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Playing Monopoly with the Neighborhood: Impact of Series Limited Liability Companies on Nuisance Abatement Actions and Housing Code Enforcement

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**PLAYING MONOPOLY WITH THE
NEIGHBORHOOD: IMPACT OF SERIES LIMITED
LIABILITY COMPANIES ON NUISANCE
ABATEMENT ACTIONS AND HOUSING CODE
ENFORCEMENT**

LAUREN WILLIAMS*

ABSTRACT

The City of Cleveland has been one of the most active cities in combating the negative effects of the 2008 financial crisis, utilizing nuisance abatement actions in combination with municipal programs aimed at assisting homeowners and renters. However, the Ohio Revised Limited Liability Company Act (“ORLLCA”), passed in 2021, may reverse the progress made in cities like Cleveland by enabling real estate investors to conceal assets in several series under the same limited liability company, resulting in rising vacancy rates and unstable communities. This will negatively impact the effectiveness of nuisance abatement actions and traditional housing code enforcement in curbing the rise of vacancy in blighted communities. This Note examines the conflicts between the ORLLCA and the processes involved in nuisance abatement actions. The Series Limited Liability Company (“Series LLCs”) structure directly conflicts with the requirement of service of process in civil litigation, making it difficult to serve the summons to the defendant. The labyrinthine structure of Series LLCs, combined with the elusive personas of LLCs, makes it almost impossible to serve the summons within the six-month period specified by the Ohio Rules of Civil Procedure. The process of Service by Publication is not a feasible alternative, as it is time-consuming, costly, and not equivalent to the standard means of service of process. The ORLLCA's pass-through partnership status and limited liability protection also makes it difficult to enforce and collect judgment in a Series LLC nuisance abatement action. This Note concludes that the ORLLCA's impact on nuisance abatement actions will hinder efforts to curb the rise of vacancy in communities and suggests methods to circumvent this hindrance.

* J.D. expected May 2023, Cleveland State University College of Law. Special thanks to Zach Germaniuk for providing the inspiration for this project and for his constant support throughout this entire endeavor. I am also deeply grateful to the residents of Slavic Village for showing me what a resilient community really looks like. Additionally, thanks to my family and partner for their continued patience during the writing process as well as the full *Cleveland State Law Review* editorial team. Finally, thank you to the countless advocates who are fighting to ensure that housing is a human right.

CONTENTS

I.	INTRODUCTION	546
II.	BACKGROUND.....	547
	<i>A. Side Effects of the 2008 Foreclosure Crisis and its Impending Sequel</i> .	547
	<i>B. Traditional Housing Code Enforcement</i>	551
	<i>C. The Legal Mechanism of Nuisance Abatement</i>	552
	<i>D. Origins and Function of Series LLCs</i>	555
	<i>E. Ohio’s New Limited Liability Company Act</i>	557
III.	POSSIBLE IMPACTS OF THE OHIO REVISED LIMITED LIABILITY COMPANY ACT ON FUTURE ABATEMENT OF NUISANCE PROPERTIES.....	559
	<i>A. Interactions Between the Rules of Civil Procedure and Series LLCs</i>	559
	<i>B. Issues Surrounding Enforcement of Judgment in a Series LLC Nuisance Abatement Action</i>	561
	<i>C. Series LLCs and Corporate Veil Piercing</i>	563
	<i>D. Series LLCs and Housing Disinvestment</i>	564
IV.	POLICY RECOMMENDATIONS	565
	<i>A. Require Local Agent for Out-of-State and Foreign Series LLCs</i>	565
	<i>B. Create Special Division in Cleveland Housing Court to Deal with LLC and Series LLC Property Owners</i>	566
	<i>C. Local Government Limited Liability Corporate Veil Piercing</i>	567
	<i>D. Require Mandatory Disclosures of Series LLC Property Owners</i>	567
	<i>E. Stronger Enforcement of the Rental Registration Requirement</i>	568
V.	CONCLUSION.....	568

I. INTRODUCTION

This Note considers the effects the Ohio Revised Limited Liability Company Act (“ORLLCA”) will have on nuisance abatement actions occurring in low to moderate income communities in Ohio. In particular, it analyzes how the creation of Series Limited Liability Companies (“Series LLCs”), now allowed by the Act, will enable real estate investors to escape liability for failing to maintain nuisance properties, leading to increased vacancy rates in Ohio neighborhoods, while paying close attention to Cleveland.

The City of Cleveland has undertaken one of the most comprehensive efforts to counteract the negative side effects of the 2008 financial crisis in the nation.¹

¹ Kermit J. Lind, Note, *Can Public Nuisance Law Protect Your Neighborhood from Big Banks?*, 44 SUFFOLK U. L. REV. 89, 137 (2011); see generally Matthew J. Samsa, Note,

Following the crisis, community development nonprofits adapted antiquated legal techniques to fit a nuanced dilemma.² Employing the legal mechanism of nuisance abatement in conjunction with municipal programs aimed at assisting homeowners and renters maintain their homes, the vacancy rates in this rustbelt city have continued to fall in the last thirteen years.³ Organizations with the goal of stabilizing low-income neighborhoods following the crisis spearheaded the nuisance abatement model for cleaning up the blight big banks left behind.⁴

Series LLCs and the investors who hide behind them will reverse the progress made in cities like Cleveland. This Note illuminates the ways that real estate investors can strategically conceal assets in several series—all under the same umbrella LLC—in order to evade liability for failing to maintain property owned by the company. When these corporate entities fail to maintain the properties they own, these vacant and abandoned properties will cause vacancy rates to rise and communities to become unstable once again.⁵

The first Part examines the legal landscape in Cleveland following the financial crisis and how nuisance abatement actions facilitated the city's community stabilization goals. This Part also discusses ORLLCA and how it fits into the overall Ohio corporate regulatory framework. The following Part outlines the characteristics and elements of Series LLC formation that make them problematic for cities that are still seeing the effects of vacancy caused by the mortgage foreclosure crisis and Great Recession of the mid-2000s. This component will offer a critical analysis of the ways that these companies may cause vacancy rates to rise, thus setting back the strides made by community leaders.

The third Part analyzes how the Series LLC's corporate form will interact with the service of process step in commencing a nuisance abatement action, the difficulties that come with collecting judgment against these entities, the impracticability of piercing the corporate veil of a Series LLC, and how Series LLCs will facilitate housing disinvestment. The final substantive Part gives policy recommendations that community leaders and the Ohio Legislature could implement to counteract the likely negative effects of Series LLCs formation on housing law.

II. BACKGROUND

A. *Side Effects of the 2008 Foreclosure Crisis and its Impending Sequel*

The complexities and results of the foreclosure and mortgage crisis of the mid-2000s in the United States present an intricate backdrop to the current status of business entities. The Slavic Village neighborhood on the east side of Cleveland has

Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment, 56 CLEV. ST. L. REV. 189, 232 (2008).

² Lind, *supra* note 1, at 103.

³ U.S. Dep't of Hous. & Urb. Dev., COMPREHENSIVE HOUSING MARKET ANALYSIS: CLEVELAND-ELYRIA, OHIO (2020).

⁴ Lind, *supra* note 1, at 103–04.

⁵ Samsa, *supra* note 1, at 204.

been called the epicenter of the foreclosure crisis.⁶ This unfortunate nickname stemmed from the neighborhood's position as one of the first casualties to the 2008 financial crisis.⁷ Before the crisis, Cleveland had an already weakened real estate and housing market.⁸ Combined with the predatory and illegal lending taking place during the 1990s and 2000s in inner-ring Cleveland neighborhoods like Slavic Village, this caused the perfect disaster.⁹ This city in Northeast Ohio experienced a four-fold increase in foreclosures between 1995 and 2007, meaning that entire neighborhoods became decimated and vacant.¹⁰ This devastation makes Cleveland a prime example for other cities that continue to recover, over a decade later, from an issue that could have been avoided with appropriate legislation and policymaking.

The stage of properties affected by the crisis took the form of an inverted pyramid, progressing through the following stages from top to bottom: (1) delinquency default; (2) foreclosure vacant; (3) real estate owned (REO) vacant; and (4) abandoned nuisance homes.¹¹ This cycle was exacerbated from the typically low level of mortgage delinquencies, foreclosures, and vacancies to a tipping point where the curbing mechanisms could not physically grapple with the number of foreclosures occurring due to subprime and predatory lending.¹² This massive scale of foreclosures and subsequent vacancies which became nuisance properties caused the abatement systems to become bogged down and foreclosure actions took much longer to go through the court system.¹³ Because foreclosure actions and the subsequent sale of

⁶ Lind, *supra* note 1, at 100.

