



CSU  
College of Law Library

Cleveland State Law Review

---

Volume 56 | Issue 1

Note

---

2008

## Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment

Mathew J. Samsa

Follow this and additional works at: <https://engagedscholarship.csuohio.edu/clevstrev>



Part of the [Land Use Law Commons](#)

[How does access to this work benefit you? Let us know!](#)

---

### Recommended Citation

Note, Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment, 56 Clev. St. L. Rev. 189 (2008)

This Note is brought to you for free and open access by the Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact [library.es@csuohio.edu](mailto:library.es@csuohio.edu).

RECLAIMING ABANDONED PROPERTIES: USING PUBLIC  
NUISANCE SUITS AND LAND BANKS TO PURSUE ECONOMIC  
REDEVELOPMENT

MATTHEW J. SAMSA\*

I.	INTRODUCTION .....	190
II.	PROBLEMS PRESENTED BY ABANDONED AND VACANT HOUSING.....	193
	A. <i>Defining Abandonment</i> .....	193
	B. <i>Breadth, Causes and Effects of Abandonment</i> .....	194
III.	COMMON METHODS OF ADDRESSING ABANDONMENT .....	197
	A. <i>Code Enforcement</i> .....	197
	B. <i>Tax Foreclosure</i> .....	198
IV.	PRIVATIZED PUBLIC NUISANCE ABATEMENT SUITS.....	201
	A. <i>Standing to Sue and Receiverships</i> .....	202
	B. <i>Tailoring the Process to Abandonment: Definition,     In Rem Jurisdiction</i> .....	203
	C. <i>Receiver's Liens</i> .....	207
	D. <i>Title Clearing</i> .....	210
	E. <i>Benefits of Community Involvement Through     CDCs</i> .....	210
V.	LAND BANKING .....	213
	A. <i>Goals and Informational Strategies for Land Banks</i> .....	216
	B. <i>Organization of a Land Bank</i> .....	219
	C. <i>Property Acquisition Mechanisms</i> .....	222
	1. <i>Tax Foreclosure</i> .....	223
	2. <i>Other Acquisition Methods</i> .....	225
	D. <i>Management of Problem Properties</i> .....	227
	1. <i>Land Bank Immunity</i> .....	228
	2. <i>Oversight Powers</i> .....	228
	E. <i>Disposition of Properties</i> .....	229
VI.	ARGUMENT FOR USING PRIVATIZED NUISANCE ABATEMENT SUITS AND LAND BANKS AS A HOLISTIC	

---

\* J.D. expected, May 2008, Cleveland State University, Cleveland-Marshall College of Law; B.A. Cleveland State University. The author would like to thank all the people who read and evaluated this piece during all the stages of its composition, especially Kathleen Engel for her support and guidance. I would also like to thank Kermit Lind, Robert Jackimowitz, Barbara Tyler and David Mraz. Finally, thanks to my wife, Katherine Samsa, for her help and understanding. I apologize to anyone I have forgotten. All errors and omissions are mine alone.

APPROACH TO COMMUNITY REDEVELOPMENT ..... 231  
 VII. CONCLUSION..... 232

I. INTRODUCTION

On Homer Avenue on the east side of Cleveland, Ohio, vacant homes litter the landscape.<sup>1</sup> Although fewer than twenty houses line this short, one-way street, seven of them sit empty and only two of those have been boarded and secured by the city.<sup>2</sup> The vacant homes are in various states of disrepair. Their yards fill with weeds in the summer and a multiplicity of insects breed in the grass.<sup>3</sup> Most of the houses have broken windows, chipped paint and dislodged gutters.<sup>4</sup> One house draws a number of people who engage in illicit activities during the evening hours.<sup>5</sup>

In addition to the empty houses, three once vibrant commercial buildings sit empty as well.<sup>6</sup> The factory at the end of the street provides one function for the neighborhood; teenagers amuse themselves from time to time by breaking the factory windows with rocks, leaving shattered glass strewn about the street.<sup>7</sup> Two boarded school buildings dominate the other end of the street.<sup>8</sup> Loose bricks occasionally cascade from the second stories, crashing to the street below.<sup>9</sup> Although the current owner removed the rickety and rusty fire escapes that children previously climbed, poison oak plants still run the length of the building.<sup>10</sup>

A property becomes abandoned when an owner fails to perform the basic responsibilities of property ownership.<sup>11</sup> Abandonment assumes a variety of forms,

---

<sup>1</sup>This hypothetical comes from the author’s experience on his parent’s street, Homer Avenue, in Cleveland, Ohio. The changes described began around the summer of 2000 and the deterioration continues to the date of publication.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>*Id.* In this particular house, former resident tenants still use the property at night for a variety of activities, which neighbors assume to include drug dealing and prostitution. Police have been unresponsive to calls by neighbors.

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>ALLAN MALLACH, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS, 1 (2005) (“An abandoned property is a property where the owner has stopped carrying out at least one of the significant responsibilities of property ownership, as a result of which the property is vacant, or likely to become vacant in the immediate future.”).

ranging from a failure to provide minimal upkeep to vacancy,<sup>12</sup> which is the hallmark and most derisive feature of abandonment.<sup>13</sup>

The burden of abandoned homes falls on cities.<sup>14</sup> Neglected housing drains municipal resources, as the tax base erodes and the enforcement of building and housing codes becomes increasingly difficult in the wake of a sea of dilapidated homes.<sup>15</sup> Cities facing mounting blight are hard-pressed to take the steps to redevelop neighborhoods.<sup>16</sup>

Local governments currently use tax foreclosure and building and housing codes as the principal methods of abating nuisances.<sup>17</sup> Limitations inherent in both methods often result in extensive delays or, worse yet, complete failures to abate nuisances.<sup>18</sup> Because tax foreclosure and code enforcement remedies are not effective in addressing abandoned housing,<sup>19</sup> communities must devise and implement new tools focused specifically on abating nuisances and controlling the disposition of future land use.<sup>20</sup> Privatized public nuisance abatement suits and land

---

<sup>12</sup>*Id.* The lack of minimal upkeep generally creates the conditions which amount to a nuisance.

<sup>13</sup>*Id.* Even the definition of abandonment includes the prerequisite that the property “is vacant, or likely to become vacant in the immediate future.”

<sup>14</sup>Kathleen Engel, *Do Cities Have Standing? Redressing the Externalities of Predatory Lending*, 38 CONN L. REV. 355, 355 (2006) (“The task of cleaning up falls to cities . . .”).

<sup>15</sup>See ALLAN MALLACH ET AL., *CLEVELAND AT THE CROSSROADS: TURNING ABANDONMENT INTO OPPORTUNITY 5* (Neighborhood Press, Inc. 2005) ([http://www.mi.vt.edu/uploads/Cleveland\\_Crossroads.pdf](http://www.mi.vt.edu/uploads/Cleveland_Crossroads.pdf)) (“Estimates range from 10,000 to 25,000” abandoned buildings in the City of Cleveland alone).

<sup>16</sup>See MALLACH, *supra* note 11, at 8 (“Few cities are equipped to engage in the extended process of rehabilitating abandoned property.”).

<sup>17</sup>See generally James J. Kelly, Jr., *Refreshing the Heart of the City: Vacant Building Receivership as a Tool for Neighborhood Revitalization and Community Empowerment*, 13 J. OF AFFORDABLE HOUSING AND COMMUNITY DEV. L. 210, 214 (discussing the limitations tax foreclosure and code enforcement remedies in relation to abandoned and vacant housing). Building and housing codes consist of municipal ordinances which fine residents for non-compliance with established housing standards.

<sup>18</sup>See *id.* at 214. Both tax foreclosure and code enforcement remedies require certain levels of due process which slow down or halt action to remove blight. *Id.*

<sup>19</sup>See generally MALLACH, *supra* note 11 (discussing throughout how changes can be made to existing law to address abandonment). Neither tax foreclosure or code enforcement remedies are tailored specifically to addressing abandoned and vacant housing. *Id.* Instead, these methods were designed to deal with historically traditional situations where the owner was present in the house and either allowed a code violation to persist or became delinquent in taxes. *Id.*

<sup>20</sup>See ANN O’M. BOWMAN AND MICHAEL A. PAGANO, *TERRA INCOGNITA: VACANT LAND AND URBAN STRATEGIES 19* (2004) (describing difficulties in controlling vacant land). The difficulties in controlling vacant require new methods to overcome the specific obstacles posed by abandoned structures. See generally Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. OF AFFORDABLE HOUSING AND COMMUNITY DEV. L. 140 (2005) [hereinafter Alexander, *Land Banks*]. Especially where abandonment becomes widespread, the community must respond by reconfiguring land use patterns to meet emerging needs. *Id.*

banks provide communities with useful tools aimed at tackling abandoned property.<sup>21</sup> Furthermore, these methods are inclusionary; they involve community activists<sup>22</sup> and regional governments,<sup>23</sup> taking some of the burden off overstretched urban municipalities.<sup>24</sup>

Addressing abandonment on a strategic level that makes productive use out of abandoned property requires the aid of community activists<sup>25</sup> and broad regional support.<sup>26</sup> Those tackling this issue must engage in thoughtful, organized and concerted efforts to acquire and rehabilitate or demolish decaying properties in a manner that promotes public and private reinvestment in neighborhoods.<sup>27</sup> For example, municipalities must include and utilize neighborhood-specific information and the expertise of community activists in attacking abandoned properties.<sup>28</sup> To that extent, non-profit community entities, such as community development corporations (CDCs),<sup>29</sup> must be empowered to press public nuisance abatement suits against owners of abandoned properties and authorized as receivers to rehabilitate individual vacant homes.

Local governments struggling with widespread abandonment should form land banks, entities—including multiple local governmental agencies—focused on addressing abandoned property systematically through acquisition. Land banks can fulfill a variety of needs for a region, ranging from cataloging abandoned properties

---

This type of guidance and oversight can produce long-term economic and social benefits for the community. *Id.*

<sup>21</sup>See generally Kelly, Jr., *supra* note 17; see also generally Alexander, *Land Banks*, *supra* note 20. Both land banks and nuisance abatement receiverships are aimed directly at addressing abandonment.

<sup>22</sup>See generally Kelly, Jr., *supra* note 17, at 213.

<sup>23</sup>See Alexander, *Land Banks*, *supra* note 20, at 142.

<sup>24</sup>Work by both community activists and other regional or state governments helps cities struggling with abandonment issues by increasing the pool of labor and funds available. Furthermore, these groups can provide services and pursue tactics unavailable or impractical for individual municipalities.

<sup>25</sup>See Alexander, *Land Banks*, *supra* note 20.

<sup>26</sup>See BOWMAN & PAGANO, *supra* note 20 at 37 (discussing the implications of vacancy on regional property values and policy). Abandoned structures affect policy decisions on a regional basis, and as such require comprehensive plans to include input from multiple regional sources. *Id.*

<sup>27</sup>See generally Alexander, *Land Banks*, *supra* note 20. The breadth of abandonment in many areas demands systematic attention.

<sup>28</sup>See Kelly, Jr., *supra* note 17, at 225 (discussing the benefits of community participation in the code enforcement process). Involving the community in the eradication of abandoned structures not only utilizes the collective knowledge of the citizens, but also creates a sense of ownership that helps to stabilize communities. *Id.*

<sup>29</sup>A Community Development Corporation (CDC) is a community-based nonprofit entity devoted to promoting development within a particular neighborhood. CDCs generally receive most funding through the Community Development Block Grants (CDBG) dispersed by the federal government through local government agencies.

and organizing available information to obtaining title to properties.<sup>30</sup> Through mass acquisitions using fast tracked tax foreclosures, land banks can also shape future land use in an area and encourage economic redevelopment on a wider scale.<sup>31</sup>

When properly empowered by broad statutory mandates and with effective oversight, privatized nuisance abatement suits driven by community activists combined with land banks organized by local governments provide powerful tools that can make abandoned property productive, promote economic redevelopment and allow communities to control the disposition of future land use. If used appropriately for the purpose of sustained economic revitalization and tailored to a community's needs in addressing abandoned property, privatized nuisance abatement suits and land banks offer systematic methods of protecting communities and spurring sustainable reinvestment.

This Note examines the methods of attacking abandonment. The next section, Part II, describes the problems presented by abandoned and vacant housing. Part III examines the effectiveness of code enforcement and traditional tax foreclosure. Part IV analyzes privatized nuisance abatement suits and receiverships. Part V discusses land banks. Part VI argues that using broadly empowered privatized nuisance abatement suits for individual parcels and land banks for mass acquisitions is the most effective means of addressing abandoned property, and Part VII concludes with a brief review of the overall abandonment discussion.

## II. PROBLEMS PRESENTED BY ABANDONED AND VACANT HOUSING

### A. Defining Abandonment

The concept of abandonment comprises a variety of issues, and even defining abandonment presents a problem. Municipal building and housing codes generally concentrate on conditions amounting to a nuisance.<sup>32</sup> Common law in most states defines abandonment as the owner's intent to relinquish rights to the property.<sup>33</sup>

---

<sup>30</sup>See MALLACH, *supra* note 11, at 107 (describing how land banks both collect information and obtain title to abandoned properties).

<sup>31</sup>See Alexander, *Land Banks*, *supra* note 20, at 157 ([A land bank may make] intentional decisions to hold tracts of land for future uses. A land bank should evaluate its existing inventory of properties with an eye towards public or private uses of the land for which a demand emerges in the future."). Not only can the land bank hold tracts of land for future uses, but can dispose of that land with discretion. *Id.* The discretion of the land bank works against corrupting private market forces and helps to ensure responsible and sustainable growth.

<sup>32</sup>See, e.g., CLEVELAND, OHIO, CODIFIED ORDINANCES, ch. 3103.09(b)(1) (2007). The code tracks language indicating nuisances as its focus, such as "public health, safety or welfare" and includes a variety of other factual determinations that would amount to a nuisance, such as vacancy and inadequate maintenance. *Id.* This definition of "nuisance" includes abandoned structures as nuisances per se, making the definitions of nuisance and abandonment essentially reciprocal. *Id.*

<sup>33</sup>Frank Ford, *Receivership: An Ancient Remedy for a Modern Problem* (1994) (unpublished manuscript, on file with author) ("In almost every state in the United States, common law decisions hold that property cannot be considered 'abandoned' unless there is proof of the owner's intent to relinquish his or her rights to the property.").

More expansive statutory definitions include a wider variety of indicators of abandonment, such as the need for rehabilitation, tax delinquency, vacancy, or a finding of a nuisance.<sup>34</sup>

The best definition of an abandoned property is “a property where the owner has stopped carrying out at least one of the significant responsibilities of property ownership, as a result of which the property is vacant, or likely to become vacant in the immediate future.”<sup>35</sup> This definition includes a wide range of abandoned property, including nuisance properties,<sup>36</sup> and focuses on the effects or externalities, posed by abandoned and vacant housing.<sup>37</sup> Narrower definitions can be over or under-inclusive. For example, tax delinquency, does not always mean a property is abandoned.<sup>38</sup> Likewise, requiring that an owner intends to relinquish rights to property for the property to be deemed abandoned fails to take into account properties that are vacant and neglected where the owner wishes to retain title.<sup>39</sup>

### B. Breadth, Causes and Effects of Abandonment

Abandonment occurs for a variety of reasons, but economic factors are the dominant explanation.<sup>40</sup> A faltering regional economy contributes heavily to

---

<sup>34</sup>See, e.g. N.J. STAT. ANN. § 55:19-81-82 (2007). (including as indicators of vacancy a six month vacancy period, one installment of property taxes delinquent, a building “unfit for human habitation,” fire hazards, health hazards, vermin, debris, “uncut vegetation” and other indicators which “materially affect[s] the welfare, including the economic welfare, of the residents of the area in close proximity to the property”).

<sup>35</sup>MALLACH, *supra* note 11, at 1.

<sup>36</sup>*Id.* One of the responsibilities of a property owner is to keep the property in a condition that conforms to local building and housing codes. Moreover, common law nuisance principles impose the responsibility of minimal upkeep on property owners. *Id.*

<sup>37</sup>*Id.* Notice that the definition focuses on the responsibilities of the owner and the consequences for neighbors and the community, as opposed to the common law definition of abandonment cited in note thirty-six which instead focuses on the owner’s intent to relinquish property rights, or on tax delinquency, which affects the rights of government agencies, not neighbors. Focusing the definition of abandonment on externalities rather than tangential factors such as intent to abandon or tax delinquency ensures that owners cannot avoid consequences by pointing to extraneous factors; the abandoned nuisance becomes the center point of any action.

