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# Vacant and Abandoned but Not Forgotten: The Rehabilitation of Abandoned Properties in New Jersey

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Vacant and Abandoned but Not Forgotten:  
The Rehabilitation of Abandoned Properties in New Jersey

I. Introduction

Abandoned properties contribute to the blight of communities across the state, negatively affect property values, strain municipal resources, and create an atmosphere of hopelessness. The problem of vacant and abandoned properties is not self-healing for it is unlikely that the housing market, acting alone, will operate to remedy these problem properties.<sup>1</sup> The market is constrained by economic factors and government regulations which impose numerous complications to rehabilitating abandoned properties.<sup>2</sup> Additionally, federal, state, and local governments are also ill-equipped to address abandoned properties because they lack the capital needed to undertake major rehabilitation projects. Home repairs are expensive and it is unlikely citizens would support initiatives to rehabilitate private properties using the taxpayers' checkbook. There is a need for a public-private nexus to successfully undergo the rehabilitation of abandoned properties because the private sector has the capital and expertise needed to implement redevelopment efforts. If incentivized properly, private developers will adopt the public policy initiative of rehabilitating blighted properties.

This note addresses the serious problem vacant and abandoned properties pose to society. Section II of this note discusses the numerous negative effects abandoned properties have on a community and highlights the need for initiatives to rehabilitate these properties. Section III provides a description of the various methods that have been used to address vacant

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<sup>1</sup> Lavea Brachman, *Vacant and Abandoned Property: Remedies for Acquisition and Redevelopment*, LAND LINES NEWSLETTER OF THE LINCOLN INSTITUTE OF LAND POLICY, October 2005, at 2.

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

and abandoned properties. Section IV explains, and critiques, New Jersey's current abandoned property legislation. Section V expands on the deficiencies of New Jersey's legislation and suggests statutory amendments to clarify the notice requirements needed for abandoned property proceedings and to provide a means for private developers to initiate receivership actions to rehabilitate abandoned properties.

## II. Blight and the Problem of Abandoned Properties

A blighted area is defined as a district which is not what it should be.<sup>3</sup> The term "blight" describes the dilapidation process, or condition, of neighborhoods that have fallen below the standards of the community. A blighted community is frequently plagued with decrepit, vacant, and abandoned properties. The withering structures are detrimental to the safety, health, and morale of residents.<sup>4</sup> Throughout the history of industrialization and the Great Depression this scourge was contained to urban areas.<sup>5</sup>

The recession and housing market crash of the 2000s brought blight to the suburbs where there has been a dramatic increase in the number of vacant and abandoned properties.<sup>6</sup> During the Recession, foreclosure rates increased and economic conditions worsened, forcing people to walk away from properties that were of marginal value.<sup>7</sup> These properties were often left vacant and abandoned as a result of the previous owner's inability to survive tough economic times.<sup>8</sup> In turn, the abandoned properties jeopardized the entire neighborhood's ability to survive.

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<sup>3</sup> Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and The Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 306 (2003-2004).

<sup>4</sup> Colin Gordon *supra* note 3 at 310.

<sup>5</sup> *Id.* at 308.

<sup>6</sup> Hye-Sung Han, *The Impact of Abandoned Properties on Nearby Property Values*, HOUSING POLICY DEBATE, Vol. 24 Iss. 2 (2014) at 26.

<sup>7</sup> *Id.* at 1.

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

There are three aspects of property abandonment—functional, financial, and physical.<sup>9</sup> Functional abandonment describes a property that is not suitable for residency due to an inhabitable condition such as boarded up windows and doors.<sup>10</sup> Financial abandonment occurs when a property owner fails to meet his or her financial obligations of ownership such as making mortgage and tax payments.<sup>11</sup> Physical abandonment describes a property which has fallen into a state unfit for occupation due to blatant neglect.<sup>12</sup> Properties are commonly included in all three categories, for example, due to financial abandonment there may be a discontinuance of basic property maintenance and the property will be functionally and physically abandoned.

All forms of abandoned properties decrease surrounding property values. The presence of an abandoned property within 250 feet decreases neighboring properties by 0.87%.<sup>13</sup> The further the distance of an abandoned property, the less of a negative effect it will have on neighborhood property values. Additionally, the longer the property remains abandoned the greater the negative effect on surrounding property values will be.<sup>14</sup>

An abandoned property is an epicenter emitting ripples of negative effects throughout the neighborhood. The closer surrounding properties are to the epicenter, the greater the negative effects and the longer the property remains abandoned the further the ripples of blight radiate into the community.<sup>15</sup> For example, “a Philadelphia study found that the presence of one abandoned property on a block reduced the value of the other properties on the block by nearly \$6,500.”<sup>16</sup> The first few abandoned properties in a community have the greatest negative effect

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 3-4

<sup>11</sup> *Id.* at 3.

<sup>12</sup> Han *supra* note 6 at 3-4.

<sup>13</sup> *Id.* at 57.

<sup>14</sup> *Id.* at 59.

<sup>15</sup> *Id.* at 66.

<sup>16</sup> Allan Mallach, *Abandoned Property: Effective Strategies to Reclaim Community Assets*, HOUSING FACTS & FINDINGS, (FannieMae Foundation) Vol. 6 No. 2 2004 at 6; Allan Mallach, *Restoring Problem Properties: A Guide*

on property values; the impact on surrounding property values increased from a 0.97% impact when there was a single abandoned property to a 2.66% impact with the presence of two abandoned properties.<sup>17</sup> Once a threshold number of properties are abandoned, calculated at approximately fourteen properties, each additional abandoned property has less of an effect on nearby property values.<sup>18</sup> It can be speculated that the community with fourteen abandoned properties has reached a level of hopelessness whereby an additional abandoned property cannot sink the neighborhood into a state of blight worse than the present.

It has been proven that abandoned properties bring an increase of crime to the community, offering a haven for prostitution, drug trafficking, and other criminal activities.<sup>19</sup> A study in Austin, Texas showed 34-41% of abandoned properties were being used for illegal activities.<sup>20</sup> Another study in Pittsburgh, Pennsylvania showed that vacant and abandoned properties led to a 15% increase in violent crimes.<sup>21</sup> High crime rates make neighborhoods undesirable to residents and new homebuyers, which perpetuates blight. Accordingly, high crime rates inevitably increase the burden on municipalities to provide a police presence in order to combat the criminal activities.

Moreover, abandoned properties create a massive fiscal burden to municipalities as they incur the costs of preventing fire and public safety hazards. “The National Fire Protection

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to *New Jersey's Abandoned Property Tools*, HOUSING AND COMMUNITY DEVELOPMENT NETWORK OF NEW JERSEY, 4 (2005).

<sup>17</sup> Han *supra* note 6 at 107.

<sup>18</sup> *Id.* at 108.

<sup>19</sup> Brachman, *supra* note 1 at 1; Allan Mallach, *Restoring Problem Properties: A Guide to New Jersey's Abandoned Property Tools*, HOUSING AND COMMUNITY DEVELOPMENT NETWORK OF NEW JERSEY, 4 (2005) at 5; Allan Mallach, *Abandoned Property: Effective Strategies to Reclaim Community Assets*, HOUSING FACTS & FINDINGS, (FannieMae Foundation) Vol. 6 No. 2 2004 at 6; Frank S. Alexander & Leslie A. Powell, *Neighborhood Stabilization Strategies for Vacant and Abandoned Properties*, ZONING AND PLANNING LAW REPORT (Emory University School of Law) Vol. 34 No. 8 September 2011 1, 1.

