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## Receivership as a Tool for Preservation and Revitalization

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# Receivership as a Tool for Preservation and Revitalization

## Abstract

Many neighborhoods are faced with the complex issues of blight and vacant properties, and, if left unaddressed, abandoned properties continue to deteriorate and are subject to demolition by neglect. Prolonged vacancy not only threatens the retention of historic urban fabrics, but also the safety and economic capacity of the surrounding areas. One option to remediate property abandonment is receivership, or the process where a court-appointed party takes control of a neglected property and is given the responsibility to stabilize, rehabilitate or demolish the structure in order to address seriously blighting conditions that the owner has been unwilling or unable to deal with. This thesis examines receivership practices for vacant properties in order to evaluate their effectiveness as a tool to prevent demolition by neglect and support the preservation and revitalization of neighborhoods. The evaluations rely on a national survey of existing enabling legislation across the United States and case studies to determine the strengths and weaknesses of receivership. States need to provide clear and accessible standards that incentivize a range of individuals to participate in the process, but nonetheless, receivership has the potential to be a flexible and strategic tool to address at risk sites and ensure they are successfully rehabilitated.

## Keywords

conservatorship, abandonment, demolition by neglect, vacant properties, rehabilitation

## Disciplines

Historic Preservation and Conservation

RECEIVERSHIP AS A TOOL FOR PRESERVATION AND REVITALIZATION

Amanda Leigh Stevens

A THESIS

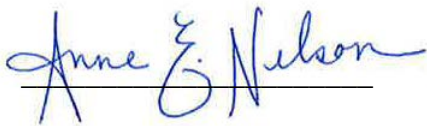
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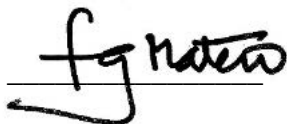
Presented to the Faculties of the University of Pennsylvania in  
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MASTER OF SCIENCE IN HISTORIC PRESERVATION

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A handwritten signature in blue ink that reads "Anne E. Nelson". The signature is written in a cursive style and is positioned above a horizontal line.

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## **1. INTRODUCTION**

Many neighborhoods throughout the nation are faced with the complex issues of blight and vacant properties that resulted from decades of urban decline. In the mid-twentieth century, cities across the country were left with declining populations. As people moved away from urban centers, neighborhoods were faced with unprecedented vacancy. Although cities have begun to regain population in recent years, some neighborhoods have yet to see their populations rise and still are contending with the issue of vacant structures. In other cases, properties are willfully left vacant due to the neglect of absentee owners who choose to forgo maintenance and rehabilitation efforts. Whether it is from an inability or unwillingness to provide an active use for a building, the impacts of vacant structures can be detrimental to neighborhoods. In urban areas struggling to regain population, attract businesses, and support economic vitality, abandoned properties are a nuisance that contribute to the continuation of these conditions. Vacancy on the part of property owners also places the physical structure of a building at risk, and continued disinvestment and neglect contribute to the loss of historic built fabric and threatens public safety.

Typical means of addressing demolition by neglect rely on the direct involvement and initiation on the part of local governments. This is accomplished through the issuance of building code violations or, in extreme cases, condemnation, but these tools are limited in their ability to ensure that a property is redeveloped and returned to active use. When dealing with larger scale areas, governments have relied on the powers of eminent domain to take control of and redevelop land, but this often does not address hyperlocal

instances of blight or vacancy. And more often than not, these powers have been used to demolish older properties to facilitate new construction rather than rehabilitating existing structures. Vacant property receivership gives private individuals and neighborhood organizations the power to take control of the conditions at this local level rather than relying on outside parties to address the issues.<sup>1</sup> Although the process varies state-to-state, there is typically some stage in which neighborhood residents can influence the fate of problem properties. Despite the opportunities this tool presents as a means to revitalize communities, there is a lack of information surrounding its usefulness as a resource. Broadly speaking, receivership legislation has been a more recent introduction in many states; thus, the extent of its capabilities and effectiveness as a national strategy have yet to be fully explored. By understanding the context, merits, and results of receivership, its strength as a tool for both preservation and community revitalization can be better understood and used to inform future decisions.

While receivership in some recognizable form or another has been around since the mid-twentieth century, the full impacts of the various types of legislation are still being evaluated across states and cities. This is further limited by the more recent adoption of legislation of some states.<sup>2</sup> The current scholarship on receivership as a tool is primarily found in professional reports and academic articles. Most of these sources focus on the legal capabilities of the various pieces of legislation but do not fully examine

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<sup>1</sup> In the state of Pennsylvania, the enabling legislation defines the tool as “conservatorship,” and the court appointed actor as “conservator.” In the state of New Jersey, receivership is referred to as “possession.” For the sake of consistency in this paper, the term receivership and receiver will be used to address all states.

<sup>2</sup> For example, North Carolina just enacted vacant property receivership legislation in 2018. To see when all states enacted legislation, see Appendix I.



the impact at a neighborhood level over time. While it is important to understand the limits of receivership from a legal standpoint, it is also necessary that the usefulness of the tool in practice is evaluated.

This thesis examines vacant property receivership practices in order to evaluate their effectiveness as a tool to prevent demolition by neglect and support the preservation and revitalization of neighborhoods. This thesis will investigate receivership legislation across the United States through qualitative research, case studies, and interviews with the goal of synthesizing the best policy practices and making recommendations for the improved implementation and use of the legislation.

## **2. THE CHALLENGE: ABANDONMENT AND DEMOLITION BY NEGLECT**

### Defining Property Abandonment and Demolition by Neglect

Abandonment is a complex issue that has no singular cause, but economic issues are typically at the core. Every state and municipality defines abandonment differently, but a common determinant used to classify a property as abandoned is an owner's intent and willingness to relinquish property rights. According to Mathew Samsa in an article he wrote for the *Cleveland State Law Review*, the most comprehensive definition of an abandoned property is "a property where the owner has stopped carrying out at least one of the significant responsibilities of property ownership, as a result of which the property is vacant, or likely to become vacant in the immediate future."<sup>3</sup> This definition focuses the conversation on the impacts abandonment has on the broader community rather than the personal costs or loss of a property owner. Of concern to the community are issues such as property values, public safety, neighborhood image, and lost revenue. These externalities will be discussed in more detail in a subsequent section; however, the key takeaway is that because abandonment's true impact cannot be constrained within set property lines, the issue warrants broader community involvement.

The issue that can be constrained to the boundaries of a singular property is the loss of built fabric. Property abandonment often begins – or in some cases continues – a process of demolition by neglect. The term "demolition by neglect" applies when a property owner intentionally allows a historic property to deteriorate beyond a point

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<sup>3</sup> Mathew J. Samsa, "Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment," *Cleveland State Law Review* 56 (2008), 194.

where rehabilitation is reasonable or feasible.<sup>4</sup> While this definition by the National Trust for Historic Preservation defines the process as pertaining specifically to historic properties, it is important to acknowledge that demolition by neglect is equally relevant to non-historic structures within cities.

In some cases, demolition by neglect is a form of abandonment, particularly when the cost of rehabilitating a structure is greater than the potential return.<sup>5</sup> The intent here is not always malicious, as a property owner may not be able to afford the necessary repairs to keep a building inhabitable. In other cases, the intention is to circumvent regulations with the prospect of pursuing some type of newer development on a site. For locally designated historic structures,<sup>6</sup> the active refusal to stop a building from deteriorating is often viewed as a means of avoiding the restrictions of local preservation ordinances.<sup>7</sup> Under this logic, if a property deteriorates to a point where rehabilitation is not feasible, an owner or developer can file for economic hardship and avoid conforming to the standards of the relevant preservation ordinance or pursue the full demolition of a site.<sup>8</sup>

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<sup>4</sup> National Trust for Historic Preservation, *Preservation Law Education Materials: Demolition by Neglect*, (Washington, D.C.: National Trust for Historic Preservation, 2009).

<sup>5</sup> Samsa, “Reclaiming Abandoned Properties,” 195.

<sup>6</sup> Local historic designation gives communities the opportunity to protect their historic resources. Local registers can include individual properties as well as districts that encompass multiple properties. Compared to other registers (e.g. National Register of Historic Places and state registers), local designation typically provides the greatest level of protection for historic resources. Properties designated at the local level are often subject to a range of review requirements that impact what can or cannot be done with a property. Alterations that affect the exterior appearance of a structure (e.g. additions, material changes, door and window replacement, and demolition) are subject the review of the relevant authority, but the actions that trigger review vary depending on the specifics of the local preservation ordinance. It is this local level of protection that is often the source of complaint for property owners who feel the review requirements infringe on their rights. For a brief comparison of the different levels of historic designation, see Sarah Heffern, “Historic Designations: What Do They Mean?” National Trust for Historic Preservation, March 21, 2014.

<sup>7</sup> Anna Martin, “Demolition by Neglect: Repairing Buildings by Repairing Legislation” (seminar, Georgetown University Law Center, 2007), 3.

<sup>8</sup> A property owner can claim economic hardship when they feel a decision made by the local preservation commission regarding their property denies them “all reasonable beneficial use or return.” The precise

For undesignated structures the threat of new development may still lead to demolition by neglect, particularly in areas where speculation is high. In these cases, developers will hold on to a property with the hope markets will shift – allowing them to either sell the land or build a new. Meanwhile, the building in the current market is allowed to deteriorate because the incentive to maintain is not enough to justify the expenditure.<sup>9</sup>

For one West Philadelphia property, the threat of demolition by neglect was all too real. A *Philadelphia Inquirer* article from 2010 documents the case of 1446 N. Conestoga Street – a rowhouse that was left vacant and crumbling on the residential block.<sup>10</sup> At the time, the rowhouse had been vacant for nearly ten years, and all the while continued to deteriorate despite the efforts of neighbors who tried to maintain what they could. Neighbors of the property felt the impact of its vacancy, with one resident, Carolyn McClary, stating “I would like to see it renovated and brought back to life. Because what happens, it weakens the whole block. None of these houses were built to stand alone.”<sup>11</sup> Records of who was the legal owner of 1446 N. Conestoga had been lost somewhere along the line during the buildings complicated history of owners dying and leaving the city, and the City of Philadelphia’s various departments issued notices of tax delinquency and code violations that were left unanswered. This is not a unique story, as

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standards vary based on the local ordinance in effect and cases are evaluated on a property-to-property basis. For more information on the typical standards and processes for determining economic hardship, see National Trust for Historic Preservation, *Preservation Law Education Materials: Assessing Economic Hardship Claims Under Historic Preservation Ordinances*, (Washington, D.C.: National Trust for Historic Preservation, 2009).

<sup>9</sup> Samsa, “Reclaiming Abandoned Properties,” 195.

<sup>10</sup> Kia Gregory, “W. Phila. Neighbors fight to save their block,” *The Philadelphia Inquirer*, April 8, 2010, [https://www.inquirer.com/philly/news/local/20100408\\_W\\_\\_Phila\\_\\_neighbors\\_fight\\_to\\_save\\_their\\_block.html](https://www.inquirer.com/philly/news/local/20100408_W__Phila__neighbors_fight_to_save_their_block.html).

<sup>11</sup> *Ibid.*

1446 N. Conestoga was not the first property on the block to be subject to these conditions; in previous years “the street [had] already lost one tooth; now another [was] rotting.”<sup>12</sup> Thankfully in the case of 1446 N. Conestoga, the rowhouse was able to be saved through the sheriff sale process,<sup>13</sup> but this was after years of unnecessary neglect and frustration on the part of neighbors.<sup>14</sup> Without an enforceable and clear way of dealing with problematic properties such as 1446 N. Conestoga, residents were left with an unsafe, deteriorating property that affected their daily lives and represented a loss of thousands of dollars in delinquent property taxes to the City of Philadelphia.

### Externalities

While intent is important in understanding the cause of abandonment and demolition by neglect, the end result is often the same. Between 2000 and 2010, the number of vacant housing units in the United States rose by more than 4.5 million or an increase of 44%.<sup>15</sup> In places like Baltimore, the city is gaining new vacant houses just as fast as it is able to address previously abandoned ones.<sup>16</sup> Although population in urban

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<sup>12</sup> Ibid.

<sup>13</sup> A property goes to sheriff sale when the owner is delinquent on property payments. In Philadelphia, there are two types of sheriff sale – Tax Sale and Judicial Mortgage Foreclosure Sale. Tax Sale occurs when a property owner fails to make payment on municipal debt (e.g. city property taxes, water bills, etc.). Judicial Mortgage Foreclosure Sale occurs when mortgage companies or other financial institutions seek to collect debt after the property owner defaults on payments. In both instances, the property in question is released to public auction where individuals can bid to become the owner of the property with proceeds going towards the repayment of the outstanding debt.

<sup>14</sup> Sheriff Deed of Sale from Lester Opher to WPRE Inventory LLC, 16 November 2010, Record 52282636, Department of Records, Philadelphia, PA.

<sup>15</sup> Alan Mallach, *Laying the Groundwork for Change: Demolition, Urban Strategy, and Policy Reform*, Washington D.C.: Brookings Metropolitan Policy Program, September 2012, 3.

<sup>16</sup> Ian Duncan and Christine Zhang, “Baltimore is furiously knocking down vacant houses – but barely keeps up as new ones go empty,” *Baltimore Sun* (Baltimore, MD), Oct. 18, 2019, <https://www.baltimoresun.com/politics/bs-md-ci-vacants-demolition-progress-20191018-mw3cb5vlbjb4dmnxlbyjg7tdy-story.html>.

areas is generally rising, not all neighborhoods within these cities are equally seeing the same shifts in demand. It is here that vacancy lingers, and as vacancy progresses the costs and impacts associated with it grow. The impacts that extend beyond a single property are what make abandonment and demolition by neglect a community and city issue. While the true impact can never be fully understood, additional city expenditure and loss of revenue and negative impacts to public safety and property values are all common issues that arise in regard to the relationship between property abandonment and neighborhood revitalization efforts.

#### *City Expenditure and Loss of Revenue*

At a first glance the abandonment of structures might suggest that there is a complete lack of capital going towards the building on the part of cities and owners; however, the burden of the cost is often taken up by the local municipalities. Securing abandoned structures should, in theory, be the responsibility of property owners, but local governments often take on an additional burden to ensure properties are securely boarded as well providing additional services such as fire and police that are necessary to prevent further harm.<sup>17</sup> Across the country millions of dollars are spent by cities to address the issue of vacant properties. In a 2011 report by the U.S. Government Accountability Office, nine municipalities were studied to determine the financial impact of vacant houses. Expenses included “boarding up and securing properties, mowing lawns, draining pools, and removing debris” in addition to inspections required to determine the status of

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<sup>17</sup> Mallach, *Laying the Groundwork for Change*, 12.

properties.<sup>18</sup> On average, each time a vacant property needs to be secured, it costs between \$233 and \$1,400. According the 2011 report, Chicago estimated that it spent \$875,000 to secure vacant properties in 2010, and Detroit spent approximately \$1.4 million.<sup>19</sup> Additionally, if an abandoned property is allowed to deteriorate to the point it becomes a liability, cities must then dedicate revenue to demolishing the structure before it threatens public safety. Demolishing detached single-family properties costs between \$4,800 to \$7,000 on average; however, demolition costs can vary greatly depending on the materials used, the size, and form of the property.<sup>20</sup> These costs are separate from considerations of tax delinquency and lost revenue that could have been collected by city agencies. A 2010 study by Econsult in Philadelphia found that vacant parcels represent \$20 million spent by the City on maintenance in addition to approximately \$70 million in delinquent property tax revenue.<sup>21</sup> The loss of revenue impacts the amount cities are able to put back into supporting their neighborhoods, such as physical improvements or community serving programs.

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<sup>18</sup> Mathew J. Scire, *Vacant Properties: Growing Number Increases Communities' Costs and Challenges*, United States Government Accountability Office (2011), 37.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, 39-40. The presence of asbestos or lead can increase demolition costs due to the required abatement measures. Rowhouses and other attached buildings are also significantly more expensive to demolish than detached ones because the adjacent property or properties must be stabilized and secured in the process. According to Baltimore officials, a single rowhouse could cost anywhere between \$13,000 and \$40,000 to demolish. Because of the higher cost per building, it often makes more fiscal sense for the city to demolish entire rows rather than a single property.

<sup>21</sup> Econsult Corporation et al, "Vacant Land Management in Philadelphia: The Cost of the Current System and the Benefits of Reform," prepared for the Redevelopment Authority of the City of Philadelphia and the Philadelphia Association of Community Development Corporations (2010): 5. The estimated costs and value of lost revenue are based on an analysis of around 40,000 vacant parcels (although the actual number is likely higher) in the City of Philadelphia where about three-quarters are privately controlled. Of these parcels, about 37,000 parcels have no standing structures. Although this significantly modifies the portion of costs that can be attributed to abandoned structures, the principle of unnecessary expenditure on the part of the city still stands.

## *Public Safety*

The most obvious safety issue involving abandoned properties is a result of prolonged periods without maintenance. As buildings deteriorate, they are subject to structural failings. For attached structures, the risk is particularly high for the adjacent properties, as unless other measures are taken, the stability of neighboring properties is tied to each other. If conditions are left unaddressed, buildings are at risk of collapse. In some cases, it is specific elements that can fall to the ground like pieces of cornices or brickwork. Other times it is total structural failure. Regardless, any degree of structural failing places the safety and lives of passersby at risk.<sup>22</sup>

Under the “Broken Windows” theory, deteriorating properties are viewed as a cause of neighborhood disorder or crime.<sup>23</sup> Discussions about the theory largely stem from a 1982 article by George L. Kelling and James Q. Wilson that appeared in *The Atlantic Monthly*.<sup>24</sup> The theory claims that the simple presence of disorder – so in this case, abandoned structures – supports the perception that an area is impoverished and crime-ridden, which in turn implies residents are ambivalent to the status of their neighborhood.<sup>25</sup> In terms of how this impacts public safety, the relevant part of the theory states that the perception of lack of control can lead to increased amounts of criminal activity and further abandonment. All of this serves as a barrier to potential investment

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<sup>22</sup> Ellen Wulforst, “Passersby Injured by Debris from Empty Building Collapse in Brooklyn,” *Reuters*, July 14, 2015, <https://www.reuters.com/article/us-usa-new-york-building-idUSKCN0PO2GT20150714>. This article describes an incident in Brooklyn, NY where a vacant building suddenly collapsed, and the falling debris struck people on the street and sent multiple people to the hospital for related injuries.

