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Recommended Citation

Richard J. Marko & James P. Mancino, Housing Code Enforcement - A New Approach, 18 Clev.-Marshall L. Rev. 368 (1969)

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Housing Code Enforcement—A New Approach

Richard J. Marco* and James P. Mancino**

*"One change always leaves the way prepared for the introduction of another."*¹

FOR MANY YEARS, planners, lawyers, city fathers and legislators have attempted to find methods of stopping, or at least slowing down, the seemingly irreversible, omnivorous decay eating away at the hearts of our cities, particularly in the area of housing. The Congress of the United States, in adopting the Housing Act of 1949, sought to attain the ". . . realization as soon as possible of the goal of a decent home and a suitable living environment for every American . . ." ² Inadequate, unsafe, and substandard living accommodations still exist—in fact, the situation is growing critical.

Recognizing the national housing crises and the inadequate progress toward solutions through the utilization of either present code enforcement techniques or the ponderous urban renewal processes, new methods, techniques and approaches for the enforcement of housing code standards were sought.

Statistical Data

During the past several years urban communities have been engaged in a struggle to counteract urban decay and to provide adequate housing accommodations for an expanding populace. Proper utilization of existing housing resources becomes increasingly vital in this context. Housing codes were developed to establish minimum standards of health, safety and welfare in connection with the usage of these resources,³ and it is the enforcement of these Codes that should

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[Note: The views expressed herein are the authors'; they do not necessarily reflect the opinions of the Department of Law nor the Department of Community Development, City of Cleveland.]

¹ Machiavelli, *Il Principe*, c. 2 (1513).

² Housing Act of 1949, 63 Stat. 413 (1949).

³ The enactment in recent years of comprehensive housing codes by local communities, can be directly traced to the requirement in the Housing Act of 1964, Title III, Sec. 301(a), 78 Stat. 785 (1964), amending Housing Act of 1949, Sec. 101(c), that, first, no workable program shall be certified or recertified unless the locality had in effect at least six months prior to certification a minimum standards housing code

(Continued on next page)

provide a means for correcting and eliminating blighting conditions.⁴ The problem of enforcement is one of magnitude. It is not unique to a single city but is multiplied by every urban center in the United States.

The City of Cleveland, Ohio's largest city with a population of approximately 814,156,⁵ has developed some statistical data in connection with the preparation of its Workable Program for Community Improvement, 1967-1968.⁶ The results indicate a continuing trend, not at all startling, but reflective of major cities throughout the United States.

The Real Property Inventory for 1968⁷ shows that there are 267,654 dwelling units within the City of Cleveland. The Division of Housing of the City of Cleveland, by statistical breakdown during a twelve month period (May, 1967-May, 1968), shows in Table 1:

It is particularly significant to note that in spite of the constant pressures brought by an enforcement division section of the City,⁸

(Continued from preceding page)

relating to health, sanitation and occupancy requirements; and, second, that the Secretary of the Housing and Home Finance Agency (presently the Department of Housing and Urban Development) is satisfied that the particular locality is carrying out an effective program of compliance to compel such enforcement in order that such locality would be eligible for Federal financial aid. This amendment to the Housing Act of 1949 thus made a comprehensive code enforcement program an integral part of the workable program.

⁴ State ex rel. Schulman v. City of Cleveland, 8 Ohio Misc. 1, 220 N.E.2d 386 (C.P. 1966); aff'd without opinion, Ct. of App., Cuy. County, Case No. 28127 (1967); Motion to Certify overruled Supreme Court of Ohio, Case No. 68-14 (1968); Reid v. The Architectural Board of Review of Cleveland Heights, 119 Ohio App. 67, 192 N.E.2d 74 (1963); Nolden v. East Cleveland City Comm'n., 12 Ohio Misc. 205, 232 N.E.2d 421 (C.P. 1966).

⁵ "Family and Housing Characteristics," Real Property Inventory of Metropolitan Cleveland (1968 Edition) Part I of Report 45, page 7—this figure represents the estimated population as of October, 1967.

⁶ Tables 1, 2 and 3 which follow were prepared by the City of Cleveland for submission to the Department of Housing and Urban Development as part of the requirements for a workable program (Urban Renewal Handbook, R.H.A. 7204, Febr. 1968). A certified workable program is a prerequisite for any community that wants to become eligible for federal aid for public housing, urban renewal, rent supplements, and other related programs.

⁷ "Family and Housing Characteristics," Real Property Inventory of Metropolitan Cleveland (1968 Edition) Part I of Report 45, page 9.

⁸ The Department of Community Development, City of Cleveland, is composed of five divisions. The two divisions responsible for code enforcement are the Division of Housing and the Division of Building. The jurisdiction of the Division of Housing applies ". . . to all buildings or portions thereof, excepting hotels as defined herein, which are used or designed or intended to be used for residential occupancy. Section 6.0103 of The Codified Ordinances of the City of Cleveland. The jurisdiction of the Division of Building applies . . . to the location, design, materials, construction, alteration, repair, equipment, use and occupancy, maintenance, removal, and demolition of every building and other structure, and to any appurtenances connected or attached to such buildings and such structures, except in so far as such matters are otherwise specifically provided for in the Charter, or under other Titles of the Municipal Code of the City of Cleveland." Section 5.0103 of The Codified Ordinances of the City of Cleveland.