<sup>38</sup>*Id.* (discussing how real estate speculators pay taxes on vacant and dilapidated buildings). If a speculator can avoid foreclosure on the property simply by paying taxes, there is little incentive for the speculator to own and maintain property responsibly. *Id.* Likewise, poor residents may not be able to pay taxes on a property. As such, when discussing abandonment, a working definition should focus on externalities posed by abandonment and not tangential factors such as tax delinquency.

<sup>39</sup>*Id.* at 1 (describing a New Jersey statute favorably as “expansive, and recognize[ing] that a wide variety of conditions may lead to a property being reasonably considered abandoned.”). Wide definitions encompass speculators who wish to retain title to dilapidated structures.

<sup>40</sup>See *id.* at 4 (“Today, abandonment usually reflects economic and demographic shifts within American society . . .”).

abandonment.<sup>41</sup> Where the costs of rehabilitating a property outweigh the potential return on such an investment, abandonment becomes an alternative.<sup>42</sup> Because of this, abandonment is most pronounced in poorer urban areas with lower property values.<sup>43</sup> Other factors that intensify the problem include changes in the real estate market caused by demographic shifts from urban to suburban living<sup>44</sup> and ill health or death resulting in a household transition.<sup>45</sup> Predatory lending and real estate speculation add to the mix.<sup>46</sup> Speculation, in particular, contributes to abandonment because the speculator purposefully avoids investing capital in a vacant property while waiting for the real estate market to rise.<sup>47</sup> The strategy of leaving a home vacant coupled with the caprices of real estate markets make speculation uniquely dangerous to urban neighborhoods.

Abandonment is most prevalent in older, industrial based cities in the Midwest, although it is by no means confined to that area.<sup>48</sup> All types of property fall into abandonment, ranging from single family homes to industrial complexes.<sup>49</sup> Statistics

---

<sup>41</sup>See *id.* at 5 (“The decline in real estate demand behind property abandonment often reflects slow economic growth, or economic decline, within a city or its region.”).

<sup>42</sup>*Id.* at 4 (describing physical obsolescence and abandonment as an alternative to investment). If a property owner views a property as a drain on resources that cannot produce income, even in the long-term, abandonment of the property becomes an attractive alternative. *Id.*

<sup>43</sup>*Id.* Returns on investment are likely to be least where the property, even if in pristine condition, would not sell for a high price. Rehabilitating a property in a poorer urban neighborhood with low property values and in proximity to other dilapidated structures thus diminishes the capability of an owner to generate a sufficient return on investment in a property.

<sup>44</sup>See MALLACH, *supra* note 11, at 6. A household transition occurs when a family member dies and leaves property behind. *Id.* A property owner who dies intestate may leave behind a property that heirs do not want or are unable utilize.

<sup>45</sup>*Id.*

<sup>46</sup>See *id.* at 5 (“All of these [abandonment] conditions are made worse by practices such as predatory lending or speculative ‘flipping’ of properties, which lead to situations where properties end up being abandoned – either as a result of foreclosure or misuse – even where abandonment might not be inevitable on market grounds.”).

<sup>47</sup>See Geoff Dutton, *Flipping Frenzy: Wealthy investors profit from run-down houses*, COLUMBUS DISPATCH, September 20, 2005 at A1 (describing the negative effects of flipping). Real estate speculation and flipping houses involves investing as little possible into the property in the hopes of making the largest returns. As such, this technique assures that a property will remain vacant while the speculator holds title. Furthermore, the speculating investor generally purchases many houses in a given area and leaves them abandoned. *Id.*

<sup>48</sup>See Michael A. Pagano and Ann O’M. Bowman, *Vacant Land in Cities: An Urban Resource*, BROOKINGS INSTITUTION SURVEY SERIES, December 2000 at 1 (available at [https://www.brookings.edu/dybdocroot/es/urban/pagano/pagano\\_final.pdf](https://www.brookings.edu/dybdocroot/es/urban/pagano/pagano_final.pdf)) (describing vacant land across the nation but noting that Northeastern municipalities retain the most abandoned structures).

<sup>49</sup>See MALLACH, *supra* note 11, at 2 (“Abandoned properties take as many forms as there are properties.”).

show that declining cities with a population over 100,000 average about 10,000 abandoned structures.<sup>50</sup> The City of Detroit alone holds title to more than 40,000 abandoned buildings, despite demolishing more than 28,000 structures since 1989.<sup>51</sup> Estimates range from 10,000 to 25,000 abandoned structures in the City of Cleveland.<sup>52</sup> The large range of uncertainty in the Cleveland estimates demonstrates another problem: acquiring accurate statistics on abandonment poses significant difficulties.<sup>53</sup> Just the same, the data that exist demonstrate that in cities with declining populations, abandonment is widespread.<sup>54</sup>

Abandoned and vacant homes pose significant dangers for urban neighborhoods. They drive down property values,<sup>55</sup> create health hazards, threaten the safety of residents,<sup>56</sup> and perpetuate an image of the neighborhood which promotes criminal behavior and discourages redevelopment.<sup>57</sup> The “Broken Windows” theory asserts that the mere existence of abandoned housing detrimentally affects a neighborhood because it demonstrates to outsiders and residents that the neighborhood is of the type that supports crime and poverty, creating a vicious cycle that encourages additional abandonment.<sup>58</sup> Owners of abandoned structures impose these externalities on neighborhood residents when they allow a vacant nuisance to persist.

---

<sup>50</sup>*Id.* at 3; *see also* Pagano & Bowman, *supra* note 48, at 4-9 (discussing difficulties in estimating the amount of vacant land and abandoned structures in cities).

<sup>51</sup>*Id.*

<sup>52</sup>MALLACHET AL., *supra* note 15, at 11.

<sup>53</sup>*See* BOWMAN & PAGANO, *supra* note 20, at 140-41 (discussing difficulties in gathering information about abandoned structures).

<sup>54</sup>*See e.g.*, MALLACHET AL., *supra* note 15, at 12 (“How Cleveland confronts the challenge of vacant properties during the next five years will have a dramatic impact on the future of the city and its neighborhoods. Cleveland stands at the proverbial crossroads that compel immediate action.”).

<sup>55</sup>*See* Kelly, Jr., *supra* note 17, at 212 (“With parcels so close together, the appeal of any one house depends almost as much on the appearance of . . . neighboring properties as it does that houses own physical condition.”); *see also* BOWMAN & PAGANO *supra* note 20, at 128-29 (“In a study conducted in Philadelphia, each vacant lot affected the value of as many as eight nearby properties.”).

<sup>56</sup>*See* Carl Matzelle, *Lorain Cyclist Accused of Raping Two Middle School Pupils*, PLAIN DEALER (Cleveland), June 2, 2005 at B3 (reporting on two alleged rapes which occurred behind an abandoned home in Lorain, Ohio). *See also* Kelli Wynn, *Police Arrest Rape Suspect; 18-Year-Old Held in Assault on Girl, 13*, DAYTON DAILY NEWS, October 1, 2005, at A1 (reporting on an alleged rape of a young girl in an abandoned home).

<sup>57</sup>*See* Kelly, Jr., *supra* note 17, at 212-13 (noting that vacant houses contribute to creating crime and perpetuating a poor neighborhood image). Not only do abandoned structures provide easily accessible sites for criminal activity, but the general tenor of the neighborhood promotes criminal behavior.

<sup>58</sup>*See* GEORGE L. KELLING AND CATHERINE M. COLES, *FIXING BROKEN WINDOWS* (Touchstone 1996) (discussing the “Broken Windows” Theory). Dilapidated conditions spur further deterioration.

### III. COMMON METHODS OF ADDRESSING ABANDONMENT

Communities utilize a variety of tools to address problems stemming from abandoned and vacant properties. Governmental agencies generally use building and housing code citations<sup>59</sup> and tax foreclosures<sup>60</sup> as methods of abating vacant nuisances. Limitations inherent in both code enforcement and tax foreclosure hinder systematic economic revitalization of communities.<sup>61</sup> Neither method was designed specifically to address abandonment and, thus, neither method can effectively be harnessed to combat neighborhood blight.<sup>62</sup>

#### A. Code Enforcement

Rather than pursue a common law public nuisance suit, municipalities enforce local building and housing codes when attempting to abate nuisances created by abandoned and vacant housing.<sup>63</sup> Both state statutes and municipal ordinances generally define a nuisance property as one that threatens public health, safety, and welfare.<sup>64</sup> Three interrelated problems arise when codes are applied to abandoned and vacant property. First, code enforcement requires a relatively high degree of due process which the speculating investor and other homeowners can avoid by hiding from service.<sup>65</sup> By evading process, the investor halts code enforcement remedies, at least for some time, while neighborhoods bear the burden of their malfeasance. In

---

<sup>59</sup>See OHIO REV. CODE ANN. § 715.44 (West 2007) (allowing municipal corporations to abate nuisances); see also CLEVELAND, OHIO, CODIFIED ORDINANCES part 2, title 1, ch. 203.01-02, 209.02 (2007) (powers to abate nuisances); see also Kelly, Jr., *supra* note 17, at 214-15 (describing some traditional barriers to code enforcement).

<sup>60</sup>See Kelly, Jr. *supra* note 17, at 215 (examining the tax foreclosure process).

<sup>61</sup>*Id.* at 214-15.

<sup>62</sup>See MALLACH, *supra* note 11, at 65 (“Tax foreclosure statutes have typically been designed not to further neighborhood revitalization, but to enable municipalities to recoup lost tax revenues.”). Both tax foreclosure and code enforcement remedies suffer from severe limitations when applied to the problem of abandoned and vacant housing. These limitations are discussed at length below.

<sup>63</sup>See *id.* at 41 (“Few municipalities, however, have shown a sustained commitment to use receivership statutes except in isolated cases”). Receivership is a remedy provided for in some public nuisance statutes. *E.g.*, OHIO REV. CODE ANN. § 3767 (West 2007). Municipalities tend to use the police power through building and housing codes to abate nuisances rather than rely on the courts.

<sup>64</sup>OHIO REV. CODE ANN. § 3767.41 (West 2007) (“‘Public nuisance’ means a building that is a menace to the public health, welfare, or safety[.]”); see also N.J. STAT. ANN. § 55:19-81 (2007) (stating in various ways that nuisances affect public health or safety); see also CLEVELAND, OHIO, CODIFIED ORDINANCES part 2, title 1, ch. 203.01 (2007) (stating that a “nuisance . . . may affect or endanger the life, health or senses of the inhabitants of the City[.]”). See also Ford, *supra* note 33, at 4 (noting that “the typical test [for determining a nuisance] would be whether the property is 1) structurally unsound, 2) a fire hazard, 3) a health hazard, etc.”).

<sup>65</sup>See Kelly, Jr., *supra* note 17, at 214. Serving a property owner with notice of violations, either in nuisance abatement actions or for code enforcement purposes require an expenditure of time and resources that diminish the capability of cities to pursue owners. *Id.*

other situations, homeowners may not be evading service, but are in transition and difficult for authorities to locate. Second, owners of nuisance properties often lack the financial ability to abate the nuisance.<sup>66</sup> Thus, even if a governmental agency presses a successful suit against an owner, the nuisance will likely persist if the owner cannot afford to abate the nuisance.<sup>67</sup> Third, the logistical and financial costs of code enforcement, especially in areas with large numbers of nuisance properties, may impede enforcement efforts.<sup>68</sup> As a practical matter, code enforcement, at best, results in a series of haphazard citations, certainly outside the gambit of a systematic approach to economic redevelopment.<sup>69</sup>

### B. Tax Foreclosure

Abating nuisances created by abandoned housing through tax foreclosure poses similar obstacles. The tax foreclosure process itself does not necessarily return a property to productive use. Municipalities, counties, and often other governmental agencies all foreclose on properties with delinquent taxes.<sup>70</sup> Sometimes government agencies sell tax liens to private entities that then attempt to collect back taxes assessed against a property.<sup>71</sup> The multiplicity of parties foreclosing on tax delinquent properties precludes a systematic approach to community redevelopment.<sup>72</sup> Government agencies focus not on community redevelopment per

---

<sup>66</sup>*Id.*

<sup>67</sup>*Id.* The goal of code enforcement is the abatement of nuisances. If the owner cannot afford to abate the nuisance, code enforcement falls short of that goal and leaves few viable options open to the municipality.

<sup>68</sup>*Id.* at 214 (“[The speculating investor] may succeed in making pursuit of him just difficult enough to induce a code enforcement attorney to use the agency’s limited resources on a more attainable defendant.”); *see also* MALLACH, *supra* note 11, at 3 (noting the vast numbers of abandoned structures in Midwestern cities). The costs of locating owners coupled with the number of abandoned structures render code enforcement, at best, a band-aid approach to abating nuisances.

<sup>69</sup>Kelly, Jr., *supra* note 17, at 213 (highlighting the benefits and limitations of code enforcement). Citations delivered to owners of structures provide incentives to abate nuisances, in the form of fines for non-compliance. As such, code enforcement has very little connection to a scheme to induce economic redevelopment. This method reacts to nuisances; a proactive agenda to spur reinvestment cannot result merely from citations.

<sup>70</sup>*See* MALLACH, *supra* note 11, at 64 (“Tax foreclosure is the taking of title to properties where the owners have failed to pay their property taxes or other obligations to the municipality, school district or county.”).

<sup>71</sup>*See* Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 IND. L.J. 747, 748 (2000) [hereinafter Alexander, *Tax*] (“[Municipalities] frequently . . . prefer to sell the right to collect [taxes] to private third parties.”); *see* MALLACH, *supra* note 11, at 65 (“Many statutes encourage acquisition of tax liens or title by third parties, who can be developers, speculators, or investors.”). The sale of tax liens to third parties in bulk can perpetuate vacancy as well. Third party purchasers aim to collect back taxes, not return the property to productive use.

<sup>72</sup>*See* MALLACH, *supra* note 11, at 66 (detailing the pitfalls of tax lien sales). Even when tax liens are not sold to third-party purchasers, allowing multiple jurisdictions to foreclose on abandoned houses helps prevent the formation of a systematic approach to community revitalization, as opposed to returning a single property to productive use. When several

se, but instead on increasing tax revenues by returning properties to the tax rolls.<sup>73</sup> Properties in foreclosure are sold at auction.<sup>74</sup> Foreclosing agencies looking to return the property to the tax rolls put it up for auction, which often results in vacancy when homes fail to sell at auction.<sup>75</sup> The combination of multiple foreclosing parties focused on producing tax revenue and the auction block process prevent any systematic planning regarding the disposition of abandoned properties.<sup>76</sup>

Other limitations hamstringing tax foreclosure as a method of addressing abandonment. First, speculators often remain outside the reach of tax foreclosure. In rising real estate markets, speculators often keep taxes current on vacant buildings in the hope of reselling a decrepit property for a profit in the future.<sup>77</sup> The speculator stymies government agencies that could foreclose on a nuisance property by keeping the taxes current.<sup>78</sup> By avoiding tax foreclosure, the speculator imposes the externalities of abandonment without fear of losing the property. Speculators fetter the matter on the other end by purchasing properties at foreclosure auctions.<sup>79</sup> Thus, an abandoned house taken in foreclosure may be sold, or “flipped,” to a speculator who plans to perpetuate the vacant nuisance.

Second, tax foreclosure is generally a lengthy process.<sup>80</sup> Notice requirements<sup>81</sup> and clogged court dockets delay foreclosure actions.<sup>82</sup> Owners of tax delinquent

---

unconnected entities foreclose on properties without communicating with each other and without regard to promoting economic development the results can be disastrous, including further abandonment.

<sup>73</sup>See *supra* note 66 and accompanying text.

<sup>74</sup>See MALLACH, *supra* note 11, at 64 (describing how governments sell foreclosed properties). Properties are not sold at auction if a tax lien has been purchased by a third-party. See, e.g. IND. CODE § 6-1.1-24-5 (2007) (describing auction sale of tax delinquent properties).

<sup>75</sup>See Engel, *supra* note 14, at 358 n.13 (“identifying ninety-two homes that had gone through the foreclosure process and finding that half were still vacant a year later”).

<sup>76</sup>See *id.* (discussing reasons for cities and lienholders to elect not to foreclose on default properties); see also Alexander, *Tax*, *supra* note 71, at 748 (detailing transactional insurance impediments to procuring tax foreclosed properties). Impediments such as a lack of available insurance for purchasers of properties in tax foreclosure helps prevent foreclosed properties from returning to productive use. Furthermore, speculative “flipping” can occur at tax sales, whereby real estate speculators purchase a property with the intent to continue a vacant nuisance.

<sup>77</sup>See MALLACH, *supra* note 11, at 1 (“In many cities, where property values are rising, owners are paying the taxes on buildings that are sitting empty, unsecured, potentially becoming magnets for crime and disease.”); see also, Kelly, Jr., *supra* note 17, at 214 (“A speculating investor . . . may acquire a vacant property with no intention of ever renovating the property. The Investor will buy up dilapidated properties cheaply and do nothing but continue to pay the taxes on them.”).