<sup>23</sup> George L. Kelling and James Q. Wilson, “Broken Windows,” *The Atlantic Monthly* (March 1982).

<sup>24</sup> *Ibid.*

<sup>25</sup> Samsa, “Reclaiming Abandoned Properties,” 196.



and redevelopment. The lack of investment due to the stigma can worsen the preexisting issue of deteriorating and abandoned properties or, at best, allow it to remain unchanged.

Over the past couple of decades there have been multiple studies that have examined the relationship between abandoned structures and criminal activity. Some of these are summarized in a report by the National Vacant Property Campaign from 2005, and, overall, there is a relationship between blocks with high vacancy and blocks with higher amounts of criminal activity.<sup>26</sup> It is important to note that the method of analysis does not always support a definitive correlation of increased criminal activity as a direct result of vacancy. Neighborhoods with high crime and high vacancy rates are subject to many other factors that impact both criminal activity and property abandonment. However, the relationship that is observed supports, at a minimum, the benefit of securing abandoned properties.

Another common concern with abandoned properties is the risk of fire. Because of poor maintenance, outdated systems, faulty wiring, trash, and illegal occupation, abandoned properties are at a higher risk of accidental fires. The U.S. Fire Administration reported that there are over 12,000 fires in vacant properties each year. Of these, more than 70% can be attributed to or are suspected arson.<sup>27</sup> Fires in abandoned properties are a greater threat to firefighters due to the pre-existing deteriorated conditions, and they also threaten the safety of those living in neighboring buildings.

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<sup>26</sup> *Vacant Properties: The True Cost to Communities*, National Vacant Property Campaign (August 2005): 3. In a study of Richmond, VA during the mid-90s, vacant properties had the highest correlation to the incidence of crime of all demographic and economic variables tested. A study in Austin, TX found that crime rates on blocks with open vacant buildings were twice as high as other similar blocks without open buildings. Furthermore, 43% of abandoned buildings could be entered without the use of force, and of these, 83% showed evidence of illegal use by prostitutes, drug dealers, vandals, and others.

<sup>27</sup> *Vacant Properties: The True Cost to Communities*, National Vacant Property Campaign, 4.



*Figure 2.1. The aftermath of a fire that broke out in an abandoned Baltimore building. The same night this fire occurred, three other abandoned buildings caught fire in the city. (Baltimore Sun, 2020)*

### *Property Values*

Proximity to an abandoned structure also negatively impacts the property values of surrounding parcels. Many studies have attempted to quantify the negative impact vacant properties have on the appraised value of adjacent properties. A survey by a federal research organization determined that proximity to a vacant residential property could lower the value of nearby properties from .9 to 8.7%.<sup>28</sup> A study by Temple University found that property values decreased more significantly the closer a site was to an abandoned property (see Figure 2.2).<sup>29</sup> Lowered property values from surrounding properties further exacerbate cities' lost revenue, as lower assessed values for these

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<sup>28</sup> Scire, *Vacant Properties: Growing Number Increases Communities' Costs and Challenges*, 45.

<sup>29</sup> Temple University Center for Public Policy & Eastern Pennsylvania Organizing Project, *Blight Free Philadelphia: A Public-Private Strategy to Create and Enhance Neighborhood Value* (Philadelphia: Temple University, 2001).

neighboring properties further reduces the total amount of property taxes being collected by the City.

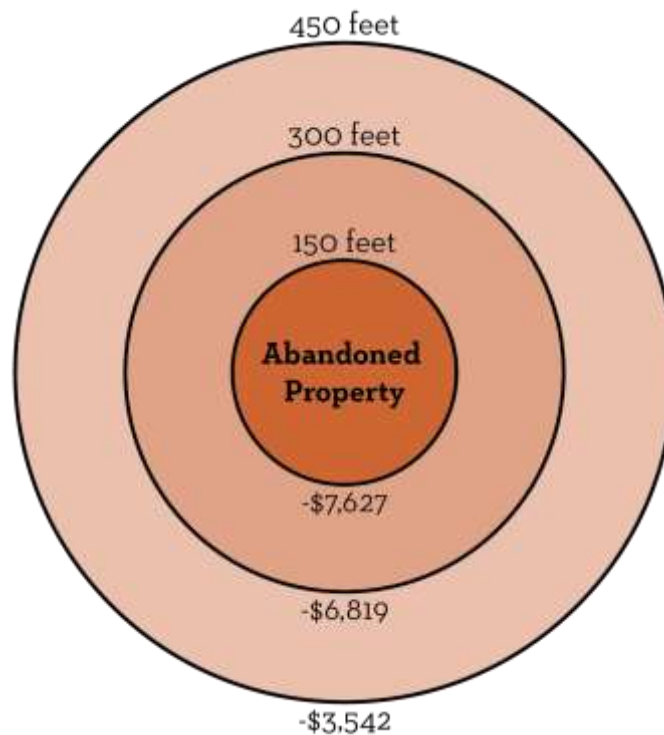


Figure 2.2. The negative impact proximity to an abandoned property has on the assessed value of a parcel (Temple University Center for Public Policy & Eastern Pennsylvania Organizing Project, 2001)

Aside from the measurable impact associated with property values, abandonment can prevent the revitalization of neighborhoods by contributing to a negative perception and serving as a barrier to any potential new development or investment. Areas with concentrated vacancy disincentivize investors to make property repairs and make it difficult to support viable commercial enterprises.<sup>30</sup> This is particularly problematic in low-income neighborhoods where personal wealth and security is compromised by the

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<sup>30</sup> Robert J. Sampson and Stephen W. Raudenbush, "Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods," *American journal of sociology* 105, no. 3 (1999): 610.

state of neighboring properties.<sup>31</sup> The National Vacant Properties Campaign summarized the effects of abandoned buildings on their communities:

With abandoned buildings comes social fragmentation. Individuals who live in communities with an increasing number of vacant buildings begin to feel isolated, weakening the community as a whole. A large number of vacant buildings in a neighborhood symbolizes that no one cares, increasing the likelihood that property values will continue to decline and that further abandonment will set in. In the case of vacant properties, the problem is out in the open, for all to see.<sup>32</sup>

If abandonment becomes too widespread in a given area, the overall real estate market weakens; although, this relationship goes both ways, as vacancy is also a symptom of a weak market.

#### Strategies to Address Demolition by Neglect

Abandonment and demolition by neglect are not new phenomena, and, as such, there have been many attempts to prevent them from taking place. It is in the best interest of cities to address demolition by neglect for the sake of the well-being of their neighborhoods. The following tools do not represent a comprehensive list of ways cities manage demolition by neglect but include some of the most common methods used for both locally designated and undesignated structures.<sup>33</sup> Many of these strategies rely on local governments to carry out enforcement. These strategies tend to either be “regulatory-based” or “incentive-based.”<sup>34</sup> As the name implies, incentive-based

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<sup>31</sup> Mallach, *Laying the Groundwork for Change*, 13.

<sup>32</sup> *Vacant Properties: The True Cost to Communities*, National Vacant Property Campaign, 8.

<sup>33</sup> Unless otherwise noted, all references to a property as “designated” or “undesignated” refer to its status as a designated historic structure at the local level.

<sup>34</sup> Galen Newman and Jesse Saginor. “Four Imperatives for Preventing Demolition by Neglect,” *Journal of Urban Design* 19, no. 5 (2014): 630.

strategies focus on incentivizing the redevelopment or maintenance of a structure.<sup>35</sup> Often these apply more broadly to encouraging redevelopment and do not specifically incentivize the revitalization of properties that have severely deteriorated. Regulatory-based strategies tend to be more reactive and are applied when a building has already begun to fall into a state of disrepair. These generally involve enforcement of set local regulations to penalize property owners who willfully abandon and fail to maintain their building. This section and the following discussions throughout this paper will focus on regulatory-based strategies, how these strategies can be used once the process of demolition by neglect begins, and where they fall short.

### *Code Enforcement*

One of the most common ways cities try to ensure the maintenance of structures is through code enforcement. This strategy can be traced back to the mid- to late-nineteenth century but really became commonplace in the mid-twentieth century when cities used housing codes to enforce building maintenance through the police power.<sup>36</sup> Police powers are granted to states through the Tenth Amendment of the United States Constitution and give states the ability to establish and enforce laws that protect the welfare, safety, and health of the public.<sup>37</sup> Building codes fall within the scope of these powers as they allow municipalities to ensure all structures are safe for use and habitable. Standards are set at

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<sup>35</sup> Ways to incentivize the rehabilitation of structures often include tools such as zoning reliefs, transfer of development rights, tax abatement, and other financial incentives. These make the option to restore a building with an obsolete use or other barriers to viable redevelopment more financially or logistically appealing.

<sup>36</sup> David Listokin, Lizabeth Allewelt, and James J. Nemeth, "Housing Receivership: Self-Help Neighborhood Revitalization," *Washington University Journal of Urban and Contemporary Law* 27 (1984): 73.

<sup>37</sup> *U.S. Constitution*, Amendment X.

both the state and local level to identify and abate nuisance properties. While this tool is successful in directly identifying safety issues that need to be addressed, its applicability to abandoned properties is not the most efficient use of government resources. First, owners who have abandoned their properties can easily avoid paying fines associated with code violations. This also assumes that the property owner is able to be identified in the first place, as tangled titles may obscure the responsible owner.<sup>38</sup> Furthermore, even if a property owner is identified, they may not be able to afford the repairs necessary to bring a building into compliance – hence their abandonment of the property. Lastly, code enforcement requires a significant amount of effort from local governments, which are often under-staffed and under-funded. And because it relies on the management of city agencies, it is difficult for cities to enforce in a systematic manner.<sup>39</sup>

#### *Doors and Windows Ordinances*

Like code enforcement, local doors and windows ordinances attempt to address vacant properties from a physical standpoint. Cities with such ordinances try to mitigate the security and structural risks that come from vacant properties by requiring that all structures have securely closed windows and doors; otherwise, the owner is subject to a fine. In Philadelphia, for example, the ordinance applies on blocks that are more than

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<sup>38</sup> Tangled titles occur when the person(s) residing in or responsible for a property is not the recorded, legal owner. One way this can happen is when the previous owner passes away and another family member maintains the property without transferring the title. In low-income neighborhoods where real estate pressures are minimal, there is less incentive to pay the legal fees and other inheritance taxes. See Inga Saffron, “The secret to making gentrification benefit Philadelphia’s low-income homeowners,” *The Philadelphia Inquirer*, (2017): [https://www.inquirer.com/philly/columnists/inga\\_saffron/The-secret-to-making-gentrification-benefit-Philadelphias-low-income-homeowners-.html](https://www.inquirer.com/philly/columnists/inga_saffron/The-secret-to-making-gentrification-benefit-Philadelphias-low-income-homeowners-.html).

<sup>39</sup> Samsa, “Reclaiming Abandoned Properties,” 197-198.

80% occupied.<sup>40</sup> For these cases, all door and window openings must be secured with operable fixtures.<sup>41</sup> From an aesthetic standpoint, functional doors and windows improve the quality of a site compared to typical plywood closures, but they also provide greater security for vacant buildings by making it more difficult for people to illegally enter. Similar to code enforcement, the success of this tool relies on having an owner that can be readily contacted and is willing and able to pay for windows, doors, or the fines. This tool is also a band-aid on a much larger problem. While to some extent doors and windows ordinances can help protect against – or at least delay – demolition by neglect by encouraging owners to properly enclose their buildings, it neglects to address the more critical cause of deterioration: vacancy. No attempts to incentivize redevelopment are included within the scope of doors and windows ordinances.

### *Tax Foreclosure*

Beginning in the 1970s, municipalities increasingly turned to property tax foreclosure as a tool to address property abandonment. While the uses of this tool extend beyond dealing with vacancy in neighborhoods, the following discussion will focus on how it applies to the prevention of demolition by neglect. In cases where property owners are only seeking to maximize their profits, they might hold onto a parcel without supporting an active use in the property until they see signs of market change. Alternately, their concerns may be focused on short-term profits. Because of this focus on

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<sup>40</sup> City of Philadelphia Department of Licensing and Inspection, “Doors and Windows Ordinance” *Philadelphia Property Maintenance Code Section 306* (Philadelphia, 2011).

<sup>41</sup> Jake Blumgart, “Philadelphia Anti-Blight Legislation Back in Action,” *The Philadelphia Tribune*, [https://www.phillytrib.com/news/philadelphia-anti-blight-legislation-back-in-action/article\\_d0604dab-d40b-50d1-9dbb-9616e1b9d438.html](https://www.phillytrib.com/news/philadelphia-anti-blight-legislation-back-in-action/article_d0604dab-d40b-50d1-9dbb-9616e1b9d438.html).

profits, owners may be delinquent in paying their property taxes as the risk of foreclosure is low compared to the short-term profits that can be had by holding on to that extra revenue.<sup>42</sup> After a defined period of time of delinquent taxes, a property is subject to foreclosure. Under this process, the city taxing entity initiates a tax sale for a tax delinquent property where the delinquent owner has a set amount of time to pay back taxes and any interest and fees before the title is then conveyed to the appropriate city agency or sold at auction. In many cases, properties that were vacant for extended periods of time prior to foreclosure have difficulty attracting private investment or private buyers. As a result, public entities often are the ones taking title to vacant properties through the foreclosure process.<sup>43</sup> This further increases the expenditure needed to maintain a vacant property and the lost tax revenue that would be paid under private ownership. With these challenges in mind, in many cases of city-owned vacant buildings, the most likely outcome is demolition.

While property tax foreclosure is useful in transferring the title when owners refuse to or cannot pay their legally required taxes, its effectiveness as a tool for addressing abandoned properties is limited. For one, it is not an applicable strategy when property owners are paying their required taxes but are still not investing in the maintenance of their building.<sup>44</sup> Foreclosure is also a time-consuming process. From notice requirements to the actual proceedings, cases can take anywhere from one to three years.<sup>45</sup> All the while, the vacant property is in a prolonged state of abandonment and is

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<sup>42</sup> Listokin et al, "Housing Receivership: Self-Help Neighborhood Revitalization," 76.

<sup>43</sup> Ibid, 77.

<sup>44</sup> Listokin et al, "Housing Receivership: Self-Help Neighborhood Revitalization," 77.

<sup>45</sup> Samsa, "Reclaiming Abandoned Properties," 199-200.



at further risk of deterioration. As a tool to address widespread vacancy, foreclosure is challenged because it is a municipal led process. Issues of capacity to pursue come into effect as well as ones of equal treatment of property owners. This means municipalities must employ it against all delinquent properties without showing any favor to specific areas or owners.<sup>46</sup> Consequently, property tax foreclosure is not a useful tool for strategic approaches to addressing abandoned buildings. And even if an abandoned property is foreclosed upon, there is no guarantee that it will be returned to active use.<sup>47</sup> Cities that hold title to many properties may not have the capacity to redevelop critical sites, and building are allowed to sit in a continued state of vacancy.

#### *Preservation Ordinances and Demolition by Neglect Clauses*

In order to attempt to address the loss of historic structures directly, some municipalities enact demolition by neglect clauses as part of their preservation ordinances. Such clauses require that all designated historic structures comply with established building standards.<sup>48</sup> These provisions serve as a way to maintain the aesthetics and cohesion of a neighborhood, but also as a means to specifically protect against property owners who might use deferred maintenance to avoid preservation regulations by arguing for economic hardship.<sup>49</sup> Economic hardship cannot, therefore, be claimed if there were no reasonable efforts to adapt or find a viable use for a locally

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<sup>46</sup> Listokin et al, "Housing Receivership: Self-Help Neighborhood Revitalization," 78.

<sup>47</sup> Samsa, "Reclaiming Abandoned Properties," 198.

<sup>48</sup> An example of building standard provisions includes the requirement to keep all locally designated properties or properties within a historic district in good repair, as neglect can result in the deterioration, decay, or permanent loss of historic features, see *Historic Buildings, Structures, Sites, Objects and Districts*, Philadelphia Code §14-2007(8)(c) (2004).

<sup>49</sup> Martin, "Demolition by Neglect," 3.

designated building.<sup>50</sup> Preserving historic structures also brings opportunities for economic development and revitalization.<sup>51</sup>

Cities like Philadelphia, New Orleans, New York City, and Washington D.C. have demolition by neglect clauses in place, but most cities often lack the capacity to effectively enforce them. For example, in Washington D.C., there are no procedures in place to identify, report, and repair properties.<sup>52</sup> Philadelphia and New Orleans have comprehensive legislation but lack the personnel and funding necessary to oversee and enforce demolition by neglect ordinances.<sup>53</sup> In Philadelphia, the Philadelphia Historical Commission has the power to issue fines for demolition by neglect, but seldom does so.<sup>54</sup> They have a staff of only seven people, and they do not have the capacity to actively pursue properties that are in violation. Instead, the Philadelphia Historical Commission relies on the Philadelphia Department of Licenses and Inspections to issue and enforce fines for building code violations.<sup>55</sup> Another limitation is the political willpower of such enforcements from preservation offices. Without broader political support, preservation offices may be hesitant to push for stricter regulations and enforcement. Furthermore, aggressively pursuing a case might result in a full inspection that reveals a property is

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<sup>50</sup> Each municipality defines economic hardship differently in their ordinance, but generally hardship exists where the regulations placed on a property under the local ordinance (often a denial to alter or demolish a building) prevents any reasonable use or return on the property. Hardship is typically evaluated on a site-to-site basis and the burden of proof is on the applicant, see National Trust for Historic Preservation, *Preservation Law Education Materials: Assessing Economic Hardship Claims Under Historic Preservation Ordinances*.