TABLE 1

	Number of Structures	Number of Dwelling Units
a. Inspected during past 12 months	12,483	43,890
b. (1) Found in noncompliance with housing code during past 12 months	11,145	38,808
(2) Noncompliance carryover from prior inspections	5,498	19,237
(3) Total requiring compliance action b(1) plus b(2)	16,643	58,250
c. (1) Brought into compliance during past 12 months	3,656	12,796
(2) Razed or otherwise eliminated during past 12 months	489	1,712
(3) Total compliance actions completed c(1) plus c(2)	4,145	14,507
(4) Remaining in noncompliance at end of past 12 months b(3) minus c(3)	12,498	43,743

Source: City of Cleveland Workable Program For Community Improvement, 1967-1968.

there were remaining, at the end of that period of time, fifteen more structures not in compliance than were inspected and only 147 dwelling units less in non-compliance than were inspected.

As a result, there are over 43,743 dwelling units in Cleveland's files pending action as of the writing of this paper. This figure represents housing units in which people are living in conditions where even the minimal standards for the preservation of their health, safety and welfare are not being met.

How adequate are the existing procedures now utilized to diminish the number of substandard dwelling units? A look at some statistics in Table 2 during the same period of time (May, 1967-May, 1968) shows:

TABLE 2

Cases appealed to Administrative Boards	362
Cases referred for prosecutive action	527
DISPOSITION OF COURT CASES (Total)	511
CONVICTIONS	234
CONTINUANCES	193
CAPIAS' ISSUED	41

DISMISSALS-NOLLIES	43
AMOUNT OF FINES IMPOSED	\$20,085.00
AMOUNT OF FINES SUSPENDED	\$ 3,605.00
AMOUNT OF FINES PAID	\$16,480.00

Source: City of Cleveland Workable Program For Community Improvement, 1967-1968.

There are two interesting aspects to these statistics. First, the type of ownership in the cases referred for prosecutive action is indicated in Table 3:

TABLE 3

169	One-Family	95 Absentee	56%
		74 Resident	44%
154	Two-Family	112 Absentee	73%
		42 Resident	27%
204	Multi-Family	161 Absentee	84%
		43 Resident	16%
527 (total)		527	

Source: City of Cleveland Workable Program For Community Improvement, 1967-1968.

Out of a total of 527 cases referred for prosecution, 368 were owned by absentee landlords.

Second, the convictions obtained and fines imposed averaged approximately \$70.00 per violation. It would seem that it is cheaper to pay the fine than to make the necessary repairs. This is not exclusive to Cleveland but seems to be a common experience with other cities.⁹ Paying fines merely adds to the cost of doing business without substantially reducing the property owner's return on his investment.¹⁰

Although the courts have recognized the problem and are working diligently to assist in seeking solutions, they are bound by traditional methods. Nonetheless, the existence of 43,473 inadequate dwelling units,

⁹ Gribetz and Grad, "Housing Code Enforcement Reviewed," 23 *Journal of Housing* 511 (Oct. 1966).

¹⁰ The following figures represent the cost of improvements to real properties throughout the City of Cleveland as a result of inspection activities by approximately 95 housing inspectors in the Division of Housing for a three month period:

June, 1968 —\$110,707.50
 July, 1968 —\$475,866.00
 August, 1968—\$168,424.00

resulting in only 234 convictions (not corrections), is hardly an adequate inroad to reducing urban decay.

The approach must be changed. No longer is it sufficient to merely make inspections, find violations, and fine the violators. More efficient and affirmative methods must be found to prevent the occurrence of violations and, if violations are found, to bring the properties back to the required standards.

Police Power As Related To Housing Codes

Before the inadequacies of the present methods can be determined, the historical pattern by which they were established must be examined.

The public, recognizing the need for police regulations in certain areas, granted home rule power to its municipalities. Ohio's Constitution authorizes municipalities to adopt and enforce, within their limits, local police, sanitary, and other similar regulations as are not in conflict with general law.¹¹

Historically the procedures utilized for the enforcement of ordinances and regulations adopted for the preservation of the public health, safety, and welfare have been under the police power. The police power is the governmental authority to enact and enforce regulations to preserve and promote the public health, safety, morality, and welfare;¹² it encompasses the authority to cope with prevailing conditions for the purpose of serving the public welfare.¹³

Housing codes, being related to the question of the public health, safety, and welfare, are within the police power under the Ohio Constitution.¹⁴ The courts have recognized that less than adequate housing is of great public interest and have gone so far as to indicate that not only is the elimination of slum and blight conditions a matter of public interest, but also is the prevention of their reoccurrence.¹⁵

The ordinances and regulations are primarily enforced by the local housing or building inspectors who, upon a complaint or in the normal inspection processes, inspect a structure for violations of local ordinances or regulations. If a housing or building inspector finds a violation or violations, a notice is issued. The owner then has certain options. The

¹¹ Ohio Const. art. XVIII, Sec. 3.

¹² Benjamin v. Columbus, 167 Ohio St. 103 (1957).