<sup>20</sup> Han *supra* note 6 at 9.

<sup>21</sup> *Id.*

Agency reports that, in 1999, an estimated 11,400 structure fires in vacant properties caused 24 civilian deaths, 66 civilian injuries, and \$131.5 million in direct property damage”.<sup>22</sup> The estimated “cost of police and fire services per block showed an annual increase of \$1,472 for each vacant property.”<sup>23</sup> Municipalities also incur costs when they are forced to take action to secure abandoned properties to maintain public health standards. Depending on the number of abandoned properties in the municipality, the cost to board-up, clean-up, or demolish abandoned properties can amount to millions of dollars.<sup>24</sup> This is a direct cost the municipality is forced to bear. The municipality is also faced with lost tax revenue as the properties sit abandoned, which increases the burden on local governments.<sup>25</sup>

Due to the multifarious negative consequences of blight, municipalities have tried to ease the burden through facilitating the rehabilitation of abandoned properties. Those approaches include tax foreclosures, code enforcement and nuisance abatement, land banks, and receivership. Each will be explored below.

### III. Approaches to Combating Abandonment

It has been noted that “blight was the disease, slums were the result, and redevelopment was the cure.”<sup>26</sup> There have been numerous approaches to combatting blight and all have the same ultimate goal of restoring properties to productive use. This section will examine tax foreclosures, code enforcement as a nuisance abatement strategy, land banks, and receivership as methods to rehabilitate vacant and abandoned properties.

#### A. *Tax Foreclosures*

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<sup>22</sup> Allan Mallach, *Abandoned Property: Effective Strategies to Reclaim Community Assets*, HOUSING FACTS & FINDINGS, (FannieMae Foundation) Vol. 6 No. 2 1, 6 (2004).

<sup>23</sup> Han *supra* note 6 at 11.

<sup>24</sup> *Id.*; Allan Mallach, *Restoring Problem Properties: A Guide to New Jersey’s Abandoned Property Tools*, HOUSING AND COMMUNITY DEVELOPMENT NETWORK OF NEW JERSEY 1, 4 (2005).

<sup>25</sup> Han *supra* note 6 at 11.

<sup>26</sup> Gordon *supra* note 3 at 327.

Tax foreclosure is a property acquisition process municipalities can use to take title to properties that are delinquent in property taxes or where owners have failed other obligations owed to the city.<sup>27</sup> There are currently over 150 property tax collection systems in the United States and the processes for tax lien foreclosure are almost as varied.<sup>28</sup> State legislatures set statutory guidelines for municipalities wishing to conduct tax foreclosures.<sup>29</sup> In general, after a statutory period of delinquency, the municipality can move for foreclosure and take, or sell, title to the property.<sup>30</sup>

There are specific procedures that need to be followed in a foreclosure action to ensure the Constitutionality of taking an individual's property. Before a property may be foreclosed, interested parties must be notified of the impending foreclosure. The Supreme Court has set the standards for foreclosure notice requirements to include direct notice to all parties holding a legal interest in the property.<sup>31</sup> This includes providing notice to all mortgage and lien holders. Notice is provided to alert the parties of the option to exercise their rights to the property, or face the possibility of forfeiting all rights to the property via a tax foreclosure.<sup>32</sup> This is why it is of the utmost importance for legislation to clearly outline notice requirements when there are actions where property owners may lose possession of their land. Without clear statutory

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<sup>27</sup> Alan Mallach, BRINGING BUILDINGS BACK 75 (National Housing Institute 2006); Brachman, *supra* note 1 at 4. Other obligations that can be foreclosed on are school district taxes, county taxes, or any other liens the municipality has placed on the property. Some municipalities undergo efforts to clean-up or secure abandoned properties. The efforts the municipality expends on the property are then placed as a lien against the property.

<sup>28</sup> Frank S. Alexander & Leslie A. Powell, *Neighborhood Stabilization Strategies for Vacant and Abandoned Properties*, ZONING AND PLANNING LAW REPORT (Emory University School of Law) Vol. 34 No. 8 September 2011 at 4.

<sup>29</sup> *See generally*, Alan Mallach, BRINGING BUILDINGS BACK 75, 78 (National Housing Institute 2006).

<sup>30</sup> *Id.* at 76.

<sup>31</sup> *Id. citing* Mennonite Board of Missions v. Adams, 462 US 791 (1983). "In a property tax foreclosure procedure notice must be given to every party holding a legally protected interest whose name and address can reasonably be determined by diligent efforts. The notice must be of the kind designed to inform these parties of the proceedings. Notice by publication in a newspaper will not be adequate notice except in very rare circumstances. Notice by mail sent to the best available address will usually be required".

<sup>32</sup> *Id.* at 76

guidance, notice may be deficient and the entire foreclosure and subsequent rehabilitation initiatives may be deemed unconstitutional.

Once notice has been given in the foreclosure process, the municipality holds a tax sale where the properties are sold, often at an auction.<sup>33</sup> Post-sale the previous owner has a statutorily designated period of time in which they can reclaim the property.<sup>34</sup> If the previous owner fails to reclaim the property, the successful bidder is awarded the property.<sup>35</sup> In a jurisdiction that uses a judicial proceeding and gives “super priority” or “senior status” to tax and municipal liens, the successful bidder is able to gain clear and marketable title to the property.<sup>36</sup> Essentially, the title is cleared on the foreclosed property through a court proceeding so the new owner can receive marketable title. If the municipal liens lack priority status, or the town does not use a judicial foreclosure system, the new owner will not receive marketable title; the title will continue to be clouded with the prior liens and mortgages.<sup>37</sup> Some jurisdictions permit municipalities to auction off the government lien to private parties which may then bring the foreclosure action, the private party takes the place of the municipality and facilitates the foreclosure.<sup>38</sup>

The tax foreclosure process is often aimed at assisting the municipality in recovering lost tax revenue.<sup>39</sup> The primary goal of tax foreclosures is usually not the rehabilitation of

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Alan Mallach, BRINGING BUILDINGS BACK (National Housing Institute 2006) at 76.

<sup>36</sup> Frank S. Alexander & Leslie A. Powell *supra* note 29 at 5 “Super priority” and “senior lien status” are used to describe the process by which a municipal lien is given priority over all private liens attached to a property. In a super priority jurisdiction the time at which the municipal lien comes into existence is irrelevant in the foreclosure process because the municipal lien preempts all private liens and mortgages. “A valid foreclosure of this senior lien terminates the interests and claims of all other parties to the property.” Once the other liens are extinguished the new owner has an unencumbered title free of clouds; Alexander *supra* note 55 at 18-19. A judicial decree asserting the constitutional validity of the foreclosure process is necessary to convey clear title to the property.

<sup>37</sup> Frank S. Alexander & Leslie A. Powell *supra* note 29 at 4; Frank S. Alexander, LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS 1, 18-19 (Local Initiatives Support Corporation 2005).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*



properties. As a result, there are major flaws of tax foreclosures which inhibit their success in rehabilitating vacant and abandoned properties. First, a tax foreclosure usually takes a great amount of time. Statutes often require a period of time that taxes must be in arrears before the foreclosure process can begin.<sup>40</sup> Once the statutory period of delinquency is reached, there are additional time periods reserved to give the owner the ability to reclaim the property.<sup>41</sup> In total, time restrictions associated with tax foreclosures can keep a property in limbo for eighteen months to over seven years.<sup>42</sup> When a municipality is concerned with the negative effects of abandoned properties, tax foreclosures hardly provide a timely solution. The longer a property is left abandoned, the worse its effect on the community.