<sup>78</sup>See MALLACH, *supra* note 11, at 1. See also Kelly, Jr., *supra* note 17, at 214.

<sup>79</sup>See *supra* notes 75-81 and accompanying text.

<sup>80</sup>See MALLACH, *supra* note 11, at 65 (“It is rare, at best, for a municipality to gain title through tax foreclosure in less than eighteen months to two years from the point at which the owner stopped paying taxes. In less efficient systems, the process can take five years or more.”).

parcels are sometimes hard to find, especially when a speculating investor purposefully evades notice,<sup>83</sup> but also because of difficulties locating title owners and heirs to estates.<sup>84</sup> When a property remains vacant for long periods of time, it decreases the value of the property,<sup>85</sup> further harms neighboring residents,<sup>86</sup> and encourages additional abandonment in the area.<sup>87</sup> The sluggishness of tax foreclosure renders it an unattractive method because the externalities of abandonment remain in place while the property winds its way through the legal system.<sup>88</sup>

---

<sup>81</sup>See *Menonite Bd. of Missions v. Richard C. Adams*, 462 U.S. 791, 798 (1983) (requiring notice “reasonably calculated to apprise” all parties with a property interest prior to a tax sale). In *Menonite*, the Court held that notice by newspaper publication “must be supplemented by notice mailed to mortgagee’s last known available address, or by personal service.” *Id.* Furthermore, notice given to the property owner alone will not suffice; all mortgagees must be notified individually that the property is subject to a foreclosure proceeding. *Id.* This process further delays the progression of the property through the legal system.

<sup>82</sup>See Alexander, *Tax*, *supra* note 71, at 750 (“[The notice requirement] lead to dramatic inefficiencies in the collection of taxes, inconsistent rules and standards, and impairs the ability of local governments and property owners alike to anticipate enforcement of the obligation to pay property taxes.”). The unwieldy tax foreclosure process causes clogged court systems. See also Ford, *supra* note 33, at 6 (“In some major urban cities that have a backlog of cases, [the receivership process] could take 12 to 18 months.”). Where heavy abandonment occurs, both the tax foreclosure and the general housing dockets can be severely clogged with unresolved cases.

<sup>83</sup>See generally Alexander, *Tax*, *supra* note 71 (discussing the various difficulties in collecting property taxes in relation to the notice requirement); see also Kelly, Jr., *supra* note 17, at 214 (“A speculating owner can frustrate attempts at personal service by creating sham ownership entities or just by providing the vacant house as the only mailing address for himself as owner of the property.”).

<sup>84</sup>When a property owner dies intestate, even determining who currently maintains a right to the property may present a significant challenge.

<sup>85</sup>See MALLACH, *supra* note 11, at 61. As a property sits vacant and deteriorates it continually loses value and increases the costs of rehabilitation. *Id.* The longer a property remains vacant, the more likely demolition will be required to remedy the nuisance. *Id.*

<sup>86</sup>See *id.* at 7 (describing negative effects of abandoned housing on neighboring property values, public safety, public health, fire safety and municipal tax generation); see also Engel, *supra* note 14, at 358 n.12 (describing the negative effects of foreclosed housing on neighboring property values).

<sup>87</sup>See BOWMAN & PAGANO, *supra* note 20, at 156 (“The quicker the vacant land is put back into productive use, the less likely the decay will spread.”). See *supra* Part II.B. A vacant property that drives down neighboring property values diminishes the potential return on investment in nearby properties and therefore increases the attractiveness of abandonment to an owner struggling with a problem property.

<sup>88</sup>See MALLACH, *supra* note 11, at 69 (“When dealing with abandoned properties, the shorter the period the better.”). Dealing with abandoned properties quickly represents the ultimate goal, and the lengthy tax foreclosure process leaves the property abandoned while court proceedings take place.

## IV. PRIVATIZED PUBLIC NUISANCE ABATEMENT SUITS

The ineffectiveness of code enforcement and tax foreclosure when dealing with abandoned and vacant properties demonstrate the need for innovative methods of addressing abandonment. Privatized public nuisance abatement suits<sup>89</sup> have proven useful to communities committed to stemming the tide of abandonment. This technique meets some of the needs of struggling communities. When used thoughtfully, with economic revitalization in mind, this approach provides a unique way to reclaim abandoned properties and support sustainable growth.

Privatized nuisance abatement suits are proceedings brought by plaintiffs other than the government on the basis of a public nuisance.<sup>90</sup> Often, CDCs press these suits when attempting to abate vacant nuisances within their neighborhoods.<sup>91</sup> Generally, CDCs are better suited than cities to address abandoned and vacant housing in neighborhoods.<sup>92</sup> The logistics of acquiring and rehabilitating an abandoned and vacant property require careful attention and often long-term oversight.<sup>93</sup> Furthermore, systematic, strategic acquisition of delinquent properties

<sup>89</sup>See generally Kelly, Jr., *supra* note 17 (praising the use of privatized public nuisance abatement suits and receivership as a remedy to fight abandonment).

<sup>90</sup>See, e.g., BALT., MD., INT'L BUILDING CODE §121.2 (2007) ("The Building Official or an established community association or nonprofit housing corporation authorized by the Building Official to act as the Building Official's agent may petition the court for appointment of receiver to rehabilitate the property or to sell it to a qualified buyer."); see also, e.g., OHIO REV. CODE ANN. § 3767.41(5) (West 2007) (allowing neighbors to sue for nuisance abatement); see also, e.g. OHIO REV. CODE ANN §3767.41(B)(1) (West 2007) ("In any civil action to enforce any local building, housing . . . ordinance . . . that is commenced . . . by a municipal corporation in which the buildings involved is located, by any neighbor, tenant, or by a nonprofit corporation . . ."). Both the Baltimore ordinance and the Ohio statute authorize parties other than the government to sue to abate a nuisance. Neither the ordinance nor the statute requires that the nuisance property demonstrably affects the property of the party authorized to sue. This important distinction essentially means that a private party is suing to abate a public nuisance, because a private nuisance suit would require a showing that the nuisance property affected the rights of the plaintiff property owner. DAN B. DOBBS, *THE LAW OF TORTS*, 1334 (West 2000) ("A public nuisance, as distinct from a private nuisance, is a substantial and unreasonable interference with a right held in common by the general public. . . in health, safety, and convenience.").

<sup>91</sup>See Ford, *supra* note 33, at 9 (describing the receivership process and how CDCs and other nonprofits utilize it). Although a neighbor could sue under these types of privatized nuisance abatement suits, neighbors rarely have the resources or the drive to pursue this type of action alone.

<sup>92</sup>See Kelly, Jr., *supra* note 17 and accompanying text. The logistical and financial constraints on cities make the receivership process problematical.

<sup>93</sup>See Ford, *supra* note 33, at 9 ("Receivership takes prior planning and preparation, and is bound to be a long process."); see, e.g., Kelly, Jr., *supra*, note 17, at 226-27 (2004) (describing how the Patterson Park CDC utilized vacant housing receivership strategically to augment the value of properties it already owned over a long period of time); see also MALLACH *supra* note 11, at 45 ("[Financial and logistical constraints] suggest that the best receivers are not likely to be municipalities, or even, in most cases, experienced managers of conventional rental property, but organizations with substantial experience both in property management and in the rehabilitation of affordable housing. A municipality serious about pursuing a receivership strategy should recruit CDCs with a solid record in both areas to become receivers.").

requires an intimate knowledge of the particular community's needs.<sup>94</sup> As functioning community advocates, CDCs are better than municipal governments at understanding individual neighborhoods.<sup>95</sup> This understanding allows CDCs to develop insightful strategies in acquiring abandoned and vacant homes and reintroducing them to productive use.<sup>96</sup> The residents who drive CDCs also maintain a long-term stake in revitalizing the neighborhood, which increases the likelihood of successful rehabilitation of homes.<sup>97</sup>

The law should allow CDCs to press public nuisance suits and to appoint receivers or act as receivers to abate nuisances. The suit should be tailored specifically to abandoned property, authorize nonprofit entities to borrow money against the value of the property to facilitate rehabilitation and provide a mechanism to acquire and clear title to the property to allow communities, through CDCs, to defend themselves against a proliferation of nuisance properties.

#### A. *Standing to Sue and Receiverships*

Without a statutory authorization, CDCs cannot bring public nuisance actions.<sup>98</sup> The first simple but important tweak necessary to empower CDCs to sue for public nuisance abatement is a statutory provision allowing nonprofit entities sue for public nuisance and to petition for receivership as a remedy<sup>99</sup> to abate those nuisances.<sup>100</sup> A

---

<sup>94</sup>See Kelly, Jr., *supra* note 17, at 213 (noting the need for swift action and arguing that CDCs can fulfill that requirement better than municipalities). Each individual CDC operates within a particular neighborhood and knows those neighborhoods better than a large, distended local government. *Id.*

<sup>95</sup>See *id.* at 212. ("To secure market stability, a city must involve the community organizations of these neighborhoods both in the eradication of nuisance vacant houses and in the coordination of capital improvements."). Individual CDCs are connected to particular communities better than a municipal government because the scope of the CDCs' mission is so much narrower. A CDC guided by committed leaders understands the neighborhoods because of intimate interaction with the residents. Simply talking to residents allows leaders in CDCs to identify nuisance properties quickly and determine where efforts to revitalize the community will induce additional private influxes of capital investment.

<sup>96</sup>See *id.* at 228 (discussing how CDCs can use receivership creatively to induce confidence in the neighborhood). Because CDCs know the neighborhood, they can focus on the most pressing problems and work with residents to create opportunities for future investment. *Id.*

<sup>97</sup>See *id.* at 210 ("[Community members] band together to form neighborhood associations to increase the effectiveness of their advocacy for code enforcement and other public services.").

<sup>98</sup>Some type of authority is required for a CDC to press a nuisance abatement suit. Although an ordinance may provide the necessary authority, a wide range of home rule issues which vacillate depending upon state constitutions may prevent municipal ordinances from effectively granting CDC's the power to petition for receivership to abate nuisances. Most authorizing legislation of this type takes the form of a statute, although Baltimore's municipal receivership ordinance is effective.

<sup>99</sup>Ford, *supra* note 33, at 4 ("Receivership is a *remedy* a court can employ *after* a lawsuit has been filed.") (emphasis original).

receiver is a court appointed disinterested person charged with protecting a property.<sup>101</sup> In the case of vacant property, a receiver's duties include the rehabilitation of the property.<sup>102</sup> Many state statutes allow only municipal corporations or counties to sue for public nuisance and petition for appointment as receivers.<sup>103</sup> Failing to include CDCs or other nonprofit corporations in the statutory scheme robs the statute of much relevance because municipalities and counties cannot and do not utilize receivership effectively.<sup>104</sup>

*B. Tailoring the Process to Abandonment: Definition, In Rem Jurisdiction*

Abandoned nuisance abatement and receivership statutes should be designed specifically to tackle abandonment and expedite the process of transforming a dilapidated property into a viable community asset.<sup>105</sup> Abating nuisances quickly significantly escalates the usefulness of receivership as a tool.<sup>106</sup> To this end, abandoned property receivership laws should adopt a wide definition of abandonment as a nuisance per se and allow for in rem jurisdiction over the property.

<sup>100</sup>See *e.g.*, OHIO REV. CODE ANN. § 3767.41(B)(1) (West 2007) (authorizing nonprofit entities and neighbors to petition for receivership); *see also e.g.*, MO. ANN. STAT. § 441.510 (West 2007).

<sup>101</sup>See BLACK'S LAW DICTIONARY (8th ed. 2004). Receivers assume a variety of forms and functions, but for the purposes of this discussion, receivership focuses solely on abandoned property. Receivers may be appointed to oversee properties occupied by tenants, and charged with general management duties in other situations.

<sup>102</sup>See OHIO REV. CODE ANN. §3767.41(J)(1)(a) (West 2007) ("The receiver shall be discharged by the judge as provided in division (I)(4) of this section, or when all of the following have occurred: (a) The public nuisance has been abated. . . ."); *see also* ARIZ. REV. STAT. ANN. § 33-1903(L) (2007) ("After all [nuisance] violations have been cured, the temporary receivership shall be terminated.").

<sup>103</sup>See, *e.g.*, ARIZ. REV. STAT. ANN. § 33-3903(A) (2007) ("This state or a city, town or county of this state may apply to the superior court for the appointment of a temporary receiver . . . ."); *see also* OR. REV. STAT. ANN. § 105.430 (2007) ("[T]he city or county . . . may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement."). These statutes encompass both standing to sue and the ability to petition the court for the remedy of receivership.

<sup>104</sup>MALLACH, *supra* note 11, at 8 ("Even though the power to pursue vacant property receivership may derive from municipal police power, most local governments will not actually use those powers. Few cities are equipped to engage in the extended process of rehabilitating abandoned property.").

<sup>105</sup>See *supra* note 89 and accompanying text. The speed of the process itself is one of the key components of designing a statute with abandonment in mind. The externalities of abandonment increase as time elapses, and as such one of the goals of vacant housing receivership is to reduce the time that a structure remains abandoned.

<sup>106</sup>See MALLACH, *supra* note 11, at 61 ("The longer a building sits vacant, the more it deteriorates, and the more it becomes a potential target for arson and vandalism, not only affecting the neighborhood's quality of life, but materially increasing the cost of future rehabilitation and the likelihood that the building will have to be demolished rather than rehabilitated."). Methods of abating vacant nuisances faster reduce these externalities as well as the cost of rehabilitation.

Any statute authorizing abandoned nuisance abatement receivership must embrace an expansive definition of abandoned and vacant property. Definitions of abandoned property must focus on the existence of a nuisance, not tax delinquency, as do some statutes.<sup>107</sup> A vacant property, whether or not the owner keeps taxes current, damages the community.<sup>108</sup> If property owners can avoid losing or rehabilitating the property simply by paying taxes, many abandoned homes purchased by speculators will fall outside the reach of CDCs, continue to harm the community and discourage private investment.<sup>109</sup> Thus, any receivership statute should focus primarily on the nuisance maintained by the property owner to the detriment of neighbors. The definition of a nuisance property should include abandonment and vacancy as nuisances per se, rather than merely listing conditions which amount to a common law nuisance. This type of definition permits more flexible action and specifically names and address abandonment as the problem.

The definition of abandoned or vacant property should include health hazards, fire hazards, vermin, and vacancy for a short period of time without rehabilitation.<sup>110</sup> Any definition which requires a period of vacancy longer than six months drives up the cost of rehabilitation, promotes disinvestment in the neighborhood and prevents CDCs from providing the necessary quick check on blight.<sup>111</sup> A constraining statute

---

<sup>107</sup>MALLACH, *supra* note 11, at 1 (“Paying property taxes and other municipal charges is only one part of an owner’s responsibility. A vacant property on which taxes are being paid can still be considered an abandoned property, if the owner allows it to become a nuisance to neighbors.”). *See supra* Part III.B. An owner who pays taxes on the property but maintains a nuisance on the property damages the neighborhood but avoids tax foreclosure. Addressing this type of malfeasance without further burdening municipalities represents one of the primary goals of vacant housing receivership. However, some statutes retain language focused on tax delinquency as an indicator of abandonment. Presumably, this focus on tax delinquency represents an attempt to satisfy traditional definitions of abandonment which demand an intent to relinquish property rights. Thus, the tax delinquency functions as circumstantial evidence bearing on the owner’s intent to relinquish the property, since the tax delinquency opens the possibility of a tax foreclosure action.

<sup>108</sup>*Id.*

<sup>109</sup>MALLACH, *supra* note 11, at 9 (“The definition must *not* set tax delinquency as a threshold criterion for applying the law, as it is precisely those properties whose owners – often speculators – are paying taxes while allowing the property to deteriorate that are most suitable for receivership.”) (emphasis in original).

<sup>110</sup>*See, e.g.*, N.J. STAT. ANN. § 55:19-81-82 (2007). (including as indicators of vacancy a six month vacancy period, one installment of property taxes delinquent, a building “unfit for human habitation,” fire hazards, health hazards, vermin, debris, “uncut vegetation” and other indicators which “materially affect[s] the welfare, including the economic welfare, of the residents of the area in close proximity to the property”). Authorizing statutes may include any number of additional indicators of abandonment as well. The goal of expansive definitions of abandonment lies in creating a situation facilitating extremely rapid action against the nuisance property.

