

# ABANDONED HOUSING STRATEGIES 101

## TRAINING MANUAL

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*For a Just Society*

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# DATA-DRIVEN DECISION-MAKING

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## A Word about Words

Before we can discuss how abandoned housing strategies are shaped by abandoned housing data, we must first make clear what we are calling “**abandoned houses.**” For the purposes of this manual, an abandoned house is a single-family house or duplex that is both unoccupied long-term and visibly uninhabitable. That is, it is *both vacant and derelict*. Its vacancy can be judged either from the fact it has sat empty for at least six months or that it has suffered sudden major structural damage such as from a fire or a storm. The fact that no one could live in it in its current condition might be seen from the fact that it is boarded up, or open to casual entry, or has major roof or window problems.

In many articles about abandoned housing—including some written by the authors of this manual—these properties are referred to as vacant houses instead of abandoned houses. But, the use of the word “abandoned” conveys not only the house’s lack of use but also its neglect by its owner. As we explore important Indiana law related to abandoned housing, we will see that words such as “vacant” and “abandoned” have special definitions in certain statutes that do not match up with our use. Nevertheless, it is important that we agree on a single phrase that captures the core problem plaguing so many communities throughout the United States today.

## Understanding the Impact of Abandoned Houses

If abandoned houses quietly marked the fact that a neighborhood or a city did not have as many people as it once did, they would be, at worst, a somewhat depressing reminder that growth is neither inevitable nor everlasting. But, abandoned houses are anything but quiet neighbors. They attract vandalism, scavenging, illegal use, dumping and all manner of criminal activity. For nearby properties, they pose the threat of water or fire damage. For community residents, especially children, the dangers are potentially more serious. Having an abandoned house attached or even next door to your own property can also make it expensive or impossible to obtain insurance. It is little wonder that a study found that house values within a 1- or 2-block radius drop 1.3% for each nearby abandoned house.<sup>1</sup>

Nor does the neighborhood suffer alone. Abandoned houses require frequent calls for emergency services. First responders that need to enter these properties face a dark and dangerous environment. Efforts to mitigate the nuisance such as cleaning, boarding and cutting the grass cost municipalities millions of dollars every year.

## Understanding the History and Trajectory of the Problem

Both those on the frontlines of the battle against vacant house nuisances and the larger community affected by them can benefit from having a full understanding of the causes of the local vacant house crisis. In the absence of an analysis of the larger trends and forces shaping the current situation, it will be all too easy to assume that vacant houses arose from the ill will of

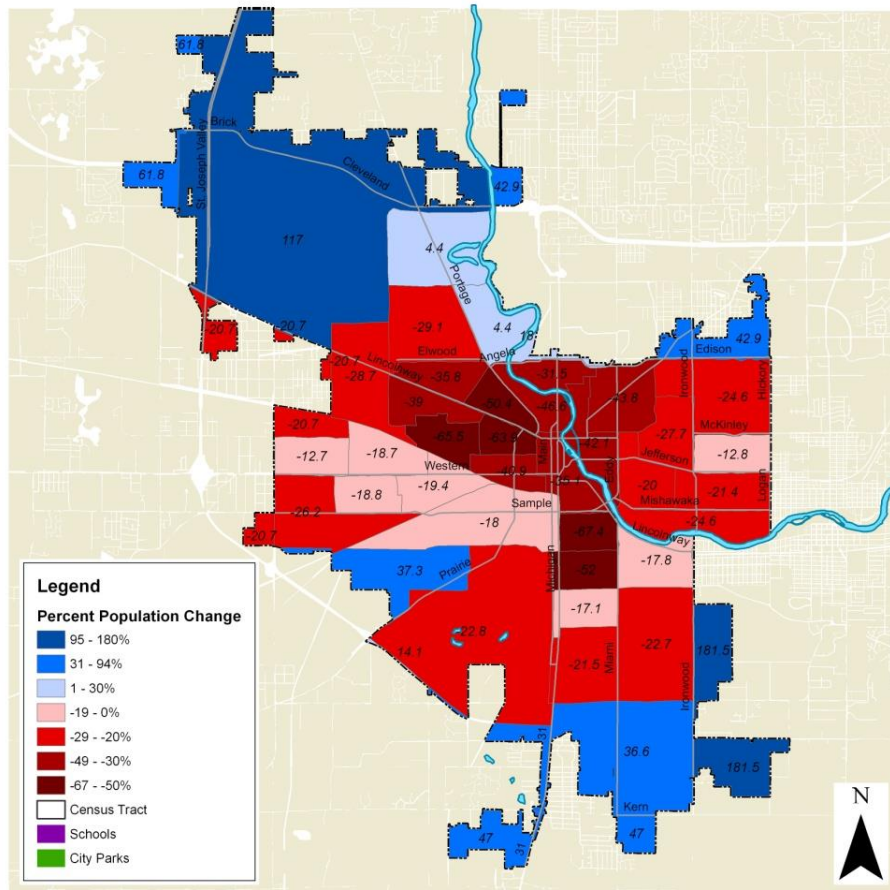
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<sup>1</sup> STEPHEN WHITAKER & THOMAS J. FITZPATRICK, IV, THE IMPACT OF VACANT, TAX-DELINQUENT AND FORECLOSED PROPERTY ON SALES PRICES OF NEIGHBORING HOME 2 (2012)

absentee landowners and the indifference of previous municipal administrations. Even in places where the problem of vacant properties has only recently received top priority consideration, the cycle of disinvestment and neglect has likely been underway for decades.

When the City of South Bend formed a vacant properties task force in early 2012 led by the City’s new mayor, Pete Buttigieg and one of this manual’s authors, Jim Kelly, the first matter to be addressed was the history, scale and track of the abandoned housing crisis. [The Task Force Report](#), published in February 2013, identified four principal causes of the abandonment epidemic: population loss, deindustrialization, the recent foreclosure crisis and a recent spike in property tax assessments. The first three are likely to have played large roles in the abandoned housing problem of any Indiana community and can be documented using the same methods employed by South Bend.

Using widely available Census Bureau data, the Report depicted a forty-year decline of nearly 25% in City population even as the County as a whole grew modestly. The map below showed that this loss of populace was not distributed evenly across the City. Neighborhoods northwest and southeast of Downtown lost more than half its population from 1970 to 2010. The proximity of these communities to the formerly active industrial area southwest of Downtown went a long way to explain the skewed decline. Other maps depicting the location of foreclosure filings from 2001-2007 and abandoned houses in 2012 helped show how strong a role the forces of deindustrialization, suburbanization and predatory lending in creating the distress faced by South Bend’s hardest-hit communities.

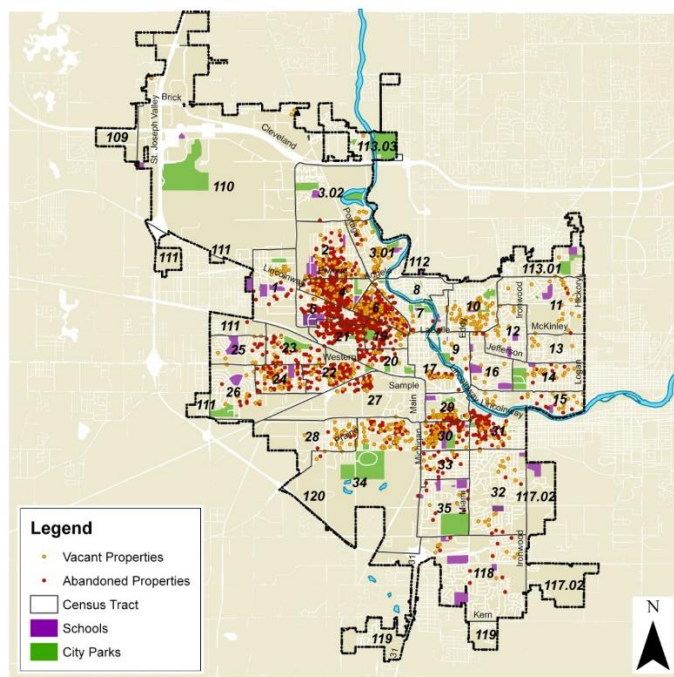


## Understanding the Scope and Trajectory of the Problem

As important as it is to understand how the past has shaped the present abandoned house problem, the true cornerstone of abandoned house data management is the census of abandoned houses themselves. For many reasons, it is insufficient to know simply how many abandoned houses you have in your town, city or county. You must know where they are located and the current status of abatement efforts. Counties and municipalities responsible for code enforcement need to have these abandoned house records in an electronic database that can be connected to Geographic Information Systems (GIS) data structures and software that will allow them to be mapped, at least at the street block and neighborhood level in order to understand which communities are beset with multiple abandoned house nuisances.

To understand the likely future of abandoned housing on any given block, communities must also be ready to track those houses that are not yet derelict but have remained unoccupied for more than a few months. While neighbor complaints, neighborhood inspections and so-called “windshield surveys” can generate good data on abandoned houses, it can be considerably more difficult to ferret out properties that are unoccupied for than two or three months but are not yet in violation of any code standards. Yet, frequently, these are next year’s new abandoned houses. While it might seem that postal delivery records would easily show when someone last lived in a certain property, the United States Postal Service will not freely share this protected information on a parcel basis. Likewise, public utility providers of phone, gas and electric services are also reluctant to share customer records without judicial authorization. Many code enforcement agencies have better luck with water service records, which are often maintained by a separate branch of the municipal or county government. Even with this information available, any group wishing to know which properties have not been lived in for several months will develop a network of neighborhood activists on the watch for potentially problematic properties.

A complete census of both types of properties can produce a map like this one from South Bend:



## **Gaining and Using Abandoned Housing Nuisance Case Information**

Gathering information about the scope and the likely future track of the abandoned housing problem is a crucial part of marshaling the political will necessary to confront the problem head on. But, abandoned house data plays a far more central role in the case management of abating actual abandoned house nuisances. There are three critical types of information in selecting and pursuing the strategies that will abate abandoned house nuisances:

- *Physical Condition of the Structure*
- *The Strength of the Neighborhood Real Estate Market*
- *The Readiness, Willingness and Ability of the Owner to Rehab the Structure*

With the first two pieces of information—the property condition and the neighborhood market strength, code enforcement officials can determine whether or not it is worthwhile to focus on immediate and complete rehabilitation of the house as the goal of compliance efforts. At first glance, it may seem that knowing the prospects of the owner voluntarily rehabilitating the abandoned house would be crucial to discerning whether or not to pursue demolition instead of rehabilitation. But, two problems present themselves right away. First, a code enforcement official will not really know whether an owner is ready, willing and able to fix up without seeing, possibly over the course of weeks or months, the owner’s actual compliance efforts. These alone may reveal the owner’s true intentions, motivations, abilities and resources. Second, only the cost of the repairs and the projected return from them actually impact their economic feasibility. The owner’s lack of desire or ability to make a good investment does not in any way diminish the fact that the rehabilitation would be a sound economic choice. As will be pointed out again in a later section, a neighborhood with any abandoned houses can ill afford to demolish one that can be returned to productive use.