<sup>51</sup> Newman and Saginor, "Four Imperatives for Preventing Demolition by Neglect," 624.

<sup>52</sup> Martin, "Demolition by Neglect," 4-5.

<sup>53</sup> *Ibid*, 7-14.

<sup>54</sup> The Philadelphia Historical Commission is the agency tasked with the regulation, designation, and protection of historic properties within the City of Philadelphia.

<sup>55</sup> Rachel Ann Hildebrandt, "Demolition-By-Neglect: Where Are We Now?" (Master's Thesis, University of Pennsylvania, 2012), 38.

structurally unsound and would need to be demolished in the name of public safety.<sup>56</sup> Of course, this is the end result of the demolition by neglect process regardless. Preventing a designated structure from being demolished through preservation regulations is often only delaying the inevitable if the owner is uncooperative or lacks the capital necessary to make repairs. Relying too heavily on these types of regulations by preservation offices often represents an overdependence on the architectural values of a place while neglecting that of function.<sup>57</sup> In these cases, the physical characteristics are prioritized over having an active use that contributes to the well-being or historic uses of a site or neighborhood. Of course, one of the biggest limitations to preservation ordinances is they are only applicable to designated structures. Cities often lack the capacity to complete comprehensive surveys to identify and nominate eligible historic structures. As a result, many neighborhoods, particularly low-income ones removed from the downtown cores or historic centers, lack the protections granted through historic designation.<sup>58</sup>

### *Land Banks*

In concept, land banks operate in a similar manner as receivership. Land banks can be fully- or quasi-public entities who repurpose abandoned or tax delinquent properties. A defined agency takes control of eligible properties and is responsible for making the necessary repairs in order to mitigate any liabilities. Key to the land banking

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<sup>56</sup> Martin, 14.

<sup>57</sup> Newman and Saginor. "Four Imperatives for Preventing Demolition by Neglect," 623.

<sup>58</sup> A study by the Preservation Alliance for Greater Philadelphia found that only approximately 4% of all buildings in Philadelphia had been evaluated for their historical significance. Only approximately 2% of all buildings in the city have any form of historic protection through either district or individual designation. See "Preservation Plan for Philadelphia," Preservation Alliance for Greater Philadelphia, <http://www.preservationalliance.com/what-we-do/preservation-plan-for-philadelphia/>.

process is the ability to “overcome significant impediments in the property acquisition and disposition system.”<sup>59</sup> Often one of the powers granted is the ability to clear any tax delinquencies associated with the property. After this last step is complete, the agency then facilitates the sale of the property to a responsible owner or in some cases retains interest long-term to ensure the property contributes to a use that benefits the community.

In practice this is often successful in addressing problematic properties; however, this strategy requires the creation of a distinct entity to manage properties throughout the city. This means there is the need for designated funding to support the operational costs and personnel required to run the agency. Land banks operate at large scales, so in cities with more distressed markets, the potential financial responsibilities of the land bank agencies are far more extensive. Additionally, in many cases, land banks rely on pre-existing structures to acquire properties – the primary means being the tax foreclosure process. This brings the same limitations discussed above into the land banking process. Further limitations arise through each municipalities’ definition of eligible properties. Only authorizing land banks to acquire properties with vacant land and not vacant structures – as is the case in many cities – reduces the land banks capacity to address problematic properties.<sup>60</sup> Properties acquired by land banks are done so with the ultimate goal of transferring title to a new owner who will take on the responsibility of redeveloping the parcel and returning to active use. The land bank process itself does not address this. Many land banks can hold properties for an indefinite period of time, in

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<sup>59</sup> Allan Mallach, *Bringing Buildings Back: From Abandoned Properties to Community Assets*, Second Edition (Montclair, NJ: National Housing Institute, 2010), 130.

<sup>60</sup> Mallach, *Bringing Buildings Back*, 132.

which their efforts primarily focus on stabilization (e.g. boarding the building, mowing lawns, maintaining sidewalks) rather than fully rehabilitating structures.<sup>61</sup>

### *Eminent Domain*

The final tool that is used to address abandoned properties is eminent domain. Eminent domain is the power of government to take (or condemn) property against the owner's will when it is in the public interest and just compensation is provided under the 5<sup>th</sup> Amendment of the United States Constitution.<sup>62</sup> Title I of the Federal Housing Act of 1949 determined that the redevelopment of blighted areas was considered a public purpose for which eminent domain could be used, as long as the owner was justly compensated.<sup>63</sup> The landmark cases of *Berman v. Parker* and *Kelo v. New London* secured the ability of eminent domain to serve as a tool for neighborhood revitalization.<sup>64</sup> In cities like San Antonio and Baltimore, eminent domain has specifically been used to acquire historic properties in order to save them from demolition by neglect.<sup>65</sup> While this is a powerful tool with the potential to protect properties, it has often been used to demolish rather than rehabilitate existing structures.<sup>66</sup> When cities employ eminent domain, there are no mechanisms that ensure a site is actually rehabilitated or

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<sup>61</sup> Mallach, *Bringing Buildings Back*, 135.

<sup>62</sup> *U.S. Constitution*, Amendment V.

<sup>63</sup> Mallach, *Bringing Buildings Back*, 88.

<sup>64</sup> *Berman v. Parker* affirmed private property could be transferred from one private party to another for public purpose if it is to promote the general physical, aesthetic, sanitary, or economic quality of an area. *Kelo v. New London* affirmed economic development as a public purpose. See *Berman v. Parker*, 348 U.S. 26 (1954) and *Kelo v. New London* (04-108) 545 U.S. 469 (2005).

<sup>65</sup> The City of San Antonio is permitted to condemn historic properties and take it through eminent domain for the purpose of rehabilitation and reuse. In 1950, the City of Baltimore used its authority to acquire and preserve the Betsy Ross House. See National Trust for Historic Preservation, *Preservation Law Education Materials: Demolition by Neglect*, 7.

<sup>66</sup> *Kelo v. New London* (04-108) 545 U.S. 469 (2005).

redeveloped. In *Kelo v. New London* the courts held that eminent domain could be used for economic development purposes and economic development is considered a public good. The aftermath of the case saw the condemnation subsequent demolition of fifteen properties on the Thames River Peninsula in New London, Connecticut to make way for a private company who promised to bring new jobs and revitalize the area. However, these plans never came to fruition and the land where the residential community once stood is still vacant.<sup>67</sup> Furthermore, due to the scrutiny that follows the use of the tool, it is not effective for “spot-blight” treatment, which is the act of taking a single property from one party to be redeveloped by another.<sup>68</sup> As a result, its ability to serve as a surgical tool to address abandonment and blight is limited.<sup>69</sup>

Vacancy is not a simple problem. Occurrences of demolition by neglect resulting from prolonged abandonment puts the built environment of cities at risk. The resulting city expenditure and loss of revenue, threats to public safety, and impacts on surrounding property values associated with vacant and deteriorating properties often requires strategic public action. While the various methods of removing vacancy have their own strengths, they often fail to directly address or incentivize putting a building back into active use.

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<sup>67</sup> *Kelo v. New London*.

<sup>68</sup> “Spot Blight Eminent Domain,” Housing and Community Development Network of New Jersey.

<sup>69</sup> For more information on the use of eminent domain to prevent demolition by neglect see Sarah McHale Scott, ““Eminent Good Sense?:” Using Eminent Domain to Curtail Demolition by Neglect” (Master’s thesis, University of Pennsylvania, 2019).

### **3. RECEIVERSHIP**

#### Overview of the Process

In the face of demolition by neglect and property abandonment, vacant property receivership provides an alternative approach to the previously described means of addressing vacant properties and prioritizes the reuse and rehabilitation of existing buildings. Currently, twenty-one states across the United States have enabling legislation in place that allows cities to act under either the state law or to pass local receivership ordinances. There is great variation in the abilities and procedures across the different states, but generally speaking, the following statement can be used to define receivership:

Process where a judge appoints a responsible party to take control of a neglected property and bring it into compliance with code standards. The party appointed for this purpose, known as a receiver or conservator, is given the responsibility to stabilize, rehabilitate or demolish the structure in order to address seriously blighting conditions that the owner has been unwilling or unable to deal with. The receiver then has the authority to sell the property through private sale or public auction in order to be reimbursed for the costs incurred.<sup>70</sup>

There are a variety of actors that participate in this process – the four main ones are (1) the property owner, (2) the petitioner, (3) the receiver, and (4) a local court. The property owner is the person or entity who has legal title to a building at the beginning of the process. They have let the property deteriorate to a point where it has become a public concern due to either intentional neglect or a lack of funds to properly maintain it. Sometimes the property owner cannot be reached during the process, so they do not play an active role. The petitioner is the person, group, organization, or municipality who

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<sup>70</sup> “Tool 3: Vacant Property Receivership,” Center for Community Progress.

identifies a problem property and brings it to the court and makes the argument for the appointment of a receiver. The receiver is then the individual or entity who is appointed by the court to complete the necessary work to repair a property. And finally, the local court oversees the entire process from the appointment of the receiver to the approval of the rehabilitation work. A more detailed analysis of these actors' qualifications and powers is included in a later section of this chapter.

As stated before, the exact process differs by state, but there are common aspects that the established vacant property receivership legislation follows. For the sake of generalizing the process across states, the process can be distilled to five or six steps, depending on the location. The first step is a consideration of the eligibility of a problem property. Requirements can include, but are not limited to, vacancy status, tax delinquency, and structural deterioration. At this step, the eligibility is evaluated by the petitioner, and at the point they feel confident a building meets their state's standards, they move to the second step of the process which is to file for receivership with their local court responsible for handling such cases. As part of the actions to pursue receivership, proper notice must be given to owners and parties with interest so they are aware of any subsequent hearings and have the opportunity to make the necessary repairs. After sufficient time has passed, the process moves to the third step which consists of a preliminary hearing where the case is presented. The property owner has a chance to argue why their property should not be considered for receivership or prove that they are capable and willing to abate the property themselves if they haven't already. At this point, the court decides whether to dismiss the case or proceed to the next stage. The fourth step is the appointment of a receiver by the local court who will be responsible for



abating the property themselves. Sometimes the receiver can be the same as the petitioner, but this depends on the facts of the individual case and the state. The receiver presents a work plan where the steps they will take to mitigate any problematic conditions are outlined as well as the estimated costs. Once the plan is approved by the court, work begins. At no point during this stage does the receiver take title of the property. The receiver is given the same legal powers of an owner (e.g. entering the property, collecting rents, taking out a loan for the site, etc.), but ownership stays with the original individual or entity. After the work is completed, the receiver must return to the court for the next stage – termination of receivership. In the fifth step, the court reviews the completed rehabilitation of the building and ensures that work is completed and assesses the total cost before moving to terminate the receivership.<sup>71</sup> For most states, the receiver is authorized to collect rents while in control of the property to help cover the costs of rehabilitation. Often after the receiver and any outstanding liens or mortgages have been repaid from the collection of these rents – in addition to the completion of rehabilitation work – the receivership is terminated. If this income exceeds the rehabilitation costs and other liens, the building is returned to the owners along with the remaining net income. When the income is not sufficient to cover the costs and fees of the receiver, an optional sixth step occurs. In this sixth step, once approved by the courts, the property can be released for sale. It is at this stage the title officially changes to a new

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<sup>71</sup> The final approved work does not necessarily mean the building has been fully renovated. In some cases the approved plan simply mandates that the structure is stabilized and the building is enclosed. The goal is to get the building to a point where it can be sold to a new owner who will take responsibility for completing any additional work outside of the oversight of the court.

owner, and the proceeds of the sale are then distributed under court supervision.<sup>72</sup> Some states require that properties that have undergone the receivership process be sold at public auction while others are free to go through private sale mechanisms. Receivers are sometimes able to take title themselves either through a quit claim deed after enough time has passed or by using their lien as a credit against the property. No matter the method, the goal is to sell the property to a responsible new owner who will contribute to any additional rehabilitation measures and return the building to active use.

### The Establishment of Receivership

Vacant property receivership legislation is a relatively new method of addressing problem properties, but its roots can be traced to earlier legislation that served as precedents and the foundations for current practices. In part, vacant property receivership was born from early housing codes which were created in response to the poor conditions in buildings – particularly, tenements – in urban areas.<sup>73</sup> New York was the first to pass legislation protecting the safety of tenants, and other states followed. The first form of receivership appeared as an attachment to the New York Multiple Dwelling Law of 1929, which created housing codes and the necessary enforcement measures for violations.<sup>74</sup> The attachment gave the State of New York the authority “to remove or remedy a nuisance” through the use of receivership.<sup>75</sup> This early form of receivership, or “rental

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<sup>72</sup> The proceeds of sale are often distributed in the following order: municipal liens, costs of sale, any other governmental liens, receiver expenses and any loans granted priority, other liens and security interests, and the owner.

<sup>73</sup> Melanie B. Lacey, "A national perspective on vacant property receivership," *Journal of Affordable Housing & Community Development Law* 25, no. 1 (2016): 136.

<sup>74</sup> *Ibid.*

<sup>75</sup> 37 N.Y. Sess. Laws 1929, ch. 713, §309(5).

receivership,” focused on residential rental properties, specifically, multi-family buildings. It provided protections to tenants whose safety was threatened by unsafe building conditions that often resulted from deferred maintenance or an outright refusal to repair on the part of the building owner. Although this form of receivership developed to enforce building standards in occupied properties, this rental receivership served as the precursor for vacant property receivership, as it established the ability for legal action to be brought against property owners who willfully allowed their buildings to deteriorate.<sup>76</sup> Rental receivership legislation faced much opposition as to its constitutionality, and the opposition faced helped strengthen or inform the provisions that would later be included in vacant property receivership legislation. The arguments of opposition to the legal standing of receivership are explained in more detail in the following section. A key case that expanded the scope of rental receivership is *City of Chicago v. Westphalen*.<sup>77</sup> Under earlier receivership legislation, only government agencies were able to petition for receivership. *City of Chicago v. Westphalen* established private action in the receivership process by upholding provisions that allowed for neighbors of a given property to jointly file for receivership with the City. Giving private parties standing in the receivership process paved the way for greater community involvement.

The early iterations of rental receivership served as the foundation for vacant property receivership legislation, and both types of receivership are in practice today. Much like rental receivership, vacant property receivership sought to address the negative impacts to residents that resulted from property owners willfully neglected their

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<sup>76</sup> Lacey, "A national perspective on vacant property receivership," 1400141.

<sup>77</sup> *City of Chicago v. Westphalen*, 418 N.E.2d 63 (Ill. App. Ct. 1981).

buildings, but in this case, it was the impact to residents of neighboring properties rather than occupants themselves. Rental receivership also sought to prevent resident displacement due to adverse building conditions while vacant property receivership seeks to remediate conditions where blight followed abandonment.<sup>78</sup>

The first instance of receivership legislation specifically targeting vacant properties occurred in Cleveland, Ohio in the 1970s and is outlined by Melanie Lacey in her article "A national perspective on vacant property receivership." In the face of significant population loss and a rising stock of vacant houses, the city needed to find new ways to address widespread deteriorating building conditions. Cleveland founded one of the country's first housing courts to address smaller scale residential buildings. Typically, the city would utilize the tax sale process or rental receivership, but in the case of single-family houses the latter was not applicable, while the former often resulted in speculative purchases. This left demolition as the preferred method to resolve the issue of vacant and abandoned properties. The Union-Miles Development Corporation, a nonprofit community organization in Cleveland, sought an alternative to demolition and led the effort in the establishment of vacant property receivership by persuading the housing court to appoint them as receiver for an abandoned house in their neighborhood. After their first project, the Union-Miles Development Corporation saw the potential of vacant property receivership and funded a national study of existing receivership legislation.<sup>79</sup> This study outlined the recommended provisions to ensure the successful implementation of receivership legislation. These included eligibility requirements,

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<sup>78</sup> Lacey, "A national perspective on vacant property receivership," 140-141.

<sup>79</sup> Ibid.

allowable actors, the type of court that reviews cases, timelines, and financing options.<sup>80</sup>

Although not all of the provisions produced in the report were included in the final legislation, the survey and the recommendations served as the framework for the first vacant property receivership legislation in Ohio and the country.<sup>81</sup>

### Legal Standing

Like the use of eminent domain and other strategies used to address demolition by neglect, receivership has been subject to the scrutiny of the Takings Clause of the Fifth Amendment of the United States Constitution. This clause states that “No person shall...be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.”<sup>82</sup> Arguments claiming that the transfer of ownership through receivership violates a property owner’s right to due process and constitutes a taking has been one of the most commonly used methods to challenge the legislation.<sup>83</sup> The argument has two fronts: (1) there is not enough notice or time for property owners to remediate building issues, and (2) it is unconstitutional for the receiver to be given priority over the prior lien-holders.<sup>84</sup> The

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<sup>80</sup> The model statute and provisions are included in Listokin et al, “Housing Receivership: Self-Help Neighborhood Revitalization,” 105-107.

<sup>81</sup> Ibid.

<sup>82</sup> *U.S. Constitution*, Amendment V.

<sup>83</sup> Due process deals with the administration of laws. While there is no single procedure for due process, a common guide includes: (1) an unbiased tribunal; (2) notice of the proposed action and the grounds asserted for it; (3) opportunity to present reasons why the proposed action should not be taken; (4) the right to present evidence, including the right to call witnesses; (5) the right to know opposing evidence; (6) the right to cross-examine adverse witnesses; (7) a decision based exclusively on the evidence presented; (8) opportunity to be represented by counsel; (9) requirement that the tribunal prepare a record of the evidence presented; and (10) requirement that the tribunal prepare written findings of fact and reasons for its decision. For more information, see Henry J. Friendly, “Some Kind of Hearing,” *University of Pennsylvania Law Review* 123, no. 1267 (1975).

