



3-2015


# Perspectives on Abandoned Houses in a Time of Dystopia

Kermit J. Lind

*Cleveland State University*, [kermitlind@gmail.com](mailto:kermitlind@gmail.com)

## How does access to this work benefit you? Let us know!

Follow this and additional works at: [http://engagedscholarship.csuohio.edu/fac\\_articles](http://engagedscholarship.csuohio.edu/fac_articles)

 Part of the [Housing Law Commons](#), [Urban Studies Commons](#), and the [Urban Studies and Planning Commons](#)

---

## Original Citation

Lind, Kermit J., Perspectives on Abandoned Houses in a Time of Dystopia (March 23, 2015). *Probate & Property*, Vol. 29, No. 2, (March/April 2015) (American Bar Association): pp. 1-9 ; Cleveland-Marshall Legal Studies Paper No. 15-283. Available at SSRN: <http://ssrn.com/abstract=2583829>

This Article is brought to you for free and open access by the Faculty Scholarship at EngagedScholarship@CSU. It has been accepted for inclusion in Law Faculty Articles and Essays by an authorized administrator of EngagedScholarship@CSU. For more information, please contact [research.services@law.csuohio.edu](mailto:research.services@law.csuohio.edu).

# CLEVELAND-MARSHALL COLLEGE OF LAW



Research Paper 15-283  
March 2015

## Perspectives on Abandoned Houses in a Time of Dystopia

by

**Kermit Lind**

Clinical Professor Emeritus, Cleveland-Marshall College of Law

Accepted Paper

*Probate & Property*, vol. 29:2 (March/April 2015) (American Bar Association): 1-9

This paper can be downloaded without charge from  
the Social Science Research Network electronic library:

<http://ssrn.com/abstract=2583829>

# Perspectives on Abandoned Houses in a Time of Dystopia

By Kermit J. Lind, J.D.

Clinical Professor of Law Emeritus

Cleveland-Marshall College of Law, Cleveland State University

**Abstract:** This article describes various perspectives on abandoned houses in urban neighborhoods and the reactions from those perspectives.. It notes how conflicting reactions perpetuate the crisis of blight for individual residents and their communities. It argues that real solutions for management of abandonment must be based in local communities and tailored to local conditions. Priority must be placed on consistent maintenance in compliance with local housing and neighborhood health, safety and environmental codes. Housing preservation, rehabilitation, reutilization programs will not succeed without improved and sustained maintenance. Localities will need to take the lead in remodeling residential maintenance using new strategies, methods and technologies. Role models for that work are emerging.

**Keywords:** Abandoned, houses, residential, neighborhoods, codes, maintenance,

Abandoned houses are an increasingly common sight in residential neighborhoods, especially in those hardest hit by the mortgage crisis. Legacy cities in particular — Detroit, Chicago, Cleveland, St. Louis, Memphis, Baltimore, Philadelphia, to name a few — are dealing with an extended crisis of abandoned houses that requires repurposing and reconstructing entire neighborhoods.

What one sees in abandoned houses will depend on the perspective from which they are viewed. Homeowners, investors, neighbors, debt collectors, various municipal and regulatory agencies, courts, taxpayers, speculators and criminals have different perspectives and see different things when they look at abandoned houses and buildings. Let us consider what they see and how they react.

## Homeowners

Homeowners who abandon their homes are usually in a financial crisis beyond their coping capacities. They are financially broke, desperate, hounded by debt collectors, oftentimes naïve or misinformed, and unable or unwilling to continue the responsibilities of home ownership. Worse yet, many of these homeowners cannot voluntarily divest their ownership by sale or donation because the title is toxic, meaning that it is encumbered with liens exceeding the current market value. Sometimes these are called *zombie titles*, visible but dead. While creditors may get no financial benefit from asserting their rights, they can still hold an empty house hostage in the debtor's name, speculating on an improbable solution, or sell the debt at a discount. Homeowners in this situation remain stuck with a liability from which they cannot escape.

These homeowners view their now-abandoned home as a personal loss that will haunt them for years to come.