When rehabilitation is determined to be the proper strategic objective, the best method for making a house ready for occupancy will depend on whether the current owner is the person to get the job done. Traditional code enforcement mechanisms of administrative orders, civil penalties and judicial orders to make repairs will invariably make the difference for property owners that have the resources and ability to fix up the property. These tools will be discussed in the Code Enforcement chapter. But, for those owners who evade direct accountability or lack the ability to make repairs, the legal mechanisms discussed in the Manual chapter “Firing the Owner” will be indispensable to achieving the goal of a revitalized property.

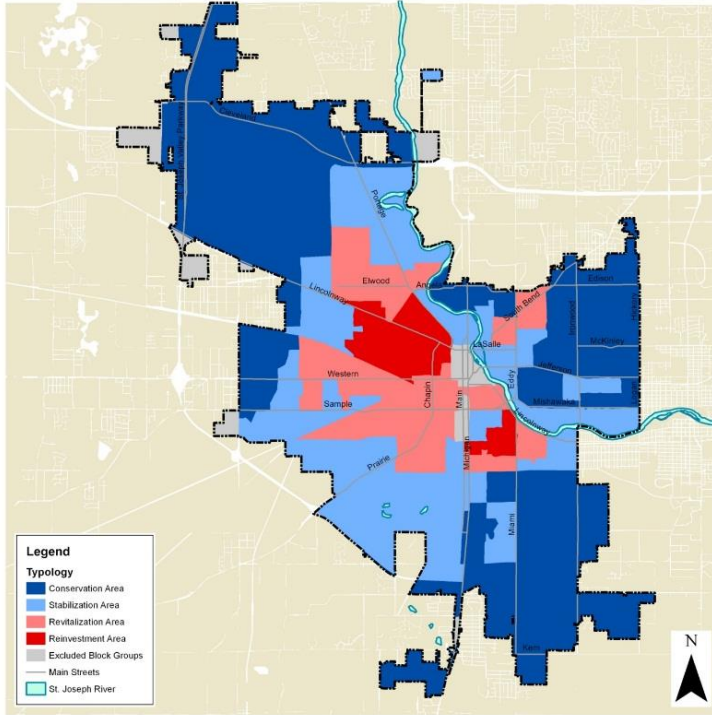
Even though this third piece of information may only be uncovered through the process of enforcement, the condition of the property can be obtained at or near the beginning of the process, albeit not without significant effort by inspectors. Constitutional protections of privacy extend even to unoccupied properties, but experience code enforcement officials can make rough estimates of the costs involved in bringing an abandoned house into full code compliance without unauthorized intrusions. When an impaired structure has exposed the interior to rain, wind or even large changes in temperature, significant interior renovations will be required to make the property habitable.

The strength of the neighborhood real estate market, however, cannot be judged so easily. In determining how to make strategic code enforcement decisions, many local officials battling abandoned house nuisances have developed maps that show variations in housing market

strength from block to block. These maps take into account a wide range of data relevant to the relative health of real estate investment in a community. In creating its map below, the City of South Bend looked to nine statistical elements:

- *Average Change in Assessed Value*
- *Percent of Abandoned Properties*
- *Percent of Commissioners' Certificate Sale Properties*
- *Percent of Foreclosures*
- *Average Home Sale Price*
- *Average Days Home on Market*
- *Sales / Mortgage Ratio*
- *Vacant Properties*
- *Homeownership Rate*

All of these data were available from accessible records that were updated continuously. Statistical calculations created a composite map showing a fine range of strength and weakness in the real estate investment environment. The City then created a four-tier typology it used to classify small groups of city blocks. The two highest levels were neighborhoods very likely to reward the renovation of all but the most devastated of derelict houses. The most distressed neighborhoods, called reinvestment areas, were unlikely to have any significantly deteriorated houses that could be renovated in an economically feasible manner. These were also the neighborhoods that had the heaviest concentration of abandoned houses. The next level up, revitalization area, described communities that might support the renovation of some abandoned houses, especially with some subsidy.





# IDENTIFYING AND GETTING THE ATTENTION OF RESPONSIBLE PARTIES

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## Developing a Process to Identify Responsible Parties

Identifying the party responsible for a vacant property is critical for ensuring that properties are maintained and minimizing the burden they impose on municipalities. Tracking down the party responsible for a property – i.e., someone who is legally obligated to care for the property or someone who will step up to care for a property in which they have an interest in order to protect their asset – can be difficult and time-consuming. Some vacant property owners have decided that they are better off if they just walk away from a property. Some financial institutions frequently transfer ownership of mortgages. In both cases, it is harder to get up-to-date, accurate information.

There are several different resources that a municipality can use to expedite the process of identifying a responsible party. Following are a handful of free resources that local officials have identified as providing useful information on property ownership, mortgagees, and lien holders.

- Examine **publicly available documents**, such as deeds and tax records, which should name the owner and may include some contact information. In many cases, however, this information will be out of date or will not provide accurate contact information. The Recorder of Deeds office in each county is usually a good, inexpensive source of basic information and can be a good place to start. The County Assessor's office may provide information about where the most recent tax bill was sent. The methods of obtaining digital access vary by County. While some are free, the costs of searching, downloading, and/or printing also vary by County.
- **Safeguard Compliance Connections**, [http://www.safeguardproperties.com/Services/High\\_Risk\\_Code\\_Enforcement/Compliance\\_Connections.aspx](http://www.safeguardproperties.com/Services/High_Risk_Code_Enforcement/Compliance_Connections.aspx), is a free service that identifies property owners, servicers, lien holders, and points of contact for single-family (1-4 units) properties throughout the country that have a lien holder, not just those for which Safeguard is the servicer. Municipal officials can conduct unlimited searches. In addition, they can upload violation notices and pictures of damage. Safeguard can pass this on to the point of contact for each property, which can expedite the maintenance and collection process.
- **Mortgage Electronic Registration System (MERS)**, <https://www.mersinc.org/join-mers/pricing-schedule#merslink>, is a national database created and maintained by the real estate finance industry that enables local governments to obtain information regarding the current servicer of a mortgage registered on the MERS system. The percentage of properties included in the MERS database varies from jurisdiction to jurisdiction, and in some cases the MERS listing does not contain the information a municipality may need.
- In many states or regions, **private land use search services** provide digital access to a variety of land records, including real estate transactions, mortgage transactions, liens and

judgments, foreclosures and auctions. These services may offer subscription packages or one-time search services at different price points, often including some relatively low-cost options.

***Persistence pays off.*** When tracking down the party responsible for a vacant property, persistence and ingenuity go a long way. When an official in Berkeley, Illinois, contacted the loan servicing company that had once been responsible for maintaining a troubled property, he spoke to someone who said that the bank the servicer worked for had sold the mortgage to another institution, so neither the servicer nor the bank were responsible for the property anymore. The servicer representative said they weren't open to further discussion and ended the conversation. The building official waited about half an hour, called the service company again, and this time spoke with a different agent. The official explained the situation and suggested that the servicer contact the new bank. The servicer placed the building official on hold, and in a matter of minutes had contacted the new bank, regained the service contract, returned to the call with the building official, and begun to address the problem.

### **Getting the Attention and Cooperation of Responsible Parties**

Merely identifying is the party responsible for a particular property does not guarantee responsiveness. Responsible parties are more likely to be responsive in communities with a healthy real estate market where a maintained property will be likely to sell. But even under the best of circumstances, it can be challenging for municipalities to get the attention of responsible parties. Here are a few strategies municipalities have found to be helpful:

- Many **issue citations to everyone** with any responsibility for the property—owners, banks, servicers, or property managers—to maximize the chance of getting a response from at least one.
- When the traditional owner cannot be found, informing banks or servicers about the specifics of the building's condition can grab attention and result in a quicker response. **Sending photographs of the property** can be especially helpful.
- **Personal relationships achieve results faster.** The building director in one community was unable to get responses from the right people at some of the banks responsible for many of the vacant properties in his community. However, after he issued violation notices and the banks' attorneys began to show up in court, the building director began to develop constructive working relationships with them. Now, when a problem arises, **rather than working directly with the mostly unresponsive banks, he contacts their attorneys**, who then convey the information to their clients. Once the attorneys are involved, the banks often move quickly to resolve the problem. As a result, the community may be able to get a work order issued quickly, without having to expend time in court. Through this informal process, his community **gets problems addressed 30 to 60 days faster**. Moreover, good working relationships can lead to others. Now, when the building director has to deal with a new bank, he often asks an attorney with

whom he has a good working relationship to introduce him to attorneys for the bank he does not know. This often results in better, faster responses.

- Others have found that **having neighbors call the responsible party to complain** increases the pressure to respond. Often there is a contact number posted on the building, or municipalities will provide the contact information.
- If the responsible party does not respond and conditions on the property warrant, the municipality may choose to clean up the property or undertake some repair and then seek to recover its costs from the responsible party. **Sometimes, when a municipal employee notifies a servicer or owner that the municipality is going to do the work itself and bill the servicer or owner, it is enough to spur the responsible party to action** – since it may cost less to do the work itself than to pay the municipality.

***Proactive communication.*** Municipalities have found it useful to reach out to building owners, banks, and loan servicers about new registry programs, even before problems arise at a specific property. Early communication with banks and servicers can help clarify who is responsible on each end and can sometimes speed up bank action. For example, Chicago, Illinois periodically sends banks a list of newly vacant properties, which gives them a head start in identifying those they are responsible for and allows them to take the necessary steps to register and correct problems. Similarly, before Evanston, Illinois sends a bank the official legal notice of a VBO violation, it sends an email notice about the violation so that the responsible party can begin to comply.

***Quick and consistent enforcement.*** Compliance is improved when responsible parties know that enforcement is swift and certain. Thus, when there is a violation, municipalities should issue violation notices promptly. If the violation is not corrected, municipalities should move as soon as possible to obtain an order for compliance and enforcement activities. Responsible parties are more likely to act quickly when they are facing penalties, especially if the penalties make it more difficult to sell the property in question.

**Taking steps to ratchet up enforcement will almost always elicit a response.** As one director of community development observed, “It helps to get a reputation for bringing cases forcefully to court.” The department head from another municipality noted that communities must be willing to utilize the full arsenal of enforcement tools, including demolition, if necessary: “A credible threat of tough enforcement gets cooperation.” **Once the municipality demonstrates that it is serious about enforcement, banks and servicers are less likely to push back.**

However, as one municipal official emphasized, it is important to keep careful records and document every action taken with respect to a vacant property as if it were a potential court case.

***Firm but flexible enforcement.*** While quick and consistent enforcement is fundamental to an effective program, municipal officials emphasize that it is important to exercise common sense and flexibility.

- Even if a municipality gets a responsible party to the table and may be able to recover outstanding fees, fines, and costs, it may benefit the municipality to forego full recovery of the money if doing so makes it more likely the building will be repaired and reoccupied.
- Similarly, if a property is not in full compliance, but the responsible party is working in good faith to complete the desired work within a designated time frame, a municipality may agree to forego or reduce fines as long as the work continues on schedule, or it might allow an extension of time before pursuing further enforcement.

