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State and Local Government

I-1 Addressing Abandoned Property Using Legal Tools

Vacant and abandoned property has long been an issue in small and large Kansas communities. According to testimony received on various bills heard by the Kansas Legislature, these properties are a familiar part of the American landscape, and these structures can devastate neighborhoods and undermine neighbors' quality of life. Additionally, these properties diminish the value of nearby properties, resulting in reduced local property tax revenue, and can cost some cities millions for policing, cleaning vacant lots, and demolishing derelict buildings.

Research describes tools that may be used to deal with abandoned and vacant property, with property registration, land banking, and receivership programs receiving the most attention. Researchers caution not all of these tools will work for every market and the approach a municipality takes should be designed with its particular issues in mind.

Vacant Property Registration

Vacant property registration is described as the first step a municipality can take to gather more information about the particular abandoned property issues the community is facing, and it may help prevent abandonment altogether. A report from GSBS Richman Consulting (GSBS), prepared for Oklahoma City in 2013, suggests that, at a minimum, a registry should include a maintenance plan for the identified property and a fee structure (<https://www.okc.gov/home/showdocument?id=2518>). Best practices for this tool include:

- Registration of foreclosed properties at the time of notice of default or foreclosure;
- Submission of a maintenance plan at time of registration;
- Purchasing insurance coverage for unoccupied buildings;
- Establishing minimum levels of exterior maintenance;
- Posting owner contact information on the property;
- Frequent inspections by the municipality;
- Installing exterior nighttime lighting; and
- Code enforcement for non-compliance.

According to the U.S. Department of Housing and Urban Development (HUD), these registrations help municipalities track vacancy issues in their jurisdictions. HUD and GSBS also suggest that fees for registration should escalate the longer the property remains vacant to create a disincentive for owners and encourage the return of these properties to productive use. Additionally, the fees for these registrations could be utilized to offset cost associated with vacant properties.

The Unified Government of Wyandotte County and Kansas City, Kansas, adopted a registration ordinance in February 2018. The ordinance requires the owner of any building or structure that becomes vacant to register within 60 days of the first date of vacancy. The registration must be accompanied by a written comprehensive plan of action containing a timeline for corrective action for any code violations, rehabilitation (if required), and maintenance while the building is vacant. The annual fee is \$200. The ordinance also outlines other provisions, such as inspection of the property and notification for change of ownership.

Vacant building registration is not without opponents. In 2013, in response to the GSBS report, Oklahoma City enacted a vacant property registration program. That program included a \$285 registration fee that increased by \$190 every year the property remained vacant. However, in 2014, the Oklahoma Legislature passed legislation preventing such ordinances from being enacted, ending the Oklahoma City program.

Land Banks

Another tool some municipalities utilize to deal with vacant properties is land banking. HUD's Neighborhood Stabilization Program describes a land bank as a public or community-owned entity created for the purpose of acquiring, managing, maintaining, and re-purposing vacant, abandoned, and foreclosed properties. The Center for Community Progress (CCP) estimated there were 170 land banking programs in the United States as of January 2018. Land banks are most often associated with municipalities that

have large-scale blight and abandonment issues within their jurisdictions.

Best practices. Land banks are typically created *via* local ordinances, pursuant to authority provided in state law. Occasionally, they are also created within existing entities, such as redevelopment authorities, housing departments, or planning departments. Their authority varies greatly, depending on how the land bank is created. Typically, they are granted special powers and authority in the state's enabling statute. According to CCP, comprehensive land bank legislation usually grants the following powers:

- The ability to obtain property at low or no cost through the tax foreclosure process;
- The ability to hold land tax-free;
- The ability to obtain clear title, extinguish back taxes, or both;
- The ability to lease properties for temporary uses; and
- The ability to negotiate sales based on the outcome that most closely aligns with a community's needs.

The Lincoln Institute of Land Policy (LILP) identifies Ohio's land bank enabling statute as a possible example of comprehensive land bank legislation. In Ohio, land banks have the following statutory purposes:

- Facilitate the re-utilization of vacant, abandoned, and tax-foreclosed real property;
- Efficiently hold such property pending re-utilization;
- Assist entities to assemble and clear the title of such property; and
- Promote economic and housing development.