### **Absentee Owners and Commercial Housing Investors**

Absentee owners and commercial housing investors, on the other hand, see their vacant houses as either productive or nonproductive commodities, if they look at them at all. Their interest is in profitable transactions. Paying for upkeep and property taxes on their investment is only justified by expectations of profit. Unprofitable and unmarketable houses are a liability and treated as waste. Corporate and trustee owners, along with their servicers, find little risk in ignoring their legal responsibilities for maintenance of residential properties owned or controlled by their lien rights. They ignore local housing and environmental laws in favor of contract law. They are not shy about telling code policing officials and communities that compliance with local housing maintenance codes is not in their business plan. They can abandon the care of unproductive houses, clear their books of the debt owed without removing their lien, then sell the debt and lien to scavenger debt collectors. Debt collectors rarely have any interest in preserving the collateral they remotely control, since the title, along with the liability, is in someone else's name.

### **Neighbors Near Abandoned Dwellings**

Neighbors near abandoned dwellings see abandoned houses as eyesores and as threats to neighborhood safety and to the value of their homes. Housing blight in a neighborhood lowers values below the amount owed on the mortgages. Underwater houses do not sell and short sales are not a solution in a declining market. Over the past decade some weak market neighborhoods have lost entire blocks of housing to abandonment and blight at a huge costs to other homeowners, mortgagees and municipalities. Neighbors to abandoned houses have virtually no means of defending their property interests from the disaster rising around them. Many are caught between caring for family needs or making payments on a mortgage for a house with not hope of equity in it. The total loss of savings in home equity to millions of middle and lower income households over the past decade surely will add up to trillions of dollars. The cost in terms of quality of life, health and diminished opportunity is incalculable. There is no bailout for the neighbors losing their safety and savings to abandonment in their neighborhood.

### **Municipal Officials and Owners Associations**

Municipal officials and owners associations charged with enforcing public health, safety and welfare regulations see abandoned dwellings as crime scenes. These are the people Joseph Schilling calls “the forgotten first responders” in his excellent article, *Code Enforcement and Community Stabilization: The Forgotten First responders to Vacant and Foreclosed Properties*, 2 Alb. Gov’t L. Rev. 101 (2009). Abandoned houses are magnets for vandalism, theft, fires, drug trafficking, and more serious crimes, all of which require more and better municipal services.

The rising tide of housing abandonment costs municipalities more for inspections, grass cutting, board-ups, fire and police services, and demolitions. Simultaneously, abandonment de-

pletes municipal tax bases that pay for these services. Municipalities cannot meet this new challenge without new policies and programs. Nor can they stem the spread of neighborhood blight acting alone while legislative and regulatory institutions under the sway of well-financed business interests oppose their policing efforts. Most older legacy cities struggled with economic and population losses before the turn of the century. The mortgage crisis has only added costs and losses, making their situation still more perilous. Most municipal officials do not yet see an end to their abandoned house problem.

### **Judges, Sheriffs, Bankruptcy Trustees and Other Officials**

Judges, sheriffs, bankruptcy trustees and other officials who preside over legal transactions related to involuntary deed transfers, taxation, liens and record registration see only documents that track transactions and claims affecting the legal title. In foreclosures, bankruptcies and sheriff sales, officials supervise disposition of titles, liens and other interests without regard to the unlawful condition and actual worth of the subject property. Though sworn to uphold the law, they ignore evidence of the unlawful condition of abandoned houses in the cases they process at their desks because individual officials are charged only with a particular aspect of debt collection, liquidating, transferring and recording documents; reporting unlawful conditions is not their job. This institutional fragmentation and myopia enables owners and creditors alike to neglect property maintenance with impunity and defer the resulting costs to hypothetical future owners, who are likely to be scavengers and speculators unwilling or unable to absorb the costs of deferred maintenance and taxes. The legal system for debt collection and property taxation does paperwork controlling legal interests in abandoned housing without visualizing the harmful condition and real value of the houses.

