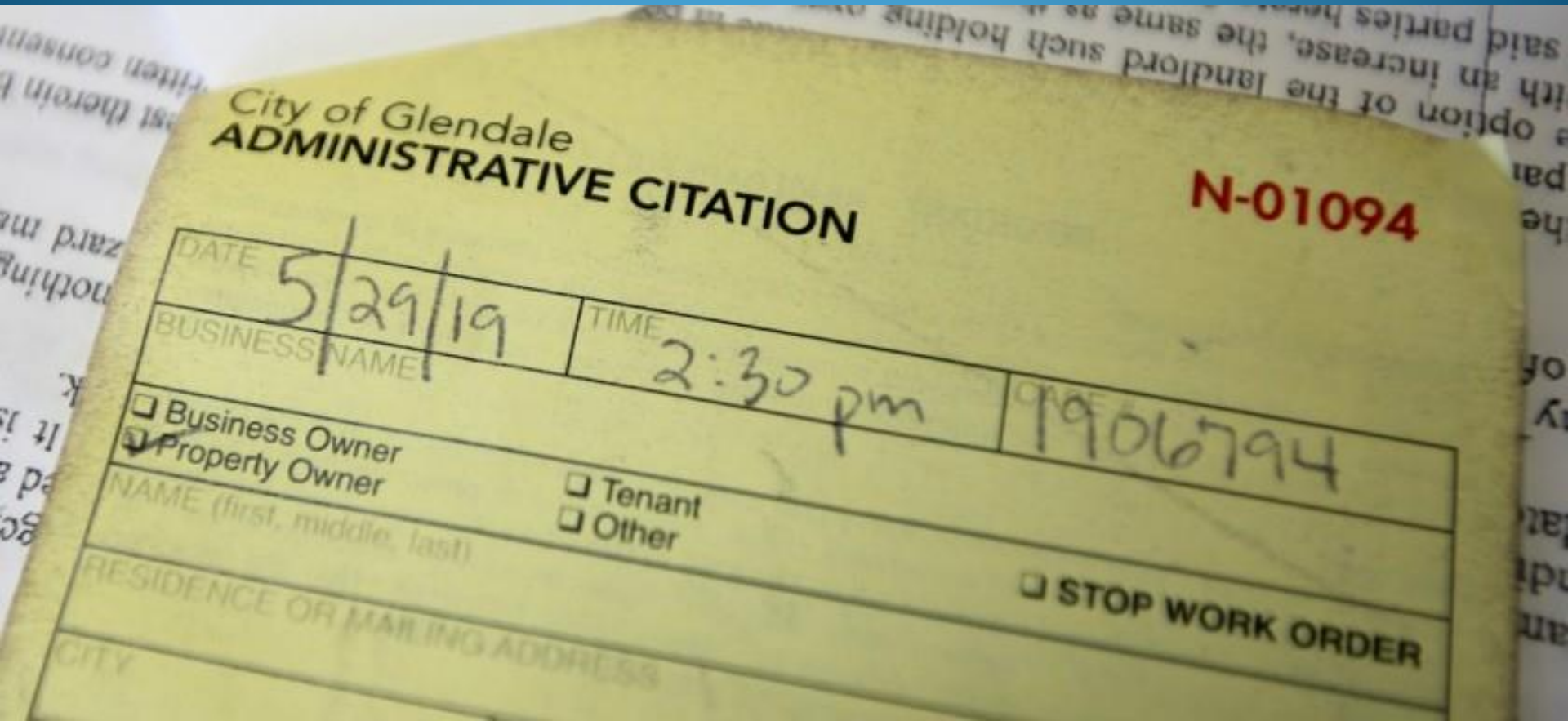
Admin Cites



Admin Cite

I. **Usurping Power of Criminal Court**
   A. Fines Only; No Loss of Liberty
II. **Grace Period**
III. **Responsible Parties**
   A. Owners, Tenants, Possessors, Perpetuators
   B. Person/Violation/Day



Fine Recovery

I. **Dispute Process**
   A. Admin Hearing
   B. Court Appeal
II. **Personal Liability**
III. **Tax Refund Intercept**
IV. **Property Liens**
   A. Priority?



