



From Liability to Viability

A Legal Toolkit to Address Neglected Properties in West Virginia

WVULAW

LAND USE & SUSTAINABLE DEVELOPMENT LAW CLINIC

Acknowledgements

From Liability to Viability: A Legal Toolkit to Address Neglected Properties in West Virginia is the culmination of the efforts of numerous individuals and organizations.

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SIDEWALK
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Preface

For the past three years, the Land Use and Sustainable Development Law Clinic has been working with local governments throughout West Virginia on long-term land use planning. As part of this process, communities prioritize their top challenges and outline steps to address those challenges. Time after time, we have heard that dilapidated properties are a problem. In 2013, we started referring communities to the Northern Brownfields Assistance Center (NBAC), knowing that the NBAC helps communities identify and prioritize neglected properties as part of their BAD Buildings Program.

Months later, the NBAC circled back to us after finding that many communities struggle with legal issues related to problem properties and wondered if we would be willing to explain or formulate legal solutions to address dilapidated buildings. At the time, this proposal seemed quite challenging. After all, the issues surrounding dilapidated buildings include tax law, property law, land use law, estates and trusts, and more, and our small staff of attorneys, planners, and rotating law students were already hard at work throughout West Virginia. This undertaking would require a team of attorneys, expertise from subject matter experts, and, most importantly, input from communities that have already successfully dealt with abandoned properties.

In April of 2014, the clinic was awarded a grant from the Claude Benedum Foundation to develop legal resources to address abandoned and neglected properties. We call this effort WV LEAP: West Virginia Legal Education to Address Abandoned and Neglected Properties. As part of our WV LEAP efforts, we conducted a series of listening sessions throughout West Virginia to understand the main legal barriers to addressing dilapidated buildings. We reviewed ordinance provisions to find the most effective ordinance language. We interviewed dozens of subject matter experts as well as leaders working locally to address neglected properties. In May of 2015, we held a Continuing Legal Education event in Charleston with over 100 participants. In July of 2015, 90% of the members of the West Virginia Chapter of the American Planning Association signed up to attend a WV LEAP seminar in Bruceton Mills. What began as a formidable task has turned into an exciting and enlightening statewide conversation. Attorneys, mayors, code enforcement officers, land use planners, and community leaders have been happy to share their experiences and lessons learned.

We have listed many of our collaborators on the acknowledgements page, but there are a few groups that deserve special mention. First, the Housing Alliance of Pennsylvania has been an incredible resource. We were inspired by its toolkit, *From Blight to Bright*. Liz Hersh, the Executive Director, gave us wonderful guidance as to structure and collaboration with partners. The second is the Abandoned Properties Coalition (APC). This coalition of partners was a wonderful sounding board to discuss examples and the effectiveness of certain tools. Members of the APC include the WV HUB, West Virginia Cooperative Extension, and the NBAC. Finally, the members of the Association of Municipal Attorneys provided invaluable feedback and served as an excellent resource for questions related to the toolkit.

Katherine Garvey,
Director, Land Use and Sustainable Development Law Clinic
West Virginia University College of Law

Introduction

Across West Virginia, communities struggle with dilapidated, abandoned, and neglected properties.

As many as 1 in 16 properties in West Virginia are vacant or abandoned.¹ Neglected properties deter economic development, increase crime, and create safety hazards.² At the same time, neglected properties represent an opportunity for community revitalization. The quantity of dilapidated properties can seem overwhelming, but West Virginia communities are sharing and developing innovative strategies to successfully tackle these problem properties. In order to further enable revitalization efforts, this toolkit details legal strategies to address neglected properties.

- Richwood has identified 110 abandoned structures in a population of 2,000 people.
- Fairmont has identified 300 vacant or dilapidated buildings in a town of about 19,000 people and about 9 square miles.³

“A common thread that runs through all communities in West Virginia is the dilapidated properties within them. The spread of blight results in reduced property values, public safety hazards, and can be a barrier to economic development. Neglected properties affect not only a property owner, but the surrounding property owners, and the community as a whole.

However, it is apparent that many communities have a desire to address these neglected properties. In the last few years, communities have been trying both traditional and innovative strategies to address neglected properties with promising results.”

—Ann Worley, President of the Board of the Municipal League

WV LEAP
Legal Education to Address
Abandoned Properties

NOTE:

Throughout this document the terms “neglected,” “dilapidated,” “vacant,” and “abandoned” are used interchangeably. All tools are appropriate for residential, commercial, industrial, and even vacant properties.

Structure of the Toolkit

Part 1 describes steps for laying a foundation that can enable communities to strategize and take action. Addressing dilapidated properties is a long-term project that requires capitalizing on community partnerships and community planning. Part 2 discusses fundamental tools, tried and true strategies that have worked well for the communities that have implemented them. For example, maintaining properties typically requires the use of an effective code enforcement program and a registration system to keep track of vacant and uninhabitable properties. Part 3 identifies additional tools that may be necessary if fundamental tools prove inadequate. Part 4 elaborates on approaches to addressing neglected properties referred to as land banks. Finally, the toolkit summarizes three issues that deserve special consideration: historic properties, contaminated properties, and considerations when communities are enrolled in the Municipal Home Rule Pilot Program.

Themes to Keep in Mind

There are several basic principles that communities effectively dealing with neglected properties embrace in their strategies. Those principles appear repeatedly throughout this toolkit:

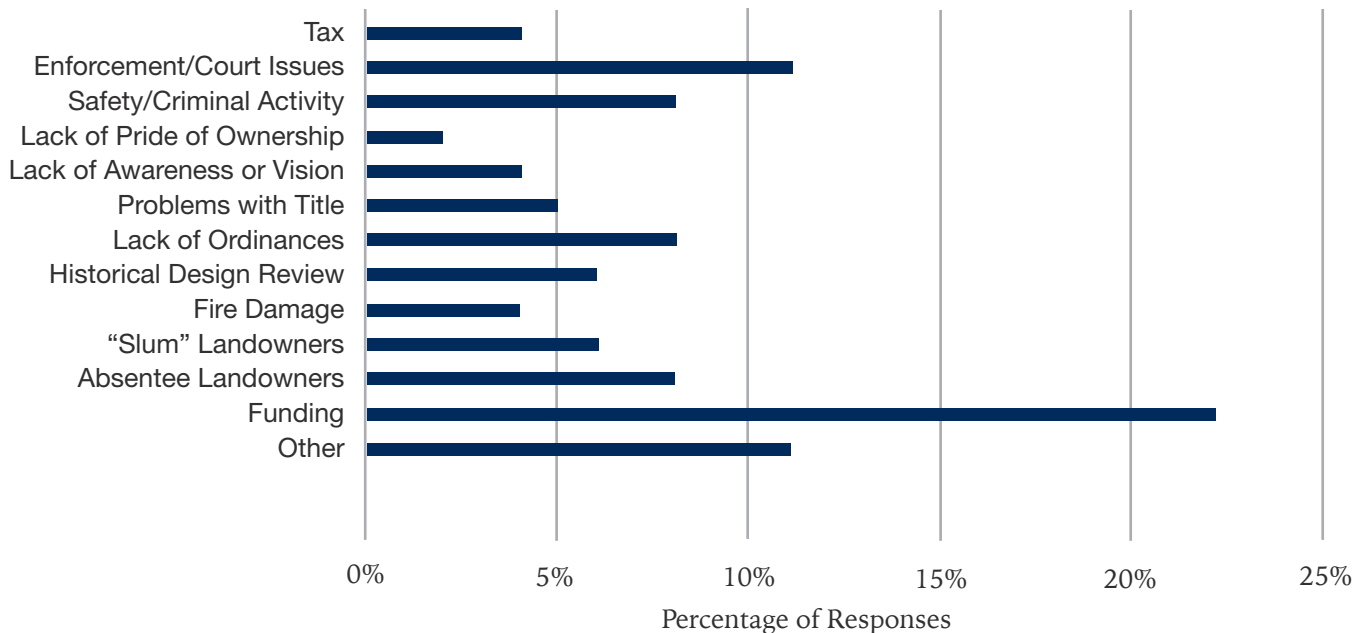
- 1) Proactive behavior. Maintaining properties in good condition is more cost effective than addressing properties that have already been abandoned. For this reason, the Building Code is the first fundamental tool. Similarly, a proactive process to prioritize and identify properties is preferable to a complaint-based system.
- 2) Collaboration, partnerships, and communication. Effective communication with partners is essential to address neglected properties. Three tools highlight the importance of these relationships: Collaboration with Key Players, Negotiating with Stakeholders, and Partnerships with Financial Institutions.
- 3) Regionalism. Addressing neglected properties is expensive and complex. Often, combining forces with other local governments to share resources and lessons learned can be mutually beneficial. For example, see Subsection on Sharing a Building Inspector in Section on the Building Code.
- 4) A holistic, community-based approach. Unfortunately, no one-size-fits-all strategy will apply to all West Virginia communities. If a silver bullet existed for dealing with neglected properties, the problem would not be as widespread. Rather, successful communities determine their specific needs and work with available resources to meet them. A wide variety of successful approaches exist, even in small communities with limited resources, but successful approaches tend to be tailor-made based on communities' strengths, weaknesses, and ability to collaborate.

Research Process

While written primarily by attorneys, the ideas for strategies and tools in this toolkit were developed and improved at the local level by a variety of players—ranging from code enforcement officers to bankers. Before writing this toolkit, the authors conducted a series of listening sessions in conjunction with the Northern Brownfields Assistance Center. During these sessions, participants were asked to describe in detail

their community’s process for dealing with neglected properties. Participants also identified the key barriers they faced. The responses from these sessions helped frame the strategies described in this toolkit. A more detailed analysis of the results, as well as the list of participants, is available in Appendix B.

During the listening sessions, community members were asked the question, “What are the top 5 issues currently stalling the revitalization of a dilapidated property?”



Consult with an Attorney

The law is constantly evolving. This toolkit does not provide an exhaustive list of legal barriers or solutions and should not be construed as legal advice. Instead of relying solely on this toolkit, community leaders are strongly advised to consult with an attorney prior to implementing any of these legal tools. All tools included in this toolkit are currently enabled under West Virginia

law. However, note that certain tools are only available to communities that have been selected to participate in the Municipal Home Rule Pilot Program. Where relevant, this toolkit indicates whether counties, municipalities, or home rule communities may use the tool.

Traditional Steps When Dealing with Abandoned Properties

1. Identify properties by receiving a complaint from a citizen, by conducting formal inspections, or by creating an inventory. Depending on the community, certain complaints go to the police department, the city clerk, or the code enforcement office.
2. If the community has adopted the building code, a code enforcement officer may inspect the property to evaluate whether a landowner has violated a city code.
3. If a code provision has been violated, a warning or citation may be issued.
4. If the owner refuses to comply, the community may continue to issue citations and fines.
5. If the owner continues to refuse to comply, the community may decide to repair or remedy the violation and place a lien on the property to cover costs.
6. In extreme circumstances, the community may condemn the property through eminent domain to take ownership and find an alternate use.

To Request Technical Assistance

Limited technical assistance is available to help local governments implement tools in this toolkit. Local government representatives may contact the Land Use and Sustainable Development Law Clinic at the West Virginia University College of Law to discuss the need for technical assistance and whether the Land Use Clinic or other resources may be available.

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1 *American FactFinder: Community Facts Search*, U.S. CENSUS BUREAU, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (search "West Virginia"; then select "Housing" tab; follow the "Selected Housing Characteristics" hyperlink; and follow the "2013" hyperlink). The survey estimates that 139,561 of the approximately 880,951 houses in West Virginia are vacant. *Id.*

2 NAT'L VACANT PROPS. CAMPAIGN, *VACANT PROPERTIES: THE TRUE COSTS TO COMMUNITY* (2005), available at <http://www.smartgrowthamerica.org/documents/true-costs.pdf>. "[M]ore than 12,000 fires occur in vacant structures in the US annually." *Id.* at 4. An Austin, Texas, study found that blocks with neglected properties "had 3.2 times as many drug calls to police, 1.8 times as many theft calls, and twice the number of violent calls as blocks without vacant buildings." *Id.* at 1. "A 2001 study in Philadelphia found that houses within 150 feet of a vacant or abandoned property experienced a net loss of \$7,627 in value." *Id.*

3 Jonathan Drew, *In Appalachia, Groups Tackle Coal's Legacy of Rural Blight to Make Way for New Development*, U.S. NEWS & WORLD REPORT (May 24, 2015, 4:01 PM), <http://www.usnews.com/news/us/articles/2015/05/24/in-the-coalfields-dilapidated-sites-make-way-for-renewal>.

Part 1

Laying the Foundation

A number of foundational strategies are necessary to effectively tackle dilapidated properties. The ideal first steps include identifying key players, brainstorming, and determining local needs. This Part describes common ways of identifying dilapidated properties and helpful methods for prioritizing them. Also discussed in this Part, comprehensive plans are an essential tool for guiding a community's goals and resources, particularly for dilapidated properties.



Collaborating with Key Players

Collaborating with key players involves bringing local stakeholders together to brainstorm and formulate strategies for dealing with problem properties.

Important local stakeholders usually include mayors, code enforcement officials, councilpersons, municipal and county attorneys, building code officials, planners, police and fire department officials, local business and property owners, concerned citizens, neighborhood associations, schools, bankers, nonprofit organizations such as the local Main Street organization and housing organizations, and developers. These knowledgeable individuals and groups can come together formally or informally to brainstorm possible approaches to neglected properties based on local needs and resources.

Collaborating groups working together more formally can inventory and prioritize properties that need attention or engage in any level of proactive planning the group sees fit. Unsafe Building Commissions and BAD (Brownfields, Abandoned, and Dilapidated) Buildings Committees are good examples of more formalized collaboration. Less formal collaboration can also be effective: just bringing people and groups with diverse perspectives together can help communities formulate solutions tailored to local goals.