A veteran building department director summed up the "firm but flexible" guidance this way: "Issue citations to get their attention and let them know you mean business. Follow up if they don't do what they say they are going to do when they say they are going to do it. And be flexible once there is trust in the relationship."

# VACANT BUILDING ORDINANCES

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## Introduction

Many communities throughout the country are grappling with the myriad problems posed by vacant and abandoned properties. Vacant properties pose health and safety risks, threaten the value of adjacent properties, destabilize neighborhoods, and frustrate local economic recovery efforts. One effective strategy that municipalities around the country have used to get vacant property problems under control is a vacant building ordinance (VBO).

**VBOs are a useful supplement to code enforcement efforts. They help to quickly identify who is responsible for problem properties. In addition, new fees and fines for noncompliance get the attention of responsible parties and help get problems resolved more quickly.**

Most VBOs have very similar requirements:

- They require owners to **register** vacant buildings with the municipality and **provide contact information** for someone responsible for the property. Many also require financial institutions with a legal interest in the property to register if the owner cannot be found. This helps local governments identify who is responsible for a vacant property and contact them quickly when necessary.
- Most require registrants to **pay an annual fee**, which helps local governments offset the substantial costs they incur when dealing with vacant property challenges. These fees can be used to motivate responsible parties to act quickly to address troubled properties.
- Many also require registrants to **maintain, secure, and insure vacant properties** as well as to prepare and implement plans to demolish them or return them to productive use.

## Key Features of Vacant Building Ordinances

Most vacant building registry programs share the same basic structure, though there is a great deal of variety with regard to program details. When designing a VBO, municipalities need to answer a few fundamental questions:

- Who should register?
- What does it mean for a building to be vacant and require registration?
- When should a property be registered?
- What should the registration fee be and how should it be structured?
- What contact and property information should registrants provide?

- What other requirements should be included?
- What happens if someone doesn't comply?

The discussion below highlights some of the factors municipalities should consider when answering these questions.

### **Who Should Register?**

Effective VBOs require *owners* to register vacant properties. Some ordinances also require banks holding the mortgage on the property and mortgage servicers to register. Including banks and servicers in a registry is especially important in communities where abandoned homes are a problem.

There are different ways to apply a VBO to banks and servicers. Most ordinances define “owner” as any person or entity “having a legal or equitable interest” in the property. This language is broad enough to include both owners and banks. Some municipalities include a definition that explicitly includes “mortgagees,” like banks and servicers.

### **What Does It Mean for a Building to Be "Vacant" and Require Registration?**

The answer varies among municipalities.

- Vacant building ordinances apply not only to vacant unoccupied buildings, but also to buildings that are illegally occupied.
- Some ordinances define "vacant" based solely on how long the property has been vacant or unoccupied. For example, Waukegan, Illinois' ordinance considers a building to be vacant if it has not been legally occupied for 30 consecutive days.
- Other ordinances provide a number of options for determining whether a building is vacant. Under these ordinances, it is not enough for a building to be without legal occupants. Vacancies must co-exist with any one of a number of physical conditions or illegal activity, or must exist for a specified amount of time. For example, Evanston, Illinois' ordinance includes eight different criteria, any one of which would meet the definition of vacancy; for example, a building would be considered vacant if it is unoccupied and has multiple code violations or is unoccupied and has been the site of unlawful activity within the previous six months. In both South Bend and Merrillville, Indiana, registration is optional if the building is vacant (not legally occupied) but mandatory for buildings that are both vacant and abandoned (vacant for more than 90

days, the subject of an order under the Indiana Unsafe Building Law, and at which the condition which generated the order has existed for at least 30 days and not been fixed).

- The ordinance in Mount Prospect, Illinois defines vacancy in a way that essentially exempts code-compliant properties from registration. Unless a property has been condemned, declared an immediate hazard, or has been unoccupied and unsecured, the obligation to register an unoccupied property and pay the fee does not kick in unless there is a code violation, or the building has been boarded for 30 days or more.
- Some ordinances provide exceptions to registration for certain types of vacant property, such as seasonal homes or properties under active construction, rehabilitation, or repair.

How should a municipality decide which definition of "vacant" to use, and which properties should register? It depends on the goals of the registration program and which properties municipalities believe should be closely monitored. For example, if a municipality's primary concern is ensuring that vacant properties don't cause problems for neighbors, it could apply registration requirements only to buildings with code violations or other signs of trouble. But if a municipality wants information about more properties that may be potential threats and the ability to act quickly if problems arise, it could require all properties to register after they have been empty of legal occupants for a specified amount of time.

### **When Should a Property Be Registered?**

The timing of when a property must be registered varies. Some ordinances require registration within a certain time after a property becomes vacant or after the owner learns that the property is vacant. But many communities, like Evanston, Illinois, require responsible parties to register **as soon as they should know that the property is vacant**. Municipalities typically apply this standard by saying that if there is a problem at the property, the owner should know that it is vacant. That means that a municipality can issue a violation notice if a responsible party fails to register, regardless of whether the responsible party actually knows the property is vacant and regardless of whether the municipality has notified them that they must register. This puts the burden on the responsible party to monitor its own properties and makes it immediately accountable if the municipality finds a problem. The ability to issue a violation notice gives the municipality added leverage to prompt registration.

### **What Should the Registration Fee Be and How Should It Be Structured?**

Municipalities have taken several different approaches to registration fees.

- **Require a fee.** Nearly all VBOs require payment of a fee at the time of registration and at regular intervals afterwards, as long as the property is vacant. Revenue from the fees helps municipalities defray the costs for administering their programs, including monitoring and enforcement. (In some municipalities, the fee-generated revenue may go back to the vacant property program; in others, the revenue goes to the general revenue fund. In Indiana, municipalities that adopt the Unsafe Building Law, IC 36-7-9-1 *et seq.*, are required to create an unsafe building fund in which fee revenue can be deposited and

used to fund program expenses.) Many local officials believe that fees with regular renewals are a critical factor in motivating owners to act quickly to maintain their vacant properties.

- **Require a fee, but offer waivers.** On the flip side, some municipalities say that their primary goal is to ensure that properties are maintained and secured, and that offsetting related local government costs isn't an issue. So, some municipalities waive fees if the owner or responsible party does a good job maintaining and securing a vacant property.
- **Do not require a fee.** Similarly, some municipalities say that the primary purpose of their program is to get properties registered in order to make it easier to find who is responsible for the property if there is a problem. In these programs, the ordinance encourages maximum participation by imposing no registration fee or a minimal one.

There are a number of practical considerations for municipalities to consider in designing registration fees.

- **How much should the fee be?** Determining the amount of the registration fee involves a number of considerations. The most important thing to consider is the intent of the program. **If a municipality wants to encourage the largest possible number of people to register, it should consider setting the fee as low as possible. But if the municipality needs revenue to help cover program expenses, or wishes to use the fee as an incentive to keep properties maintained, it should set a higher fee.**

The fee should not be more than is necessary to cover the cost of administering a vacant property program. **Program costs can include not only costs of maintaining the registry but also costs related to implementing the program**, including, for example, staff time and gas mileage related to monitoring and inspecting properties, as well as issuing and enforcing citations.

While fees may never be high enough to actually cover all related local government expenses, many municipalities say that even if a compelling case can be made for a higher fee, there are other considerations. For example, if a fee is set too high, it may discourage people from registering, and then most of the program's potential benefits will be lost.

Similarly, when setting the registration fee, municipalities should take into account other related fees, such as inspection fees, as well as fines and penalties that may be imposed for violations of the program requirements. For example, some municipalities include the cost of property inspections as part of the registration and thus set a higher fee; others charge a separate inspection fee but a lower registration fee. Some municipalities believe higher fees and fines may be more effective in encouraging compliance.



- **How often should fees be collected?** Municipalities can structure collection of fees in different ways to promote different goals.
  - ✓ Some municipalities seek to get as many properties registered as possible, and so just require a **one-time registration fee**.
  - ✓ Some municipalities use fee revenue to help cover program expenses, so they require **periodic renewals**, typically once or twice a year. While renewal fees are generally due on the anniversary date of the original registration, Wilmington, Delaware, has established a single date for all fee renewals, regardless of the anniversary date, and prorates the initial registration fee accordingly. According to the program director, this has greatly simplified program administration, streamlining the issuance of renewal notices and making it easier to track compliance.
  - ✓ A number of municipalities that use the fee to encourage compliance develop **creative combinations of fees and payment schedules**. For example, Burlington, Vermont, sets a high fee—\$500—and requires that it be renewed four times a year. On the positive side, that may create an incentive to get buildings occupied. On the negative side, the frequent renewals also mean more work for municipal officials.
  - ✓ Wilmington, Delaware, has a **progressive fee structure** that kicks in after the property has been vacant for a year and increases for each year the property remains vacant. This is intended to account for the increasing local government costs that result from continued vacancy. South Bend, Indiana imposes a flat annual fee of \$300 for residential buildings of three units or less and a progressive fee for buildings with more than 3 units (\$500 for the first year, \$750 for the second, and \$1,000 for the third and each subsequent year).
  - ✓ **Some communities provide fee-based incentives to encourage timely compliance with program requirements.** For example, Wilmington and Burlington waive fees for a certain period of time under specified conditions—for example, if the owner is in the process of actively repairing, rehabbing, demolishing, selling, or leasing the property. This means the ordinance is used primarily to target property owners who are not taking action to maintain or transfer their property.

### **What Contact and Property Information Should Registrants Provide?**

To speed resolution of code violations or other problems related to the property, all programs require registrants to provide information that will help the municipality identify whom to contact. **The most critical information includes the actual street address of the property (not a P.O. box), contact information for the owner/responsible party, 24-hour contact**

**information for the person or property management firm responsible for day-to-day management, and designation of and contact information for a local agent authorized to receive legal notice.** Some municipalities collect additional information as well. Timely and accurate information is essential, and virtually all programs require prompt notice of any changes.

Some communities require that 24-hour contact information be posted on the building itself. Such posting requirements help police and fire officials or concerned neighbors know whom to contact without having to check the registry or contact the municipality. Municipalities have found that contacts by neighbors can increase pressure on responsible parties and help expedite corrective action. Some municipalities, however, believe that posting requirements may advertise a vacancy that may otherwise not be apparent, thereby inviting vandalism or negatively impacting the immediate neighborhood.

### **What Other Requirements Should Be Included?**

#### ***Securing and Maintaining Vacant Buildings***

Nearly all programs require responsible parties to secure and maintain vacant properties. These requirements are designed to prevent unauthorized persons from entering the building, maintain the structural integrity of the building for code enforcement and public safety officers, and minimize adverse effects on adjacent properties and the larger neighborhood. Some ordinances do this by specifying that vacant buildings are required to follow existing building code requirements; some create additional maintenance and security requirements that apply solely to vacant property.

#### ***Requiring and Recovering Costs for Property Inspections***

Ordinances should require that vacant properties undergo a formal inspection to be conducted by a code enforcement officer. This allows municipalities to assess and document the condition of vacant buildings and ensure compliance with safety and maintenance requirements. Chicago, Illinois requires owners to give building inspectors access to conduct interior and exterior inspections every six months.