⁷ *See id.* at 101.

⁸ Michelle Jarboe, *Cleveland's Housing Crisis and Recovery in Graphics: The Ups and Downs of Sales, Prices, and Distress*, CLEVELAND.COM (Sept. 25, 2013, 11:00 AM), https://www.cleveland.com/business/2013/09/clevelands_housing_crisis_and.html.

⁹ Kermit J. Lind, *The Perfect Storm: An Eyewitness Report from Ground Zero in Cleveland's Neighborhoods*, 17 J. AFFORDABLE HOUS. & CMTY. DEV. L. 237, 253 (2008); *see* NORMAN KRUMHOLZ, *REBUILDING URBAN NEIGHBORHOODS: ACHIEVEMENTS, OPPORTUNITIES, AND LIMITS* 88–89 (W. Dennis Keating & Norman Krumholz eds., 1999); Norman Krumholz et al., *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).

¹⁰ Claudia Coulton et al., *Facing the Foreclosure Crisis in Greater Cleveland: What Happened and How Communities are Responding*, FED. RESERVE BANK OF CLEV. (Jan. 1, 2010), <https://www.clevelandfed.org/publications/cd-reports/2010/sr-20100101-facing-the-foreclosure-crisis-in-greater-cleveland-what-how>; *see generally* NIGEL G. GRISWOLD ET AL., *ESTIMATING THE EFFECT OF DEMOLISHING DISTRESSED STRUCTURES IN CLEVELAND, OH, 2009-2013: IMPACTS ON REAL ESTATE EQUITY AND MORTGAGE-FORECLOSURE* 6 (W. Reserve Land Conservancy eds., 2014).

¹¹ Coulton et al., *supra* note 10, at 3.

¹² *Id.* at 5, 7.

¹³ *Id.* at 10.

properties may take many years to resolve, blight invaded Cleveland's neighborhoods.¹⁴

When homes entered a prolonged period of vacancy due to families moving out when foreclosures were filed, these dwellings began to deteriorate which, in turn, caused individuals to vandalize the properties.¹⁵ This vandalism substantially reduced the likelihood that the foreclosed homes would be sold and subsequently reoccupied.¹⁶ These spillover effects are commonplace in areas with high vacancy rates as a result of the foreclosure crisis.¹⁷ Much like the broken windows theory in policing,¹⁸ the deterioration of a neighboring property influences all of the properties in proximity, thus creating a vicious cycle for neighborhoods at the forefront of the crisis.¹⁹

In the wake of the foreclosure crisis, Cleveland's hardest hit areas have experienced the negative secondary effects of increased foreclosures which include fallen property values, decreased tax base revenue, and the growing costs of abating these nuisance properties through code enforcement.²⁰ With rising vacancy rates and the effects thereof, the legal community in Cleveland and the rest of the nation had to develop new and modernize legal techniques. Traditional housing code enforcement proved inefficient for handling the sheer volume of vacant properties.²¹ Community Development Corporations (CDCs), nonprofit organizations created to support and revitalize surrounding communities, have been widely distinguished in Cleveland due to Cleveland CDCs accomplishing very strategic and high-performance plans to deal with rising vacancy and the negative secondary effects thereof.²² These CDCs worked as housing rehabilitation specialists even before the foreclosure crisis began to take its insidious toll.²³ This fact, along with the innovative nature of Cleveland CDCs in particular, made these community organizations more equipped to deal with the mass foreclosures that affected residents of the neighborhoods they serve.²⁴

Although CDCs and organizations committed to rehabilitation and demolishing vacant and abandoned houses have pushed the pendulum in the direction of reduction

¹⁴ *See id.* at 13.

¹⁵ *Id.*

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 1.

¹⁸ Samsa, *supra* note 1, at 196.

¹⁹ *See* Stephen R. Miller, Note, *Community Rights and Municipal Police Power*, 55 SANTA CLARA L. REV. 675, 727 (2015); *see also* Joseph Schilling, Note, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 ALB. GOV'T L. REV. 101, 163 (2009).

²⁰ Lind, *The Perfect Storm*, *supra* note 9, at 253–54.

²¹ Lind, *supra* note 1, at 92.

²² *Id.* at 90–91.

²³ *Id.* at 96–97.

²⁴ *See id.* at 90.

of blight in communities hit hardest, the impending housing crisis may threaten the work already done. Due to the COVID-19 pandemic, people are once again threatened with the frightening reality that their secure housing may be swept from under their feet.²⁵ This time around, however, the crisis is likely to affect renters more so than those who inadvertently obtained predatory and subprime loans as was the case in 2008.²⁶ Similar to the 2008 foreclosure event, this housing crisis is likely to hit Black and Latinx renters at a disproportionate rate.²⁷ As Black and Latinx community members are more likely to rent homes than their white counterparts, this predicted housing crisis caused by a mass wave of evictions will cause more Black and Latinx community members to lose their homes.²⁸ The eerie similarity between the higher rates of subprime lending to Black and other communities of color and the current eviction crisis is not lost on academics.²⁹

In response to this impending eviction fueled housing crisis, municipalities like Cleveland have enacted legislation to help keep individuals in their homes. Cleveland City Council passed a Right to Counsel ordinance whereby any low-income resident facing eviction received legal counsel to represent them in their eviction proceedings.³⁰ In the time between July and December 2020, the Right to Counsel program allowed ninety-three percent of represented tenants to avoid eviction.³¹ By enacting the Right to Counsel ordinance through Cleveland Codified Ordinance 375.12, the Cleveland City Council ensured that thousands of tenants stayed in their homes and were not forced out through eviction or involuntary move outs.³²

²⁵ Colin Rigley, *Is a Housing Crisis Lurking?*, WASH. STATE BAR ASS'N (Apr. 1, 2021), <https://wabarnews.org/2021/04/01/is-a-housing-crisis-lurking/>.

²⁶ See Shrey Dua, *Why a 2022 Housing Market Crash Could Be Worse Than 2008*, INVESTORPLACE (Sept. 29, 2022, 12:33 PM), <https://investorplace.com/2022/09/why-a-2022-housing-market-crash-could-be-worse-than-2008/>.

²⁷ Rigley, *supra* note 25.

²⁸ Drew Desilver, *As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.*, PEW RSCH. CTR. (Aug. 2, 2021), <https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/>.

²⁹ See Jackelyn Hwang et al., *Segregation and Subprime Lending Within and Across Metropolitan Areas*, 34 INST. FOR RSCH. ON POVERTY 10, 17 (2019).

³⁰ William Winans, *Right to Counsel Prevented 93% of Cleveland Family Evictions in First Six Months of Program That Provides Low-Income Tenants with Free Legal Assistance*, UNITED WAY OF GREATER CLEV. (Feb. 10, 2021), <https://www.unitedwaycleveland.org/right-to-counsel-prevented-93-of-cleveland-family-evictions-in-first-six-months-of-program-that-provides-low-income-tenants-with-free-legal-assistance/>.

³¹ *Id.*

³² *Id.*; see CLEV., OH., CODE § 375.12(b) (2020).

B. *Traditional Housing Code Enforcement*

The continued work to reverse the negative secondary effects of the 2000s foreclosure crisis, combined with the threat of another such crisis in many American cities presents local governments and their housing code enforcement divisions with a complex set of circumstances.³³ The origin of the housing code in the United States is a beneficial primer for understanding the ways in which the code is enforced today. Housing codes, as opposed to building codes, are concerned with the maintenance of a property, rather than a building's acceptable design and construction materials.³⁴ The first building and housing code was implemented in New York City through their Tenement Housing Act of 1867, which set the foundation for the Housing Development Act of 1965 and embodied the belief that housing code enforcement could reduce blight present in many neighborhoods.³⁵ This Act required housing codes and blight removal programs to be funded in order to control neighborhood deterioration.³⁶ These aspects made traditional housing code enforcement a mainstay of American municipal law.³⁷

In general, housing codes are similar to other regulatory laws in that they are "voluminous, vague, and ideal," allowing for a large amount of discretion by the individuals acting under the code's authority.³⁸ The process of traditional housing code enforcement typically begins with an inspection of the dwelling and the issuance of a code violation for the owner failing to maintain the property in accordance with the applicable housing code.³⁹ If the dwelling is deemed to not be in compliance with the housing code, officials can exercise their police power to protect the public health, safety, and welfare.⁴⁰ Additionally, officials can impose criminal penalties in order to compel the owner of such properties to repair the homes, thus bringing them back into a habitable state of compliance.⁴¹ This court proceeding has the purpose of quelling the failure to maintain the property in a way that does not harm the health and safety of others as well as modifying the behavior of the property to deter other bad actors from doing the same in the future.⁴²

³³ Schilling, *supra* note 19, at 105.