No Prerequisites

The City of Fairmont's BAD Building Staff Advisory Committee created a "top ten" list of problem properties to help the City shift from a complaint-based approach to a more proactive one.

Advantages

- Helps communities consider and implement strategy that takes most advantage of local resources to meet local needs
- Different and diverse perspectives promote creative solutions
- Uses limited resources
- Encourages community engagement
- Can start with the important first step of determining the scope of the problem

Disadvantages

- May have less of an impact than a larger-scale approach, such as a comprehensive plan or redevelopment plan
- Collaboration that excludes some stakeholders or is not viewed as transparent may compromise community buy-in or enthusiasm
- With a large group of collaborators, organizational issues and conflicting expectations may arise, requiring more time and resources to keep the initiative on track

Funding

This approach should not need any funding at first, although additional time and resources of public employees may be required. Enthusiastic community volunteers can play a big role. Technical assistance grants, if available, can help the community get collaboration initiatives off the ground. For more information, see Appendix J.

Usage in West Virginia

This approach has been gaining increasing popularity throughout West Virginia as communities realize that no one actor can take on neglected properties alone.

From 2001 to 2011, Charles Town and Ranson worked together to revitalize a blighted corridor that went through their adjacent downtowns. “Two key parcels at the center of the corridor were mothballed for decades, held by families unable and uninterested in sale or redevelopment. . . . The cities of Charles Town and Ranson engaged these property owners, local developers, and the broader community in a process to create a reuse vision for this corridor, to educate stakeholders on opportunities, and to prime the market for reuse. . . . In this case, small lot property owners, an inexperienced local government, and reluctant investors who had given up on this downtown corridor came together to create a reuse vision that is now being implemented.”¹

Procedures

There is no standard process when trying to establish collaboration among key players. It can be as simple as bringing people together for a conversation. More formal groups often start by inventorying the neglected properties throughout the community. Next, they prioritize sites in need of the greatest amount of attention.

A group’s approach should emphasize transparency, open public participation, and involvement of all stakeholders at each step of the process. Partnership with local government helps maximize a group’s effectiveness.

Community Highlight

In 2014, Fairmont established two separate groups devoted to tackling the issue of neglected properties. The first, the BAD Buildings Team, was comprised of concerned citizen volunteers who collaborated with the City Planner and other local stakeholders. By the end of 2014, the Team had identified over 300 neglected properties and mapped approximately 250. The volunteers helped categorize the buildings according to their condition and developed a system for prioritizing properties to address the issue. Volunteers also researched properties’ title information in order to identify owners. Friendly letters were sent to the owners of vacant properties, many of whom live out of state.

The second group, the City of Fairmont’s BAD Buildings Staff Advisory Committee, was formed by City Council resolution to determine objective criteria and a process through which to prioritize the demolition of buildings at the City’s major gateways. This committee has played a more formal role in city affairs, for instance, by encouraging City Council to designate funds to address neglected buildings in the budget. Members of the advisory committee include representatives from fire, police, code enforcement, planning, public works, and city administration. Using the members’ diverse areas of expertise, this group worked to identify neglected properties, created a “top ten” list, and aimed to help the City shift from a complaint-based approach to a more proactive one.

¹ U.S. EPA, REVITALIZING MOTHBALLLED PROPERTIES: CHALLENGES, SUCCESS STORIES, & SOLUTIONS 23–24 (2008), available at <http://nepis.epa.gov/Exe/ZyPDF.cgi/P1002IB3.PDF?Dockey=P1002IB3.PDF>.

Highlight

Identification: The Windshield Survey

A logical first step to addressing neglected properties is identifying the extent of the problem by conducting a systematic inventory. The windshield survey, the most commonly used way to take this first step, involves volunteers or government employees driving or walking through a community with a clipboard to make a list of neglected properties. It is important to note that windshield surveys are visual inspections of the exterior of the property. Only authorized personnel may enter onto private property.

Issues to look for during windshield surveys include:

- Posted notice
- Boarded-up windows and doors
- No yard maintenance
- Excessive mail piling up (indicates vacancy)
- “For Sale” signs
- Missing doors or windows
- Burn marks or fire damage
- Signs of vandalism
- Public nuisances, such as trash, vermin, or fire hazards
- Vacancy
- Lack of utilities, such as water, sewer, electric power, or heating

Highlight

Prioritize Property Redevelopment

Once a community has completed an inventory of its abandoned properties, the community may have to make tough decisions about which properties to address first. Factors to consider when prioritizing properties for redevelopment include:

- Designation of dilapidated or historic properties in a comprehensive plan
- Designation of dilapidated or historic properties in a zoning ordinance
- Boundaries defined by a community's Urban Renewal Authority or Land Reuse Agency
- A preferred alternate use for a specific property because, for instance, a lot may be irregular, have a small layout, have insufficient street capacity, or have insufficient green space, parks, or recreational facilities

Example: A dilapidated building in a busy business district may be demolished to create additional parking spaces for local businesses.

- Condition of title, particularly when multiple owners claim ownership interest or the community cannot locate or identify the owner
- Character of the neighborhood, including historic neighborhoods and blighted or slum areas
- Crime statistics in a specific neighborhood
- Traffic and accident analysis
- Declared disaster areas due to flooding, hurricanes, earthquakes, fires, and tornadoes
- Physical and geological factors, such as whether land is submerged, contains karst that causes periodic flooding, has unusual topography, or has features that would make development by private enterprise uneconomical
- Economic feasibility, considering the cost of demolition, market costs, or the cost to partially or completely fix a building



Comprehensive Plan

A comprehensive plan serves as a blueprint for future development in a community, setting forth guidelines, goals, and an action plan for all activities that affect growth and development.¹

Addressing neglected properties is a long-term process that benefits from planning and public buy-in, especially when public funds are used to address problem properties. The comprehensive plan helps determine an overall vision of the community and helps communities prioritize the use of funds and staff time. The goals contained in the comprehensive plan are aspirational, and the action plan, also part of the comprehensive plan, sets up realistic steps towards achieving those goals. Steps outlined in the plan can protect key assets and resources that are important to the community, such as historic resources or an important business corridor.

No Prerequisites

Advantages

- Prepares a community for the future
- Proactive instead of reactive
- Can identify and help prioritize neglected properties
- Establishes tools that may be implemented to address neglected properties
- Assists in obtaining grant funding
- Serves as a prerequisite for some tools, such as the creation of an Urban Renewal Authority
- Enables a strategic approach to neglected properties
- The public participation required to create an effective comprehensive plan can bring a community together and energize the effort to address neglected properties

Disadvantages

- The comprehensive plan is a policy document and therefore cannot be enforced
- Establishing the comprehensive plan requires time, effort, and financial resources
- Without a team to implement the goals of the comprehensive plan, the goals may not be achieved

Funding

Some grant funding may be available to finance the process of drafting a comprehensive plan, including flex-e-grants. Flex-e-grants are a joint effort of the West Virginia Development Office, the Appalachian Regional Commission, and the Claude Worthington Benedum Foundation.²

In addition, The Land Use and Sustainable Development Law Clinic at West Virginia University College of Law may be able to provide technical assistance for a reduced fee or, in some instances, at no charge to communities that have few resources yet are interested in planning for the future of the community.³

Procedure

Chapter 8A of the West Virginia Code provides the required procedures and components of a comprehensive plan. Procedures include adoption of the comprehensive plan by the local governing body, two required public hearings, and the adoption of public input procedures to guide public participation. Plans must be reviewed and updated every ten years.

Usage in West Virginia

Most municipalities in West Virginia have adopted comprehensive plans. Although less common, a significant number of counties in West Virginia have adopted, or are in the process of adopting, a comprehensive plan as well, including Hardy County, Fayette County, and Putnam County. In order for municipalities or counties to enforce zoning regulations or subdivision and land development ordinances, they must adopt a comprehensive plan.

Community Highlight

Recognizing that neglected properties posed a significant issue, when the City of Dunbar adopted its comprehensive plan in 2014, the City set a number of goals to address neglected properties and established an action plan to accomplish those goals. The City used its comprehensive plan as its centerpiece to be selected to participate in Phase II of the Municipal Home Rule Pilot Program. City officials believed the selection was based in part on the strength of its comprehensive plan.

A comprehensive plan in West Virginia must discuss the following components:⁴

- Land use*
- Housing*
- Transportation
- Infrastructure
- Public Services
- Rural
- Recreation
- Economic development*
- Community design*
- Preferred development areas*
- Renewal and/or redevelopment*
- Financing
- Historic preservation*

* Particularly applicable to neglected properties.

Consequently, the City of Dunbar has the authority to adopt and implement some innovative tools to address neglected properties. These innovative tools include the ability to issue on-site citations and the ability to place liens on neglected properties for the cost incurred by the City to maintain the property and address neglected upkeep.⁵ For more information, see Sections on the Municipal Home Rule Pilot Program, On-site Citations, and Liens for Demolition and Repair.

Many communities in West Virginia address neglected properties in their comprehensive plan. The City of Weston and the City of Wellsburg are two examples.

The City of Weston's comprehensive plan lists vacant and dilapidated housing as Critical Issue 2, Goal 2, "Encourage housing improvements throughout the City to attract and retain residents." The objectives under this goal and the action steps that seek to address them are listed below. Note that the City's comprehensive plan details each goal, objective, issue, and step.

Objective 1: Institute a city-wide housing program for vacant, dilapidated, and condemned structures.

Objective 2: Enforce ordinances with homeowners.

Action Step 1: Develop an inventory of all vacant and dilapidated structures.

Action Step 2: Target code enforcement and resources to key investment areas.

Action Step 3: Develop a system to track complaints.

Action Step 4: Increase enforcement of building codes and property maintenance ordinances to improve appearance of the City.

The City of Wellsburg's Goal 3 of its comprehensive plan seeks to promote the continued development and redevelopment of the City. In addition, other objectives and action steps implement Wellsburg's goal of continued development and redevelopment. Only those items directly related to neglected properties are included below. Note that the City's comprehensive plan details these goals, objectives, issues, and steps.

Objective 1: Reduce the number of abandoned and dilapidated commercial and industrial sites in the city.

Action Step 1: Identify, and then declare by resolution, areas in the city that are slum or blighted and in need of redevelopment.

Action Step 2: Work with the Wellsburg Urban Redevelopment Authority to create redevelopment plans.

Action Step 3: Regularly update the vacant and uninhabitable buildings registry.

Action Step 4: Continue to participate in and be an active member of the Brooke-Hancock Brownfield Redevelopment Task Force, which meets quarterly.

Objective 2: Enable city redevelopment or demolition of abandoned and dilapidated residential structures that are not acted upon by the owners.

Action Step 1: Continue to seek FEMA grant funding for further demolition of residential structures that meet the necessary requirements for demolition.

Action Step 2: Prioritize dilapidated residential structures for demolition.

1 W. VA. CODE ANN. § 8A-1-1 (West 2015).

2 See *Flex-E-Grant*, W. VA. DEP'T OF COM., <http://www.wvcommerce.org/people/communityresources/financialresources/flexgrant/default.aspx> (last visited Jul. 27, 2015).

3 See WEST VIRGINIA COLLEGE OF LAW: LAND USE AND SUSTAINABLE DEVELOPMENT LAW CLINIC, <http://landuse.law.wvu.edu/> (last visited Jul. 27, 2015).

4 W. VA. CODE ANN. § 8A-3-4 (West).

5 CITY OF DUNBAR, MUNICIPAL HOME RULE PILOT PROGRAM PHASE II APPLICATION (2014), available at http://www.wvcommerce.org/App_Media/assets/doc/peopleandplaces/WV_Home_Rule/Dunbar.pdf.

Part 2

Fundamental Tools

This Part introduces fundamental tools that are effectively being used in West Virginia to combat problem properties, before and after they become a problem. First, maintaining properties is more cost effective than addressing a property that has already become dilapidated. To this end, this Part introduces legal and non-legal strategies used to prevent properties from falling into disrepair.

Once a property has fallen into disrepair, the most commonly used method to regulate the condition of property is the building code. For communities that have adopted the building code and that are authorized home rule communities, on-site citations can be utilized to expedite existing enforcement programs. Communities can also implement vacant or uninhabitable property registration programs to monitor properties in an organized way. Finally, public shaming has been used to effectively prevent properties from remaining in a long-term state of neglect.

Although preventing neglected properties from appearing in the first place would be ideal, some inevitably slip through the cracks. Properties may be abandoned, out-of-town owners may be difficult to reach, some owners may be struggling financially, and a small minority of owners simply do not care. When it becomes necessary, the process of local governments repairing properties and recovering costs does not necessarily follow a strict formula. Local officials in West Virginia have repeatedly noted that most property owners will take care of repairs themselves if problems are brought to their attention or if they think legal action might be taken. Where solutions do not emerge from these types of conversations, local governments can use their authority to make repairs, demolish structures, clean up after fires, and impose liens on properties or pursue civil actions to recover their costs. To help with these efforts, local governments can negotiate with stakeholders and develop partnerships with banks, both relatively easy and inexpensive steps that rely heavily on collaboration, brainstorming, and creating plans for mutual gain.



Building Code

The West Virginia State Building Code (WVSBC) is a set of technical rules and standards for building construction, renovation, and safety.¹

Effective enforcement of the building code can help prevent properties from becoming dilapidated in the first place and provide remedies for repair and demolition if a property is not properly maintained. The WVSBC combines several different code standards to form one uniform statewide building code. If a community decides to adopt the WVSBC, the community must adopt it in one of the following manners: 1) adopt all parts of the WVSBC, which consists of 11 different codes; 2) adopt only the International Property Maintenance Code (IPMC) without adopting the rest of the WVSBC; or 3) adopt all of the WVSBC except the International Property Maintenance Code. Local governments are given interpretation and enforcement authority over the adopted codes in their respective jurisdictions.