Many municipalities recover the costs of doing inspections by building them into the program registration fee. Others require building owners to pay an inspection fee. For example, after a determination that a property is vacant, Evanston, Illinois requires the owner to allow a code compliance inspection of the interior and charges a \$500 inspection fee.

#### ***Liability Insurance***

Many ordinances require owners to maintain liability insurance to spread the risk of injury associated with vacant property. The amount of insurance typically depends on the number of units in the building. The added cost can also provide another incentive for owners to act quickly to fix or demolish their buildings. However, insurance requirements need to be carefully drafted.

Only property owners can purchase property liability insurance—banks and others with a legal interest in a property cannot—so even if a VBO generally applies to anyone with a legal interest in a property, a requirement to maintain liability insurance should apply only to owners.

### ***Developing a Vacant Property Plan***

Many programs also require that the person or company responsible for a property create a detailed plan to take care of it. The requirements usually include a timeline for maintaining, rehabbing, reoccupying, or demolishing the property. Several municipalities have found this to be an effective way to engage with motivated property owners early on and help them identify concrete steps that should be taken to address problems with their properties. **Getting something in writing, even if it is very simple, also creates a reminder that the responsible party has an obligation to care for the property and creates a record of what the registrant promised to do.** Some ordinances give the municipality extra leverage by saying that failure to have an approved plan or to comply with an approved plan constitutes an ordinance violation. The violation may result in fines, or in getting the owner to come in and meet with municipal officials. In either case, it is an added incentive to take care of the property.

Municipalities that use this requirement emphasize the need for flexibility in its enforcement. For example, one community development official noted that in cases where banks do not hold title to the property, the municipality emphasizes the maintenance and security aspects of the plan, such as making sure the windows and doors are secure, rather than making the building ready for occupancy so that it can be offered for sale or rent. Banks usually want these buildings to be secure in order to protect their investment in them, so they have typically been very willing to comply with these important provisions.

### ***What Happens If Someone Doesn't Comply?***

Most vacant property ordinances provide that failure to comply results in a fine. Typically, each violation and each day's failure to comply constitute a separate offense. Fines vary among municipalities. In Illinois they typically range between \$100 and \$750 per day per violation. In both South Bend and Merrillville, Indiana, the ordinance imposes a fine of \$250 for the first day of violation and not less than \$600 (but no more than \$2,500) for subsequent violations. Municipalities may not always collect all the money they charge in fines, but the financial penalties provide an additional incentive for compliance and help to cover costs incurred by the municipality in the event of noncompliance. These fines are in addition to whatever penalties the municipality may impose through their code enforcement and nuisance abatement programs. Mount Prospect, Illinois' VBO provides that any property with at least two code violations is also a nuisance; those same violations are therefore subject to a penalty for violating the vacant property ordinance as well as the daily nuisance fee.

In addition to imposing financial penalties, the enforcement provisions in vacant property ordinances commonly make it clear that the municipality may pursue other appropriate remedies, including demolition, condemnation, making repairs, foreclosure of liens, appointment of a

receiver (where a judge appoints someone to repair or rehab a troubled property), and injunctive relief (where a judge requires the responsible property to take a specific action or face serious consequences).

***A Note about Appeals***

VBOs can result in serious consequences for property owners. For example, a determination that a property is vacant may trigger a requirement to register, pay a fee, purchase liability insurance, and prepare a vacant property plan. Failure to comply with such requirements can result in the imposition of a large fine. When the stakes are this high, it is important to give owners and others with a legal interest in a property an opportunity to appeal. Municipalities should discuss this issue with their municipal attorneys to determine whether appeals should be addressed in their VBOs.

## More Information Regarding Specific Statutory Language

- Excerpts from a variety of VBOs that illustrate different approaches to significant ordinance features are included in *Vacant Building Ordinances: Strategies for Confronting Vacant Building Challenges*, Appendix 1, at <http://www.bpichicago.org/programs/housing-community-development/affordable-housing/resources/>.
- Safeguard Properties maintains a matrix of known ordinances that can be accessed by state: [http://www.safeguardproperties.com/Resources/Vacant\\_Property\\_Registration.aspx](http://www.safeguardproperties.com/Resources/Vacant_Property_Registration.aspx).

## Program Administration

In some municipalities, several different departments have responsibilities related to vacant properties. Departments of community development, economic development, housing, police, fire, and public works may all play a role. Municipalities can deal most effectively with vacant properties when the work of all of these departments is well-coordinated, and up-to-date and accurate information about vacant properties is made it available to all the relevant departments. This can be achieved by better information sharing, coordination of personnel and activities, and interdepartmental collaboration, as described below.

***Information Sharing.*** At a minimum, **municipalities should establish a system to share vacant property information among all relevant individuals across departments.** This will ensure that each department has the information it needs to do its job effectively and that critical information does not fall through the cracks. For example, code enforcement officers should provide police and fire departments with lists of vacant properties and information about property conditions. Police are thus alerted to which properties may require extra vigilance, and fire officials know which properties pose extra danger to firefighters. In return, police and fire officials can alert code enforcement officials of suspected vacant properties or new problems with vacant properties already on the registry.

Methods for interdepartmental sharing of information vary considerably. For example, small communities maintain detailed property information in paper files and print periodic lists of vacant properties and reports that are shared with multiple individuals across departments. Other communities maintain their vacant property registries in a simple Excel spreadsheet that can be shared among departments. Wilmington, Delaware, has developed a customized in-house vacant property database that can be shared across all departments.

***Coordination of Personnel and Activities.*** Staff from a variety of municipal departments may come into contact with vacant properties. If they receive a little bit of training, they can be a

valuable extra set of eyes and ears to help ensure that vacant property problems are identified and addressed quickly. Staff can be trained to identify indicators of vacancy and signs of property maintenance failure and the best ways to report them. Requiring only a minimal investment of time, it can produce substantial benefits. For example, because code enforcement inspectors can be only so many places at once, Evanston, IL has trained inspectors in the health and public works departments to identify and report code violations common to vacant properties when they are conducting their own inspections. Evanston inspectors use iPads on site to document violations (including those related to vacancy) and upload them to a 311 reporting system that the building department can access. This means more eyes on vacant properties more often and the ability to communicate with property owners in real time about the status of the property. This increases the likelihood that more code violations will be identified and resolved more quickly. A representative of an absentee landlord in Evanston reported that the system saves time, establishes a point of contact for the property owner and provides clear and timely information about what the City has found and what the property owner's obligations are. In another community, code enforcement and fire officials conduct joint inspections of vacant properties. They have found that this maximizes efficiency and facilitates greater sharing of knowledge of vacant property problems across relevant departments.

In addition to a municipality's own employees, private contractors may also come in contact with vacant properties. If the municipality takes the time to inform contractors about the vacant property program, contractors – e.g., scavenger haulers, water meter readers, pest control contractors – can provide valuable information with the municipality when they observe a problem. It's almost like having extra staff for free.

***Interdepartmental Collaboration.*** Some municipalities have developed structured ways to encourage or require collaboration across departments. Collaboration is a more intentional way to bring different stakeholders together to share information, identify problems, develop solutions, and coordinate activities around a specific issue or issues. For example, a municipality may convene representatives from all departments that have responsibility for vacant properties to address troubled properties or broader issues regarding neighborhood stabilization and revitalization. Collaboration can be formal or informal. Some municipalities have created a formal task force with regularly scheduled meetings of officials across relevant municipal departments. Others just encourage informal but purposeful exchanges of information. Collaboration can bolster communication and coordination and reduce redundancies in dealing with vacant properties. Following are two examples:

- In 2007, the mayor and village manager of Park Forest, Illinois established a Troubled Buildings Task Force. The Task Force included all department heads with a stake in vacant property management (public works, water, building, police, fire, health, and the village's attorney). They met monthly to work together to tackle their biggest problems with specific properties and to discuss issues relating to the village's efforts to ensure property maintenance, such as its crime-free housing program. These meetings encouraged department heads to get in the habit of sharing information about vacant or

potentially vacant properties across the village government. Within a few years, the department heads became so accustomed to working together to solve vacant property problems that they decided the formal monthly meetings were no longer necessary. The meetings were replaced with an informal system of regular communication among mid-level staff with in-person meetings arranged whenever necessary. In one Park Forest code enforcement officer's assessment, the formal meetings helped to set the direction and open the lines of communication across departments, conveyed the message that sharing information and collaborating across departments had the official sanction of the elected officials and upper level staff, and set the stage for the effective, informal collaboration that is now part of everyday operations.

- Evanston, Illinois instituted similar monthly meetings that also evolved into a more flexible, real-time collaborative structure. As in Park Forest, these meetings enabled building officials to pool information from any inspector or department head with knowledge about a vacant property. While these meetings no longer focus specifically on vacant property issues, the collaborative approach continues to pay dividends as officials work together across multiple departments to create policies and programs to meet local housing needs.





## CODE ENFORCEMENT

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### **Indiana's Two Enforcement Approaches to Abandoned Houses**

Indiana offers its counties and municipalities two primary legal avenues for responding to abandoned houses: the Indiana Building Code and the Unsafe Building Law. Either or both can be adopted by a county, city or town. Although the former is universally used, the Unsafe Building Law has also been implemented by many communities with significant abandoned housing problems. Because the Unsafe Building Law is specifically designed to enable local governments to respond to abandoned houses, this chapter will focus on it after a brief discussion of the Indiana Building Code

### **Indiana Building Code**

The [Indiana Building Code](#) (IBC) is a modified version of the 2012 International Building Code, a model set of building construction standards and procedures. The IBC standards and procedures are both written with the permitting and inspecting of new building construction in mind. Nevertheless, the IBC clearly states that existing buildings must continue to meet the construction standards in place at the time the various building components were completed. With regard to single-family houses and duplexes, the IBC adopts a modified version of the International Residential Code, complete with relevant house construction standards. Although the modified version of the International Building Code adopted by Indiana does not itself specify the particular ways local governments are to enforce the IBC, two other state statute empower counties and municipalities to enforce their ordinances, including the IBC, through [court action](#) and/or [to adopt administrative procedures](#) to compel compliance.

### **Unsafe Building Law**

First enacted in 1981, Indiana's [Unsafe Building Law](#) (UBL) is designed to supplement rather than replace the IBC in dealing with abandoned houses. Over the last 35 years, the development of the law and the enforcement infrastructure associated with it have made it an indispensable tool for addressing abandoned house nuisances as well as related problems with yards and vacant lots. Our discussion will focus on the standards imposed by the UBL as well as the many enforcement remedies it offers to local governments.

### **Standards under the UBL**

Unlike the Indiana Building Code which specifies all the ways a building can be out of compliance, the Unsafe Building Law (UBL) applies only to the buildings and lots that meet its

statutory definitions of “unsafe.” [As defined by the UBL](#), an unsafe building includes any building, whether commercial or residential, whether occupied or vacant, that is either:

***Unsafe due to:***

***Structural Impairment;***

***Fire Hazard;***

***Public Health Hazard;***

***Public Nuisance; or***

***Code Violation***

***OR***

***Deemed unsafe because it is:***

***Vacant or Blighted, and***

***Unfit for Human Habitation***

So the question then becomes . . .