¹³ See, for a review of police power: Berman v. Parker, 348 U.S. 26 (1954); Cincinnati v. Correll, 141 Ohio St. 535 (1943); State ex rel. Schulman v. City of Cleveland, 8 Ohio Misc. 1, 220 N.E.2d 386 (C.P. 1966); aff'd., Ct. of App., Cuy. County, Case No. 28127 (1967); Motion to Certify overruled, Supreme Court of Ohio, Case No. 68-14 (1968); Nolden v. East Cleveland City Comm'n., 12 Ohio Misc. 205, 232 N.E.2d 421 (C.P. 1966); Miller v. Board of Public Works, 195 Cal. 477, 234 P. 381 (1925).

¹⁴ Ohio Const. art. XVIII, Sec. 3. Also see note 4 *supra*.

¹⁵ State ex rel. Bruestle v. Rich, 159 Ohio St. 13 (1953).

owner may of course comply or may appeal the notice to the appropriate administrative body or board. If he does nothing, the enforcement processes must be utilized to compel compliance.

The Inadequacies of The Present Methods of Enforcement

As has been pointed out, the traditional procedure for enforcement of police ordinances and regulations is to find the violator and then punish him. The courts are beginning to recognize the inadequacy of this method in attempting to combat blight.

In an eloquent summary of housing problems facing the cities, the Honorable Donald Lybarger, in *State, ex rel. Milt Schulman v. City of Cleveland*,¹⁶ recognized not only the problems of decay but also the inadequacies of present enforcement procedures. The position of the City of Cleveland was sustained, enforcing its order of demolition of structures where the housing code standards were not being met and the property owners failed to respond to or comply with such orders.

The court stated:

Heretofore the Court has recited what the evidence clearly shows is the condition of the plaintiffs' two properties. There is before the Court the description of the plaintiffs' structures and others which likewise have been vandalized, boarded up, left unsanitary and a refuge for rats, exposed to the elements because of upper story broken windows, having loose gutters and broken downspouts spewing drain water over the neighborhoods, and with the probability of boards being torn off periodically to admit juveniles—in short, festering sores on the face of a great city.

An owner cannot escape responsibility or eliminate the violations merely by boarding up a condemned building and just letting it stand. The external violations are still there and, as the evidence here shows, a board may easily be torn from a closed opening to admit anyone intent on mischief or unlawful conduct. The violations still stand. The nuisance is there for all to see. The Court has no power to pass judgment on the social and economic factors which have contributed to the conditions displayed by the evidence in this case. It is sufficient to say that they should be of deep concern not only to the inner-city but also to all who claim the larger community as their residence.

The owners of many properties in slum areas have paid no attention to the city's lawful demands that they fix up their premises,

¹⁶ *State ex rel. Schulman v. City of Cleveland*, 8 Ohio Misc. 1, 220 N.E.2d 386 (C.P. 1966); aff'd without opinion, Ct. of App., Cuy. County, Case No. 28127 (1967); Motion to Certify overruled, Supreme Court of Ohio, Case No. 68-14 (1968), at 21-22—a most interesting sidelight to the *Schulman* decision is that it had originally been filed as a taxpayer's action, and the trial court found it to be brought as such. As a result, the issues and any and all matters that were raised, or should properly have been raised, are *res adjudicata*, and binding on all taxpayers similarly situated. See, *Stock Yards v. Cincinnati*, 14 Ohio N. P. (n.s.) 529 (1913), aff'd. 1 Ohio App. 452 (C.A. Hamilton County) (1913); *Thomas v. Greenwood*, 6 Ohio Dec. Reprint 639 (1878); 52 Am. Jur. 26, *Taxpayer's Action* 838, p. 26 (1960).

but have allowed them to deteriorate and become a menace in many neighborhoods.

The city by the actions here narrated has taken steps to remedy a serious situation. This Court sustains the legislation and the steps taken to enforce it, and finds that the plaintiffs and others similarly situated have been justly dealt with. The structures in question are in fact and in the sight of the law public nuisances. The demolition of the premises set forth in the ordinances should proceed without delay to the end that the nuisances may be abated.¹⁷

Civil Proceedings—A Breakthrough

Jurisdictional Advantages

A more preventative and affirmative approach to the aforementioned problems was sought. The City should not be interested solely in punishing a crime, rather it should be interested in preventing the commission of a crime.

A seldom used statute was utilized to place the responsibility of maintaining property within housing code standards with the property owner where it properly belongs.

The relevant portions of the statute are:

Subject to section 1901.17 of the Ohio Revised Code, a municipal court has original jurisdiction within its territory:

* * *

(1) The municipal court of Cleveland shall also have jurisdiction within its territory:

* * *

(4) In all actions for injunction to prevent or terminate violations of the ordinances and regulations of the City of Cleveland enacted or promulgated under the police power of the City of Cleveland, pursuant to Section 3 of Article XVIII, Ohio Constitution, over which the common pleas court has or may have jurisdiction, and in such case the court may proceed to render such judgments and make such findings and orders in the same manner and to the same extent as in like cases in the court of common pleas. (Emphasis added.)

Under this section it was believed that an injunction action could be filed in the Municipal Court of Cleveland as in any other civil proceeding, the statute being jurisdictional. A key phrase in the statute is "----- over which the common pleas court has or may have jurisdiction -----."

