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Responding to the Mortgage Crisis: Three Cleveland Examples

W. Dennis Keating*
Kermit J. Lind**

I. Introduction

YEARS BEFORE THE MORTGAGE CRISIS fueled by subprime and predatory lending became a national crisis in 2008, this emerging disaster was ravaging neighborhoods in Cleveland, Ohio.¹ Unlike cities in fast-growing states like California, Florida, and Nevada that later suffered the highest rates of foreclosure and housing abandonment, Cleveland had never experienced a housing bubble. In a region with long term economic problems and in a city whose population has declined steadily since 1950 (from 914,818 to 397,000 in 2010),² housing prices and values were among the lowest among major cities in the United States.³ Despite a relatively stable housing market, beginning in 1995 the foreclosure filings increased sharply.⁴

Investigations that followed revealed that homeowners were being persuaded to refinance their mortgages and often to finance home repairs

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1. See Kermit J. Lind, *The Perfect Storm: An Eyewitness Report from Ground Zero in Cleveland's Neighborhoods*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 237, 237-240 (Spring 2008) [hereinafter Lind, *Perfect Storm*]; see also W. Dennis Keating, Preventing Foreclosures, Rebuilding Neighborhoods: Cleveland 3-5 (2010) (unpublished manuscript, on file with authors) [hereinafter Keating, *Preventing Foreclosures*].

2. See Rich Exner, *Where Did All Those Clevelanders Go?*, THE PLAIN DEALER, Mar. 27, 2011, at B1 (noting that Cleveland's population was 431,363 in 2009).

3. See Rich Exner, *Cuyahoga Home Sales and Home Prices Down Against This Year: Sunday's Numbers*, THE PLAIN DEALER (Nov. 27, 2011, 9:00 AM), http://www.cleveland.com/datacentral/index.ssf/2011/11/cuyahoga_home_sales_and_home_p.html; see also Michelle Jarboe McFee, *House Prices Take a Double Dip as Much-Watched Indices Show Declines Nationwide, In Cleveland*, THE PLAIN DEALER (May 31, 2001, 11:13 PM), http://www.cleveland.com/business/index.ssf/2011/05/house_prices_take_a_double_dip.html.

4. See ZACH SCHILLER & APRIL HIRSH, POLICY MATTERS OHIO, FORECLOSURE GROWTH IN OHIO 9 tbl.4 (2008), available at <http://www.policymattersohio.org/pdf/ForeclosureGrowthInOhio2008.pdf>

and amenities through predatory lending, including adjustable rate mortgages with initial low interest rates (“teaser loans”). These loans typically had onerous terms that disadvantaged consumers. Many borrowers, especially the elderly, had no understanding of these terms.⁵ Worse, in this initial period, speculators engaged in “flipping.”⁶ This typically meant that they purchased homes with housing code violations, doing minimal cosmetic or no repairs, and then resold these homes at much higher prices. This involved fraud with “straw” purchasers, inflated appraisals and falsified loan applications. Subsequently, several mortgage brokers and their accomplices were convicted of mortgage fraud.⁷ Unfortunately, criminal prosecutions came long after the damage to vulnerable homeowners and Cleveland neighborhoods had already occurred. By 2000, Slavic Village and other vulnerable Cleveland neighborhoods were fighting for their lives against the forces of a housing finance system running amok.⁸

The Cleveland neighborhood of Slavic Village was especially hard hit, with massive amounts of mortgage fraud followed by hundreds of foreclosures of borrowers resulting in housing abandonment and widespread blight.⁹ This working class neighborhood historically populated with European immigrants working in the adjacent industrial valley had seen its population decline with the loss of manufacturing jobs. However, several community organizations had led efforts in the 1980s and

5. While in Cleveland January 4, 2012 to announce the appointment of Richard Cordray to head the Consumer Finance Protection Bureau, President Obama made a highly publicized visit to the home of an elderly couple who ended up with an \$80,000 loan by contracting for a \$8,000 home repair job. See http://blog.cleveland.com/metro/2012/01/obamas_visit_wednesday_is_life.html

6. *A Boom in Houses of Cards: By Flipping Inner-City Properties Owners Inflate Prices and Snare Outside Buyers Who Pay Premium Prices*, THE PLAIN DEALER, Aug. 28, 2000, at A1; Olivera Perkins, *Teetering on a Shaky Foundation; Court Cracks Down on Landlord's Run-Down Houses*, THE PLAIN DEALER, Sept. 24, 2000, at A1; see Lind, *Perfect Storm*, *supra* note 1, at 239 n.7; Alex Kotlowitz, *All Boarded Up*, N.Y. TIMES, Mar. 6, 2009, available at <http://www.nytimes.com/2009/03/08/magazine/08Foreclosure-t.html>.

7. See, e.g., Mark Gillispie, Frank Viola, Uri Goffman sentenced to federal prison in mortgage fraud scheme, THE PLAIN DEALER, http://blog.cleveland.com/metro/2012/01/viola_gofman_sentenced_to_long.html. Mark Gillispie, *Mortgage Broker Sentenced in Slavic Village Fraud Case*, THE PLAIN DEALER, May 20, 2010, at B1; Karl Turner, *Cuyahoga County Investigators Bust \$44 Million Mortgage Fraud Scheme*, THE PLAIN DEALER (Aug. 27, 2009, 12:20 AM), http://blog.cleveland.com/metro/2009/08/cuyahoga_county_investigators.html;

8. See generally Lind, *Perfect Storm*, *supra* note 1; Kotlowitz, *supra* note 6; see also CLEVELAND VS. WALL STREET, *infra* note 67.

9. See generally Lind, *Perfect Storm*, *supra* note 1; Kotlowitz, *supra* note 6.

1990s to counteract decline. Most effective among these has been Slavic Village Development (SVD), which promoted affordable housing, commercial development, and recreation attractions to retain residents and attract newcomers.¹⁰ It had enjoyed considerable success in revitalizing the neighborhood.¹¹ By 1999 it was apparent that SVD's investments in revitalization were being undermined by destructive housing market practices and mortgage fraud.¹² Millions of dollars in housing rehabilitation and new construction supported by restored or new infrastructure was being undermined by a flood of abandoned blighted houses with mortgage loans in deep default. By 2005 it was clear that Cleveland was at a crossroads and even suburban mayors were alarmed by the surge of foreclosures in their jurisdictions.¹³

Just as SVD fought back against predatory lending, mortgage fraud, and speculator flipping, the City of Cleveland and Cuyahoga County also sought to prevent these practices and stem the rising tide of foreclosures. This included legislation, litigation, and homeowner counseling.¹⁴ This article will focus on three examples of the response to the mortgage crisis in Cleveland: the Cleveland Housing Court, the Cuyahoga County Land Reutilization Corporation (land bank), and community development corporations (CDCs) and local intermediaries (namely, the Cleveland Housing Network (CHN) and Neighborhood Progress, Inc. (NPI)). Each of these entities has developed initiatives aimed at the crisis, often in an innovative fashion. While many other cities have similar

10. See generally Emily K. Miller & Jennifer L. Scofield, *Slavic Village: Incorporating Active Living into Community Development Through Partnerships*, Robert Wood Johnson Foundation, available at <http://www.rwjf.org/files/research/4307.53036.slavicmiller.pdf>

11. See Norman Krumholz, W. Dennis Keating, Philip D. Star & Mark C. Chupp, *The Long-Term Impact of CDCs on Urban Neighborhoods: Case Studies of Cleveland's Broadway-Slavic Village and Tremont Neighborhoods*, 37 J. CMTY. DEV. SOC'Y 33, 52 (2006).

12. See generally Lind, *Perfect Storm*, *supra* note 1; Kotlowitz, *supra* note 6 (discussing background on the destruction that occurred in the Slavic Village neighborhood).

13. See generally ALAN MALLACH, LISA MUELLER LEVY, & JOSEPH SCHILLING, *CLEVELAND AT THE CROSSROADS: TURNING ABANDONMENT INTO OPPORTUNITY* (2005) (discussing the problems of vacant properties and abandoned buildings that had reached crisis proportions in Cleveland during the summer of 2004 and offering solutions to remove blight and revitalize the city through a partnership of local government, community organizations, and the private development community).

14. See generally CLAUDIA J. COULTON & KATHRYN W. HEXTER, *FACING THE FORECLOSURE CRISIS IN GREATER CLEVELAND: WHAT HAPPENED AND HOW COMMUNITIES ARE RESPONDING* (July 2010) (documenting the foreclosure crisis in northeast Ohio and discussing several multi-faceted responses implemented in the City of Cleveland).

organizations, these Cleveland examples have been cited as models which provide lessons to other cities facing similar problems.¹⁵

In the case of Cuyahoga County, residential mortgage loan foreclosures more than quadrupled between 1995 and 2007.¹⁶ Until 2009, a majority of these foreclosures were in the City of Cleveland. In 2010, the number foreclosures in suburban Cuyahoga County exceeded those in the City of Cleveland.¹⁷ Increasingly, foreclosures involve prime rather than subprime mortgage loans and the major cause is believed to be more the result of economic problems, primarily unemployment due to the recession and diminishing equity for owners needing to sell or refinance.¹⁸

Along with the soaring number of foreclosures, the number of vacant, abandoned housing units also rose. In the 2000 United States census, 25,218 housing units in Cleveland were counted as vacant.¹⁹ In the 2010 census that number rose to 40,046.²⁰ This was an increase

15. See Allen Mallach, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS, National Housing Institute (2006), pp. 29, 45-46, 136, 142.

16. See ZACH SCHILLER & APRIL HIRSH, POLICY MATTERS OHIO, FORECLOSURE GROWTH IN OHIO 9 tbl.4 (2008), available at <http://www.policymattersohio.org/pdf/ForeclosureGrowthInOhio2008.pdf> (according to Schiller and Hirsh, there were 3,345 new foreclosure filings in Cuyahoga County in 1995, and by 2007, this figure had increased fourfold to 14,946, representing a 346.8% increase over the preceding twelve-year period. Not incidentally, Schiller and Hirsh also report the number of new foreclosure filings quadrupled in all but twelve Ohio counties and nearly quintupled state-wide).

17. See Sandra Livingston, *Cuyahoga's New Foreclosures up 13% for First Half of Year*, THE PLAIN DEALER, July 19, 2010, at B1; see also discussion *infra* note 91. This trend was also reported as occurring throughout the state of Ohio in 2009. See DAVID ROTHSTEIN & SAPNA MEHTA, POLICY MATTERS OHIO, FORECLOSURE GROWTH IN OHIO 2 (Mar. 2009), available at <http://www.policymattersohio.org/wp-content/uploads/2011/09/ForeclosureGrowth2009.pdf>.

18. Research is being conducted to find out if mortgagees are not filing foreclosures in neighborhoods mortgage servicers are now identifying as having low-value housing stock. Government Accountability Office, *Mortgage Foreclosures: Additional Mortgage Servicer Actions Could Help Reduce the Frequency and Impact of Abandoned Foreclosures*, GAO-11-93, November 2010: Michael Schramm, April Hirsh, Diwakar Vadapalli, Daniel J. Van Grol, Esq., Krista Moine Nelson, Esq., Claudia Coulton, Ph.D., *Stalling the Foreclosure Process: The Complexity Behind Bank Walkaways*, http://blog.case.edu/msass/2011/02/07/stalling_the_foreclosure_process_the_complexity_behind_bank_walkaways.html. Also, there is some question about the extent of strategic default in suburban neighborhoods where more upscale housing was purchased in the past five years in anticipation of resale or refinancing that is now impossible.