Secondly, the strict notice requirements mandated by the Supreme Court also pose a problem to municipalities seeking the rehabilitation of abandoned properties through tax foreclosures. It is often the case that problem properties are encumbered with a multitude of private liens. Under many current state regimes, all lien holders must be notified by mail of the impending foreclosure.<sup>43</sup> This poses a problem to municipalities because it is often difficult to find contact information for lienholders. If proper notice is not given, it can result in an unmarketable title.<sup>44</sup> Any clouds on the title make the property undesirable and impede future rehabilitation efforts.

However, if proper notice is given, some tax foreclosure systems provide a valuable mechanism to clear the property's title through judicial proceedings. These title-clearing processes should be incorporated in any initiative aimed at rehabilitating abandoned properties

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<sup>40</sup> Mallach *supra* note 33 at 76.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 76; Frank S. Alexander & Leslie A. Powell *supra* note 29 at 4.

<sup>43</sup> Mallach *supra* note 33 at 76.; Brachman, *supra* note 1 at 4.

<sup>44</sup> Mallach *supra* note 33 at 76.

because they provide a valuable incentive for people to undertake rehabilitation efforts because free and clear title to the property will be awarded at the end of the endeavor.

Overall, the foreclosure system is ill-equipped to deal with the vast amount of blight resulting from vacant and abandoned properties. As a result, municipalities have turned to code enforcement and nuisance abatement policies to help address the problem of dilapidated properties.

#### B. *Code Enforcement and Nuisance Abatement*

Abandoned properties are often characterized as having numerous local code violations. The abandoned, unsafe, unkempt structures are what create the image and spirit of blight in the community. Municipalities have ordinances that prohibit property owners from neglecting their land and impose fines for such ordinance violations.<sup>45</sup> In extreme circumstances, the municipality may undergo the necessary property repairs to ensure the health, safety, and welfare of the public.<sup>46</sup>

Once there is an imposition of liability, whether in the form of a fine or municipal repair made to the property, the municipality can exact a lien against the property owner or attach a lien to the property.<sup>47</sup> Complications arise when an individual property owner is held personally liable for municipal actions taken to better the abandoned property.<sup>48</sup> It is often difficult to identify the owner of the property, especially when corporate structures pad individuals from liability and, even when ownership is identified, collecting the full sum of the lien from the owner can be a strenuous, unfruitful process.<sup>49</sup>

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<sup>45</sup> See Section I for a description of the problems caused by blight.

<sup>46</sup> See generally, Frank S. Alexander & Leslie A. Powell *supra* note 29 at 6.

<sup>47</sup> Frank S. Alexander & Leslie A. Powell *supra* note 29 at 6.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

An alternative to personal liability for code violations is attaching liability to the title of the property “for every code violation and for each expenditure of public assets to remedy a violation.”<sup>50</sup> These liens can either take on chronological priority or super priority status.<sup>51</sup> Assigning code enforcement liens super priority has two major benefits. First, it is likely the municipality will recoup the amount spent on the property.<sup>52</sup> Second, giving code enforcement liens priority status permits the municipality to foreclose on the property to satisfy the lien absent any tax delinquencies.<sup>53</sup> If the code enforcement foreclosure is completed with a judicial decree, it is possible for clear and marketable title to be transferred to the new owner.<sup>54</sup>

Code enforcement liens require the municipality to make a financial investment to move an abandoned property towards rehabilitation. Municipalities may be hesitant to use public funds on private properties, especially when there is no guarantee the expenditures will be recovered in the future. Municipalities plagued with dozens of abandoned properties most likely lack the budget and manpower needed to rehabilitate the properties and return them to fruitful use. This is why there is a need for a public private nexus whereby private parties assist municipalities in rehabilitating abandoned properties by providing the resources municipalities lack. Additional complications arise from the protracted amount of time needed to identify a code violation, notify the property owner, remedy the violation, and attain reimbursement for the municipal expenditure; it is possible for this process to take months to years.<sup>55</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* Chronological liens are “subordinate to mortgages, judgments, and other encumbrances” attached to the property prior to the municipal code enforcement lien. Chronological liens provide little functional value to municipalities since they often fall at the end of a long list of previously existing liens. For a discussion of super priority liens *see supra* note 36.

<sup>52</sup> Frank S. Alexander & Leslie A. Powell *supra* note 29 at 6.

<sup>53</sup> *Id.*

<sup>54</sup> Frank S. Alexander, LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS at 18 (Local Initiatives Support Corporation 2005).

<sup>55</sup> *Id.* at 17.

Without additional support, it is difficult for a municipality to rely on code enforcement and nuisance abatements as a means to successfully rehabilitate abandoned properties. Land banks are an entity that can provide municipalities with the much-needed additional support.

### C. *Land Banks*

Land banks are governmental or non-profit entities that aid in the fight against blight.

The four main goals of land banks are to,

- 1) eliminate the harms caused by vacant, abandoned, and tax-delinquent properties;
- 2) eliminate barriers to returning the properties to productive use;
- 3) convey properties to new owners for productive use, and;
- 4) hold properties for future use.<sup>56</sup>

Land banks are “enabled by state legislation and enacted by local ordinances.”<sup>57</sup> Some jurisdictions retain municipal control over the land bank while others sever the connection and permit the land bank to operate as its own entity.<sup>58</sup> Regardless of its corporate structure, land banks are vested with the legal authority to acquire, manage, and facilitate the rehabilitation of blighted properties.<sup>59</sup>

Land banks acquire most of the properties in their possession through processes involving tax foreclosures.<sup>60</sup> In some jurisdictions the tax foreclosure system is constructed to automatically give land banks title to properties that fail to sell at the official foreclosure sale.<sup>61</sup> In other jurisdictions the transfer of unsold properties to the land banks remains optional.<sup>62</sup> Lastly, some jurisdictions require the land bank to place a minimum bid on the property, in the

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<sup>56</sup> *Id.* at 29.

<sup>57</sup> U.S. Dept. of Housing and Urban Development, *Revitalizing Foreclosed Properties with Land Banks 1* (August 2009).

<sup>58</sup> *See generally* Alexander *supra* note 55 at 39-42.

<sup>59</sup> *Id.* at 22.

<sup>60</sup> *Id.* at 23.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

same fashion as other participants in the sale.<sup>63</sup> Besides tax foreclosures, land banks may foreclose on other municipal liens, seek voluntary transfer of properties, purchase properties on the free market, and, in extremely rare circumstances, use eminent domain powers to procure properties.<sup>64</sup>

Land banks are vested with the ability to waive taxes and clear titles, two significant powers with enormous potential to facilitate rehabilitation.<sup>65</sup> Municipalities can grant land banks the ability to extinguish all government taxes and liens attached to the property when the property is conveyed to a third party purchaser.<sup>66</sup> Without this weapon in the land bank's arsenal of property rehabilitation mechanisms the subsequent purchaser, or even the land bank, would be responsible for paying the back taxes and municipal liens. Responsibility for governmental liens would seriously inhibit the operations of land banks by using funds that would otherwise be focused on the property rehabilitation efforts. The exemption of responsibility for governmental liens should be included in legislation that addresses abandoned properties because it provides an incentive to third parties to purchase the properties from and initiate rehabilitation.