<sup>84</sup> Listokin et al, “Housing Receivership: Self-Help Neighborhood Revitalization,” 100.

latter argument was successful in discontinuing the practice of receivership in New York for nearly thirty years. In 1938, the case of *Central Savings Bank v. City of New York* resulted in the declaration that New York's receivership statute was unconstitutional based on the finding that the receiver's lien priority violated the mortgagee's guarantee of due process and constituted a taking because lienholders were not included in the notification process.<sup>85</sup> By 1962, urban areas across the country were dealing with deteriorating building stocks. When a new receivership program was implemented at this time in New York, it was upheld by the courts.<sup>86</sup> In part this was due to a general willingness to accept government intervention in an effort to address worsening conditions. But greater steps were also taken to retain existing property rights. Included were better measures to notify property owners and give them a reasonable time to remediate the conditions themselves.<sup>87</sup>

Other cases have tried to prove the unconstitutionality of receivership but were not successful in their attempts. One such case is *Community Renewal Foundation, Inc. v. Chicago Title and Trust Co.*<sup>88</sup> Under Illinois' receivership statute, receivers can draw from a property's rents and profits and issue receivership certificates to help pay for the costs of rehabilitating a site. In 1965, an amendment to the legislation gave these receivership certificates first lien status, which led to numerous legal challenges. Like the *Central Savings Bank* case, it was argued that rental receivership violated the lienholder's

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<sup>85</sup> *Central Savings Bank v. City of New York*, 18 N.E.2d 151 (N.Y. 1938).

<sup>86</sup> See *In re Department of Buildings of City of New York*, 14 N.Y.2d 291, 200 N.E.2d 432, 251 N.Y.S.2d 441 (1964) in which the court upheld housing receivership as a valid use of police power.

<sup>87</sup> Listokin et al, "Housing Receivership: Self-Help Neighborhood Revitalization," 101.

<sup>88</sup> *Community Renewal Foundation, Inc. v. Chicago Title and Trust Co.*, 255 N.E.2d 908 (Ill. 1970).

due process. However, the challenges in *Community Renewal Foundation, Inc. v. Chicago Title and Trust Co.* went so far as to argue that rehabilitation went beyond the power of a receiver and a court of equity did not have the power to appoint a receiver.<sup>89</sup> In the end, the court upheld all the receivership provisions, and the right of a court of equity to appoint a receiver was later reconfirmed in *City of Chicago v. Westphalen*.<sup>90</sup>

More recent legislation has followed the precedent set in New York by taking great care to ensure the retention of property rights. Despite these added measures, the legality of receivership legislation is upheld to this day due to two other legal factors. First, the legislation is in compliance with the Taking Clause, as owners are in fact given the opportunity to remove their property from the process by abating the nuisances themselves or by paying the cost of repairs and reclaiming.<sup>91</sup> These opportunities ultimately do not impact receivership's legal standing since the legislation is tied to cities' police powers in order to ensure safe and sanitary conditions for all citizens.<sup>92</sup> When a property deteriorates to the point where it is imminently dangerous, cities have the power to step in and remediate these conditions. The 1788 case of *Respublica v. Sparhawk USSC* supports this practice through the finding that the seizure of property is allowable if it is to protect public safety and does not require compensation for the loss.<sup>93</sup>

This was reaffirmed more recently in *Mugler v. Kansas* which defined the "nuisance

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<sup>89</sup> Listokin et al, "Housing Receivership: Self-Help Neighborhood Revitalization," 103.

<sup>90</sup> *City of Chicago v. Westphalen*.

<sup>91</sup> Samsa, "Reclaiming Abandoned Properties," 209.

<sup>92</sup> *Ibid*, 203.

<sup>93</sup> *Respublica v. Sparhawk USSC*, 1 U.S. 357 (1788). This argument originated as a wartime exception for government action but was later expanded upon to encompass public nuisances when they threatened personal safety, see Melanie Lacey, "The Pennsylvania Abandoned and Blighted Property Conservatorship Act: A Tool for Targeted Neighborhood Revitalization." *Rutgers Journal of Law & Public Policy Blog*, August 6, 2015.

exception” to payment for the loss of property rights.<sup>94</sup> Since vacancy and deterioration threaten the safety of the public, using receivership to rehabilitate properties is a valid application of police power. The challenges of previous twentieth century receivership practices and the precedents set by related cases strengthened the legal standing of receivership practices today.

### National Survey of Receivership Practices

One of the challenges in evaluating receivership as a tool for preservation and revitalization, broadly speaking, is that each state’s enabling legislation varies.<sup>95</sup> These differences can be minor with no real impact in practice, while other variations prohibit receivership from being effectively applied in certain states. When examining receivership across the country, the legislation can be broken into seven common components that impact the effectiveness of receivership in a given state. These themes are property eligibility requirements that include: (1) property type and (2) property condition or violation type; the parties who can be involved in the process as (3) the petitioner and (4) the receiver; (5) lien priority status, (6) termination of receivership; and (7) whether or not there are preservation requirements. Twenty-one states across the

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<sup>94</sup> *Mugler v. Kansas*, 123 U.S. 623 (1887).

<sup>95</sup> Recently there has been an effort to enact uniform law for receivership. *The Uniform Commercial Real Estate Receivership Act (UCRERA)* has been enacted in Florida, North Carolina, Maryland, Arizona, Michigan, Tennessee, Nevada, Utah, and Oregon and in 2020 it was also introduced in Connecticut. As the name implies, the uniform law only applies to commercial real estate and aims to provide “greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership.” The legislation does not explicitly apply to vacant properties and instead extends to properties where “the property or its revenue-producing potential is being subjected to or is in danger of waste, loss, dissipation, or impairment.” In the states that have enacted a version of this law, their previous receivership legislation (where applicable) is not directly altered and is instead supplemented by *UCRERA*. For more information see “Commercial Real Estate Receivership Act,” Uniform Law Commission.



United States have some form of vacant property receivership legislation, and the exact same legislation cannot be found between any two states.<sup>96</sup> The differences between the states' legislation's effectiveness can often be attributed to the specificities of the legislation, but the legislation also works in tandem with other local factors that will be discussed later in this thesis. In addition to the following discussions, the various components are represented in a table in Appendix I of this paper.

### *1. Property Types*

The basis for whether receivership is applicable, let alone effective, is the property type requirements. This is one of the first levels of clearances in the receivership process. Before one even begins to initiate receivership, the petitioner must first confirm that the problem property of concern is eligible under their receivership legislation, as some states only allow receivership for certain property types. The only property type that is eligible in every state is residential.<sup>97</sup> This category includes single-family and multifamily properties. Nearly half of the states *only* allow residential properties to qualify for receivership. The remaining states allow more property types in addition to residential ones to include: (1) mixed-use;<sup>98</sup> (2) mixed-use and commercial;<sup>99</sup> (3) mixed-use, commercial, and industrial;<sup>100</sup> or (4) unspecified.<sup>101</sup> Where property type is

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<sup>96</sup> Based on the scope of this thesis, the list of states included in the survey is limited to places with receivership legislation enacted that is applicable to abandoned structures. Many more states have other forms of receivership legislation (e.g. rental receivership) that are based on similar legal foundations, but are used in a different capacity and do not apply to vacant structures.

<sup>97</sup> Pennsylvania prohibits the use of receivership for any federally owned sites, see PA. STAT. ANN. tit. 68, § 1101.20 (a).

<sup>98</sup> Iowa, New Jersey, Ohio, and Rhode Island.

<sup>99</sup> Kansas.

<sup>100</sup> Pennsylvania and Virginia.

<sup>101</sup> Indiana, Maryland (Baltimore), and North Carolina.

unspecified, municipalities have the discretion to apply receivership where it is most needed. Some semblances of rationale for what types of properties are eligible for receivership in each state can be found when looking at state and regional conditions. If a state once possessed cities that were manufacturing centers, like Pennsylvania, for example, the legislation is likely to allow the rehabilitation of industrial buildings that have been vacant for prolonged periods due to changes in production.<sup>102</sup> Residential properties are always eligible in part due to their prevalence, and this property type has become a particular focus in cities that were hard hit by the subprime mortgage crisis between 2007 and 2010 that led to mass foreclosures across the country.

## *2. Property Condition and Violation Types*

The second and final factor that determines if a property is eligible for receivership is the property condition or type of violation. While the intent behind receivership legislation is often the same, the states use vastly different language to define the property conditions that justify receivership action. Speaking in general terms, the typical legislation for receivership targets problem properties that pose some sort of risk to public health and safety, or in some cases, the economic well-being of areas. The vast majority of legislation across the states uses relatively simple evaluation standards that build off of existing city standards and definitions. This often means referring to other city-wide building codes or health and safety codes. These codes are then used as the standard to judge whether a property is not in compliance to establish eligibility for receivership. The majority of states require that a property must be in violation of

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<sup>102</sup> PA. STAT. ANN. tit. 68, § 1101 et seq.

minimum health and safety standards in order to qualify for receivership.<sup>103</sup> These standards are determined at the local level and often the specific building codes are referred to within the receivership legislation. California’s legislation states that a property is eligible if the issues are “so extensive and of such a nature that the health & safety of residents OR the public is substantially endangered.”<sup>104</sup> Many of these same states also use the term “nuisance” to determine cases where receivership is applicable.<sup>105</sup> States often define what is considered a nuisance through different pieces of legislation, and in order to be eligible for receivership, a property must be consistent with those nuisance standards. In Michigan, for example, nuisance is defined as

... an unreasonable interference with a common right enjoyed by the general public. The term "unreasonable interference" includes conduct that (1) significantly interferes with the public's health, safety, peace, comfort, or convenience, (2) is proscribed by law, or (3) is known or should have been known by the actor to be of a continuing nature that produces a permanent or long-lasting, significant effect on these rights.<sup>106</sup>

Other states require a building to be placed on an official list for vacant or blighted properties or have active code violations to be considered a nuisance. These requirements rely on cities to maintain such a list and assume it is being updated to accurately represent building conditions. This is the case in Louisiana where receivership legislation was established as a direct result of the devastation of Hurricane Katrina in 2005.<sup>107</sup> The City

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<sup>103</sup> Illinois, Indiana, Kansas, Maryland (Baltimore), Massachusetts, Michigan, Missouri, New Jersey, North Carolina, Pennsylvania, South Carolina, and Virginia.

<sup>104</sup> California State Health and Safety Code § 17980.6.

<sup>105</sup> Illinois, Indiana, Kansas, Maryland (Baltimore), Michigan, New Jersey, Pennsylvania, South Carolina, and Virginia.

<sup>106</sup> *Cloverleaf Car Co v. Phillips Petroleum Co*, 213 Mich App 186, 190; 540 NW2d 297 (1995).

<sup>107</sup> LA. Rev. Stat. § 40:600.36 (A).

keeps a list of affected properties that are eligible for rehabilitation work using receivership.

Together, these two factors – public nuisances and threats to public health and safety – are informed by the core intent of receivership legislation – providing governments and local actors a tool to address their problem properties. And part of what causes properties to be considered a problem is their prolonged vacancy. Some states explicitly include vacancy as an additional qualifying factor for receivership eligibility; however, vacancy on its own is not enough without a reasonable threat to public safety.<sup>108</sup> Likewise, a building become a nuisance without being vacant, but in many cases, the nuisance or threat to public health and safety is caused by vacancy. States that allow claims to be filed for occupied buildings often exclude single-family, owner-occupied structures.<sup>109</sup>

A few states break from the generalized conditions and terms discussed above. For example, properties in Kansas must also be tax delinquent. Pennsylvania and Louisiana use the term “blighted” to define eligible properties. Blight is in itself a vague term, and like the term “nuisance”, it relies on other city codes or legislation to define what it means in its given context. In order to be considered eligible for receivership in Pennsylvania, a property must satisfy at least three out of nine potential conditions. This includes the typical factors like being a public nuisance or threat to public health and safety, but it also explicitly lists economic loss to neighboring properties as a valid reason to file for receivership, reading

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<sup>108</sup> Illinois, Iowa, Kansas, Louisiana, Maryland (Baltimore), New Jersey, and Pennsylvania.

<sup>109</sup> This practice is similar to rental receivership legislation that *only* applies to multi-family, rental sites.

The dilapidated appearance or other condition of the building negatively affects the economic well-being of residents and businesses in close proximity to the building, including decreases in property value and loss of business, and the owner has failed to take reasonable and necessary measures to remedy appearance or the condition.<sup>110</sup>

Pennsylvania's and New Jersey's legislation goes one step further and lists factors that exclude a property from receivership. For example, a property in Pennsylvania is ineligible for receivership if there has been a recent sale, attempted sale of the property, or foreclosure.<sup>111</sup> These exclusions serve to limit the use of receivership to cases where there has been a lack of action or responsibility on the part of the property owner, and it helps limit cases brought against owners who do not have the financial capacity to address the concerns and are pursuing other options.

### *3. Petitioner*

As previously discussed, the party responsible for initiating the receivership process is the petitioner. The individual, organization, or municipality advocates for why receivership is necessary. In every state except for Illinois, local municipalities can serve as the petitioner – whether or not they choose to is another topic and is discussed in part in the following section. Municipalities often have designated agencies that are responsible for advocating for receivership, and these agencies are usually part of a local code enforcement or planning departments.<sup>112</sup> For most states the municipality is the only valid petitioner.<sup>113</sup> With municipalities driving the process, there is the opportunity

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<sup>110</sup> PA. STAT. ANN. tit. 68, § 1101.4.

<sup>111</sup> *Ibid.*

<sup>112</sup> For example, in Baltimore it is the Department of Housing and Community Development.

<sup>113</sup> Louisiana, Maryland (Baltimore), Michigan, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, Virginia, and Wisconsin.

for cities to fully embrace receivership as a strategic tool and incorporate it into city-wide planning and preservation efforts.

It is the other eligible parties, aside from municipalities, that sets states apart in their receivership action by giving more individuals or groups the power to petition for receivership. Nonprofits or community organizations are the second most common party eligible to petition for receivership.<sup>114</sup> These groups often must prove they have substantial interest and the legal standing to petition for receivership. This can be done through establishing set boundaries within a certain radius of the property in question. For example, in Pennsylvania, any organization seeking to petition for receivership must have participated in a project within a five-mile radius of the property in order to have their claim considered by the courts.<sup>115</sup> Other states require organizations to have a focus on housing development – often specifically low- and moderate-income housing – to be considered an organization with legal standing.<sup>116</sup>

In addition to nonprofit organizations and municipalities, a few states allow neighbors of a property to petition for receivership.<sup>117</sup> Like with community organizations, neighbors have geographic limitations; however, unlike community organizations, neighbors do not need to participate in projects prior to filing for receivership, but they must live within a certain radius of the subject property to have their claim considered. California, Ohio, and Massachusetts also allow tenants to petition

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<sup>114</sup> Illinois, Indiana, Iowa, Kansas, Ohio, Pennsylvania, Tennessee, and Texas.

<sup>115</sup> In Pennsylvania, community organizations used to have to have participated in a project within a one-mile radius of a property, but in 2017 it was amended to a five-mile radius. 68 PA. CONS. STAT. § 1103

<sup>116</sup> Lacey, "A national perspective on vacant property receivership," 147.

<sup>117</sup> Iowa, Ohio, Pennsylvania, and Tennessee.

for receivership, as vacancy is not a requirement in the state. In fact, California only allows tenants or local enforcement agency to file for receivership. In general, the differences in who can act as a petitioner is defined by either the presence or absence of private participants, or in other words, whether or not non-government parties can initiate the process.

#### *4. Receiver*

When it comes to successfully completing the receivership process, the role of the receiver is one of the most crucial. Surveying the legislation across the states does not reveal any one dominant party qualified to serve as the receiver, and receivers can be individuals, neighbors, community organizations or other non-profits, municipalities, lienholders, the petitioner, private companies, or qualified entities. The term qualified entity is a broad term used to encompass any individuals, private companies, community organizations, and more – that can demonstrate they are capable of completing the work. Even when a state’s legislation does not specifically use a term similar to ‘qualified entity’ there is still the implication that the party must be capable of completing the work, and they must be approved by the courts. In some cases, the receiver does not need be the one who completes the rehabilitation work. When applicable, the receiver can serve as a facilitator who finds a qualified buyer who then fully takes on the responsibility of rehabilitating a structure.<sup>118</sup> This differs from the standard action of receivers who only rehabilitate a property to an agreed upon point before selling.

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<sup>118</sup> This is a common practice in Baltimore.

### *5. Lien Priority Status*

A common challenge with receivership is finding ways to incentivize people to take on the role of receiver. There is always a risk of losing money with receivership, so ensuring receivers have secure funding sources is crucial to effectively employing receivership. For receivers to be able to secure funding for rehabilitation work, they need the assurance that their efforts will be repaid. In some, but not all states, the receiver can apply for loans or other liens without explicit court approval, but outside funding is never a guarantee. To compensate for this challenge, most states give the receiver's lien priority, second only to delinquent taxes, and in Ohio, Texas, and South Carolina, the receiver's lien can come before taxes.<sup>119</sup> This ensures the receiver is repaid before any other previously existing lienholders, such as mortgage liens. Based on this practice, the legality of receivership has been challenged in the past, as discussed above, but by providing appropriate notice and opportunity, it has been upheld. For example, one way of preventing legal challenges can be seen in Pennsylvania. The senior lienholder must first be approached to gauge their interest in serving as receiver because Pennsylvania's receivership statute allows the receiver's liens to take priority over any existing liens on the property other than those belonging to the government.<sup>120</sup> If the priority of the lien is left unspecified in the given legislation, it may prove difficult to find a receiver willing to take the risk to rehabilitate a property.

### *6. Termination of Receivership*

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<sup>119</sup> Ohio Rev. Code Ann. § 3767.41; S.C. Code Ann. Title § 6-38; and Tex. Loc. Gov't Code Ann. § 7-214.003.

<sup>120</sup> PA. STAT. ANN. tit. 68, § 1101 §4 (e)(2).