19. U.S. Census 2000, Summary File 1.

20. Though there is no consensus on the true number of vacant properties in the City of Cleveland, observers indicate there were over 11,000 vacant properties in 2010 and over 20,000 vacant properties in early 2011. See RE-IMAGINING CLEVELAND: IDEAS TO ACTION, RESOURCE BOOK, at 5 (2011); see also Presentation to the Fed. Reserve Bank of Phila. by Frank Ford, Senior Vice President, Neighborhood Progress, Inc., Trends—Abandonment, at 5 (May 12, 2010) [hereinafter Ford].

from 11.7% to 19.3%. A significant number of those structures in 2010 were abandoned, without prospective buyers (other than possibly speculative flippers), and blighted due to neglect and vandalism. This has required the City of Cleveland to greatly increase its spending on maintaining these abandoned structures in lieu of responsible absentee owners and in the case of thousands to eventually demolish them as nuisance properties. In 2010, the city's building department estimated that approximately 7,067 abandoned residential buildings constituted blighted nuisances.²¹

An additional problem associated with housing abandonment is the condition of the title. The term "toxic title"²² has been applied to describe a title to real property where no one with a legal interest can realize a benefit from the exercise of property rights sufficient to justify the transaction costs.²³ Titles cannot be conveyed because of liens and liabilities costing more than the property is worth. Bankrupt owners who have lost control of their property cannot sell it or even give it away because of the liabilities attached. At a sheriff's sale in a foreclosure proceeding, buyers will not pay the statutory minimum price nor will the judgment lien holder take ownership in exchange for the debt owed. In this limbo, the house may sit for years as a public nuisance bringing down the value and marketability of neighboring houses.

The number of demolitions by the city has risen steadily over the past several years.²⁴ But this has fallen far short of the number of nuisance properties. In 2010, the city spent approximately \$7.5 million on nuisance

21. Statement by Edward Rybka, Dir., Cleveland Dep't Bldg. & Hous. to the Cuyahoga Affordable Hous. Alliance (May 2, 2011) (on file with author).

22. The term "toxic title" was coined first by Kermit Lind and has been since referred to in national conversations on the foreclosure crisis. *See generally* Lind, *Perfect Storm*, *supra* note 1; Kermit J. Lind, *Can Public Nuisance Law Protect Your Neighborhood from Big Banks?*, 44 SUFFOLK U. L. REV. 89, 100 n.40 (2011) [hereinafter Lind, *Protect Your Neighborhood*]; *see also* Keating, *Preventing Foreclosures*, *supra* note 1, at 4; Michael Orey, *Dirty Deeds*, BUSINESS WEEK, Jan. 14, 2008, at 1, available at http://www.businessweek.com/magazine/content/08_02/b4066046083770.htm.

23. *See* Lind, *Perfect Storm*, *supra* note 1, at 249.

24. As part of Cuyahoga County's Foreclosure Prevention program, \$1 million was allocated to the City of Cleveland for demolition purposes. *See* ALAN C. WEINSTEIN, KATHRYN W. HEXTER & MOLLY SCHNOKE, *RESPONDING TO FORECLOSURES IN CUYAHOGA COUNTY: A PILOT INITIATIVE—INTERIM REPORT 27* (May 12, 2008), available at http://urban.csuohio.edu/publications/center/center_for_community_wplanning_and_development/foreclosures_05_12_08.pdf [hereinafter Weinstein]; *see also* Ford, *supra* note 20 (indicating that over the immediately following three-year period, 300 closely-situated homes in the City of Cleveland are projected to be demolished pursuant to the City's Opportunity Homes program, together with Neighborhood Progress, Inc).

abatement but recovered only about \$2 million of these costs.²⁵ In a city with very limited financial resources, the growing need for demolitions vastly exceeds the funds available, even with the addition of the federal Neighborhood Stabilization Program (NSP) created in 2008. In three rounds of NSP funding, Cleveland has received approximately \$45 million, most of which has been targeted for the demolition of blighted, abandoned housing.²⁶ In a very depressed housing market, there is little immediate prospect of replacing most of this lost housing with new construction, in part because the city's reduced population has led to a surplus of vacant housing. Despite these discouraging data, the following three examples of responses give hope that the challenges caused by this crisis can be met and the city's neighborhoods can be rebuilt even with a reduced population and reconfigured land uses.

II. The Cleveland Municipal Court, Housing Division

The Cleveland Housing Court started with a 1974 college term paper written by Jim Rokakis, an Oberlin College undergraduate from Cleveland.²⁷ In the following term, Rokakis worked for a State Senator, Charles Butts, whose interest in a housing court for Cleveland resulted in a bill in the Ohio General Assembly to authorize the establishment of housing divisions in Ohio municipal courts.²⁸ Two years later, Rokakis was elected to Cleveland City Council and, with another councilman, Terence Copeland, spent much of his first year in council lobbying state legislators for the passage of the housing court bill.²⁹ After the bill was

25. Statement by Ed Rybka, Commissioner, City of Cleveland Department of Housing and Building, May 2, 2011.

26. Neighborhood Stabilization Program, Community Development Block Grant Action Program, Department of Community Development, City of Cleveland.

27. This early history of the Housing Court was recounted for this article in conversations with Rokakis, a friend of the authors. Rokakis reports that he got a B for the paper written for a political science course. In a similar fashion, Rokakis' proposal received mixed reviews outside of the classroom. *See, e.g., Housing Court is Proposed*, THE PLAIN DEALER, p. 19, Feb. 18, 1979 (“[A] housing court judge would have too much time to just twiddle his thumbs on the bench.”); Katherine Hatten, *The time for Cleveland Housing court is now*, THE PLAIN DEALER, Mar. 4, 1979, at 26; *Councilmen Get Help in Drive to Establish Housing Court for City*, THE PLAIN DEALER, Mar. 14, 1979 (“the only hope for the city lies in . . . a comprehensive code-enforcement program. And a housing court is a prerequisite for any effective enforcement program.”).

28. A copy of SB 35, 113th General Assembly, 1979, is on file with the author. The provisions of the legislation are described in Frederic P. White, *The Cleveland Housing Court Act: New Answer to an Old Problem*, 30 CLEV. ST. L. REV. 41 (1981).

29. *See generally* Robert Jaquay, *Cleveland's Housing Court: A Grassroots Victory 25 Years Ago Paved the Way for a Reliable, Much Needed Institution*, SHELTERFORCE, May/June 2005, available at <http://www.nhi.org/online/issues/141/housingcourt.html>.

passed near the end of the legislative session in 1979, opponents of the measure in Cleveland urged Republican Governor James Rhodes to veto the bill. Rokakis relates he made an urgent appeal to newly elected Cleveland Mayor George Voinovich, who persuaded the Governor not to veto the bill and to let the legislation go into effect without his signature. Thus, in 1980, Cleveland's Housing Court, the first in Ohio, was established.³⁰ This new development was only one of several major housing initiatives of the 1970s. The decade of the 70s saw the establishment of fair housing advocacy and enforcement programs in Cleveland and its suburbs. A landlord-tenant act was enacted by the state legislature in 1974.³¹ Neighborhood organizations attacked banks over red-lining and disinvestment of inner-city minority and racially diverse neighborhoods. Neighborhood advocates also railed at the city about the lack of code enforcement in the face of neighborhood decline. Cleveland got legislative authorization in 1978 to operate a land bank program to get access to unproductive tax-dead properties and put them back into productive use.³² The Housing Court emerged in a period of concern and urgency about the decline of urban housing and neighborhoods. It was thus cast from the outset as a court to meet the needs of people who were demanding a means to stop decline.³³

Housing courts, like other special purpose courts, have several distinguishing features. They have a specific and limited original subject matter jurisdiction. Their judges and other personnel are intended to have a high degree of knowledge and expertise in the subject matter of the court. They manage cases and adjudicate them to get a remedial result, preferring compliance over punishment. Often they are equipped with special personnel and resources to assist the court in carrying out its remedial purpose and to solve problems informally as well as to

30. *See id.* (“[I]n 1980 the creation of [the] Cleveland Municipal Housing Court by Ohio’s General Assembly was viewed as both an important urban reform and a grass-roots advocacy victory.”).

31. *See, e.g., Landlord-Tenant Handbook: Rights and Responsibilities Under Ohio Law*, 4, <http://www.hapcap.org/documents/LANDLORD.pdf>.

32. *See infra* notes 95, 102-103, 113 and accompanying text.

33. Any consideration of the Cleveland Housing Court’s history, development and characteristics must rely, at least in part, on the publications of Frederic White, Dennis Keating, and Robert Jaquay. *See* White, *supra* note 28; W. Dennis Keating, *Judicial Approaches to Urban Housing Problems: A Study of the Cleveland Housing Court*, 19 URB. LAW. 345 (1987) [hereinafter Keating, *Judicial Approaches*]; Jaquay, *supra* note 29; Kermit Lind, *The People’s Court: Cleveland Housing Court Judge Raymond Pianka Uses Innovative Legal Tactics to Achieve Code Compliance, but is it Enough to Stabilize Neighborhoods?*, SHELTERFORCE, Mar. 23, 2012, http://www.shelterforce.org/article/2482/the_peoples_court.

issue orders and judgments. Ohio's enabling statute grants to statutory housing courts special tools and powers to be a problem solving and remedial court accessible by ordinary persons as well as those who are represented by legal counsel.³⁴ Thus, in housing courts people evicted from their home may be connected to social services to mitigate the disruption of their lives. Low-income housing code violators may get access to special community-based financial assistance or home repair services. Defendants whose housing problems are part of other and larger legal problems may obtain advice or access to legal assistance in dealing with those collateral issues. Those whose capacity to comply with court orders is limited can get advice and guidance from Housing Specialists on the Court's staff in executing an approved compliance plan. The criminal defendants in the courts are not charged with felonies and, unless they are defiant or chronic violators, are presumed to be persons who can be helped to solve a compliance deficiency problem.

Chapter 1901 of the Ohio Revised Code governs the Cleveland Municipal Housing Court.³⁵ Specifically, section 1901.01 establishes the Cleveland Municipal Court, and section 1901.02 provides that courts established by section 1901.01 have jurisdiction within the corporate limits of their respective municipal corporations and are courts of record.³⁶ Section 1901.011 establishes the housing division in the Cleveland Municipal Court.³⁷ The section was subsequently amended to establish a housing court in Toledo and an environmental court in Franklin County, which includes Columbus. This environmental division of the Franklin County Municipal Court lacks jurisdiction in landlord-tenant but is otherwise endowed with all the powers,³⁸ subject matter³⁹ and monetary⁴⁰ jurisdiction of housing divisions, plus some specifically designated jurisdiction granted pursuant to section 1901.183.

34. OHIO REV. CODE ANN. § 1901.01 (West 2011); see Jaquay, *supra* note 29 (“[A]ttorneys and [housing] court officials look[] for innovative solutions that benefit both the parties before the Court and the community at large.”); Keating, *Judicial Approaches*, *supra* note 33, at 348 (“One of the major features of a housing court [relative to traditional courts] is . . . a judge with a sufficiently long term and experience to better deal with housing problems. . . .”); White, *supra* note 28, at 46 (discussing the role of the Housing Court Specialist as a mechanism for “steering homeowners to various loan and grant programs to secure funds for necessary repairs.”).

35. OHIO REV. CODE ANN. § 1901.01 (West 2011).

36. In Ohio, the jurisdiction of a municipal court may encompass more than one municipality. For instance, the Cleveland Municipal Court jurisdiction includes the Village of Bratenahl.

37. OHIO REV. CODE ANN. § 1901.01 (West 2011).

38. *See id.* § 1901.131.

39. *See id.* § 1901.181.

40. *See id.* § 1901.17.