The WVSBC was enacted in 1989 and became effective in 1990.² All building or housing codes that were in effect prior to the creation of the WVSBC are no longer valid in West Virginia.³ Local governments are not required to enforce the WVSBC. However, no other code provisions pertaining to building construction, repair, or maintenance may be enforced in West Virginia. Prior to the enactment of the WVSBC, multiple regional building and housing codes were utilized, creating confusion as to which standards applied in different jurisdictions.

The WVSBC is administered by the State Fire Commission. The State Fire Commission is tasked with establishing rules and “standards considered necessary for the safeguarding of life and property and to ensure compliance with the minimum standards of safe construction of all structures erected and renovated throughout the state.”⁴

Several code disciplines (e.g., mechanical, plumbing, electrical, and residential) are combined to form the state building code. For neglected properties, the IPMC may be the most applicable section of the WVSBC because it emphasizes the maintenance and upkeep of existing structures and properties.

WVSBC’s Eleven Codes

1. International Building Code⁵
2. International Plumbing Code⁶
3. International Mechanical Code⁷
4. International Fuel Gas Code⁸
5. International Energy Conservation Code⁹
6. International Residential Code¹⁰
7. ANSI/ASHRA/IESNA Standard 90.1-2007 Edition for Commercial Buildings
8. International Existing Building Code¹¹
9. National Electric Code¹²
10. International Property Maintenance Code¹³
11. ICC/ANSI A117.1-2009 American Standards for Accessible & Usable Buildings and Facilities

* The 2016 proposed version of the WVSBC also adopts the International Pools and Spas Code.



Prerequisites

Notice to Fire Commission: A community must notify the State Fire Commission of its intent to adopt the WVSBC.¹⁴ The State Fire Commission may conduct public meetings in each community that intends to adopt the WVSBC to explain its provisions.¹⁵

Certified Personnel. A community must have certified personnel either on staff or contracted with the community in order to enforce the provisions of the WVSBC.

West Virginia State Building Code Certification

Individuals wishing to enforce the WVSBC may obtain certification in three overarching categories: 1) Code Official; 2) Code Inspector; and 3) Code Plans Examiner.

In general terms, a Code Official is the chief executive officer to administer and oversee the operation of a code department for local government. This individual is responsible for supervising employees who carry out the functions of code enforcement. Code Officials may only administer in the disciplines for which they are certified (e.g. a Code Official certified only in Property Maintenance may not enforce Fuel Gas provisions). The Code Official is responsible for the issuance of orders, permits, and other directives of the code department.

A Code Inspector is permitted to enforce the provisions of the discipline in which he or she is certified. For instance, a property maintenance inspector may inspect and examine properties for violations of the IPMC, write reports of conditions, issue notices of violation, etc.

based upon the condition of the property. The sole exception to this rule is for a “single person jurisdiction building code inspector,” which may act without a Code Official due to the limited size of the office.

A Code Plans Examiner is certified to review project documents and plans in a particular discipline to determine compliance with the WVSBC.

In order for a local government to enforce the provisions of the WVSBC, it must have an employee that is capable and certified by the West Virginia State Fire Commission. Certification typically involves taking courses and passing exams related to the code disciplines (mechanical, electrical, plumbing, etc.) that will be needed in a jurisdiction. Certification is valid for 3 years and each certified individual must complete 1.5 continuing education units (or 15 hours) each year.

Advantages

- Provides uniformity and compliance with minimum standards of building construction and property maintenance
- Helps ensure the construction of safe buildings, protecting lives and personal property
- Codes utilize proven industry standards, including new technologies and commonly accepted construction practices and materials
- Helps counter effects of blight by improving property values and promoting economic revitalization

Funding

Although a community's code department should generate sufficient revenue to enforce the building code, that is often not the case. To increase revenue after adopting the building code, local governments should require a building permit for all new or substantially improved construction. Building permit fees for inspections and administrative work can offset enforcement costs. Note that a community may not issue building permits when it chooses to adopt only the IPMC. Therefore, communities that adopt just the IPMC will not generate this form of additional revenue to cover enforcement costs.

Other local sources of funding are available for the enforcement of the WVSBC, such as a community's general fund. For instance, if a community identifies neglected properties as a top priority through its comprehensive plan process, elected officials should consider dedicating some of the general fund to adopting and enforcing the WVSBC.

In addition, a local government may place a lien against property for corrective action taken for violation of the WVSBC, including demolition costs.¹⁷ However, there is no guarantee these liens will be collected and lead to additional revenue to offset the cost of the local government's corrective action. For more information, see Section on Demolition Liens.

Disadvantages

- Requires the community to allocate resources for enforcement, training, inspections, and possible legal costs
- Requires enforcement of all parts of the building code adopted by the community
- Building codes can be technical, complex, and not easily understood
- Misunderstandings about the building code's purpose may lead to opposition to its implementation
- The code may not be enforced retroactively¹⁶

“Regular inspections by code enforcement officers have proven to be one of the most successful strategies to prevent properties from becoming dilapidated. Our inspectors can frequently work out solutions with landowners before the property gets to the point where we have to spend money to tear a building down.”

-Ryan Simonton, City Attorney, City of Morgantown, WV

Usage in West Virginia

Any municipality or county in West Virginia is permitted by state law to adopt the WVSBC.¹⁸ According to the West Virginia State Fire Commission's Office, as of June 11, 2015, 9 counties and 52 cities and towns in West Virginia had adopted the WVSBC. Of those 61 communities, only 7 chose to adopt only the IPMC. For a full list of communities in West Virginia that have adopted the WVSBC, see Appendix C.

Low-Income Exception

Although one advantage of adopting the statewide building code is the uniform requirements, note that there are no exceptions in the WVSBC for low-income persons. In many situations, a property owner may want to repair property to conform to the building code but not have the necessary funds. Repairs may be further hindered when the property is the primary residence of the owner or a renter.

The end goal for building officials should be to correct violations and ensure safe building construction. In doing so, building officials should work with property owners to develop a reasonable timeline that reflects factors such as inability to pay for repairs or the fact that the property serves as a primary residence.

Identification & Notification Requirements

There is no set method for identifying a violation of the WVSBC. Often, violations are identified through a complaint-based system in which citizens contact building officials. Building officials might also identify violations while driving to and from an inspection site or by periodically driving through the community, conducting a "windshield survey."¹⁹ Once a violation is identified, building officials must then provide notice of the violation to the property owner.

Procedures for providing notice can be found in each of the different WVSBC codes. For example, the IPMC requires that a notice of a violation be in writing and include a description of the real estate, statement of violation, reason for issuance of the violation, correction order, notification of the right to appeal, and statement of the right to file a lien.²⁰ An owner who fails to comply with a notice of violation or order served under the IPMC must be deemed guilty of a misdemeanor or civil infraction.²¹

Fact

As of February 2015, 38 of 50 states have provisions enabling or requiring state or local governments to adopt the IPMC.²² All 50 states have enabled state or local governments to adopt the International Building Code, and all but one state has enabled state or local governments to adopt the International Residential Code.²³

Sharing Building Inspectors

Most communities in West Virginia have very limited resources, either in the form of financial resources or personnel. For many communities, hiring personnel or a certified third-party contractor to enforce the building code is not feasible. However, if the community establishes an agreement with another community to share a building inspector, costs for each participating community are lowered. For instance, County "A" works with City "B" and City "C" through a mutual agreement in which the building inspector spends a certain percentage of time in each jurisdiction and is paid a proportional amount from each community. This scenario can also alleviate the concern that one community may not have the need for a full-time (40 hours per week) building inspector but would benefit from having an inspector available for 10-15 hours per week.

¹ W. VA. CODE ANN. § 29-3-5b(b) (West 2015).

² *Id.* (originally enacted as Fire Prevention and Control Act, ch. 114, art. 3) (stated that all building and housing codes in existence were void one year after enactment, in 1990); see *Swiger v. UGI/Amerigas, Inc.*, 216 W. Va. 756, 759 n.13, 613 S.E.2d 904, 907 n.13 (2005).

³ W. VA. CODE R. § 87-4-8 (2013).

Community Highlight

The City of Summersville, county seat of Nicholas County, has a population of over 3,500 residents. Summersville adopted the WVSBC in 2009 and added the IPMC in 2012. The City typically issues between 200 and 250 building permits per year.

The City has one full-time code official, Ashley Carr, who enforces all WVSBC provisions within the City limits. Some of Mr. Carr's daily duties include:

- **Reviewing permit applications for planning and building department approval**
- **Conducting plan reviews for building code compliance**
- **Issuing building permits and approved plans prior to construction**
- **Answering any questions citizens might have regarding the WVSBC**
- **Conducting all required inspections throughout the construction process**

Mr. Carr identified several benefits of adopting the WVSBC: having building, construction, and maintenance standards to reference; having a building code official to assist with questions pertaining to the code provisions; and having a certified code official to complete a plan review to prevent costly construction mistakes and job delays. Lastly, and most importantly, by adopting the WVSBC, a community can reduce risk of hazards and utilize proven standards and materials to ensure safety.

However, Mr. Carr is not acting alone with respect to the WVSBC in Summersville. As Mr. Carr explained, other city officials and the entire municipal staff work together towards promoting the future of Summersville, which includes the goal of property maintenance and safe building construction. For example, the Summersville Forward Committee, a volunteer group, has been working on a number of projects that aim to improve and revitalize Summersville's central downtown business district.

4 *Id.* § 87-4-1.1.

5 INT'L BLDG. CODE (2012) (with a few minor exceptions noted in Series 4).

6 INT'L PLUMBING CODE (2012).

7 INT'L MECH. CODE (2012).

8 INT'L FUEL GAS CODE (2012) (with a few noted exceptions).

9 INT'L ENERGY CONSERVATION CODE (2012) (effective 2013).

10 INT'L RESIDENTIAL CODE (2009) (with noted exceptions).

11 INT'L EXISTING BLDG. CODE (2012).

12 NAT'L ELEC. CODE (2011) (established by the National Fire Protection Association (NFPA)).

13 INT'L PROP. MAINT. CODE (2012).

14 *Id.* § 87-4-7.1.

15 W. VA. CODE ANN. § 29-3-5b(i) (West 2015).

16 *Id.* § 29-3-5b(a).

17 INT'L PROP. MAINT. CODE § 106.3.

18 W. VA. CODE ANN. § 29-3-5b (West).

19 *Guide 1: Set the Direction with a Community Assessment*, NAT'L NETWORK OF LIBRARIES OF MED., <https://nlnm.gov/outreach/community/planning.html> (last visited Jul. 23, 2015) (explaining that a windshield survey is when a person drives (or walks) around a community or area and records his or her observations).

20 INT'L PROP. MAINT. CODE § 107.2.

21 *Id.* § 106.3.

22 INTERNATIONAL CODE COUNCIL, INTERNATIONAL CODE—ADOPTION BY STATE (2015), available at <http://www.iccsafe.org/gr/Documents/stateadoptions.pdf>.

23 *Id.*



On-site Citations

On-site citations are tickets given to landowners for external sanitation and nuisance violations.

When a local government utilizes on-site citations, city official's may issue citations to a property owner "on-the-spot" for external sanitation and nuisance violations without the need to go to court, functioning similar to a traffic ticket. On-site citations are only issued for external property violations, such as accumulation of garbage, high weeds or grass, open storage, graffiti, and drainage issues. Local officials have cited compliance, rather than punishment or revenue, as the primary goal of on-site citation programs. For this reason, many communities give verbal or written warnings before issuing a citation.

Prerequisites

Approved Home Rule Status. Currently, an on-site citation program is only available to communities who have requested the authority through a home rule program. For a list of communities who have requested this authority, see Appendix G.

Ordinance. The community must have ordinances related to exterior sanitation and nuisance violations. The City of Charleston's ordinance is attached in Appendix E.

As Huntington Police Department Sgt. Darin Dempsey explains, "The goal of the program is to bring property owners into compliance, not issue fines." According to Dempsey, "Once a person sees that their neighbor is getting a citation, they know they have to take care of their own property or they're next. In time, I think there will be a noticeable difference in what this community looks like."¹

Advantages

- Improved rates of compliance
- Faster compliance
- Fair when proper notice is provided
- Reduced cost for the community, primarily due to reduced time in court for public employees

Disadvantages

- Must have an approved home rule program
- Concerns about abuse of discretion by enforcement officials (although the use of pictures and citing specific evidence in the notice of violation and citations reduces the likelihood of error)
- Confusion about the imposition of a fine without the right to trial first (although property owners have a right to appeal)

Description of Violation	Section(s) Violated	Amount Due
<input checked="" type="checkbox"/> Open Storage in Residential Districts <input type="checkbox"/> Surfacing	<input checked="" type="checkbox"/> (3-070-C-1), (3-070-C-2), (3-060-C-5) <input type="checkbox"/> (22-040-04)	\$100.00

Community Highlight: City of Charleston

In 2009, the City of Charleston began issuing on-site citations for sanitation, drainage, sidewalks in disrepair, high weed or grass, graffiti, exterior garbage accumulation, open storage in residential districts, and nonresident recreational vehicles.

Before issuing a citation, enforcement officials issue a warning called a Notice of Violation. If a person repeats the violation, a second warning is not required before a citation is issued. The program allows a landowner 5 days to address a violation after a citation is issued, although enforcement officials often allow additional time. Otherwise, the landowner is fined \$100 for the first citation, \$200 for the second citation, \$300 for the third citation, and \$500 for each additional citation. Fines are due within ten days of receipt of the citation.

Each Notice of Violation states, “If a citation is issued, failure to pay when due or failure to file an appeal with the Charleston Municipal Court within ten days of service of the citation shall constitute a failure to appear or otherwise respond and will result in notification to the Department of Motor Vehicles, which shall result in the suspension of your driver’s license. Additionally, if the City corrects the violation(s) as a result of your failure to do so, it may file a lien on your property for any costs incurred.”

Since the City of Charleston began using its citation program, the Planning and Building Departments have issued over 2,563 Notices of Violations. Over 87% of violations were corrected after a Notice of Violation was issued, avoiding the need for a citation.