Although the common pleas court has jurisdiction in many areas, three Sections related to the purposes of this paper are §§ 715.30, 713.13 and 715.44, Ohio Revised Code.¹⁸ These make the enforcement of police ordinances and regulations the subject of litigation over which these courts have jurisdiction.

¹⁷ State ex rel. Schulman v. City of Cleveland, *supra* note 16.

¹⁸ Ohio Rev. Code Secs. 715.30, 715.44 (1953).

With jurisdiction therefore conferred by statute, the actions are to be brought “. . . in the same manner and to the same extent as in like cases in the Court of Common Pleas.”¹⁹ This obviates the defense of an adequate remedy at law for these actions to enforce housing and building ordinances may be brought by the City “. . . in addition to any other remedies provided by law”²⁰

Practical Advantages

Use of the civil remedy has other practical advantages. The defendant may be cross-examined under the statute as in a civil proceeding,²¹ whereas, in criminal cases a defendant may not be forced to testify against himself.²² In addition, the degree of proof is reduced to a preponderance of the evidence rather than beyond a reasonable doubt and, it being an equity proceeding, the court has continuing jurisdiction over the person of the defendant until all code violations are abated,²³ the court retaining jurisdiction for the purpose of granting all proper relief²⁴ with concurrent power to punish for contempt.²⁵ These are but some of the more important advantages of civil as opposed to criminal proceedings—continuing jurisdiction over the adverse party and the concurrent power of contempt of court if the violations are not corrected.

These steps have been taken in an attempt to improve code enforcement but they are not enough. The several procedures used in one case tried by the authors in the Cleveland Municipal Court will demonstrate the methods thus far mentioned. Suffice it to say at this point that it is necessary to find and create an expanded means of obtaining the desired solution.

Receivership

The utilization of the injunctive process has expanded the methods of enforcement by making available to the cities the broader aspects of the municipal court's authority. However, the continuing jurisdiction

¹⁹ Ohio Rev. Code, Sec. 1901.18 (I) (4) (1953).

²⁰ *Ibid*; Johnson v. United Enterprises, Inc., 166 Ohio St. 149 (1957); McFarland v. Beaver Township Board of Appeals, 9 Ohio App. 2d 57, 222 N.E.2d 841 (1967).

²¹ Ohio Rev. Code, Sec. 2317.07 (1953); Oleksiw v. Weidener, 2 Ohio St. 2d 147 (1965).

²² U. S. Const. amend. V; U. S. Const. amend. XIV.

²³ See generally, 20 Ohio Jur. 2d, Equity, and 27 Am. Jur. 2d Equity.

²⁴ Brinkershoff, Trustee v. Smith, 57 Ohio St. 610 (1898).

²⁵ Ohio Rev. Code, Sec. 2705.05 (1953). See for a general discussion of Contempt, 11 Ohio Jur. 2d 140, Contempt, Sec. 58 and 29 Ohio Jur. 2d 444, Injunctions, Section 211. A contempt citation is a powerful club and should be used sparingly, but one to be used as a last resort in attempting to compel compliance. The court has the power to find an individual in contempt any number of times for failure to abide by its orders.

of the courts to enforce their orders through contempt proceedings still contains the seeds of the philosophy that is found in criminal proceedings which is a rather complex answer to a straightforward problem.

What is the solution desired? The answer is simple; decent, safe, and sanitary living conditions are required. The problem is essentially to enforce compliance with the minimum standards and still preserve the constitutional right to property.

Some of the methods utilized by the courts to enforce their equitable decrees in analogous situations appeared appealing, particularly that of receivership.

A receivership by definition is “. . . an extraordinary provisional remedy of ancillary character, regulated by statutory provision and allowable only in cases pending for some other purpose,²⁶ and a receiver is a person appointed by a court to take into his custody, control, and management the property of another person pending judicial action concerning it.²⁷ Ordinarily the receiver is appointed by the court pursuant to specific statutory authority²⁸ and upon appointment is entitled to the control and possession of the property subject to the orders of the appointing court.²⁹

The Receiver in Housing Code Enforcement

Relating the foregoing principles to the problem of housing code enforcement, receivership as a method of code enforcement appears appealing. It is a technique by which economically sound buildings that an owner is unwilling, unable, or reluctant to repair could be rehabilitated by a court appointed receiver and returned to the community as a housing resource. Additionally, the threat of an owner's profit being utilized over a period of time to enable a receiver to improve the property in question may act as an inducement to owners to invest in the repair of their own property. The need was then to relate a program of receivership to code enforcement. This required a search of the enabling statutes in Ohio and a perusal of analogous cases.

Section 1901.18 (I) (4) of the Ohio Revised Code, granting jurisdiction to the Cleveland Municipal Court to enjoin housing and building code violations, paralleled the jurisdiction of the common pleas court in similar cases. As previously shown, Section 715.30 of the Ohio Revised Code³⁰ gives the common pleas court jurisdiction to entertain

²⁶ Hoiles v. Watkins, 117 Ohio St. 165 (1927).

²⁷ Hamburger v. Darusmont, 3 Ohio N. P. 222, 4 Ohio Dec. 232 (1896).