Ohio Rev. Code Ann. § 1724.02 established an exhaustive list of powers that may be granted to land banks in the state, many of which align with the examples provided above. These powers include the ability to apply for tax exemption for the property, negotiate the purchase and sale of

property, and lease the property for temporary use.

Land banks in Kansas. Kansas cities may establish land banks under the authority of KSA 2018 Supp. 12-5901 *et seq.*, and Wyandotte County is authorized to establish a land bank under the authority of KSA 2018 Supp. 19-26,103 *et seq.* According to CCP, there are eight land banks in the state: Arma, Arkansas City, Hutchinson, Kansas City/Wyandotte County, Lyon, McPherson, Olathe, and Overland Park. Other sources add Junction City to that list.

Kansas law allows property to be transferred to land banks by the city, county, another city, or another taxing subdivision in the county. Land banks can choose to accept any transferred property, and these properties are not subject to any bidding requirements and are exempt from law requiring public sale. They also have the authority to acquire property by purchasing it. The board of directors established pursuant to the law is required to manage its property, keep an inventory of such properties, and sell or otherwise dispose of the property. The board is allowed to sell any property without competitive bidding under terms necessary to assure the effective re-utilization of the property. Land banks in the state are also exempt from property taxes, except for special assessments levied by a municipality, and the county treasurer is required to remove from the tax rolls all taxes and other charges due on the property when it is acquired by the board. Land banks in Kansas are required to operate on a cash basis; however, at the time of establishment, the governing body of the establishing municipality may advance operating funds to the bank to pay for certain expenses. Kansas law also has several transparency and reporting requirements for land banks.

When comparing Kansas land banking law to the referenced best practices, Kansas law incorporates most best practices. The exclusions are the ability to lease properties for temporary use and the clear directive for obtaining a clear title.

Land banks and tax foreclosure. Land banks can be used to complement or possibly replace

tax foreclosure sales. Some researchers view tax foreclosure sales as a liquidation-based system composed of the sale of tax liens or public tax auctions wherein government trades its interest in tax-delinquent property to speculators or investors for modest revenue collection. Depending on the real estate market in the area, this could potentially result in real estate speculators holding onto property with little incentive to improve or maintain it. However, land banks typically have a statutory obligation to seek a new use for acquired property and to hold property in careful stewardship until a new purpose can be determined.

Receivership Programs

Receivership is a legal tool that can be used by a court system to designate a local government or qualified non-governmental entity, such as a nonprofit, as the receiver of a vacant property. According to the LILP, this tool exists in many states, but provisions vary greatly, making them more useful in some states than others.

Generally, a receivership statute allows a municipality or a qualified non-profit entity to apply to a court to be appointed the receiver or be granted possession of the property to restore it to use. Once appointed, a receiver or possessor has control of the property, can borrow and spend money to rehabilitate it, and can place liens against the property for the amount spent. Once the property is rehabilitated, the owner may be able to regain control of the property by making the receiver whole, or the property may be sold by the court or receiver.

The City of Baltimore is considered to have a robust receivership ordinance. The ordinance allows the city or a nonprofit designee to ask a court to appoint a receiver for any property that has an outstanding vacant building violation notice. Any entity with a preexisting interest in the property, such as an owner or mortgagee, must demonstrate the ability to rehabilitate the property without delay to avoid appointment of a receiver. If a receiver is appointed, the receiver's administrative and rehabilitation expenses become a super-priority lien on the property.

Additionally, the ordinance provides notification requirements a court must determine have been met.

Massachusetts, a state the CCP considers to have a strong receivership law, utilizes a statewide abandoned housing initiative (<https://www.mass.gov/service-details/abandoned-housing-initiative>) within the Attorney General's Office (AGO). This program allows municipalities to submit addresses of abandoned residential properties to the AGO to initiate an investigation to identify delinquent owners. Once identified, the AGO attempts to contact the owner and any party with legal interest to reach an agreement to complete necessary repairs. If this is not possible, the state's Sanitary Code (<http://www.mass.gov/ago/doing-business-in-massachusetts/economic-development/abandoned-housing-initiative-ahi/ahi-receivership-manual/sanitary-code-and-receivership-statute/>) contains a provision for receivership that can be utilized to remedy code violations. According to the AGO, the Sanitary Code allows for a priority lien to be placed on the residence. A receivership can last six months to a year; at its conclusion, the owner can reimburse the receiver for the cost to clear the lien. If this is not possible, the receiver may foreclose on the lien in a manner approved by a court.