In Charleston, on-site citations are used to enforce provisions of the City’s building code and zoning ordinance. For example, according to the City’s zoning ordinance, “parking of recreational vehicles in the front yard” by visitors is permitted for a maximum of 7 consecutive days.² Under the on-site citation program, a warning may be given on the 8th day a nonresident recreational vehicle remains parked in a front yard.

Many of Charleston’s on-site citations rely on the International Property Maintenance Code (IMPC) as well. For example, the City of Charleston has adopted Section 302.4 to require all premises and exterior property be maintained free from weeds or plant growth in excess of 10 inches.

The City of Charleston implemented its on-site citation program to address a lengthy enforcement process that was proving cumbersome and ineffective and was resulting in a high rate of repeat offenders. Traditionally, the enforcement process for external sanitation issues would take a minimum of 13 weeks. For non-compliant owners, code enforcement officials were required to go through a lengthy complaint-based process that involved service of process, a court date, appointing a public defender if requested (because Building Code violations can carry a jail term), and a trial. During this time, neighbors could be left dealing with an uncorrected violation for 13 weeks or more. In addition, the City may have had to expend resources because, for example, the City’s public works department had to cut the grass several times. Worse, some owners would frustrate the process by temporarily remedying problems. For example, in derelict car cases, some offenders would move the problem vehicle until after the case was dismissed, then return it to the property knowing that the court process clock would start over again. In the

“I am thrilled with the success we are having under home rule. The threat of a fine and revocation of a driver’s license has proven to motivate people to correct violations more often, and faster than the old process of going through municipal court.”

—Dan Vriendt, Commissioner, Charleston Planning Department

case of trash accumulation, offenders would clean up a space long enough for the violation to be dismissed and then start accumulating trash again.

The on-site citation program provides an alternative that allows enforcement officers to timely deal with exterior sanitation and nuisance violations and discourage recidivism.³

Funding

For communities that already have a code enforcement and legal department, the additional cost to implement an on-site citation program may be little, if any. These programs can actually save communities money and resources because they are expedited; avoid the court system in most cases; raise funds from fines; and, over the long run, increase tax revenue from improved property values. At the same time, these programs require a great deal of investment and expertise in requesting home rule authority, amending ordinances, and ensuring there is adequate notice and that procedures are followed. For communities without code enforcement departments, the cost of hiring a code official can be mitigated by sharing one with a neighboring community. For more information on sharing code officials, see Section on the Building Code.

Sec. 3-26 – Enforcement of external sanitation and common nuisance violations.

This section shall apply to the following exterior sanitation and common nuisance violations contained in the Building Code and Zoning Ordinance, incorporated by reference into Chapters 14 and 91, respectively, of the Municipal Code of the City of Charleston:

- a. Sanitation (IPMC 302.1 or any corresponding section to the extent amended);
- b. Drainage (IPMC 302.2 or any corresponding section to the extent amended);
- c. Sidewalks in disrepair (IPMC 302.3 or any corresponding section to the extent amended);
- d. High weeds/grass (IPMC 302.4 or any corresponding section to the extent amended) and (City Code section 50-124);
- e. Graffiti (IPMC 302.9 or any corresponding section to the extent amended);
- f. Exterior garbage accumulation (IPMC 307.1 or any corresponding section to the extent amended) and (City Code section 50-124);
- g. Open storage in residential districts (3-060-C-5, 3-070-C-1 and 3-070-C-2, or any corresponding section to the extent amended);
- h. Nonresident recreational vehicles (3-060-C-5 or any corresponding section to the extent amended).

¹ Bryan Chambers, *Nuisance Citations Piling up Quickly*, THE HERALD DISPATCH (Jul. 26, 2013, 12:00 AM), <http://www.herald-dispatch.com/x1495871393/No-Headline> (last visited Aug. 12, 2015).

² CHARLESTON, W. VA., ZONING ORDINANCE § 3-070(C) (2005), available at <http://www.cityofcharleston.org/sites/default/files/documents/Zoning%20Ordinance%20Amended%20to%203-2-15.pdf>.

³ The Charleston Case Study was adapted from materials developed by Paul Ellis and Susan Economou for their presentation of "On the Spot Citations, A Game Changer" at the West Virginia Continuing Legal Education event, WV Dilapidated Buildings and Abandoned Properties: From Liability to Viability, held May 14, 2015, at the WVU Medical Center in Charleston, West Virginia. Mr. Ellis and Ms. Economou are attorneys for the City of Charleston.



Vacant Property Registration

A vacant property registry is a program that municipalities in West Virginia can establish to require all owners of vacant buildings and properties to register their properties and pay an annual registration fee.

Vacant properties are defined in the West Virginia Code as “property on which no building is erected and no routine activity occurs.”¹ Vacant buildings are defined as “unoccupied, or unsecured and occupied by one or more unauthorized persons.”² A municipality can assess a registration fee for both vacant properties and vacant buildings.

A new building, while under construction, is not subject to a vacant property registration fee.³ In addition, a municipality should include a good-faith provision that exempts property owners who are actively trying to sell or renovate their property from paying an annual vacant property registration fee.

Prerequisites

Municipalities. These programs may only be implemented by municipalities, not counties.⁴

Advantages

- Incentivizes renovating properties/buildings to avoid paying annual registration fees
- Fees collected through a local vacant property registration program must be used to improve public safety and to monitor and administer the registration program⁵
- A registration program creates an up-to-date list of vacant buildings “for police and fire personnel, who most often contend with the dangerous situations manifested in vacant buildings”⁶

Disadvantages

- A municipality may need to go to court or file a lien to collect unpaid vacant property registration fees
- Requires time and resources to enforce a vacant property registration program

Funding

The West Virginia Code requires that fees received under a vacant property registration program, in part, be “used to monitor and administer” the program.⁷

The fee schedule for a registration program is set by a municipality’s governing body. Many communities have implemented a tiered fee schedule that determines fees based on how many years a property has been on the registry.

The City of Wheeling does not assess a registration fee for a property during its first year on the registry.⁷ If the property is on the registry for a second year, the fee is \$500. The third year, the fee increases to \$1,000. The annual registration fee increases each year until the fifth year, when the fee is \$4,000. After the fifth year, the fee is \$4,000, plus \$300 for each additional year.⁸

Usage in West Virginia

Since 2010, when all municipalities in West Virginia were permitted to create vacant property registration programs, the results have been mostly positive. Many communities are reporting that properties are either being sold or renovated by property owners to avoid paying annual registration fees.

Low-Income Exception

The West Virginia State Code states that “the governing body of a municipality, on a case-by-case basis, upon request by the property owner, shall exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determinate period of time.”¹⁰ This section of the West Virginia Code does not outline a specific exception for low-income property owners, however, a governing body may take financial status into consideration when deciding whether to exempt a property from the vacant property registry.

Notification Requirements & Special Procedures

The West Virginia Code outlines procedures for the administration and enforcement of a vacant property registration program and the collection of registration fees.¹¹ A municipality may require vacant property owners who live out-of-state to provide the name and address of a person who lives in-state to represent them in regards to the vacant property.¹²

A municipality must give notice to the property owner or authorized agent before a lien is filed for any unpaid or delinquent vacant property registration fees.¹³ Notice should be given by certified mail with return receipt. The property owner has at least 30 days from receipt of the notice before a lien may be filed to collect registration fees.¹⁴ Note that municipalities may provide for alternative means of service when service cannot be obtained by certified mail.¹⁵

“In crafting the City of Wheeling’s vacant structure ordinance, which requires registration and includes fees with lien and collection procedures, the governing body took such action after determining that uninspected and unmonitored vacant buildings may present fire hazards; provide temporary occupancy to transients, drug dealers, and traffickers; may detract from public and/or private efforts to rehabilitate or maintain surrounding buildings; and that the health, safety, and welfare of the public is served by regulation of such vacant structures. The program in Wheeling is a successful and useful tool for the City and citizens of the municipality.”

— Rosemary Humway-Warmuth, City Solicitor, City of Wheeling

When creating a vacant property registration program, municipalities must include in their ordinances the right to appeal to the circuit court of the county in which the property is located.¹⁶

Community Highlights

Summersville

The City of Summersville created a vacant property registration program in March 2014. The City initially registered 32 vacant structures.¹⁷ Property owners of 25 structures achieved compliance during their first year on the registry and did not pay any registration fees.¹⁸ However, the property owners of the 7 remaining structures were required to pay a vacant property registration fee after their first year on the registry.¹⁹

Wheeling

In 2009, Wheeling became the first city in West Virginia to create a vacant property registration program through the state's Municipal Home Rule Pilot Program.²⁰ Since its inception, Wheeling's vacant property registration program has been an effective means of addressing neglected properties and a source of revenue. By 2012, Wheeling had registered 155 properties, demolished 19 buildings, and generated \$15,800 in registration fees.²¹ Wheeling's success prompted the West Virginia Legislature to grant all municipalities in the state the authority to create similar programs.²²

1 W. VA. CODE ANN. § 8-12-16c(b)(3) (West 2015).

2 *Id.* § 8-12-16c(b)(2).

3 *Id.*

4 *Id.* § 8-12-16c(a).

5 *Id.* § 8-12-16c(h).

6 *Id.*

7 *Id.*

8 See, e.g., CITY OF WHEELING ECON. AND CMTY DEV. DEPT., VACANT BUILDING REGISTRATION FORM, available at [http://www.wheelingwv.gov/uploads/09-01-11_uv_VacantBuildingReg\(notary\).pdf](http://www.wheelingwv.gov/uploads/09-01-11_uv_VacantBuildingReg(notary).pdf).

9 *Id.*

10 W. VA. CODE ANN. § 8-12-16c(b)(2) (West).

11 *Id.* § 8-12-16c(c).

12 *Id.* § 8-12-16c(d).

13 *Id.* § 8-12-16c(e).

14 *Id.*

15 *Id.*

16 *Id.* § 8-12-16c(g).

17 Email from Ashley Carr, Code Enforcement Officer, City of Summersville, West Virginia, to Jared Anderson, Supporting Land Use Attorney, Land Use and Sustainable Development Law Clinic (June 17, 2015 10:23 AM) (on file with LUSD Law Clinic).

18 *Id.*

19 *Id.*

20 W. VA. LEGISLATIVE AUDITOR, PERFORMANCE EVALUATION AND RESEARCH DIV., SPECIAL REPORT: MUNICIPAL HOME RULE PILOT PROGRAM 14 (2012), available at http://www.legis.state.wv.us/joint/perd/perdrep/HomeRule_11_2012.pdf.

21 *Id.*

22 *Id.* at 15; W. VA. CODE ANN. § 8-12-16c (West 2015).



Uninhabitable Property Registration

An uninhabitable property registry is a program that municipalities in West Virginia can establish to require all owners of uninhabitable properties to register their properties and pay an annual registration fee.

A municipality's code enforcement officer determines whether a property is uninhabitable, in violation of the West Virginia State Building Code (WVSBC), and subject to an uninhabitable property registration program fee.

Although similar to a vacant property registry, an uninhabitable property registration program has different requirements and should be treated as distinct.

Prerequisites

Municipalities. These programs may only be implemented by municipalities, not counties.¹

Adopt the WVSBC. A municipality must adopt the WVSBC prior to creating an uninhabitable property registration program. A code enforcement officer, certified under the WVSBC, must determine whether a property violates the building code and is subject to the registration program.²

Establish an enforcement agency. A municipality must also have an enforcement agency in place, under West Virginia Code Section 8-12-16, in order to maintain an uninhabitable property registration program. The enforcement agency consists of the mayor, the municipal engineer or building inspector, and one member at large.³ The ranking health officer and fire chief serve as ex officio members of the enforcement agency.⁴

Advantages

- If an uninhabitable property registration fee remains unpaid for two years, a municipality may take action to receive the property by means of forfeiture
- Creates an incentive for owners of uninhabitable structures to fix their properties to avoid paying annual registration fees and losing property by forfeiture

Disadvantages

- If a structure is uninhabitable, it remains in violation of the WVSBC even if registration fees are paid
- Takes time and resources to enforce the registry

Funding

The fee schedule for an uninhabitable property registration program is set by the municipality's governing body.⁶ Some communities have implemented a tiered fee schedule with fee amounts determined by how many years a property has been on the registry.

The City of Buckhannon has established an uninhabitable property registration program. However, the City uses a different approach for determining registration fees. The City calculates a monthly fee of \$0.02 per square foot of the uninhabitable structure, using records maintained by the Upshur County Assessor's Office to determine square footage.⁷

The fees obtained through an uninhabitable property registration program can be used to help fund its enforcement and monitoring efforts.⁸

Usage in West Virginia

The West Virginia Code was amended in 2014 to clarify who is responsible for compliance with local uninhabitable registration programs by defining "owner" for registration fee purposes.

In 2014, the City of Ranson was selected to participate in the Municipal Home Rule Pilot Program. Under the home rule program, the City received the authority to shorten the time period to claim properties by forfeiture under West Virginia Code Section 8-12-16a. The City will reduce the time period to take property by forfeiture under the uninhabitable property registration program from 24 months to 10 months.⁸

"The City has been aggressively going after owners who have property that is uninhabitable. It is important to keep a file on each property including all complaints, violations, police reports, and any other report related to the structure. The more information you have on a nuisance property, the easier it is to prove there is a problem if you need to. The City's goal is to get the property owner to take responsibility for their property, including maintenance and upkeep."

- Joe Richmond, Building Inspector, City of Moundsville

Notification Requirements & Special Procedures

After code enforcement officers determine that a structure is uninhabitable and violates the WVSBC, they must post notice of the violation on the property and send a copy of the notice, by certified mail, to the owner(s) of the property at the last known address.⁹

Notice must include:

- An explanation of the violation(s);
- A description of the registration;
- The date the fee will be assessed;
- An explanation of how to be removed from the registration;
- An explanation of the appeals process; and
- A statement that if the fee is not paid, the property is subject to forfeiture.