³⁴ H. Lawrence Ross, *Housing Code Enforcement and Urban Decline*, 6 J. AFFORDABLE HOUS. & CMTY. DEV. L. 29, 46 (1996).

³⁵ *Id.* at 31.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 31–32.

³⁹ *Code Enforcement*, LOCAL HOUS. SOL., <https://localhousingsolutions.org/housing-policy-library/code-enforcement/> (last visited Oct. 23, 2022).

⁴⁰ *Id.*

⁴¹ OHIO REV. CODE ANN. § 3767.27 (West 2022); *see* Ross, *supra* note 34, at 36–37.

⁴² Ross, *supra* note 34, at 37; *see, e.g.,* Lind, *supra* note 1, at 92 n. 10 ("The primary goal of most sentences in the Housing Court is to encourage owners to bring their properties into

This enforcement process has proven extremely problematic and cumbersome at quelling the rise of vacancy, however. Code enforcement requires a high degree of due process, owners often lack the financial means capable of rehabilitating the property to bring it into compliance with the local housing code, and the code enforcement process itself is accompanied with many costs that often prove too high for communities with high levels of vacancy.⁴³ These code enforcement procedures typically work well in circumstances where property owners either work or live in or near the property they have title to but fall short when the owners cannot be obtained or when they live out-of-state.⁴⁴ This lack of transparency leads to vacancy rise due to the inadequacy of traditional housing code enforcement.⁴⁵ This erratic and inefficient process spawned the need for a more robust, legal alternative. Private nuisance abatement suits fill the enforcement gaps in high-vacancy areas where code enforcement proves insufficient.⁴⁶

C. *The Legal Mechanism of Nuisance Abatement*

The doctrine of nuisance law developed from the law of real property rights, particularly from the foundational principle that a person must maintain their property in a manner that does not harm others.⁴⁷ For the purposes of this Note, “nuisance” means a physical housing condition that is harmful to others, harm resulting from this unkempt physical condition, and liability stemming from the resulting harm of failing to maintain the property in a healthy and habitable condition.⁴⁸ When the surrounding neighborhoods cannot enjoy their properties because of a vacant and abandoned home, they have lost a stick in their bundle of property rights.⁴⁹

As an alternative, civil nuisance abatement suits essentially accomplish what traditional criminal code enforcement cannot. Courts can issue permanent injunctions against neglectful property owners as opposed to issuing multiple housing code

compliance with City codes despite the fact that the owners failed to do so within the time the City set for compliance in a violation notice issued to the owner. Therefore, when sentencing a defendant, the Court first considers whether the defendant has brought the property up to code. If not, the Court generally imposes a sentence it believes sufficient to motivate the owner to make the needed repairs”); *City of Cleveland v. Franklin Inn, Ltd.*, No. 84576, 2005 WL 315371, at *1–4 (Ohio Ct. App. Feb. 10, 2005).

⁴³ Samsa, *supra* note 1, at 197–98.

⁴⁴ Schilling, *supra* note 19, at 126.

⁴⁵ *Id.*

⁴⁶ *Id.* at 129.

⁴⁷ Roger Pilon, *Property Rights and the Constitution*, CATO INST., <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution> (last visited Oct. 23, 2022).

⁴⁸ OHIO REV. CODE ANN. § 3767.41 (West 2022).

⁴⁹ Denise R. Johnson, Note, *Reflections on the Bundle of Rights*, 32 VT. L. REV. 247, 272 (2007).

violations for repeated offenses.⁵⁰ A municipal court, having jurisdiction over homeowners and their property, may permanently abate the nuisance with the issuance of an injunction ordering the property owners to bring their home back into compliance with the housing code.⁵¹ Most states and municipalities have private and public nuisance abatement statutes within their state regulatory codes.⁵²

The Ohio nuisance abatement statutes are unique because, in addition to authorizing private citizens to bring nuisance abatement actions, it also allows municipalities and CDCs with a purpose of improving housing conditions to bring nuisance suits in a court of law.⁵³ O.R.C. § 3676.41 grants private citizens, municipalities, and CDCs, among other actors, the ability to bring a lawsuit alleging that a homeowner has failed to maintain their home and that the home has deteriorated into a state of nuisance.⁵⁴ The key provisions of the statute limit the cases that can be brought to residential, unoccupied homes that have reached a nuisance condition.⁵⁵ As defined earlier, this “nuisance” condition must be one where the structure is unfit for habitation.⁵⁶ After the suit is brought, the court may order that the nuisance presented by the residential building be abated by a means accorded by the Ohio code.⁵⁷ If the owners of the property still do not comply with the court order to abate

⁵⁰ Lind, *supra* note 1, at 93; see Samsa, *supra* note 1, at 197; OHIO REV. CODE ANN. § 3767.02(A) (West 2022) (defining who is responsible for nuisance (“Any person, who uses, occupies, establishes, or conducts a nuisance, or aids or abets in the use, occupancy, establishment, or conduct of a nuisance; the owner, agent, or lessee of an interest in any such nuisance; any person who is employed in that nuisance by that owner, agent, or lessee; and any person who is in control of that nuisance is guilty of maintaining a nuisance and shall be enjoined as provided in sections 3767.03 to 3767.11 of the Revised Code.”)).

⁵¹ Lind, *supra* note 1, at 93–94.

⁵² *Id.* at 93.

⁵³ See OHIO REV. CODE ANN. § 3767.03 (West 2022) (defining who can bring nuisance abatement action (“Whenever a nuisance exists, the attorney general; the village solicitor, city director of law, or other similar chief legal officer of the municipal corporation in which the nuisance exists; the prosecuting attorney of the county in which the nuisance exists; the law director of a township that has adopted a limited home rule government under Chapter 504. of the Revised Code; or any person who is a citizen of the county in which the nuisance exists may bring an action in equity in the name of the state, upon the relation of the attorney general; the village solicitor, city director of law, or other similar chief legal officer of the municipal corporation; the prosecuting attorney; the township law director; or the person, to abate the nuisance and to perpetually enjoin the person maintaining the nuisance from further maintaining it.”)).

⁵⁴ OHIO REV. CODE ANN. § 3767.41(B) (West 2022).

⁵⁵ OHIO REV. CODE ANN. § 3767.41(A) (West 2022) (requiring that a building be structurally unsafe, unsanitary, a fire hazard, or otherwise dangerous to human life to be considered a public nuisance).

⁵⁶ OHIO REV. CODE ANN. § 3767.41(A)(2)(a) (West 2022).

⁵⁷ OHIO REV. CODE ANN. § 3767.41(B)(1)(a) (West 2022) (conveying standing to neighbors, tenants, municipalities, and nonprofits (“In any civil action to enforce any local building, housing . . . or safety code . . . by a municipal corporation or township in which the building

the nuisance, daily monetary sanctions and other abrasive remedies can be put upon the owners in order to compel compliance.⁵⁸ This statute, as laid out by the Ohio legislature, gives the courts and plaintiffs bringing these actions a great deal of power to improve housing quality in neighborhoods with severe housing deterioration.