***What Unoccupied Houses are Covered by the Unsafe Building Law?***

- *Houses open to casual entry (Public Nuisance)*
- *Boarded-up houses (Unfit for Human Habitation)*
- *Secure properties with serious code violations (Unfit for Human Habitation)*
- *Lots or houses with debris in the yards (Public Health Hazard)*
- *Structurally compromised properties (Structural Impairment)*

So, a debris-free, secure, unoccupied house is not subject to the Unsafe Building Law unless it is not fit to be lived in. More importantly, being subject to the Unsafe Building Law does not mean being subject to every remedy available under the UBL. The statute requires that any remedy used be an appropriate response to the harm caused by the property. Thus, a boarded-up house could not be demolished just because it was boarded up.

### **Procedures under the UBL**

In order to take advantage of the UBL, a town, city or county must adopt it by ordinance. That ordinance will designate the official or agency authorized to enforce the UBL and an administrative hearing process to review the enforcement orders issued. [The UBL authorizes different types of orders](#) that can be issued. The orders can require any or all of the following that are reasonable given the condition and type of property:

- *That a building be vacated immediately*
- *That a building be sealed up against entry*
- *That pest control be performed*
- *That debris and trash be removed*
- *That a building be rehabilitated in compliance with the IBC*
- *That a building be partially or completely demolished, if warranted*
- *That a building be sealed and maintained to look like nearby buildings*

There is no violation under the UBL until the deadline in an issued order has come and gone without compliance. The deadline must normally be between 10 and 60 days from the issuance of the order, and the time given for compliance must be sufficient for the mandated action to be completed.

### ***Notice and Hearing***

Notice of the order must be provided to any and all owners of the property. If the order calls for demolition, then mortgagees must also receive notice. Orders that require vacating, demolishing or special sealing and maintenance of a building must provide for a hearing date so that the order can be reviewed by an independent hearing officer. All other orders must inform the owners that they have 10 days to request a hearing or the order will become final. At any hearing on the order, the independent hearing officer may affirm the order, modify the order or rescind it altogether.

### ***Enforcement Follow-Up***

When an order has not been complied with by the deadline, the code enforcement authority may take any of the following actions:

- *Issue civil penalties for lack of compliance 60 days past the deadline*
- *Request hearing officer to issue civil penalties for willful refusal to comply*
- *Take direct action to carry out the order*
- *File a court action (can be filed by a community organization also):*
  - *to order the owner(s) to comply*
  - *to issue civil penalties*
  - *to appoint a receiver that may rehabilitate and/or sell the property*
  - *to authorize the petitioner to carry out the ordered action*

### **Abatement by Rehabilitation v. Abatement by Demolition**

For all the variety of legal tools and procedural avenues offered by the UBL, true abatement of an abandoned house nuisance is achieved in one of only two ways: the house is rehabilitated, or the house is demolished. In discussing the use of neighborhood market strength data in the first section of the Manual, we said the economic feasibility of rehabilitating the property depended not only on the extent of the repairs needed but also the surrounding property values. If a neighborhood market is already distressed, very few significant property repairs will be cost-effective. But, the question remains: why should the economic feasibility of rehabilitation determine whether or not rehabilitation is pursued as a goal by a code enforcement official enforcing the law (especially when demolitions are invariably funded by taxpayers)?

An owner's ability to see a reasonable return on rehabilitation investment determines whether or not the renovation happens primarily because most owners do not have sufficient disposable cash to fully fund the needed repairs themselves. If they do not, then they will need to borrow money to carry out the repairs. Any bank lending on the property will want to know that the resulting resale value of the property will be high enough to secure repayment of the loan. If the neighborhood market is too weak, no one will voluntarily invest in the renovation.

While an owner with deep pockets may be cajoled into making a "bad" renovation investment, threats of liens against the property will not make for effective threats as the owner has already accepted the fact that he or she will not be seeing any further income from the property. Nor should code enforcement officials assume that it will be easy to convince a hearing officer or a judge that an owner with the cash to fix up an abandoned house in a distressed neighborhood should be punished with fines or jail for his or her refusal to renovate. If there are other vacant houses that are not being rehabilitated, such an owner may be allowed to pay for demolition or nuisance mitigation instead.

But, even though it makes sense that the lack of economic return may rule out renovation, it still may not be clear why a code enforcement official should pursue rehabilitation of a property instead of demolition just because the neighborhood is still strong enough to reward renovation investment. When such a neighborhood has any abandoned houses, it is already moving closer to the point where it no longer has the market strength to encourage significant capital investment. Clearly, a vacant lot is preferable to an abandoned house, but a renovated house speaks to the neighborhood's strength far more effectively than does a public demolition of the derelict structure. If the choice was between receiving immediate demolition and waiting indefinitely for a possible renovation, the neighbors most affected by the abandoned house would

almost certainly prefer the vacant lot as a new neighbor. But, to really keep marginal neighborhoods viable, code enforcement officials have to develop tools that can achieve rehabilitation quickly even when the owner is unable to see the job done. These tools will be discussed in the section entitled “Firing the Owner.” For now, we will take a look at the more traditional mechanisms the UBL offers to achieve rehabilitation.

### **Issuing & Enforcing an Order to Repair**

The first thing to note about the UBL approach to repair orders is that they are not merely orders to make the property safe. Since the UBL takes pains to make clear that not every noncompliant, unoccupied house meets the statutory definition of an unsafe building, one might easily think that an order to repair is merely an instruction to the owner to put the property back into a condition that does not qualify as “unsafe” under the statute. But, that would be wrong. Once a house has become unsafe as defined by the UBL, code enforcement officials are authorized to order the owner to make the property fully compliant with the Indiana Building Code, assuming that is the standard applied by the local government. If it were otherwise, code enforcement officials would be playing a rather pointless cat-and-mouse game in which owners of vacant properties that slipped into a derelict condition could make code enforcement go away with a few belated superficial repairs. As it is, UBL allows code enforcement officials to order owners of abandoned houses to get them move-in ready.

In some cases, the mere issuance of an order to the owner of an abandoned house can spur an owner to action, especially if the code enforcement official has been careful to restrict such orders to economically feasible rehabilitations. But, fines and/or court orders will be necessary for other owners. As discussed in the next chapter, the imposition of fines can be an important way for a local government to recoup revenue from its enforcement efforts. But, fines, or even the threat of them, can make an owner move forward on a renovation that previously had been delayed indefinitely. For other, more defiant, owners, only confrontation by a judge will be enough to get them to do what the law requires. When an administrative hearing officer finds that an owner has willfully refused to comply with a rehabilitation order, the most he or she can do is impose civil penalties. A judge, on the other hand, can find an owner who willfully disobeys a court order in contempt of court. Fines for contempt can be large and mount on a daily basis. Arrest and incarceration are also remedies available to a court committed to seeing an owner comply with an order.

### **Demolition**

The Unsafe Building Law authorizes non-emergency demolitions of privately owned structures based on confirmation at an administrative hearing. The UBL requires that a hearing be held even if no one requests one or even makes any response to the notice of demolition order. The UBL also mandates that mortgagees and anyone else with a substantial property interest in the abandoned house be sent notice of the order and the hearing. This requirement means that any local government that wishes to order a property demolished in a non-emergency situation must do a title search on the property before sending out notice of the demolition order and hearing. Moreover, if a respondent contests the order and loses, any appeal taken will result in a full rehearing of the case in court. But, such an appeal must be filed within 10 days of the hearing officer’s decision. If an order to demolish a property is upheld at the hearing and, at the time, no appeal is pending and the deadline for compliance has passed, then code enforcement officials

may, upon further notice to the owners and mortgagees, arrange to have the abandoned house demolished, with the owner liable for the costs.

As noted earlier, the fact that an abandoned house meets the definition of “unsafe” does not necessarily mean the order to demolish it will be upheld. In reviewing demolition orders the courts have held the fact that a building may yet be repaired could be a reason to rescind a demolition order. But, they also have consistently found that when it appears that it is not likely that an owner actually will rehabilitate a property, then a demolition order will be affirmed. Of course, neither the hearing officer nor a judge, on appeal, is limited to the choice between rescinding an order and affirming an order as written. They also have the option of modifying the order by extending the deadline for compliance. This intermediate step may allow the owner to demonstrate their seriousness about bringing the property back. But, for code enforcement officials who have already explored the feasibility of rehabilitation, it can seem a needless delay.

Code enforcement officials using the UBL have devised several strategies to make sure that property owners or lienholders do not needlessly postpone an inevitable demolition. First, they will hold out the possibility of consenting to an extension in exchange for information about the property, the costs of the required repairs and the resources available to the owner. Even if the owner refuses any or all of these requests, then the hearing officer will want the information in determining the credibility of the owner’s promise of repairs. Apart from the UBL’s provision for performance bonds as part of a judicial deadline extension, the City of South Bend has created an administrative policy of allowing more time to complete repairs and avoid demolition upon condition that the owner purchase a bond or deposit a sum of money in escrow that would be used to pay for the demolition, if the new deadline is not met.

As frustrating as delays caused by owners claiming to be on the verge of making repairs may be, the true constraint on demolitions in communities with many abandoned houses is lack of funds. Cities have turned to Community Development Block Grant (CDBG), then to successive iterations of the Neighborhood Stabilization Fund (NSF) program and most recently to the Hardest Hit Fund. Nevertheless, the need exceeds the available resources. This scarcity raises two issues. First, orders issued under the UBL remain in effect only for two years. After that, demolition orders must be reissued and go through the hearing process anew. Second, cities should consider how to prioritize the use of demolition funds and make provision for mitigation of abandoned house nuisances that cannot be promptly abated.

### **Mitigating Abandoned House Nuisances**

Although this chapter has focused on the UBL’s remedies for abating abandoned house nuisances, the UBL also authorizes orders to owners to mitigate them by directing them to keep them clean and secure. Whenever such an order is issued, it should reference [another statute](#) that also authorizes these kinds of orders because giving such an order can be used to have the property declared “abandoned”, a subject we will revisit in later chapters.

# **RECOVERING LOCAL GOVERNMENT COSTS FOR MAINTAINING AND SECURING VACANT PROPERTIES**

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## **Introduction**

Ideally, property owners, banks or servicers will maintain and secure vacant properties. But when an owner or other responsible party can't be found or is unable or unwilling to maintain a vacant property, municipalities may take on the burden in order to prevent harm to surrounding properties and the neighborhood. Municipalities have long had the power to engage in such nuisance abatement activities, but they have had a hard time recovering the costs they incur. But now, Indiana's Unsafe Building Law provides several options for municipalities to recover the money they spend on vacant property maintenance. The provisions of the law that can be used to help municipalities recover money can also be used to incentivize property owners or banks or servicers with a legal interest in a property to do the work in the first place.