The property owner has 45 days after receiving notice to either make the necessary repairs or provide written information to the code enforcement officer showing that repairs are forthcoming in a reasonable period of time.¹⁰ The property owner may appeal the officer's determination to the local enforcement agency within 90 days of receiving notification. The property owner may also appeal the enforcement agency's decision to the circuit court within 30 days of the enforcement agency's decision.¹¹

If an uninhabitable property registration fee remains unpaid for 24 months, the municipality may take action to receive the uninhabitable property by means of forfeiture. When a municipality takes a property by forfeiture, it becomes the owner of record and takes the property subject to all liens and applicable taxes.¹²

Community Highlight

In 2013, the City of Moundsville created an uninhabitable property registration program. The City has a general registration program that includes both vacant and uninhabitable properties. As of July 2015, there were approximately 90 properties on the vacant property registry, and of those, about 30 structures were also on the uninhabitable property registry. The City imposes a tiered fee schedule for the vacant property registry, based on how many years a property has been listed, and a \$100 annual fee for the uninhabitable property registry.¹³

Over the last four years, there have been 66 structures demolished, most which were on the vacant and uninhabitable property registration list.¹⁵ Property owners demolished all but five of them, using personal funds, after being placed on one of the registries.

In addition to paying fees, owners of vacant or uninhabitable properties in Moundsville must also keep their property mowed; cover any unstable doors and windows; and repair trim, gutters, and overhang extensions.¹⁶

1 W. VA. CODE ANN. § 8-12-16c(a) (West 2015).

2 *See id.* § 8-12-16a.

3 *Id.*

4 *Id.*

5 *Id.* § 8-12-16a(n).

6 *Id.* § 8-12-16a(a).

7 BUCKHANNON, W. VA., VACANT STRUCTURES ORDINANCE 367 art. 2, § 13 (2012), available at <http://bwv.pikewoodcreative.com/wordpress/wp-content/uploads/2015/02/Ord-367-Vacant-Structures.pdf>.

8 CITY OF RANSON, POWERS FOR PROGRESS: WEST VIRGINIA HOME RULE PILOT PROGRAM PHASE II APPLICATION 3 (2014), available at http://www.wvcommerce.org/App_Media/assets/doc/peopleandplaces/WW_Home_Rule/Ranson.pdf.

9 W. VA. CODE ANN. § 8-12-16a(c)(2) (West).

10 *Id.* § 8-12-16a(d).

11 *Id.* § 8-12-16a(j).

12 *Id.* § 8-12-16a(n).

13 MOUNDSVILLE, W. VA., ORDINANCE art. 1107 (2015).

14 *Id.* art. 1107.3(c)-(d).

15 Email from Joe Richmond, Building Inspector, City of Moundsville, West Virginia, to Jared Anderson, Supporting Land Use Attorney, Land Use and Sustainable Development Law Clinic (Jul. 2, 2015, [11:44am]) (on file with LUSD Law Clinic).

16 MOUNDSVILLE, W. VA., ORDINANCE art. 1107.09.

A man in a blue shirt is standing in front of a white door, posting several notices or documents on it. The door is slightly ajar, and there are some plants and a light fixture on the wall to the right. The background shows some greenery.

Liens for Demolition and Repair under the Building Code

Local governments can demolish or make necessary repairs to a neglected property, impose a lien on the property, and sue to recover the cost of the lien.

When municipalities and counties spend money to repair or demolish a building that violates the building code, a lien may be filed against the property for the costs incurred.¹ A lien is a legal claim to property, put in place to satisfy the owner's debt. The lienholder (i.e., the local government) may enforce the lien by requesting that the circuit court order the sale of the property to satisfy the lien.² In contrast to a large-scale, systemic approach, a lien is a way of attempting to force a property owner to pay for demolition, nuisance abatement, and repairs that were completed by a local government.

Prerequisites

Adopt the West Virginia State Building Code (WVSBC) or the International Property Maintenance Code (IPMC). See Section on the Building Code. See also Section on Ordinance to Regulate Unsafe Properties for information on demolition and repair liens for unsafe properties under West Virginia Code Sections 8-12-16 or 7-1-3ff.

Advantages

- Relatively simple
- Allows local governments to recover costs
- Problem properties are addressed rather than continuing to deteriorate
- Threat or imposition of lien may motivate property owner to be more compliant and pay debts rather than facing litigation
- The landowner cannot acquire financing on the property, and usually cannot sell the property, without satisfying the lien

Disadvantages

- Recovering costs is not guaranteed
- Recovering costs for demolition is particularly unlikely if the result is an empty lot with low value
- If the property owner cannot be located, moving through court is difficult
- Imposing and enforcing liens uses time and resources, adding to those already expended making repairs or demolishing a building

Funding

The process of imposing and enforcing liens requires time and resources. In particular, liens imposed under building codes use the time of code enforcement officials, and securing the services of a code enforcement official can sometimes be a funding challenge by itself. However, if local governments successfully enforce a lien, these costs can potentially be offset.

Community Highlight

John Reed, a former compliance officer for the Wood County Building Permit and Compliance Office, says, “Usually we’re successful in getting the property owner to do [demolitions and repairs] themselves before it gets to the point of imposing a lien.” However, Wood County needs to finance the cleanup of two or three properties per year; for those properties, the County imposes liens in order to recoup the cost of cleanup.³

Usage Throughout West Virginia:

Many local governments in West Virginia attempt to use liens to recover costs for demolitions or repairs to neglected properties, though many communities struggle with collecting on those liens. In Wheeling, for example, abandoned buildings and difficulties locating the property owner pose challenges to using liens effectively.⁴ Over the past few years, home rule communities have been given more flexibility in collecting on demolition and repair costs. For a Summary of Home Rule Applications, see Appendix G. For instance, the City of Parkersburg may now collect the value of demolition and repair liens at tax sale auction in addition to delinquent property taxes. Similarly, the City of Buckhannon may now assess remediation costs as a property tax lien instead of a general lien.

Special Procedures

For liens imposed under the WVSBC/IPMC:

- Sections 106.3 and 110.3 of the IPMC provide that code enforcement officials may take action to abate violations, and any action they take “shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.”⁵
- IPMC Section 107 provides for notice and service of notice to the person responsible, “includ[ing] a statement of the right to file a lien in accordance with Section 106.3.”⁶
- To be enforceable, all local government liens on real estate must be recorded in the clerk’s office in the county where the real estate is located.⁷
- Other rules passed by the local code enforcement agency may apply, but generally, liens are enforced in court and given priority according to the order in which they are filed.⁸
- Note: Liens often compete with each other during enforcement proceedings. The general rule on establishing the priority of liens is “[f]irst in time, first in right.” The practical result is that other liens might need to be satisfied before the local government’s liens.⁹
- Note: Both municipalities and counties can pursue civil actions for reimbursement of costs without imposing a lien under an unsafe properties ordinance.¹⁰

FAQs

Q: What is the difference between these types of liens and judgment liens?

A: A judgment lien is created when a creditor obtains a court judgment stating that an individual owes the creditor money. The creditor then obtains a writ of execution from the court to have the sheriff enforce the lien by seizing property. By contrast, a lien for demolitions or repairs is a “property lien,” which must be recorded and must be enforced through a court judgment ordering sale of the property. The end result of both processes is similar—the sheriff will ultimately seize the property in question for a property lien—however, there are different procedural requirements for each process.

Q: Is it worth the risk of making repairs or going forward with demolition if successfully enforcing the lien is uncertain?

A: Balancing the risk of a net financial loss in the process is a matter of strategy based on the needs and resources of individual communities, the nature of the property in question, and the circumstances of the property owner. If it seems unlikely that costs will be successfully reimbursed, it may not be worth going forward in certain cases. For instance, the property’s value after demolition may be worth less than the total amount of costs incurred to pursue demolition. However, if going forward with demolition and repairs is a priority in a certain community, and if the property can later be put back into productive use, it may be worth the risk.

1 W. VA. CODE ANN. §§ 7-1-3ff(h), 8-12-16(e)(1) (West 2015).

2 *Id.* § 8-12-16(e)(2).

3 Pamela Brust, *House to be Demolished*, NEWS AND SENTINEL (Jan. 13, 2015), available at <http://www.newsandsentinel.com/page/content.detail/id/602725/House-to-be-demolished.html?nav=5066>.

4 Ian Hicks, *Wheeling to Use Gas Royalties for Demolitions*, THE INTELLIGENCER/WHEELING NEWS-REGISTER (Jan. 14, 2015), available at <http://wvpress.org/news/wheeling-use-gas-royalties-demolitions/>.

5 INT’L PROP. MAINT. CODE § 106.3, 110.3 (2012).

6 *Id.* § 107.2.

7 W. VA. CODE ANN. § 38-10C-1 (West).

8 *City of Parkersburg v. Carpenter*, 203 W. Va. 242, 245, 507 S.E.2d 120, 123 (1998).

9 See *id.* at 122; see also W. VA. CODE ANN. § 38-10C-1 (West).

10 W. VA. CODE ANN. §§ 8-12-16(e)(2), 7-1-3ff(h) (West).



Public Pressure to Address Neglected Properties

Public pressure can be applied to draw attention to a specific neglected property as a way to encourage cleanup of the property.

After publicizing a property owner's name, address, or a property's address, some owners quickly fix the dilapidated nature of the property to avoid embarrassment. Publicizing a property owner's name or a property's address can be accomplished through online postings to social media (Facebook, Instagram, Twitter, and Snapchat); city or county web pages; ads in local newspapers; ads on community television and radio stations; large, brightly colored signs physically placed on the property; or a "Wall of Shame" bulletin board in a public place such as City Hall or the County Courthouse.

Use of social media has the potential to reach a great number of people quickly. As of 2011, 63% of West Virginians had access to some form of internet.¹ US Census data shows that 71% of persons with internet access use Facebook.²

No Prerequisites

Advantages

- No or little cost
- Installation is quick for physical signs
- Online postings are immediate
- Puts other property owners on notice that the local government will take action

Disadvantages

- Internet posts may require outside technical assistance for website creation, updating, and maintenance
- Placement of physical signs could lead to direct confrontations with property owners
- Signs can be vandalized or removed and are ineffective for buildings in low-traffic areas

“Wall of Shame”

The Wall of Shame is another tool used to publicize problem properties. These displays often include pictures of the properties the community has chosen to highlight along with the owner’s name, address, and phone number. Example titles include “Wall of Shame,” “Hall of Shame,” and “Problem Properties.” The “Wall” can look very similar whether it is a bulletin board, newsletter, newspaper ad, or online posting. Many communities also include information about the number of fines or types of violations.

Language from the City of Auburn, Washington’s Wall of Shame website:

“The City of Auburn takes the issue of abandoned properties very seriously. Below is a list of mortgage holder-owned abandoned properties. City code compliance staff work every day to address the impacts of these properties on other properties and neighborhoods, however, in many instances, the mortgage holders are out of state financial institutions who are slow to respond or have hired property preservation companies who are not consistent in their maintenance activities.

Citizens who have concerns about abandoned properties and want to help the City get action on them can access information below about the mortgage holders. Citizens are encouraged to write, phone or email the mortgage holders or property preservation contacts and request action be taken on one or more abandoned properties. These efforts may help convince the mortgage holders and property preservation companies to act more quickly and consistently.

Please note that the information provided is the most current and available to the City. From time to time, the City may update information and may add or delete properties. For more information on a specific property, to report an abandoned property in your neighborhood, or to learn more about the City’s code compliance efforts, please contact the City of Auburn Permit Center at 253-931-3020 or by email.”³

Usage in West Virginia

Regardless of size, any community can implement a public shaming program. No legal barriers exist to the implementation of a public shaming program.

Special Procedures

A community should establish rules or guidelines to determine which properties will be highlighted and how public shaming will be used. Guidelines should include factors for community leaders to consider such as:

- Does the property violate the building code?
- Is the owner delinquent in paying sewer or water bills?
- Has the property been declared a nuisance?
- Has the owner been warned of violations in the past?
- Is there a history of complaints from neighbors?
- Does the property present health or safety issues?
- Has the property been the site of criminal activity?
- Is the property a fire hazard?
- Is the property owner living on the property?
- Is the property a commercial property that an absentee landowner has chosen to allow to deteriorate for financial reasons?
- Is the owner having financial problems that prevent compliance with community standards?

A community could choose some or all of these factors, or even develop its own.

Funding

Costs will vary with the method that communities choose to use. Newspaper ads vary in cost depending on the size of the ad. Expect to pay extra for color. Although social media is free, websites require regular updating by someone who is familiar with social media. The cost of Notice of Violations signs is minimal. As mentioned below, Fayette County spends only \$8.50 per sign.

Community Highlight Fayette County

In Fayette County, the Building Department will place a Notice of Violation sign on problem properties. The Notice of Violation sign includes the property owner's name and the property's address, and states that the building is in violation of the Fayette County Dilapidated Building and Beautification Ordinance. The Building Department also sends a letter to the landowner. These measures are taken only after the building has been designated dilapidated by the County's Beautification Committee. Fayette County uses a local company to print its signs at a cost of \$8.50 per sign, which includes the cost of stakes.

The signs should be placed on a highly visible portion of the property where they are likely to be seen by the greatest number of people.



Fayette County, West Virginia, has used a Public Pressure approach successfully for several years.

“Most people don’t want others to know they own a run down, old building. Many property owners respond and make necessary changes once we place the sign on their property.”

—Angela Gerald, Abandoned Buildings Coordinator, Fayette County, West Virginia

¹ Paul Miller, *Broadband Access Lacking in West Virginia*, W. VA. CTR. ON BUDGET AND POLICY, <http://www.wvpolicy.org/downloads/Broadband102411.pdf> (last visited May 7, 2015).

² Thiago Guimaraes, *7 Statistics about Facebook Users Reveals Why It's Such a Powerful Marketing Platform*, BUS. INSIDER (Dec. 3, 2014, 3:15 PM), <http://www.businessinsider.com/a-primer-on-facebook-user-statistics-2104-9>.