<sup>111</sup>*See* MALLACH, *supra* note 11, at 61 (“The first task is to reduce the period that an abandoned building sits vacant, and the length of time between its abandonment and its reuse. The negative impact of abandoned buildings on the municipality, on the neighborhood, and on nearby residents is substantial.”). Allowing for long periods of vacancy defeats the purpose of authorizing CDCs to pursue nuisance abatement actions. This type of action leverages institutional knowledge maintained by CDCs to provide a quick response to abandonment. If

which requires periods of vacancy for years or specific indicators of abandonment can halt CDC action for a time while the property damages the neighborhood. Forming the statute around an expansive definition of vacancy helps focus on the actual problem posed by the property and allows rehabilitation property owned by absent speculators.

The difficulty of serving process to owners of abandoned structures hinders efforts to speedily abate nuisances.<sup>112</sup> In response, vacant receivership statutes should enforce rights on an *in rem* basis and permit notification by certified mail to the owner's listed address and posting notice on the property itself. *In rem* nuisance actions focus on extinguishing an owner's property rights,<sup>113</sup> while traditional *in personam* actions address the owner's intent in maintaining the nuisance.<sup>114</sup> The remedy in *in rem* actions is limited to the property in question.<sup>115</sup> Both *in rem* and *in personam* jurisdiction require "notice reasonably calculated, under all the circumstances, to apprise parties of the pendency of the action and afford them an opportunity to present their objections."<sup>116</sup>

While the notification requirements for *in rem* and *in personam* actions remain identical,<sup>117</sup> it is easier for CDCs to fulfill due process requirements in *in rem* actions because alternate service may substitute for personal service when locating the defendant becomes highly problematical.<sup>118</sup> Instead of serving the property owner personally, the plaintiff may simply put notice on the vacant property itself after an

---

CDCs cannot act for six months, the value of that knowledge diminishes to the vanishing point. On the other hand, vacancy for a very short time period, such as a month, increases the value of the action because CDCs can conceivably reclaim a viable property before the costs of rehabilitation escalate. Generally, the shorter the statutory vacancy period, the better. Problems arising from owners on vacation or other similar complications are easily dealt with once notice is given; such suits may be dismissed easily.

<sup>112</sup>See Kelly, Jr., *supra* note 17, at 214 (discussing speculators hindering actions by hiding from process). If finding an owner takes an inordinate amount of time and consumes resources, nuisances become difficult to abate quickly. *Id.*

<sup>113</sup>See Shaffer v. Heitner, 433 U.S. 186, 206 (1977) ("[A]n adverse judgment in rem directly affects the property owner by divesting him of his rights in the property before the court."); see also Kelly, Jr., *supra* note 17, at 217 ("The focus of the proceeding is no longer the owner's culpability, but the termination of the owner's rights in the property.").

<sup>114</sup>See Kelly, Jr., *supra* note 17, at 216 (stating that intent based approaches are less flexible than civil *in rem* approaches).

<sup>115</sup>See Alexander, *Tax*, *supra* note 71, at 765 ("A judgment in an *in rem* proceeding is limited to the defendant's interest in the property.").

<sup>116</sup>Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950).

<sup>117</sup>*Id.* at 313 ("It is sufficient to observe that, whatever the technical definition of its chosen procedure, [a court may adjudicate] provided its procedure accords full opportunity to appear and be heard."); see also Alexander, *Tax*, *supra* note 71, at 766 ("In . . . Mullane . . . the Supreme Court held that the distinction between *in personam* and *in rem* jurisdiction is not a basis for differences in the duty to provide notice of the proceeding to interested parties.").

<sup>118</sup>See *Mullane*, 339 U.S. at 316 ("This Court has not hesitated to approve of resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning."). The Court was specifically concerned with an *in rem* foreclosure proceeding when giving this statement. *Id.*

initial reasonable attempt at personal service.<sup>119</sup> This process is particularly valuable where speculators purposefully evade notification.<sup>120</sup> Exhaustive searches for a hiding property owner, which require additional time and expense, go beyond the requirements of due process.<sup>121</sup> Furthermore, *in rem* actions allow the court to dispose of cases without the property owner even physically appearing in court.<sup>122</sup> This structure draws the delinquent property owner out of hiding to prevent transfer of the property to another person or entity.<sup>123</sup> As such, receivership statutes should proceed on an *in rem* basis and provide for notice by mail to the owner's listed address and posting notice on the vacant property.<sup>124</sup>

---

<sup>119</sup>See *Mennonite Bd. of Missions v. Richard C. Adams*, 462 U.S. 791, 798 (1983) (“But unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the mandate of *Mullane*.”) An *in rem* proceeding which provides for notice through mailing to an address and then constructive notice through posting on the property should satisfy this requirement. See also Kelly, Jr., *supra* note 17, at 218 (“But, once personal delivery has been attempted, *in rem* proceedings may be allowed to proceed by alternative service where *in personam* cases might need to wait for a showing that the defendant is deliberately evading service of process.”).

<sup>120</sup>See *Mullane*, 339 U.S. at 315 (“Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper . . .”). In *Mullane*, the Court required more than just notification by publication for an *in rem* tax foreclosure proceeding. However, the Court noted that “where it is not reasonably possible or practicable to give more adequate warning” alternative types of service are available. *Id.* at 316. Posting notification on the property itself is more likely to provide notice than simply publishing a small type notice in a newspaper, as the Court noted. *Id.* at 315. Furthermore, in the case of receiverships, finding the property owner is a goal, not something to be avoided. Notification of this type is a last resort after reasonable attempts to locate the property owner, not an end run around the property owner while trying to snatch the property. Posting notice on the property represents the last and only reasonable resort, short of protracted and expensive searches for the property owner while the nuisance persists. See also Alexander, *Tax*, *supra* note 71, at 768 (“The due process standard for property tax foreclosures became ‘notice reasonably calculated’ to inform those parties who hold ‘legally protected property interests’ whose names and addresses are ‘reasonably ascertainable’ by ‘reasonably diligent efforts.’”)

<sup>121</sup>See *Mennonite*, 462 U.S. at 799 (“The County’s use of these less reliable forms of notice is not reasonable where, as here, ‘an inexpensive and efficient mechanism such as mail service is available.’”). A speculator hiding from service or a delinquent owner who has simply disappeared makes certain that no inexpensive or efficient mechanism for notice exists.

<sup>122</sup>See Kelly, *supra* note 17, at 217 (“Although the ultimate power of the court to induce compliance presupposes the owner’s physical presence in the courtroom, the owner’s attendance is not required for a receivership hearing to be effective. . . . If the owner’s efforts at obscurity have been successful, the receiver can transfer the property without the owner even knowing it.”).

<sup>123</sup>*Id.* (“Whether or not the owner makes his whereabouts known, he will need to come forward and appear in the lawsuit to preserve his stake in the property.”).

<sup>124</sup>See, e.g., BALT., MD., INT’L BUILDING CODE §123.7(a) (2007) (“Adequate and sufficient notice may be made by posting a copy of notice on the property in question if: the identity or whereabouts of the owner, agent, person in control, former owner, or other person responsible for the property is unknown . . .”). This remedy is limited to situations in which service by mail cannot be accomplished, including as related to mortgages; see BALT., MD.,

Allowing for *in rem* nuisance proceedings would drastically increase the value of nuisance actions to CDCs because checking the spread of blight depends on abating nuisances in a timely fashion.<sup>125</sup> Utilizing a wide definition of abandonment as a nuisance per se and permitting enforcement on an *in rem* basis would quicken the process without trampling the rights of property owners or lienholders. Owners of vacant properties, if they can be found, will have ample opportunity to address the nuisance and keep the property.<sup>126</sup> In addition, lienholders will be mailed notice of the proceedings and have an opportunity to come forward and enforce interests in the property by either maintaining the property or paying down the costs of rehabilitation.<sup>127</sup>

### C. Receiver's Liens

The high cost of rehabilitating properties demands that receivers retain the right to borrow funds against the value of the property to finance the improvements.<sup>128</sup> Money does not grow on urban neighborhood trees and CDCs need funds to undertake any rehabilitation.<sup>129</sup> Without the authority to borrow money, CDCs may not have the resources to develop the property at all or may be limited to rehabilitating relatively few properties.

In order to facilitate CDCs' rehabilitation of property, vacant building receivership statutes should include mechanisms for establishing a receiver's lien. Courts may authorize a receiver's lien when the receiver spends or borrows money to repair a property.<sup>130</sup> The receiver's lien should then hold a priority position over

---

INT'L BUILDING CODE §121.3.1 (2007) ("The receiver's lien for rehabilitation expenses will not have priority over a previously recorded mortgage if: (a) the recorded mortgage contains and [sic] address at which service can be effected on the mortgagee and (b) the mortgagee was not served with notice of the proceedings.").

<sup>125</sup>See MALLACH, *supra* note 11, at 61.

<sup>126</sup>See Kelly, Jr., *supra* note 17, at 218 ("If the owner wants to be notified of *in rem* proceedings like vacant building receivership, he will need to provide contact information that will allow him to be given notice."). This is a relatively low burden which a property owner can comply with easily. Furthermore, in the case of lienholders with a security interest in the property, notification of this type should be possible, barring inefficiencies or obstacles in the recording process.

<sup>127</sup>See *infra* note 132 and accompanying text. Once the lienholder has notice of the proceedings, the lienholder may protect a security interest in the property by abating the nuisance.

<sup>128</sup>See MALLACH, *supra* note 11, at 42 ("Many buildings will need a substantial up-front capital investment in order to be restored to sound condition. Unless the receiver can borrow money for capital improvements, the receivership will often be unsuccessful, and the building may end up being vacated and abandoned.").

<sup>129</sup>*Id.* (stating that authority to borrow funds is necessary to successful receiverships).

<sup>130</sup>See Ford, *supra* note 33, at 5 ("A receiver traditionally has, with the court's permission, the same powers as an owner. These are usually spelled out by the state statute and might include. . . issuing notes and securing them with a receiver's lien."); see also OHIO REV. CODE ANN. § 3767.41(F)(9) (West 2007) ("The judge may empower the receiver to do any or all of the following: (9) Issue notes and secure them by a mortgage."); see also MO. ANN. STAT. § 441.590(6) (West 2007) ("The receiver may with the approval of the circuit court borrow

other creditor liens because the receiver both protects the assets of creditors and acts as an agent of the court.<sup>131</sup>

In the alternative, allowing the receiver to establish a priority lien composed of the court costs and foreclose on the property before rehabilitation frees CDCs to find private developers to purchase the property and undertake redevelopment.<sup>132</sup> This attractive alternative works well because CDCs can identify problem properties, develop a strategy as to which properties to acquire, and release the properties to responsible developers with a strategic redevelopment plan for the entire community in mind.<sup>133</sup>

The receiver's lien must hold a priority position,<sup>134</sup> and prior lienholders must be given notice that their lien will be extinguished if they fail to abate the nuisance.<sup>135</sup> A preliminary hearing regarding prior lienholders provides the necessary notice to creditors.<sup>136</sup> If the lienholders decline to take control of the property and rehabilitate

---

money against, and encumber, the property as security therefore in such amounts as may be necessary to carry out his or her responsibilities . . . .”).

<sup>131</sup>See *e.g.* OHIO REV. CODE ANN. § 3767.41(H)(2)(a) (West 2007) (“[A]ll expenses and other amounts paid . . . by a receiver . . . are a first lien upon the building involved and the property on which it is located and are superior to all prior and subsequent liens or other encumbrances associated with the building or property, including, but not limited to, those for taxes and assessments . . . .”); *see also, e.g.*, MO. ANN. STAT. § 441.590(8) (West 2007) (“[The receiver’s lien] shall have priority over all other liens and encumbrances of record . . . except taxes.”). Notice that the Missouri statute provides that the receiver’s lien is inferior to taxes. Holding a priority position over tax liens, as the Ohio statute provides, simplifies the process. Otherwise, a CDC might need to seek forgiveness for the taxes from municipalities and counties.

<sup>132</sup>See Kelly, Jr., *supra* note 17, at 219-220 (describing how sales prior to rehabilitation can be more effective methods of revitalizing a community).

<sup>133</sup>See *id.* at 227 (noting Paterson Park CDC’s systematic use of receivership). Authorization of this type essentially takes the CDC out of the rehabilitation process. *Id.* A private sector developer, identified by a CDC, then undertakes the rehabilitation.

<sup>134</sup>MALLACH ET AL., *supra* note 15, at 3-4 (“The ability to borrow, however, is all but meaningless without the ability to secure the loan with a lien. . . . [t]he statute should provide clear language authorizing the receiver to borrow funds for improvement and place liens on the property, which should take precedence over all pre-existing liens other than municipal liens.”); *see e.g.* OHIO REV. CODE ANN. § 3767.41(H)(2)(a) (West 2007) (authorizing a receiver’s lien in a priority position over all other liens including tax liens).

<sup>135</sup>See, *e.g.*, OHIO REV. CODE ANN. § 3767.41 (C)(2) (West 2007) (“[T]he judge shall offer any mortgagee, lienholder, or other interested party associated with the property on which the building is located, in the order of priority of interest in title, the opportunity to undertake the work and to furnish the materials necessary to abate the nuisance.”); *see also* Kelly, Jr., *supra* note 17, at 224 (“In a vacant property receivership action, all of these stakeholders are given notice of their last chance to protect their investments in the property by seeing to its renovation. If they do not, they will be cleared out by the foreclosure sale along with the owner of the property.”).

<sup>136</sup>See, *e.g.* Ohio Rev. Code Ann. § 3767.41(B)(2)(b) (West 2007) (“The judge. . . shall conduct a hearing at least twenty-eight days after the owner of the building and the other interested parties have been served with a copy of the complaint . . . .”); *see also* BALT., MD., INT’L BUILDING CODE §121.6.1 (2007) (“Within 30 days of the date on which the notice was

it, their only recourse remaining is a distribution of assets after the receiver sells the property.<sup>137</sup> The receiver, by way of the priority lien, possesses the first claim to the proceeds of the sale, and any remaining funds derived from the property revert to the creditors.<sup>138</sup>

Any receivership provisions would have to comply with the Fifth Amendment's ban on governmental "takings" without just compensation. This can be accomplished by allowing the defendant property owner and creditor lienholders an opportunity to redeem the property before rehabilitation, by abating the nuisance personally, or after rehabilitation, by paying the costs of the repairs and reclaiming the property.<sup>139</sup> Even if challenged on the basis of the Fifth Amendment, vacant property receivership provisions would withstand constitutional scrutiny.<sup>140</sup> Nuisances fall within an exception to the Fifth Amendment takings ban by allowing the states to deprive an owner of property when the use of that property injures the public health and welfare.<sup>141</sup> The "nuisance exception" will be satisfied with a demonstration of an "objectively reasonable"<sup>142</sup> preexisting state law nuisance.<sup>143</sup> To avoid compensating the property owner, the ends sought by the government must focus on eliminating a specific harm which the property owner never maintained the right to perpetrate through use of the property.<sup>144</sup> In purchasing a property, the

---

mailed, a judgment creditor or lien holder may apply to intervene in the proceedings and to be appointed [as receiver.]").

<sup>137</sup>*See, e.g.* OHIO REV. Code ANN. § 3767.41(I)(3) (West 2007) (mandating that proceeds from the sale of a property in receivership shall be distributed in a certain order, with prior mortgagees recovering after the receiver recoups the cost of rehabilitation).

<sup>138</sup>*Id.*

<sup>139</sup>Ford, *supra* note 33, at 7 ("[C]hallenges to [receivership] statutes with these due process protections have been unsuccessful."); *see* Kelly, Jr., *supra* note 17, at 219 ("The owner can avoid any interference with his rights simply by demonstrating his prospective ability to renovate the property."). Abating the nuisance allows the owner to retain all property rights.

<sup>140</sup>*See* Kelly, Jr., *supra* note 17, at 220 (stating that vacant property receivership falls under the "nuisance exception" to takings).

<sup>141</sup>*Mugler v. Kansas*, 123 U.S. 623, 668-69 (1887). ("A prohibition upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking[.]"). Although the receiver personally takes title to the property, the power of the receiver derives from the state police power.

<sup>142</sup>*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1032 n.18 (1992) (stating that total takings without compensation will be upheld if "objectively reasonable" in light of state law).

<sup>143</sup>*Id.* at 1030-31. State law nuisance actions normally include consideration of several factors, such as "the degree of harm to public lands . . . or adjacent private property" and "the social value of the [owner's] activities and their suitability to the locality in question." *Id.* Abandoned and vacant houses have no social value; on the contrary, they present a severe social danger. Moreover, abandoned homes cause significant damage to all surrounding property.

<sup>144</sup>*Id.* at 1029 ("Any limitation so severe cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles

owner never bought the right to maintain a nuisance property in a deplorable state which invites criminal behavior, creates a fire hazard and deflates the value of neighboring property.<sup>145</sup> The nuisances posed by abandoned homes fall within common law nuisances and therefore fit within the nuisance exception to takings jurisprudence as well. Prior lienholders can protect their rights in the property by abating the nuisances personally or simply by paying the costs of the rehabilitation.<sup>146</sup> If the owner of a vacant nuisance and prior lienholders refuse to take action, the receiver can take title to the property without providing compensation.