Receivership is not an indefinite process, and at some point in time the appropriate court must approve the termination of the receivership. Some states define the maximum number of years receivership is allowed to extend. Louisiana sets this at five years, while in Maryland it is limited to only two years.<sup>121</sup> The most common method of termination is relative to the rehabilitation work.<sup>122</sup> Indiana legislation succinctly describes this idea in its statements that “The purpose of the receivership must be to take possession of the unsafe premises for a period sufficient to accomplish and pay for repairs and improvements.”<sup>123</sup> Most states follow this principal and allow for the termination of receivership when the necessary rehabilitation work is completed, the receiver has been reimbursed for their expenses, and outstanding liens and mortgages have been paid. In some cases, the third requirement calls for the owner or other interested parties to agree to comply with all applicable codes and standards.<sup>124</sup> The receiver is authorized to collect rents and other income on the properties in their control to help cover their expenses.<sup>125</sup> If the property owner or other parties with interest choose to reimburse the receiver prior to or after the rehabilitation work is completed, the receivership can be terminated.<sup>126</sup>

When the receiver’s liens and other rehabilitation expenses are not satisfied from the rents collected or payments from the owner, they are often granted the ability to sell

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<sup>121</sup> LA. Rev. Stat. § 40:600.37 (D) and Building, Fire, and Related Codes of Baltimore City § 121.11.

<sup>122</sup> This is excluding the previously mentioned cases/states where the receiver is permitted to transfer the property to a qualified buyer before rehabilitation work has been completed.

<sup>123</sup> Indiana Code Ann. § 36-7-9-20 (1).

<sup>124</sup> Oregon and Wisconsin.

<sup>125</sup> Surplus income after the receiver has been reimbursed first goes to satisfying any outstanding taxes or liens, and then to the owner.

<sup>126</sup> If moving to terminate before rehabilitation is completed, the owner must agree to complete the work.

the property and change title.<sup>127</sup> There are two main ways for this to occur – public auction and private sale.<sup>128</sup> The majority of states allow for sale by public auction, as that is viewed as a fair way of changing the ownership of the property. Many states also allow properties to be made available through private sale for fair market value, although sometimes this sale must be approved by the courts.<sup>129</sup> The benefit of private sales is that there is more control as to who ultimately purchases a property, and hopefully the sale will result in the sustained care and use of the site. In places like Baltimore, the original owner and lienholders are given a right of first refusal to buy their property. When this occurs, they must pay all of the expenses incurred by the receiver during the rehabilitation and any outstanding or delinquent fees in order to maintain ownership of their property. Illinois and Kansas allow the receiver to gain title through quit claim deeds if the owner does not take any action to regain possession of the building in a set amount of time.<sup>130</sup> In South Carolina the receiver is able to purchase the property themselves with their investment in rehabilitating the property serving as credit for the purchase of the property, although this is less common.<sup>131</sup>

## *7. Preservation Requirements*

Receivership in itself is not solely a preservation tool. If the deterioration is severe enough, it may warrant the demolition of the structure, and that is still a valid outcome of

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<sup>127</sup> Sales are not permitted in California and Illinois.

<sup>128</sup> Oregon and Wisconsin have no specified method. In Rhode Island and Tennessee the court must approve the type of sale.

<sup>129</sup> Indiana, Louisiana, Maryland (Baltimore), Missouri, New Jersey, North Carolina, Pennsylvania, and South Carolina.

<sup>130</sup> In Illinois this action must take place within 2 years of the initiation of receivership; in Kansas the owner has until the rehabilitation work is completed.

<sup>131</sup> S.C. Code Ann. Title § 6-38-130 (C).

the receivership process and the situation would be considered remediated. Inherently with receivership there is some element of preservation, as many cases see the successful rehabilitation of a property that was on the verge of collapse. In fact, Illinois, Louisiana, and Virginia only allow renovations or repairs of properties under receivership.<sup>132</sup> Of course, this is all representative of a more informal approach to preservation that focuses on maintaining existing features, but not necessarily historic ones.

In terms of addressing preservation as an outcome, few states explicitly include it in their legislation. Some states acknowledge the possibility of historic properties being placed in receivership and provide recommendations for addressing these sites, although they do not specifically call for compliance with any local preservation ordinance. Because all plans for rehabilitation work must be approved by courts before receivership can commence, Iowa legislation gives preference to plans that preserve historic features of a designated building or building located in a historic district.<sup>133</sup> Likewise, South Carolina prefers the appointment of receivers with sufficient experience rehabilitating historic properties when it comes to dealing with designated sites.<sup>134</sup> In New Jersey, any petition for receivership must include a statement from a qualified professional stating “that there are sound reasons that the building should be rehabilitated rather than demolished based upon the physical, aesthetic or historical character.”<sup>135</sup> Although these three cases do not directly require compliance with preservation standards, they demonstrate a respect and consideration for the historic built environment.

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<sup>132</sup> 310 Ill. Comp. Stat. §50 §5; LA. Rev. Stat. § 40:600.32 (4); and Va. Code Ann. § 15.2-907.2 (A).

<sup>133</sup> Iowa Code §§657A.3 (4).

<sup>134</sup> S.C. Code Ann. Title § 6-38-40 (3).

<sup>135</sup> N.J. STAT. ANN. § 55:19-85(b).

Only Pennsylvania and Texas require explicit preservation compliance in their legislation. Simply put, these require receivers to comply with all local preservation standards for designated structures being rehabilitated through receivership. In Pennsylvania, the retention of older properties as a priority of the legislation in addition to the explicit preservation requirements. The introduction of the act that enacted receivership contains the following:

Pennsylvania's older communities are important to the Commonwealth's economic health by providing a focal point for businesses and services and to this Commonwealth's quality of life with its rich history and diverse communities. However, many older communities suffer from blighted properties that have been abandoned by their owners.<sup>136</sup>

Although demolition can still occur in Pennsylvania, the preference for options that rehabilitate properties is indicated throughout the legislation. Receivership action in Texas must also comply with all historic standards, but the state differs from Pennsylvania in that receivership is one of three approved actions that must be attempted before any *potentially eligible* federal, state, or local historic site facing substandard conditions can be approved for demolition.<sup>137</sup> This allowance extends protection to sites beyond that given by local preservation ordinance.

These preservation requirements in Pennsylvania and Texas are fairly limited as outlines in the receivership legislation, and they are an exception rather than the rule when looking at the legislation in all states. The vast majority of states make no special considerations for historic sites, and in general, does not distinguish between designated and undesignated structures. A lack of explicit preservation requirements does not negate

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<sup>136</sup> PA. STAT. ANN. tit. 68, § 1101.2 (1).

<sup>137</sup> Tex. Loc. Gov't Code Ann. § 7-214.00111.

preservation as an outcome in these states, but it eliminates it as a clear goal of the legislation.

The different pieces of receivership legislation across the country may vary in their capacity, but they share similar components. Although not the definitive representation of the effectiveness of receivership, the different components of state enabling legislation are the driving force behind where and when receivership can be used. Without legislative capabilities appropriate for the specific conditions and challenges faced by municipalities at the local level, receivership cannot be an effective tool for addressing demolition by neglect. Previous iterations and challenges to receivership further defined the scope of receivership and are evident in practices today. Despite the limitations in place, the establishment and application of receivership legislation provides the opportunity for cities and citizens to take control of conditions in their neighborhoods and strategically reduce vacancies.

#### 4. CASE STUDIES

This section further examines the use of receivership in four cities within the United States: Philadelphia, Pennsylvania; Baltimore, Maryland; Providence, Rhode Island; and Grand Rapids, Michigan. The cities were selected after preliminary research that considered the general public opinions and perceptions as the effectiveness of the relevant state's legislation. The goal was to not only identify cities that use receivership legislation effectively, but also those that do not favor the legislation or use it in its full potential. Effectiveness of a receivership statute is in part solely determined (or limited) by a state's enabling legislation and the relevant eligibility requirements and other capabilities. Effectiveness is also based on a city's choice to utilize or embrace receivership as a strategy and the success of their application of it as a tool.<sup>138</sup>

Philadelphia and Baltimore are widely considered two of the strongest examples of cities that employ receivership legislation and are used as references for other states' own use of the tool. Although these cities are both strong examples of receivership use, their enabling legislation differs in terms of eligible properties and actors and warrants further examination as to what makes them successful. Providence is more moderate in terms of its effectiveness, with active use of the legislation but a hesitancy to fully embrace receivership as a tool. Of the four cities, Grand Rapids is the weakest example of the use of receivership to address vacancy, as it is seen as a tool of last resort in the city. While these four cities are not a comprehensive representation of receivership use

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<sup>138</sup> In this thesis the success of properties that have underwent the receivership process is not determined using set quantitative measures. Instead, success is evaluated using qualitative research.

across the country, they provide enough variation to support a discussion on the common strengths and weaknesses of receivership legislation.

To understand the different levels of effectiveness across the four case studies of receivership, it is first important to note the major differences between their state enabling legislation. These differences fall into the same categories as the seven described in the previous section.<sup>139</sup> Philadelphia for example has some of the broadest legislation. Under Pennsylvania's enabling legislation commercial, residential, and industrial properties are all eligible for receivership action. Additionally, both the petitioner and the receiver can come from a range of parties that include the municipality, nonprofit organizations, private individuals, or a lienholder. As noted in the previous section, Pennsylvania also has explicit preservation requirements.

In Baltimore only the municipality has the authority to initiate the process and act as a petitioner. Furthermore, qualified individuals or entities are the primary parties serving as receivers. Although these qualified receivers can include nonprofits like in Philadelphia, the language of the legislation is distinct. The municipality or lienholder can also serve as a receiver in Baltimore. In Providence, one begins to see further restrictions on the type of properties that can go through receivership in that only properties that include some residential aspect are eligible. Likewise, in Grand Rapids only residential properties are eligible for receivership and the municipality serves as the petitioner in all cases. Whereas in other states, the fully or partially rehabilitated

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<sup>139</sup> The following description is just a highlight of some of the differences between Maryland's, Pennsylvania's, Rhode Island's, and Michigan's legislation. See Appendix I for a comparison of the different legislation

properties can be sold through private sale or public auction, in Michigan, buildings follow foreclosure proceedings. The effectiveness of each state's receivership legislation is further impacted by the local context of each city it is employed. This includes, but is not limited to, the number of vacant properties, average length of vacancy for properties, size of the city, city budget, and the presence of other tools. These local factors are discussed in the following sections.

### Philadelphia

In Philadelphia, Pennsylvania there are currently estimated to be approximately 12,000 vacant buildings.<sup>140</sup> In the mid-twentieth century, the City of Philadelphia expected its population to grow to two million people and subsequently worked to expand its capacity to support this large population. Instead, the city's population continuously declined from 1960 to 2010 as industries closed in the city and many residents fled for the suburbs. Today, Philadelphia has a population of 1.58 million which has been slowly increasing each year, but considering where the city currently stands, the infrastructure could support nearly half a million more people.

In the past decade, the City of Philadelphia has introduced a myriad of strategies to address their vacant buildings.<sup>141</sup> Despite this, receivership under Pennsylvania's Act 135, or the Abandoned and Blighted Property Conservatorship Act, has never been a

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<sup>140</sup> Estimate comes from indicators, but do not represent a precise count of all vacancy in the City of Philadelphia. This is also in addition to nearly 40,000 parcels of vacant land. See Philadelphia Department of Licenses and Inspection, *Vacant Property Indicators*, 2016, distributed by Open Data Philly.

<sup>141</sup> For example, Philadelphia tried to implement the Vacant Gift Property Program which tried to incentivize the donation of abandoned parcels to the city. See Listokin et al, "Housing Receivership: Self-Help Neighborhood Revitalization," 81.



strategy fully embraced at the city level and implemented at a wide scale.<sup>142</sup> However, this does not mean it has not been used in the city. The majority of receivership cases in Philadelphia were petitioned for by nonprofit community organizations across the city. There is no one overarching method used by community organizations throughout Philadelphia in terms of how they employ receivership. These organizations use their familiarity with a specific neighborhood to operate at a scale that is appropriate to their communities and to target properties that have often been regarded as problem properties for a few years. Pennsylvania first enacted their receivership legislation in 2008, and since then the community organizations in Philadelphia have played an important role in shaping how it gets utilized.

In 2009, the Germantown Conservancy, a coalition of civic, community, historical, and other nonprofit groups in the 12th, 59th, 22nd and 9th Wards of Philadelphia, was the first to attempt to implement receivership in the city. This first attempt saw petitions for 331 properties throughout the Conservancy's area. According to one source, at the time receivership was initiated the properties owed a combined total of approximately two million dollars in delinquent city real estate taxes. This bold move was meant to address the challenges that occur when a single property is rehabilitated but the remainder of the block is in disrepair. And this was the case in the neighborhoods overseen by the Germantown Conservancy. Much of the blocks saw widespread vacancy with different houses, civic buildings, religious structures, and historical landmarks

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<sup>142</sup> Pennsylvania legislation uses the term 'conservatorship' and 'conservator' instead of 'receivership' and 'receiver.' For the sake of consistency throughout this thesis, discussions regarding action in Philadelphia and Pennsylvania will use the latter.

deteriorating. As part of the effort to revitalize the area, the Germantown Conservancy petitioned for receivership for fifty properties under a single petition. The petition was dismissed on the basis that the simultaneous filing violated Act 135, so the Conservancy challenged the ruling. Ultimately, the court ruled that individual filings must be made for each property.<sup>143</sup> This ruling limited the ability of receivership to be used as a broad-stroke tool to tackle large scale property abandonment in Philadelphia and more broadly in Pennsylvania. However, in 2014, further action was taken to expand the capacity of receivership through an amendment to Act 135. The amendment to Act 135 had two major components to it. First, it allowed a single petition to be filed if adjacent, abandoned and eligible properties had the same owner. Second, it expanded the distance requirements of neighbors who could petition for receivership from 500 feet to 2,000 feet.<sup>144</sup> Both of these changes provided greater flexibility in the application of receivership. In recent years, more community organizations have embraced receivership as a tool for their service areas. Two of the many organizations and individuals who have been working to rehabilitate vacant properties in the Philadelphia area are Mt. Airy USA and the Tacony Community Development Corporations.

In 2013, Mt. Airy USA became the first non-profit organization in Philadelphia to successfully complete the rehabilitation of a property using receivership. Prior to receivership, the property of 59 E. Phil Ellena Street owed nearly \$10,000 in delinquent taxes and had been officially declared a public nuisance. The property was part of a block

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<sup>143</sup> *IN RE: a Conservatorship Proceeding In REM by the GERMANTOWN CONSERVANCY, INC., concerning minimally 319 properties in the 12th, 13th, 59th, 22nd and 9th Wards: in the City and County of Philadelphia Appeal of: The Germantown Conservancy, Inc.*, No. 2385 C.D.2009 (2010).

<sup>144</sup> *Amendments to Conservatorship Law, PA Act 157* (2014).

with many long-standing property owners, but blight was “beginning to creep in” so the property was targeted for its strategic role in limiting the spread of this blight.<sup>145</sup> Mt. Airy USA used receivership in addition to utilizing another publicly sponsored tool – the Neighborhood Assistance Program – to secure the property.<sup>146</sup> The rehabilitation is an example of a public-private-nonprofit partnership that successfully remediated a severe case of vacancy and made a positive impact on its neighborhood. Anuj Gupta, the executive director of the Mt. Airy USA at the time of the rehabilitation of 59 Phil Ellena Street, stated that receivership gave the organization “a new tool in [their] arsenal, and [they] plan[ned] on using it aggressively.”<sup>147</sup> Since then, Mt. Airy USA has continued to employ receivership to rehabilitate their neighborhood’s vacant and abandoned properties. Not every case can be considered a full success. In one situation, a property was fully rehabilitated, but when the property was auctioned at sheriff sale, it sold for less than what Mt. Airy USA invested, leaving them without full reimbursement for their rehabilitation expenses.<sup>148</sup> For community organizations, especially those working in disinvested neighborhoods, this is a real risk. Beth McConnell, policy director of the Philadelphia Association of Community Development Corporations, acknowledged the

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<sup>145</sup> Jake Spelcher, “Mt. Airy USA Takes Over Blighted Property,” *Patch*, October 10, 2013, <https://patch.com/pennsylvania/chestnuthill/mt-airy-usa-takes-over-blighted-property>.

<sup>146</sup> The Neighborhood Assistance Program is administered by the Pennsylvania Department of Community & Economic Development and incentivizes private investment in distressed neighborhoods by providing tax incentives. For more information, see “Neighborhood Assistance Program (NAP),” Pennsylvania Department of Community & Economic Development, <https://dced.pa.gov/programs/neighborhood-assistance-program-nap/>.

<sup>147</sup> Spelcher, “Mt. Airy USA Takes Over Blighted Property.”

<sup>148</sup> Michaela Winberg, “Historic Philly Underground Railroad stop that freed 9,000 slaves is saved from brink of collapse,” *Billy Penn* (Philadelphia, PA), September 20, 2019. <https://billypenn.com/2019/09/20/historic-philly-underground-railroad-stop-that-freed-9000-slaves-is-saved-from-brink-of-collapse/>.

usefulness of receivership, but noted that for many organizations, they do not have the financial capacity to pursue receivership and the financial risks that go along with it.<sup>149</sup>

The Tacony Community Development Corporation (CDC) has recently begun to implement receivership for vacant properties. In 2019, the Tacony CDC petitioned for their first receivership case along the neighborhood's main commercial corridor. The property, 6807 Torresdale Avenue, had sat vacant for nearly seven years. According to Alexander Balloon, executive director of the Tacony CDC, the property had been a continuous source of complaint for residents. The Tacony CDC has a mission to promote business along the Torresdale Avenue commercial corridor, and despite successful efforts to revitalize much of the corridor, 6807 Torresdale has remained a problematic property, impacting not only its own structure, but that of the nearby properties and corridor as a whole. During its seven years of vacancy, it had attracted squatters, vermin, and large amounts of debris that were overflowing from the property.<sup>150</sup>

Due to the properties critical position on the corridor, the Tacony CDC worked with community members and the nonprofit Scioli Turco to file for receivership. Scioli Turco is a Philadelphia based organization that has successfully completed over one hundred receivership cases. They work with community groups to petition courts and complete the receivership process. Community organizations like the Tacony CDC approach Scioli Turco for preliminary consultation as to whether they think a property is eligible. If they believe it is, they petition for receivership on behalf of the community

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<sup>149</sup> Ibid.