³ *Wall of Shame – Mortgage Holders of Abandoned Properties*, CITY OF AUBURN, WASH., <http://www.auburnwa.gov/asp/abandons/>.

Highlight

Locating the Property Owner

Many of the tools discussed in this toolkit require communication with the owner of the property. Sometimes finding the owner is as easy as a knock on the door. Often, however, neglected properties have been abandoned, leaving no trace of ownership. Even when someone is living in a home or using a commercial space, the true owner may be difficult to track down.

Examples of Hard-to-Locate Property Owners:

1. A foreclosed property is owned by an out-of-state or out-of-country bank.
2. A property has been abandoned.
3. The owner passed away with no will, and heirs have not been identified.
4. The owner is in a nursing home, and the property has been placed with a caretaker who pays taxes but is otherwise uninvolved and unknown.
5. Ownership may be unclear. Multiple organizations and families may own the same piece of property.

“Finding the Owner” is a significant challenge when addressing neglected properties according to all nine communities formally interviewed for this toolkit.

Strategies to Find the Property Owner

Site Visit:

The first step when trying to locate an owner of a neglected property is a visit to the property. For instance, renters may have information on the whereabouts of their landlord, the property owner.

Certified Mail:

Weston, West Virginia, uses certified mail as a first step to locate property owners. For example, with the United States Postal Service (USPS), certain mail (including certified mail and priority mail) may be accompanied by “Ancillary Services,” which include an “Address Correction Service” and “Address Service Requested.”¹ With “Address Service Requests,” the sender may receive notice of the addressee’s new address if it is actively on file with USPS. The sender prints “Address Service Requested” on qualifying pieces of mail, then USPS will forward undeliverable-as-addressed mail to the new address and provide the sender notice of the new address.²

Asking Neighbors:

Ashley Carr, the Building Inspector for Summersville, West Virginia, often asks neighbors whether they know the owner of a certain property. “Better to use sugar than salt,” he says.

Internet Search:

An address search via the online Yellow Book or reverse White Pages may provide additional clues.

Public Records Search

Tax Records:

In some counties, online tax records can be searched by physical address to determine the name of the person paying property taxes.

In other counties, a visit to the County Assessor's Office is needed to obtain the same tax information. In the Map Room, the staff can help identify the map and parcel number for the property. With the map and parcel number, staff can provide a tax ticket. The tax ticket will identify the owner of the property, or the tax ticket may provide a deed book and page number that can be used to find the deed to the property.

Records available in the County Record Room:

Once the property owner's name or the deed book and page number have been identified, the County's Record Room can provide more information. For example, with only the deed book number and page, the deed can be located to determine who last sold the property to whom. With the owner's name, a search can be conducted using the Grantor Index to determine whether the owner granted or sold the relevant property and to whom. Searching the owner's name in a Deed of Trust Index might help determine if a bank holds a mortgage on the property. Knowing the bank's name is helpful if it is suspected that the property is a foreclosure and the bank needs to be contacted about its responsibility for maintaining the property, including mowing the property.

Note:

An informal search of public records may be useful in tracking down property owners to communicate with them about the property. However, an informal search is not a reliable way to confirm ownership of the property. To fully understand the ownership interests in the property, it may be necessary to hire an attorney who can conduct a certified title opinion. In Part 3, the "Title Opinion" tool provides more detail on searching title in a record room and the type of detail analyzed during a title opinion.

¹ *Quick Service Guide 507: Additional Services and Ancillary Service Endorsements*, U.S. POSTAL SERV., available at <http://pe.usps.com/text/qsg300/Q507.htm> (last visited July 15, 2015).

² *507 Mailer Services*, U.S. POSTAL SERV., available at http://pe.usps.com/text/dmm300/507.htm#xd_507_1_5 (last visited July 15, 2015).



Partnerships with financial institutions, such as banks and credit unions, can facilitate initiatives designed to return properties to productive use.

Lenders and local governments tend to have common interests because owners of neglected properties often default on their mortgages, causing lenders to lose interest revenue and local governments to lose tax revenue. Large national banks, regional banks, local community banks, and finance companies that operate nationwide can all be lienholders on neglected properties. Moreover, some of these institutions may have programs devoted to community revitalization that could form the basis for a partnership with local government or a nonprofit organization to promote adaptive reuse. In addition to financial institutions, local governments might establish productive partnerships with owners of property adjoining neglected properties, redevelopers, and redevelopment agencies.

Partnership goals could include:

- (1) forgivable or low-interest loans to individuals or developers with the capacity to rehabilitate neglected properties;
- (2) agreements to transfer neglected properties to new owners for free or at a low cost with the requirement that the new owners rehabilitate or redevelop neglected properties;
- (3) agreements by banks with mortgages on foreclosed properties to maintain or rehabilitate neglected properties; and
- (4) other joint efforts to facilitate funding options, incentivize property owners to make improvements, and return neglected properties to productive use.

No Prerequisites

“Thanks to our partners, and Wells Fargo, a fresh start has been given to a single mother and her daughter, fresh air has been blown into the bones of a home destined for abandonment and demolition, and energy has filled a cul-de-sac that has been forgotten.”

— June 15, 2015, post to the Facebook page of the Business Development Corporation of the Northern Panhandle

Advantages

- Relatively simple and inexpensive
- Realizing common goals between financial institutions and local governments can streamline processes, saving time and resources
- Can keep local government from holding the title to problem properties for long periods of time
- Lenders who agree to transfer properties to local governments may also be willing to include a stipend for maintenance costs
- Potential for collaboration, particularly with local institutions, may be easier in small communities where residents are familiar with one another
- Positive publicity for the institution may motivate participation
- A partnership between a local government and a financial institution addressing neglected properties may lead to other partnerships, such as financial literacy programs that may help alleviate poverty and contribute to higher rates of homeownership
- Financial institutions often have relationships with developers that can help identify potential collaborators for redeveloping particular properties

Disadvantages

- Communicating with large institutions and non-local lenders may be difficult
- Lending institutions themselves may be the neglectful owner or uninterested in cooperating
- Some problem properties are treated like “hot potatoes” because all potential owners are concerned about maintenance costs or issues like asbestos
- It may be more difficult to secure loans for properties in blighted areas

Funding

Forming formal partnerships with banks may have incidental costs, such as paying attorneys to negotiate and draft agreements. Over the long-term, returning neglected properties to productive use increases tax revenue for local governments.

Procedure

No standard procedures apply to forming partnerships with financial institutions, particularly because these institutions have varied structures, roles, and goals. However, as a first step, communities should consider calling the organization and asking to speak with a community development specialist. Any formal agreements should be put in writing.

Usage in West Virginia

Many communities and developers around West Virginia have partnered with or received funding from financial institutions to pursue redevelopment and revitalization projects. For instance, in 2011, FHLBank Pittsburgh, a congressionally created, privately owned wholesale bank—through its Affordable Housing Program—partnered with member banks throughout West Virginia (including PNC Bank, WesBanco Bank, United Bank, and Pendleton Community Bank) to fund rehabilitation projects in Charleston, Fairmont, Martinsburg, Wayne, Wheeling, and White Sulphur Springs.¹

Community Highlight

Wells Fargo, an “international banking and financial services company,” has played an active role in working with the Business Development Corporation of the Northern Panhandle (BDC) based in Weirton, West Virginia, to address problems with dilapidated housing stock. Wells Fargo “acquires some houses after they have been foreclosed and, through its Community Urban Stabilization Program, partners with faith-based and other nonprofit groups to eliminate blight and make housing available to people with low- to moderate-incomes.”² Wells Fargo has additionally deeded numerous foreclosed homes to the BDC’s housing initiative for repurposing.³

The BDC uses market studies to strategically determine which properties to rehabilitate and which to raze. For several properties, Wells Fargo has provided a stipend for maintenance. However, even stipends may not cover all of the costs for problem properties. With funds set aside from its diverse programs, the BDC is able to absorb the costs of problem properties that require expensive maintenance or sell them for less than the cost of renovation.

The BDC has also partnered with CHANGE, Inc., a “community action and health agency that serves northern West Virginia.”⁴ The BDC tends to renovate homes in transitional neighborhoods where potential homeowners often have low to moderate incomes. For one house the BDC renovated, CHANGE, Inc., screened applicants, provided credit counseling to prepare applicants for homeownership and credit approval, and provided down payment assistance. The partnership allowed the BDC to sell the home to a single mother working multiple jobs.

“The groups that are best equipped to handle these types of properties are the ones with layered partnerships,” says Pat Ford, the BDC’s Executive Director. “They’re not on the hook by themselves. They say it takes a community to raise a child—it takes a community to deal with a property lot. As long as you’ve got a wide variety of resources to tap into, you can do it.”

1 *Affordable Housing Program: 2011 Funding Round Recipients, West Virginia*, FHLBANK, http://www.fhlb-pgh.com/housing-and-community/programs/ahp_recipients_11.html#ww (last visited Jul. 21, 2015).

2 *The State Journal, BDC Helping Communities in Brooke and Hancock Counties Eradicate Blight*, CLAUDE WORTHINGTON BENEDUM FOUND. (May 7, 2015), <http://www.benedum.org/about/news.shtml>.

3 See, e.g., *Linda Harris, Leadership Weirton Class to Tour Abandoned WV Properties, See Benefits of Revitalization*, THE STATE JOURNAL (Jul. 9, 2015, 11:14 AM), <http://www.statejournal.com/story/29275486/leadership-weirton-class-to-tour-abandoned-properties-see-benefits-of-revitalization>.

4 CHANGE, INC., <http://www.changeinc.org> (last visited Jul. 21, 2015).



Negotiating with Stakeholders

Negotiation is the process of communicating back and forth to reach an agreement.

Municipal officials and others can negotiate, whether formally or informally, to come to agreements that address neglected properties, particularly before resorting to litigation. Negotiation is an “all-purpose strategy,” useful for simple and far-reaching agreements. Various people and entities can have different or shared interests, or “stakes,” in particular issues. In either case, effective negotiation strategies and creative plans can help parties look for mutual gains, or “win-win” agreements, wherever possible.¹

Before using the legal system, local governments can consider whether the right conversation, motivation, or use of a resource may take care of an issue. For instance, a property owner may want to get rid of his or her neglected property but not have time to look into it, while a developer may be interested in redeveloping the property; facilitating a simple conversation can get the ball rolling.

This approach could be as simple as directing a public works employee to mow a property’s grass and bill the landowner, to something as ambitious as negotiating a deal with a landlord to acquire a problem property and develop it into affordable housing. Unlike negotiations among business associates, local governments can leverage and use the law if necessary, and ultimately have the police power on their side.

No Prerequisites

Advantages

- Limits unnecessary use of resources
- Flexible, non-regulatory solution
- Can encourage or lead to repairs or demolitions
- Can help local governments recover costs
- Can put neglected properties back into productive use
- Can involve neighbors in a productive and positive way
- Can be speedier than using legal tools

Disadvantages

- Requires action on a case-by-case basis
- Can take time and energy with few guarantees and limited guidance
- Although negotiation can involve exerting some pressure and leveraging interests, poorly conducted negotiations could turn into harassment, discrimination, and illegal conduct, none of which are encouraged by this tool

Special Procedures

In more formal contexts, such as negotiating a settlement to pending or possible litigation, or working out a contract over a development deal, rules governing negotiations, settlements, and contracts will apply.² In informal contexts, negotiation generally involves: (1) bringing parties with an interest together, (2) communicating to identify shared and conflicting interests, and (3) inventing options for mutual gain.³

“Any method of negotiation may be fairly judged by three criteria: It should produce a wise agreement if agreement is possible. It should be efficient. And it should improve or at least not damage the relationship between the parties.”⁴

The City of Point Pleasant directs public works employees to mow properties with overgrown lawns when they are already in a particular area to do other work. The City then sends a bill to the property owners for the costs. Many property owners, especially those living out-of-town, are fine with this informal arrangement. All parties are glad the grass is maintained, and the City recovers the cost of abating the nuisance without having to use more formal procedures.

“[A]ll too often, negotiators end up like the proverbial sisters who quarreled over an orange. After they finally agreed to divide the orange in half, the first sister took her half, ate the fruit, and threw away the peel, while the other sister threw away the fruit and used the peel from her half in baking a cake. All too often, negotiators ‘leave money on the table’—they fail to reach agreement when they might have, or the agreement they do reach could have been better for each side. Too many negotiations end up with half an orange for each side instead of the whole fruit for one and the whole peel for the other.”⁶

“Bargaining is about focusing on who is right. It is competitive and win-lose. Negotiation is about focusing on what is right. It is cooperative and win-win.”⁷

Tips for Successful Negotiations:⁵

1. Identify interests, asking people, “why?” or “why not?”
 - Interests can be unpredictable and diverse.
 - Some examples include security, money, avoiding embarrassment, control over one’s life, family loyalty, and group welfare.
2. Avoid assumptions and premature judgments.
3. Refer to independent standards, such as a community tradition or ordinance. The use of common values or community norms can make agreements more successful by reducing perceptions of unfairness and making people less likely to back out.
- Examples of standards that can be referred to in negotiations include laws, moral values, neighborhood traditions, and costs to the city and taxpayers.
4. Consider emphasizing civic duties and the interconnectedness of problems to residents of small communities.
5. If a solution is not obvious, try brainstorming alone or together or advancing alternative options.
6. Offer solutions instead of making threats.

Community Highlight

Tom Whittier, City Attorney for the City of Spencer, which has a population of about 3,000, describes the creative approach that he and Mayor Terry Williams take to neglected properties, using legal proceedings as “the last resort.” After identifying problem properties and prioritizing them, the mayor contacts the owners himself and tries to work out a deal based on the particular problem. This ranges from simply encouraging the owner to make repairs to trying to convince the owner that the building poses substantial liability and title should be transferred to the City. “This has been,” Mr. Whittier says, “to date, our most successful method of taking care of these buildings. They get donated to the city for a small amount, then the city demolishes about ten buildings a year.”