These special purpose housing divisions have specified subject matter jurisdiction but are allotted powers within their subject matter jurisdiction that are greater than those of general divisions of municipal courts. A statutory housing court has exclusive jurisdiction in eviction and other civil matters involving housing or land use regulation in addition to misdemeanor criminal actions for violations of local building, housing, air pollution, sanitation, health, fire, zoning or safety codes and for any regulation applicable to premises used or intended for the use as a place of human habitation, buildings, structures or any other real property subject to any such code or ordinance.⁴¹ Where a case is brought with claims within the exclusive jurisdiction of the housing division, the court can adjudicate all related claims in the case and exercise all the power of a common pleas court to make findings, render judgments or issue orders.⁴² This augmented authority prevents defendants from moving housing cases out of the housing division by raising counter-claims or cross-claims on matters not within the original jurisdiction of the housing division.

At the time of its initiation, it was not certain that the new court would be successful. Certainly, there were those who did not want it to be. However, Professor Frederic White was not one of them and supported his position in favor of the housing court in a 1981 law review article where he reported on the initial political and financial obstruction of the court's request for sufficient resources to employ the staff needed to carry out the plan designed for operational effectiveness.⁴³ The court had to make due with a staff of 5, including the judge and his bailiff, instead of the requested 14.⁴⁴ There was also bickering over the source of the funds for the court. By law, the city must pay the expenses of the court, but the law does not specify from which fund and how much the court shall be allocated. The lack of support from the city council meant that cases languished on the crowded docket. One method of speeding up the process that was then explored was allowing citizens to come to court with a sworn statement about an unlawful condition and file a criminal complaint directly without waiting for the city's inspectors and the Law Department to do this with time-consuming procedures that slowed the enforcement process.⁴⁵ In his 1987 article, Professor Dennis

41. *See id.* § 1901.181.

42. *See id.* § 1901.131.

43. *See White, supra* note 28, at 56.

44. *Id.* at 52.

45. *Id.* at 53 (discussing whether a Massachusetts decision allowing citizens to file criminal actions was a possible option in Ohio).

Keating reported on persistent resource deficiencies that limited the ability of the Housing Court to achieve its code enforcement potential.⁴⁶

In its first year of operation, the Housing Court handled 6,452 eviction cases and 599 criminal code compliance cases.⁴⁷ Clearly there was a demonstrated need for the services of a housing court both for civil eviction cases and for criminal prosecutions brought by the City of Cleveland's law department. Courts, after all, can only be available; cases are brought to them by litigants. After its first decade, the capacity and case load in the Cleveland Housing Court grew rapidly. By 2010, its 30th anniversary year, the court's case load and the costs and fines collected reached an all-time high. There were 11,555 civil cases, the vast majority of which were evictions.⁴⁸ There were 8,075 criminal cases.⁴⁹ Fees and fines collected that year totaled \$554,177.⁵⁰ No single judge in Ohio can match the current volume of cases heard by the Cleveland Housing Court judge.

Looking more specifically at the case load in the years of mortgage crisis, in 2000, there were 11,166 civil cases and 5,950 criminal cases filed.⁵¹ Over the ensuing decade the number of civil cases ranged from a low in 2003 of 10,565 to a high in 2008 of 12,385.⁵² Criminal cases brought by city prosecutors had a wider range of variation from a low in 2006 of 3,693 to the 2010 high of 8,075.⁵³ The steady volume of evictions and the recent rise in criminal cases are all the more remarkable in face of the decrease in Cleveland's population by some 81,000 people, 17%, during the decade.⁵⁴ It suggests that the decline in economic and

46. See Keating, *Judicial Approaches*, *supra* note 33, at 351-57.

47. See Jaquay, *supra* note 29.

48. 2010 Ohio Courts Statistical Report, The Supreme Court of Ohio, June 2011, p. 93, <http://www.sconet.state.oh.us/Publications/annrep/10OCS/default.asp>.

49. *Id.* at 202.

50. *Id.* It is important to note that the collection of fines is not a function of the Housing Court but a function of the Municipal Clerk of Court. There was controversy reported in the local news at the end of 2010 over the fact that millions of dollars in fines levied by the court on large or out-of-state absentee property owners went uncollected. See generally Sandra Livingston, *Cleveland Housing Court Issued \$20 Million in Fines for Contempt by No-Show Companies, But Collections are Sparse*, THE PLAIN DEALER, Nov. 22, 2010 (discussing the role of the Clerk of Courts in collecting fines imposed by the Housing Court and noting the disparity in the amount of fines imposed relative to those collected).

51. J. Raymond L. Pianka, *Cleveland Housing Court*, 7, <http://www.clevelandhousingcourt.org/clevelandmarshall.pdf> (last visited Dec. 14, 2011).

52. *Id.*

53. *Id.*

54. See Rich Exner, *2010 Census Population Numbers Show Cleveland Below 400,000; Northeast Ohio Down 2.2 Percent*, THE PLAIN DEALER, Mar. 9, 2011 (noting that Cleveland's population was 477,472 in 2000 and 396,815 in 2010).

demographic strength results in more housing and neighborhood instability reflected in evictions and especially in noncompliance with local residential codes. The data on fines and costs collected by the Municipal Clerk of Court⁵⁵ is even more dramatic. In 2008 and 2009, collections jumped to an average of more than \$650,000 and were \$554,177 in 2010.⁵⁶ Before that, collections topped \$400,000 only twice, in 1998 and 2005.⁵⁷ They slumped to \$268,000 and \$256,000 respectively for 2006 and 2007.⁵⁸ Data on the amount of fines ordered by the court was not kept before 2010 so that it is impossible to compare collections with fines levied. However, in widely heralded cases, some multi-million dollar fines were levied by the court against commercial dealers in foreclosed residential properties since 2009.⁵⁹

The current capacity of the Housing Court is greatly improved from what it was in the first half of the court's existence. In its 30th anniversary retrospective in 2010, Judge Raymond Pianka reported that the court's personnel numbered 45—9 Housing Court Specialists, 5 magistrates and 5 clerks, 12 bailiffs, plus administrative and part-time clerks and interns. The most important figure is, of course, the presiding judge. Raymond Pianka has been judge in the Housing Court for the past 16 years. There is no doubt that his influence and leadership brought this court to national and international recognition, especially for its response to the conditions wrought by the mortgage crisis. Pianka's resume is perfect for his office. He was born, raised and educated in Cleveland, was founding director of one of the city's most successful community development corporations, went on to serve on city council for ten years where he chaired the community development committee of the council, and was then elected in 1995 to serve as judge of the Housing Court. His knowledge of the city and its history is encyclopedic as is his familiarity with the city's ordinances on housing and land use. Those who come into his court room leave impressed by the fair

55. It must be noted that while fines are ordered by the Court, collections are done by the Clerk of Court, who in Cleveland is a separately elected office holder. This fragmentation of functions results in some loss of coordination and interesting electoral politics. *See, e.g., Memo to the Housing Court: The Judge Fines; The Clerk Collects: Editorial*, THE PLAIN DEALER, Nov. 26, 2010 (noting that large fines, while intended to force compliance, are ineffective unless they can be enforced).

56. The data reported here is from an internal document prepared by staff of the Housing Court a copy of which was provided to the author with whom it remains on file.

57. *Id.*

58. *Id.*

59. *See discussion infra* Section IIA: Defiant Corporations and Absentee Investors.

treatment he provides, even when they disagree about the judgment in their case. It is those who reject the Court's jurisdiction and refuse to accept its judgments who have portrayed his decisions as harsh.⁶⁰ Those critics are, for the most part, lawyers representing corporate slumlords and businesses whose practices presume that compliance with housing laws in Cleveland is optional.⁶¹

Evidence of the destabilization of the Cleveland housing market by neglectful or absentee owners showed up in the Housing Court by the mid-1990s. It appeared in the form of the frequent appearances by investor-owners for failure to comply with orders to correct code violations.⁶² Purchasers of houses at foreclosure sales were buying dilapidated dwellings as investments but failing to maintain them. The investment and flipping practices of investors included mortgaging the properties for as much or more than the purchase price. The court observed not only the unlawful failure to comply with housing codes but also the larger business practice of flipping the ownership of substandard dwellings from one speculator to another and to inexperienced homeowners who failed to realize the extent of the repairs needed or the faulty quality of cosmetic repairs made by those flipping properties.

In one civil nuisance abatement case brought on behalf of SVD by the co-author's law clinic at Cleveland State University, a bankrupt investor told the court that he was persuaded by television infomercials on buying and flipping houses was able to do so by getting individual mortgage loans for more than the purchase price of the houses he

60. See Kotlowitz, *supra* note 6, at 6 (reporting statement of a defendant's attorney that the court's judgment was unconstitutional and that Destiny Ventures would no longer do business in Cleveland); see also <http://cleveland.craigslist.org/reo/2727693875.html> (anonymous flipper of houses complains about "Judge Pianka's hanging court.").

61. Sterios Theologides, General Counsel senior vice president and general counsel for CoreLogic, a provider of consumer, financial, and property information, analytics, and services to business and government and a former general counsel to Morgan Stanley's residential mortgage business and to New Century Financial Corporation, an originator of subprime mortgage loans, made it clear that the general practice of servicers of bank-owned residential properties responsible for the maintenance low-value homes would refuse to repair or maintain them and get rid of them in their distressed condition instead of complying with local housing codes. *Servicing REO Properties: The Servicer's Role and Incentives*, REO & VACANT PROPERTIES: STRATEGIES FOR STABILIZATION, Federal Reserve Banks of Boston and Cleveland and the Federal Reserve Board 77—85 n.5 (2010); see also Kermit Lind, *Can Nuisance Law Protect Your Neighborhood From Big Banks?* 44 SUFFOLK U. L. REV. 89, 101-102; Frank Ford, *Cleaning Up After the Foreclosure Tsunami: Tackling Bank Walk-Aways and Vulture Investors*, SHELTERFORCE, Fall/Winter; Sandra Livingston, *Cleveland housing court judge fines 2 real estate firms about \$13 million for neglect*, http://blog.cleveland.com/metro/2010/06/cleveland_housing_court_judge_1.html#f2009

62. See *A Boom in Houses of Cards*, *supra* note 6; see also Perkins, *supra* note 6.

bought.⁶³ His financing was with “non-traditional” lenders and he was able to get loans even while in default on earlier loans. Led by his desire to make money in real estate without investing his own cash, this speculator ended up simultaneously in bankruptcy, foreclosures, and on both the criminal and civil docket of the Housing Court. This business practice was rampant in Cleveland at the turn of the century.

While the Housing Court saw much of this information about the corruption of the housing market in vulnerable neighborhoods, the issues before the court and the court’s prescribed authority to adjudicate prohibited it from holding perpetrators accountable. Although state and federal agencies ultimately prosecuted some speculators for their crimes, there was little recognition before 2008 by state or federal law enforcement or financial institution regulators of the magnitude of predatory lending and mortgage fraud schemes that resulted in widespread housing blight. In subsequent studies of predatory and subprime financing, it has been shown that the crisis took root first in predominantly minority and low-income neighborhoods, then moved into neighborhoods with higher priced housing financed with new subprime loan products introduced after 2004.⁶⁴ The Housing Court saw a growing number of investor-owners and corporate owners on its criminal docket during the most recent decade. It could easily see the correlation between abusive home financing and blighted houses, but it could only issue orders or judgments on cases brought to it and which were rigorously prosecuted. It lacked direct legal means to prevent the cause of blight or the persistent appearance of “frequent fliers” on its docket.