In the past, when municipalities have worked to address nuisances, they have been authorized to place municipal liens on properties to recover the costs of some maintenance activities, like picking up garbage and mowing lawns. But until recently, these liens would be paid off in a foreclosure sale only after other encumbrances, including mortgages, had been paid. And since the value of a foreclosed property is often less than the value of the mortgage, that means these municipal liens would rarely get paid off.

However, in most cases, the Unsafe Building Law is not an effective tool for recovering costs for very low-value properties whose owners have very limited assets. The law is unlikely to be helpful in situations where an owner with limited resources or an entity with a legal interest in a property believes that a property is worth less than the cost of maintaining and securing it, and continuing to pay property taxes and insurance. In those situations, municipalities can turn to other tools like demolition, property acquisition, or transfer to a land bank.

Indiana's Unsafe Building Law is a powerful tool that can be used to repair vacant properties and maintain vacant lots, and to recover at least a substantial portion of the cost of doing that work. A work order issued under the UBL gives a local government or a contractor hired by the local government the authority to remedy unsafe or unsanitary conditions and bill the owner to recover the costs. If the owner doesn't pay, the law gives the local government the power to seek a judgment lien against all properties owned by the individual or entity in question. Or the local government is authorized to seek a special assessment lien against the specific property. Under Indiana law, these special assessment liens are treated like property taxes, which means that they can be enforced through the tax sale process.

## **Indiana's Unsafe Building Law Provisions**

In order to take advantage of the cost recovery provisions in Indiana's Unsafe Building Law, a municipality or county must pass an ordinance that adopts the law and either designate or create a local government body that will administer the law.

The law lists some of the activities that a municipality can undertake for an unsafe building or unsafe property. (It is a non-exhaustive list. Local governments' nuisance abatement authority gives them broad power to maintain and secure vacant properties.) The list includes:

- picking up garbage and debris
- exterminating vermin
- sealing an unsafe building
- repairing an unsafe building to bring it into compliance with the building code
- demolishing an unsafe building

To do this work and recover the costs, the enforcement authority must do several things:

- Issue an order requiring that the work be done within 10-60 days
- In some cases involving more extensive work, provide notice of the order to people who have an ownership interest in the property (things you can bill owner for without a hearing -- [36-7-9-7](#) (a)(2), (a)(3), (a)(4) and (a)(5))
- In some cases, generally involving the most serious interventions, like demolition, hold a hearing
- If the required work isn't completed within the specified time, the local government has several options
  - For certain common property maintenance tasks, like picking up garbage and debris, exterminating vermin and sealing an unsafe building, the local government can hire a contractor to do the work on an ongoing basis
  - If the work is expected to cost less than \$10,000, the local government can do the work itself, and
  - For work estimated to cost \$10,000 or more, the local government must put the work out to public bid
- Bill the owner for the costs of doing the work
- If within 15 days after the work is completed, the owner doesn't pay for the work, then the local government can take steps to recover its costs.

### **Who is responsible for paying to maintain and secure unsafe properties?**

[Anyone who has an ownership interest in the unsafe premises can be required to pay to maintain and secure the property.](#)

- The law applies to people who hold a fee interest, a life estate interest or an equitable interest of a contract purchaser from the time the order requiring the work was issued to the time the work was completed
- Anyone who has such an ownership stake is "jointly and severally liable"



## **What costs can be recovered?**

Local governments can recover not just the actual cost of the work performed, but many related costs, too. Local governments can recover:

- The actual cost of the work performed by the government entity or the contractor
- The cost of getting good information about who has a substantial legal interest in the property
- The costs associated with providing any of the notices required under the law
- The salaries of employees doing the work
- The costs of related supplies, equipment and office space

The law recognizes that it would be difficult to calculate all of these related costs in every case, so it says that the local government can go through a public process to determine the average cost, and then apply that amount in other cases.

## **How can a local government collect the money it is owed?**

### **Get a judgment lien**

If recoverable costs aren't paid for more than 15 days after the work is completed, [a local government can get a judgment lien](#), which in some cases can be used to collect the money it is owed.

The judgment is "a debt and lien on all the real and personal property" of the affected parties.

This means that the local government can go beyond just attaching a lien to the unsafe building. If the lien could only be attached to the unsafe building, it would often not be paid. Delinquent property taxes and outstanding mortgages must be paid off before the holder of a judgment lien can collect. Similarly, if the value of the lien is greater than the value of the unsafe building, the owner has nothing to lose by not paying the lien.

However, the law allows the local government to attach the lien to any real or personal property owned by the same person. That creates many more opportunities for a local government to collect the money it is owed for maintaining and securing unsafe buildings.

- For example, if the unsafe building is worth very little money, but the owner also has a bank account, the local government can go and put the lien on the bank account. That gives the local government the right to take out of the bank account an amount up to the amount that it is owed to the local government.

- Similarly, if the owner of the unsafe building owns a car, the local government can attach the lien to the car, then foreclose on the lien. That would give the property owner a few choices. If he wants to keep the car, he will need to pay off the debt to the local government. If he does not pay off the debt, the local government can go through the process to take ownership of the car, sell the car and use the proceeds to pay off the debt to the local government.

Here are the steps required to obtain a judgment lien:

- Prepare a record
- File it with the Clerk of the Circuit Court
- Send notices
- Wait 30 days to see if any interested party objects
- If there is an objection, there is a court hearing, where the judge decides whether or not to enter judgment against the property owner
- If there is no objection and no hearing, then a judgment is entered against the property owner

### **Get a special assessment applied on a property tax bill**

If recoverable costs aren't paid for more than 15 days after the work is completed, [a local government can take several steps to get a special assessment applied to its property](#), which in some cases can be used to collect money it is owed. Here are the steps:

- Prepare a record
- Send notices
- After 30 days, certify the information with the county auditor, including about how much money is owed
- The auditor can then create a special assessment, which can be collected through the process for collecting delinquent taxes

### **How are these special assessments collected?**

The special assessments are collected together with delinquent property taxes. A tax sale purchaser can pay off the amount that is due. The tax sale purchaser must pay the amount that is due for unpaid property taxes and for the special assessment. That means that the tax sale purchaser will, in effect, pay the local government for the costs of maintaining and securing an unsafe building.

However, it is important to remember that a tax sale purchaser will only pay what is owed for the property if the tax sale purchaser believes they will get their money back -- and that will only happen if a property is worth enough that the tax purchaser can sell the property to someone willing to pay more than the tax purchaser has paid, or if the owner or a bank with an interest in the property will repay the tax purchaser, plus interest, in order to keep the property.

Special assessments collected through the tax sale process will not be an effective tool for if the property is not worth as much as the unpaid taxes and the special assessment

### **How do you decide whether to use judgment liens or special assessments?**

- Judgment liens are only helpful if the owner has assets that can be used to pay the local government what it is owed. Good options include cash in a bank account, personal property that is owned without any debt, and real estate that is worth more than the mortgage. Bank-owned REO property can also be used to satisfy a judgment lien.
- Special assessments are helpful if the property is worth more than the special assessment. Special assessments work only when a property attracts a private investor who is willing to pay what is owed for a property. A private investor will only do that if they think the owner or a bank wants the property enough to the investor back, or if the investor thinks that if they take ownership of the property, they will be able to sell it at a profit.

### **Best Practices**

- ***Don't lose sight of your primary goals.*** In most cases, your primary goals are to minimize the harm that vacant properties can cause for neighbors and neighborhoods, to stabilize and strengthen neighborhoods, and, when possible, to recover the costs of doing this work. The cost recovery tools will not be effective in every case. However, using the tools can take up a lot of precious time. So before you seek to recover costs for particular property, do some preliminary assessment to determine how likely it is that you will succeed in recovering costs. Just because an owner should be held accountable and required to pay, doesn't mean they can be held accountable and required to pay.

And think about which tools are most likely to succeed. For example, a judgment lien is only likely to help you if the owner of an unsafe building has substantial enough assets outside of the subject property. If the owner doesn't have significant assets, this tool won't help.

Similarly, just because you've started the cost recovery process doesn't mean you need to finish it. If it looks increasingly like you won't succeed in recovering costs, don't keep trying, even if you have already spent time and money on the process. You'll just be taking time and money away from other properties where you might accomplish more.

- ***Use enforcement to encourage good behavior and promote cost recovery.*** Officials in other jurisdictions have often found that simply initiating the process of cost recovery and notifying owners can be a powerful incentive for owners to quickly pay the local government what it owes.

- ***Use checklists.*** The Unsafe Building Law sets out a clear and straightforward process for getting orders to maintain and secure vacant properties, enforcing those orders and then, when appropriate, recovering costs. Though the process is straightforward, it can be time-consuming, and it is important not to miss any steps. Some local governments working with similar laws in other states have found it very helpful to have easy-to-follow checklists that specify all the steps. Such lists are usually prepared by municipal attorneys. They can make it much easier to comply, and may allow a local government to do most or all of the work easily and cost-effectively in each case, without incurring the expense of using an attorney.

## PROPERTY ABANDONMENT PREVENTION

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### Monitoring Properties in Danger of Becoming Abandoned Houses

Any code enforcement program that focuses only on abandoned houses misses the opportunity to prevent them from becoming derelict and unoccupied in the first place. Fortunately, the mission of building code enforcement extends beyond unoccupied properties that are uninhabitable to both unoccupied and occupied with more modest compliance issue. A proactive approach to abandoned houses will engage owners when their properties first begin to fall into disrepair. Such a code enforcement approach must move beyond the scope of the Unsafe Building Law, which is restricted to more severely noncompliant properties.

As mentioned in the prior chapter on Code Enforcement, the widely adopted Indiana Building Code, through its inclusion of the Indiana Residential Code, provides a detailed array of standards for specifying when a single-family house or duplex is no longer compliant. All cities are [empowered to enforce their ordinances through initiating judicial actions](#). But, resort to the courts for relatively minor violations would be very costly and slow. Any local government that wishes to enforce ordinances needs an administrative process that allows citation of owners for Code violations. For certain infractions that can and should be addressed immediately, an immediate citation with a one-time fine may be appropriate. If the problem is not corrected, a second citation can be issued. For more instances of noncompliance that may involve a longer effort to remedy, an administrative order to correct the violation may function better because it creates a procedure for follow-up. Either of these enforcement steps may be preceded by a warning letter giving the owner a chance to comply without financial penalty. These systems can be applied to both occupied and unoccupied properties. The violations can be discovered by complaints from tenants or neighbors or through code enforcement inspections. While depending on citizen complaints may allow a small staff of code inspectors to respond to the most pressing problems, only a more systematic survey of housing conditions in a neighborhood can truly be the basis for a preventative approach to abandoned housing.

### Establishing a Baseline for Occupied Property Maintenance

To be even more proactive, some municipalities are requiring landlords not only to register but also to have their units pass some kind of code inspection. Lack of code enforcement personnel resources makes such licensing systems far more common for multi-family housing than for single-family houses or duplexes. Nevertheless, some cities or towns are experimenting with different levels of licensing. Some baseline inspections will focus on only the most common and serious areas of tenant health and safety. Those properties that pass the first inspection may be given longer renewal periods than those that do not.