But the City does not eat the costs; rather, the mayor tries to sell the acquired properties. “He talks to each of the neighbors and asks, ‘If they tear down this building, will you buy this lot?’ He acquaints himself with the neighboring houses and tries to work out deals, maybe selling half to one adjacent property owner and half to another, so the City can recoup a substantial amount of its demolition costs. Sometimes people need a spot for a garage or parking—we have narrow streets, and people like to buy space for parking, which we like because it gets cars off the street. The mayor uses what amounts to horse-trading, where the city acquires the property, demolishes the building, and sells the property to the neighbors for a substantial percentage of the demolition cost.”

“If you can find someone to deal with, there are a lot of tools you can use,” Mr. Whittier says. “You get involved in many aspects of different things and you try to minimize the conflict and work it out without having to use the legal system. When you use the legal system, it’s slower and more conflictual.” For instance, the mayor uses tools like partition, demolition liens,

and tax sales indirectly, as bargaining chips, before fully pursuing the actual legal proceedings. “One tool is just to wake the owners up so they will take some action,” Mr. Whittier explains. “The threat of partition is a more useful tool than the actual partition. It is a tool that you use to get people to solve their own problems,” he says. For demolition liens, for example, Spencer officials will use their ability to impose a lien to encourage neglectful owners to sell to someone with the capacity to make repairs, bringing all of the parties together and emphasizing the owner’s civic duty not to continue to burden the community.

Spencer also tries to negotiate to use resources efficiently, such as when it arranged to share a certified code official with the City of Parkersburg. “We didn’t have anyone who was willing to get certified in Spencer. Finally, we worked something out with Parkersburg to use their certified code official. What we use is an informal inspection by the city, then if all other tools fail, we call in the certified inspector from Parkersburg to begin legal proceedings.” Similarly, while properties with hazardous materials pose a challenge because there is no local HazMat company, the City of Spencer negotiates with an out-of-town company to inspect or address multiple properties at a time for a discounted rate.

“Small cities need to minimize their costs,” Mr. Whittier says. “The approach of our small city is that legal proceedings are the last resort. You try to use all the practical tools and the like before you resort to them. Then, when you start the legal proceedings, you try to use that as an impetus to get the resolution. We’ve been lucky. We’ve been successful in getting most cases resolved before we actually went through a full condemnation hearing. We’ve probably had two condemnation hearings in the course of taking down between 30 and 40 dilapidated buildings—we have an informal goal of doing 10 a year.”

1 ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* xviii (1991).

2 See, e.g., S.D. W. Va. L.R. Civ. P. 16.7(a) (“Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel and unrepresented parties shall meet no later than 21 days before the date of the final pretrial conference to conduct settlement negotiations.”); Fed. R. Civ. P. 16(a) (pretrial conferences may be held to facilitate settlement); *Stark Elec., Inc. v. Huntington Hous. Auth.*, 180 W. Va. 140, 142, 375 S.E.2d 772, 774 (1988) (discussing law of contract formation); *Snyder v. Hicks*, 170 W. Va. 281, 283, 294 S.E.2d 83, 85 (1982) (dismissal of cases for failure to prosecute may depend on whether plaintiff made efforts to settle).

3 See generally FISHER & URY, *supra* note 1.

4 *Id.* at 4.

5 See *id.*

6 *Id.* at 56.

7 Laura Smolier, *Stop Bargaining and Start Negotiating*, *Inc.com* (Mar. 13, 2013), <http://www.inc.com/laura-smoliar/the-difference-between-bargaining-and-negotiating.html>.



Injunctive Relief Through a Nuisance Code

In addition to issuing orders through a code official, a city may elect to have a hearing before the city council or county commission, declare a condition a public nuisance, and proceed to circuit court for injunctive relief.

While the building code provides clear standards and remedies to address violations, some communities have found this method of addressing problem properties to be costly and time-consuming. For example, after a code violation is issued under the International Property Maintenance Code (IPMC), a landowner may appeal to the IPMC Board of Appeals. The landowner may also file a second or third appeal by petition in circuit court, which can take up to a year, and then to the West Virginia Supreme Court of Appeals, costing the local government tens of thousands of dollars and several years of time. For this reason, many communities also enact nuisance ordinances so they may seek injunctive relief from a court of law.

A typical nuisance ordinance reads:

“No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the City, or within the police jurisdiction of the City.” - Section 1101.01, City of Charles Town.

Ordinances also define what constitutes a public nuisance, often by referencing to health and safety codes as well as the building code. Municipalities may regulate nuisances under the following West Virginia Code provisions:

Section 8-12-5(23) allows municipalities “[t]o provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance.”

Section 8-12-5(13) allows municipalities “[t]o prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome.”

An injunction is a court order that requires a person to do something or to stop doing something. For example, the court may order a building owner to demolish a building or may order the owner to repair and restore the building. Under Section 53-5-4 of the West Virginia Code, every judge has general jurisdiction in awarding injunctions, meaning judges can award injunctions in any kind of case.

Prerequisites

Nuisance ordinance. Municipalities must adopt a local nuisance code.

Advantages

- Allows the local government to proceed directly to circuit court for injunctive relief, after providing notice to appropriate parties
- May expedite the process of addressing a problem property, saving time and resources
- The court may order the property owner to pay the local government's legal costs, including attorney's fees

Disadvantages

- Subject to appeal
- Requires savvy legal counsel with an understanding of litigation and nuisance law

Use of the IPMC with a Nuisance Ordinance Proceeding

“Whether violations enumerated under the IPMC are pursued directly under the procedures contained therein, or alternatively referred to as proof of unlawful conditions under a nuisance ordinance proceeding, the IPMC provides a tried and true, well-established code that is accepted statewide under the State Fire Code.”

—Braun Hamstead

Community Highlight – Morgantown

Article 1149 of the Morgantown City Code authorizes Morgantown City Council to abate anything that in the opinion of a majority of Council constitutes a public nuisance, after due notice to all parties.

On May 18, 2012, after receiving numerous complaints from neighboring property owners about a smell coming from the house, City building code officials condemned the house on the basis that it was unfit for human occupancy. An on-site inspection revealed the remains of multiple dead animals and large amounts of animal waste. The owners had been cited multiple times and had consistently failed to correct sanitation issues. Eventually, the owners requested a hearing with the Morgantown ICC Building Code Board of Appeals. The Appeals Board ordered the owners to comply with the code enforcement office's orders, but the owners again failed to do so. As a result, city building code officials arranged for an environmental indoor air quality specialist to inspect the house and outline any steps needed to eliminate health hazards.

A report detailing the health hazards was submitted to the City in March 2014. This report led the Morgantown City Manager to request that the City Council hold a hearing to determine whether the house constituted a public nuisance. City Council proceeded to hold the hearing after giving notice to the owners and placing a Class II Legal Advertisement in the local newspaper to give notice to all persons with an ownership interest in the property.

In May 2014, City Council ordered all persons with an ownership interest in the property to submit an agreement to remediate the structure and to hire qualified individuals to perform the necessary work. When the homeowners failed to comply with the order to abate the nuisance, the City Manager sought judicial relief from the Circuit Court of Monongalia County. The court granted an injunction and authorized the City to take whatever action it deemed necessary to remove the health hazard, including demolition of the structure. The court appointed a Special Commissioner with the authority to sell the property and distribute proceeds if the owners could not reimburse the City in full.



Liens for Debris Removal after Fire

In West Virginia, when a property owner files an insurance claim for real property loss due to fire, a statutory lien is created in favor of the local government to ensure insurance proceeds are used for cleanup.

Local governments have often been tasked with cleaning up burned and abandoned structures. To help local governments recoup the cost of these cleanups, when an insurance company receives a claim under a fire insurance policy for a loss to real property (such as land and buildings) due to fire, a lien on the insurance proceeds is automatically created in favor of the municipality or county where the property is located.¹ The insurer must withhold payment of a portion of proceeds until it receives certification that the building has been repaired or cleaned up.² If the owner satisfactorily cleans up or repairs the property within a reasonable time, the lien is released.³ If, on the other hand, a municipality or county has incurred these costs and the insurance company receives notice to that effect within six months, the local government will be reimbursed from the withheld proceeds.⁴

Liens for fire cleanup are the greater amount between \$5,000 or 10% of the policy limit for the real property loss, including any coverage for debris removal, although the lien amount may not exceed a policy's limit on coverage for real property and debris removal.⁵ For policies issued by farmers' mutual fire insurance companies, liens are limited to 10% of policy limits for loss to real property.⁶ The liens do not apply to the loss of items such as personal possessions or payments for temporary housing and living expenses.⁷

No Prerequisites

Advantages

- Discourages deliberate arson or neglect
- Discourages abandonment after fire by property owners, particularly for non-owner-occupied properties where those incentives are higher
- Can expedite returning properties to productive use
- Helps local governments cover costs of fire-related debris removal and demolition
- Helps mitigate fire-related hazards created by neglected properties

Disadvantages

- Limited applicability
- New provision of the West Virginia Code is largely untested and possibly unknown to insurance companies, county clerks, and others

Special Procedures

The Insurer’s Letter. Within 10 days of the insurer’s determination that a covered claim constitutes a total loss,⁸ the company must send certified letters to the insured and either to the municipal treasurer or the county sheriff, as applicable.

The letter should state:

- (1) any amount claimed;
- (2) the limits and conditions of coverage;
- (3) the location of the property;
- (4) the terms and limits of coverage designated by the insurance policy for securing, cleanup, and removal, if any;
- (5) any time limitations imposed on the insured for securing, cleanup, and removal; and
- (6) the policyholder’s name and mailing address.⁹

Recording and Perfecting the Lien. Within 30 days of receiving the insurer’s letter, a local government must perfect (i.e., make official) its lien by filing notarized notice with the clerk of the county commission of the county where the property is located. The notice should state and establish a lien for the estimated cost of cleanup, debris removal, and securing the structure, subject to the limitations discussed above. Section 38-10E-1(c)(3) of the West Virginia Code provides the format for the notice. The county clerk must index the lien in a book in his or her office called “Debris Removal Liens” as a lien against the insurance proceeds, and must send a copy of the notice to the insurer.¹⁰

Releasing the Lien. When the property has been adequately cleaned up, the lien is considered satisfied. The municipal treasurer or the county sheriff must then sign a release and record it with the clerk of the county commission in the “Debris Removal Liens” book, and immediately send a certified copy to the insurance company.¹¹



Funding

No additional funding should be necessary to use this tool.

Dave Bias, Fire Marshal for the City of Huntington, noted in Huntington’s first Home Rule application, “It’s to the insurance industry’s advantage to participate in a program like this. To an extent, it takes the arson-for-profit motive out of the picture when the property owner knows they will have to take care of their property after they burn it down.”¹²

Community Highlight

In October 2008, the City of Huntington passed an ordinance requiring insurance companies to hold a portion of proceeds from fire insurance claims, to be allocated to the City’s Finance Director. If an owner paid to rebuild or tear down a fire-damaged property within a certain amount of time, the money held for the City was returned to the owner. If an owner walked away from a fire-damaged property, the allocated money was used to pay for demolition.

As Huntington explains in its Home Rule Plan, revised in 2013:

Members of the City of Huntington’s Home Rule team had several meetings with representatives of the Insurance Commissioner’s office and the West Virginia Insurance Federation while working on the details of the ordinance. The Insurance Federation took issue with the City of Huntington enacting an ordinance that set out different guidelines than those used in other parts of the state. As a potential compromise, the City agreed to work with State legislators on a solution that would be consistent across the state and delayed the effective date of the article until July 1, 2009.

On July 1, 2009, the Insurance Federation filed a lawsuit against the city of Huntington in Cabell Circuit Court. The lawsuit was prompted by the enactment of the ordinance. The West Virginia Insurance Federation contended in the lawsuit that the Home Rule Pilot Program giving Huntington and three other cities home rule powers is unconstitutional and should be terminated.

The City of Huntington worked closely with [former] Governor Joe Manchin and [West Virginia] legislators on a bill that would allow counties and municipalities to place a statutory lien on a portion of fire insurance proceeds when there is a total loss. Governor Manchin proposed the bill during the West Virginia Legislature’s regular session in January [2010] and touted its potential while touring several dilapidated structures in Huntington in March.

On June 16, 2010, Governor Manchin signed the Fire Insurance Proceeds Bill into law. The bill was a compromise between Huntington and the Insurance Federation.¹³

“We haven’t made money on this tool, but that’s actually a good thing. It means that people are taking care of their properties themselves. The buildings are getting demolished, and we do receive some revenue from people having to come in and get a permit to do the demolition. One of our inspectors goes out and checks to make sure the work is done, and we haven’t had any problems with non-performance. There was a problem in this context before and this tool seems to have taken care of it, with minimal effort on our part. When you can get the bank and the insurance companies involved, property owners react, including owners who live out of state. This tool seems to be working across the board, and doesn’t seem to be a respecter of persons.”

— Ericka Hernandez Hostetter, Assistant City Attorney, Huntington

The Insurance Journal reported in 2010 that “Gov. Joseph Manchin, insurers and the West Virginia Municipal League, as well as the city of Huntington, are now embracing legislation that will allow any city or county to obtain a lien on insurance proceeds for a total fire loss if the municipality has reason to believe the owner will abandon the property and not take care of cleaning up after the fire.

‘Unfortunately, after a damaging fire, some property owners take their fire insurance money and run, leaving the city with a dangerous, abandoned building they cannot afford to demolish. We are joining our cities and the Insurance Federation on a bill that gives more flexibility to clean up buildings damaged beyond repair by fire, by allowing the cities to place a lien on fire insurance policies,’ said Manchin.”¹⁴

Huntington’s original Home Rule Plan cited the statistic that injuries to firefighters are around five times higher in vacant structures than in occupied ones.¹⁵

From 2003 to 2008, Huntington averaged over 300 structure fires within the city limits annually:

- 77% occurred in non-owner-occupied buildings.
- 30% of those occurring in non-owner-occupied buildings resulted in total loss and abandonment.
- Properties abandoned after structure fires were estimated to have a high correlation with delinquency on property taxes, refuse fees, and municipal fees.
- Values for properties next to burned structures were estimated to drop by at least 10%.¹⁶

1 W. VA. CODE ANN. § 38-10E-1 (West 2015).

2 *Id.* §§ 38-10E-1(a), 38-10E-2(a).