New features of the mortgage crisis created new problems for the Housing Court. The court found that foreclosed bank-owned houses, bank real estate owned (REO), were inspected but owners were very difficult to identify and to notify. City code enforcers were spending extra time trying to track ownership of blighted, vacant houses to perfect the service required by law. Owner-occupants and nonprofit community

63. For a discussion on the complexity of predatory business operations in Cleveland, including in the Slavic Village neighborhood, see Lind, *Protect Your Neighborhoods*, *supra* note 22, at 99-101; *see also* Jaquay, *supra* note 29; John Caniglia, *Feds Charge ‘Rehabber’ with Fraud*, THE PLAIN DEALER, Feb. 25, 2005 (discussing a 70-count federal indictment brought against real-estate rehabber, Raymond Delacruz, for engaging in widespread fraud in Slavic Village and other east-side neighborhoods).

64. *See, e.g., The CRA and Subprime Lending: Discerning the Difference*, BANKING AND COMMUNITY PERSPECTIVES 5 (Issue 1 2009) <http://dallasfed.org/ca/bcp/2009/bcp0901.pdf> (finding that of the higher-priced loans originated in 2005 and 2006, fifty-five percent were originated to middle and upper-income borrowers or borrowers in middle- and upper-income neighborhoods).

developers complained that the corporate owners of houses sold at sheriff sales were not filing deeds, that abandoned houses were growing in number and having a deterrent effect on the well-established and largely successful neighborhood recovery investments being made in challenged inner-city neighborhoods. In addition, there were many cases when corporations or absentee owners simply ignored summonses and complaints that were served. As was concluded in an important study called "Cleveland at the Crossroads," in 2005, it was too cheap and easy to speculate in blighted housing in the city.⁶⁵ The costs of holding defective housing could easily be dumped off to the public simply by ignoring the law and the weak law enforcement institutions, by paying fines or evading them by transferring property and, ultimately, by not paying property taxes for a few years. As a result, the city was spending more and more on nuisance abatement and demolition while the property tax collector, the county treasurer, saw tax collection and property values diminish.⁶⁶

After 2005, Cleveland emerged on the national scene as a poster child for the destructive force of predatory and subprime mortgage financing, and the Slavic Village neighborhood was pinpointed as the epicenter of the mortgage crisis.⁶⁷ As the national and international media came to take a closer look, the Housing Court attracted much of the attention for a variety of reasons. One very obvious reason is that the Court was in session every day of the week. The criminal docket was active no less

65. See MALLACH, LEVY & SCHILLING, *supra* note 13, at 14.

66. See generally Weinstein, *supra* note 24. In an attempt to address the rising tide of foreclosures and vacant and abandoned properties in Cuyahoga County, the County implemented a Foreclosure Prevention pilot program in 2006. As part of this program, Cuyahoga County authorized a total of \$3 million from the County's Delinquent Tax Administration and Collection funds to be directed at preventing foreclosures (\$1.5 million) and abating residential nuisances (\$1.5 million). *Id.* at 27. Similarly, during this pilot program, then Cuyahoga County Treasurer, James Rokakis, began supporting a proposal for what would become the Cuyahoga County Land Bank, arguing that a county wide land bank is a necessary mechanism to address the "growing problem posed by abandoned and vacant properties." *Id.* at 14.

67. See, e.g., Lind, *Perfect Storm*, *supra* note 1; Kotlowitz, *supra* note 6; see also CLEVELAND VS. WALL STREET (Saga-Productions et. al. 2010). *Cleveland vs. Wall Street*, by Swiss director Jean-Stephane Bron, was shot documentary-style during several trips to Cleveland and spotlights the impact of the mortgage crisis on residents of Cleveland's Slavic Village neighborhood. The film was entered in the Cannes International Film Festival in April 2010. See also *A Local Look at the National Foreclosure Crisis: Cleveland Families, Neighborhoods, Economy Under Siege from the Subprime Mortgage Fallout: Hearing Before the J. Econ. Comm.*, 110th Cong. (2007) (statements of James Rokakis, Treasurer Cuyahoga County, Ohio & Anthony Brancatelli, City Councilman, Slavic Village, Ohio), available at <http://jec.senate.gov> (search "Slavic Village"); Alyssa Katz, *Prime Suspect*, MOTHER JONES (Sept./Oct. 2006), <http://motherjones.com/politics/2006/09/prime-suspect>.

than three days each week and the civil docket had hearings every day. So, the Housing Court was a convenient place to get a story. Also, the Housing Court had acquired considerable experience with and information about the mortgage crisis. Many of the key actors in the problematic conduct were in its records. The court's reputation for rulings and programs designed to cope with emerging housing problems was growing so that many people engaged in community development and housing matters had strong opinions about the court and its work. Thus, the Cleveland Housing Court and its judge were the subject of a great deal of media coverage both in the U.S. and abroad.⁶⁸

As the volume of mortgage foreclosures reached new heights, the Housing Court became the first public institution to register alarm at the nature and dimension of the disaster being visited on the City of Cleveland. Although the court did not have mortgage foreclosures on its docket, it found many of its code violation defendants coming to court saying that even though the records showed the title to a blighted house to be in their names, they had lost the house in foreclosure. In addition, the Court was seeing national and global banks on its criminal docket with greater frequency than ever and they generally ignored local law enforcement efforts aimed at their houses with nuisance conditions. Perhaps worst of all were those absentee investors who bought low-value houses from banks after the banks purchased those houses at foreclosure sale. They invested in the worst of the housing stock and implemented business plans that contemplated no significant expenditure for code compliance. They engaged in manipulation of title records to evade liability for their illegally maintained houses.⁶⁹ They essentially thumbed their noses at the code enforcement by the city and the summonses to appear in Housing Court. To make matters worse, in the early years of the new century, the housing and building department of the City of Cleveland was notoriously lacking in capacity and competence.⁷⁰ In resources, equipment, personnel, training and dedicated

68. See, e.g., Mhari Saito, *Judge May Hold Investors Responsible for Blight*, NPR (Aug. 11, 2010), <http://www.npr.org/templates/story/story.php?storyId=129108026>.

69. See Lind, *The People's Court*, *supra* note 33, at 77. As this article was being prepared for publication the Cuyahoga County Prosecutor announced the indictment of a notorious flipper of houses who had used a false name to purchase, own and sell houses in northeastern Ohio and several other states. Some forty separate cases of housing code violations are pending and contempt fines in excess of \$9.5 million are waiting for this defendant in Cleveland's Housing Court. See Gabriel Baird, *Cuyahoga County Prosecutor Charges House Flipper From Florida*, THE PLAIN DEALER, Dec. 29, 2011.

70. Olivera Perkins, *City's Housing Office a Wreck*, THE PLAIN DEALER, Sept. 30, 2006; Christopher Evans, *Slackers & Shacks*, THE PLAIN DEALER, Sept. 14, 2008.

work ethic, it was no match for the mortgage crisis and the resulting blight that it spawned in the city's poorest neighborhoods.

In the face of this escalation of egregious destruction of neighborhood dwellings, the Housing Court fought back with an array of innovative measures. The Housing Court presided over by Judge Pianka became identified as Cleveland's primary institutional defender in the mortgage crisis in the first years of the new century.⁷¹ We now examine those programs and actions.⁷²

A. *Defiant Corporations and Absentee Investors*

Corporations and limited liability companies from out of state often neglect to respond to summonses or make appearances in Housing Court when prosecuted by the City of Cleveland for failure to comply with local ordinances. The Court publishes a list of persons subject to warrants and arrest for not answering criminal charges of failing to comply with housing and building code citations. The city typically names corporations as defendant-owners rather than specific corporate officers. Corporations and limited liability companies show up on the list of those wanted on criminal charges, but not individuals responsible for corporation conduct. This means no human person is subject to arrest on a warrant for failure to appear at court. So beginning in 2007, the court conducted special hearings for corporations which had been summoned to court and, when they failed to appear, a plea of not guilty was entered for them by the clerk.⁷³ Then the court scheduled a trial which was conducted without the corporate defendant present. The court heard forty-seven trials *in absentia* and sentenced the missing defendants to a total of \$1.37 million in criminal fines and costs.⁷⁴ Trials *in absentia* were discontinued when appeals from the sentences

71. See Kotlowitz, *supra* note 6, at 5-6 (describing the work of the court and its significance).

72. See Kotlowitz, *supra* note 6, at 8-14 (describing, in detail, the challenges facing Cleveland's code enforcement system. This description illuminates the lawlessness built into the business plans and practices of entrepreneurs and big banks in distressed housing markets.).

73. See, e.g., Sandra Livingston, *Stand Before this Judge or Face Contempt Charges Absentee Landlords on Notice that Hard Times Call for Tough Measures*, THE PLAIN DEALER (June 18, 2009) (discussing Judge Pianka's strategy of imposing fines against companies found to be in contempt for failing to appear).

74. Lind, *The People's Court*, *supra* note 33.

by corporations resulted in an adverse procedural ruling by the Ohio Supreme Court.⁷⁵

Presently, the court deals with absent and defiant corporations by sending notices of hearings requiring an appearance to corporate officers and to officers personally to show cause why the corporation should not be held in contempt of court for ignoring court-orders after the defendants received summonses and complaints. The court then holds hearings for contempt of court and issues substantial daily fines against non-responding corporations in accordance with Ohio statutes granting judges the authority to punish disobedience or resistance to "lawful writ[s], order[s], process[es], rule[s], judgment[s] or command[s] of a court or officer."⁷⁶ As of July 2010, more than \$15 million in fines for contempt of court were levied and converted into civil judgments.⁷⁷ The Court reported that this measure is having good results.⁷⁸ On October 20, 2011 Ohio's 8th District Court of Appeals heard an appeal by Paramount Land Holdings on the issue of whether the contempt hearings and sanctions are criminal or civil in character and whether the defendant had an opportunity to be heard.⁷⁹ The court of appeals affirmed the trial court's decision that there was no due process violation as this was a matter of civil law and Paramount Land Holdings was given notice and an opportunity to be heard.⁸⁰

When owners who persistently defy orders to comply with housing codes are fined, the court responds with substantial punishment. The case of two related companies from South Carolina makes the point.⁸¹

75. See *Cleveland v. Washington Mut. Bank*, 125 Ohio St. 3d 541, 2010-Ohio-2219, 929 N.E.2d 1039 (limiting its holding to the trial of corporations *in absentia* in a criminal proceeding initiated in a municipal court).

76. See OHIO REV. CODE ANN. § 2705.02(A) (West 2011).

77. Lind, *The People's Court*, *supra* note 33.

78. See HOUSING COURT INITIATIVES, CLEVELAND MUN. CT. HOUS. DIV. (Aug. 31, 2010) (on file with author) (report prepared and issued by the Housing Court).

79. On December 16, 2010, Paramount filed its appeal of four cases, which were subsequently consolidated on December 21, 2010. The four cases were *City of Cleveland v. Paramount Land Holdings*, No. CA-10-96180 (Ohio Ct. App.); *City of Cleveland v. Paramount Land Holdings*, No. CA-10-96181 (Ohio Ct. App.); *City of Cleveland v. Paramount Land Holdings*, No. CA-10-96182 (Ohio Ct. App.); *City of Cleveland v. Paramount Land Holdings*, No. CA-10-96183 (Ohio Ct. App.). Note that these three cases are not the same cases as those involving Paramount referenced *infra* at notes 81 and 82. The four consolidated cases were decided by the court of appeals on October 20, 2011. *City of Cleveland v. Paramount Land Holdings*, 2011 Ohio 5382, 2011 Ohio App. LEXIS 4454.

80. *City of Cleveland v. Paramount Land Holdings*, 2011 Ohio 5382, 2011 Ohio App. LEXIS 4454.