Early cases falling under the nuisance abatement scheme in Ohio were brought pursuant to O.R.C. § 3767.41 in the late 1980s.⁵⁹ Nonprofit corporations who brought suit under this new Ohio statute “targeted vacant houses in a nuisance condition as candidates for rehabilitation.”⁶⁰ These early cases proved successful for converting a vacant, nuisance property into a home that individuals with limited income could purchase.⁶¹

The reach of nuisance abatement was tested in December of 2008. In the landmark case of *Cleveland Housing Renewal Project, Inc., v. Wells Fargo Bank, N.A., et. al.*, the plaintiffs identified over 200 property titles owned by the bank, many of which were vacant and abandoned, that had been repeatedly vandalized and stripped of value.⁶² Plaintiffs CHRP sought an order restraining Defendant Wells Fargo Bank from selling their properties that were not up to housing code standards.⁶³ This procedural safeguard was necessary because if defendants were allowed to transfer title of the unlawfully maintained properties, the dilapidated properties would be “in a state of limbo for a period of time . . . allowing the defendants to claim to the court that they no longer owned the nuisances.”⁶⁴ In response, the court issued the order requested by Plaintiffs, restraining Defendants from transferring their properties.⁶⁵

Throughout the years, community development lawyers have developed a robust system for dealing with the vacancy problem still present in the communities they serve. With a repertoire of legal mechanisms including mitigation techniques, nuisance abatement, and redevelopment or demolition, organizations have made strides to clean up the mess banks left behind. Today, however, a new ownership type threatens the increase of owner-occupied homes in areas that were once at the center of the foreclosure crisis.

involved is located, by any neighbor, tenant, or by a nonprofit corporation that is duly organized and has as one of its goals the improvement of housing conditions in the county or municipal corporation in which the building involved is located, if a building is alleged to be a public nuisance, the municipal corporation, township, neighbor, tenant, or nonprofit corporation may apply in its complaint for an injunction . . . or for the appointment of a receiver . . . or for both . . . ”)).

⁵⁸ OHIO REV. CODE ANN. § 3767.41(C)(1) (West 2022).

⁵⁹ Lind, *supra* note 1, at 96.

⁶⁰ *Id.*

⁶¹ *Id.* at 97.

⁶² *Clev. Hous. Renewal Project, Inc., v. Wells Fargo Bank*, 934 N.E.2d 372, 381 (Ohio Ct. App. 2010).

⁶³ *Id.* at 374.

⁶⁴ Lind, *supra* note 1, at 106.

⁶⁵ *Id.*

D. *Origins and Function of Series LLCs*

To fully understand the function and power a Series LLC has, it is important to examine the structure of standard limited liability companies (“LLCs”). The precursor to the LLC, the partnership association or limited partnership association, was created in Pennsylvania, Michigan, New Jersey, and Ohio between 1874 and 1881.⁶⁶ In 1977, Wyoming enacted its LLC Act which gave some clarity to the functionality of this growing new business entity type.⁶⁷ This Wyoming Act set the stage for Florida to adopt a similar Act, which in turn afforded these new partnership entities with a large amount of flexibility.⁶⁸ Most state LLC laws are modeled after these early examples of LLC regulations.⁶⁹

The structure of an LLC is fairly straightforward. This non-corporate entity allows for its members to run the company while not being subject to personal liability, thus the name “limited liability company.”⁷⁰ Because each state is a little different in terms of their exact regulatory scheme for LLCs, it is important to differentiate the different ways LLCs function in each jurisdiction.⁷¹ However, the basic limited liability of LLCs across jurisdictional lines remains largely the same.⁷² LLCs are a popular entity types because of the lack of liability afforded to their members.⁷³ Because the limited liability structure protects members and managers of the LLC, creditors are only protected through statutorily mandated “disclosures, distribution, and dissolution.”⁷⁴

LLCs, similar to traditional corporations, are formed through a state agency, such as the Ohio Secretary of State, by submitting paperwork declaring formation of the business entity.⁷⁵ Filing formalities vary by state and can include variable articles of incorporation that need to be filed by the entity being formed.⁷⁶ Although these formalities vary, an LLC and its members must be formally incorporated with the

⁶⁶ Robert R. Keatinge et al., *The Limited Liability Company: A Study of the Emerging Entity*, 47 THE BUS. LAW. 378, 381 (1992); see also Jonathan R. Macey, Note, *The Limited Liability Company: Lessons for Corporate Law*, 73 WASH. U. L. REV. 433, 454 (1995).

⁶⁷ Robert R. Keatinge et al., *The Limited Liability Company: A Study of the Emerging Entity*, 47 BUS. LAW. 375, 383 (1992).

⁶⁸ *Id.*

⁶⁹ Joseph A. Rodriguez, Comment, *Wyoming Limited Liability Companies: Limited Liability and Taxation Concerns in Other Jurisdictions*, 27 LAND & WATER L. REV. 539, 548 (1992).

⁷⁰ Keatinge et al., *supra* note 66, at 397.

⁷¹ *Id.* at 379.

⁷² *Id.*

⁷³ *Id.* at 380.

⁷⁴ *Id.* at 385.

⁷⁵ *Id.* at 386.

⁷⁶ *Id.* at 418–19.

applicable state entity.⁷⁷ Because of the popularity of LLCs and their immense growth within the property and real estate law context, many states, being influenced by business owners, have adopted legislation expanding the scope of LLCs that individuals can form. This includes the Series LLC.

In 1990, Delaware became the first state to allow for the creation of Series LLCs in the Delaware Business Trust Act.⁷⁸ Series LLCs became part of the Delaware statutory code in 1996 when the state added provisions specifically for Series LLCs.⁷⁹ The Delaware legislature was urged to add these provisions by the mutual fund and investment company industry.⁸⁰ Following the enactment of these provisions by Delaware, many states followed suit including Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas, Utah, and now Ohio.⁸¹

As outlined in the article titled *Through the Looking Glass—Series LLCs in 2016*, “the individual series can be viewed as administrative accounting entities distinct from each other and the Series LLC and, if properly formed and maintained, with individual liability protection between and among the individual series and the Series LLC.”⁸² Owners of these Series LLCs are allowed to create a vast labyrinth of individual series, all formed under the umbrella of the larger Series LLC.⁸³ A Series LLC in Texas or Delaware, for example, has the enumerated power to hold title to real property and has the ability to sue and be sued.⁸⁴ This structure allows a Series LLC to transfer property with relative ease and with very little paperwork.⁸⁵ A Series LLC could, for example, transfer property from itself to a series, or a series could transfer property to another series.⁸⁶

The way in which Series LLCs are formed and the rights and protection they possess create a shield of liability.⁸⁷ Because each individual series is considered separate and distinct from its parent entity, each series is shielded from liability arising

⁷⁷ Jason Fernando, *What is an LLC? Limited Liability Company Structure and Benefits Defined*, INVESTOPEDIA (July 31, 2022), <https://www.investopedia.com/terms/l/llc.asp>.

⁷⁸ Allen Sparkman, *Through the Looking Glass – Series LLCs in 2016*, BUS. & BANKR. L. J. 1, 3 (2014).

⁷⁹ *Id.* at 5.

⁸⁰ *Id.* at 3.

⁸¹ *What is a Series LLC?*, NOLO, <https://www.nolo.com/legal-encyclopedia/what-is-series-llc.html> (last visited Oct. 17, 2022).

⁸² Sparkman, *supra* note 78, at 6.

⁸³ *Id.*

⁸⁴ *Id.* at 11.

⁸⁵ Bradley T. Borden, *Series LLCs in Real Estate Transactions*, 46 REAL PROP. TR. & EST. J. 255, 258 (2011).

⁸⁶ *Id.*

⁸⁷ Thomas E. Rutledge, *Again, For the Want of a Theory: The Challenge of the “Series” to Business Organization Law*, 46 AM. BUS. L. J. 311, 311 (2009).

from the wrongdoings of other series within its own conglomerate.⁸⁸ Three principles are true of most Series LLCs: neither the parent entity's assets nor any other series are subject to the debts and obligations of another series, the owners of the parent LLC are not liable for the obligations of the individual series, and the assets of one series are not available to satisfy the obligations of another series, the parent entity, or any of the series owners.⁸⁹ According to real estate data compiled in Nevada, in 2010, LLC filings totaled 33,911 with 1,529 of those filing being for Series LLCs.⁹⁰ This non-negligible number of Series LLC filings shows that this type of entity comprises a significant choice among business and real estate owners.⁹¹

E. Ohio's New Limited Liability Company Act

The Ohio General Assembly, in January 2021, passed a new Ohio Revised Limited Liability Company Act, thereby replacing the original LLC Act passed in 1994.⁹² This new Act went into effect on January 1, 2022.⁹³ With the assistance of the Ohio State Bar Association's Corporate Law Committee, the replacement Act amends the prior Act to reflect changes in the state's approach to LLCs and creates a wholly new Chapter 1706 of the Ohio Revised Code.⁹⁴ This new ORLLCA permits the formation of Series LLCs in the state of Ohio.⁹⁵ In order to form a Series LLC under Ohio law,

⁸⁸ *See id.*

⁸⁹ *Id.* at 318–19.