#### D. Title Clearing

Another very important aspect of any receivership statute lies in providing free and clear title to the property after seizure.<sup>147</sup> Clouds on the title prevent a property from reemerging in the community with a productive purpose because responsible buyers will shy away from purchasing property with doubtful title.<sup>148</sup> Furthermore, purchasers may find it impossible to secure title transfer insurance where prior lienholders may have a claim to the property.<sup>149</sup> Thus, any effective receivership statute must include strong provisions allowing clear title to rehabilitated property. If receivers cannot clear the title quickly and effectively, the property may revert to a vacant, though rehabilitated, property.<sup>150</sup> Cleaning the title to the property must occur if neighborhoods hope to reintroduce nuisance properties to productive use.

#### E. Benefits of Community Involvement Through CDCs

By allowing CDCs to press suit for abandoned nuisance abatement, embracing an expansive definition of abandonment, focusing on *in rem* enforcement, and authorizing receivers to borrow against the property and obtain clear title through the

---

of the State's law of property and nuisance already place upon land ownership.”). Vacant nuisance receivership satisfies this requirement easily because of the damaging externalities of abandonment.

<sup>145</sup>See Kelly, Jr., *supra* note 17, at 221 (“With regard to vacant buildings, no owner has a property right to keep his or her house, even an unoccupied house, in a visibly uninhabitable condition. . . . They are, as the code states, fire hazards. . . . Those vacant houses open to casual entry harbor all manner of illegal activity”).

<sup>146</sup>See *infra* Part IV.D. Prior lienholders will receive notice of the receivership action and an opportunity to abate the nuisance personally prior to losing the superiority of a lien.

<sup>147</sup>MALLACH, *supra* note 11, at 5 (“Any provisions for sale of the property, to be effective, *must* include language authorizing the court, once the proceeds have been distributed in order of priority, to extinguish any remaining liens on the property.”) (emphasis in original).

<sup>148</sup>*Id.* at 5 (“Without [title clearing] language, the buyer of any property in a transaction resulting from a receivership is at significant risk of being unable to get clean, insurable, title to the property.”).

<sup>149</sup>See Kelly, Jr., *supra* note 17, at 223 (“Even if the owner finds an unsuspecting buyer, the sale may never go to closing as the settlement company may refuse to issue a title insurance policy.”).

<sup>150</sup>See Kelly, Jr., *supra*, note 17, at 227. If the property is rehabilitated, but the title is clouded, insurance companies will likely refuse to issue title insurance, making transfer impossible, and leaving the property vacant.

process, vacant housing receivership can provide a mechanism to redevelop land and prevent blight and offer an alternative to traditional code enforcement and tax foreclosures.<sup>151</sup> Vacant property receivership, driven by CDCs, involves the community in protecting its assets and facilitates strategic redevelopment of floundering neighborhoods.<sup>152</sup> While vacant housing receivership is not a panacea, it can be an effective tool to fight abandonment house by house, street by street.

The receivership process requires long-term oversight and CDCs maintain a unique position, which allows them to act as receivers or select qualified receivers.<sup>153</sup> Not only do CDCs know individual neighborhoods better than municipalities, but CDCs can also identify responsible developers or new homeowners to ensure that redeveloped houses remain in productive use. Furthermore, CDCs can create opportunities for sustainable development within a given neighborhood by guiding an initial burst of capital investment and encouraging further private investment. Eliminating blight in a small area not only protects the investments of neighbors, but enhances the possibility of escalating returns on investment by eliminating the negative impact of abandoned properties. Including CDCs helps to guarantee that buyers of a rehabilitated property care for the home after a sale, because CDCs often recruit people to live in a neighborhood, and at the very least can make certain that a purchaser is not a real estate speculator.<sup>154</sup>

Nuisance abatement actions and receiverships work best as a relatively quick response to abandonment in neighborhoods that maintain the capability of spurring private investment.<sup>155</sup> With this in mind, CDCs pressing nuisance abatement suits function most effectively by addressing abandonment in a relatively small area with existing infrastructure and without extensive vacancy. A nuisance abatement action provides a relatively quick response to vacancy in a single structure.<sup>156</sup> As such, this action works well as a “spot check” on blight creeping into sound neighborhoods. The action capitalizes on a CDC’s individual knowledge of a particular neighborhood because community activists observe conditions in the neighborhood

---

<sup>151</sup>*Id.* (“Vacant building receivership’s focus on nuisance abatement, as opposed to punishment, makes it the most appropriate code enforcement tool for such direct community control.”). An expanded authorization to press nuisance abatement suits allows for even more effective action on the part of CDCs.

<sup>152</sup>*Id.* at 217 (positing that “the city, or its community nonprofit designee, has the power to ask a court to appoint a receivers for any property”). Because CDCs embody community activity, when a CDCs presses a suit, the community itself becomes involved in protecting housing assets.

<sup>153</sup>Ford, *supra* note 33, at 9 (“As nonprofit community development corporations gain more experience in this type of community rehabilitation, they become ideal candidates for receivership. . . . Receivership takes prior planning and preparation, and is bound to be a long process.”).

<sup>154</sup>*See* Kelly, Jr., *supra* note 17, at 228-29 (describing the various ways CDC’s can condition the receiver process to control developer and resident behavior to a certain extent before and after rehabilitation). In this process, CDC’s can maintain the flexibility to pick and chose properties to pursue and select parties to whom the property may be sold.

<sup>155</sup>*See infra* notes 164-165 and accompanying text.

<sup>156</sup>*See supra* Part IV.B.

and can respond quickly.<sup>157</sup> The flexibility and rapidity of the nuisance abatement action takes advantage of a CDC's strengths by leveraging intimacy with a community into a response to abandonment.

Furthermore, the nuisance abatement action, as described above, works well against speculators who keep taxes current on properties.<sup>158</sup> Speculators focusing on making gains by holding titles to vacant houses in the hopes that real estate prices will rise are more likely to attack structurally sound neighborhoods.<sup>159</sup> The nuisance abatement action allows CDCs to fight speculators immediately when a vacant house appears.<sup>160</sup> The *in rem* nature of the action prevents speculators from stymieing efforts to erase abandonment by hiding from process as well.<sup>161</sup> The ability to stifle speculators in one small area greatly strengthens a neighborhood's capacity to prevent abandonment from spreading.

Receiverships driven by CDCs work best in neighborhoods before widespread abandonment destroys the fabric of the area.<sup>162</sup> This is because areas with only spotty blight retain the ability to entice investors, either as homeowners or in commercial enterprises.<sup>163</sup> Receiverships involve a lengthy process, efficient organization and skilled workers. Moreover, successfully using receiverships to revitalize neighborhoods hinges on spurring subsequent private investment. Where vacant properties are concentrated, land banking may be the more effective vehicle for recovery. However, because rehabilitating properties requires extensive oversight<sup>164</sup> and takes some time, the nuisance abatement action is not an effective method of revitalizing a neighborhood suffering from dozens, if not hundreds, of abandoned homes. Financial and temporal constraints on CDCs prevent the rehabilitation of a large volume of homes.<sup>165</sup> One rehabilitated home in the midst of dozens of vacant structures may not fetch a decent price on the market.<sup>166</sup> The

---

<sup>157</sup>See *supra* Part IV.E.

<sup>158</sup>See *supra* Part IV.B.

<sup>159</sup>See *id.*

<sup>160</sup>*Id.*

<sup>161</sup>*Id.*

<sup>162</sup>See *id.* at 231 (discussing the limits of the receivership action). The effectiveness of the receivership process lies in maintaining the viability of communities, not in overhauling destitute neighborhoods. *Id.* Rehabilitation of isolated problem properties helps spur or continue the flow of investment into a neighborhood. *Id.* Great numbers of abandoned houses preclude the use of the receivership action as an effective tool to promote reinvestment, because the rehabilitated houses themselves decline in value due to their proximity to abandoned structures.

<sup>163</sup>See *id.* at 211 (arguing that receiverships are a tool to induce and maintain private investment). Isolated rehabilitations may help individual families or streets, but receiverships work best when they leverage potential private reinvestment. *Id.*

<sup>164</sup>See *supra* Part IV.E.

<sup>165</sup>*Id.*

<sup>166</sup>See BOWMAN & PAGANO, *supra* note 20, at 128 (describing the "contagion effect" of abandoned and vacant structures and the corresponding drop in property values when abandoned structures are in the vicinity of other real property).

proximity to abandoned structures diminishes the attractiveness and value of the home considerably.<sup>167</sup> This type of rehabilitation, while admirable and useful to some extent, fails to accomplish any systematic economic revitalization because no other private capital from secondary sources flows from the work done to a single home surrounded by urban decay. While rehabilitation encourages secondary investment in fairly stable neighborhoods, in severely blighted neighborhoods the value of the rehabilitation itself decreases due to the closeness of abandoned structures.

#### V. LAND BANKING

A land bank is an agency that oversees the acquisition, management and disposal of problem properties for the purpose of strategic re-use.<sup>168</sup> The duties of a land bank generally include taking title to tax delinquent properties, securing those properties, and releasing land bank properties to developers with plans to reintroduce the property to productive use. Strategically re-using properties requires the land bank to identify opportunities to use idle properties in ways that promote further economic development. For example, if a land bank assembles several parcels containing small, one-family homes, a developer may wish to demolish all of them and instead build larger homes, condominiums, or mixed-use development. This type of strategic acquisition and release which promotes economic development represents the ultimate goal of a land bank entity.

Usually, a land bank is designed to carry out the policies of various regional governmental agencies rather than an independent agency itself.<sup>169</sup> As a result, land banks assume several forms and differ widely.<sup>170</sup> The common factor among land banks is that they are all designed to contend with abandoned and vacant properties.<sup>171</sup>

---

<sup>167</sup>*See id.*

<sup>168</sup>*See* MICH. COMP. LAWS ANN. § 124.752 (West 2007) (“The legislature finds that . . . it is in the best interests of this state and local units of government. . . to assemble or dispose of public property, including tax reverted property, in a coordinated manner to foster the development of that property and to promote in this state . . .”); *see also* Alexander, *Land Banks*, *supra* note 20, at 150 (“The acquisition, management, and disposition of vacant, abandoned, and tax-delinquent properties are the primary functions of a land bank.”); *see also* MALLACH, *supra* note 11, at 106 (“A land bank authority or similar entity is an entity created for the explicit purpose of gaining control over the city’s problem property inventory, in order to make possible its timely and productive reuse. . . . The mission of any land bank entity is to take title to, hold, and dispose of property.”).

<sup>169</sup>*See* MALLACH, *supra* note 11, at 112 (“Since a land bank entity is generally not an independent body, but a vehicle to execute the policies of one or more government entities, it must take direction from the planning, housing, and community development officials of its parent jurisdictions.”); *see also* Alexander, *Land Banks*, *supra* note 20, at 157 (describing problems arising from friction between state government and multiple local governments in the governance of a land bank).

<sup>170</sup>*See* Alexander, *Land Banks*, *supra* note 20, at 142 (“There is no single form or function to land banks.”).

<sup>171</sup>*Id.* (“A land bank is a governmental entity that focuses on the conversion of vacant, abandoned, and tax-delinquent properties into productive use.”).

Typically, land banks deal primarily with tax delinquent properties.<sup>172</sup> Some land banks automatically receive title to all tax delinquent properties not sold at foreclosure auctions, while others receive title to all tax delinquent properties in an area.<sup>173</sup> Furthermore, some land banks can identify specific tax delinquent properties and quickly acquire those properties. In all cases, the land bank takes title to the property, and ideally secures the property for long-term vacancy. For communities struggling with abandonment, land banks can provide an essential function: long-term strategic planning and oversight of abandoned properties within a single entity.<sup>174</sup> Where pervasive abandonment has disrupted or destroyed the fabric of a region, a single guiding entity that harnesses resources from a variety of sources can develop systematic and creative ways to identify, acquire, hold and dispose of land. Coordinating efforts under one agency allows communities to more effectively control the future disposition of land in a region.

The creation and operation of a land bank requires considerable planning, time, and expense.<sup>175</sup> Organizing a land bank requires changes in state law and inter-governmental agreements among the governments that share jurisdiction with the land bank.<sup>176</sup> Especially where inter-local governmental agreements are necessary, political inertia can stand as a barrier to the creation of a land bank.<sup>177</sup> Furthermore,

---

<sup>172</sup>*Id.*

<sup>173</sup>The Genesee County Land bank is the only land bank that automatically receives title to all the tax delinquent properties in the area it services. Other land banks assume title to tax delinquent properties in a variety of ways. The acquisition methods used by each land bank ultimately reflect local conditions, including the prevalence of abandonment in the community and the laws governing the tax foreclosure process.

<sup>174</sup>*Id.* (“When the term ‘land bank’ is viewed as a reference to an entity that assembles and ‘banks’ land for short or long-term strategic purposes, the understanding is a bit more accurate.”); see also BOWMAN & PAGANO, *supra* note 20, at 130-31 (“Even though general-purpose local governments are responsible for regulating and managing land, they do not possess carte blanche authority. . . . A city’s decision-making sphere is circumscribed by externally imposed rules . . .”). The “externally imposed” rules stem from the state and other local governments. Combining land reuse authority from multiple sources in one entity alleviates some of the problems stemming from conflict of laws and policies.

<sup>175</sup>See MALLACH, *supra* note 11, at 107 (noting the expense of creating a land bank). Any entity which includes voices from multiple government agencies requires careful planning.

<sup>176</sup>See *id.* at 114 (“[Statutory authority] is particularly important where no general statute provides clear legal authority for such an entity, or where the effectiveness of the land bank depends on inter-local agreement between different jurisdictions, typically between the municipality and county in which it is located.”).

<sup>177</sup>See *id.* at 116 (“Skepticism about local government capacity, as well as concerns over the proliferation of authorities and special districts, may prompt opposition to a bill authorizing municipalities to create land bank authorities, even from people who may support the goals of the legislation.”). Coordinating different agencies and overcoming political opposition presents one of the challenges to forming a land bank. However, the problems involved in forming a land bank underscore one of the primary reasons for creating a land bank – avoiding continuous political conflict when devising land reuse policies. Forming the land bank essentially reduces the number of times different government agencies have the opportunity to conflict with each other.

forging a land bank may require changes in the law regulating tax foreclosure.<sup>178</sup> Even noting these obstacles, in areas rife with abandonment, a land bank provides the best method of coordinating a multiplicity of local governments, agencies, and community activists under one umbrella in order to address the issues. Moreover, in developing comprehensive land policy initiatives, land banks can address not only abandonment issues, but also wider social justice issues connected to land use.

The value of any one parcel of land depends largely on the value of surrounding properties, and therefore addressing abandonment requires concerted action on the part of multiple agencies extending beyond the borders of individual municipalities.<sup>179</sup> Pervasive abandonment harms entire regions,<sup>180</sup> and tackling abandonment requires concerted effort from all sectors.<sup>181</sup> Furthermore, where abandonment exists on a large scale, pooling the resources not only of municipalities, but also of community activists can increase the impact of efforts to curb the effects of abandonment. For example, CDCs can help identify abandoned structures as they become abandoned, and local community groups can assist in securing buildings and providing basic maintenance. Land banks facilitate coordination and strategic planning over a wide area.<sup>182</sup>

In assembling vast tracts of abandoned properties, land banks can package these properties and use them for public purposes or convey them to developers.<sup>183</sup> Developers can work with larger tracts of land and reuse the land in imaginative and distinct manners. Land banks that acquire large tracts of land can control the disposition of future land use in a community by selecting appropriate policy objectives and pursuing those objectives by identifying qualified developers and

---

<sup>178</sup>*See id.* at 107-08 (describing difficulties in property acquisition which land banks can address, including problems with methods of tax foreclosure); *see also* BOWMAN & PAGANO, *supra* note 20, at 188 (“Moreover, a state’s control if its municipalities’ general tax structure has implications for spatial development, sprawl, and abandonment, because any tax structure encourages a certain strategic behavior on the part of city officials whose interest is to maximize the community’s well-being.”). Those “implications” include incentives and disincentives to vigorously pursue tax foreclosure. Where tax foreclosure takes an extended period of time, urban revitalization becomes increasingly difficult.

<sup>179</sup>*See supra* Part II.B. Especially where widespread abandonment exists, addressing the issue systematically with the entire breadth of the problem in mind demands coordinated efforts on the part of all municipalities in a region.