An even greater incentive to third parties to take action on abandoned properties is the ability to receive clear title.<sup>67</sup> Some jurisdictions permit the land bank to serve as a conduit for a third party purchaser of a property with a clouded title.<sup>68</sup> In this conduit transfer, a private party gains title to the property, usually on the open market or through a foreclosure proceeding.<sup>69</sup> The private party then transfers the clouded title to the land bank, which clears the title and then

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<sup>63</sup> *Id.*

<sup>64</sup> Frank S. Alexander & Leslie A. Powell *supra* note 29 at 8.

<sup>65</sup> U.S. Dept. of Housing and Urban Development *supra* note 58 at 2.

<sup>66</sup> Frank S. Alexander *supra* note 55 at 27.

<sup>67</sup> Clear title occurs when there are no outstanding liens on the property and there is clear succession of ownership. This ensures ownership will not be challenged by a previous owner or claimant to the property.

<sup>68</sup> Alexander *supra* note 55 at 27.

<sup>69</sup> *Id.*

transfers the property back to the private party.<sup>70</sup> It would be beneficial for jurisdictions without land banks to establish a similar process whereby the municipality, or a court, can order the clearing of an abandoned property's title to encourage third-party rehabilitation efforts.

Land banks provide a way for municipalities to alleviate the burden of vacant and abandoned properties. Once operational, the land bank remains fairly self-sufficient, operating off the sales of the properties instead of being dependent on government financing. However, some municipalities choose to continually fund the land bank.<sup>71</sup> The ability to operate independently and successfully convey clear title to properties make land banks an attractive mechanism for rehabilitating abandoned properties. However, there have been cases of fraud involved in land bank organizations, which make some states hesitant to expand the bureaucratic framework to include partnerships with land banks.<sup>72</sup>

Another obstacle states face when establishing land banks as a mechanism to rehabilitate properties is that land banks are reliant on the philanthropic willingness of people to supply their time to ensure the success of the program. Many areas that are plagued with abandoned properties do not have residents or impassioned angel donors willing to work to guarantee the success of land banks. Without honorable, charitable, and experienced personnel land banks will not be successful in bringing large scale rehabilitation to abandoned properties. Receivership actions may be an effective alternative to land banks because they vest the power of property rehabilitation in an individual thus avoiding the problems of maintaining a large land bank organization.

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<sup>70</sup> U.S. Dept. of Housing and Urban Development *supra* note 58 at 17.

<sup>71</sup> Frank S. Alexander *supra* note 55 at 25.

<sup>72</sup> Joe Tyrell, *Initiatives to Acquire, Revive Abandoned Homes Are Making Progress in New Jersey*, NJ SPOTLIGHT, Mar. 17, 2015 at 3.

#### D. Receivership

Receivership is a device employed by municipalities to directly remedy derelict properties.<sup>73</sup> Historically, receivership was used to take possession of apartment houses that had active tenants, but neglectful landlords causing unlivable conditions.<sup>74</sup> Through a court action, a receiver is appointed to the property and steps into the role of the owner.<sup>75</sup> The receiver has the power to, among other things, collect rents, remedy code violations, update the building, and lease the building.<sup>76</sup> In some jurisdictions the receivership ends and the property is returned to the owner when the violations are cured, while in other jurisdictions the court must take action to return the property to the owner.<sup>77</sup>

Municipalities have employed receivership actions to directly address vacant and abandoned properties. To do so, the municipality appoints a receiver to the problem property who is empowered to take loans against the property to facilitate its rehabilitation.<sup>78</sup> These loans taken to finance the property rehabilitation can be given super priority status and judicially foreclosed on to provide clear title.<sup>79</sup>

Some state statutes provide for the receiver to take action to gain title to the property before the rehabilitation is executed.<sup>80</sup> By evaluating the potential costs of rehabilitation, the receiver may take a precursory super priority lien on the property.<sup>81</sup> The receiver can then initiate the foreclosure process to gain title and often sell the property to a developer who then

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<sup>73</sup> See generally Mallach *supra* note 33 at 49.

<sup>74</sup> Mallach *supra* note 33 at 49.

<sup>75</sup> Frank S. Alexander & Leslie A. Powell *supra* note 29 at 7.

<sup>76</sup> Mallach *supra* note 33 at 49.

<sup>77</sup> *Id.* at 62.

<sup>78</sup> Frank S. Alexander & Leslie A. Powell *supra* note 29 at 7.

<sup>79</sup> *Id.*

<sup>80</sup> U.S. Dept. of Housing and Urban Development *supra* note 58 at 217-22.

<sup>81</sup> *Id.*

undertakes the actual rehabilitation.<sup>82</sup> This expedited foreclosure process is seen as nuisance abatement, thus avoiding the potential of being categorized as an uncompensated government taking.<sup>83</sup> The Supreme Court has recognized a “nuisance exception” to the Takings Clause.<sup>84</sup> The exception permits the government to take actions within its police powers to abate nuisances.<sup>85</sup> The governmental police powers used in these cases include the power to prevent noxious activities that interfere with others enjoyment of their property.<sup>86</sup> Because blight directly affects the value of surrounding properties, it is within the government’s power to use rationally related means to abate the problem.<sup>87</sup>

Heightened notice requirements of receivership foreclosures also help to ensure the Constitutionality of the actions. The receiver is often required to provide the owner, and lien holders, with ten days prior notice of filing for the appointment as receiver.<sup>88</sup> This notice must be accomplished by personal service or certified mail; in rare circumstances posting notice on the property may suffice.<sup>89</sup>

The notice of intention to be appointed as receiver provides any interested party the opportunity to exercise his or her right and take action to rehabilitate the property.<sup>90</sup> If no party steps forward, the receiver may file the action with the court.<sup>91</sup> The receiver is required to execute proper service of the complaint on all interested parties.<sup>92</sup> If the property owner fails to

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<sup>82</sup> *Id.* at 217.

<sup>83</sup> *Id.* at 218-20; The 5<sup>th</sup> Amendment to the Constitution provides citizens with the protection in property ownership. The 5<sup>th</sup> Amendment Takings Clause states, “private property [shall not] be taken for public use, without just compensation”.

<sup>84</sup> U.S. Dept. of Housing and Urban Development *supra* note 57 at 220.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 220.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 218.

<sup>89</sup> *Id.* The posting of notice suffices when reasonable efforts to serve the interested parties have been exhausted.

<sup>90</sup> U.S. Dept. of Housing and Urban Development *supra* note 58 at 218.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*



appear at the receivership action, they forfeit the property.<sup>93</sup> Some states provide additional safeguards to owner rights by having an additional period of time post-rehabilitation for the owner to reclaim the property by settling all private and public liens on the property.<sup>94</sup> If the owner fails to initiate ownership restoration actions, the receiver is granted title to the property.<sup>95</sup>

Receivership is a powerful tool municipalities can use to address vacant and abandoned properties, but it has its complications. Receivership is dependent on the willingness of third parties to be appointed as receivers. In jurisdictions which do not provide for the ability of the receiver to take title to the property, there lacks an incentive for them to take on the responsibility, and high costs, of rehabilitation unless they are personally affected by the abandoned property. Jurisdictions which limit the incentive for private parties to take title do not provide for effective large-scale rehabilitation because they are reliant on the parties immediately impacted by the abandoned property to take action. Ideally, receivership should be used as a tool to eliminate blight and better the community through incentivizing private parties to adopt efforts to rehabilitate abandoned property.