81. In early 2010, Cleveland Municipal Housing Court Judge Raymond Pianka imposed criminal fines in an amount that exceeded \$13 million against three commercial homeowners for repeated violations of Cleveland's residential building and housing

They were fined a total of \$13 million for neglecting compliance on 13 properties so dilapidated that the city had to demolish them to protect the public.⁸² The court's judgment included a detailed rationale for the fines which weighed the reasons for punishment and the aggravating facts against the mitigating facts.⁸³ Here, the defendant failed to appear in several instances and then pleaded "no contest" in all cases, failed to spend any money to make repairs, failed to pay property taxes and failed to make any other effort to take any action which the Court could consider in mitigation of a sentence.⁸⁴ The judgment concluded with the following statement:

Despite Defendant's complete and total disregard for the laws—and the citizens—of the City of Cleveland, the Court remains committed to its problem-solving mission. Should Defendant change its behavior and resolve the aforementioned violations, the Court may consider mitigation. Using the mitigating factors discussed in this entry as a guide, Defendant may formulate a plan and execute it. Should Defendant make real and demonstrable progress toward abating the nuisance posed by its properties, Defendant may file a motion to mitigate its sentence.⁸⁵

code. On May 20, 2010, Stonecrest Investments, LLC was fined \$5,000 for each violation, resulting in a total fine of \$190,000. *City of Cleveland v. Stonecrest Inv.*, No. 09-CRB-42705 (Ohio Cleveland Mun. Ct. Hous. Div. May 20, 2010) (*docket available at* http://clevelandmunicipalcourt.org/pa/prodpa.urd/pamw2000.docket_lst?3622715) (Judgment Entry, consolidating 38 cases). On June 18, 2010, South Carolina-based Paramount Land Holdings, LLC and Interstate Investment Group were each fined \$1 million and \$11.9 million respectively. *City of Cleveland v. Paramount Land Holdings*, No. 09-CRB-44396 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010), *available at* www.clevelandhousingcourt.org/pdf/Paramount_6-18-10.pdf (Judgment Entry, consolidating 8 cases); *City of Cleveland v. Interstate Inv. Grp.*, No. 09-CRB-44442 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010) (*docket available at* http://clevelandmunicipalcourt.org/pa/prodpa.urd/pamw2000.docket_lst?3631742) (Judgment Entry, consolidating 10 cases). As of this writing, none of the three commercial defendants have satisfied their judgments, either in whole or in part. While both Paramount and Interstate appealed their consolidated judgment entries, Stonecrest has expressed interest in working with the Cuyahoga County Land Bank so as to mitigate its fines and reduce the negative impact its properties have on the community. Notwithstanding, the gravity of these fines sends a clear message to banks and bulk purchasers of real property that local, municipal laws are not to be ignored in favor of maintaining a profitable business model.

82. *See* *City of Cleveland v. Interstate Inv. Grp.*, No. 09-CRB-44442 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010), *available at* www.supremecourt.ohio.gov/rod/docs/pdf/8/. . /2011-ohio-3384.pdf; *City of Cleveland v. Paramount Land Holdings*, No. 09-CRB-44396 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010), *available at* www.clevelandhousingcourt.org/pdf/Paramount_6-18-10.pdf; *see also* Sandra Livingston, *Cleveland Housing Court Judge Fines Two Real Estate Firms About \$13 Million for Neglect*, THE PLAIN DEALER (June 22, 2010, 10:06 AM), http://blog.cleveland.com/metro/2010/06/cleveland_housing_court_judge_1.html.

83. *See* *City of Cleveland v. Interstate Inv. Grp.*, No. 09-CRB-44442 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010) (*docket available at* http://clevelandmunicipalcourt.org/pa/prodpa.urd/pamw2000.docket_lst?3631742).

84. *See id.* at 7-10.

85. *Id.* at 13.

This conclusion to a severe sentence of a criminal defendant who ignored multiple opportunities over more than a year to mitigate the sentence show how determined the court is to trade sentences and fines for compliance, even for the most egregious of offenders.

B. *Comprehensive Plea Agreements*

The court uses plea bargains and the mitigation of sentences to obtain increased compliance by defendants. In an unstable housing market, buyers, many of whom have wildly unrealistic notions about home ownership as a result of get-rich-quick seminars or real estate infomercials on television, end up in court for violations on one or two properties while owning several more that are in bad condition. Whenever possible, the Housing Court prefers plea agreements and sentences that include solutions to all the problem properties of a defendant. In such cases, the court wants the owner to repair all its properties, not only the ones cited. By putting its other properties into compliance with housing codes, owners are able to get jail sentences and fines suspended. Similarly, the prosecutor can reduce the charges where defendants cooperate in the development of plans to get their houses into compliance before their trial date.

C. *Evictions With Clean Hands*

It came to the Court's attention that eviction actions⁸⁶ were being filed by corporate owners against residents in dwellings while those owners had outstanding warrants for failure to appear in the Housing Court to answer charges in criminal code enforcement cases. Thus, the Housing Court was being asked to authorize the dispossession of residents by owners who were refusing to appear before the court in housing code violation cases. The court then imposed the equitable doctrine of "clean hands."⁸⁷ Based on this principle, the court refused to proceed on an eviction where the plaintiff-owner of the dwelling was subject to an arrest warrant for failure to appear before the court to answer criminal charges. Thus, plaintiffs are required to deal with their pending criminal cases before they dispossess occupants of the houses the plaintiffs purchased at sheriff's sales.⁸⁸

86. An eviction case is a civil action invoking the equitable jurisdiction of a court.

87. This doctrine states that "he who comes into equity must come with clean hands."

88. Judge Pianka's approach to managing evictions served to complement the Protecting Tenants at Foreclosure Act, passed by Congress in 2009. See Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, Div. A, Title VII, § 701, 123 Stat.

D. *Public and Community Service Programs*

The Housing Court engages in a variety of programs to inform the public, specifically those directly affected by foreclosures, on both their rights and responsibilities. Its website⁸⁹ offers articles, bulletins, and videos to inform the public about preventing nuisance conditions. The court also sends a letter to defendants in mortgage foreclosure cases encouraging them to remain in their homes as long as possible and informing them that until the house is sold to a new owner, code compliance is their responsibility even if they abandon possession—neither bankruptcy nor a foreclosure alone will end their responsibility for the condition of their house. Each year since 2007, the court has sent as many as 7,500 such letters.⁹⁰ When letters are returned because of vacancy or with a reply from an occupant, the court collects the information. Postal records of vacancies are forwarded to the Court of Common Pleas where nearly all foreclosures are adjudicated.

Another initiative to mitigate the effects of abandonment is the use made of the Court Community Service (CCS) program. The Cleveland Municipal Court system may, when appropriate, sentence criminal defendants to supervised community service. The Housing Court may order the CCS staff to supply workers sentenced to community service to clean up vacant lots, perform yard work, secure vacant structures and make minor repairs at properties that are the subject of pending cases in the court.

When an abandoned vacant property is the subject of a case pending before the court, the court orders a bailiff to put up a notice on the premises forbidding trespassing and providing information about who is responsible for the condition of the property, along with contact information. This notice provides neighbors with information about who to contact regarding any problems with the property and where to get information about the status of the case in Housing Court.

1632, 1660, (2009) (codified at 12 U.S.C. § 5201 and amending 42 U.S.C. § 1347(o)(7)) (modified by Mortgage Reform and Anti-Predatory Lending Act, Pub. L. No. 111-203, Title XIV, Subtitle G, § 1484, 124 Stat. 2136, 2204 (2010)). Before Congress passed the federal legislation, tenants residing in a foreclosed residence had little protection against a subsequent owner-in-interest and were often evicted by the new owner without regard to the tenant's original lease terms. The federal legislation changed this practice with respect to foreclosure sales, by requiring subsequent owners-in-interest provide all tenants with a notice to vacate, 90-days in advance of any eviction. In this regard, Judge Pianka afforded more protection to tenants than did the federal legislation.

89. See CLEVELAND HOUSING COURT, <http://www.clevelandhousingcourt.org>.

90. See Livingston, *Cuyahoga's New Foreclosures up 13% for First Half of Year*, *supra* note 17.

III. Cuyahoga County Land Bank

In addition to the wave of foreclosures that engulfed Cleveland due to predatory subprime mortgage lending and outright fraud, foreclosures also began to increase in many cities in suburban Cuyahoga County. While the county government increased funding to the courts to accelerate the processing of foreclosures and funded several agencies beginning in 2005 to provide counseling to homeowners in danger of losing their homes through foreclosure, by 2009 the number of foreclosure filings in suburban Cuyahoga County exceeded those in the City of Cleveland.⁹¹ Cuyahoga County Treasurer Jim Rokakis was alarmed not only by this increase in the volume of foreclosures but also by the loss of property tax revenue due to abandoned foreclosed homes with “toxic titles” that could not be resold in an economy hit by a major recession and an increasing number of tax appeals by homeowners citing the declining market value of their homes.

A similar pattern of abandonment had occurred in the 1970s but was largely confined to the City of Cleveland itself. The combination of de-industrialization resulting in a massive loss of jobs, continued suburbanization, and “white flight” triggered by cross-town busing as part of the remedy in the Cleveland public school desegregation lawsuit caused an almost one-quarter loss of population.⁹² The City of Cleveland found itself with thousands of abandoned homes with unpaid taxes (as well as industrial and commercial buildings), many becoming nuisance properties eventually requiring condemnation and demolition.⁹³ Neighborhood-based organizations complained about the negative impact of these deteriorating structures on their neighborhoods.⁹⁴

In response to this crisis, the City of Cleveland persuaded the Ohio legislature to authorize in 1976 the creation of a land bank.⁹⁵ Under

91. *See id.*; *see also* ROTHSTEIN & MEHTA, *supra* note 17.

92. *See* CAROL POH MILLER & ROBERT WHEELER, *CLEVELAND: A CONCISE HISTORY, 1796-1990* (1990); *see also* EXNER, *supra* note 54 (discussing a declining trend in Cleveland’s population).

93. *See* Frank S. Alexander, Local Initiatives Support Corporation, *Land Bank Authorities: A Guide for the Creation and Operation of Local Land Banks* 6 (April 2005) (citing SUSAN OLSON & M. LEANNE LACHMAN, *TAX DELINQUENCY IN THE INNER CITY: THE PROBLEMS AND ITS POSSIBLE SOLUTIONS I* (1976)), *available at* http://www.communityprogress.net/filebin/pdf/new_resrcs/alexander_land_bank_lisc.pdf.

94. *See* Les Christie, *Foreclosure’s Other Victims—Those Left Behind*, CNN MONEY, Nov. 28, 2007, *available at* http://money.cnn.com/2007/11/28/real_estate/Slavic_vilages_othervictims/index.html.

95. *See* 1976 House Bill 1327, No. 4-415 (1976) (enacting OHIO REV. CODE § 5722.01 to .14).

this legislation, Cuyahoga County transferred tax-delinquent properties that had been foreclosed and were now vacant to the City of Cleveland at the city's request.⁹⁶ Cleveland established its land bank in the Real Estate section of its Community Development Department.⁹⁷ The city accepted only vacant lots and separated these lots into buildable and non-buildable parcels according to the size of the parcel and the applicable zoning.⁹⁸ The former were sold for a nominal sum (\$100) to developers.⁹⁹ Most went to the city's growing number of community development corporations (CDCs) for non-profit development of below market affordable housing.¹⁰⁰ Some of the strongest CDCs formed the Cleveland Housing Network in 1981 and later created a Homeward program to promote home ownership for eligible purchasers (usually moderate-income first time homeowners) of newly-constructed housing.¹⁰¹ The non-buildable lots were offered to adjacent property owners (for \$1 and the cost of recording title) who might use the vacant lot for yard expansion, gardening, or parking.¹⁰² Over its life, the City of Cleveland's land bank has contributed to the reclamation and re-use of thousands of vacant lots and, through the CDC network, the rebuilding of neighborhoods addressing blight and abandonment. The city's land bank held 7,399 parcels for future use as of December, 2011.¹⁰³

96. Frank S. Alexander, Center for Community Progress, *Land Banks and Land Banking* (June 2011), available at http://www.communityprogress.net/filebin/pdf/new_resres/LB_Book_2011_F.pdf.