<sup>180</sup>*See* BOWMAN & PAGANO, *supra* note 20, at 128-29 (describing the “contagion effect” whereby nearby land decreases in value as well). Where abandonment typifies neighborhoods, the effects do not always stop at the border of a municipality.

<sup>181</sup>*See id.* at 181-82 (“A fragmented administrative apparatus – in which as many as fifteen public agencies had some sort of responsibility for vacant land – has made it difficult to compile an inventory, much less to develop effective strategies.”). As a regional issue, coordination of the various government agencies helps synchronize efforts into a coherent whole.

<sup>182</sup>*Id.* This type of “fragmented administrative apparatus” represents one major problem creation of a land bank may rectify.

<sup>183</sup>*See* Alexander, *Land Banks*, *supra* note 20, at 157 (examining techniques land banks can use to spur development).

working with them to promote those goals.<sup>184</sup> While the ultimate goal remains to spur economic growth and support sustainable communities, land banks can pursue the equally important objective of promoting social justice by controlling land use in the community.<sup>185</sup>

Widespread abandonment most drastically affects poverty stricken neighborhoods.<sup>186</sup> This fact implicates racial injustice as well. In declining cities where pervasive abandonment exists,<sup>187</sup> reforming land use presents an opportunity to lessen the impact of racial and economic segregation. Inventive redevelopment can address issues of social justice through redistribution of abandoned property. Land banks can facilitate resourceful redevelopment of land and further the policy objectives of spurring economic growth and promoting social justice. The opportunity exists, but land banks need the authorization to undertake innovative measures and inventive thinkers to devise and implement balanced and sustainable revitalization initiatives.

#### A. Goals and Informational Strategies for Land Banks

Land bank entities differ widely in both organization and methodology.<sup>188</sup> Communities may wish to focus a land bank on any number of issues, including creation of affordable housing, returning properties to tax rolls quickly, or long-term economic redevelopment.<sup>189</sup> Additionally, land banks may provide other services, such as foreclosure prevention and mortgagee education programs.<sup>190</sup> In organizing a land bank, each community must tailor the institution to the specific needs of the

---

<sup>184</sup>See Alexander, *Land Bank Authorities: A Guide for the Creation and Operation of Local Land Banks* 45 (Local Initiatives Support Corporation 2005) (available at <http://www.lisc.org/resources>) [hereinafter Alexander, *Authorities*], (discussing methods by which land banks develop relationships with potential developers and ensure that those developers are qualified and responsible parties).

<sup>185</sup>See, e.g., Genesee Land Bank Homepage, <http://www.thelandbank.org/> (last visited Feb. 26, 2008)(listing creation of affordable housing as one of the primary policy objectives of the land bank). Promoting social justice need not stop at creating affordable housing. Examining just patterns of land use is beyond the scope of this article. However, creative redistribution of land may result more equitable patterns of land use.

<sup>186</sup>See MALLACH, *supra* note 11, at 4-5. Market complexities and deficiencies affect the decisions of owners to abandon property. *Id.* Abandonment occurs more often in poverty stricken neighborhoods because the weak market in those neighborhoods encourages abandonment.

<sup>187</sup>*Id.* at 5 (discussing pervasive abandonment problems in “rust belt” cities).

<sup>188</sup>See *supra* note 168.

<sup>189</sup>See, e.g. Genesee County Land Bank Homepage, <http://www.thelandbank.org/> (last visited Feb. 26, 2008)(laying out as guiding principles for land disposition neighborhood revitalization, homeownership, affordable housing, return to tax-paying status, and assemblage for both short and long-term development); see also e.g. MICH. COMP. LAWS ANN. § 124.752 (West 2007) (stating that “development of . . . property and . . . economic growth” are the targets of the land bank fast track authority).

<sup>190</sup>See Genesee County Land Bank Homepage, <http://www.thelandbank.org/aboutus.asp> (last visited Feb. 26, 2008)(describing the foreclosure prevention program).

area.<sup>191</sup> However, no matter what the focus, the primary responsibility of a land bank remains the acquisition, management, and disposal of vacant and abandoned properties.<sup>192</sup>

Difficulties in selecting the focus of a land bank highlight one of the most beneficial aspects of creating a land bank: collection and categorization of data concerning abandoned properties.<sup>193</sup> Organizing an area's problem property inventory presents a gargantuan task,<sup>194</sup> and a properly conceived land bank can develop information systems cataloging abandoned property,<sup>195</sup> geographic information systems (GIS) mapping properties,<sup>196</sup> streamlined procedures for acquiring properties<sup>197</sup> and overarching plans to reintroduce properties to productive uses.<sup>198</sup> By organizing information effectively, land banks can help create an organizational backdrop which promotes systematic economic redevelopment.<sup>199</sup> Whether community leaders decide to focus the land bank on enlarging affordable

---

<sup>191</sup>See MALLACH, *supra* note 11, at 106 (“[T]he structure and legal powers of a land bank entity must be tailored to local conditions . . . .”); *see also* BOWMAN & PAGANO, *supra* note 20, at 175 (“City leaders must craft solutions that fit the situation, the context, the supply of available resources, and the opportunities.”). Not all the problems faced by communities struggling with abandonment will be identical. Therefore, in forging a land bank entity, community leaders should remember the specific causes giving rise to the need to develop a land bank.

<sup>192</sup>See Alexander, *Land Banks*, *supra* note 20, at 140 (“Land banking is the story of attention to vacant, abandoned, and usually tax-delinquent parcels of land in the inner cities of our metropolitan areas.”).

<sup>193</sup>See BOWMAN & PAGANO, *supra* note 20, at 177 (“Although no one approach can apply to all cities, one exhortation does apply to all: Know your vacant land. That is, know how much there is, where it is located, and what its characteristics are. This dictum operates as a first principle.”).

<sup>194</sup>*Id.* (“Monitoring abandoned or vacated structures seems even more problematic than tracking vacant land.”).

<sup>195</sup>*Id.* at 140-41 (describing problems and solutions regarding collecting an inventory of vacant parcels in Detroit, MI and Cincinnati, OH).

<sup>196</sup>*Id.* (“The advent of geographic information technology (GIS) has made the task much easier.”)

<sup>197</sup>See MALLACH, *supra* note 11, at 108 (charting benefits of creating a land bank to deal with various acquisition and internal procedures).

<sup>198</sup>See Alexander, *Land Banks*, *supra* note 20, at 157 (discussing land banks' functions in undertaking planning efforts and in identifying areas of future need).

<sup>199</sup>See BOWMAN & PAGANO, *supra* note 20, at 177 (“Without adequate knowledge of vacant land, a city cannot design policies and programs effectively. . . . Without a reliable database containing information about derelict property throughout the city, a systematic response to vacant land will prove elusive, and policies will likely fall short of their intended effect.”); *see also* Paul C. Brophy and Jennifer S. Vey, *Seizing City Assets: Ten Steps to Urban Land Reform*, The Brookings Institution Center on Urban and Metropolitan Policy, 2-3 (2002) (noting the necessity of cataloging vacant land). Organizing land allows a land bank entity to fully understand and address the problems stemming from abandonment. It is a necessary prerequisite to forging a comprehensive abandonment plan.

housing or simply returning abandoned properties to the tax rolls swiftly instead of pursuing long-term revitalization strategies, thorough information systems expedite the process and promote efficiency.<sup>200</sup>

While all land banks acquire and dispose of properties, some attempt to reconvey properties to developers quickly to avoid keeping large numbers of parcels in the land bank's inventory.<sup>201</sup> This type of land banking works well in strong real estate markets, where developers desire usable land.<sup>202</sup> Detailed information systems guide the acquisition process by aiding land banks in identifying properties amenable to quick turnaround or as proper sites for building affordable housing.<sup>203</sup>

In addressing widespread abandonment, comprehensive information systems become essential because they also allow officials and developers to forge systematic acquisition plans with economic revitalization in mind.<sup>204</sup> The availability of complete data systems permits communities to pursue aggressive acquisition strategies where officials identify significant opportunities or needs.<sup>205</sup> Identifying these opportunities and needs is essential to systematic redevelopment<sup>206</sup> and land

---

<sup>200</sup>See BOWMAN & PAGANO, *supra* note 20, at 177. Informational databases help both developers and land banks identify areas where redevelopment becomes a possibility. *Id.*

<sup>201</sup>See MALLACH, *supra* note 11, at 109 (“All land bank entities hold properties. In some cases, however, the mission of the land bank entity is to reconvey the property to a private entity as quickly as possible, while in others the land bank entity may hold properties for an extended period before they can be reconveyed.”); *see also id.* at 157 (stating that in cities of declining population an inadequate number of transferees request the land acquired by land banks). Situations involving quick transfers generally occur in strong-market cities, where the demand for land is high. A policy of quick reconveyance is probably inappropriate for a declining city looking to revitalize.

<sup>202</sup>See MALLACH, *supra* note 11, at 110 (“In a strong market city such as Boston or Minneapolis, where qualified developers and CDCs are available to build on any parcel that the land bank entity might have available, there is little need for a land bank entity to maintain a large property inventory.”). By contrast, in weak market cities, land is available, but developers are lacking. In this context, land banking requires holding properties for extended periods of time until the right opportunity arises.

<sup>203</sup>See *supra* notes 185 and 191. As discussed above, knowing where abandonment exists allows policymakers to identify areas of opportunity.

<sup>204</sup>See MALLACH, *supra* note 11, at 10. Using knowledge effectively includes devising holistic plans for land redevelopment and economic growth. By knowing where abandonment exists and what buildings are available allows planners to devise strategies to reuse land.

<sup>205</sup>See *id.* at 107 (noting that lack of information prevents pursuit of properties); *see also* Brophy, *supra* note 199, at 4 (discussing Milwaukee's GIS system and how it can be used to identify opportunity). GIS systems allow land banks to know the status of properties, including tax delinquency and relative states of disrepair. *Id.* Rather than merely demolishing isolated buildings based on the length of time the land bank has owned title to the property, or the whims of councilpeople, GIS systems allow planners to develop a strategy to deal with properties. For example, with a GIS system as an available resource, land bank officials can identify strips of land that have recently become tax delinquent in a desirable area and move to acquire those properties quickly if developers are waiting for land in that area. Identifying this type of opportunity when it first arises can increase the pace of redevelopment.

<sup>206</sup>See *supra* note 191.

banks can provide the necessary information more easily because the information flows to one entity instead of a multiplicity of governmental agencies, and thus eliminates the cumbersome information sharing process.<sup>207</sup> Engineering a long-term plan assumes a special importance in declining cities, where extensive abandonment coupled with a lack of development permits vast reconfiguration of land use.<sup>208</sup>

Prioritizing the objectives of a land bank requires involvement of a wide array of community leaders, which in turn demand detailed information systems to support and shape those policy goals. Utilizing information gathered in one entity allows for efficient planning to address various needs across a region. Thus, a land bank can identify the best uses for parcels spread over a wide area and designate those parcels for the uses deemed most appropriate. Developing properly integrated information systems is indispensable to focusing a land bank and creating long-term revitalization plans. A land bank which possesses comprehensive information about abandonment can utilize that knowledge to more efficiently control property in the public interest.

### B. Organization of a Land Bank

Land banks usually involve multiple governmental agencies from a region and interact with local community leaders.<sup>209</sup> Forging this type of regional coordination helps fight abandonment because concerted efforts allow policymakers to pool resources and knowledge to address the entire breadth of abandonment in a region.<sup>210</sup> For example, development of an economic corridor may extend through several neighborhoods or even municipalities and unifying the guidance and planning for such an ambitious undertaking can increase efficiency and maximize potential returns. However, coordinating efforts from many distinct groups provides both a strength and a challenge. Combining and synchronizing the efforts of multiple

---

<sup>207</sup>See MALLACH, *supra* note 11, at 14 (noting the variety of unshared information governments collect). When government agencies devise and implement data systems separately, much of the same research may be duplicated. *Id.* Organizing and synchronizing information systems helps to prevent the costly and wasteful duplication of information gathering; see also Alexander, *Authorities*, *supra* note 184 at 6. (“For a variety of historical, cultural, and other reasons, information tends to be bracketed in isolated departments of expertise . . .”). Problems of this nature represent the exact entanglements that can be avoided by streamlining information gathering into a land bank. These information sharing processes not only drive up costs for municipalities and counties, but also discourage private investors because the information is tangled in unusable forms.

<sup>208</sup>See Alexander, *Land Banks*, *supra* note 20 at 157 (“A land bank should evaluate its existing inventory of properties with an eye toward public or private uses of land for which a demand emerges in the future.”). If abandonment represents, at least in part, a shift in the market demand for certain types of housing, land banking presents an opportunity to provide the type of reconfigured land use which the market actually supports.

<sup>209</sup>See Alexander, *Land Banks*, *supra* note 20, at 142, 146-48. Most land banks carry out policy initiatives derived from different sources, including counties and cities. *Id.* The Cleveland Land Banks is a major exception; it operates as an arm of the municipal Community Development Department. *Id.*

<sup>210</sup>See BOWMAN & PAGANO, *supra* note 20, at 37 (discussing the regional implications for strategies in addressing vacant land). The regional nature of the problem requires concerted action from all the jurisdictions facing interrelated abandonment problems. *Id.*

agencies eases the process of forming a comprehensive abandonment plan and implementing undertakings with ease. At the same time, municipalities may have divergent goals regarding land use and redevelopment and may be reluctant to diminish their autonomy to any extent.<sup>211</sup> Where pervasive abandonment exists, coordinating efforts within a single independent agency outweighs these political obstacles and helps weaken political inertia. The key lies in balancing the rights of municipalities so that all communities can both protect their individual interests and reap the benefits of regional redevelopment.

Land banks take a variety of forms, ranging from control within a single municipality<sup>212</sup> to entities formed through inter local agreements between municipalities<sup>213</sup> to formation under specific state statutes.<sup>214</sup> While coordinating the efforts of multiple jurisdictions presents a significant demand,<sup>215</sup> input from an assortment of sources provides strength.<sup>216</sup> As a regional issue, fighting abandonment requires coordination between neighboring jurisdictions. An independent statutory authorization for a land bank promotes the most stable environment for the production of long-term regional development plans by fostering uninterrupted oversight. Furthermore, independent statutory authorization creates clear legal authority for the entity<sup>217</sup> and an opportunity to redesign aspects of the law which encumber the acquisition process.

---

<sup>211</sup>Depending on the situation, the tension between urban and suburban municipalities may be considerable. Constituencies in urban and suburban municipalities may maintain very different views on land use and those views may put pressure on politicians. Also, politicians are traditionally reluctant to relinquish power for any reason. It is exactly these types of barriers which promote squabbling and discord and prevent the formulation of comprehensive plans to address any issue. Where real property and tax revenues are concerned, as they are with abandonment, the difficulties only become more pronounced.

<sup>212</sup>See Cleveland Land Bank Homepage, <http://www.city.cleveland.oh.us/government/departments/commdev/cdneigdev/cdndlandbank.html> (last visited Feb. 26, 2008). The Cleveland Land Bank is currently the only major land bank that operates entirely within a department of a single municipality.

<sup>213</sup>See Alexander, *Authorities*, *supra* note 184, at 6 (“[T]he Kentucky legislation enabled creation of land banks not within the structure of existing local government, but rather as independent public corporations created pursuant to interlocal [sic] agreements among key governmental entities.”).

<sup>214</sup>See MICH. COMP. LAWS ANN. § 124.751 (West 2007) (authorizing the creation of land bank entities); see also *id.* at 7 (“Unlike other states that have enacted statutes permitting local governments to create land banks, Michigan elected to create a ‘land bank fast track authority’ with broad-ranging powers.”).

<sup>215</sup>See *supra* note 173 and accompanying text.

<sup>216</sup>See BOWMAN & PAGANO, *supra* note 20, at 37-38 (discussing strategies in implementing land use plans and noting the interconnectedness of neighboring municipalities). Creating a regional entity to overcome the obstacles to reclaiming abandoned property fosters the creation of holistic and evenhanded planning. *Id.* Because abandonment affects regions, not merely individual municipalities, strategies that invite input from all the jurisdictions involved help to prevent shortsighted or isolationist solutions.