In states such as Indiana, it may be important to attend to how any licensing scheme treats those landlords who enter into land contracts with their tenants. The Indiana Building Code is clear that legal owners remain legally responsible for the conditions of their property even after they have agreed to sell it to the tenants by an installment sale. But, if a rental licensing scheme applies only to conventional landlord-tenant arrangements, some landlords may be incentivized to switch to a land contract approach just to avoid the additional accountability.

The [Center for Community Progress](#), the nation's leading advocacy and research center on vacant property issues, has recently published a report by Alan Mallach entitled "[Raising the Bar: Linking Landlord Incentives and Regulation through Rental Licensing](#)".

### **Facilitation of Repairs by Owner-Occupants**

Of course, not all abandoned houses were absentee-owned when occupied. Often enough, the last residents of a derelict, unoccupied property were the same people who own it now. At first glance, it seems that the same enforcement systems that are used to hold landlords accountable should also be put to work in the context of homeowners. But, when the person legally responsible for the conditions in the property are also those who suffer the direct effects of its disrepair, fines may be unnecessary and certainly can be counterproductive if limited funds is the reason for the trouble.

Facilitating major repairs can be a more effective approach to ensuring that struggling homeowners are not so overwhelmed by conditions on their properties as to be forced out. Seniors and others on fixed income may qualify for, federally funded weatherization grants. Repairs covered by such funds could include important exterior roof and window repairs that will be critical to allowing the property to remain habitable. But, weatherization funds cannot be used on houses with other serious code violations. Thus, it is important for local communities to develop other loans, grants and other assistance programs that can be used to take care of non-weatherization repairs. These unrestricted funds can then leverage weatherization funds.

In addition to financial assistance, some homeowners may need help in actually dealing with the paperwork and other tasks with overseeing the repairs to their home. In this regard, social service agencies that promote independent living and/or focus on the needs of the elderly or developmentally disabled may serve as important allies in accessing the help needed to keep deteriorating homeowner properties up to code.

## **FIRING THE OWNER: FORECLOSING ON ABANDONED HOUSES**

### **When the Abandoned House is Right for Rehab, but the Owner is the Wrong One to Do it.**

In the earlier section on Code Enforcement, we discussed how to make sure an abandoned house that should be renovated gets renovated even when the owner is unwilling to make the needed investment. The combination of civil penalties and court orders can make for a formidable amount of persuasive power. Even so, there are instances where those efforts to coerce compliance will not be successful, or at least not in anything like a reasonable timeframe.

Three types of abandoned house ownership situations regularly present themselves as being difficult if not impossible to resolve through civil penalties and court orders. First, an *elderly former homeowner* may still have title to the property but lack the resources to bring the abandoned house into full compliance with Code. In such a case, a hearing officer or judge may soon realize that threats will not bring about a successful result and may not be willing to impose punishment on such a sympathetic owner. Second, an *elusive speculator* may be using shell companies to avoid any direct accountability for keeping the property up to Code. His or her strategy may include evading service of process for enforcement actions with the hope that, without any additional investment, he or she can flip the property later for a significant return. Third, an *owner whose interest in the abandoned house is buried under multiple mortgages and liens* may not be able to borrow the needed money for repairs because his or her title cannot support any further mortgages. Even though this last instance may not seem to involve an owner unable to make repairs, the lack of access to mortgage capital makes repairs very unlikely without a change in the ownership situation.

When an order to repair seems like a dead end, as it does in each of these cases, then demolition would appear to be the only alternative. But, by moving beyond traditional code enforcement responses, officials can resolve the situation by putting the owner, as well as any mortgagee, to the question: step up and fix the property or watch your interest be liquidated in foreclosure. When firing the owner is the only viable course of action to achieve rehabilitation, the main question is how. We will explore three options: Receivership Lien Foreclosure, Abandoned House Receivership Foreclosure and Tax Sale after Imposition of Code Enforcement Liens.

### **Receivership Lien Foreclosure**

[The Unsafe Building Law authorizes](#) the local government or a community organization to enforce a UBL order past its deadline by petitioning [a court to appoint a receiver to seize possession of the abandoned house and later sell it](#) if neither the owner nor the mortgagees step forward to make repairs. Once appointed, the receiver may make repairs on the property with the cost of such repairs acting as a lien on the property. As long as all mortgagees receive appropriate notice of their right to pay off the lien and rehab the property themselves, the receiver may foreclose on the property and sell it free and clear of all encumbrances except taxes. Any purchaser at the foreclosure auction must be able demonstrate to the receiver his or her ability and experience to promptly rehabilitate the property. But, because the winning bidder would acquire the property free and clear of all private liens, any economically feasible rehabilitation should be achievable through a receivership lien foreclosure sale, as long as the outstanding taxes were not too high. To deal with that problem, we turn to a newer statute.

## **Abandoned House Receivership Foreclosure**

[A recently added provision in the UBL](#) provides for the appointment of a receiver for any unsafe building that has been determined by a judge or a hearing officer to be “abandoned” as defined by a statute that is separate from the UBL. At the end of the earlier chapter on code enforcement, it was recommended that any order to clean and secure reference [Indiana Code 36-7-36-9](#) because the issuance of such an order is one of [the factors in judging a property “abandoned.”](#) Others strongly overlap with the Unsafe Building Law factors. These include having boarded-up windows and/or doors, having broken windows and/or doors, being open to casual entry, and having serious code violations.

While most properties that qualify for the appointment of a receiver under the UBL would also meet on these building condition aspects of the definition of “abandoned”, there are other factors in the definition that are also key. These include shut-off utilities, owner locked out, without prompt objection, by the mortgagee, and written or other evidence of intent to abandon the property. Given the importance of intent to abandon, it would seem that just about any belated attempt by the owner to engage with the property’s problems or even just with the abandonment proceeding might preclude the possibility of an abandonment declaration.

The powers of the appointed receiver are very similar to the older receivership statute, but the sale procedures are not only more detailed but also more powerful. In the older version of receivership, any purchaser at auction had to be prepared to pay off outstanding taxes. If the property is sold by an abandoned house receiver, the lien foreclosure sale wipes out the public liens as well as the private liens. With the elimination of preexisting tax and code enforcement liens, this receivership sale remedy truly allows any economically feasible rehabilitation to proceed.

## **Tax Sale after Imposition of Code Enforcement Liens**

The differences between the two UBL receivership types highlights the fact that tax and code enforcement liens can get in the way of an otherwise economically feasible rehabilitation. But, the existence of those public liens on the property provide a third avenue for clearing title and making the property available for a smart renovation investment. If taxes and code enforcement charges are not paid, the owner will lose the property through tax sale foreclosure. Receivership uses the owner’s failure to take care of the property as a basis for creating a special lien and a special foreclosure sale. But, the UBL provisions already discussed in the Code Enforcement and Cost Recovery chapters also hold neglectful owners financially accountable in a way that creates first liens.

If not paid, both civil penalties and charges for repairs imposed through the UBL can be collected in the same manner as unpaid taxes. A court-appointed receiver is granted legal possession of the abandoned house and authorized to make any and all repairs. But, the UBL allows code enforcement officials, with proper notice to owners and mortgagees, to enforce orders to repair by making the repairs directly and placing a special assessment against the properties for the costs. So, prior to the actual foreclosure, there may not be a great deal of difference between this approach and to the two receivership processes just summarized.

The different types of tax sale will be discussed in the next chapter on Land Banking. For now, it is sufficient to point out the similarities and differences between receivership sales and tax sales generally. Both receivership sales and tax sales eliminate all private liens and allow the



new property owner to take title free and clear of all prior mortgages. Like the Abandoned House Receivership Foreclosure process, tax sale eliminates all preexisting public liens. Thus, both the receivership sale and tax sale processes can pave the way for an economically feasible renovation to occur.

But the tax sale process is quite different from either of the receivership sale procedures. Tax sale is a single annual event with steps occurring both before and after it each taking weeks, if not, months to occur. Receivership sales happen on a case-by-case basis and are conducted by the receivers under the supervision of the court. More importantly, receivership sales require that successful bidders have the experience and ability to make the needed repairs. Tax sales generally have no such restrictions. The best way for a local government wishing to make sure a tax sale foreclosure property goes only to someone who is ready, willing and able to make repairs is to first acquire the tax certificate or property itself and then make a transfer to a qualifying private owner.

This public acquisition of derelict properties in order to resell them to those who will return them to productive use is the core activity of land banks, which will be explored in the next chapter. While the receivership sale provisions of the UBL are clearly designed to make sure an economically feasible rehabilitation occurs even when the owner is capable of carrying it out, some local governments may not be in a position to set up the institutional infrastructure to see the process through. In these cases, the option of imposing liens and forcing properties into tax sale may be an attractive alternative.

### **How the Credible Threat of Foreclosure Achieves Rehabilitation**

After reading how tax sale might be used to “fire the owner,” one might think that all properties that are so neglected by their owner as to be considered abandoned houses must also be tax delinquent. But, in the neighborhoods where the real estate market is still strong enough to encourage investment generally, even owners unwilling or unable to make significant repairs may still be keeping current on property tax payments, which might be quite low given the condition of the property. The elderly former homeowner may not have the resources to fix up his or her former home, but the tax bills get paid anyway. The elusive speculator’s strategy may be to spend only enough money on the property to allow him or her to flip it when other people’s investment on the block raises property values. Even in the case of the property that is subject to mortgage balances that exceed its value, a first mortgage may pay property tax bills while it decides whether or not it is worthwhile to foreclose.

In all of these cases, then, the owners must be made to realize that they have two obligations to the public: to pay their property taxes and to keep their property from becoming a nuisance. Ultimately, complete disregard of either one of them should cause the liquidation of their interests in their properties. These three mechanisms above make failure to make repairs just as much a basis for foreclosure as tax delinquency. But, the strongest reason to develop and to use one or more of these approaches is that the credible threat of foreclosure for failure to make repairs will bring about the repairs in most cases without an actual foreclosure. Once these owners realize that they can no longer maintain their ownership of their houses without bringing them up to code, they will change their behavior. When they understand how little they will get from the leftover proceeds of a foreclosure auction, they will be willing to sell the property to someone who can make the repairs, or they will finally step up and complete the rehabilitation themselves. Although a property whose value is buried under multiple mortgages may get

renovated only through a public foreclosure process, even these cases are sometimes resolved by a multi-party release by various mortgagees. Once word gets around about effective code enforcement procedures, a great many behaviors concerning abandoned houses may change for the better.

## LAND BANKING

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### **The Future of Neighborhoods Too Distressed to Support Abandoned House Rehabilitation**

Both the Code Enforcement and Firing the Owner chapters focused on neighborhoods with enough market strength to incentivize rehabilitation investment in derelict structures. Demolition and nuisance mitigation have been the only remedies proposed, so far, for neighborhoods too distressed to attract investment capital, even from owners already invested in them. Given that in many older urban communities, the vast majority of abandoned houses are located in such neighborhoods, the overall strategy for abandoned houses, as it currently stands, seems weak. Compounding this sense of dissatisfaction is the fact that these neighborhoods are home to the heaviest concentration of poor and minority residents. They are now being told that code enforcement will fight for the rehabilitation of an abandoned house in a less distressed neighborhood, but an abandoned house in exactly the same physical condition in their neighborhood will not get these enforcement resources. Instead, the most they can hope for is boarding and demolition.