97. Great Lakes Environmental Finance Center & Maxine Goodman Levin College of Urban Affairs, Cleveland State University, *Best Practices in Land Bank Operation*, 13 (June 2005), available at http://urban.csuohio.edu/publications/center/great_lakes_environmental_finance_center/land_bank_best.pdf.

98. See Alexander, *supra* note 93.

99. *Id.* at 47.

100. See Great Lakes Environmental Finance Center, *supra* note 97, at 13.

101. See Christopher Warren, *Housing: New Lessons, New Models*, in CLEVELAND: A METROPOLITAN READER (W. Dennis Keating, Norman Krumholz & David C. Perry, eds., 1995).

102. See ELISE M. BRIGHT, REVIVING AMERICA'S FORGOTTEN NEIGHBORHOODS: AN INVESTIGATION OF INNER CITY REVITALIZATION EFFORTS, (2000); Norman Krumholz & Brian Lloyd, *Land Banking and Neighborhood Revitalization*, PLANNERS' CASEBOOK, AMERICAN INSTITUTE OF CERTIFIED PLANNERS (Summer 2002). See generally Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225 (2010) (describing the process of land banking in Cleveland).

103. Data obtained from the City of Cleveland's Department of Development. See The City of Cleveland Land Bank Property Search Available Lots, <http://cd.city.cleveland.oh.us/scripts/cityport.php> (last visited December 14, 2011). Through the City of Cleveland's Land Reutilization Program, the Cleveland land bank will transfer properties to individuals, developers, and not-for-profit organizations for redevelopment purposes.

In confronting the most recent crisis, however, this type of land bank is insufficient. It does not deal with blighted structures, their rehabilitation or demolition. It has no funding to develop housing. It has no authority to strategically assemble vacant land for development. Its authority and capacity to engage in collaboration with municipalities or with businesses is limited. Most importantly, it has no independent source of funding to acquire and maintain abandoned vacant properties.

In addressing the county-wide mortgage crisis, Rokakis and others looked toward a different model—the Genesee County Land Bank Authority (GCLBA).¹⁰⁴ In 2003, Michigan enacted the Land Bank Fast Track Act.¹⁰⁵ It authorized the creation by counties of city and county land bank authorities with powers to assemble, sell, or redevelop tax-foreclosed properties in an expedited process and also enabled counties to plan brownfield redevelopment.¹⁰⁶ The GCLBA was created under this legislation in 2004.¹⁰⁷ Its focus has been primarily on the City of Flint, hit hard for many years by the loss of jobs in the auto manufacturing industry.¹⁰⁸ It works closely with the County Treasurer, who is responsible for foreclosing on tax delinquent properties.¹⁰⁹ It also acquires properties from public and private entities and receives property transfers. A 2009 HUD report on land banks described its activities:

The GCLBA operates 10 different programs designed to ensure productive reuse of tax-foreclosed properties through foreclosure prevention, housing renovation, side lot transfer, clean and green (vacant lots are converted into gardens and green space), planning and outreach, demolition, property maintenance, sales, development, and brownfield redevelopment. Since most of the properties acquired by the land bank are either vacant or in severe disrepair, the GCLBA categorizes them for demolition,

104. Anne Trubek, *The Man Who Saw the Mortgage Crisis Coming*, MILLER-MCCUNE (Nov. 21, 2011), available at <http://www.miller-mccune.com/business-economics/the-man-who-saw-the-mortgage-crisis-coming-37756/>.

105. Land Bank Fast Track Act, H. 4483, 92d Leg., Reg. Sess., (Mich. 2003) (codified at MICH. COMP. LAWS §§ 124.751-124.774 (2004)).

106. *Id.*

107. *Id.* Though the Land Bank Fast Track Act authorized the formal establishment of land banks, Genesee County's land reutilization efforts began in 2002 with the creation of the Genesee County Land Reutilization Council. The Land Reutilization Council was Genesee County's response to the rising number of tax delinquent properties and was the predecessor to the county's land bank. See Alexander, *supra* note 93, at 7; see also Urban Cooperation Act, 1967 Ex. Sess. Act 7, §§ 124.501 to .512 (Mar. 1968) (codified at MICH. COMP. LAWS § 124.501-.512 (1967)) (authorizing the creation and operation of the Land Reutilization Council), available at www.legislature.mi.gov/%28S%28qtukdv45ddmigs55kngfp33d%29%29/mileg.aspx?page=GetObject&objectname=mcl-Act-7-of-1967-Ex-Sess-.

108. GENESSEE COUNTY LAND BANK, <http://thelandbank.org/aboutus.asp>.

109. *Id.*

rehabilitation, or for rent or sale to interested parties. Neighborhood revitalization, homeownership, and increasing housing opportunities for low-income families are top priorities at the GCLBA.¹¹⁰

During the period beginning in 2002 and ending in 2010, the GCLBA has sold 2,138 properties, demolished 1,181 structures, and in 2010, the GCLBA had an inventory of 6,235 residential properties, with 3,952 of those properties being vacant.¹¹¹ Inspired by this model, land bank proponents in Cleveland sought to develop a county-wide land bank with capacities and characteristics to deal with the rising and foreseeable volume of abandoned parcels of land.¹¹² Rokakis led a working group of experts in public finance, banking, local government and real estate law in the design of a land bank with the tools to work collaboratively with all public entities and with private financial and real estate businesses. Legislation was drafted and was introduced in the Ohio legislature in 2008 to create the state's first countywide land bank.¹¹³ It was approved and signed by the governor in early 2009, initially on a 2-year experimental basis.¹¹⁴

The Cuyahoga County Land Re-utilization Corporation (CCLRC) (hereinafter referred to as the "Cuyahoga County land bank" or the "land bank") is not part of the government of Cuyahoga County (which

110. U.S. Dep't of Hous. & Urb. Dev., Office of Policy Dev. & Research, *Revitalizing Foreclosed Properties with Land Banks* 10 (Aug. 2009), available at <http://www.huduser.org/portal/publications/landbanks.pdf> (citing Genesee County Land Bank Authority, *Genesee County Land Bank Programs*); see also Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. STATE L. REV. 189 (2008).

111. See Genesee County Land Bank, *Genesee County Land Bank 2002-2010 Annual Review*, at 2-3 (Winter 2011), available at <http://www.thelandbank.org/downloads/LBANewsletter-Annual-Report-Winter-2011.pdf>.

112. See Trubek, *supra* note 104.

113. See Creation of Land Reutilization Corporations—Reclamation—Abandoned or Unclaimed Property—Urban Renewal, S. Res. 353, 127th Gen. Assemb., Reg. Sess. (Ohio 2008). The legislation authorized the creation of a land reutilization corporation to facilitate the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property. Notably, although the 2008 legislation authorized Ohio's first county-wide land bank, the City of Cleveland had been operating a land bank since 1976. See 1976 House Bill 1327, No. 4-415 (enacting OHIO REV. CODE § 5722.01-14). See generally OHIO REV. CODE § 5722.01 (Apr. 7, 2009); *id.* § 5722.02(A), (B) (Apr. 7, 2009) (authorizing a county to establish a land reutilization corporation). See also *id.* § 1724.01, (Apr. 7, 2009) (providing that a county land reutilization corporation shall be organized as a not-for-profit corporation under chapters 1724 and 1702 of the Ohio Revised Code).

114. See Creation of Land Reutilization Corporations—Reclamation—Abandoned or Unclaimed Property—Urban Renewal, S. Res. 353, 127th Gen. Assemb., Reg. Sess. (Ohio 2008). This two-year limitation was removed by an amendment less than a year later.

was re-organized as of January 1, 2011).¹¹⁵ Instead, it is a special purpose, non-profit corporation authorized under R.C. 1724. It is governed by a board of corporate directors established and authorized by Ohio's nonprofit corporation statute, R.C. 1702.¹¹⁶ In addition to the provisions governing nonprofit corporations, land reutilization corporations are subject to state open meetings and sunshine regulations plus the special scrutiny of Ohio's Secretary of State and Attorney General. The land bank's mission is to "strategically acquire properties, return them to productive use, reduce blight, increase property values, support community goals, and improve the quality of life for county residents."¹¹⁷ Its powers include:

1. purchasing, receiving, transferring, holding, managing, and leasing real property;
2. engaging in code enforcement and nuisance abatement (including demolition);
3. acquiring or managing unimproved (vacant) underutilized property and forfeited lands;
4. purchasing delinquent property tax lien certificates;
5. issuing bonds, applying for grants, making loans, and borrowing money.¹¹⁸

The CCLRC receives its funding from a variety of traditional and nontraditional sources.¹¹⁹ However, a primary source of the land bank's funding comes from interest and penalties on unpaid or delinquent real property taxes and assessments collected by the Cuyahoga County

115. Though organized as a private corporation with a business plan that includes governmental activities, the CCLRC was incorporated by the Cuyahoga County Treasurer with the authorization of the County Board of Commissioners. Consequently, the land bank is not entirely free from those provisions that govern public entities. *See, e.g.*, OHIO REV. CODE § 1724.11 (2011) (addressing Ohio's Public Records Law); *see also* Cuyahoga County Land Reutilization Corporation, *Public Records Policy*, CUYAHOGA LAND BANK (May 22, 2009) available at http://www.cuyahogalandbank.org/documents/policies/00496436_PUBLIC_RECORDS.pdf (acknowledging compliance with Ohio's Public Records Law).

116. *See* OHIO REV. CODE ANN. § 1702 (West 2011).

117. *See* Cuyahoga County Ohio Land Bank, About Us, <http://www.cuyahogalandbank.org/aboutUs.php> (last visited Dec. 26, 2011).

118. *See* OHIO REV. CODE ANN. §§ 1724.02, .10 (West 2011); OHIO REV. CODE ANN. § 5722 (West 2011); *see also* Agreement & Plan of Reclamation, Rehab., and Reutilization of Vacant, Abandoned, Tax-Foreclosed or Other Real Prop. in Cuyahoga County Ohio between the County of Cuyahoga, Ohio & the Cuyahoga County Land Reutilization Corp., Article II, *Actions in Furtherance of the Plan* (June 4, 2009), available at http://www.cuyahogalandbank.org/documents/organizational/Agreement_and_Plan.pdf.

119. *See* OHIO REV. CODE ANN. § 122.65 (West 2011); *see also* OHIO REV. CODE ANN. §§ 307.01, 307.07, 307.09-.10, 307.12, 307.64, 307.698, 307.78-.781, 321.261,

Auditor. The land bank also received funding through HUD's Neighborhood Stabilization funds. In the first round of NSP funding, the land bank received \$1 million for acquisition and demolition in thirty municipalities.¹²⁰ In the second round, it led a consortium which included the City of Cleveland, the Cuyahoga Metropolitan Housing Authority and the County government which received \$41 million.¹²¹ In December, 2010, the land bank successfully obtained \$9 million from its first bond sale.¹²² Finally, the land bank received a \$400,000 grant from the U.S. Environmental Protection Agency (EPA) to assist with assessment of environmental contamination in industrial and commercial sites.¹²³ These accomplishments in its first year demonstrate the nimble and flexible capacity of the land bank in collaborating

1724.02, 5705.19(EE), (UU), 5721.19, 5722.08 (West 2011). See generally LEGIS. SERV. COMM'N, BILL ANALYSIS—SB 353—FINAL, ACT SUMMARY & CONTENT AND OPERATION, *CLRC Sources of Funding and Asset Acquisition* (2009), available at http://www.legislature.state.oh.us/analyses.cfm?ID=127_SB_353&ACT=As%20Enrolled. For a discussion of how modern land banks, including the Cuyahoga County Land Bank, utilize innovating funding methods, see Thomas J. Fitzpatrick, *How Modern Land Banking Can Be Used to Solve REO Acquisition Problems*, REO & VACANT PROPERTIES: STRATEGIES FOR NEIGHBORHOOD STABILIZATION 145, 147-149 (Fed. Reserve Banks of Boston & Cleveland and the Fed. Reserve Bd. 2010).