²⁸ Ohio Rev. Code, Sec. 2735.01 (1953).

²⁹ Bank v. McLeod, 38 Ohio St. 174 (1882).

³⁰ Ohio Rev. Code, Sec. 715.30 (1953) reads in part:

In the event any building or structure is being erected, constructed, altered, re-

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a suit for injunction to prevent and terminate the violation of ordinances and regulations of a municipality. Accordingly, since the court of common pleas had jurisdiction to issue injunctions to prevent or terminate violations upon suit of a municipality, it necessarily followed that the Cleveland Municipal Court had jurisdiction in like situations.

Further, Section 1901.18 (I) (4), Ohio Revised Code, states the Cleveland Municipal Court may “. . . proceed to render such findings and orders in the same manner and to the same extent as in like cases in the Court of Common Pleas (emphasis added).” Since Section 2735.01, Ohio Revised Code, states that a common pleas court may appoint a receiver “. . . after judgment to carry the judgment into effect . . .,” it follows that the Cleveland Municipal Court could, in the same circumstances, also appoint a receiver “. . . to carry the judgment into effect. . . .” The Supreme Court of Ohio in *Soul v. Lockhart*,³¹ affirmed a decision which originated in the Cleveland Municipal Court and held that the Cleveland Municipal Court was correct in appointing a receiver over corporate assets of the defendant because the court had the power to appoint receivers where they are necessary to enforce judgments of the court. The court stated:

We are therefore of the opinion that the municipal court of Cleveland, in the appointment of receivers, is confined to the appointment of special receiverships, where they may be necessary to conserve its original jurisdiction and to enforce its judgments.³²

*Soul v. Lockhart*³³ is direct authority for appointment of a special receiver by the Cleveland Municipal Court to enforce its judgments except for the apparently limiting language of Section 1901.13 (B), Ohio Revised Code³⁴ which states that a municipal court has power to appoint receivers of personal property. However, this section must be read in light of Section 1901.18 (I) (4), Ohio Revised Code, and the last para-

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paired, or maintained in violation of any such ordinances or regulations, or there is imminent threat of violation, the municipal corporation or the owner of any contiguous or neighboring property who would be especially damaged by such violation, in addition to any other remedies provided by law, may institute a suit for injunction to prevent or terminate such violation.

³¹ 119 Ohio St. 393 (1928), the case was decided under then existing General Code Sections 1579-6 and 1579-11, which are present Sections 1901.18 and 1901.13, Ohio Revised Code.

³² *Id.* at 399.

³³ *Soul v. Lockhart*, *supra* note 31 at 396. The court stated that the original jurisdiction of the Cleveland Municipal Court is conferred by Section 1579-6, General Code (Sec. 1901.18, Ohio Revised Code).

³⁴ Ohio Rev. Code Sec. 1901.13 (B) reads in part:

In any action or proceeding of which a municipal court has jurisdiction, the court or any judge thereof has power:

* * * * *

(B) To issue any necessary orders in any proceedings before and after judgment . . . and appointment of a receiver of personal property, for which authority is conferred upon the courts of common pleas or a judge thereof, . . .

graph of Section 1901.13, Ohio Revised Code³⁵ as the appointment of a receiver is an equitable remedy and therefore, within the purview of the last paragraph of Section 1901.13, Revised Code, which provides that in any action brought in a municipal court within Cuyahoga County, that court has jurisdiction “. . . to hear and determine all . . . equitable remedies necessary or proper for a complete determination of the rights of the parties.”

Section 1901.13 (B), Ohio Revised Code, applies to the powers of municipal courts generally but since the last paragraph of this Section is an enlargement of the jurisdiction of municipal courts located in Cuyahoga County, the Cleveland Municipal Court is not limited by Section 1901.13 (B), Ohio Revised Code. The “powers” of the Cleveland Municipal Court includes jurisdiction to appoint a special receiver “. . . to enforce all rights involved therein. . . .”³⁶

Example

As indicated earlier, the procedures used in actual cases tried in the City of Cleveland will be discussed. A three suite apartment building with two store fronts located in the City of Cleveland in a fairly stable residential area, was the subject of housing problems and litigation. The owner had been prosecuted and convicted on at least seven separate occasions.³⁷ Over the years he had received approximately eleven violation notices but the property was never brought into compliance with the minimum code standard requirements.

In late 1966, a Petition for Mandatory Injunction³⁸ was filed to terminate existing violations of the Codified Ordinances of the City of Cleveland on the property. The issues were joined and trial held. The trial court found the property to be in violation of the Codified Ordinances relating to housing and sanitation and that the maintenance and continuation of said violations constituted a nuisance detrimental to the public health, safety, and welfare. An order was issued enjoining

³⁵ The last paragraph of Ohio Rev. Code, Sec. 1901.13 reads as follows:

Whenever an action or proceeding is properly brought in a municipal court within Cuyahoga County, the court has *jurisdiction* to determine, preserve, and enforce all rights involved therein, *and to hear and determine all legal and equitable remedies necessary or proper for a complete determination of the rights of the parties* (authors' emphasis).

³⁶ Ohio Rev. Code, Sec. 1901.13, last paragraph.