But the present market realities of the communities most affected by housing abandonment need not forever determine their future, nor is the only alternative a massive infusion of subsidy to rebuild the neighborhoods with the hope that the neighborhoods' problems unrelated to abandonment vanish so that new residents will move in. A housing investor or homeowner will not risk his or her money, saved or borrowed, to fix up one abandoned house on a block when several others remain. But, what if the needed investment could be coordinated so that all the abandoned houses in the immediate area were fixed up together. Then, those investing in the community might have an opportunity to get in on the ground floor of a neighborhood surging to a more stable future.

Land banking is the acquisition of abandoned properties for the purpose of facilitating their return to productive use. In as sense, the receivership and the tax sale mechanisms examined in Firing the Owner are forms of land banking. But, usually, land banking requires not only that a public agency clear title to a property but also own it for a while to sell it, along with other nearby properties, at a time that maximizes the chance of strengthening the neighborhood real estate market.

### **Land Banking's Three Components**

Thus, there are three functional elements to every land banking program:

- *Acquisition*
- *Management*
- *Disposition*

Land banks generally acquire parcels through tax sale procedures, particularly those designed specially to promote proper disposition of abandoned properties. They manage the houses and lots they own making sure they clean, structurally sound and well-secured. They then make them available for sale to those who are ready, willing and able to return them to productive use.

## Acquisition-The Varieties of Tax Sale

Like in many states, Indiana counties sell the right to foreclose on tax-delinquent properties at annual public auctions. The minimum bid for each property is the full amount of money owed to the local governments. If the property does not attract any bids, it is not sold. For many abandoned houses and vacant lots, the regular tax sale neither collects unpaid taxes nor puts property back into productive use. The chart below, taken from [a recent Center for Community Progress report on vacant and abandoned properties in Indianapolis](#), illustrates the other approaches to tax sale that have been enacted to better handle abandoned houses and lots.

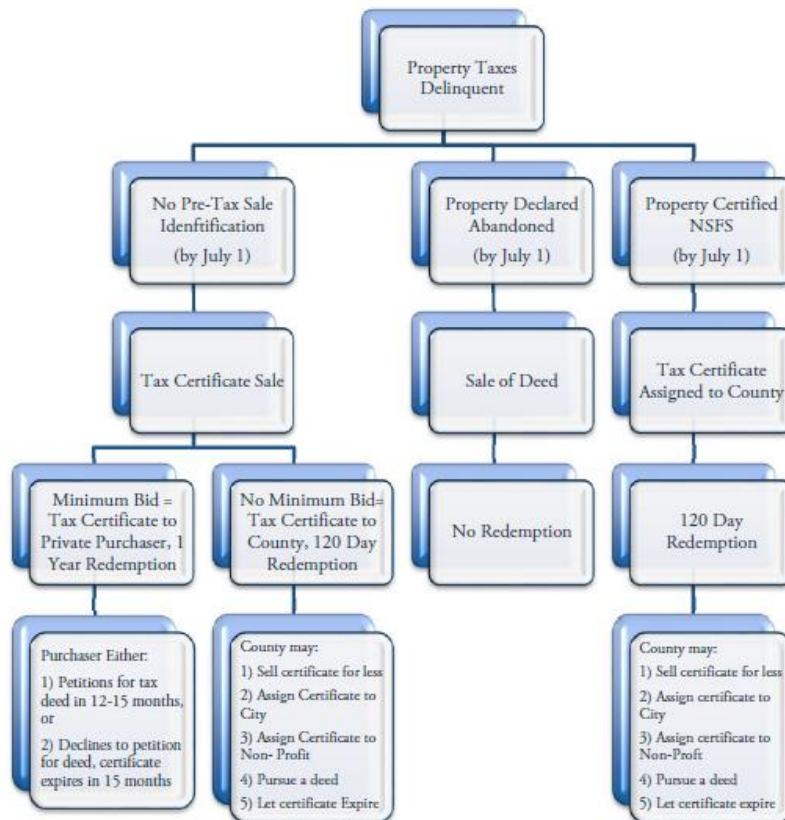


Figure 6 – Options to Transfer Tax Delinquent Property in Indiana

The regular tax sale is illustrated by the flowchart path on the left hand side. If a property does not attract the minimum bid at the tax certificate sale, the tax certificate is assigned to the county, as shown on the chart just to the right. The path to the far right shows that the county may also acquire the certificate if, prior to the tax sale, a property is declared “NSFS” or “Not Suitable for Sale.” The middle path shows how a property, if it is declared “abandoned”, can avoid the tax

certificate process altogether. We will briefly examine each of these special tax sale acquisition methods in turn.

### ***Tax Certificates Assigned to County***

When a property allowed to go through the regular tax sale process fails to attract the required minimum bid of the full amount of taxes and other charges due from its owner, then the county becomes the holder of the tax certificate. As shown on the chart, the county may then sell the certificate for an amount less than the minimum bid, assign it to a nonprofit or the city government that has jurisdiction over the parcel, or foreclose on the certificate. Where holders of regular tax certificates must wait a full year to allow owners and mortgagees one last chance to pay off the overdue taxes and other charges, the county or any other holder of its certificate need only wait 120 days before asking a court for a deed to the property.

The process described above is the same for certificates pulled prior to the tax sale because they are “Not Suitable for Sale.” These properties must have environmental and/or Code issues that cannot be addressed in an economically feasible manner. By shortening the time for redemption and allowing counties flexibility in how they dispose of these certificates, the General Assembly has recognized that properties that are too far gone to attract private investment need land banking to reconnect them with a functioning real estate market.

### ***Properties Declared Abandoned***

In the discussion of Abandoned House Receivership Foreclosure in the “Firing the Owner” chapter, we saw how the declaration that a property was abandoned allowed a special avenue for liquidating the interests of the property’s owners and mortgagees. Just as with that Unsafe Building Law procedure, the tax sale statutes provide for a special transfer of the property when it has first been declared “abandoned.” Not only do such properties not have to be put up for auction in the annual tax sale, they do not have to go through the tax certificate foreclosure process at all. Instead, the owners and mortgagees are notified of their last chance to pay off the taxes and charges due shortly after the abandonment declaration is made. When the amount due remains unpaid, instead of a certificate, the county gets a deed to the property. Moreover, where properties that go through tax sale must be a year delinquent, abandoned properties need only be six months behind in tax payments before being taken from their owners.

### ***Serially Tax Delinquent Properties***

One tax sale diversion procedure not depicted in the chart above allows for removal of properties that are tax delinquent again after having been previously acquired in tax sale. Any such group of at least 10 properties with common ownership may be taken off the tax sale list and, after appropriate notice to owners and lienholders, deeded over to the County.

### ***Crucial Role that Tax Sale Reforms Play in Land Banking Acquisition***

A city or town struggling with concentrated abandoned houses and vacant lots would never be able to return them to productive use under a conventional tax sale system, which requires that all liens be paid in full. Even if the municipality had enough cash on hand to “pay” off its own code enforcement liens, it would not have enough to pay the back taxes due the county. When the property was eventually sold, there would be no guarantee that the city or town would recoup its purchase price. The county, meanwhile, would get the double benefit of having been overpaid for the property and seeing it return to the tax rolls.

The reforms described above allow for cities and towns to obtain properties at less than lien value and in a manner that often does not require them to compete with speculators. With each mechanism there are steps taken to make sure that the county, as the collector of taxes, retains a great deal of discretion in how and when properties are transferred. As will be noted later, one of the strongest arguments for a separate land bank authority, one that is not merely an agency controlled by a city or town, is to allow for ongoing accountability to the county that is the source of the tax-foreclosed titles.

### **Management & Disposition**

More about the governance of land banking entities as well as the management and disposition processes that can be put in place can be gained from Frank Alexander's book, [Land Banks and Land Banking](#), now in its 2<sup>nd</sup> edition from the [Center for Community Progress](#). For now, it should be noted that some cities, notably Baltimore, have shown a reluctance more recently to take title to properties for which disposition plans are uncertain. Other communities feel that the best way to make sure that abandoned houses and lots do not drag down property values is for them to be publicly owned and managed.

In Indiana, the need to have actual ownership of a property in order to carry out effective nuisance control is diminished by both the Unsafe Building Law and the Good Samaritan Law. The former allows local governments to get orders of continuous maintenance on unsafe houses and lots. While these must be renewed before a hearing officer every two years, they allow agencies to take care of a property without legal ownership. The Good Samaritan law protects anyone entering onto a vacant or abandoned property for the purpose of eliminating hazardous conditions from liability for trespass. Work done under this protection may not be chargeable to the owner under the UBL but it still may allow for important care of a property without ownership or authorization under the UBL.

Design of disposition procedures is among the most important policy decisions those creating and governing a land bank will make. With the goal of land banking being the return to productive use, quick resale of properties may seem to be the overriding focus. But, there must be care to make sure that properties are being sold to those who will succeed in redeveloping them. Because this often means selling properties in bundles, there should be appropriate mechanisms for community input on sales. At the same time, imposing too many conditions or procedures on the reselling of land banked property may discourage the very investment that affected communities need. Whether these policy decisions are made for a city agency acting as a land bank or a formally created land bank authority, accountability to the public must be a governing principle of land bank disposition right from the start.

### **The State of Land Banking in Indiana**

Unfortunately for Indiana, the pilot project for land bank authorities has suffered a fatal setback. In 2013, the FBI raided the offices of the Indy Land Bank to obtain evidence that would lead to the 2015 corruption convictions of certain officials. While this scandal did stop land banking advocates from achieving in 2015 many of the tax sale reforms described above, there has not been any promising effort to expand land bank authorities beyond Indianapolis/Marion County since the corruption in the pilot program was discovered. For now, land banking in the rest of Indiana is very much a story about the ups and downs of city and county cooperation.

# REUSE OF VACANT PROPERTIES

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## Subsidized Rehabilitation & New Construction

It is natural for most community members to want the neighborhood back the way it used to be, for abandoned houses and vacant lots to be returned to their previous uses as residences for new community members. For distressed neighborhoods, the subsidy needed to make this a reality may make sense especially if certain parts of the neighborhood can be returned to viability at the levels of density they had in better time. These images taken from South Bend's Task Force Report illustrate less costly options for vacant lots.

## Side Yards

South Bend has funded the Notre Dame Clinical Law Center to help homeowners acquire adjacent vacant lots to expand their living spaces.



## Pocket Parks

Other vacant lots can be turned into small playgrounds or community oases. Cities and towns can partner with neighborhood groups to make sure the properties remain treasured community assets.



## Community Gardens

Urban residents' lack of access to healthy food has spurred a new generation to make urban spaces green and productive. Small nonprofits are an indispensable part of any reuse of this kind.



## ABOUT THE TRAINERS

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