#### IV. Abandoned Properties in New Jersey

New Jersey is not immune to the plague of blighted vacant and abandoned properties. New Jersey “leads the nation in foreclosure rates” and with this leading status comes many abandoned properties.<sup>96</sup> A sampling of the municipalities in the state reveals the extent of the problem: East Orange has identified 582 abandoned properties; Jersey City has at least 1,400 vacant properties; Camden has acknowledged 3,417 abandoned properties; Montclair has about

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<sup>93</sup> *Id.* at 218.

<sup>94</sup> Mallach *supra* note 33 at 62-63.

<sup>95</sup> Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment* 56 CLEV. ST. L. REV. 189, 209 (2008).

<sup>96</sup> Joe Tyrell *supra* note 73 at 2.

190 vacant properties; Washington Township has approximately 175 abandoned properties.<sup>97</sup>

Though distressed large cities experience abandonment in great numbers, small towns, rural areas, and affluent communities all share this problem.<sup>98</sup>

The New Jersey State legislature has enacted two major pieces of legislation aimed at addressing the problem of property abandonment throughout the state. This section of the note analyzes New Jersey's current provisions, expose the inadequacies of the legislation, and then provides suggested amendments to further facilitate the rehabilitation of abandoned properties.

#### A. *Abandoned Properties Rehabilitation Act*

In the midst of the Great Recession, New Jersey enacted the Abandoned Properties Rehabilitation Act (APRA).<sup>99</sup> The legislature found that abandoned properties “create a wide range of problems for the communities in which they are located, fostering criminal activity, creating public health problems and otherwise diminishing the quality of life...”<sup>100</sup> This led the legislature to presume that abandoned properties are nuisances whose presence creates a barrier to revitalization in New Jersey.<sup>101</sup> The legislators identified abandonment:

as a local problem that must be addressed locally and the most important role of State government is to provide local governments, local community organizations, citizens, and residents with the tools to address the problem.<sup>102</sup>

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<sup>97</sup> *Id.* at 1-3; see generally Michelle Caffrey, *N.J. Law Would Levy Hefty Fines against Abandoned Homes, Absentee Creditors*, (August 24, 2014 at 6:00A M, updated August 28, 2014 at 2:51 PM), <http://www.nj.com>.

<sup>98</sup> Diane Sterner and Alan Mallach, *The Abandoned Properties Rehabilitation Act New Tools for the Fight Against Blight*, NEW JERSEY MUNICIPALITIES March 2005 at 1.

<sup>99</sup> The Great Recession refers to the sharp decline in economic activity which took place during the early 2000s and is considered the largest economic downturn since the Great Depression. (April 1, 2016 at 9:15 A.M.) <http://www.investopedia.com/terms/g/great-recession.asp>

<sup>100</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-79(2) (a)-(b).

<sup>101</sup> *Id.* § 55:19-79(2) (c)-(d).

<sup>102</sup> *Id.* § 55:19-79(2) (e).

In an attempt to actualize this goal, the State provided the local governments with the APRA as a tool to be used for the rehabilitation of abandoned properties.<sup>103</sup> Local governments have attempted to take the initiative to enact ordinances implementing the APRA and address abandoned properties, but the APRA fails to provide them with clear guidance.

The APRA sets guidelines for a municipal public officer to use in determining if a property is abandoned.<sup>104</sup> To be classified as abandoned, a property must not have been legally occupied for a period of at least six months.<sup>105</sup> Additionally, the property must meet at least one of the following criteria to be deemed abandoned, unless the property is of seasonal use then it must meet two of the additional criteria:<sup>106</sup>

- A) the public officer determines the property is in need of rehabilitation and no rehabilitation efforts have taken place for six months;<sup>107</sup>
- B) construction on the property was undertaken, but stopped before completion, leaving the building in a condition that is unsuitable for occupancy, and there has been no construction for at least six months;<sup>108</sup>
- C) there is at least one delinquent instalment of property taxes.<sup>109</sup> This criteria is not met if the tax lien has been sold to a third party which continues to pay current taxes or a foreclosure proceeding has been initiated; or<sup>110</sup>
- D) the public officer has determined the property is a nuisance.

The public officer may determine the property is a nuisance if:

- 1) the property is unfit for human habitation, occupancy, or use;<sup>111</sup>

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<sup>103</sup> *Id.* § 55:19-79 (2) (g) The municipalities were to use the APRA guidelines to preserve and rehabilitate abandoned structures as opposed to undertaking massive demolition initiatives to eliminate the nuisance of abandoned properties.

<sup>104</sup> *Id.* § 55:19-81.

<sup>105</sup> *Id.* § 55:19-81(4).

<sup>106</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-83(6)(a).

<sup>107</sup> *Id.* § 55:19-81(4)(a).

<sup>108</sup> *Id.* § 55:19-81(4)(b).

<sup>109</sup> *Id.* § 55:19-81(4)(c).

<sup>110</sup> *Id.* § 55:19-83(6)(a).

<sup>111</sup> *Id.* § 55:19-82(5)(a).

- 2) the condition and vacancy of the property materially increase the risk of fire to the property and adjoining properties;<sup>112</sup>
- 3) the property is subject to unauthorized entry leading to potential health and safety hazards and the owner has failed to secure the property, or the municipality has acted to secured the property;<sup>113</sup>
- 4) vermin, debris, uncut vegetation, or deterioration of the structure and grounds create potential health and safety hazards and the owner has failed to take action to remedy said conditions;<sup>114</sup> or
- 5) the dilapidated appearance or other condition of the property materially affects the welfare, including economic welfare, of the residents in close proximity to the property and the owner has failed to remedy the condition.<sup>115</sup>

When determining whether a property is a nuisance, the public officer must serve the owner and lienholders with notice of the conditions that make the property a nuisance and provide a hearing.<sup>116</sup> At the hearing the property can be officially declared a nuisance. It is only after this notice and hearing procedure that the nuisance classification may be used to determine a property is abandoned under the APRA.

Once a municipality has designated a property as abandoned it may file action in the Superior Court to take possession of the property and rehabilitate it.<sup>117</sup> The APRA requires the municipality to inform the property owner and any lienholders of its intention to take possession of the property thirty days before the suit is filed with the court.<sup>118</sup> Once the complaint is filed, the owner and lienholders must be served notice according to New Jersey Court Rules.<sup>119</sup>

However, the notice requirements are unclear and impede the process of rehabilitation. The

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<sup>112</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-82(5)(b).

<sup>113</sup> *Id.* § 55:19-82(5)(c).

<sup>114</sup> *Id.* § 55:19-82(5)(d).

<sup>115</sup> *Id.* § 55:19-82(5)(e).

<sup>116</sup> N.J.S.A. § 40:28-2.5.

<sup>117</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-84.

<sup>118</sup> *Id.* § 55:19-86(9)(b).