### **Buyers, Rehabbers and Speculators**

Buyers, rehabbers and speculators see an income prospect in abandoned houses. Blighted houses for sale “as is” are viewed as moneymakers by various types of buyers, including those who ignore their legal maintenance responsibilities. Traditionally, local rehab professionals and do-it-yourself home improvement amateurs absorbed the trickle of mortgage failures in the market. For the past two decades, however, those traditional buyers have been replaced with investors and speculators who see blighted housing as a cheap, fast way to make money with minimal risk of loss or liability. Flipping defective houses has become an industry propelled with textbooks, lectures and TV infomercials on getting rich quick. The greedy and gullible are advised on how to purchase houses at sheriff sales or from online dealers in bank repossessed properties. These houses are, in turn, sold to people who shop deals on the Internet and “invest” without a single glance at the actual property. These blind buyers and sellers see a mirage of profit. Sometimes abandoned houses are bought in bulk for as low as one dollar and retailed to buyers who also cannot or will not repair them. Those in this business, as a rule, avoid compliance with local housing or building codes and payment of property taxes because they are able to move faster than law enforcers.

## **Taxpayers and the Public**

Ultimately, taxpayers and the public are forced to subsidize homeowners and businesses that abandon their obligation to keep their property from harming other people and their property. To get a sense of the public costs, consider that in October, 2014 the City of Cleveland, Ohio reported it then had 12,000 abandoned buildings, 6,000 of them already condemned and waiting demolition. It anticipated needing \$120 million to demolish its current inventory of abandoned houses in the city of fewer than 400,000 people. Its inner-ring suburbs also have a rising inventory of abandoned houses to dispose of. To deal with this problem, the county is floating a \$50 million dollar bond issue for demolition and municipalities are already fighting for a share of the proceeds. This is on top of the millions already spent in recent years and the additional millions needed for demolition of future inventories. Officials and civic leaders in Cleveland and Detroit are openly discussing 50-year plans for cleaning up tax-dead real estate and reimagining how urban land can be sustainably reused.

Meanwhile, taxpayers and elected leaders trying to survive the immediate recession are confronted with current solid waste cleanup costs too big to calculate. That would not include the equally incalculable private savings losses to homeowners whose property values are not likely to recover the loss sustained since 2007 face equally incalculable private savings losses. Grim facts on the cost to communities of abandoned houses were reported in a 2011 government study. U.S. Gov't Accounting Office, *Vacant Properties: Growing Number Increases Communities' Costs and Challenges* (Dec. 6, 2011), <http://www.gao.gov/products/GAO-12-34>.

## **Conflicting Perspectives Must Be Reconciled**

Homeowners, lenders investors, speculators, creditors, debt collectors, neighbors, community advocates, local officials, state officials, federal officials and public agencies are pursuing different, and often conflicting, objectives in relation to real property abandonment. Governments at the various levels have different agendas, as do courts, prosecutors and policing agencies, even those within the same jurisdiction. The agencies and institutions of government and public policy are not effective when they work at cross purposes.

Global financial institutions, government-sponsored enterprises, real estate investment trusts and their servicing agents also do not share the same vision. Each sector's individual interests compete for profit with procedures that undermine the success of another's business plan. Legions of lawyers and lobbyists are employed to promote the competing business interests. Lawyers serving these divergent interests are often dedicated to subordinating all other perspectives of abandoned houses to the one they serve. Neighborhoods and the health, safety and wellbeing of housing consumers are the least-served interest.

The risks resulting from this asymmetrical battle between the perspectives of housing consumers and the perspectives of global financial, investment and real estate businesses makes home ownership less possible and less attractive for young families than at any time during the last century. Who wants to be tied to a home when the business interests of absentee owners, investors, debt collectors and politicians determine your family's health, safety and security?

Measured in quality of life, home ownership is not the sure bet it used to be. Those in the living room and those in the board room need to create a shared vision for stable, resilient residential neighborhoods.

### **Real Solutions**

Real solutions for resilient residential neighborhoods are emerging. See David Weber, *Cities and States Battle Back: taking the Fight to the Zombie (Mortgages) and Abandoned Properties*. Prob. & Prop., Jan./Feb., 2015, at 42. Prof. Weber points to vacant property registration ordinances (VPROs), land banks, fast track tax foreclosures and housing courts as important innovations for municipalities facing an abandoned house crisis. The author has participated in the implementation and operation of these types of responses in a number of places. They are certainly important tools when they are well designed and effectively used; but they are not always so. No one of them alone is the solution to chronic abandonment.