³⁷ The owner had been prosecuted every year from 1959 through 1966, some seven times, and had fines levied totaling \$1050.00, plus costs, some of which was suspended. He also had been ordered to serve 40 days in the workhouse, some of which were suspended.

³⁸ The City of Cleveland v. Jury, Case No. 793,852, Municipal Court of Cleveland. The structure itself is located in the Mt. Pleasant Neighborhood Area, a basically sound residential neighborhood. The property was the proverbial “bad apple in a good barrel,” as the other homes and apartments on the street were maintained, in most cases, to minimum code standards.

the defendant from maintaining the premises in this manner and ordered him to bring the property into compliance with the applicable sections of the Codified Ordinances of the City of Cleveland.

The defendant did not comply with the court's order. A Motion to Show Cause was filed with the Municipal Court seeking to hold the defendant in contempt of court for failure to comply with the order. While the defendant was found guilty of contempt, this still did not produce the desired result of compliance.

Subsequently, the City filed a "Motion for Appointment of Receiver"³⁹ with the court to take possession of the premises, comply with the court order, and manage the property in order to secure the necessary funds therefor. Upon the hearing the court determined that it was necessary for a Receiver to be appointed to carry out the court's order.

A receiver was appointed on March 6, 1967, and has been serving since that time. The court order is being carried out and the premises have been restored as a useful addition to the housing market.⁴⁰

³⁹ The Motion requested an order to appoint a receiver to carry out the judgment of the court dated October 28, 1966.

⁴⁰ The order appointing the receiver empowered him to take possession of the real property; to collect rents and income from the property; to pay all necessary expenses of managing the property; to establish rentals, rent and evict tenants; and to repair the property in conformance with minimum code standards.

⁴¹ The States of New York and Illinois have receivership statutes which place control of seriously deteriorated buildings into the hands of a court appointed receiver.

The New York Procedure

The New York procedure is strictly statutory, N.Y. Mult. Dwel. Law, Sec. 309, and contains quite elaborate safeguards for the owners as well as others having an interest in the property before the court ever appoints a receiver. Under the New York procedure, an inspection is conducted to determine if the building ". . . constitutes a serious fire hazard or is a serious threat to life, health, or safety . . .," N.Y. Mult. Dwel. Law, Sec. 309 (I) (B); in short, a public nuisance. If these conditions exist, the Department of Housing issues an order to repair within 21 days. Upon failure to remedy the conditions, an application is made to show cause why the commissioner of the Department of Real Estate should not be appointed receiver of the building. After the appropriate hearings, and after all interested parties are given an opportunity to step in and comply with the order, the Department of Real Estate is appointed as receiver with full authority to remedy the nuisance and make all necessary repairs *from a revolving fund set up by the City*. The receiver has a lien for all necessary expenses, which lien has priority over most pre-existing encumbrances. The receiver is discharged only after the costs of repairs and receiver's fees have been recouped.

The Illinois Procedure

The Illinois Statute, Ill. Stat. ch. 24 Sec. 11-31-2, generally authorizes injunctive relief against code violations, and is not as closely circumscribed by statute as New York. The statute provides that a municipality can apply for the appointment of a receiver to a court of competent jurisdiction to compel a building or structure to conform to its ordinances. It then provides for various procedural steps, and after those steps have been taken, a receiver may be appointed. Upon appointment, and with approval of the court, the receiver may expend the rents of the property for repairs and rehabilitation, and may also recover the cost of repairs by the issuance

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of receivership certificates. In Illinois the court appoints private parties to act as receivers.

In Chicago, Illinois, the Chicago Dwellings Association has been frequently appointed as receiver, and in 1966 alone the Association was appointed as receiver for some 280 buildings. Ninety of these buildings containing 1200 dwelling units have been rehabilitated and restored to code standards. 1966 Annual Report, Chicago Dwellings Association. In 1967, the Association was appointed receiver of some 202 buildings containing 1873 dwelling units. 1967 Annual Report, Chicago Dwellings Association (Append.).

⁴² The 107th General Assembly (1967-1968) attempted to get enacted new Section 1901.131 of the Revised Code to vest jurisdiction in a municipal court to appoint a receiver to take possession and control of any building occupied or intended for occupancy for residential purposes where that building is in violation of minimum code standards.

This bill (H.B. No. 709) was heard, but not reported out of the Judiciary Committee. It provided that the municipal court may appoint a receiver to take possession and control of the building with full powers of management and gave the receiver authority to issue notes or receiver's certificates for necessary managerial funds, which notes or receiver's certificates were to be a first lien on the premises and superior to all prior liens and encumbrances, except taxes.

The City of Cleveland is going to introduce a receivership bill in the 108th General Assembly. The bill, substantially in the form it will be introduced, reads as follows:

To enact section 1901.131 of the Revised Code relative to granting jurisdiction to a municipal court in the appointment of a receiver to take possession and control of any building occupied or intended for occupancy for residential purposes where the owner has violated any ordinance regulation concerning building or housing.