<sup>119</sup> *Id.* § 55:19-86(9)(b) New Jersey Court Rule 1.5-2 explains service of papers on individuals. According to this rule a moving party is required to notify individuals by personal service or certified mail, return receipt requested. If no address is known, the filing of papers with the clerk of the court shall satisfy notice.

municipality is also required to file *a lis pendens* with the county recording officer within ten days of filing the complaint.<sup>120</sup>

At any point in this process the owner may submit a rehabilitation plan to the court in order to prevent the municipality from taking possession.<sup>121</sup> The rehabilitation plan must be accompanied by a bond equal to 125 percent of the projected cost of rehabilitation.<sup>122</sup> If the property owner does not exercise his or her rights by submitting a rehabilitation plan, lienholders have the ability to exercise their rights to the property by submitting a rehabilitation plan.<sup>123</sup> This process is adequate to ensure that those with secured rights in the property have the opportunity to take action before the municipal government assumes control of the rehabilitation process. Upon the failure of the owner or lienholders to effectuate the rehabilitation according to the court approved plan, the court may order the bond forfeited and provide the municipality with the bond proceeds to complete the rehabilitation.<sup>124</sup>

The municipality is the third, and final, entity in the statutory line of succession which has the ability to possess and rehabilitate the property.<sup>125</sup> If the property owner and lienholder fail to submit rehabilitation plans, the municipality may submit such a plan to the court and be awarded possession of the property.<sup>126</sup> In doing so the municipality may rehabilitate the property and place a lien on the property in the amount of the expenses incurred by the rehabilitation.<sup>127</sup>

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<sup>120</sup> *Id.* § 55:19-86(9)(a); *Lis pendens* is an action that involves real property. Notice of the action is filed with the recording agent who proscribes it on the title of the property. This is done to give the owner, and the public, notice of the action involving the property. <http://dictionary.law.com/default.aspx?selected=1172>

<sup>121</sup> *Id.* § 55:19-84.

<sup>122</sup> *Id.* § 55:19-87(10)(a).

<sup>123</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-98(11).

<sup>124</sup> *Id.* § 55:19-87(2).

<sup>125</sup> *Id.* § 55:19-87(2).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* § 55:19-86(9)(b).

The municipality also has the power to designate a qualified rehabilitation entity for the purposes of undergoing the physical rehabilitation efforts, but the municipality retains responsibility for the property throughout rehabilitation.<sup>128</sup> The APRA is devoid of any guidance pertaining to the criteria, or process, a municipality should use to designate a “qualified rehabilitation entity”. This forces the municipality to either avoid the nebulous process of designating a qualified rehabilitation entity or proceed down the unclear path of designating an entity and risk judicial and legislative disapproval.

The APRA does provide the municipality with guidance on ways to fund the rehabilitation efforts. For the municipality to be permitted to borrow against the property, it must first seek financing from the senior lienholder.<sup>129</sup> If the senior lienholder fails to provide financing, a priority lien may be placed on the property to induce another financial institution to fund the rehabilitation efforts.<sup>130</sup> Once the rehabilitation is complete, the owner has the option to satisfy any rehabilitation liens and petition the court for reinstatement of the property.<sup>131</sup> Otherwise, the municipal lien may be satisfied by the sale of the property.<sup>132</sup>

When there are six months left to complete the property rehabilitation, the municipality is required to file a Notice of Completion with the court and serve notice on the owner and lienholders.<sup>133</sup> The owner then has a thirty-day period to petition the court for reinstatement of the property.<sup>134</sup> To be awarded possession of the property, the owner is required to reimburse the municipality for the cost of rehabilitation and pay all delinquent taxes and municipal liens.<sup>135</sup>

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<sup>128</sup> *Id.* § 55:19-90(13).

<sup>129</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-91(14)(b).

<sup>130</sup> *Id.* § 55:19-91(14)(b).

<sup>131</sup> *Id.* § 55:19-86(9)(b).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* § 55:19-91(14)(d).

<sup>134</sup> *Id.* § 55:19-92(15).

<sup>135</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-93(16)(c).

The court also has the option of requiring the owner to post an additional bond which is held to ensure the future maintenance of the property.<sup>136</sup>

When the owner has failed to seek reinstatement, or failed conditions of reinstatement, the court may authorize the municipality to purchase the property at fair market value.<sup>137</sup> The municipality then has the burden of selling the property.<sup>138</sup> In order to clear title, the proceeds of the sale are put in escrow and used to satisfy any liens on the property.<sup>139</sup> The order of distribution for the sale proceeds is as follows: 1) the costs incurred by the sale; 2) other government liens; 3) priority municipal rehabilitation liens; 3) development fee for the municipality; 4) other liens following in the order of their priority; 5) the owner.<sup>140</sup> The APRA does not, as written, permit a municipality to profit from the rehabilitation of abandoned properties.

Instead of completing the rehabilitation and selling the property, the municipality has the option of holding a special tax sale of the property. During this sale tax liens on the abandoned properties are auctioned off.<sup>141</sup> In these special tax sales, it is often a requirement that the bidder foreclose on the tax lien and rehabilitate the property within a certain time period.<sup>142</sup> This foreclosure process is insufficient because it can only be used to foreclose delinquent tax liens; it does nothing to remedy other liens and clear title to the property.

The APRA was intended to facilitate the rehabilitation of abandoned properties in New Jersey. While it has provided a framework enabling some municipal action, the legislation has failed to adequately address the large-scale problem of property abandonment.

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<sup>136</sup> *Id.* § 55:19-94(17).

<sup>137</sup> *Id.* § 55:19-96(19)(a).

<sup>138</sup> *Id.* § 55:19-95(18); *Id.* § 55:19-96(19)(a).

<sup>139</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-96(19(a)-(c).

<sup>140</sup> *Id.* § 55:19-97(20)(a)-(f).

<sup>141</sup> *Id.* § 55:19-101(24)(a)-(f).

<sup>142</sup> *Id.* § 55:19-101(24)(a).

B. *Ordinances to Regulate Care, Maintenance, Security, and Upkeep of Certain Residential Properties*

Although the APRA directly addressed properties that were abandoned, the statute failed to encourage creditors undergoing a foreclosure process to upkeep the abandoned property.<sup>143</sup> The APRA does not permit municipalities to take action on properties where private lien holders have filed foreclosure actions. These properties often sit abandoned for years, spiraling into neglect, as the foreclosure crawls through the system.<sup>144</sup> The New Jersey Legislature identified these properties as a nuisance and enacted a property maintenance statute to combat this form of blight.

Under this statute, a municipality may enact ordinances requiring the creditor filing a summons and complaint in action for foreclosure to be responsible for the care, maintenance, security, and upkeep of the exterior of the vacant and abandoned property.<sup>145</sup> The municipal ordinance may require an out-of-state creditor filing the foreclosure action to appoint an in-state agent to act for the foreclosing creditor to fulfill the property maintenance responsibilities.<sup>146</sup> The municipality has the option to fine the foreclosing party \$2,500 a day for the failure to appoint an in-state agent.<sup>147</sup>

The statute authorizes public officers responsible for property maintenance codes to issue a notice to creditors who fail to meet their property maintenance responsibilities.<sup>148</sup> The creditor is allotted thirty days to cure the violation, unless there is an immediate threat to public health or

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<sup>143</sup> See generally, Caffrey *supra* note 103.

<sup>144</sup> *Id.*

<sup>145</sup> N.J.S.A. § 40:48-2.12.s.

<sup>146</sup> N.J.S.A. § 40:48-2.12.s (2).

<sup>147</sup> N.J.S.A. § 40:48-2.12.s (c) (1).

<sup>148</sup> N.J. S.A. § 40:48-2.12.s (b) (2).



safety in which there is a ten day cure period.<sup>149</sup> If the creditor fails to cure the violation within the given period he or she is subject to a daily fine of \$1,500.

This property maintenance statute is an overt effort by the New Jersey legislature to take real action to address blight in the state. As explained, protracted foreclosure actions are only one cause of property abandonment. The legislature needs to take similar intensive actions to enable municipalities to address other types of property abandonment.