120. Under the first round of NSP funding (NSP1), as authorized by The Housing and Economic Recovery Act, only states and units of local governments could apply for, and be awarded, NSP1 funds. See Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, Div. B, Title III, § 2301(a), (b), 122 Stat. 2850 (2008) (codified at 42 U.S.C. § 5301), amended by American Recovery and Reinvestment Act, H.R. 1-103 to 105, 111th Cong. (2009). Conversely, nonprofit land banks, whether governmental or nongovernmental entities, were precluded from applying for NSP1 funds directly. See 73 Fed. Reg. 58330, 58332 (Oct. 6, 2008). Rather, recipients of NSP1 awards could choose to allocate a portion of their total award to newly created, or pre-existing, land banks, provided the land bank would operate in a specific, defined geographic area and use the funds to purchase foreclosed properties and then maintain, assemble, facilitate the redevelopment of, market, and dispose of those properties. See 74 Fed. Reg. 29223, 29224 (June 19, 2009) (amending 73 Fed. Reg. 58330 (Oct. 6, 2008)). Accordingly, the CCLRC was allocated a portion of the NSP1 funds that were awarded to Cuyahoga County. See 73 Fed. Reg. at 58348 (Oct. 6, 2008) (providing a list of NSP1 recipients); see also NSP Quarterly Reports, Cuyahoga County Department of Development, NSP Quarterly Performance Report 2nd Quarter 2009 (2009) (allocating certain NSP1 awards to the CCLRC).

121. See Press Release, City of Cleveland, County Land Reutilization Corp. Cuyahoga County and CMHA Partnership Receives \$40.8 Million in NSP2 Funds (Jan. 14, 2010), available at http://www.cuyahogalandbank.org/clippings/20100114_pr_consortium_nsp2_award.pdf.

122. Dennis Keating, *Cuyahoga County Land Reutilization Corporation: The Beginning, The Present, and Beyond*, available at http://www.community-wealth.org/_pdfs/news/recent.../report-keating.pdf.

123. The CCLRC received its grant as part of a larger \$78.9 million initiative by the EPA to help communities in forty states clean up, revitalize, and sustainably reuse contaminated properties. See Press Release, FY10 Brownfields Assessment, Cleanup, and Revolving Loan Fund Grants, Region 5, at 8 (April 2010), available at http://www.epa.gov/brownfields/grant_announce/selectedgrants.pdf.

with different types and levels of public entities to obtain and manage resources.

The Cuyahoga County land bank began operations in the summer of 2009. Its primary operational focus has been on demolition of badly blighted nuisance structures. In 2010, it acquired 495 properties and demolished 147 abandoned housing units, with another 100 scheduled to be demolished.¹²⁴ It transferred 80 empty lots, mostly to the City of Cleveland's land bank.¹²⁵ In September, 2010, it sold its first renovated house.¹²⁶

Significant achievements in its initial period of operation included agreements with fifteen municipalities, initially with the City of Cleveland, detailing how the land bank would operate within their boundaries. Most importantly the land bank agreed that it would generally abide by their priorities in acquiring properties and then disposing of them for re-use. Land use regulation is done by separate municipalities within Cuyahoga County. While this results in fragmented planning and discordant development, until land use planning and regulation is more regional, the land bank must operate with multiple and varied voluntary agreements with individual municipal jurisdictions.

The land bank also negotiated the first agreement in the country with the Federal National Mortgage Association (FNMA) under its First Look program. This agreement not only gives the land bank the first right to acquire FNMA's foreclosed properties in Cuyahoga County but also has FNMA contributing \$3,500/property toward the demolition of badly blighted properties.¹²⁷ This is roughly half the cost of demolition of single-family houses. Later, the land bank negotiated an agreement with HUD whereby HUD agreed to give the land bank the first right to acquire low value properties (*i.e.*, those under \$20,000) for the nominal price of \$100.¹²⁸ In 2011 the land bank began negotiating agreements

124. Keating, *Cuyahoga County Land Reutilization Corporation*, *supra* note 122, at 16.

125. *Id.*

126. Mike Gaynier, *Home in the Heights Sells First Renovated Vacant House*, Heights Observer June 2, 2009, available at http://media.heightsobserver.org/issue_pdfs/TheHeightsObserver_Vol_02_Issue_06.pdf.

127. See Sandra Livingston, *Fannie Mae and the New Cuyahoga County Land Bank Forge Unique Agreement*, THE PLAIN DEALER, Dec. 16, 2009 (explaining that in addition to the \$3,500 contribution by FNMA, the initial agreement between FNMA and the CCLRC allowed the land bank to acquire properties owned by FNMA for \$1.00).

128. See Press Release, U.S. Dep't of Hous. & Urban Dev., HUD Expands Neighborhood Stabilization Program in Cuyahoga County: Deep Discounts on HUD Homes to Help Recovery Act Program Work More Effectively in Cleveland Metro Area, HUD No. 10-141 (July 2, 2010), available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-141.

with big banks for disposition of low value properties owned by the banks or bank trusts after mortgage foreclosures. These private agreements will provide for payment of demolition costs for bank-owned houses.¹²⁹ These agreements prevent these nuisance properties being bought at auction by speculators who then resell them without first bringing them into compliance with local housing codes. Of the more than 300 properties demolished by the land bank since it began operations most have been FNMA- and HUD-owned properties.¹³⁰ As this article was being written, the land bank was in negotiation with other mortgage and REO servicers for agreements on the disposition of houses mortgagees were abandoning. Orderly disposition of what is actually solid waste in cooperation with a land bank is a benefit to municipalities in terms of cost and its protection of the public health, safety and welfare.

While the land bank is still in the early stage of its operation, it is already viewed as a key agency in addressing the impact of the mortgage crisis in Cuyahoga County and in the rebuilding process of those cities and neighborhoods most heavily impacted by foreclosures and abandonment. It is a model for other Ohio urban counties interested in creating similar land banks.

IV. Rebuilding Neighborhoods: the Community Development Community

The Cleveland Housing Court and the Cuyahoga County land bank represent two of the most effective organizations responding to the mortgage crisis and the housing abandonment that it has caused. A third important responder is the combination of community development organizations (CDCs) and the two major local “intermediaries” that support networks of CDCs—the Cleveland Housing Network (CHN) and Neighborhood Progress, Inc. (NPI). They are in the forefront of the efforts to rebuild the neighborhoods in which they have worked for the past three decades or more and which have been damaged in this crisis. Moreover, the neighborhood-based organizations in Cleveland were, and remain, a critical force for the establishment and integrity of the Housing Court and the Cuyahoga County Land Reutilization Corporation.

¹²⁹ E-mail from Gus Frangos, President, Cuyahoga County Land Reutilization Corporation, to authors (June 3, 2011) (on file with authors and reiterating what has been reported at public meetings).

¹³⁰ *Id.*

CHN began in 1981 as an association of six CDCs and has grown to have seventeen CDC members. CHN has provided financing for CDC-sponsored affordable housing, much of which it manages. Its lease-purchase program modeled on one initiated by the Famicos Foundation following the 1966 Hough riot to renovate housing and promote low-income home ownership has gained acclaim as a way in which lower-income families can become responsible homeowners.¹³¹ It also began its Homeward program to produce more affordable new housing as part of the City of Cleveland's efforts to retain residents and attract new homeowners. Over its 30-year life, CHN and its member CDCs have produced several thousand affordable housing units and allowed several hundred participants in the lease-purchase program to become homeowners.¹³² NPI was formed in 1988 to channel funding from corporations and foundations in collaboration with the City of Cleveland to CDCs for neighborhood redevelopment. Its primary objective has been to recreate markets and support the development of housing and related facilities in selected neighborhoods.¹³³ It has provided access to capital to finance projects and organizational support to what has been considered the strongest of the CDCs.

The efforts of CHN and NPI have helped to revitalize many Cleveland neighborhoods, even as those neighborhoods continued to experience many serious challenges, including declining population, poverty and unemployment, crime, substandard housing, and troubled public schools. Two examples of the positive impact of the work of CDCs could be found in the Slavic Village and Tremont neighborhoods.¹³⁴ The progress that has been made was being significantly undermined

131. The CHN lease-purchase program has received national acclaim, in part, because it was the first of its kind to use federal Low Income Housing Tax Credits in connection with a lease-purchase strategy to facilitate home ownership. In 2006, former President Bill Clinton celebrated the program's success, and in 2010, the city of Urbana, Illinois proposed creating a rent-to-own development that was modeled in part on CHN's lease-purchase program, but would use state, rather than federal, tax credits. See generally Memorandum from Elizabeth H. Tylor, Dir. Cmty. Dev., to Laurel Lunt Prussing, Mayor of the City of Urbana (Oct. 13, 2010) (referenced within the Kerr Avenue Project Status Update). For a thorough synopsis of CHN's lease-purchase program, see *Innovations in Community Development: Lease Purchase Paves a Path to Homeownership*, ENTERPRISE FOUND. (2004), available at <http://www.practitionerresources.org/cache/documents/19725.pdf>.

132. Since 1981, the Cleveland Housing Network has made \$484 million in capital investments in the city of Cleveland and has developed 4,485 affordable homes for rent and ownership to over 1,700 Cleveland families. See CLEVELAND HOUSING NETWORK, 2009 COMMUNITY REPORT, at 18, available at http://www.chnnet.com/chn_report_09.pdf.

133. NEIGHBORHOOD PROGRESS, <http://neighborhoodprogress.org/home.php> (last visited Dec. 14, 2011).

134. See generally Krumholz, Keating, Star & Chupp, *supra* note 11.

by the impact of vacant and abandoned foreclosed housing. Slavic Village was a much-published example of the devastating impact of this phenomenon.¹³⁵

To counter this crisis, NPI, CHN and partner CDCs have combined to launch several initiatives to counter housing abandonment and begin to rebuild key neighborhoods. In 2004, NPI invited a team from the National Vacant Properties Campaign to conduct a strategic assessment of the existing system for returning vacant, abandoned, and blighted properties to productive use. It produced a report in 2005 with numerous recommendations.¹³⁶ Their recommendations addressed strengthening the city's code enforcement policies, restructuring and expanding the city's land bank, registering vacant properties, establishing an aggressive, targeted nuisance abatement program (including expanding the use of receivership), regulating mortgage companies and lending to prevent foreclosures, designing and creating a land assembly program in cooperation with CDCs, and developing a property information system to provide an early warning capability about properties in danger of foreclosure and identify vacant properties.¹³⁷ They also recommended creation of an ongoing vacant property committee to act as a catalyst for change.¹³⁸ This helped to spur the creation of the Vacant and Abandoned Properties Action Council (VAPAC) with representative membership from the City of Cleveland, a suburban municipal coalition and county agencies, community development corporations, and funders.¹³⁹ VAPAC's convener, NPI, provided special staff assistance from Cleveland State University and Case Western Reserve University.