<sup>150</sup> Author previously worked in the Tacony neighborhood of Philadelphia and witnessed firsthand the conditions resulting from years of vacancy.

organization and for themselves to be appointed receiver. They pay all court fees and then hire a contractor to complete the rehabilitation work. This position removes all costs from the community organizations who often do not have the necessary capital to support large scale rehabilitation projects.



*Figure 4.1. The image depicts 6807 Torresdale prior to the petition for receivership. (Jack Tomczuk, Northeast Times, 2019)*

Receivership has also been used to address historically designated properties in the city that have been neglected but have evaded any enforcement from the Philadelphia Historical Commission's demolition by neglect clause. The City of Philadelphia has a small staff of preservationists, considering the geographic size of the city and richness of historically significant properties. It is difficult for the commission staff to continuously monitor the historically designated properties to ensure they are being properly maintained. This is what happened with the Robert Purvis House on Mt. Vernon Street.

The house, located at 1601 Mt. Vernon Street, is the only extant home of the abolitionist and cofounder of the American Anti-Slavery Society and the Library Company of Colored People. Robert Purvis is also referred to as the president of the Underground Railroad. During his life, it is estimated that he and his wife, Harriet Forten Purvis, helped around 9,000 people escape slavery. The couple used their previous two homes to take in escaped slaves before Robert Purvis moved to the Mt. Vernon Street home after his wife's death where he continued to work on behalf of black people and women's rights. The house is significant in its own right and is also part of the larger Spring Garden Philadelphia Historic District. Despite the historic significance of the house, it was allowed to deteriorate, and efforts to save it were challenged by the property owner. Barbara Wolf, a board member of the Spring Garden Community Development Corporation, described these challenges in an email to All That Philly Jazz:<sup>151</sup>

The owners of this historic property have repeatedly and persistently failed to take the basic necessary steps, even when court ordered, to maintain and secure this building. Through willful neglect, they have caused the rear of the building to collapse, with resultant city's demolition because of immediate safety concerns. The son of the owners in a recent court hearing even boldly stated that he wanted the remaining front block of the building to be demolished. This building survived in solid shape for over 100 years before the owners' purchase in 1977. In a little over 40 years, the rear ell wall has collapsed and the remaining front is seriously deteriorated in an "unsafe" condition.<sup>152</sup>

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<sup>151</sup> All That Philly Jazz is a public history project that is telling the story of Philadelphia jazz by documenting and mapping jazz-related cultural resources and historic assets. For information on All That Philly Jazz, see "About," All That Philly Jazz, <https://phillyjazz.us/historic-preservation-public-memory-cultural-heritage-tourism/>.

<sup>152</sup> Quote via Spelcher, "Mt. Airy USA Takes Over Blighted Property."



*Figure 4.2. For years, the Robert Purvis House was left to deteriorate despite the efforts of the local community and other advocates. (OCF Realty, 2012)*



*Figure 4.3. Work has recently begun to make repairs to the historic Robert Purvis House after it was placed into receivership. (Mark Henninger, Billy Penn, 2019)*

The City of Philadelphia spent countless amounts of time trying to get the property owner to repair the property.<sup>153</sup> Between all the court appearances and challenges, the property had amounted more than \$200,000 in fees. The Spring Garden CDC fought from January to November 2018 to gain receivership of the property. Since then, they have begun work to stabilize and rehabilitate the property while emphasizing the retention of the historic character.

Pennsylvania's legislation provides the breadth and flexibility to address many property types, but because the work has primarily been completed by community organizations, finding ways to finance efforts is key. It has only been twelve years since Pennsylvania enacted their receivership legislation, but already it is considered to be a strong and successful piece of legislation. As Philadelphia organizations continue to explore ways to best utilize the tool, they will inform future applications across the city and state.

### Baltimore

For nearly a decade, Baltimore has been faced with the presence of nearly 17,000 vacant buildings across the city.<sup>154</sup> While this number has remained relatively unchanged year-to-year, it is not from a lack of effort on the part of citizens and the city. The city is still grappling with significant population loss. Between 2010 and 2019, the

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<sup>153</sup> It is claimed that this property set a city record for amount of time spent trying to enforce the "good repair" requirement for the house, see Winberg, "Historic Philly Underground Railroad stop that freed 9,000 slaves is saved from brink of collapse."

<sup>154</sup> Because the total number of vacancies changes month-to-month, this thesis will use rounded numbers when referring to the current number of vacancies in Baltimore to account for variations during the research periods. Precise numbers are used when referring to a specific point in time.



city lost 4.4% of its population while many other cities in the region (like Philadelphia) have seen population gains.<sup>155</sup> The loss of population contributes to the emergence of new vacant properties throughout the city. The latest estimates for Baltimore's population place it at 593,490, but the city has enough housing stock for a million people.<sup>156</sup> Between February and October 2019, the City removed 1,507 properties from their vacant properties list,<sup>157</sup> but during that same period 1,360 properties were declared legally vacant.<sup>158</sup>

Baltimore City Department of Housing and Community Development (DHCD) is the city agency responsible for leading the efforts to reduce vacancy, as well as other building violations. In 2010, the City established the Vacants to Value program, which is managed by DHCD. The goal of the program is to reduce the number of vacant properties – with an emphasis on residential properties – in Baltimore and return the parcels to active use. A key component of this program is promoting and incentivizing private action and facilitating the transfer of properties to responsible owners.<sup>159</sup> The program

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<sup>155</sup> U.S. Census Bureau “P1 : Total Population, Baltimore city, MD.” 2010 Census. U.S. Census Bureau, 2010 and U.S. Census Bureau, "Population Estimates, July 1, 2019 (V2019), Baltimore city, MD," via Quick Facts.

<sup>156</sup> There is room for error in the 2019 population estimates, but the overall trend demonstrates the gap between housing stock and residents. See U.S. Census Bureau, "Population Estimates, July 1, 2019 (V2019), Baltimore city, MD."

<sup>157</sup> The number of properties removed from the vacants list does not differentiate between the method used. It captures both buildings demolished and buildings rehabilitated. See Ian Duncan and Christine Zhang, “Baltimore is furiously knocking down vacant houses — but barely keeps up as new ones go empty,” *The Baltimore Sun* (Baltimore, MD), October 18, 2019, <https://www.baltimoresun.com/politics/bs-md-ci-vacants-demolition-progress-20191018-mw3cb5vlbjb4dmnxljbvjg7tdy-story.html>.

<sup>158</sup> Based on a private spreadsheet shared with the author from Baltimore City Department of Housing and Community Development which provided a single sum of all rehabilitated buildings per fiscal, it can be estimated that around half of the remediated vacancies were done so through rehabilitation. In 2019, Baltimore saw a total of 779 completed rehabilitations of vacant properties.

<sup>159</sup> According to the Vacants to Value website, the program is committed to growing the city by 10,000 families and making room for new families or green space through the demolition, rehabilitation, or redevelopment of vacant properties. See “Vacants to Value,” Vacants to Value, <http://www.vacantstovalue.org/About.aspx>.

provides a variety of options that aim to attract a range of investment in the city's building stock. The program includes options for potential homebuyers looking to find a place for their households and also for developers who want opportunities for investment. Potential homebuyers can find vacant properties that still need to be rehabilitated or ones that have been recently rehabilitated through the program. Developers can find City-owned or receivership properties that are being sold or auctioned through the Vacants to Value website.<sup>160</sup> Both parties have access to different incentives that provide financial support for those taking ownership of vacant buildings. DHCD commissioner, Michael Braverman, stated "How could we move the vacant and abandoned privately-owned inventory in a way that was predictable enough for our partners to make business decisions?"<sup>161</sup> This question was resolved through the application of the City's receivership statute.<sup>162</sup>

The goals of the Vacants to Value program and the viability of receivership as a tool to address vacancy in Baltimore are reiterated in the more recent community development framework produced by DHCD.<sup>163</sup> One of the goals of this framework is to invest in all neighborhoods within the city, and in doing so, build assets and address blight. When suitable, DHCD aims to rehabilitate rather than demolish structures to preserve them for future use, especially when dealing with mid-block properties of an

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<sup>160</sup> For more information, see "Vacants to Value."

<sup>161</sup> Quote from Tamara E. Holmes, "Making a Pipeline for Vacant Building Rehab: Baltimore's Vacants to Value program sparked revitalization block by block with a few key legal powers and partnerships," *Shelterforce* (Montclair, NJ), November 13, 2018, <https://shelterforce.org/2018/11/13/making-a-pipeline-for-vacant-building-rehab/>.

<sup>162</sup> *Building, Fire, and Related Codes of Baltimore City* §121 (2020).

<sup>163</sup> Department of Housing and Community Development, *A New Era of Community Investment: A Framework for Community Development* (Baltimore, MD: Baltimore City Department of Housing and Community Development, 2019).

otherwise stable block.<sup>164</sup> The framework notes that in order to successfully revitalize neighborhoods, the challenges of “incoherent ownership” must be resolved. This can only be done through government intervention in clearing titles and creating more viable sites for redevelopment. Within the framework, receivership is highlighted as a strategic tool to drive the redevelopment and rehabilitation of vacant buildings in Baltimore.

Over the past ten years, receivership has been embraced by the City of Baltimore as one of the primary tools for addressing abandoned and vacant properties. Officials within DHCD see receivership as being a stronger option than more traditional code enforcement methods. Specifically, the City has had difficulty using code enforcement on blocks where there are large amounts of vacancy. Robert Pipik, the Chief of Policy and Partnerships with DHCD, stated that he “can’t code enforce [his] way one at a time,” and that there is difficulty using code enforcement as it relies on people actually answering the court notices to see any improvements in building condition.<sup>165</sup> In light of these difficulties, receivership is an appealing strategy as it can still move forward even if the property owner does not respond to the notice and can progress quicker than other methods. The City also identified Streamlined Code Enforcement Neighborhoods where vacancy is scattered and market conditions are strong enough to entice owners to make repairs themselves or attract potential receivers.<sup>166</sup>

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<sup>164</sup> The cost of demolishing structures in mid-block is a difficult endeavor that requires the creation of retaining walls. This is expensive to complete and creates lots that are difficult to maintain or redevelop.

<sup>165</sup> Pipik noted that when using code enforcement to address vacancy or unsafe building conditions, it ends up being the “little old lady” who gets prosecuted because she answered and not the absentee owners who are the larger source/cause of the conditions the City is attempting to address. Robert Pipik in discussion with author, March 2020.

<sup>166</sup> Center for Community Progress, *Tackling the Challenge of Blight in Baltimore: An Evaluation of Baltimore’s Vacants to Value Program* (Washington, D.C.: Center for Community Progress, 2017), 8.

Due to the structure of Baltimore’s legislation, the petitioner is always DHCD. Their resources and higher level of planning allows the DHCD to identify properties that have the market potential to be a catalyst for future redevelopment efforts.<sup>167</sup> After a building is identified and notice is issued to the property owner, a receiver must be appointed. In Baltimore, the receiver is typically a nonprofit organization that specializes in addressing vacant properties. Receivers can choose to demolish a property if the building condition is beyond what can reasonably be maintained, sell to a qualified buyer who will take on the responsibility of rehabilitating the site, or complete the rehabilitation themselves. Transferring a property to a qualified buyer clears title and helps the receiver eliminate most of their costs, and in addition, the receiver can also foreclose on a lien to help recover costs.

When it comes to serving as a receiver for residential properties, the nonprofit organization One House at a Time (OHAAT) is perhaps the most active. The organization has been active since the early 2000s and in that time, they have facilitated the sale of hundreds of properties. OHAAT is independent from DHCD and their mission differs from that of DHCD, but is not necessarily in direct conflict. Both look to different tools but rely on the use of receivership – one as the petitioner and the other as the receiver. The main point of departure is OHAAT’s focus on single-family residential properties. OHAAT also does not complete rehabilitation work themselves. Instead they facilitate the sale of properties through public auction to bidders who then must complete the rehabilitation work within one year. Bidders must be pre-qualified in order to ensure

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<sup>167</sup> Robert Pipik in discussion with author, March 20, 2020.

they are capable of successfully completing the required work. Interested parties must submit an application that describes and demonstrates (1) their financial ability, (2) their rehabilitation experience, and (3) that they are in good standing as a Baltimore property owner.<sup>168</sup> In more recent years, there has been an uptick in the number of smaller developers looking to buy properties out of receivership.<sup>169</sup> Although it is too soon to know for sure, it is likely that the greater amount of interest from small developers will result in a greater diversity of project types.

As of February of 2020, approximately 2,000 properties in Baltimore have gone through receivership since the beginning of the Vacants to Value program.<sup>170</sup> This number represents roughly 15% of all vacant properties within Baltimore. Within these many properties, there are some projects of note for their successful use of receivership, including the Baltimore Design School and the Sellers Mansion.<sup>171</sup>

The Baltimore Design School, as it is now known, was formerly known as the Lebow Building. It was originally constructed between 1915 and 1916 as the Crown Cork and Seal Company's machine shop. At its construction, it was regarded as a "palace of industry" for its use of natural light, city views, and an early form of air conditioning.<sup>172</sup> After nearly sixty years, the building was sold and subsequently leased to the Lebow

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<sup>168</sup> See One House at a Time, "Bidders Application," <http://www.onehousebaltimore.org/wp-content/uploads/2014/02/oha-at-bidders-application-v3.pdf>.

<sup>169</sup> Robert Pipik in discussion with author, March 20, 2020.

<sup>170</sup> Receivership was used in Baltimore before the Vacants to Value program, but beforehand there were only a handful of cases each year. Data via private spreadsheet shared with author.

<sup>171</sup> These properties were identified by Robert Pipik as examples of notable sites where receivership was used successfully.

<sup>172</sup> Jacques Kelly, "Lebow Bros. building transforming into Design School," *Baltimore Sun* (Baltimore, MD), March 30, 2012, <https://www.baltimoresun.com/maryland/bs-xpm-2012-03-30-bs-md-kelly-column-lebow-20120330-story.html>.

family who used it as a garment factory. During their tenancy, the building was sold to Abraham Zion Corporation who was responsible for shuttering the building and closing it for good in 1985 during a garment industry labor dispute. For decades the building and its contents inside were left abandoned and deteriorating. Fines were issued and left unpaid, repairs were ordered and left uncompleted, and liens were filed and resulted in a standoff between the owner and the City.<sup>173</sup>

The next logical step was to find a receiver to take control of the building, but due to the scale of the project the City first wanted to find potential buyers to know there was interest in the site. But the process was slowed down when the owner challenged the code violations and the constitutionality of receivership.<sup>174</sup> All the while, the building continued to deteriorate and threatened the safety of the community to the point where it seemed like the only viable solution was demolition. That is, until Seawall Development with the help of various community members and organizations and the Baltimore school system proposed a plan that would save the building. Seawall proposed the former factory become the home of the new Baltimore Design School which educates students in the fields of architecture, graphic design, and fashion. Left with no other options, the building finally went through receivership and was transferred to Seawall who rehabilitated the site and transformed it into a vibrant hub of creativity and education.

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<sup>173</sup> Central Baltimore Partnership, "A CBP Case History Baltimore Design School: an Example of how CBP Gets Things Done!" <http://www.centralbaltimorepartnership.com/a-cbp-case-history/>.

<sup>174</sup> Ibid.



*Figure 4.5. The former garment factory of 1500 Barclay sat vacant for decades with its features deteriorating. (Ziger/Snead Architects, 2010)*



*Figure 4.4. The former factory has been successfully rehabilitated and is now home to the Baltimore Design School. (Architectural Record, 2014)*

The Sellers Mansion was built around 1868 in the Lafayette Square neighborhood of Baltimore. The neighborhood was once prosperous but today it contains many larger vacant properties that have resulted from decades of urban decline and systematic neglect. The mansion was built by Matthew Bacon Sellers and his wife Anne Lewis Sellers and was subsequently passed down through generations of the Sellers family until 1955, when the youngest son of Sellers died while living in the house. In the following decades the house was passed from owner to owner. The mansion was a part of the formation of the neighborhood, demographic changes in the mid-twentieth century, and the effects of urban decline and disinvestment. However, after the last Sellers member occupied the house, the mansion never found a use that lasted. More recent attempts to adapt the building were put on pause when the building was listed on the National Register of Historic Places in 2001.<sup>175</sup>

For fifteen years the building sat vacant. Eventually, it was placed into receivership with One House at a Time, Baltimore's go-to residential receiver. The mansion greatly differs from the nonprofits typical stock of rowhouses. It would take a

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<sup>175</sup> It was nominated for its architectural significance as an example of a residence of the affluent in Baltimore, its Victorian style and architectural details, and its importance as an early example of an era of urban development that formed round small parks. In addition, it possesses significance from two generations of notable residents, Matthew Bacon Sellers and his son of the same name. The elder Sellers was the president of the Northern Central Railroad, which greatly contributed to the economic history of the region, and therefore, the building has significance in the area of Transportation. The younger Sellers was born in the mansion and later went on to have great achievements in aeronautical experimentation and worked with the Aeronautical Laboratory Commission. Under his guidance, the groundwork for NASA was laid. His accomplishments grant the mansion significance in the area of Engineering. Although not relevant to the scope of this thesis, it is important to note that Matthew Bacon Sellers was a former slave owner who moved to Baltimore from the South after the Civil War. While his accomplishments are celebrated through the nomination, they should not be evaluated in isolation. For more information see Kate Mahood, "Sellers Mansion," National Register of Historic Places Nomination Form (Washington, DC: U.S. Department of the Interior, National Park Service, 2001), [https://mht.maryland.gov/secure/medusa/PDF/NR\\_PDFs/NR-1290.pdf](https://mht.maryland.gov/secure/medusa/PDF/NR_PDFs/NR-1290.pdf).



different kind of buyer to make the project work and for a time it appeared as if the neighborhood would be plagued by this white elephant of a building.<sup>176</sup> That is where Ernst Valery comes along. He bought the property for \$10,000 through receivership auction and is in the process of converting it into senior apartments.<sup>177</sup> In the time of his ownership, he has already stabilized the building. In a city where investment is unevenly distributed by race, geography, and income, Valery and his investment in the Sellers Mansion as a result of the receivership process represents a much-needed investment to the neighborhood of Lafayette Square.