One might think that the scale and intensity of the abandoned house crisis would compel a massive bailout for those whose home equity was eliminated and neighborhoods wrecked by the criminal conduct now coming to light in hindsight. That is not happening. Instead, the competing perspectives of the various actors described above have resulted in piecemeal responses none of which alone is a reliable solution. Some piecemeal “solutions” actually make things worse because they serve only the interests of the politically and economically powerful at the expense of the poorly represented. Real solutions are not possible from only one or even two perspectives. Nor will sound solutions be provided by the public sector alone. Real solutions are being realized in local communities where remedial policies and programs are made and managed by coalitions of local stakeholders with a long-term attachment to the place where they live.

### **Responsible Maintenance of Dwelling Places**

Responsible maintenance of dwelling places is the legal and equitable obligation of those who own or control housing. It is also essential to the long-term viability of a housing finance industry that both consumers and investors can trust. Everyone with a legal interest in dwellings, including creditors, depends on maintenance of housing for themselves and for their economic interests. Those harmed when property maintenance responsibilities are abandoned include the creditors and investors in neighboring dwellings whose paying debtors may default on their mortgage loans and maintenance when their home’s value plummets. Maintenance issues are omnipresent in the scenario of the concentration and spread of subprime loans, rapid defaults, rising foreclosures, low value sheriff sales, the dumping of bank “real estate owned” properties to speculators. Maintenance is abandoned early in the sequence and the possession of dwellings is subsequently abandoned. The breakdown of maintenance begins a decline toward blight from which recovery is more costly than the value of the property.

The breakdown of maintenance can also thwart the success of efforts to prevent foreclosures. Help for distressed homeowners — financial counseling, foreclosure mediation, loan modifications, short sales, low cost rehab loans, for instance — is unlikely to succeed where the distressed homeowners are surrounded by dilapidated and unmarketable houses. Maintenance of

one house at a time will not succeed when maintenance is not the neighborhood norm. Housing preservation programs, rehab projects, new construction in-fill, and homeowner repair loan programs, among others, all need a well-maintained environment around them to be successful. Responsible maintenance is One of the fundamental requirements of a thriving community's sustainability.

### **Better Housing and Neighborhood Environmental Code Compliance**

Better housing and neighborhood environmental code compliance is essential for stopping rampant abandonment and dystopia. Unfortunately, the code compliance apparatus as currently constituted in most communities is not capable of dealing with abandoned, worthless housing. Sometimes one or two of the component parts of a compliance system may be exemplary; but those parts cannot make up for failures in other parts. The various local government compliance and enforcement agencies exercising police power in cities operate in separate silos and often at cross-purposes. Several different departments — fire, health, residential maintenance, zoning, building — may conduct inspections, issue administrative violation notices and file cases in the same court, with no awareness of each other's actions involving the same parties and property. Prosecutors may bring cases repeatedly against the same defendant at the same property for the same offense resulting in the same small fine. An occupancy permit may be issued by a licensing office on a dwelling waiting for demolition, because it is only necessary to pay the fee to authorize occupancy. This is licensing of lawless conduct, not law enforcement.

Code compliance is thwarted when each agency pursues its limited mission without regard to the people and property who depend on effective law enforcement for a healthy, safe and secure residency. The departmental and institutional vision of each enforcement task is focused on that one task, mindless of how that task relates to the ultimate objective of code compliance. It is a nearly universal complaint of both department managers and field compliance officers that narrowly defined work rules are a major impediment to successfully serving and protecting the community. In short, there is insufficient coordination in public safety operations to constitute a reliable system able to ensure compliance with neighborhood housing, health and safety laws, especially compliance by absentee owners and controlling lien holders.