⁹⁰ Borden, *supra* note 85, at 258 n.11.

⁹¹ Borden, *supra* note 85, at 259.

⁹² Michael Moeddel & Russell Rosler, *Ohio Rewrites the Law on Limited Liability Companies*, OHIO BAR (Dec. 31, 2021), <https://www.ohiobar.org/member-tools-benefits/practice-resources/practice-library-search/practice-library/2021-ohio-lawyer/ohio-rewrites-the-law-on-limited-liability-companies/>; *see generally* OHIO REV. CODE ANN. §§ 1706.01–.84 (West 2022).

⁹³ Terrence Link II, *Ohio's New Limited Liability Company Act – Revised Code Section 1706*, JD SUPRA (Feb. 15, 2021), <https://www.jdsupra.com/legalnews/ohio-s-new-limited-liability-company-3091522/>; *see also* *Ohio Revised Limited Liability Company Act*, OHIO SEC'Y OF STATE, <https://www.ohiosos.gov/businesses/revised-LLC-act---effective-2022/> (last visited Oct. 19, 2022) (outlining the new series addition to the Ohio Revised Limited Liability Company Act by stating, “[t]he new LLC Act permits the formation of Series LLCs in Ohio. Articles of Organization may specifically allow for series. Each series, in its own name, may enter into contracts; sue or be sued; hold and convey title to assets of the series, including real property, personal property, and intangible property; grant liens and security interests in assets of the series. This structure provides liability protection to each series, as assets owned by one series are shielded from the risk of liability of others within the same series LLC.”).

⁹⁴ Michael Moeddel & Russell Rosler, *Ohio Rewrites the Law on Limited Liability Companies*, OHIO BAR (Dec. 31, 2021), <https://www.ohiobar.org/member-tools-benefits/practice-resources/practice-library-search/practice-library/2021-ohio-lawyer/ohio-rewrites-the-law-on-limited-liability-companies/>.

⁹⁵ OHIO SEC'Y OF STATE, *supra* note 93.

the individuals wishing to form such an entity must submit articles of an organization with the secretary of state of Ohio.⁹⁶

Like other states, the ORLLCA allows for the same liability protection for Series LLCs as it does for traditional LLCs.⁹⁷ Because of this structure, the new Act allows the assets of one series to avoid liability arising out of actions taken by another series under the same Series LLC umbrella.⁹⁸ The new act does require state-specific formalities if the Series LLC is to operate within the boundaries of Ohio. These formalities include: (1) specifying in the articles of organization that the Series LLC is permitted to have multiple series; and (2) identifying that the series must have separate rights, powers, and duties with respect to the property owned by each series and the obligation that comes with this ownership.⁹⁹ However, the state of Ohio gives significant flexibility to the members of the Series LLC, specifying that the management of each series can be totally different and can have different personnel structure and duties depending on the type of structure that the Series LLC owners choose.¹⁰⁰

Under the ORLLCA, a Series LLC may engage in any activity in which an Ohio LLC may engage.¹⁰¹ This means that a Series LLC, like those in other states with series provisions, may “hold and convey title to assets of the series, including real property, personal property, and intangible property.”¹⁰² Series LLCs may also be sued and can enter into contracts, identically to how a regular LLC may do so.¹⁰³ This structure provides a liability shield for each individual series and the parent entity overall.¹⁰⁴

The tension between nuisance abatement actions and Series LLCs originates from the liability shield created granted by the ORLLCA.¹⁰⁵ The legal uncertainty of how the law of public nuisance will be applied to these new entities with added liability protection is troubling for areas, such as Slavic Village, that are on the mend. The

⁹⁶ OHIO REV. CODE ANN. § 1706.16(A) (LexisNexis 2022).

⁹⁷ Thomas R. Fawkes et al., *Is a Series LLC Right for You?*, TUCKER ELLIS LLP (June 2021), https://www.tuckerellis.com/news_publications/is-a-series-LLC-right-for-you.

⁹⁸ Link, *supra* note 93.

⁹⁹ See generally *id.*

¹⁰⁰ *Id.*

¹⁰¹ Fawkes et al., *supra* note 97.

¹⁰² OHIO REV. CODE ANN. § 1706.05 (LexisNexis 2022) (specifying that “[a] series established under this chapter has the power and capacity, in the series’ own name, to do all of the following: (1) Sue and be sued; (2) Contract; (3) Hold and convey title to assets of the series, including real property, personal property, and intangible property; (4) Grant liens and security interests in assets of the series”).

¹⁰³ OHIO SEC’Y OF STATE, *supra* note 93.

¹⁰⁴ *Id.*

¹⁰⁵ Justin T. Fezzi, *Third Time’s a Charm: How the Uniform Law Commission Can Fit Series LLCs into the Uniform Limited Liability Company Act*, 58 ST. LOUIS U. L. J. 911, 911 (2014).

communities hit hardest by the foreclosure crisis may now have to worry about neighboring properties entering a state of disrepair because of an absent Series LLC owner. The legal mechanisms put in place to balance the inadequacy of traditional housing code enforcement may be deficient to stop the problem of neighborhood nuisances because of Series LLC owned properties.

III. POSSIBLE IMPACTS OF THE OHIO REVISED LIMITED LIABILITY COMPANY ACT ON FUTURE ABATEMENT OF NUISANCE PROPERTIES

The previous Part of this Note demonstrated the inability of modern housing code enforcement to deal with high volumes of vacancy and how this inefficiency had to be supplemented with nuisance abatement actions.¹⁰⁶ Ohio has been an incubator for the use of nuisance abatement actions due to its position as one of the first casualties of the foreclosure crisis, resulting from its previously weakened housing market and its vulnerability to predatory lending tactics.¹⁰⁷ This Note now turns on how the ORLLCA will hinder the demonstrated effectiveness of nuisance abatement actions and traditional housing code enforcement on curbing the rise of vacancy in blighted communities by examining how the new Act will affect each facet of nuisance abatement actions.

A. *Interactions Between the Rules of Civil Procedure and Series LLCs*

Because nuisance abatement actions occur within the civil litigation sphere, an important step in the lifetime of these actions is service of process. However, the function of Series LLCs directly conflicts with this vital step in any nuisance abatement action.¹⁰⁸ Like other civil actions in our legal system, in order to bring a nuisance abatement action pursuant Ohio's residential nuisance abatement statute, R.C. section 3767.41, a party with standing must serve the opposing party with process in order to commence the action.¹⁰⁹ Under the Ohio Rules of Civil Procedure, the defendant corporation must be served with the summons directly as to comply with its constitutional right to due process.¹¹⁰ Additionally, the Rules of Civil Procedure

¹⁰⁶ See *supra* Part II(B).

¹⁰⁷ See Claudia Coulton et al., *Facing the Foreclosure Crisis in Greater Cleveland: What Happened and How Communities Are Responding*, (2010), https://case.edu/socialwork/povertycenter/sites/case.edu.povertycenter/files/2018-10/Facing_the_Foreclosure_Crisis_June_2010.pdf.

¹⁰⁸ See generally Alvin W. Lasher, *The Ohio Rules of Civil Procedure and Their Effect on Real Property Titles*, 4 AKRON L. REV. 47 (1972).

¹⁰⁹ OHIO REV. CODE ANN. § 3767.41(A)(1) (LexisNexis 2022) (defining building as: "'Building" means, except as otherwise provided in this division, any building or structure that is used or intended to be used for residential purposes. "Building" includes, but is not limited to, a building or structure in which any floor is used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and in which the other floors are used, or designed and intended to be used, for residential purposes. "Building" does not include any building or structure that is occupied by its owner and that contains three or fewer residential units.").