<sup>217</sup>See MALLACH, *supra* note 11, at 114 (“[Specific statutory authority] is particularly important where no general statute provides clear legal authority for such an entity, or where

Most land banks function as independent corporations, complete with bylaws, charters, and boards of directors.<sup>218</sup> In most circumstances, the governmental agencies involved retain some power over the land bank through the right to appoint directors to the board.<sup>219</sup> Michigan's statute vests the authority to appoint board members in the governor and staggers the timeframe for director reappointment.<sup>220</sup> This type of structure insulates the land bank's leadership from disruption when changes in leadership occur on the municipal level.<sup>221</sup> Establishing consistency in leadership fosters development of long-term planning,<sup>222</sup> encourages efficiency and continuity in staffing matters,<sup>223</sup> cultivates expertise,<sup>224</sup> and allows land bank leaders to build relationships with private developers.<sup>225</sup>

---

the effectiveness of the land bank depends on inter-local agreements between two or more jurisdictions.”). For any community committed to land banking, a state authorizing statute can remove obstacles to the effective creation and implementation of a land reuse policy. *Id.* While a statute may not be necessary, at the very least a state authorization provides clear legal authority. *Id.*

<sup>218</sup>See Alexander, *Land Banks*, *supra* note 20, at 158 (“Wherever a land bank is a separate legal entity, it is by law governed by its own board of directors or board of commissioners.”).

<sup>219</sup>See, e.g., MO. ANN. STAT. § 92.885 (West 2007) (dividing appointing authority between different government entities); see also, e.g. KY. REV. STAT. ANN. § 65.360(1) (West 2007)(same), see also, e.g., GA. CODE ANN. § 48-4-62(a) (West 2007).

<sup>220</sup>See MICH. COMP. LAWS ANN. § 124.766 (West 2007).

<sup>221</sup>See Alexander, *Authorities*, *supra* note 184, at 41 (“The primary advantage of being an independent public legal corporation is a degree of autonomy and independence from the various levels of bureaucracy and from political considerations that may characterize a local government structure.”). This type of structure fosters long-term planning by minimizing political interference resulting from changes in local legislatures and mayoral administrations. *Id.* Pervasive abandonment, especially in weak market cities where available land dwarfs development opportunities, requires stable, long-term oversight and planning.

<sup>222</sup>See MALLACH, *supra* note 11, at 116 (“Where the land bank is part of a [municipal government], it is likely that many of its actions – particularly property disposition – will require city council approval, raising potential political issues.”). Requiring this type of approval from a legislative body necessarily complicates long-term planning by injecting differing philosophies from multiple councilpeople. Fragmented input from a shifting council represents one of the dangers to developing long-term plans.

<sup>223</sup>See *id.* at 117 (“Municipal administrations come and go. If the land bank is dependent on city staff, and therefore the good will of the mayor or a senior member of his administration, policy or personnel changes in city government can undo efforts to pursue a long-term strategy.”).

<sup>224</sup>See *id.* Continuity in staff helps develop expertise and experience.

<sup>225</sup>See *id.* Part of the strategic element of land banking lies in fostering relationships with developers. Forging strong, continuous relationships encourages responsible development because unscrupulous developers may not be provided a second chance to work with a land bank entity if previous developments indicate problems. Continuity in leadership creates an atmosphere where partnerships can thrive.

One issue that land banks must balance is the rights of governmental agencies in foreclosure proceedings.<sup>226</sup> Even within a single municipality, multiple agencies, including counties, school boards and hospital districts, may claim a right to foreclose on tax delinquent properties.<sup>227</sup> To address this potential conflict, land bank statutes should authorize inter-local agreements regarding tax foreclosure that allow local governmental agencies to delegate the right to foreclose on abandoned properties in the land bank.<sup>228</sup> In the case of abandoned properties, local agencies lose little because the chances of recovering the delinquent taxes on such a property are small.<sup>229</sup> The land bank, on the other hand, gains the ability to pursue a flexible property acquisition scheme. A land bank statute can not only provide flexibility for the land bank, but also protect the rights of each municipality involved by allowing for inter-local agreements regarding the tax foreclosure process.

Other obstacles, such as staffing, are best according to the needs of the particular community.<sup>230</sup> In large cities, a land bank may need a staff of its own, while in others it may be more efficient to use available municipal staff.<sup>231</sup>

### C. Property Acquisition Mechanisms

Land banks acquire property primarily through tax foreclosure.<sup>232</sup> However, land banks can also utilize other acquisition mechanisms, such as donative transfer, purchase, and more rarely, eminent domain.<sup>233</sup> Acquisition is one of the central responsibilities of a land bank and the most effective land banks have the authority to aggressively pursue relatively quick acquisition of problem properties. Streamlining

---

<sup>226</sup>*See id.* at 113-14 (examining the “complications arising from multiple taxing districts” when acquiring tax-delinquent properties).

<sup>227</sup>*Id.*

<sup>228</sup>*See, e.g.,* MICH. COMP. LAWS ANN. § 124.765 (West 2007) (allowing land bank authorities to enter into intergovernmental agreement with counties and municipalities regarding tax foreclosure); *see also, e.g.,* GA. CODE ANN. § 48-4-61 (West 2007). Depending on the structure of the land bank and the tax foreclosure system within each state, a land bank may actually foreclose on properties, or the land bank may take title to properties foreclosed upon through the county or municipality. Thus, the specific legal structure of the foreclosure process for a given land bank depends largely on the state law where the land bank is located.

<sup>229</sup>On abandoned property, the governmental agency gives up the right to foreclose on the property. The property itself may require rehabilitation or demolition, and therefore fail to sell at auction or, worse yet, speculators may purchase the property. In any case, the right to foreclose on an abandoned property means very little to a government agency attempting to return property to productive use.

<sup>230</sup>*See* Alexander, *Authorities*, *supra* note 184, at 42 (discussing the staffing organizations in the major land banks).

<sup>231</sup>*Id.*

<sup>232</sup>*Id.* at 23 (“[L]and banks receive most of their property as a result of tax foreclosures[.]”).

<sup>233</sup>*See, e.g.,* MICH. COMP. LAWS ANN. § 124.755(1) (“[A land bank] authority may acquire by gift, devise, transfer, exchange, foreclosure, purchase . . . real or personal property[.]”); *see also* Alexander, *Authorities*, *supra* note 184, at 23-24.

and expediting tax foreclosure and sanctioning alternative acquisition methods allows land banks the widest berth to accomplish land revitalization.

### 1. Tax Foreclosure

Land banks acquire title to properties in foreclosure in a variety of ways.<sup>234</sup> Some land banks automatically receive title to a property when it fails to sell for a minimum amount at a tax foreclosure sale.<sup>235</sup> Other land banks may select which properties to pursue before a tax sale<sup>236</sup> and still others retain the right to refuse to take title to particular properties.<sup>237</sup> Each acquisition scheme reflects the differing needs of the land bank communities and the different legal problems connected to land acquisition, ranging from issues regarding which entity guides the foreclosure process to distribution of revenues generated through the disposition of tax delinquent land in the land bank.<sup>238</sup> The key element for a land bank focused on systematic economic redevelopment is the ability to select properties for acquisition and to control the tax foreclosure process internally rather than by relying on other government actors such as county or municipal treasurers. Without the power to initiate and directly pursue tax foreclosure proceedings, implementing a land redevelopment plan becomes increasingly complicated. Using sophisticated and comprehensive information systems and identifying opportunities for redevelopment are useless without the power to acquire property where redevelopment opportunities occur.<sup>239</sup> Flexibility in selecting properties expands the revitalization horizons for land banks. Land banks should be permitted to select properties for acquisition before tax sales occur, should gain title to all properties not sold at auction, and should be permitted to initiate tax foreclosure proceedings against selected properties.

Accommodating acquisition schemes permit creative land reuse plans and may produce interesting opportunities for private development.<sup>240</sup> In regions where land

---

<sup>234</sup>See *infra* notes 226-28 and accompanying text.

<sup>235</sup>See, e.g., MO. ANN. STAT. § 92.830 (West 2007) (automatically shifting title to tax-delinquent properties to the land bank if they fail to sell at auction).

<sup>236</sup>See, e.g., OHIO REV. CODE ANN § 5722.04 (West 2007) (authorizing land bank to chose properties within a municipality to designate as land bank properties and take title to those properties if they fail to sell at auction).

<sup>237</sup>See, e.g., GA. CODE ANN. § 48-4-64(a) (West 2007) (authorizing but not requiring the land bank authority to take title to foreclosed properties).

<sup>238</sup>See Alexander, *Authorities*, *supra* note 184, at 2 (“A land bank’s powers should correspond directly to the particular goals for the land bank in its community.”). The differing approaches represent responses both to challenges presented by the laws in each jurisdiction and to different needs in each of the communities.

<sup>239</sup>In pursuing a revitalization strategy, the flexibility to pick and chose parcels can be invaluable. The policy of obtaining the most value for tax-delinquent land should not hamstring comprehensive revitalization plans. Where abandonment has corrupted an area, the policy of reformatting land use patterns is of paramount importance. This highlights the difference between a reactive land banking strategy and a proactive one, where policymakers envision a plan and put it into place.

<sup>240</sup>See Alexander, *Land Banks*, *supra* note 20, at 157 (discussing land banking in terms of planning for future use). Creative disposition opportunities can arise when broad acquisition

use patterns have shifted away from traditional urban living, municipalities may wish to redevelop land in a manner that reflects the altered land use pattern and shifts in regional demographics.<sup>241</sup> For example, older industrial-based cities may contain an abundance of single family homes with small yards. Municipalities may wish to redevelop that land on other models, such as high rise condominiums, mixed-use retail and commercial patterns or along a suburban gated community model.<sup>242</sup> Likewise, municipalities may wish to create mixed income neighborhoods to break up areas of concentrated poverty. In all cases, local conditions call for policy decisions regarding the most equitable, sustainable and beneficial use of land. Abandonment creates the opportunity to reshape the urban landscape. Land banks should retain the option to pursue the redevelopment strategies deemed most appropriate for the area. In contrast, limiting acquisition methods simply produces another barrier to land reutilization. If land banks cannot acquire abandoned properties sought either by public officials or private investors as part of a land reuse plan, the entire operation loses its strategic value.

Aggressive approaches to land banking can enhance the efficiency of the tax foreclosure process itself.<sup>243</sup> The Michigan Land Bank Fast Track Authority (MLBFTA) Act, the statute mandating land bank authorities in Michigan, expedited the tax foreclosure process in Michigan by cutting down the amount of time between initial tax delinquency and foreclosure.<sup>244</sup> Expediting the tax foreclosure process can reduce neighborhood blight and, in some cases, can cut down on development costs because abandoned property expenses increase as time passes.<sup>245</sup> A land bank with access to an expedited foreclosure process may use its resources to identify

---

schemes permit land banks to acquire and assemble land. *See also* Brophy, *supra* note 199, at 18-19 (discussing creative reuse in conjunction with ensuring the continuity of affordable housing). Creative uses may differ significantly from current land use patterns. The difficulty lies in protecting neighborhoods from overly robust gentrification which drives out current residents. *Id.*

<sup>241</sup>*See* BOWMAN & PAGANO, *supra* note 20, at 181 (“Underlying Philadelphia’s changed thinking was the realization that the logic of growth, which had driven the city for so long, was no longer appropriate. The key to Philadelphia’s future is not growth but rather the creative management of decline and of its chief manifestation, blight. . . . Ridding the city of blight will allow for new patterns of redevelopment with, in all likelihood, lower-density land use.”). Although this type of “suburbanization” of urban areas may not be the most effective or desirable outcome of revitalization, it represents one alternate path a municipality may be inclined to pursue.

<sup>242</sup>Each of the proffered reconfigurations of land use in urban areas has positive and negative aspects. The author takes no position on whether or not such reuses would benefit the community as a whole, but merely suggests some alternate patterns that could be pursued.

<sup>243</sup>When drafting legislation to authorize a land bank, an opportunity arises to address some of the problems with the tax foreclosure system in relation to abandoned and vacant housing.

<sup>244</sup>*See* MICH. COMP. LAWS ANN. § 124.759, 211.78(g) (West 2007); *see also* MALLACH, *supra* note 11, at 67 (“Michigan went to a similar one-step process in 1999, including an accelerated foreclosure process for abandoned properties.”). Public Act 123 of 1999, which accomplished these legislative changes in Michigan, also authorized the creation of land bank authorities.

<sup>245</sup>*See supra* note 92 and accompanying text.

salvageable properties, foreclose on those properties quickly, and resell or release them to qualified developers. On the other hand, if the tax foreclosure process cannot even be initiated until a lengthy period of tax delinquency has elapsed,<sup>246</sup> the probability that an abandoned structure will require demolition increases.<sup>247</sup>

The duration of time necessary to commence tax foreclosure proceedings for abandoned properties should not exceed six months at the maximum. Any property identified as abandoned<sup>248</sup> should be subject to tax foreclosure proceedings almost immediately in order to increase the likelihood of saving the structure and decrease the effects of abandonment on the community. Failure to pay even a single tax installment on an abandoned structure should subject the property to expedited tax foreclosure proceedings.

## 2. Other Acquisition Methods

Broad mandates allow land banks to pursue other acquisition methods, such as donative transfer,<sup>249</sup> purchase,<sup>250</sup> and more rarely eminent domain.<sup>251</sup> Authorizing a broad range of acquisition devices gives land banks extra flexibility which can aid redevelopment plans.<sup>252</sup>

When land banks have the authority to acquire property through purchase, they can assemble the land needed to implement redevelopment plans. The real advantage of land banks purchasing land is speed, which can be critical when a large development depends on acquisition of one or a few remaining parcels. Most land banks do not have clear authority to acquire property through purchase on the open market.<sup>253</sup> Some land banks technically “purchase” tax delinquent properties for a minimum amount when they fail to sell at auction,<sup>254</sup> but this functions more as a mechanism to acquire a tax-delinquent property than as an actual purchase.

---

<sup>246</sup>See *supra* note 84 and accompanying text.

<sup>247</sup>The longer a structure remains vacant, the more deterioration occurs. If the cost of rehabilitation reaches a certain level, demolition becomes the preferred method of disposing of the property.

<sup>248</sup>The determination of abandonment should follow the definition of abandonment described earlier in this paper. When any of the significant responsibilities of property ownership are not being carried out, the property should be labeled abandoned and become subject to summary tax foreclosure proceedings.

<sup>249</sup>See, e.g., MICH. COMP. LAWS ANN. § 124.755(1) (West 2007).

<sup>250</sup>*Id.*

<sup>251</sup>See Alexander, *Authorities*, *supra* note 184, at 26 -27 (discussing eminent domain in the context of land banks and noting that land banks rarely use eminent domain in their capacity as land reserves).

<sup>252</sup>See *id.* at 23 (“[I]t is key to a land bank’s operations that it have the authority to acquire property from . . . other possible sources.”).

<sup>253</sup>*Id.* at 152 (“At present, the only major land bank that clearly possesses [purchase] acquisition powers is the Genesee Land bank . . .”).

<sup>254</sup>See *supra* notes 226-228 and accompanying text.

The ability to purchase properties depends largely on the financial resources available to a land bank.<sup>255</sup> Not all land banks maintain a budget for purchases of land.<sup>256</sup> The budget for a land bank generally relies on revenues from participating governmental agencies and from properties sold or leased by the land bank itself.<sup>257</sup> A land bank may generate significant amounts of capital when it sells properties, but governmental agencies may retain a claim to those proceeds above and beyond the land bank's costs in maintaining and disposing of the property.<sup>258</sup> Permitting a land bank to keep excess revenues derived from the disposition and management of properties for future purchases allows land banks to achieve development objectives.<sup>259</sup>

Authority to take title to government-owned properties aids land banks as well. Governments, either through prior foreclosure proceedings or other avenues such as seizure for illegal activities, often hold title to large numbers of properties.<sup>260</sup> Both as a method of facilitating systematic redevelopment and for simplicity and efficiency, land banks should have authorization to acquire properties from local government entities which have rights to a property, no matter how those rights were acquired.<sup>261</sup>

---

<sup>255</sup>In the case of a voluntary conveyance, the land bank needs funds to purchase the property if the owner is unwilling to donate the property.

<sup>256</sup>See Alexander, *Land Banks*, *supra* note 20, at 25-26 (noting differences in land bank budgets).

<sup>257</sup>See *id.* (“With the exception of the Atlanta Land Bank, the primary source of financing for the operations of land banks typically comes from either the budgets of parallel local government agencies, or the management and disposition of properties.”).

<sup>258</sup>See, e.g., OHIO REV. CODE ANN. § 5722.08 (West 2007) (mandating dispersal of funds derived from the sale of land bank properties to governmental agencies with a claim to the delinquent taxes after the land bank has recovered expenses); see, e.g., MO. REV. STAT. 92.915(2).

<sup>259</sup>See MICH. COMP. LAWS ANN. § 124.758 (West 2007) (requiring the land bank authority to reimburse taxing districts with a claim against a land bank property only if the authority receives money as payment of delinquent taxes). This type of structure allows the land bank to maintain a separate budget that can be utilized in implementing policies and pursuing land revitalization plans.

<sup>260</sup>See Alexander, *Land Banks*, *supra* note 20, at 151 (noting that some land banks have the authority to gain title to properties taken for reasons other than tax foreclosure).