The marginalization and disparagement of local first responders – those housing, fire and health officers, prosecutors and municipal courts exercising the local police powers -- makes housing abuse easy and cheap for the lawless. More often than not, these officers try to dutifully provide for the quality of life that is necessary for a civilized community's health, safety and property protection. They cannot operate effectively, however, without other departments and institutions. Code enforcement procedures depend on information kept by the array of authorities that keep title and tax records, who preside over bankruptcies, mortgage debt collection and court-ordered property transfers. At the very least, all these governmental offices need to recognize how their operations make an impact beyond their immediate tasks. Shortsighted perspectives impede good government.



## **Modernization of Obsolete Code Compliance Policies and Procedures**

Modernization of obsolete code compliance policies and procedures is a critical need for dealing with the surge of abandoned housing. Housing inspectors, prosecutors and municipal judges need new, policies, procedures and technologies for dealing with new problems like flipping ownership, disposable real estate businesses, remote defendants, repeat offenders, corporate violators, toxic titles, fraudulent conveyances and mortgage fraud. Cities need to reorganize and streamline old, arthritic bureaucracies for more nimble, mobile and effective policing. Law departments and prosecutors need to become fully engaged in the struggle against housing and neighborhood blight. Law departments usually see themselves as defenders of municipal clients, not legal enablers for municipal officers who have problems to solve.

Financially able owners and parties legally responsible for housing conditions should not escape their legal obligation to maintain the condition of their real property and to comply with court orders requiring compliance after conviction or judgment. Intentional and repeat offenders should not be enabled to neglect housing maintenance responsibilities because of weak, toothless enforcement. Creditors with the legal means to control and maintain their collateral should ensure that the collateral's condition does not destroy the value of neighboring houses or other lenders' collateral. On the other hand, financially strapped owners who can demonstrate the will and skill to comply with correction notices should have access to resources to help them do so.

It is essential that local lawmakers recognize the dominant role businesses entities play in housing markets and that some of these are huge and remote corporations with deep pockets and business plans to evade local laws and law enforcement. The Cleveland Municipal Housing Court's innovative efforts to adjudicate and sentence absentee owners and defiant corporations over the past fifteen years have made national news on numerous occasions. Municipal courts in Memphis, Baltimore, Buffalo and Boston have had similar challenges over the years. Effective municipal courts are necessary to ensure the rule of law protects neighborhoods and communities.

Enforcement officers need to act strategically to obtain maximum compliance with the limited resources available. Focusing on repeat offenders with the highest volume of violations will lead to more benefit for neighborhoods than random or complaint-driven enforcement. Using civil actions as well as criminal prosecution should be an option. Prosecutors need to seek creative sentencing that is remedial and compliance oriented, not merely punishment. Sentencing of guilty defendants with multiple properties should aim to get all of a defendants' houses into compliance as a condition for mitigation of sentences. Assessing puny fines to close cases faster for the same repeat offender is not a solution. It permits lawless conduct at an affordable business expense. Law enforcers and their community constituents need compliance, not fines or fast dockets. Getting property owners and community organizations involved in promoting voluntary compliance and providing compliance assistance to willing but needy homeowners is another useful strategy. Ultimately, the stability of neighborhoods depends on the compliance that good policing achieves more than it depends on the punishment of irresponsible defendants.

Hard-pressed municipalities are trying to avoid being manipulated by private interests into absorbing losses and costs of mortgage failures. For instance, New Jersey enacted Senate Bill 1229 last year to give its municipalities more authority to regulate vacant residential property and to hold foreclosing creditors responsible for maintenance costs. N.J. Stat. Ann. § 40:48-2.12s. A few municipal jurisdictions in Ohio and Massachusetts require a bond to be posted by mortgage foreclosure plaintiffs in order to guarantee the payment of maintenance costs until the vacant property is acquired by a new owner. These are new tools to protect taxpayers from subsidizing those who have engaged in a failed business transaction.

Code compliance is essential for neighborhood recovery strategies because rehab or repairs, vacant property registration ordinances, land banking, fast foreclosures, mandatory mediation, consumer counseling and other assistance will be successful only in an environment where housing is responsibly maintained in marketable condition for its lawful, intended purpose.