## V. Suggested Amendments to New Jersey Abandoned Property Legislation

### A. *Clarify Notice Requirements*

The APRA fails to offer municipalities clear guidance on the notice requirements necessary to ensure the Constitutionality of the rehabilitation process. The statute requires the complaint filed with the court to be served to the parties of interest in accordance with the New Jersey Rules of Court.<sup>150</sup> However, express notice instructions are not clearly provided anywhere else the APRA requires the notification of parties.<sup>151</sup>

By following a breadcrumb trail through the New Jersey Statutes it is possible to unearth the notice requirements a municipality must undertake when making additions to the Abandoned Properties List. To begin, the municipality must publish a property's addition to the Abandoned Property List in the municipal newspaper.<sup>152</sup> However, the statute fails to elucidate when the publication must occur and how many issues of the newspaper it must be printed in to satisfy public notice. The addition of these details to the publication requirement would be a minor revision that would offer much guidance to municipalities.

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<sup>149</sup> N.J. S.A. § 40:48-2.12.s (b) (2).

<sup>150</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-86(b).

<sup>151</sup> *Id.* § 55:19-86(b); *Id.* § 55:19-91(d).

<sup>152</sup> *Id.* § 55:19-55(d)(1).

Within ten days of publication, the municipality must notify the property owner of record by certified mail, return receipt requested, and by regular mail.<sup>153</sup> It is often difficult to ascertain the address of the property owner, the nature of the property being abandoned often complicates finding the owner. When the property owner is unknown, the APRA requires the tax collector to check the tax record for other addresses used by the property owner.<sup>154</sup> If the tax collector cannot determine the address of the owner, the APRA bounces to another statute outlining the service of complaints and orders.<sup>155</sup>

This service statute requires the public official who attempted to ascertain the whereabouts of the party to sign an affidavit stating his or her inability to do so.<sup>156</sup> Then service may be satisfied by a posting of the complaint on a conspicuous location on the property.<sup>157</sup> When reading these provisions together, it is unclear whether the duty to ascertain the whereabouts of the owner falls on the tax collector or the public officer in charge of the Abandoned Properties List. The APRA leaves the municipality to guess which agent is required to ascertain the whereabouts of the property owner.

The public officer composing the Abandoned Properties List should have the explicit duty to extend a reasonable effort to ascertain the whereabouts of the property owner. He or she should be required to inquire whether the tax collector has additional addresses listed for the owner. It is possible that the taxes are being paid on the property and there is a means to contact the owner using the taxpayer records, but it should not be the tax collector's duty to ascertain the property owner's address and execute notice.

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> N.J.S.A. § 40:48-2.7.

<sup>157</sup> *Id.*

The APRA should be amended to clearly require the public officer who has been designated by the municipality to identify and add properties to the Abandoned List as the officer who is required to make a reasonable effort to ascertain the whereabouts of, and serve notice to, the property owner.<sup>158</sup> The public officer has the power to designate a property as abandoned, so it is logical that he or she should be the one who must extend a reasonable effort to find the whereabouts of the property owner. The public officer has the most knowledge regarding the abandoned property so it simply makes sense that the officer should be the central figure responsible for the entire process.

It may be argued that the requirement of having the tax collector ascertain the whereabouts of the property owner is necessary to implement a check on the power of the public officer and prevent error. The cliché “two eyes are better than one” seems to substantiate this justification; the tax collector would provide an additional set of eyes to ensure the public officer has searched for the property owner. However, the proposed revision still requires the public officer to consult with the tax collector as part of the public officer’s duty of using reasonable diligence to discover the whereabouts of the property owner. So the knowledge of the tax collector will still be applied to the search for the property owner. This Amendment is needed to provide municipalities with clear guidance as to who should be responsible for fulfilling the notice requirements of the statute. Without such guidance it is possible the notice executed by the municipality will be insufficient.

As seen in *supra III (D)*, proper notice of actions effecting individual’s property rights is necessary to ensure the Constitutionality of the actions. The notice of the intention to take

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<sup>158</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-55(a) requires the municipality to designate or appoint a public officer who will identify abandoned properties for the purpose of establishing an Abandoned Properties List.

possession of an abandoned property should be held to the same notice requirements as receivership actions. This should not be seen as a Takings Clause violation because the municipality is acting within its police powers to cure the nuisance of abandoned property.<sup>159</sup>

The APRA should require municipal officer in charge of the Abandoned Property List to exercise reasonable care in ascertaining the address of the property owner and lien holders to effectuate individual service. If the municipality cannot locate the parties it should be permissible for notice to be provided by posting and publication. These notice requirements need to be clearly outlined in the legislation. As written, the APRA does not provide the municipalities with easily accessible information on the notice requirements needed to ensure the Constitutionality of the rehabilitation proceeding.

Without clarification it is possible for a municipality to provide improper notice and engage in an unjust taking of private property which will lead to extensive, and expensive, litigation.<sup>160</sup> The above proposed Amendments to the APRA will create a uniform system of notification to be used throughout the state to inform property owners that their property may be ceased for rehabilitation unless the owner takes action. This will facilitate property rehabilitation because it will provide municipalities with the guidance needed to cure any apprehensions they may have regarding the Constitutionality of rehabilitation efforts.

*B. Provide for Private Party Receivership to Bring Abandoned Property Rehabilitation Actions*

The APRA relies on property owners, lienholders, and municipalities to initiate and undertake the rehabilitation of abandoned properties. Property owners and lienholders are the exact parties who abandoned the property to begin with so it is illogical, and almost laughable, to

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<sup>159</sup> U.S. Dept. of Housing and Urban Development *supra* note 57 at 220.

<sup>160</sup> The Constitution protects citizens' private property in the 5<sup>th</sup> Amendment's Taking Provision provision. This provision requires the government to compensate the owner of land taken for the public use.

believe they will voluntarily act to rehabilitate it. And as already discussed, municipalities are ill equipped to manage the large numbers of abandoned properties found throughout New Jersey. Local governments lack the personnel, expertise, and resources needed to file actions with the court to gain possession and title to abandoned properties. As written, the APRA only permits the property owner, lien holders, and the municipality to submit rehabilitation plans for abandoned properties; this statutory grant of power goes to a group of parties that either had a hand in causing the blight or who are ill-equipped to remedy it.<sup>161</sup> Instead of limiting the availability of actors who can play a role in the rehabilitation of properties, the New Jersey legislature should provide standing for uninvolved private parties to bring an action with the court to rehabilitate an abandoned property.<sup>162</sup>

A private party should be able to file a claim in the superior court to have possession of the property awarded to him or her for the purpose of rehabilitation. The private party should be held to the same notice and rehabilitation requirements already contained in the APRA. This receivership provision is not intended to interfere with the rights of the property owner, lienholder, or municipality. The private party should not be able to supersede rehabilitation plans submitted by the owner or lienholder because those parties have protected rights to the property. It is only after a statutorily designated period of inactivity by the owner and lienholders that a private party should be able to submit a rehabilitation plan with the court.

If a private party and municipality both submit a plan for rehabilitation, it should be left to the court's discretion to decide which entity is best suited to complete the rehabilitation. The power of the court to select either the private party's or the municipality's rehabilitation plan is

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<sup>161</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55: 19-89.

<sup>162</sup> See generally <http://legal-dictionary.thefreedictionary.com/standing>. For a party to be able to bring an action with the court he or she must have legal standing. Standing results when a party is directly affected by the actions the judicial proceedings are addressing or when the legislature specifically grants a party standing.

within the scope of the APRA because the statute grants the courts broad oversight over the entire rehabilitation process. The ability to select the best rehabilitation plan is implied because the judiciary has the power to reject or accept rehabilitation plans submitted by the property owner or lienholder.<sup>163</sup> Under this amendment, the court will apply its unbiased oversight to determine if the private party or municipality is better suited to rehabilitate the property.