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License Revocations



License Revocations

I. **Business License**
   A. Check Muni Code
II. **CUP / Entitlements / Land-Use Approvals**
   A. Vested Right
   B. Affirmative Hearing
III. **Due Process**
   A. Notice (service)
   B. Administrative Hearing (opportunity)

Admin Law

I. Discussion

II. Questions

III. Anecdotes

IV. Hypotheticals





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Criminal Prosecution



Criminal Prosecution

I. **Infractions**
   A. Fines Only; No Loss of Liberty
II. **Misdemeanors**
   A. Fines & Jail
III. **NTA -v- Formal Complaint**
IV. **Statute of Limitations**
V. **Corporate Defendants**
VI. **Plea Bargain**
VII. **Civil Compromise**



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PLEA BARGAIN

I. **Guilty Plea in exchange for Reduced Penalty**

II. **Jail** (Straight; Work Release; Stayed; Suspended)

III. **Community Service**

IV. **Fines** (Lump; Payments; Stayed; Suspended)

V. **Search Waiver**

VI. **Informal Summary Probation**

   A. 1–3 Years

   B. VoP = Bench Trial; PoTE Standard



Criminal Prosecution

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I. Discussion

II. Questions

III. Anecdotes

IV. Hypotheticals





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Civil Injunctions



Civil Injunctions

I. **Order to Comply**

II. **Prohibitory**

III. **Mandatory**

IV. **TRO**

V. **Preliminary**

VI. **Permanent**



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RECEIVERSHIPS



What is a Receivership

I. Court Control of Property

II. Receiver is Court's Agent

III. Borrow Against Property

IV. Rehab Property

V. Sell Property

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RECEIVERSHIP BENEFITS

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I. **Ultimate Code Enforcement Tool**

II. **Complete Rehab**

III. **Community Safety**

IV. **Rehab, Costs, Expenses, & Fees Funded by the Nuisance Property**

V. **Cost Recovery**

VI. **No Abatement Liability**

VII. **Tenant Relocation Assistance**

VIII. **Faster & More Effective**



Candidate Properties

I. **Building Violations**

II. **Substantial Danger to Residents or Public**

III. **Examples**

A. Severe Dilapidation
B. Fire Damage
C. Criminal, Drug, Prostitution Dens
D. Hoarders
E. Abandoned Structures, Foreclosures
F. Unfinished Construction
G. Uninhabitable & Unsanitary

Cost Recovery

I. **Owner Liability**

II. **Receivership Estate Debt**
   - A. Paid by Receiver
   - B. Borrow Against Property
   - C. Property Sale

III. **Recoverable Costs**
   - A. Attorneys' Fees
   - B. Litigation Costs
   - C. Administrative Costs
   - D. Law Enforcement & Investigation Costs
   - E. Code Enforcement & Inspection Costs

RECEIVERSHIPS

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I. **Discussion**

II. **Questions**

III. **Anecdotes**

IV. **Hypotheticals**





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Cost Recovery



COVID RECESSION

I. Unemployment

II. Decreased Sales Tax

III. Decreased Redevelopment Investment

IV. Increased Blight & Nuisances

V. Broken Window Syndrome

VI. Decreased Muni Budgets

VII. Cost Recovery Pressure



Municipal Authority

I. **Authority**

   A. State & JD Specific

II. **Recoverable Costs**

   A. Staff Costs, Expenses, & Attorneys' Fees

III. **Admin Process**

   A. Faster, Easier, Better Results



Cost Recovery Tools

I. Administrative Citations/Fees

II. Criminal Fines

III. Civil Compromises

IV. Litigation Settlements

V. Attorneys' Fees Motions

VI. Civil Fines & Statutory Penalties

VII. Judgments

VIII. Abatement Liens

IX. Special Assessments

X. Receiver's Liens

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Conclusion



Legal Tools

1. Inspection Warrant
2. Search Warrant
3. Courtesy Notice
4. Cease & Desist
5. Admin Cite/Fines
6. Notice & Order
7. Admin Order
8. Admin Hearing
9. Abatement Warrant
10. Criminal Cite
11. Civil Injunctions
12. Receivership
13. Drug Abatement Act
14. STEP Act
15. Red Light Abate Act
16. Notice of Pendency
17. Cost Recovery
18. Special Assessment

Conclusion

I. Questions?

II. Anecdotes?

III. Discussion?

IV. Feedback?



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