¹¹⁰ See Ohio Civ.R. 4.1.

require that a summons be delivered to the defendant within six months of the nuisance abatement claim being filed.¹¹¹ If the summons is not served upon the defendant within this six-month period, the case is dismissed.¹¹²

When examined in the context of the new ORLLCA, this seemingly straightforward service of process step in civil litigation becomes much more convoluted. As discussed in a previous Part, Series LLCs can be numerous within a single LLC structure.¹¹³ This labyrinthine structure can have hundreds of distinct organizations, all with their own owners and managers.¹¹⁴ In conjunction with the often-illusory personas associated with individual LLCs, this structure is troublesome. Because each series is able to obtain, hold, and transfer title to property, and the manager may be an elusive person with an unattainable or even false address, a summons may not feasibly be able to be served onto that manager within the time allotted by the Ohio Rules of Civil Procedure.¹¹⁵ If this is the avenue that the plaintiff pursues to abate a nuisance present at the subject property owned by the Series LLC, their claim may be barred in the future if the court issues a ruling dismissing their claim for not meeting the time requirement.¹¹⁶

This perfection of service becomes even more complex when looked at in the context of serving out-of-state parties. Ohio Rule of Civil Procedure § 4.3(B)(1) states that “[i]n the event that the return receipt shows failure of delivery, service is completed if the serving party or his attorney . . . files with the clerk an affidavit setting forth facts indicating the reasonable diligence utilized to ascertain the whereabouts of the party to be served.”¹¹⁷ Additionally, when serving a business entity pursuant to the Ohio Rules of Civil Procedure, the plaintiff must send the process by certified mail to the entity’s usual place of business.¹¹⁸ This proves troublesome when a Series LLC has concealed their identity to the point where a “usual place of business” is unattainable. Although the Rules of Civil Procedure for serving a corporate entity are more liberal than those required for serving an individual, they are still rendered obsolete when the business location cannot be obtained.

Opponents may point to the process by which service may be made by publication as a way for plaintiff to overcome the service of process quandary these type of entities create.¹¹⁹ If the address of the Series LLC is not known, a plaintiff may motion to the

¹¹¹ Ohio Civ.R. 4(E).

¹¹² *Id.*

¹¹³ *See supra* Part II(D).

¹¹⁴ Sparkman, *supra* note 78, at 6.

¹¹⁵ *See* Ohio Civ.R. 4(E) (allotting only six months after filing the complaint before dismissal if good cause cannot be shown for why service was not made); *see generally* Borden, *supra* note 85 (showing the abilities of SLLCs to hold property).

¹¹⁶ Ohio Civ.R. 4(E).

¹¹⁷ Lasher, *supra* note 108, at 67.

¹¹⁸ *Id.* at 75.

¹¹⁹ *See generally* Ohio Civ.R. 4.4.

court to allow them to serve the opposing party through the process of service by publication instead.¹²⁰ This, however, can be cumbersome and requires additional time that a property might not have before it enters a state of dilapidation beyond repair.¹²¹

This service by publication motion also requires additional funds to submit which would also detract from the overall finances that a nonprofit bringing the nuisance abatement action may not have to spare.¹²² Overall, the process of service by publication is not sufficiently equivalent to the standard means of service of process. For this reason, the direct conflict between the Series LLC structure and this routine civil procedure requirement hinders the fluidity by which nuisance abatement actions may progress in the future. This hindrance can create further increased vacancy implications for the overall community where these actions are being brought due to the Series LLC's concealment capabilities.

B. Issues Surrounding Enforcement of Judgment in a Series LLC Nuisance Abatement Action

Much like the discussion of serving a Series LLCs with a complaint to commence a civil nuisance abatement action, the issue of enforcing and collecting judgment after an action has come to a close becomes more difficult when a Series LLC party is involved. As discussed previously, LLCs are a favored entity choice because of their pass-through partnership status and the limited liability afforded to LLC members and managers.¹²³ The fact that an LLC's members and managers are not personally liable for the LLC's obligations and debts is where the issue of collection on judgment comes into frame.¹²⁴ As an asset protection device, a Series LLC will be favorable for the protection that it affords its owners; however, it will make the plaintiff's life much more difficult when it comes to collecting on that judgment. If the plaintiff succeeds in the nuisance abatement claim against a Series LLC, a court is likely to order the

¹²⁰ *Id.*

¹²¹ Nexsen Pruet, PLLC, *The Problem with Service by Publication*, JD SUPRA (July 2, 2014), <https://www.jdsupra.com/legalnews/the-problem-with-service-by-publication-01491/>.

¹²² *Deposits for Costs & Filing Fees*, CUYAHOGA CNTY. CLERK OF COURTS, <https://coc.cuyahogacounty.us/en-us/filing-fees.aspx> (last visited Oct. 19, 2022).

¹²³ Elizabeth N. Kozlow, *A Charging Order Conundrum: Is it Really the "Exclusive Remedy" of an LLC Member Judgment Creditor?*, 63 BAYLOR L. REV. 884, 884 (2011); Vincent E. Mauer, *Dormancy and Revival: Long-Term Judgment Collection in Ohio*, BLOCKCHAIN & FIN. SERV. BLOG (March 4, 2019), <https://www.lexology.com/library/detail.aspx?g=d0b0a7df-3ff4-4823-a25a-3204c0b826a2>; see also Joseph P. Brigggett, *Current Issues in Enforcing Judgments Against LLCs*, L. J. NEWSL. (June 2018), <https://www.lawjournalnewsletters.com/2018/06/01/current-issues-in-enforcing-judgments-against-LLCs/?slreturn=20211029110705>; see generally William G. Fig, *The Charging Order - A Halt to Collection*, SUSSMAN SHANK, LLP (Mar. 2010), <https://www.sussmanshank.com/the-charging-order-a-halt-to-collection>.

¹²⁴ Joseph P. Brigggett, *Current Issues in Enforcing Judgments Against LLCs*, L. J. NEWSL. (June 2018), <https://www.lawjournalnewsletters.com/2018/06/01/current-issues-in-enforcing-judgments-against-LLCs/?slreturn=20211029110705>.

Series LLC to abate the nuisance present at their property.¹²⁵ If the Series LLC fails to abate, the court is likely to hold the Series LLC in contempt of court for failing to comply with the equitable remedy to bring the home they own title to back into compliance with local housing code.¹²⁶

Much of the litigation surrounding holding an absent homeowner in contempt of court for maintaining a nuisance comes from proceedings against lawless landlords.¹²⁷ The Ohio legislature afforded the specialized housing court in Cleveland broad remedial authority to ensure that Cleveland's housing stock is maintained and repaired in a manner congruent with the Cleveland Housing Code.¹²⁸ The Cleveland Housing Court may fine a defendant each day in the form of contempt sanctions if they fail to abate the nuisance present at their property.¹²⁹ Contempt under Ohio law means "disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court of officer."¹³⁰ As was seen in the cases of REO properties in Cleveland following the foreclosure crisis, many corporation owners do not comply with the contempt orders and the homes remain in a state of disrepair, often becoming dilapidated to a point where repairs are more costly than simply demolishing the property.¹³¹ It is likely that a Series LLC would follow the same precedent and the homes would deteriorate further because of the protection afforded the series' owners and managers. When the managers are protected from liability, there is a disincentive to repair and maintain a property that the series has already allowed to enter a state of total disrepair.

In addition to compelling the Series LLC to abate a nuisance property, the party seeking abatement may also petition the court to convert the contempt sanctions that have accrued from the date of the contempt order to a money judgment.¹³² This ability

¹²⁵ *Cleveland Hous. Renewal Project, Inc. v. Wells Fargo Bank, N.A.*, 188 Ohio App.3d (2010). *See also* Lind, *supra* note 1, at 93.

¹²⁶ *Id.*

¹²⁷ Armen H. Merjian, *Righting the Scales of Justice: The Critical Need for Contempt Proceedings Against Lawless Landlords*, 52 COLUM. HUM. RTS. L. REV. 592, 596 (2021).

¹²⁸ OHIO REV. CODE ANN. § 1901.11 (LexisNexis 2022) (creating the Cleveland municipal court and the Toledo municipal court by stating: "There is hereby created a housing division in the Cleveland municipal court and in the Toledo municipal court, and an environmental division in the Franklin county municipal court."); *see also* OHIO REV. CODE ANN. § 1901.02 (LexisNexis 2022) (discussing the Cleveland municipal Housing court exclusive jurisdiction to hear housing matters) ("The housing or environmental division of a municipal court created pursuant to section 1901.011 of the Revised Code has the same territorial jurisdiction as the municipal court of which it is a part, but shall be styled and known as the 'housing division of the [county it is located in],' or the 'environmental division of the [county it is located in]' inserting the name of the municipal court.").