### **Effective Role Models**

From the author's experience, the most effective response to the problem of abandoned vacant houses is a sustained collaboration between civic groups and public managers at the local community level, a coalition of the willing and determined. The best example of such a coordinated civic and public collaboration is the Vacant Abandoned Property Action Council in Cleveland, Ohio started in 2005. The author has observed similar coordinated collaborations in Baltimore, Philadelphia, Memphis, and Buffalo. These collaborative responses are not exactly alike or have the same results, but each is a game-changer for its municipal community.

In these examples, senior and managerial staff of public safety, municipal law enforcement and community-based nonprofit public interest agencies lead the reform needed to cope with local neighborhood housing disasters. When a determined coalition of policy and program managers communicate regularly across organizational boundaries and bureaucratic silos, they can avoid unintended conflicts with each other, coordinate policy advocacy, partner in program planning, and work strategically toward common objectives. Combining their perspectives produces synergy and a more complete perception of what is working, what is failing to work, and what has to be done to make effective improvements. Not everyone who should be included is likely to be willing or permitted to collaborate. Some agencies and community groups prefer to remain insular and defensive. Yet those who will can make a significant impact by acting strategically together.

The sharing of data and research in such a coalition is its most important activity. Access to reliable and current real property information is essential for stabilizing neighborhoods. Shared knowledge of what is happening, to whom, by whom, and when is at the heart of acting in strategic coordination. It is the means for seeing housing and neighborhood problems from multiple perspectives. Sharing a common real property information system makes data-driven planning and objective evaluation possible.

Right now, no system is better than the one provided to its Cleveland area subscribers by the Case Western Reserve University Center On Urban Poverty and Community Development.

Case W. Reserve Univ., NEO CANDO, <http://neocando.case.edu> (last visited Dec. 14, 2014). Its users produce researched scholarship, investigative reports, the history and real property trends of individual buildings, streets, neighborhoods, zip codes and communities. It tracks title transfers, code violations, building permits, property tax status, foreclosures, sheriff sales, REO portfolios, demolitions, and more. It illuminates many things otherwise hidden from view by the fragmented public data sources.

No place provides more and better detailed studies of the policy and program responses to the mortgage crisis faced by legacy cities than the Vacant Property Research Network at Virginia Tech. Under the direction of attorney and professor Joseph Schilling, this institute has completed and is publishing detailed reports on how Cleveland, Baltimore and Philadelphia are responding to the crises of housing abandonment. See Vacant Prop. Res. Network, *Cleveland and Cuyahoga County – A Resilient Region’s Response to Vacant Properties* (May 2014), <http://vacantpropertyresearch.com/wp-content/uploads/2014/05/VPRN-Cleveland-Case-Study-2014.pdf>; Vacant Prop. Res. Network, *Philadelphia’s Vacant Property Journey: Fostering Collaborative Alliances with Converging Policy Reform*, (Sept. 2013), [http://vacantpropertyresearch.com/wp-content/uploads/2013/09/Philly-Layout\\_V5.pdf](http://vacantpropertyresearch.com/wp-content/uploads/2013/09/Philly-Layout_V5.pdf). Its other reports show in detail how resilience and recovery are being achieved. Its studies and resources describe different policies and programs used to deal with a variety of housing styles, densities, preservation, and land reuse possibilities.

Another resource accessible on-line is the Center For Community Progress, which publishes cutting edge work by leading community development scholars and practitioners. See Ctr. For Cmty. Progress, [www.communityprogress.net](http://www.communityprogress.net) (last visited Dec.14, 2014). These are important sources of new hope for communities in recovery.

## **Conclusion**

Gathering serious civic and public experts to collaborate using all available relevant data to study problems and deploy strategic solutions at the local community level is our best hope against the current dystopian trend, a trend perpetuated by conflicting perspectives and interests. What will emerge out of this time of housing and neighborhood dystopia can be communities and residential neighborhoods more resilient than before. It starts with better vision.

Reprinted with permission from Probate & Property  
Vol. 29, No 2, March/April 2015 (American Bar Association)  
Copyright © 2015 American Bar Association