An alternative amendment can be to give the municipality the opportunity to submit a rehabilitation plan prior to permitting private parties the option to do so. By giving private entities fourth priority, the legislature can provide the municipality a designated time period in which it may exercise its right to take action on the abandoned property. If the municipality fails to act, or waives its right to initiate rehabilitation, the option should be extended to the general public. The ability of private parties to bring abandoned property receivership actions will help to ensure that rehabilitation of abandoned properties occurs even where municipalities lack the resources to undergo such efforts.

Essentially, the private party will be given the same powers a municipality has under the APRA. It is preferable for a private party to undertake rehabilitation so municipal finances and resources are not drained. The granting of a public power to a private entity is not an anomaly in the realm of municipal governance. A great number of municipal services have been privatized to alleviate the municipal burden of providing the services.<sup>164</sup> The APRA already comes close to providing such a receivership tool by permitting municipalities to designate qualified rehabilitation entities to exercise the municipalities' rights.<sup>165</sup> The APRA fails to provide

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<sup>163</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-87(2).

<sup>164</sup> See generally Mary Scott Nabor, *The Privatization of Public Services: We Have to Make It Work*, Forbes (July 13, 2012 at 1:17 PM) <http://www.forbes.com/sites/forbesleadershipforum/2012/07/13/the-privatization-of-public-services-we-have-to-make-it-work/>.

<sup>165</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-90.

guidance on what a “qualified rehabilitation entity” is and requires the municipality to retain responsibility for the rehabilitation.<sup>166</sup> This amendment will eliminate any confusion over what type of entity may engage in the rehabilitation of abandoned properties; any entity with the ability to undergo the rehabilitation will have the opportunity to petition the court to do so. By providing a private party standing, the municipal burden of being responsible for bringing abandoned property proceedings, the private party receiver will be responsible for the abandoned property’s rehabilitation. Since the APRA provides the court with continuous oversight over the rehabilitation process any concerns the public may have of entrusting private parties to perform the rehabilitation are ill founded; the private party is not given free rein to do as it pleases, he or she must act within the confines of judicial control.

It is necessary to properly incentivized private parties to bring actions to rehabilitate abandoned properties. In some cases neighbors may initiate rehabilitation efforts to eliminate the negative effects the abandoned property has on their community. However, it is unlikely neighbors in the blighted communities where most abandoned properties are located will have the capital needed to undertake the property rehabilitation projects. Municipalities cannot rely on good-hearted Samaritans to cure property abandonment, the assistance of real estate developers is needed.

Without fiscal incentives, it is unlikely private developers would want to exert efforts to remedy blighted communities through the rehabilitation of abandoned properties. One incentive should be insulation from liability for the private party undertaking the rehabilitation. A clause indemnifying the private party from any lawsuits brought by the property owner or lienholders should also be added the statute. This is similar to the existing provisions which require the

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<sup>166</sup> *Id.*

municipality to maintain responsibility even once a qualified rehabilitation entity has been designated. Under this amendment, the municipality will not be responsible for the physical rehabilitation efforts, the private party will remain liable for the regular risks associated with construction. Nonetheless, the private party receiver will be shielded from any claims arising from the designation of the property as abandoned or the court approved rehabilitation process. Without a protection from certain liabilities, savvy private parties will be hesitant to assume the risks involved in the rehabilitation of abandoned properties.

Additionally, the private party should be provided with the ability to bring super priority liens against the property to finance the rehabilitation efforts. This will ensure the private party that any money he or she expends will be recovered. Ideally, the statute would provide the opportunity for the private party to gain clear title to the property. As provided for in other receivership actions, the private party should be able to foreclose on the super priority lien in a judicial proceeding. This foreclosure action would then extinguish all other liens giving the private party clean title to the newly rehabilitated property. The property owner and lienholders who failed to exercise their rights in the beginning of the rehabilitation process, and failed to petition the court for reinstatement of the property, will be viewed as having forfeited their rights to the property.

The removal of all liens is necessary to provide clear and marketable title to the property. Without marketable title, the property will not ascend to its true market value. The inability to realize a fair market price for the property would be a disincentive for profit-driven private receivers to assume the burden of rehabilitation. Clearing title for the private party receiver who expended the time and effort to rehabilitate the property furthers the American value rewarding hard work.



A less drastic title clearing process would be for only governmental liens to be excused and all other liens to be satisfied by the private party taking title to the property. The municipality would forfeit its rights to collect government liens in exchange for the private party to undergo the rehabilitation efforts. Although this does not provide as great an incentive, because the private party is only exempt from paying the government liens, it does offer greater protection to the rights of the property owner and lien holders. Instead of extinguishing all rights the prior owner and lienholders have in the property, the claims will be paid by the private party who takes title or the liens may remain as a cloud on the title to be satisfied at a future date.

It is likely the private party receiver would need to sell the property in order to satisfy the liens. The order of distribution for the proceeds of the sale of a rehabilitated property is already provided for in the APRA; the proposed amendment would eliminate the disbursement of funds to satisfy governmental liens.<sup>167</sup> The APRA has a provision which permits the municipality to withhold a development fee from properties it rehabilitates and sells.<sup>168</sup> This provision should be expanded to provide for a statutory sum to be withheld by the private party receiver who sells rehabilitates and sells a property. As amended, the distribution of sale proceeds would be as follows: 1) the costs incurred by the sale; 2) rehabilitation liens incurred by the private party receiver; 3) development fee for the private party receiver; 4) other liens following in the order of their priority; 5) the owner.<sup>169</sup> This order of disbursement incentivizes private parties by alleviating the responsibility of having to satisfy government liens, ensuring they recoup the expenses incurred by the rehabilitation, and rewarding their rehabilitation efforts through the stipend of a development fee. Additionally, this order of distribution of funds satisfies the claims

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<sup>167</sup> Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-97(20)(a)-(f).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

held by lienholders, and provides the neglectful property owner with any remainder to extinguish his or her rights in the property.

Although it is possible for the title to be cleared through satisfying all liens attached to the property, as previously explained, it is preferred that the title be cleared through a judicial proceeding at the end of the rehabilitation process to incentivize private parties to engage in abandoned property rehabilitation. Even if the private party receiver has the capital to satisfy all remaining liens, it is unlikely he or she would be willing to write the extremely large check needed to clear the property's title. Thus it is preferred that the amended legislation contain a method to which the title may be rendered unclouded at the end of the rehabilitation effort.

If properly incentivized, private parties can provide the cure to New Jersey's abandoned properties problem. The state legislature should amend the APRA to permit private parties to bring receivership actions to take possession and rehabilitate abandoned properties. Through private receivership actions, entities willing and able to combat blight can be provided with the arsenal to do so.

## VI. Conclusion

Abandoned properties create blight in the community. Although numerous methods employed as attempts to rehabilitate abandoned properties have been waged, none have succeeded in curing the problem. New Jersey has enacted legislation in the form of the Abandoned Property Rehabilitation Act to address the blight caused by abandoned property. Unfortunately, this legislation fails to provide clear guidance and relies solely on the efforts of already strained municipalities principal corrective agents. By clarifying the notice requirements of APRA and providing an opportunity for private parties to bring receivership actions on behalf

of rehabilitated abandoned properties, New Jersey could more meaningfully act to reduce blight throughout the state.