¹²⁹ Loc.R. 2.14(B) of the Cleveland Municipal Housing Court.

¹³⁰ OHIO REV. CODE ANN. § 2705.02 (LexisNexis 2022) (discussing the sanctions available for failure to comply with a court order).

¹³¹ *See generally* Coulton et al., *supra* note 10.

¹³² *Fed. Trade Comm'n v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010).

to convert contempt fines to a money judgment, however monumental, is likely to be diminished when dealing with a case in which the party failing to abate the nuisance is a Series LLC.¹³³ Perhaps more amplified that the anonymity issue present with serving a Series LLC, collecting on a Series LLC may prove even more difficult because of the shield that the series structure gives these types of entities. If a plaintiff attempts to collect on the converted money judgment, they are likely to hit the wall that is the protective shield surrounding the assets of the Series LLC.¹³⁴ The asset protection mechanism affords the Series LLC managers great security at the cost of making collection of judgment against such corporate organization much more difficult.

C. Series LLCs and Corporate Veil Piercing

As the most litigated issue in corporate law, piercing the corporate veil in nuisance abatement cases may prove even more difficult when attempted in cases involving defendants who are Series LLCs. In its 2008 decision in *Dombroski v. WellPoint, Inc.*, the Ohio Supreme Court modified the *Belvedere* test for whether to pierce the veil surrounding a corporation.¹³⁵ Previously, the Court held that a plaintiff can pierce the corporate veil when

control over the corporation by the defendant is so complete that the corporation has no separate mind, will, or existence of its own; control over the corporation by the defendant is exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity; and injury or unjust loss resulted to the plaintiff from such control and wrong.¹³⁶

The Court in *Dombroski* added the additional requirement of unjust or inequitable conduct to the second prong of the *Belvedere* test, creating the corporate veil piercing framework used today.¹³⁷

¹³³ Rutledge, *supra* note 87, at 318–21; OHIO REV. CODE ANN. § 3767.03.

¹³⁴ Joseph Brigggett, *Current Issues in Enforcing Judgments Against Limited Liability Companies*, LUGENBUHL (Feb. 14, 2018), <https://www.lawla.com/blog/current-issues-in-enforcing-judgments-against-limited-liability-companies/>.

¹³⁵ *Dombroski v. WellPoint, Inc.*, 119 Ohio St. 3d 506 (2008) (holding that “to fulfill the second prong of the *Belvedere* test for piercing the corporate veil, the plaintiff must demonstrate that the defendant shareholder exercised control over the corporation in such a manner as to commit fraud, an illegal act, or a similarly unlawful act”); *see also* *Belvedere Condominium Unit Owners’ Assn. v. R.E. Roark Cos., Inc.*, 67 Ohio St.3d. 274, 288 (1993) (holding that the corporate form may be disregarded and the corporate veil pierced when (1) control over the corporation by those to be liable was so complete that the corporation has no separate mind, will, or existence of its own, (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss regulated to the plaintiff from such control and wrong) (N.E.2d 1075, modified).

¹³⁶ *Belvedere Condominium Unit Owners’ Assn.*, 67 Ohio St.3d. at 288.

¹³⁷ *Id.*

As discussed in the *Dombroski* opinion, piercing the corporate veil is a rare occurrence that will only occur in the most egregious cases of corporate fraud.¹³⁸ Because corporations are regarded as legal entities, separate and distinct from their owners and shareholders, the courts have afforded individuals associated with these entities, including LLCs the highest amount of legal protection.¹³⁹ These protections have serious implications for the future of Series LLC veil piercing in nuisance abatement cases.

In the context of nuisance abatement cases, it is unlikely that a plaintiff alleging that a Series LLC has failed to maintain its property in compliance with housing code could clear the threshold of the *Dombrowski* test for corporate veil piercing.¹⁴⁰ Therefore, this threshold requirement would subsequently render the entire court case more difficult if the party seeking nuisance abatement wants to utilize the theory of corporate veil piercing to locate a responsible party.¹⁴¹ Similar to the discussion of the interaction between Series LLCs and service of process, the way in which Series LLCs would function within the scope of corporate veil piercing would likely make litigation too costly for nonprofits to pursue, thus causing nuisance properties to remain vacant and deteriorate further.

It follows from the discussion of how Series LLCs would make nuisance abatement actions too cumbersome that nonprofits and other organizations tasked with bringing nuisance abatement actions would turn to other routes to abate the nuisances. This would likely prove to be a circular route bringing nonprofits back to using insufficient and ineffective housing code enforcement to try and solve their problems of vacancy.

D. *Series LLCs and Housing Disinvestment*

In accordance with the predicted housing crisis, another possible negative implication of Series LLCs in Ohio is housing disinvestment by these companies buying up inexpensive vacant and abandoned housing properties.¹⁴² In examining the impending housing crisis, landlord Series LLCs are likely to play a major role in this disinvestment. Disinvestment means “the withdrawal or withholding of public or

¹³⁸ Keatinge et al., *supra* note 66, at 444.

¹³⁹ Troutwine Estates Dev. Co. LLC v. ComSub Design & Eng’g Inc., No. 45A04-0802-CV-111, 2008 Ind. App. LEXIS 1860, at *6–7 (Ind. Ct. App. June 18, 2008) (finding that “[t]he purpose of a limited liability company is to provide individuals the same protection enjoyed by shareholders of a corporation through creation of a distinct *legal entity*, while at the same time featuring pass-through taxation similar to that enjoyed by partners”); Erin Porta, *LLC Personal Liability Protection: Will a Personal Guaranty Trump LLC Financial Liability Protection?*, OHIO ST. U., <https://farmoffice.osu.edu/blog-tags/llc-personal-liability-protection> (last visited Sep. 30, 2022).

¹⁴⁰ *Fast Tract Title Servs. v. Barry*, No. 110939, 2022 Ohio App. LEXIS 1810, at *16 (8th Dist. Ct. App. June 9, 2022).

¹⁴¹ See James Horner, *Code Dodgers: Landlord Use of LLCs and Housing Code Enforcement*, 37 YALE L. & POL’Y. REV. 647, 673–75 (2019) (describing LLC protections against housing code enforcements due to their corporate structuring).

¹⁴² Adam Travis, *The Organization of Neglect: Limited Liability Companies and Housing Disinvestment*, 84.1 AM. SOCIO. REV. 142, 144 (2019).

private capital from a community.”¹⁴³ This disinvestment usually brings along with it deterioration of the neighborhood and the housing stock within it, thus making nuisance more prevalent in communities with large amounts of disinvestment.¹⁴⁴ Because we are likely to see an increase in Series LLC formation in the near future, it can be inferred that Series LLCs will own and operate rental properties. Series LLCs will be a popular choice for landlords because of the extra shield of protection that the business structure affords the member or members of the Series LLC.¹⁴⁵ Because landlords who are under the shield of a Series LLC can be afforded protection from liability, they may be more likely to take risks including lack of upkeep of their property, causing their owned rental property to not meet applicable residential housing codes.

Similar to how landlords have dodged the housing code using the shield of LLCs, they are likely to do the same with Series LLCs.¹⁴⁶ As mentioned in the previous Subparts, this Series LLC shield protection will make it much harder for municipalities and CDCs with the purposes of housing improvement and rehabilitation to effectively mitigate the nuisance properties and alleviate blight. This disinvestment is likely to have the effect of allowing nuisance properties to remain in neighborhoods, reversing progress made in the last decade to bring neighborhoods back from housing collapse.

IV. POLICY RECOMMENDATIONS

Based on the insights gleaned from the examples of ways that Series LLCs could disrupt nuisance abatement in overall housing rehabilitation, there are policy recommendations that could be implemented at both the state and local level that could combat some of these hardships. If officials would like to make the legislative changes broader and more encompassing to the entire state, they could not enact new legislation or merely amend the new ORLLCA to include the policies set forth below. However, if local municipalities would like to use the recommendations and tailor them more for their own community, they could easily be scaled down and tailored to their individual communities. These policy recommendations are meant as a jumping-off point for local governments and officials to use with their own communities in mind to base future ordinances off of.