Best practices. A 2016 article in the *Journal of Affordable Housing* examined receivership statutes in 19 states and provided the following best practices:

- Establish formal governmental programs that allow for the appointment of private receivers from a list of qualified entities;
- Allow neighbors and other interested parties to petition to bring attention to properties that may not have received official attention and that affect a more limited group of people;
- Make grants and access to a certified list of potential receivers available to unaffiliated petitioners as resources so the petitioners need not go through the process of establishing receivership qualifications to a court;

- Create clear definitions for qualifying properties to ensure fewer petitions will be rejected;
- Require respondents to post bond to encourage serious effort to challenge a claim;
- Require petitioners to provide the court with a quarterly progress report;
- Enable receivers to rent rehabilitated property after rehabilitation, but before sale, to lessen the amount of their lien;
- Provide strict warnings and action deadlines to respondents (delinquent owners); and
- Provide strict guidance when dealing with a receiver's compensation.

The author also suggested consideration be given to the respondent's right of redemption after the property is sold or rehabilitated, noting the practice creates a larger risk to the project and makes it less attractive to other buyers.

Kansas receivership law. Kansas law provides for something similar to a receivership program in the provisions of KSA 2018 Supp. 12-1750 *et seq.*, particularly in KSA 2018 Supp. 12-1756a. These provisions do not use the term "receiver," but do allow for the petition of a district court by a municipality or qualified nonprofit for temporary possession of a property that meets certain requirements, such as the property being tax delinquent for two years, and be determined to meet the definition of "abandoned." Petitioners must notify interested parties 20 to 60 days prior to filing the petition. Other petitioner duties include filing an annual report with the court concerning the rehabilitation of the property, which must include statements of all expenditures made by the organization in possession, including payments for rehabilitation, operation, and maintenance; repairs; real estate taxes; mortgage payments; and lien-holder payments. The prior owner of the property is entitled to regain possession of the property by petitioning a district court. The court must determine compensation to the rehabilitating organization.

It is difficult to determine how many of the best practices can be found in Kansas' receivership law. It appears that Kansas incorporates portions of the recommendations. For instance, Kansas law allows for the establishment of formal programs allowing for the appointment of private receivers, but it would be difficult for neighbors and other interested parties to utilize these programs depending on how a municipality has implemented a program. Additionally, Kansas law contains definitions establishing what property can be considered abandoned, but there can be differences of interpretation regarding the clarity of such a definition. The law also provides action deadlines and requirements for respondents to a petition, but does not require the posting of bond to show an effort to rehabilitate. A court also has the discretion to extend these deadlines. Further, the law requires an annual progress report by a petitioner, whereas best practices suggest reports to the court should be made quarterly in order to keep the court better informed.

Kansas law does not allow for rehabilitated property to be rented before their sale and it does not provide any guidance on a receiver's compensation. It also provides for a redemption period for the prior owner, which the author of the 2016 article notes should be an item of consideration when creating these statutes.

Additional Tools

Aside from the legal tools listed above, communities can also consider options to help slow or prevent properties from becoming

abandoned or vacant, such as foreclosure prevention programs and home repair programs. Below is information on two examples of such programs.

Homeowners' Emergency Mortgage Assistance Program

In 1983, Pennsylvania created the Homeowners' Emergency Mortgage Assistance Program (HEMAP). HEMAP is a loan program for homeowners who have shown they have a reasonable prospect of resuming full mortgage payments within a required time frame. The program is funded by a state appropriation. Loans are limited to a maximum of 24 or 36 months from the date of mortgage delinquency or a maximum of \$60,000, whichever comes first. Additionally, all loan recipients must pay up to approximately 35.0 percent or 40.0 percent of their net monthly income towards their total housing expense. To date, the program has helped 46,000 homeowners.

Basic Systems Repair Program

Philadelphia offers the Basic Systems Repair Program (BSRP). The program provides free repairs to address electrical, plumbing, heating, and structural and roofing emergencies in eligible owner-occupied homes in the city. Owners are eligible if they have not received BSRP services in the previous three years, own and live in a home that has a qualifying issue, are current under their payment agreements for the property taxes and water bill, and meet the income guidelines.

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