Be it enacted by the General Assembly of the State of Ohio:

2 SECTION 1. That section 1901.131 of the Revised Code be
3 enacted to read as follows:

4 Sec. 1901.131 (a) If any appropriate official of any municipi-
5 pality determines, upon due investigation, that any real property
6 within said municipality, improved with a building occupied or
7 intended for occupancy, in whole or in part, for residential pur-
8 poses, is in violation of any ordinance or regulation concerning
9 building or housing enacted pursuant to Chapter 715 of the Ohio
10 Revised Code or Section 3 of Article XVIII of the Ohio Constitution,
11 and the owner of such property fails, after due notice, to correct
12 such violations, the municipality may make application to the
13 municipal court in whose district said property is located for an
14 injunction requiring the owner to correct such violations of such
15 ordinances or regulations, or for such other order as the court
16 may deem necessary or appropriate to secure such compliance.

17 (b) In such proceeding, if the court finds that the building
18 in violation of such ordinances or regulations constitutes a public
19 nuisance, and that the owner in such proceeding or prior thereto
20 has been afforded reasonable opportunity to correct such violations
21 and has refused or failed to do so, the court shall cause notice
22 to be served upon the owner, upon each mortgagee of record or
23 other lien holder of record, and may serve notice on any other
24 person having an interest in such property, of the findings of the
25 court, and in order to show cause why a receiver should not be
26 appointed to perform such work and to furnish such material as may
27 be reasonably required to abate such public nuisance. After such
28 hearing, the court may appoint a receiver to take possession and
29 control of such property. Such receiver shall be a municipal
30 official designated by the municipality. In the alternative, at
31 the request of the municipality, the court shall appoint as re-
32 ceiver, a non-profit corporation designated by the municipality,
33 two-fifths of the members of the board of trustees of which are
34 appointed, or approved as municipally designated trustees, by the

35 municipality. No part of the net earnings of such corporation shall
36 inure to the benefit of any private shareholder or individual.
37 Membership on the board of trustees of such non-profit corporation
38 shall not constitute the holding of a public office or employment
39 within the meaning of sections 731.02 and 731.12 of the Revised
40 Code or any other section of the Revised Code. Further, such
41 membership shall not constitute an interest, either direct or
42 indirect, in a contract or expenditure of money by any municipal
43 corporation. No member of such board of trustees shall be dis-
44 qualified from holding any public office or employment, nor shall
45 such member forfeit any such office or employment, by reason of
46 his membership on the board of trustees of such non-profit corpor-
47 ation, notwithstanding any law to the contrary.

48 "Public nuisance" shall mean, for the purposes of this
49 section, any building, or portion thereof, which constitutes a
50 public nuisance at common law or in equity jurisprudence; or which
51 is in a condition hazardous to the life, health, welfare or safety
52 of the public or of the occupants of such building; or which con-
53 stitutes such a hazard by reason of being insufficiently supported,
54 ventilated, seweraged, drained, cleaned, lighted, or inadequately
55 provided with safe ingress or egress, or because of inadequate
56 maintenance, dilapidation, obsolescence or abandonment. The closing
57 or boarding up of any such building, or portion thereof, found to
58 be a public nuisance shall not be deemed an abatement thereof.

59 (c) Prior to appointing a receiver, the court shall permit
60 any mortgagee of record or lien holder of record, in the order of
61 their priority of interest in title, to undertake such work and to
62 furnish such materials as are necessary to correct all such viola-
63 tions, provided such person demonstrates the ability promptly to
64 undertake the work required and either posts security for the per-
65 formance thereof or otherwise satisfies the court that the work
67 will be completed promptly. All amounts expended by any such party
68 with the prior approval of the court for correcting such violations
69 shall be, at the option of such party, a lien on the property, bear-
70 ing such interest and payable upon such terms as are approved by
71 the court. Such lien shall have the same priority as the mortgage
72 of a receiver, as hereinafter provided, if a certified copy of the
73 court order approving the expenses, the interest and terms of pay-
74 ment of such lien and a description of the property is filed for
75 record in the office of the Recorder of the county where the prop-
76 erty is located, within thirty days after the date of such court
77 order. If at any time the court determines that any party so
78 undertaking such corrective work cannot or will not proceed, or has
79 not proceeded with due diligence, the court may thereupon appoint
80 the receiver herein provided to take possession and control of
81 such property.

82 (d) Prior to ordering any work or the furnishing of materials,
83 the court shall make the following findings:

84 (1) The cost of the work and materials
85 required to abate, and obtain financing for the
86 abatement of, the public nuisance by repair and
87 rehabilitation therefor;

88 (2) The estimated income and expenses of
89 the property after the completion of such work and
90 the furnishing of such materials;

91 (3) The need for and terms of any financing
92 for the undertaking of such work and the furnishing
93 of such materials; and

94 (4) If repair and rehabilitation is not
95 found feasible, the cost of demolition of the
96 buildings, or portions thereof, which constitute
97 such public nuisance.

98 In no event shall the court authorize the abatement of such public
99 nuisance by repair and rehabilitation if the property is located

100 in an area that has been determined by the municipality to be a
 101 slum and blighted area. The court shall serve such findings upon
 102 the owner and each mortgagee of record and every other lien holder
 103 of record, together with an order to show cause either why such
 104 work and materials should not be furnished or why such buildings,
 105 or portions thereof, should not be demolished. After hearing, the
 106 court shall order the furnishing of work and materials, or demoli-
 107 tion, or a combination thereof, whichever it shall find most
 108 feasible to abate, and finance abatement of, such public nuisance.