A. *Require Local Agent for Out-of-State and Foreign Series LLCs*

The state legislature could adopt legislation directed to Series LLCs incorporated out-of-state but doing business within state confines. Specifically, the legislation could require such LLCs to employ a local agent that could be served in certain property disputes. This could also be implemented at the local level in areas that have the largest percentage of vacant and abandoned properties, such as Cleveland.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 147.

¹⁴⁶ Horner, *supra* note 141, at 660–62 (discussing the ways in which landlords, particularly LLC landlords, abuse the housing code enforcement process to avoid liability for not maintaining their properties).

Although the City of Cleveland has a local agent in charge of provision in their rental registration ordinance, it only applies to properties being used as rental homes.¹⁴⁷ This language could easily be extended to property transfers that take place for vacant and abandoned housing as well. Much like the rental registration ordinance, the language could read,

if an individual or entity purchases a house deemed vacant and abandoned by the applicable municipal legislation and that individual or entity is located outside of the county where the vacant and abandoned property is located, that owner shall designate a natural person who resides in the same county where the property is located to receive notice of violation on the owner's behalf.¹⁴⁸

This would allow for service of process issues surrounding LLCs to be less cumbersome because it is likely that the owner or local agent in charge can be more easily and readily obtained.

Much like the way Cleveland City Council proactively enacted its Right to Counsel legislation in order to keep tenants in their homes, the municipal government could also swiftly enact a local agent for out of state and foreign LLC ordinance to deal with the likely influx of Series LLC property ownership we will see in the coming months and years. This simple enactment would save money and time not only for community development lawyers but also of municipal government employees who are trying to expedite the code enforcement process.

B. Create Special Division in Cleveland Housing Court to Deal with LLC and Series LLC Property Owners

The Cleveland Municipal Court system is very unique in that it has a specialized housing court which was created by the Ohio legislature.¹⁴⁹ However, there are ways that this specialized Northeast Ohio court could further use its power to crackdown on absent LLC landlords and property owners in general. Similar to how other courts in Cuyahoga County have a specialized commercial docket, Cleveland Municipal Housing Court could have a specialized docket for LLCs, limited partnerships, and Series LLC property owners.

The specialized division of the municipal housing court would alleviate the already overburdened housing court by having a separate judge or magistrate rule on decisions arising out of nuisance ownership by companies with liability shields such as Series LLCs. This division would allow code enforcement actions to be expedited, thus having the positive secondary effect of speeding up blight recovery in neighborhoods with the most homes in states of nuisance code violation.

This kind of ordinance could be enacted either at the municipal or state level, much like the original Ohio Revised Code section creating the Cuyahoga County Housing Court. As discussed, this type of special division would look very similar to already created specialized dockets within the Cuyahoga County Court of Common Pleas and other local trial court level courts in other counties in the state. It is likely that this

¹⁴⁷ CLE., OHIO, CODE ORDINANCES § 365.02(b)(3) (2022).

¹⁴⁸ See generally *id.*

¹⁴⁹ OHIO REV. CODE ANN. § 5321.04.

simple recommendation would speed up the housing court process when dealing with LLC property owners and would allow not just the parties bringing these suits but also the courts and municipalities themselves to save money and time associated with bringing cases in housing court.

C. Local Government Limited Liability Corporate Veil Piercing

The Cleveland Housing Court could take an aggressive approach to piercing the corporate veil cases where there are egregious levels of blatant neglect of property owned by Series LLCs. As discussed in the previous Part, courts generally take a conservative approach to corporate veil piercing because of the magnitude of this equitable remedy. The argument here is that the magnitude of the problem of vacant and abandoned housing owned by LLCs and future Series LLCs meets or exceeds the egregiousness needed to pierce the corporate veil of these entities.

Courts should learn from the mistakes of the past and take an aggressive approach to piercing the corporate veil when a property has been maintained in a nuisance state for an extended amount of time. State legislatures could make the determination of what constitutes an extended amount of time by being in a state of disrepair for longer than a year could reasonably constitute egregious negligence by the LLC owned property. This aggressive corporate veil piercing for LLC and Series LLC property owners specifically would significantly reduce the time and money needed to bring nuisance abatement actions and enforce housing code violations.

D. Require Mandatory Disclosures of Series LLC Property Owners

The next recommendation is a safeguard that would come into play before bad actor series LLCs could even wreak havoc on neighborhoods by failing to maintain their property in a way that complies with local housing codes. The municipal code could reflect a policy of transparency which is desperately needed when dealing with these entity types. This mandatory disclosure agreement could be enforced whenever a LLC or Series LLC purchases a home that is graded at a level that is below the minimum code standard.¹⁵⁰ When a LLC or Series LLC buys these properties, they would be required to disclose the principal owner of the company or series. This could be developed as an efficient way for county auditors to reach the owner of the newly obtained property during the housing transfer process.

This formal disclosure process would essentially function as navigating around the corporate veil piercing at the local level and would give housing code enforcement officials and community development lawyers an easier avenue to serve these entities if they fail to maintain their properties in a way that does not harm anyone else or their property rights. If individuals trying to rehabilitate neighborhoods were able to contact an actual, human person to obtain information about why they are failing to maintain their properties in a healthy and habitable condition, this would make the service and demand letter steps in civil nuisance abatement and criminal code enforcement actions much easier for all involved, including the property owner.

These mandatory disclosures for LLC and Series LLC entities purchasing vacant and abandoned housing could come in the form of a simple document that would be filed with the county auditor. This form could entail merely listing a valid address and name that the principal manager of the entity could be reached. This could work in

¹⁵⁰ See, e.g., OHIO REV. CODE ANN. § 5321.04.

conjunction with requiring a local agent in charge if the LLC or Series LLC is based out of state. The local agent in charge could be the individual listed on the document to be sent to the auditor so that municipal housing code enforcement officials and community leaders focused on rehabilitation could contact them if a problem such as a nuisance were to arise from the recently purchased property.

E. Stronger Enforcement of the Rental Registration Requirement

One policy that is already in place that is not being used to its fullest extent is the Cleveland rental registration requirement. This local code requires yearly fees paid and paperwork filed stating that the individual is maintaining a rental property.¹⁵¹ Because we are likely to see an uptick in Series LLC owned rental properties in the near future, enforcement of the already in place rental registration requirement would likely lessen the severity of blight taking over Cleveland's neighborhoods. This reduction in blight would be lessened if housing code officials made sure that Series LLC and LLC rental property owners maintained their rental registration throughout the years. This may include creating a special division that would be tasked with making sure that every LLC owned rental property in the county maintain their rental registration each year. This may seem like a fairly insignificant policy, but the implications it has go beyond simple due diligence. If code enforcement officials are able to keep tabs on and make sure that LLC property owners are maintaining their rental properties in a way that is consistent with the housing code, they would be able to divert the negligent property owners from doing further damage in the neighborhood where they own properties. This simple addition to the existing rental registration requirement would provide another safeguard for making sure Series LLC and LLC property owners are not negligent with the treatment of the properties they own.

V. CONCLUSION

Increasingly sophisticated business entity formation options may have devastating effects on the established common law process of nuisance abatement. The law of nuisance abatement prohibits absent property owners from continuing to misuse their property in a way that harms their neighbors and the community as a whole. With the aftermath of the foreclosure crisis and its devastating consequences for the weak-market city of Cleveland, legal practitioners and CDCs had to develop and expand the nuisance abatement process to deal with the growing problem of vacancy in the communities they served. With the passage of the ORLLCA, which went into effect on January 1, 2022, this time-honored legal mechanism may prove less efficient for dealing with the rampant vacancy that CDCs are continuing to deal with in their communities. The ways that Series LLCs can conceal their ownership of property and the assets they hold may hinder nuisance abatement to the point that lawyers may be forced to revert to relying on the inefficient traditional housing code enforcement process. This, in turn, is likely to increase vacancy due to its sheer insufficiency at adequately handling high volumes of vacancy in cities like Cleveland. In preparation for the intense aftermath, we are likely to see from the impending housing crisis in the United States with renters and communities of color at its center, it would be beneficial for community leaders and state legislators alike to consider several policy

¹⁵¹ CLE., OHIO, CODE ORDINANCES § 365.02(b)(3) (2022).

recommendations that can be easily implemented into their already long-standing housing codes. It is in the best interest of the citizens of Ohio that legislators who serve their constituencies pass forward-looking, inclusive legislation and policies that keep the most vulnerable populations at its forefront.