Also in 2004, NPI announced a program called the "Strategic Investment Initiative" (SII). Supported by the City of Cleveland, the Cleveland Foundation, and the Gund Foundation, the SII strived for neighborhood stabilization by concentrating resources in six neighborhoods selected in a competitive process, and within these neighborhoods, 'model blocks' were chosen for initial investment.¹⁴⁰ By

135. See Lind, *Perfect Storm*, *supra* note 1, at 230 n.7; Kotlowitz, *supra* note 6; see also CLEVELAND VS. WALL STREET, *supra* note 67.

136. See MALLACH, LEVY & SCHILLING, *supra* note 13 (setting forth five steps that stakeholders should take to prevent, reclaim, and reuse Cleveland's vacant and abandoned property, and for each step, proposing several strategies and recommendations for effective implementation).

137. *Id.*

138. *Id.* at 26.

139. See COULTON & HEXTER, *supra* note 14, at 6.

140. Lind, *Perfect Storm*, *supra* note 1, at 8.

2010, NPI had announced the expansion of SII to nine neighborhoods.¹⁴¹

Similarly, in October, 2008, NPI unveiled its related “Opportunity Homes” program. Like SII, the target areas for this 3-year program were located in six Cleveland neighborhoods and all but one of these neighborhoods were also participating in the SII.¹⁴² Despite the downturn of the housing market in Cleveland which had all but halted the CHN’s housing production programs, the Opportunity Homes program was designed to demolish blighted, abandoned houses, renovate those that can be saved, and identify and counsel homeowners in danger of foreclosure. This program has been implemented through partnerships developed with NPI and CHN, the City of Cleveland, the Ohio Housing Finance Agency, Living Cities, Enterprise Community Partners, the Federal National Mortgage Association (FNMA), and several lenders.¹⁴³ To facilitate neighborhood planning, NPI created a Neighborhood Stabilization Team to assist participating CDCs in assessing the condition of housing and the likelihood of additional foreclosures. As of spring, 2011, the SII and Opportunity Homes programs together had demolished 145 homes; acquired 50 homes, of which 45 were rehabbed and 36 sold; and avoided 33 foreclosures.¹⁴⁴

These modest results must be viewed in the context of the continuing housing crisis, credit crunch, and population decline affecting Cleveland and other U.S. cities. In 2011, NPI and the City of Cleveland using federal Neighborhood Stabilization Program (NSP) funding also sponsored revitalization planning by CDCs in fifteen targeted sites within the SII areas to further promote small scale redevelopment with the hope that, if successful, this would serve as a model for future larger scale revitalization.

Finally, in 2009, NPI initiated the “Re-Imagining a More Sustainable Cleveland” project to promote the re-use of vacant land resulting from abandonment and the demolition of thousands of foreclosed properties. The previous year, NPI commissioned a study of vacant land which was mapped by the Cleveland Urban Design Collaborative (CUDC). The

141. NEIGHBORHOOD PROGRESS, *NPI to Expand the Successful Strategic Investment Initiative*, http://neighborhoodprogress.org/uploaded_pics/NPI%20SII%20expansion...file_1290020774.pdf (last visited Dec. 26, 2011).

142. See COULTON & HENTER, *supra* note 14, at 21.

143. See *id.* at 21.

144. E-mail from Frank Ford, Vice President Research & Dev., Neighborhood Progress, Inc., to authors (June 2, 2011) (confirming remarks from oral presentation on May 20, 2011) (on file with authors).

Re-Imagining project was funded by the City of Cleveland with NSP funds. In a competitive process fifty-six proposals were selected, with the hope that they would be completed in 2010 and would also serve as models. Many of the funded projects involved urban agriculture; Cleveland has over two hundred community gardens, and in 2007 the city legalized agricultural land uses.¹⁴⁵ While many of these projects have yet to be completed, they hold promise for re-use of much of the thousands of acres of vacant land with more land becoming vacant in the City of Cleveland due to future demolitions.¹⁴⁶

V. Lessons Learned

What can be learned from the responses of these public and non-profit actors to the mortgage and abandonment crisis in Cleveland? First, Cleveland benefitted from having experienced leaders who rallied against the emerging crisis, called for action, and implemented important reforms.¹⁴⁷ These leaders were able to gain public attention; help create new organizations like the Cuyahoga County Land Bank; and develop other innovative responses, including litigation strategies and the Re-Imagining Cleveland program. Unfortunately, their proposals for legislative reforms were too often ignored or blunted by unsympathetic conservative state legislators and some of their efforts were dismissed by state and federal courts. In addition, the amount of funding available to demolish or renovate blighted houses was insufficient to address the magnitude of the need. Counseling of borrowers threatened with foreclosure was not adequately funded and the record of servicers in making loan modifications continues to be erratic and insufficient. Nevertheless, the City of Cleveland and the non-profit sector have fought back against the impact of the mortgage crisis with increasing effectiveness with the limited funding available.

145. See generally Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225, 285 (2010) (discussing Cleveland's Urban Garden district as a mechanism to facilitate the productive use of land and evaluating the accompanying regulatory challenges).

146. See discussion on calculating vacancies, *supra* note 20. To combat this epidemic, the Re-Imagining Cleveland report identifies several redevelopment proposals to consider when planning community land-use projects.

147. Among these leaders were Cleveland Housing Court Judge, Raymond Pianka; Cuyahoga County Treasurer, Jim Rokakis; Slavic Village Development Director and then Cleveland City Council member, Tony Brancatelli; NPI's Vice-President for Research and Development, Frank Ford; NPI's Vice President for Programs, Bobbie Reichtell; CHN Executive Director, Rob Curry; and CDC directors like Marie Kittedge, who serves as Tony Brancatelli's successor at Slavic Village Development.

Second, as the crisis unfolded and continued to devastate neighborhoods, particularly those located on the east side of Cleveland, the CDCs and intermediaries recognized the value of collaboration and knew that collectively pursuing a shared strategy, together with other CDCs, public agencies and local municipalities, would be the only way to salvage Cleveland's hardest hit neighborhoods. Together, they would attempt to counter abandonment by instituting targeted reinvestment projects, such as the Strategic Investment Initiative and Opportunity Homes. They built upon their experience through the previous two decades of building community development networks that served as a national model. They also served as a constant catalyst drawing various public agencies into new collaborations and programs. It is hoped that the Cuyahoga County Land Reutilization Corporation will continue its critical role in preparing for rebuilding Cleveland neighborhoods through clearing and assembling land for new uses. Its performance in just two years has demonstrated the benefits of its structure and the ability of its leadership to engage with municipalities on one hand and financial institutions on the other to establish game changing programs.

Third, in addition to these demonstration programs in targeted neighborhoods, the Re-Imagining Cleveland project is tied to Cleveland's efforts to promote sustainability, a process that began in 2010.¹⁴⁸ The Opportunity Homes program and CHN is promoting green and energy efficient housing that has become city policy.¹⁴⁹ These two examples give hope that out of the wreckage caused by the crisis, better housing and stable neighborhoods will emerge through the rebuilding process.

Fourth, the Cleveland Housing Court demonstrated that an active judiciary, which uses creative means to find solutions, is essential to the success of any shared community effort. In Cleveland, Judge Raymond Pianka is leading this effort. Judge Pianka is undertaking innovative actions and is developing compliance-oriented policies to prevent irresponsible ownership of blighted properties and to protect homeowners and tenants to the extent possible within the limits of the law.

Fifth, Cleveland has recognized the importance of having strategic and nimble code enforcement methods in place. Like many cities,

148. See, e.g., Catherine J. LaCroix, *Urban Green Uses: The New Renewal*, 63 PLAN. & ENVTL. L. 3 (May 2011) (observing how many rustbelt cities, including Cleveland, are coupling economic development with innovation for the purpose of revitalizing vacant land, and focusing particularly on the green renewal efforts used by Cleveland in its recovery from the mortgage crisis).

149. See Wendy A. Kellogg & W. Dennis Keating, *Cleveland's EcoVillage: Green and Affordable Housing Through a Network Alliance*, 21 HOUS. POL'Y DEBATE 69 (2011).

Cleveland has long had ineffective housing code enforcement, but with this recognition, a partnership between the City of Cleveland and several CDCs was developed to reform how the city views code enforcement.¹⁵⁰ Enhanced data systems and better use of data is a key feature of the new program. The aim is to deploy limited resources more effectively in two directions: (1) to help responsible owners comply with minor defects before code enforcement is required, and (2) to attack severely blighted properties before the impact of their nuisance conditions further destabilizes the neighborhood.¹⁵¹

Finally, the efforts of both the City of Cleveland and the CDCs to use public nuisance law in the court system to curtail destructive business practices by big banks and other absentee owners exemplifies the difficulty of a scaled-enforcement action, as the efforts in Cleveland have had mixed results. The lawsuit brought by Cleveland against twenty-one Wall Street financial institutions was hastily removed from state court to federal court where the case was finally dismissed.¹⁵² Comparatively, the suits brought by CDCs demonstrated the effectiveness of Ohio's residential nuisance abatement statute in the Cleveland Housing Court, but also demonstrated the reality that municipalities might find themselves unable to enforce their own statutes in their own courts against large corporations, simply because these corporations are so large, and because our federal judiciary seems increasingly willing to rule on their behalf. One observer put it this way: "Federal courts are governing bodies that seem less interested in the welfare of people and places as they do the welfare of corporations. The courts, in essence, are protecting financial institutions from having to face the realities of what the foreclosure crisis is doing to cities like Cleveland. There's no justice there."¹⁵³

150. See Lind, *Protect Your Neighborhood*, *supra* note 22, at 91-93.

151. MARK FRATER, COLLEEN M. GILSON, RONALD J.H. O'LEARY, *THE CITY OF CLEVELAND CODE ENFORCEMENT PARTNERSHIP* (2009), available at http://www.communityprogress.net/filebin/pdf/CLE_CE_Partnership.pdf; see also *Community Groups Teaming with Cleveland to Fight Neglect and Blight*, *THE PLAIN DEALER*, Feb. 27, 2011.

152. Though unsuccessful in holding Wall Street banks accountable, the lawsuit brought by the City of Cleveland did provide an unexpected benefit, in that the case was the basis for the movie, "Cleveland Versus Wall Street," which shed light on the struggle of consumer of housing against abusive financing that is destroying neighborhoods. See *CLEVELAND VS. WALL STREET*, *supra* note 67.

153. Willy Staley, *Federal Flip-Flop on Flippers in Cleveland*, *NEXT AMERICAN CITY*, Nov. 23, 2010, available at <http://americancity.org/columns/entry/2736/>.

VI. Conclusion

These lessons from Cleveland offer both encouragement and a warning. Fighting back against the mortgage disaster can be effective at the local level. It requires strong, collaborative and creative civic leadership able to make long-term commitments to stabilizing neighborhoods using multiple means to accomplish that goal. While elected officials tend to be distracted by electoral and political matters, their recognition of the long-term impact of the crisis and the need to engage in developing new institutional tools at the local level is critical. Neither Wall Street nor Washington has so far produced effective solutions for communities and neighborhoods.

However, the mortgage crisis is far from over. Predicted dates for the end of disaster and the beginning of recovery are history. Financial stability and housing market recovery are, for many weak market places like Cleveland, years away. Even though the financial industry is conceding to some realities about their flawed business models, there is no reason to expect them or the federal and state lawmaking institutions influenced by their lobbyists to repair the damage to urban neighborhoods hardest hit by the mortgage crisis.

It is, then, up to existing local institutions to respond and up to local government and civic leaders to provide new institutions like housing courts, land reutilization authorities and community public interest networks with the right tools for recovery and renewal. The mortgage crisis has produced a nationwide land use crisis with different versions in each locality. The use of land is truly a local matter and abuse of land by profiteers in the mortgage crisis will persist where solutions to land use problems are not locally effective.