The results of the Vacants to Value program as a whole have been mixed. Many of the issues impacting vacancy rates in the city extend beyond the scope of such programs, and as mentioned above, the total number of remediated properties each year is nearly matched by new vacancies. Despite these challenges, it has made significant strides in creating new or enhancing existing procedures to return buildings to active use. Critics of the program claim that the greatest success of it was the use of receivership.<sup>178</sup>

Community development expert Alan Mallach states:

The Baltimore Vacant Property Receivership Ordinance... is arguably the most effective and most widely used such ordinance in effect anywhere in the United States, which tend to be applied sparingly if at all, it has become an effective method of moving large numbers of vacant properties into new ownership and reuse.<sup>179</sup>

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<sup>176</sup> A white elephant is a possession, or in this case, property, that is expensive to maintain but difficult to dispose of.

<sup>177</sup> Valery was also involved in the rehabilitation of the neighboring property, the Saint James apartments.

<sup>178</sup> Carrie Wells, "Five years in, city Vacants to Value program showing mixed results," *Baltimore Sun* (Baltimore, MD), November 12, 2015.

<sup>179</sup> Center for Community Progress, *Tackling the Challenge of Blight in Baltimore*, 37.

Based on the initial success of Baltimore’s receivership program, DHCD intends to increase the number of properties that go through receivership. For one, it is essentially a free program that the City operates.<sup>180</sup> It is important to note, that although the legislation itself will remain the same for the foreseeable future, DHCD is exploring new ways to work within the existing framework to better target their resources where they will make the greatest impact. This includes continuing to incorporate market studies to better inform where public resources are needed or where they would be successful,<sup>181</sup> and explore new ways to couple the receivership program with other tools.<sup>182</sup>

Another important consideration is exploring ways to ensure the buyers have the best interest of neighborhoods in mind.<sup>183</sup> Some level of control comes from requiring all bidders to be pre-qualified, but from a community development standpoint there is currently no way to guarantee the resulting development will be what is best for the neighborhood and align with broader City goals. One of the challenges is that the typical options for facilitating the sale of properties are built to maximize profits.<sup>184</sup> As Baltimore continues to explore ways to improve their use of receivership, finding ways to keep communities at the center is key.

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<sup>180</sup> Besides the cost of time, no city funding directly goes towards the operation of the receivership program or the rehabilitation of the identified structures.

<sup>181</sup> The *Housing Market Typology* is one such market study used to inform where public resources should be directed. For more information, see “Housing Market Typology,” Department of Planning, <https://planning.baltimorecity.gov/maps-data/housing-market-typology>.

<sup>182</sup> Pipik noted that these tools can be drawn from both the code and redevelopment sides. Possible options to support receivership can come from Community Development Block Grants and other sources of outside capital. Robert Pipik in discussion with author, March 20, 2020.

<sup>183</sup> Because receivers must be appointed by the court, the main concern is for managing the quality of those buying the properties through or after the receivership process.

<sup>184</sup> Robert Pipik in discussion with author, March 20, 2020.

## Providence

Between 2016 and 2019, there were 860 vacant properties identified by the City within Providence, Rhode Island.<sup>185</sup> Providence was hit particularly hard by the foreclosure crisis in the late 2000s which left the city with a large amount of vacant housing, the impacts of which are still observable in the city today. In fact, the most recent count of vacant properties is higher than the previous amount identified in 2017.<sup>186</sup> These vacancies are primarily situated on the western part of the city which correlates to the parts of Providence with a lower median income.<sup>187</sup>

In order to combat the rise of vacancies in Providence, the City launched the EveryHome program under Mayor Jorge Elorza in 2015. The goal of the program is to eliminate all vacant housing in Providence. A range of tools are used under the program to “protect, restore, and renew” the city’s various neighborhoods.<sup>188</sup> This means that the included in the arsenal of tools are strategies meant to address the existing vacancies as well as prevent new cases from appearing by supporting at-risk property owners. These various strategies consist of policy-based changes that altered how different agencies function, financial support through various types of loans, and direct abatement programs like receivership.<sup>189</sup>

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<sup>185</sup> Henry Dawson, “Providence’s abandoned property problem persists,” *The Brown Daily Herald* (Providence, RI), April 5, 2019, <https://www.browndailyherald.com/2019/04/05/providences-abandoned-property-problem-persists/>.

<sup>186</sup> 747 vacant properties were reported in November 2017. Ibid.

<sup>187</sup> Department of Planning and Development, *Vacant Properties Hot Spot Analysis*, 2017, JPEG, Providence.

<sup>188</sup> “EveryHome in Providence.” City of Providence.

<sup>189</sup> For more information see “EveryHome Tools,” City of Providence, <https://www.providenceri.gov/everyhome/everyhome-tools/>.

Like Baltimore, Providence's receivership program is promoted under a larger City-led initiative to eliminate vacant properties in the city. Initially receivership was one of the key strategies of the EveryHome program. When the program first began the decision was made to expand the City's receivership program. The mayor partnered with Rhode Island Housing in order to secure funding to develop a revolving loan fund. This fund allowed receivers to access small loans at interest rates lower than the market so more funds can go towards the rehabilitation of properties.<sup>190</sup> Ultimately \$3 million was set aside to create the revolving fund for receivers and contractors to complete their work.<sup>191</sup> In 2015, the goal was to remediate one hundred vacant properties per year using the receivership program.<sup>192</sup>

For the properties where receivership has been successfully used in Providence, it was often a long process. That was the case for 93 Superior Street located in Providence's West End. The residential property was vacant for a few years before efforts were made to rehabilitate it. Once the property entered the City's receivership program, it took two more years before it was fully rehabilitated and occupied.

Over time receivership proved to be more difficult to implement than some of the other strategies available for vacant properties in Providence. By November 2017, only fifteen properties had been successfully rehabilitated through the City's receivership

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<sup>190</sup> Jorge Elorza, "Jorge Elorza: Filling every home in Providence," *Providence Journal* (Providence, RI), October 22, 2015, <https://www.providencejournal.com/article/20151022/OPINION/151029809>.

<sup>191</sup> *Ibid.*

<sup>192</sup> Dan McGowan, "How Mayor Elorza plans to fix most of Providence's abandoned homes," *WPRI* (Providence, RI), October 12, 2015, <https://www.wpri.com/news/how-mayor-elorza-plans-to-fix-most-of-providences-abandoned-homes/>.

program.<sup>193</sup> This small number of cases can be attributed to the lengthier than expected legal processes. This is not to say that the EveryHome program has not been successful. Hundreds of houses have been successfully rehabilitated and placed back into active use,<sup>194</sup> but according to Ariel Pittner, the EveryHome coordinator, the majority of successful cases comes from “market trends and reactions to policy changes” rather than directly resulting from the tools included in the program.<sup>195</sup> Today in Providence, receivership is used as a tool of last resort and reserved only for extreme cases of vacancy.<sup>196</sup>

### Grand Rapids

In Grand Rapids, Michigan approximately 7.5% of the properties are vacant.<sup>197</sup> Like so many other cities across Michigan and the country, Grand Rapids was especially hard hit after the recession in the late 2000s, after which the city was left with an excess of vacant houses. Prior to this point, the city, and in particular, the downtown, were already in a state of decline. The old manufacturing city had largely lost its industries to overseas competition. Many residents were moving out of the city to the nearby suburbs leaving downtown Grand Rapids with high vacancy rates and a general sense of

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<sup>193</sup> Dan McGowan, “Providence has identified 747 vacant homes since Jan. 2016,” *WPRI* (Providence, RI), November 7, 2017, <https://www.wpri.com/news/providence-has-identified-747-vacant-homes-since-jan-2016/>.

<sup>194</sup> A May 2018 count states that 310 properties that were once vacant are now occupied and clear of any code violations. See Diana Pinzon and Shannon Hegy, “Battling Blight: Providence claims 310 vacant properties have been rehabbed,” *WPRI* (Providence, RI), May 21, 2018, <https://www.wpri.com/news/local-news/providence/battling-blight-providence-claims-310-vacant-properties-have-been-rehabbed/1190145969/>.

<sup>195</sup> McGowan, “Providence has identified 747 vacant homes since Jan. 2016.”

<sup>196</sup> “EveryHome Tools.”

<sup>197</sup> U.S. Census Bureau, “Selected Housing Characteristics, Providence, RI,” American Community Survey 2018, U.S. Census Bureau, 2018.

disinvestment.<sup>198</sup> Although there have been other efforts in recent years to revitalize the downtown that have been successful in their own ways, the city still needs to contend with thousands of vacant houses that have resulted from decades of urban flight and the recent recession.

Michigan has the necessary legislation in place to apply receivership for vacant properties, but it is a tool that is seldom used.<sup>199</sup> In fact, there has not been a single use of receivership in Grand Rapids for nearly eight years.<sup>200</sup> Unlike the previous three cities discussed, receivership has never been embraced as a comprehensive planning or preservation policy to tackle vacancy in Grand Rapids. In part, this is because receivership cannot be directly initiated by private citizens or neighborhood organizations. It can only be utilized as a last resort after all other options like fines and foreclosure action have been used as it is largely viewed as “a harsh remedy.”<sup>201</sup> This is not to say that the principle of receivership is challenged in Grand Rapids or Michigan at large. The case of *Hofmeister vs. Randall* is largely responsible for outlining the limitations of how receivership should be employed in Michigan.<sup>202</sup> *Hofmeister vs. Randall* did not in fact challenge the constitutionality of receivership like so many other cases have. Instead, much of the hearing focused on when it was appropriate to use receivership. Ultimately, it was decided that the use of receivership debated in *Hofmeister vs. Randall* was a valid application; however, the case set the precedent that “a receiver

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<sup>198</sup> Anthony Flaccavento, *Building a Healthy Economy from the Bottom Up: Harnessing Real-World Experience for Transformative Change* (Lexington: University Press of Kentucky, 2016), 94.

<sup>199</sup> Housing Law of Michigan, Michigan Compiled Laws § 125.535.

<sup>200</sup> Scott Baker, email correspondence with author, March 6, 2020.

<sup>201</sup> Community Legal Resources, *Vacant Property Manual*, 36-37.

<sup>202</sup> *Hofmeister vs. Randall*, 124 Mich. App. 443, 445 (1983).

should not be appointed where another safe, expedient, adequate and less drastic remedy exists.”<sup>203</sup>

Furthermore, the cost of receivership in Michigan can be prohibitive and disincentivize parties from initiating the process. Legal precedents in Michigan have found that the receiver has a right to have their expenses satisfied. In many cases their expenses are satisfied after the sale of the property, but if the proceeds of the sale are not enough to cover the expenses, the court “may direct the party who moved for the appointment of the receiver to pay these sums in addition to the necessary expenditures of the receiver.”<sup>204</sup> The risk of being responsible for the costs of receivership is enough to largely disincentivize city governments, like Grand Rapids, from moving to appoint a receiver. The risk of financial responsibility together with the general perception that receivership is a harsh tool has effectively eliminated receivership as a useful tool for addressing vacant and abandoned properties in Grand Rapids and much of Michigan.

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<sup>203</sup> *Ibid.*

<sup>204</sup> *Attica Hydraulic Exch. v. Seslar*, 264 Mich. App. 577, 590-591 (2004).

## 5. LESSONS LEARNED

When evaluating the effectiveness of receivership, it is important to recognize that there is no one solution that works equally well in any given context. Each piece of legislation and application of receivership must be sensitive and responsive to local and state contexts. That said, there are some lessons that can be learned when looking at existing legislation to advise the implementation or utilization of receivership in a new location. The following is by no means a comprehensive or definitive list of lessons to be gained regarding receivership. Instead the remainder of this section seeks to serve as a guideline for the effective utilization of receivership. These insights are in part gathered from academic research on the subject of receivership but are also drawn from observational research from the case studies and other examples discussed in this thesis. The lessons can be divided into two categories: legislation and utilization. Legislation refers to the components and allowances directly included in the written legislation that is enacted by states. Utilization refers to the specifics of implementation that are often left to the discretion of local actors. These are broad categories meant to distinguish between the intent versus reality of receivership as a tool for preservation and revitalization.

### Legislation

*States should take care to draft and follow legislation that respects property rights.* When considering drafts of new receivership legislation or amendments to existing ones, it is important to remember that the nature of receivership invites challenges. Historically it has been seen through cases that have questioned the



constitutionality of receivership as seen in New York City. More recently, these challenges come in the form of uncooperative owners, like with the Robert Purvis House. In Michigan, receivership is viewed as a harsh option for the property owner, and although it has not been legally challenged, it is rarely used. In order to avoid providing a basis for these challenges and perceptions of severity, legislators should be careful to avoid violations of the Takings Clause. This is particularly pertinent when considering the notices given and opportunities for the owner and lienholders to rehabilitate the property or pay the receiver's expenses to avoid a title transfer. Receivership legislation has the precedent of being upheld across the country, as long as proper steps are taken to avoid violating property and due process rights.

*To encourage the use of receivership to rehabilitate properties, legislation should also avoid becoming overly burdensome.* In part this can simply be accomplished by using clear and understandable language to ensure the legibility of the legislation. Another place to avoid burden is through the eligibility requirements and other qualifying elements. This is not to say that every property type, actors, or conditions must be allowed in order for it to be successful. To strict of requirement, however, can not only limit interest in a property but also prolong the amount of time a property sits vacant – contributing the continued deterioration. Similarly, states should consider what qualifying factors they want to require. In Baltimore, properties must go to a pre-qualified receiver. This has been successful in Baltimore where a qualified non-profit and the City are active participants and advocates for receivership, but not every place will have the same capacity. Pre-qualification risks limiting the parties who are willing to get involved. To

some degree, the courts provide quality control, as all receivers must provide a detailed account of how they plan to address a property.

*To further incentivize the use of receivership, receiver's must be given assurances to secure their financial position.* Legislation needs to explicitly give receivers the right to borrow against the property and then give those liens priority over existing liens.<sup>205</sup> This is a critical component of receivership and should be implemented in every state. Without confidence of repayment, receivers will have difficulty securing loans to fund the work and it will be challenging to find people willing to invest in a property and take on the responsibility of being a receiver.

*States should consider the role and capacity of community organizations in the receivership process.* Many of the upfront costs can be intimidating to community organizations looking to get involved. Not every organization has the capacity to fund major rehabilitation projects, and although there is never a guarantee, the more risk can be limited in an investment, the more likely community organizations will be willing to get involved. A revolving loan fund for use by receivers or other sources of financial assistance can provide organizations the upfront capital needed to pursue receivership. This is of course excluding states where community organizations cannot act as petitioner or receiver. Although receivership has proven to be successful in these locations, like Baltimore, the inclusion community groups in the process – particularly in the role of petitioner – would not detract from this success.<sup>206</sup> Community organizations are often intimately familiar with the vacancies in their neighborhoods and are instrumental in

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<sup>205</sup> Being second only to taxes.

<sup>206</sup> Pipik in discussion with author expressed similar sentiments.

identify strategic locations for investment. It is also an opportunity for cross-communication and participation amongst community groups, city agencies, and private investors.

*Preservation requirements for historic properties do not detract from the effectiveness of receivership, but they are not necessary.* Specifically, when evaluating receivership as a tool for preservation, the preservation requirements and allowances of demolition as an outcome come to mind. Including preservation requirements as a part of the legislation does not seem to significantly alter the effectiveness of legislation. The strongest benefit to come from preservation requirements is exhibited in Texas where an attempt must be made to find a receiver before demolition of a potentially eligible historic site can be approved.<sup>207</sup> Although compliance with preservation ordinances is required in Pennsylvania, which has some of the strongest receivership legislation, the decisions to retain existing fabric seems to primarily be derived from the values of the petitioner and receiver. There is inherently an element of preservation in receivership, regardless if it is stated in the legislation and regardless if a property is designated or undesignated. Explicitly including preservation standards in legislation seems to have little impact on how receivership is utilized. The benefit of receivership as a tool is that it greatly differs from other strategies, like condemnation and demolition. Receivership is dependent on the marketability of properties, and often maintaining the historic architectural features can aid the resale value of a property.<sup>208</sup> Although preservation standards are not always followed, receivership provides a second chance for buildings

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<sup>207</sup> Tex. Loc. Gov't Code Ann. § 7-214.00111.

<sup>208</sup> Mark Dollase, In discussion with author, March 18, 2020.

that might otherwise be deemed lost, and ultimately any amount of preservation is better than demolition by neglect. Following this same logic, having demolition as a potential outcome does not negate it as an effective preservation tool. Although it is not ideal, evidence points to most receivers prioritizing rehabilitation, and demolition is avoided unless there is no other feasible option.

### Utilization

*Receivership's strength comes from its ability to operate on a case-by-case basis.* For the Germantown Conservancy, this was counterproductive to their goal of enacting widespread change to multiple neighborhoods with high levels of vacancy. Overall, in most cases this limitation provides greater flexibility in terms of defining an outcome. Goals are created in a manner that is appropriate to an individual property and can be adapted based on a site-specific context. Because courts must approve receivers' plans before work begins and the work completed before receivership is terminated, there is a sense of accountability. Furthermore, because receivership must be filed individually for every property, communities are protected from heavy-handed efforts that risk erasing neighborhood fabric for the sake of removing vacancy. Receivership invites use as a catalytic tool that strategically targets properties that will have the greatest impact.