109
 110 (e) Upon the written request to have such buildings, or
 111 portions thereof, demolished, by the owner and all mortgagees and
 112 other persons having a contract right to have said buildings main-
 113 tained, the court shall order such demolition; provided that the
 114 costs of demolition and of the receivership, including those to
 115 which a municipality is entitled to reimbursement by virtue of
 116 subsection (g), all notes, certificates and mortgages of the
 117 receivership shall have been paid by the requesting parties.

118 (f) Before proceeding with its duties, such receiver shall
 119 post a bond in an amount designated by the court. The court may
 120 empower such receiver to do any or all of the following:

121 (1) Report on the feasibility of each of
 122 the alternative methods of abating such public nuisance;

123 (2) Take possession and control of the property,
 124 operate and manage the property, establish and collect
 125 rents and income, lease and rent the property, and
 126 evict tenants;

127 (3) Pay all expenses of operating and con-
 128 serving the property, pay the cost of electricity,
 129 gas, water, sewerage, heating fuel, repairs and
 130 supplies, custodian services, taxes and assessments
 131 and insurance premiums, hire a managing agent, and
 132 pay reasonable compensation therefor;

133 (4) Pay pre-receivership mortgages or
 134 installments thereof and other liens;

135 (5) Perform or enter into contracts for the
 136 performance of all work and the furnishing of materials
 137 necessary to abate and obtain financing for the abate-
 138 ment of such public nuisance; remove and dispose of
 139 any personal property abandoned or stored or other-
 140 wise situated or standing on the property in viola-
 141 tion of such regulations or ordinances;

142 (6) Issue notes or receivers' certificates
 143 and secure them by a mortgage bearing such interest
 144 and upon such terms and conditions as the court may
 145 approve; and when sold or transferred by the receiver
 146 in return for valuable consideration in money, material,
 147 labor or services, such notes or certificates shall be
 148 freely transferable. If within 60 days of such sale or
 149 transfer, such mortgage is filed for record in the
 150 County Recorder's office where the property is located,
 151 it shall be a first lien upon the property and the rents
 152 and issues thereof, and shall be superior to any claims
 153 of the receiver and to all prior or subsequent liens and
 154 encumbrances except taxes and assessments; and for
 155 purposes of priority among such receiver's mortgages,
 156 the first to be recorded shall be the first in
 157 priority;

158 (7) Obtain mortgage insurance for any such
 159 receiver's mortgage from any agency of the federal
 160 government;

161 (8) Enter into any agreements and to do such
 162 acts as may be required to maintain and preserve the
 163 property and comply with all housing and building

164 regulations and ordinances which the court has found
165 the property to be in violation of;

166 (9) Give the custody of the property and the
167 opportunity to abate the nuisance and operate the
168 property to the owner, or any mortgagee of record,
169 or any lienholder of record.

170 The amounts expended by the receiver, the amount of any
171 note or certificate issued by the receiver, any amounts expended by
172 any other person authorized by the court under this section, any
173 mortgage authorized by the court under this section and the amounts
174 connected with foreclosure thereof shall not be limited by any
175 dollar jurisdictional limit otherwise imposed upon municipal courts.
176 The receiver shall not be personally liable except for misfeasance,
177 malfeasance, or nonfeasance in the performance of the functions
178 of his office.

179 "(g) From time to time the court may assess as court costs,
180 the costs and expenses set out in (f) (3) above and approved
181 receiver's fees to the extent they are not covered by the income
182 of the property. If a legislative body of the municipal corporation
183 authorizes payment of such costs, the municipality will promptly pay
184 said costs. At any approved subsequent period, the municipality shall
185 be reimbursed any such payments by the receiver from any surplus in
186 the income of the property. To the extent that such costs paid by
187 the municipality are not reimbursed from income at the termination
188 of the receivership, the municipality shall have a lien from the
189 date of the first such payment provided that a certified copy of
190 a court order containing said non-reimbursed costs, the date of
191 first payment thereof by the municipality and a legal description
192 of the property is filed within thirty days of the termination of
193 the receivership."

194 (h) The receiver may be discharged at any time in the
195 discretion of the court and shall be discharged after abatement of
196 such public nuisance upon payment of all costs of the receivership,
197 including those paid by the municipality to which it is entitled
198 to reimbursement by virtue of subsection (g), provided that either
199 all receiver's notes, certificates and mortgages issued hereunder
200 are paid or provided that all the holders of such notes, certifi-
201 cates and mortgages so request.

202 (i) The creation of any mortgage lien under this section
203 prior to or superior to any mortgage of record at the time any such
204 mortgage lien hereunder was created, shall not disqualify any such
205 prior recorded mortgage as a legal investment under any of the pro-
206 visions of Chapters 1105 and 1151 of the Ohio Revised Code, or any
207 other provisions of the Revised Code, or any other provision of the
208 Revised Code.

209 (j) Service on the owner, any mortgagee, other lien holder,
210 or other person having an interest in the property may be had by
211 registered or certified mail or, failing therein, by publication.