<sup>261</sup>See MICH. COMP. LAWS ANN. § 124.755(4) (West 2007) (“An authority may hold and own in its name any property acquired by it or conveyed to it by this state, a foreclosing governmental unit, a local unit of government. . . including, but not limited to, tax reverted property and property with or without clear title.”); see also, e.g., GA. CODE ANN. § 48-4-61(b), 16-13-49(u)(2.1) (West 2007) (allowing the Atlanta Land Bank to take title to properties forfeited for criminal behavior). This type of broad mandate includes not only properties foreclosed upon for tax delinquency, but also properties seized for other reasons. In poverty stricken neighborhoods rife with abandonment, this type of acquisition power may significantly increase the flexibility of a land bank in pursuing an aggressive acquisition plan.

Donative transfer and eminent domain represent other avenues of acquisition open to land banks.<sup>262</sup> Donative transfers, generally gifts from a citizen, may provide revenue for a land bank, but they are unlikely to contribute to land bank development strategies. This is because donative transfer properties are scattered throughout the city and cannot be assembled for development. Furthermore, the quantity of gift properties is likely to be rather small. As such, authorization to accept donative transfers, while possibly helpful, is not essential.

Likewise, land banks rarely use eminent domain powers.<sup>263</sup> Eminent domain is a hot button issue and political ramifications of allowing an independent entity driven by unelected officials and structured to be insulated from political upheaval to seize property are considerable.<sup>264</sup> Cities can most efficiently utilize eminent domain procedures, and if necessary, may then convey the property to the land bank.<sup>265</sup>

#### D. Management of Problem Properties

Management of problem properties presents another core responsibility of a land bank.<sup>266</sup> Land banks acquire a vast array of decrepit properties that necessitate supervision.<sup>267</sup> Administration of problem properties raises issues concerning the power of the land bank to manage those properties and the potential liabilities they may incur as owner.<sup>268</sup> In response, authorizing statutes should include provisions immunizing land banks from liabilities that may arise in connection with owning abandoned property as well as broad management powers encompassing all aspects of oversight. For a land bank to successfully implement a redevelopment plan through mass acquisition, wide discretion in management of potentially long-term problem property ownership is essential.

---

<sup>262</sup>See MALLACH, *supra* note 11, at 108-09 (“Most land bank entities acquire property through tax foreclosure, donation or voluntary conveyance. Few, if any, utilize eminent domain[.]”).

<sup>263</sup>See *supra* note 256; see also Alexander, *Authorities*, *supra* note 184, at 27 (“Thus far, there has been a consensus at the state legislative level against giving the power of eminent domain to land banks.”); see, e.g. MICH. COMP. LAWS ANN. § 124.754(8) (West 2007) (expressly forbidding land banks to use the power of eminent domain). see also, e.g., OHIO REV. CODE ANN. § 5722.01-.06 (West 2007) (same).

<sup>264</sup>See Alexander, *Authorities*, *supra* note 184, at 27 (noting the argument that “to the extent that [eminent domain] is or could be exercised it should be done by a governmental entity that is directly accountable to the electorate.”). Land banks, as discussed in this article, may be somewhat insulated from political pressures. As such, a land bank should not be permitted to exercise the power of eminent domain because the takings power of a governmental entity should be monitored by the electorate. *Id.*

<sup>265</sup>See MALLACH, *supra* note 11, at 109 (“[M]unicipal governments may convey properties acquired through eminent domain to land bank entities.”).

<sup>266</sup>See, e.g., MICH. COMP LAWS ANN. § 124.755(1) (West 2007) (allowing a land bank to perform a variety of tasks in the management of problem properties).

<sup>267</sup>See *id.* at 24 (“Ownership of a large volume of properties poses significant challenges that reach far beyond simply listing and classifying the property. The land banks become responsible for all aspects of property management and maintenance, which is not a simple task when properties contain dilapidated and deteriorating structures.”).

<sup>268</sup>See *id.*

### 1. Land Bank Immunity

Land banks require immunity for owning abandoned property. Many properties in a land bank will be public nuisances, and if unsecured, criminal activity may flourish in these abandoned properties. At a minimum, since land banks typically acquire property in ill-repair, they should be immune from nuisance suits.<sup>269</sup> In the case of commercial sites, environmental hazards pose another basis for liability.<sup>270</sup> In order to avoid these entanglements, authorizing statutes should include language which confers immunity on land banks for the properties in the land bank's inventory. This immunity, would parallel immunities already established for other governmental agencies that involuntarily hold title to problem properties, such as for clean-up costs when a property is involuntarily acquired and immunity from suits relating to the environmental hazards.<sup>271</sup> This immunity would insulate the land bank from the numerous suits that can arise from ownership of dangerous structures. The rationale for immunity is that the government must take title to problem properties in order to secure the public welfare.<sup>272</sup> Exposing land banks to crippling liabilities discourages redevelopment and unjustly redistributes risk from delinquent former owners to society as a whole.<sup>273</sup>

### 2. Oversight Powers

Land banks also need broad oversight powers to ensure proper management of problem properties. Ownership of an immense number of abandoned and dilapidated properties presents an opportunity for creative reuse, but only when the land bank maintains the authority to effectively manage the property.<sup>274</sup> Land banks should have the authority to contract for a wide array of services, including

---

<sup>269</sup>See, e.g., MICH. COMP. LAWS ANN. § 124.764(4) (West 2007) (providing that any transfer to the land bank shall be deemed involuntary and that the land bank shall assume governmental immunity for liability arising in connection with a nuisance property).

<sup>270</sup>See Alexander, *Authorities*, *supra* note 184, at 25 (“Governmental entities are granted limited immunity for environmental clean-up costs when ownership of the property is considered to be an ‘involuntary acquisition.’”).

<sup>271</sup>*Id.*

<sup>272</sup>*Id.* Land banks may pursue acquisition of problem properties, but this pursuit should not necessarily be considered voluntary. If it is the duty of the municipal government to provide for the health, safety, and welfare of the community, and land banking presents a method of addressing those concerns, land banks should be insulated from the potential liabilities connected to attempting revitalization. The rationale of protecting government agencies from liability when assuming control of environmentally dangerous sites adapts easily to assuming control of nuisance properties, which pose an immediate danger to neighbors regardless of who holds title to the property. A policy decision to control the future disposition of abandoned housing should not result in liability, just as a decision to control environmentally dangerous properties demands immunity from liability.

<sup>273</sup>*Id.*

<sup>274</sup>See MALLACH, *supra* note 11, at 111 (“Holding properties requires the ability to maintain them.”); see, e.g., MICH. COMP. LAWS ANN. § 124.754 (West 2007) (providing the land bank with the authority to undertake a variety of tasks connected with managing a property).

rehabilitation, management, and professional services. This is especially true for management of rental properties, where land banks often need to contract with outside parties to manage the properties themselves.<sup>275</sup> When land banks elect to rehabilitate, stabilize or demolish unused properties to prepare for resale or long-term vacancy,<sup>276</sup> they need the authority to contract with private third-parties to provide various services.

Furthermore, land banks should engage non-profit and community groups in managing problem properties.<sup>277</sup> Because a land bank's inventory of abandoned properties may grow to a considerable size, involving groups such as CDCs, community groups, youth groups, Habitat for Humanity and any other group that might help reduce the externalities of abandonment can be essential.<sup>278</sup>

#### *E. Disposition of Properties*

Land banks require expansive discretion,<sup>279</sup> including the authority to sell properties as they see fit.<sup>280</sup> Often, restrictions oblige government entities to sell properties to third-parties at fair market value.<sup>281</sup> This restriction makes little sense in the case of land banks where the priority in selling the property revolves not

---

<sup>275</sup>See *supra* Part V.A. Land banks identify specific goals and have limited resources. The complexities of managing rental properties will most likely require assistance from professionals. Newer statutory schemes expressly authorize land banks to enter into these types of contractual relationships. See, e.g., MICH. COMP. LAWS ANN. § 124.754(1)(k) (West 2007) (“[Authorizing the land bank to] [e]nter into contracts for the management of, the collection of rents, or from the sale of real property held by the authority.”).

<sup>276</sup>See *supra* note 273 and accompanying text. These duties include activities such as boarding abandoned houses to prevent unauthorized entry and demolishing vacant structures. *Id.*

<sup>277</sup>See *supra* note 216 and accompanying text. In the same way that land bank staff can develop relationships with developers, relationships with non-profits may arise as well. The control of vacant properties under one agency eliminates some measure of confusion and fosters the development of beneficial relationships.

<sup>278</sup>*Id.*

<sup>279</sup>See MALLACH, *supra* note 11, at 113 (discussing disposition priorities). Allowing a land bank wide discretion in disposition priorities encourages reintroduction of land into productive use where that possibility arises. *Id.*

<sup>280</sup>See, e.g., MICH. COMP. LAWS ANN. § 124.757(1) (West 2007) (“[Except as modified by intergovernmental agreement] the [land bank] authority may sell, transfer, exchange, lease as a lessor, or otherwise dispose of property rights or interests in property in which the authority holds a legal interest to any public or private person for value determined by the authority.”); see also, e.g., GA. CODE ANN. § 48-4-63(c) (West 2007) (providing that laws regarding the disposal of government property shall not apply to land bank properties); see also Alexander, *Authorities*, *supra* note 184, at 46 (“A requirement that full fair market value be obtained for transfers by a land bank creates . . . a number of problems.”).

<sup>281</sup>See, e.g., OHIO REV. CODE ANN. § 5722.07 (West 2007) (restricting sale of land bank parcels to third parties to transactions for fair market value); see also, e.g., MO. ANN. STAT. § 92.895 (West 2007) (requiring approval for sales of properties at less than two-thirds the appraised value of the property).

around generating revenue, but instead on fostering economic redevelopment.<sup>282</sup> Abandoned properties reflect the absence of a competitive market.<sup>283</sup> Furthermore, in situations where developers are willing to invest in the community, or must undertake demolitions or rehabilitations in order to use the land, ample benefits accrue to the community to justify the sale of properties even for nominal consideration.

Properties disposed of by land banks need free and clear title. As with receiverships, title to a property is worthless if it retains defects which could lead to a challenge of ownership.<sup>284</sup> Statutes authorizing land banks, thus, should contain provisions that extinguish the claims of prior lienholders and owners. The process of extinguishing back taxes works well in the Atlanta Land Bank, where a “conduit transfer” encourages private purchasers of tax delinquent properties to convey the property to the land bank in order to extinguish prior tax claims.<sup>285</sup> Thus, the private developer may negotiate a private purchase of a property, convey the property to the land bank to extinguish tax liens, and regain the property from the land bank free and clear of clouds and encumbrances resulting from unpaid taxes.<sup>286</sup> This process expedites redevelopment where prior tax liens might stand in the way of redevelopment.<sup>287</sup>

---

<sup>282</sup>Even within the “fair market value” scheme, a promise to redevelop abandoned land should be considered part of the consideration in the transfer of the property because the city and land bank authority ultimately receive coveted economic redevelopment and nuisance abatement. See Abby Cooper, Note, *\$1 Per Lot for Affordable Housing in Detroit: Non-Monetary Benefits Can Constitute Fair Value in the Sale of City-Owned Surplus Property to Community Development Corporations* 28 WAYNE L. REV. 1191, 1203 (2002) (“Where a property’s cash value is not exchanged, considerations other than the present receipt of money have been held to constitute fair value where there is a binding legal agreement and a finding that the non-monetary considerations are a valuable exchange.”).

<sup>283</sup>See Alexander, *Authorities*, *supra* note 184, at 46 (“The most significant [problem] is that many properties end up in the land bank precisely because there is no clear private market for their sale, no clear market value.”).

<sup>284</sup>See *supra* note 80 and accompanying text.

<sup>285</sup>See GA. CODE ANN. § 48-4-64(c) (West 2007) (“When a property is acquired by the authority, the authority shall have the power to extinguish all county and city or consolidated government taxes, including school district taxes, at the time it sells or otherwise disposes of the property[.]”); see also Alexander, *Land Banks*, *supra* note 20, at 154 (describing the “conduit transfer” process).

<sup>286</sup>See Alexander, *Land Banks*, *supra* note 20, at 154 (“[The Atlanta Land Bank] uses this power to encourage private third parties [sic] to acquire tax-delinquent property from existing owners and then engage in a ‘conduit transfer,’ in which the property is conveyed to the Atlanta Land Bank, the taxes are extinguished, and the property is reconveyed by the land bank back to the new owner.”).

<sup>287</sup>*Id.* (“The conduit transfer program of the Atlanta Land Bank also has the advantage of not involving in any way the tax foreclosure process. It functionally uses the existence of delinquent taxes as a subsidy to encourage the private market transfers to take place.”). This type of program both speeds the process by avoiding tax foreclosure proceedings and biddings, and provides incentives for redevelopment by eliminating delinquent taxes. Furthermore, the process involves little to no expenditure on the part of local government, including the transactional costs associated with tax foreclosure.

Disposing of properties remains the ultimate goal of a land bank.<sup>288</sup> In promoting economic redevelopment of a depressed area, the primary target of the land bank is to acquire properties and re-convey them in a manner that promotes private and productive land re-use.<sup>289</sup> Statutes should allow land banks to transfer property for no or less than fair market consideration and ensure clear title.

#### VI. ARGUMENT FOR USING PRIVATIZED NUISANCE ABATEMENT SUITS AND LAND BANKS AS A HOLISTIC APPROACH TO COMMUNITY REDEVELOPMENT

Fighting abandonment requires concerted efforts from entire communities on two separate but interrelated fronts: quickly attending to nuisance properties in viable neighborhoods<sup>290</sup> and restructuring land use where widespread abandonment devastates entire neighborhoods.<sup>291</sup> When effective nuisance and land bank statutes are coupled with community and governmental cooperation, CDCs and land banks possess the tools necessary to spot check blight in areas where abandonment emerges as a problem and to craft systematic plans for future development and reconfigured land use in neighborhoods where abandonment is pervasive. This two-pronged approach promotes quick and flexible action against nuisance properties by allowing CDCs to bring nuisance abatement suits and acting as receivers. On the other end of the spectrum, land banks can operate as land use reconfiguration authorities with the ability and freedom to form long-term land reuse strategies. By utilizing these two strategies, communities can fight to maintain neighborhoods with intact infrastructures and redesign neighborhoods which no longer retain attractiveness as areas ripe for private investment.

Land redevelopment efforts stemming from CDCs and land banks provide different functions with the same overall purpose. Through the privatized nuisance abatement suit, CDCs address needs on a house by house basis, and draw capital into viable neighborhoods.<sup>292</sup> Land banks, meanwhile, focus on the wider problems presented by abandonment.<sup>293</sup> However, CDCs and land banks complement each other in a variety of ways. As part of the information sharing process, CDCs can impart knowledge on land banks regarding individual neighborhoods, identify opportunities, and help determine the best courses of action in relation to abandonment. Furthermore, CDCs provide a voice for the community in the land bank. Land banks, on the other hand, can share information from a variety of sources with CDCs, and can convey tax delinquent properties to CDCs for rehabilitation if the CDC desires to undertake that responsibility. Pooling the resources of CDCs and land banks creates greater potential to fight abandonment.

---

<sup>288</sup>See Alexander, *Authorities*, *supra* note 184, at 2 (noting that the goal of a land bank is conversion of abandoned and vacant properties to productive use).

<sup>289</sup>See Brophy *supra* note 199, at 1 (noting a shift towards reusing city land in different patterns in light of suburbanization). A land bank can facilitate the reuse of land to reflect demographic and socio-economic changes in the modern urban landscape and promote sustainable and responsible land use. *Id.*

<sup>290</sup>See *supra* Part IV.B.

<sup>291</sup>See *supra* Part V.

<sup>292</sup>See *supra* Part IV.

<sup>293</sup>See *supra* Part V.

## VII. CONCLUSION

The dangers posed by abandoned and vacant properties present a matter of primary concern for municipalities, especially in older, industrial cities. Addressing these issues requires innovative methods and long-term planning. Legislatures should enact statutes enabling land banks and private nuisance actions to allow communities to fight abandonment.

The existing system for addressing abandonment is not working because that system was designed to deal with different problems. Some cities have demonstrated that land banks and CDCs, working together in their separate spheres of action, can effectively address abandonment issues. Addressing abandonment on two separate fronts allows stable communities to protect neighborhood assets, while at the same time permitting regional leaders to focus on broader abandonment and redevelopment issues. The significance of the two-pronged approach lies in the flexibility of receiverships when dealing with neighborhood specific problems and land banks when addressing community-wide issues. Broadly authorizing both methods provides communities with relevant tools to reclaim abandoned properties. While the task may appear daunting, privatized nuisance abatement actions and land banks allow community leaders to control future land use in a responsible, sustainable manner.