*Receivership is most effective if market conditions are moderate.* In areas of widespread vacancy, receivership is less likely to be successful. It is not meant to solve deep-rooted issues that result in urban vacancy. Instead, receivership is best utilized in areas that strike a balance in terms of their markets. Strong markets likely will not see a need for receivership, as properties will likely not stay vacant long due to market

demands. But if the market is too weak, even if the need for revitalization is there, investors will find it too risky. In order to recoup their costs, receivers rely on the successful sale of a property at or above market value. In neighborhoods where demand is too low, a single property rehabilitated through receivership will likely have difficulty attracting buyers. Receivership works best in areas where there is just “spotty blight” like Torresdale Avenue in Philadelphia.<sup>209</sup> This suggests that receivership is most effective as a proactive tool to address property abandonment before deteriorated conditions spread and impact the remainder of blocks. In these situations, investors will still be available, and the rehabilitation of a problem property will help prevent widespread abandonment.

*Finding ways to control who buys a property will help ensure communities benefit from receivership.* Most legislation only specifies the type of sale – private or public auction – but exerts little control over the qualifications of the buyer. In Baltimore, DHCD is exploring ways to informally regulate buyers to ensure their future development benefits the surrounding community. This idea of conscientious public benefit is difficult to pursue when properties are placed up for public auction, as the title must go to the highest bidder. Private sales provide greater flexibility in ensuring potential buyers have the best interest of communities in mind.

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<sup>209</sup> Samsa, “Reclaiming Abandoned Properties,” 212.

## **6. CONCLUSION**

Although there is often a hesitancy to fully embrace receivership as a tool to eliminate vacancy, it is a strategic tool that has the potential to be a strong resource in the fight against demolition by neglect. Designated historic sites and undesignated properties alike can benefit from receivership. Vacant property receivership provides the opportunity to save and rehabilitate buildings that would otherwise be left to decay.

There are many options available to address vacancy, but receivership is a tool that provides mechanisms to ensure a plan of action is followed for a property. Other tools like code enforcement rely on punitive measures to force property owners to repair their properties, but when action is not taken, the only other option is for cities to take on the cost themselves to either repair or demolish a building. Similarly, eminent domain is a highly scrutinized tool that is less effectively applied to single properties.

Vacant property receivership is a proactive and flexible tool that can be used to bring properties back into active use and preserve the built environment. Full or partial rehabilitations that take place under the receivership process make buildings marketable for future use. The oversight provided by the courts throughout the process ensures that plans are reasonable to accomplish, appropriate for the site, and, most importantly, are followed through. Its success is not dependent on responsive property owners. Likewise, receivership provides a solution to budget limitations on the part of owners as well as cities, who would otherwise be incapable of making repairs.

Overall, receivership is an effective tool for addressing vacancy and demolition by neglect, but it is not without its limitations. Receivership is not a tool that can operate

freely of markets. There must be enough market potential for receivers to take on the risk and responsibility of repairing properties. This means neighborhoods that are plagued with widespread vacancy are less likely to benefit from receivership than locations with only the occasional case of vacancy. Furthermore, because cases must be evaluated on an individual basis, it is not a tool well-suited for broad action, although this also serves as a benefit as it allows the ability for plans to be adapted to the needs of a specific site. Receivership is also often viewed as a severe remedy because it can result in property owners losing title to their building with no financial compensation. This nature of receivership commonly results in a hesitancy to employ it and limits the cases that can be used to study it.

The variation in state enabling legislation makes it difficult to broadly state that receivership is always an effective tool. To some extent, its success as a tool for preservation and revitalization is dependent on the perfect combination of physical and market conditions, legislative capabilities, and local attitudes. Places that have fully embraced receivership demonstrate the potential of the tool despite legislative differences. In Baltimore, receivership is incorporated into city planning efforts and has been used to repair properties deemed catalytic by the City. Likewise, in Philadelphia community organizations are able to apply receivership at a smaller scale with great success and rehabilitate properties that have long been overlooked. Lengthy legal processes and the perception of harshness have made receivership a tool of last choice in places like Providence and Grand Rapids. This is not to say that when it is used receivership is not successful in rehabilitating or preserving properties, but in these cases it is not an effective tool for encouraging the revitalization of neighborhoods.

States and municipalities looking to enact receivership legislation should take care to first evaluate their own circumstances before determining if it is an appropriate tool. Receivership is most effective in neighborhoods without widespread vacancy, or at least in neighborhoods that have decent market potential. Cities also need strong partners in the public, private, or non-profit domains to take responsibility to pursue and fulfill receivership action. Without such partners, receivership will be a tool seldom used. States and other municipalities also need to examine what other tools are available. Some may work in tandem with receivership, like loans and grants for repairs, and strengthen the effectiveness of receivership. Other tools, like foreclosure and fines, may be faster and negate the need for receivership.

If choosing to enact receivership legislation, care should be taken to define clear yet flexible standards. This includes defining what types of properties and conditions are eligible for action and who can participate in the process. Property type and parties involved should be left broad to allow receivership to be used where needed and by whoever is willing to take on the responsibility. Conditions should be restricted to instances where the conditions threaten public health and safety and be clearly defined in order to avoid infringing on property rights. Property incentives should also be implemented to encourage parties to serve as the receiver. There will always be financial risks, but this can be limited. States and cities with the financial capacity can provide financial assistance in the form of preferential loans or grants to help receiver's cover the costs. However, it is important to note that receivership has been successful without these additional sources of capital, and low-cost options on the part of cities and states, like giving the receiver's lien priority status, can help limit the risk and cost incurred by the



receiver. Expanding the sale type at the end of receivership to include private sale also benefits the receiver and provides some level of control over the future of a property.

Ultimately, receivership has the potential to be an effective tool for preservation and revitalization and for addressing demolition by neglect. Yes, it may be a harsher remedy, but it is a tool best suited for extreme cases of neglect where traditional actions have failed. It gives cities and communities the opportunity to take control of conditions and provide a second chance to abandoned buildings that have long plagued neighborhoods and would otherwise be lost.

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**APPENDIX I: LEGISLATION SURVEY**

State	Year Est.	Amended (if known)	Citation	Eligible Property Type(s)	Eligibility Requirements
California	1990	2019	California State Health and Safety Code § 17980.6 - .7	residential; commercial	in violation of state and/or local building code; or threatens public or resident health and safety
Illinois	1994		310 Ill. Comp. Stat. §50	residential	unoccupied for at least a year; nuisance
Indiana	1981	2017	Indiana Code Ann. § 36-7-9-20	not specified	take into consideration overall condition, occupancy; public hazard, other relevant factors
Iowa	1985	2019	Iowa Code §§657A	residential; mixed-use; commercial	vacant for at least 6 months; court finds it abandoned based on testimonies
Kansas	1994	2013	Kan. Stat. Ann. §§ 12-1750; 12-1756ag	residential; commercial	unoccupied at least 90 days; or tax delinquent for at least 2 years with blighting influence on surrounding properties (threaten the health, safety, or morals of residents and the public)
Louisiana	2006		LA. Rev. Stat. § 40:600.31-.44	residential	requires environmental remediation; determined blighted; below minimum habitability standards; or unoccupied for at least 18 months and been determined a nuisance
Maryland (Baltimore)	1991	2007	Building, Fire, and Related Codes of Baltimore City § 121	not specified	vacant, unsafe structure
Massachusetts	1993		Mass. Gen. Laws Ch. 16, §111-127I	residential	in violation of sanitary codes
Michigan	1968		Mich. Comp. Laws Serv. § 125.535	residential	in violation of health and safety standards
Missouri	1969		MO. Ann. Stat. § 441.500-641	residential	in violation of building or housing codes; threatens public health and safety
New Jersey	2003	2014	N.J. STAT. ANN. § 55:19-85[b]	residential; mixed-use	unoccupied for at least 6 months; and the property is one of the following: in need of rehabilitation; in an unstable condition due to incomplete construction; tax delinquent; or is a nuisance
North Carolina	2018		SL 2018-65	not specified	in violation of building/structural conditions or threatens public health and safety; owner fails to comply with an inspector's order; owner fails to comply with an order to repair; or any owner or partial owner submits a request
Ohio	1997	2018	Ohio Rev. Code Ann. § 3767.41	residential; mixed-use	"public nuisance" failing to meet building standards
Oregon	1989		Or. Rev. Stat. §§ 105.430-450	residential	not in compliance with basic sanitary and habitability standards
Pennsylvania	2008	2017	PA. STAT. ANN. tit. 68, § 1101 et seq.	residential; commercial; industrial	unoccupied for 1 year; not been actively marketed in 60 days; no pending foreclosure action; it has not been purchased within 6 months; and 3 of the following: it is a public nuisance, in need of substantial rehabilitation and none has taken place in the last year, unfit for human habitation, subject to unauthorized entry, an attractive nuisance to children, vermin/debris/overgrowth is present, the dilapidated appearance negatively impacts the economic well-being in the area, or it is an attractive nuisance for illicit activity
Rhode Island	1986	2014	R.I. Gen. Laws Ann § 34-44	residential; mixed-use	considered a public nuisance
South Carolina	2012		S.C. Code Ann. Title § 6-38	residential	considered a substantial risk, threat to public health, or a public nuisance in violation of building or sanitary code
Tennessee	2007		Tenn. Code Ann. § 13-6-106	residential	certified public nuisance; In violation of any local code
Texas	1989	2019	Tex. Loc. Gov't Code Ann. § 7-214.003	residential	in violation of municipal ordinances regarding fire protection; structural integrity; zoning; or disposal of refuse; or other ordinances regarding public health and safety.
Virginia	2012	2017	Va. Code Ann. § 15.2-907.2	residential; commercial; industrial	considered a "derelict building"
Wisconsin	2001	2009	Wis. Stat. § 823.23	residential	considered a nuisance; in violation of local building code or threatens public safety

State	Who Can Act as a Petitioner?	Notice of petition (days)	Time given to owner to intervene or abate (days)	Who Can Act as a Conservator/Receiver	Preservation Requirements
California	tenant; tenant association; municipality	30	30	qualified entity; community organization; nonprofit	not specified
Illinois	nonprofit	30-60	90	petitioner	rehabilitation must be intent
Indiana	nonprofit; municipality	60	60	qualified entity; nonprofit	not specified
Iowa	neighbor; nonprofit; municipality	unspecified	determined by court	nonprofit; lienholder	preference to plans that preserve historic features of a building designated or located in a historic district
Kansas	nonprofit; municipality	20-60	90	nonprofit; municipality	not specified
Louisiana	municipality	45	45 days to submit rehabilitation plan	qualified entity; municipality	addresses rehabilitation
Maryland (Baltimore)	municipality	not specified	30	qualified entity; municipality; lienholder	not specified
Massachusetts	tenant; municipality	14	not specified	neighbor; qualified entity; nonprofit; private company	not specified
Michigan	municipality	not specified	not specified	qualified entity; municipality	not specified
Missouri	community organization; municipality	60	"reasonable time"	lienholder; petitioner; attorney	not specified
New Jersey	municipality	10	determined by court	qualified entity; municipality	"statement by an individual holding...that there are sound reasons that the building should be rehabilitated rather than demolished based upon the physical, aesthetic or historical character"
North Carolina	municipality	10	30	qualified entity	not specified
Ohio	tenant; neighbor; nonprofit; municipality	60	60	qualified entity; nonprofit; lienholder	not specified
Oregon	municipality	60	60	nonprofit; municipality	not specified
Pennsylvania	neighbor; nonprofit; school district; lienholder; municipality	30	determined by court	nonprofit; municipality; lienholder	must consult with appropriate preservation agency if the building has been designated a historic property
Rhode Island	municipality	20	"reasonable opportunity"	qualified entity; nonprofit; lienholder	not specified
South Carolina	municipality	60		qualified entity; general contractor	in the case of historic properties, receiver must an entity with sufficient experience rehabilitating historic properties if possible
Tennessee	neighbor; nonprofit; lienholder; municipality	30	30	nonprofit; municipality	not specified
Texas	nonprofit; municipality	30	30	nonprofit; lienholder	preservation standards must be followed; receivership can be pursued for potentially eligible federal, state, and local historic sites can before demolition is approved for a substandard building (Sec. 214.00111).
Virginia	municipality	30	30	municipality	only renovations and repairs are considered valid actions
Wisconsin	municipality	60	proceeding in "timely fashion"	qualified entity; nonprofit; private company; municipality	not specified

State	Receiver Lien Priority	Receiver Fee	Opportunity for Owner to Regain Control after Receivership has Begun
California	not specified	same as foreclosure	not applicable
Illinois	not specified	determined by court	owner petitions for restoration of possession
Indiana	2nd to Taxes	same as foreclosure	not specified
Iowa	2nd to Taxes	determined by court	not specified
Kansas	Not specified	based on receiver's reports to court	owner petitions for restoration of possession and proper compensation for receiver is determined by court
Louisiana	Not specified	not specified	owner may petition at any time during receivership if they agree to complete the rehabilitation plan and comply with all conditions of grants and/or loans; notice to respond before sale
Maryland (Baltimore)	2nd to Taxes; if insufficient notice is given, receiver's liens are not given priority	not specified	not applicable
Massachusetts	2nd to Taxes	not specified	not specified
Michigan	2nd to Taxes	not specified	not specified
Missouri	2nd to Taxes	not specified	apply for discharge of the receive upon payment of receiver's expenses; must take action within 2 years or deed transfers to receiver
New Jersey	2nd to Taxes	not specified	owner can petition any time after 1 year of grant of possession; includes plans to finish rehabilitation, comply with all grants or loans, and repay liens and other costs
North Carolina	2nd to Taxes	not specified	not specified
Ohio	1st	same as foreclosure	not specified
Oregon	2nd to Taxes	Hourly rate approved by court; not to exceed 15% of total cost	not specified
Pennsylvania	2nd to Taxes	greatest of \$2,500 adjusted 2% upward each year, 20% of expenses, or 20% of the sale price	owner petitions for the termination of receivership
Rhode Island	2nd to Taxes	determined by court	burden of proof to show building should not be sold
South Carolina	Possibly before taxes	Not to exceed 10% of costs	not specified
Tennessee	Possibly before taxes	not to exceed greater of 10% of total costs or \$25,000	not specified
Texas	Possibly before taxes	10%, at discretion of receiver.	not specified
Virginia	On par with taxes	not specified	owner may petition at any time prior to the 2-year expiration or prior to confirmation of sale at public auction by paying the receiver's liens, expenses, and other costs
Wisconsin	2nd to Taxes	Hourly rate approved by court or 20% of total cost	not specified

State	Termination of Receivership	Sale Type	Other Notes
California	owner pays to relocate tenants; owner pays receiver's unrecovered costs and fees	Not authorized	discretionary post-monitoring up to 18 months
Illinois	owner compensates receiver	Not authorized; quit claim deed after 2 years of inaction	organization must intend to use the property as low- and moderate-income housing
Indiana	receivership is maintained for a "period sufficient to accomplish and pay for repairs and improvements"	When a lien exists - private sale; public auction	receiver must have a housing focus; eligible properties exclude buildings located on agricultural land
Iowa	when nuisance has been abated; cost of receivership has been paid; and all of the receiver's mortgages have been paid	foreclosure sale	nonprofit petitioner must have housing conditions as one of their goals
Kansas	when deemed appropriate by court	quit claim deed to receiver; or receiver may take ownership by paying expenses	person purchasing a house must occupy it for at least 2 years
Louisiana	term established by court; not to exceed 5 years; excess funds are returned to owner	private sale	all grant options must be exhausted before a lien is approved
Maryland (Baltimore)	cannot extend beyond 2 years	private sale; public auction; owner pays	demolition is considered a valid outcome
Massachusetts	receiver applies income to their expenses; excess is then paid to lienholders on record	public auction	receiver must first issue proof of bonds or insurance
Michigan	lien can be issued if expenses of receiver are not met otherwise	foreclosure sale	
Missouri	conditions have been addressed; all costs have been reimbursed; surplus paid to owner	private sale; public auction; owner pays	
New Jersey	Note of Completion filed with courts; owner is last to be paid from proceeds	private sale; public auction; foreclosure sale	qualified entity must be appointed by municipality to serve as receiver
North Carolina	cannot extend more than 2 years after the rehabilitation, demolition, or sale of the property	private sale; public auction	
Ohio	when nuisance has been abated; all receivership expenses have been repaid; and all receiver's notes and mortgages issued have been paid, or holder of these have requested discharge	subsidized housing court	
Oregon	when abatement is completed; costs have been paid or lien has been filed; and interested parties will manage the property in compliance with codes	not specified	lien can be filed if the receiver's losses have not been recovered after 60 days after the date of the order
Pennsylvania	when approved plan is completed or otherwise terminated by court	private sale; receiver can gain ownership; must be approved by court	action can also be brought against adjacent properties with the same owner; most senior nongovernmental lienholder gets first consideration for appointment as conservator
Rhode Island	when nuisance has been abated; all receivership expenses have been repaid; and all receiver's notes and mortgages issued have been paid	determined by court	all interested parties must approve demolition; a nonprofit can act as receiver if they have improvement of low- and moderate-income housing as a goal
South Carolina	receiver petitions for termination when all repairs to structure or demolition have been completed; after sale excess proceeds are returned to owner	private sale; public auction; receiver can gain ownership	
Tennessee	order to sell building if liens have not been satisfied in at least 180 days	determined by court	
Texas	when all receiver costs and fees are repaid; remaining income or proceeds are returned to owner; if no owner can be located, account with district clerk's office is created	public auction; foreclosure sale	
Virginia	after necessary repairs are made, but cannot exceed a period of 2 years; court must approve sale	public auction	land bank is included as a viable receiver
Wisconsin	court determines abatement is completed; receiver's costs and obligations have been paid; owner will manage property in compliance with codes	not specified	receiver must be either a housing authority or nonprofit with housing as a focus before pursuing other qualified entities

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