3 *Id.*

4 *Id.* § 33-17-9b.

5 *Id.* §§ 38-10E-1(a), 38-10E-2(a).

6 *Id.*

7 *Id.*

8 “All insurers providing fire insurance on real property . . . shall be liable, in case of total loss by fire or otherwise, as stated in the policy, for the whole amount of insurance stated in the policy, upon such real property,” unless insurance has been procured from two or more insurers covering the same interest in the real property. *Id.* § 33-17-9. The test for whether a loss counts as a “total loss” is “whether a reasonably prudent owner, uninsured, desiring such a structure as the one in question was before the injury, would, in proceeding to restore the building to its original condition, utilize as the basis for such restoration the remnant of the structure standing. If such remnant is reasonably adapted for use as such basis, there is no total loss.” *Nicholas v. Granite State Fire Ins. Co.*, 125 W. Va. 349, 352–53, 24 S.E.2d 280, 283 (1943). This essentially means that if a burned structure can no longer be restored to its original form, the insured owner is entitled to payment for the whole insurance coverage available. For a partial loss, the insured receives coverage “for the total amount of the partial loss, not to exceed the whole amount of insurance upon the real property as stated in the policy.” W. VA. CODE ANN. § 33-17-9 (West).

9 W. VA. CODE ANN. § 38-10E-1(b) (West).

10 *Id.* § 38-10E-1(c)(1)–(3), (d).

11 *Id.* § 38-10E-2(b).

12 CITY OF HUNTINGTON, WEST VIRGINIA MUNICIPAL HOME RULE PILOT PROGRAM APPLICATION 10 (2007), available at http://www.wvcommerce.org/App_Media/assets/doc/peopleandplaces/WW_Home_Rule/2007_ORIGINAL_HomeRuleapplicationHUNTINGTON.pdf.

13 CITY OF HUNTINGTON, HOME RULE PILOT PROGRAM: REVISED APRIL 2013 6 (2013), available at http://www.cityofhuntington.com/assets/pdf/document-center/Home_Rule_Plan.pdf.

14 Andrew G. Simpson, *West Virginia Eyes Lien on Fire Insurance to Fight Abandoned Buildings*, INS. JOURNAL (Jan. 10, 2010), <http://www.insurancejournal.com/news/southeast/2010/01/21/106747.htm> (last visited Aug. 12, 2015).

15 CITY OF HUNTINGTON APPLICATION, *supra* note 12.

16 *Id.* at 11.

Part 3

Additional Tools

When the fundamental tools prove inadequate, a local government may need additional tools. For example, local governments may need to acquire a property in order to redevelop or raze it. These tools are more expensive and are reserved for long-term problem properties where no other solutions have proven effective. These drastic measures include the use of eminent domain, tax sale, and the partition suit.



Title Opinion

A title opinion is a lawyer’s opinion on the ownership interests for a given piece of real property.

A formal search and opinion by an attorney is often unnecessary when addressing neglected properties. Code enforcement staff and other government personnel will typically rely on the techniques described in the Section on Locating the Property Owner to identify the owner of a property. However, sometimes a deeper understanding of ownership interests may be required. For example, prior to spending public dollars on a demolition project, a community may conduct a title opinion to avoid getting dragged into court for failing to provide notice to the correct property owners. Generally, any time a community anticipates litigation with a landowner, a title opinion may prevent attorney’s fees later in the process, specifically if the community plans to institute a suit to quiet title, to partition, or for eminent domain.

The “Bundle of Sticks”

Ownership interests are often described as a “bundle of sticks” or a “bundle of rights.” Each stick represents an interest that a person or organization may own for the same piece of property:

- Occupy the land
- Sell the land
- Drill for oil or mine coal on the land through a lease
- Subdivide the land
- Use the land for collateral on a loan
- Collect mortgage payments
- Force the sale of the land to collect fees for a tax lien or other judgment lien (such as a mechanic’s lien or child custody judgment)

“The City of Wheeling conducts full title opinions when we anticipate litigation with property owners.”

— Rosemary Humway-Warmuth,
City Solicitor for the City of Wheeling, West Virginia

No Prerequisites

Advantages

- Provides a full understanding of ownership interests, including whether a bank holds a mortgage on the property and whether the property has been leased for coal, oil, or gas extraction
- Describes whether the current owner has good and marketable title—even if someone’s name is on the deed to the property, another person or organization may have ownership interests that prohibit the complete transfer of the property to a new owner

Title - the legal evidence of a person’s ownership rights in the property.

Good and Marketable Title - The title is good if it is free from any encumbrances, such as mortgages, liens, and severed mineral interests. The title is marketable if it can be transferred to a new owner without the likelihood of litigation.

Encumbrance – a claim against the property that could cloud the title. For example, a mortgage. For more information on clouds of title see Appendix I.

A title opinion can also show whether, and to what extent, the ownership interests are fractured. For example, in the City of Charles Town, a person claiming an ownership interest had a 1/420th interest in the property.

Funding

The cost of hiring an attorney to conduct a title examination and draft a title opinion varies widely. Additionally, estimating the cost of a title opinion can be difficult because searching the records contained in the county clerk’s office can be unpredictable. Often, an attorney will encounter factors and variables during a record search that they cannot foresee or control. However, if a new owner is purchasing a property, the cost of the title opinion may be shifted away from the local government to the purchaser.

Disadvantages

- Requires a significant amount of time
- Can be costly
- The way records are catalogued or recorded can create questions of reliability¹
- Attorneys commonly limit their searches to the most recent 40 to 60 years, creating a risk that unexamined documents could adversely affect the title

Usage in West Virginia

While seldom used, the title opinion may be useful when an informal search fails or when additional information is needed to prepare for pending litigation.

Community Highlight

The City of Spencer, West Virginia, does not typically utilize title opinions when dealing with dilapidated and abandoned buildings, according to Tom Whittier, the City’s attorney. Mr. Whittier explained that one reason the City does not request title opinions is that they are costly. However, given that Spencer is a small community, it is fairly easy for the City to determine and locate the owners of a property through informal searches, which may be difficult for larger communities. Generally in Spencer, one of the city employees will look at the tax tickets to try to identify the owner before anyone conducts a full title search. For more information, see Appendix I, The Title Opinion: An Overview.

¹ ROGER A. CUNNINGHAM ET AL., THE LAW OF PROPERTY: HORNBOOK SERIES STUDENT EDITION 824 (2d ed. 1993).



Eminent Domain

Eminent domain is the power of government entities to take private property for public use with just compensation.¹

Traditionally “public use” meant government projects such as building a school, flood control, or widening a road. Since the 1950s, eminent domain has also been used to address neglected properties in slum areas.² In general, eminent domain is a rarely used tool of last resort for local governments and Urban Renewal Authorities to address neglected properties. Before invoking the power of eminent domain, a local government typically will have attempted to work with a landowner, issued warnings and notices of violation, placed liens on the property, and attempted to negotiate a voluntary purchase. Alternatively, eminent domain may be necessary to implement a community’s approved and ongoing redevelopment plan. For more information on redevelopment plans, see Section on Urban Renewal Authorities.

The power of eminent domain is exercised through the process of condemnation.³ Note that eminent domain condemnation proceedings are different than a property being “condemned” by a code enforcement officer under the building code.

“Private property shall not be taken or damaged for public use, without just compensation” and “when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.”

— West Virginia Constitution Article III, Section 9

Prerequisites

There are three requirements for eminent domain:

(1) **Authority.** It must be exercised by a governmental entity or an entity given eminent domain authority under the law.

In addition to the federal government and state and local governments in West Virginia, Urban Renewal Authorities, and even some private entities, such as utility companies and railroads, may exercise eminent domain.⁴ However, the power is more limited for private entities and Urban Renewal Authorities.

(2) **Public Use.** The property must be put to public use.

West Virginia law sets out the public uses for which private property may be taken or damaged.⁵ These uses include but are not limited to:

1. Development of railroads, bridges, roads, and other works of internal improvement;
2. Construction of telecommunication and power lines and stations;
3. Development of energy, water, and sewer infrastructure, and specifically, infrastructure for the transport and use of coal, oil, and gas;⁶ and
4. Construction of public buildings and outdoor spaces, such as parks and cemeteries.

(3) Just compensation must be paid to the property owner, calculated as the difference between the fair market value of the property before the condemnation and the fair market value of the property after the condemnation.⁷

State constitutional amendments in 2006 clarified that West Virginia's cities, towns, counties, and state agencies may not exercise eminent domain for the primary purpose of "private economic development." Private means an activity that would result in ownership or control of the property by a private entity other than the entity exercising eminent domain. Note that the amendments contain a blight exception, leaving Urban Renewal Authorities the authority to take property through the power of eminent domain within an area designated as slum or blighted.

Funding

Governmental entities must fund eminent domain proceedings. However, if property owners wish to challenge condemnation, they usually must pay their own costs and attorney's fees.

Advantages

- Clears title to property
- Disposes of any liens on the property
- Consolidates ownership
- Can facilitate redevelopment by collecting several parcels under one owner
- Can be effective where all other strategies have failed

Usage in West Virginia

Several communities use eminent domain to address neglected properties. Most communities, however, hesitate or choose not to use the tool due to its unpopularity and possible political consequences.

Special Procedures

In West Virginia, a local government or condemning authority must attempt to enter into negotiations and make an offer in good faith to purchase a property before initiating a condemnation proceeding and exercising eminent domain.⁸

The condemnation proceeding begins with an application made by petition to the circuit court.⁹ The petition must describe with reasonable certainty the property proposed to be taken and the interests of the parties.¹⁰

After the circuit court judge determines that proper notice was given and that the applicant has a lawful right to take property for the purposes stated in the petition, five disinterested landowners are appointed to determine the amount of just compensation and any damages.¹¹ Usually, "just compensation" is the only issue to be determined. However, increasingly landowners dispute whether a "public use" exists. For an extensive list of procedures required during condemnation proceedings, see Chapter 54, Article 2, Sections 1 to 21 of the West Virginia Code.

Disadvantages

- Expensive
- Unpopular
- Often not politically feasible to implement
- Condemnation can be a complicated process due to complex rules that differ across different entities, such as development authorities and urban renewal authorities

Community Highlight

In the 1990s, the Charleston Urban Renewal Authority (CURA) acquired a privately owned commercial parking lot by eminent domain.¹² The owner sued CURA, claiming that CURA improperly exercised its power of eminent domain by not stating a legitimate intended public use in its application. The court held that CURA did state a legitimate and adequately specific public use because the property was within an area designated slum or blighted and acquiring the property was necessary to accomplish the purposes of a duly approved redevelopment plan. See Section on Urban Renewal Authorities.



1 Dep't of Natural Res. v. Cooper, 152 W.Va. 309, 312–13, 162 S.E.2d 281, 283–84 (1968). W. VA. CONST. art. III, § 9.

2 See Berman v. Parker, 348 U.S. 26 (1954). See generally Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1 (2003) (tracing the history and rhetoric of urban renewal movement from early 1800s to the present).

3 W. VA. CODE ANN. §§ 54-1-1 to -2a (West 2015).

4 *Id.* §§ 54-1-1 to -2.

5 *Id.* § 54-1-2(a).

6 *Id.*

7 Tennessee Gas Transmission Co. v. Fox, 134 W.Va. 106, 115–16, 58 S.E.2d 584, 590–91 (1950).

8 W. VA. CODE ANN. § 54-1-2a (West).

9 *Id.* § 54-2-1.

10 *Id.* § 54-2-2.

11 *Id.* § 54-2-5.

12 Charleston Urban Renewal Auth. v. Courtland Co., 203 W.Va. 528, 509 S.E.2d 569 (1998).



Ordinances to Regulate Unsafe Properties

Counties may enact an ordinance that regulates unsafe and unsanitary structures, and municipalities may enact an ordinance that regulates the repair, closing, or demolition of dwellings or buildings unfit for human habitation.

In addition to utilizing the West Virginia State Building Code (WVSBC), municipalities¹ and counties² may enact local ordinances to regulate unsafe properties. The West Virginia Code enables local governments to regulate unsafe structures as follows:

Section 7-1-3ff allows counties to regulate unsafe and unsanitary structures.

Section 8-12-16 allows municipalities to regulate the repair, closing, or demolition of dwellings or buildings unfit for human habitation.

When adopting such an ordinance, local governments must designate an enforcement agency. County enforcement agencies must consist of the county engineer; county health official (or designee); fire chief; county litter control officer; two at-large members selected by the county commission; and the sheriff, who shall serve as an ex officio member.³ Municipal enforcement agencies must consist of the Mayor, the municipal engineer or building inspector, and one at-large member.⁴ The county health officer and fire chief must serve as ex officio members on a municipal enforcement agency.⁵

Neither of the unsafe property code sections provide specific standards for how communities are to regulate unsafe buildings. Instead, both sections state, “Any ordinance adopted . . . must provide . . . standards deemed necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, and in conducting hearings.”⁶

Note that “buildings utilized for farm purposes on land actually being used for farming” are exempt from being regulated by county unsafe property ordinances, but not from being regulated by municipal unsafe property ordinances or the WVSBC.⁷

No Prerequisites

All municipalities and counties in West Virginia have the authority to create ordinances regulating unsafe properties

Advantages

- Local governments can address structures in poor condition and not fit for human habitation
- Not necessary for local government to hire additional personnel
- Allows communities to adopt unique standards to regulate buildings

Disadvantages

- Unlike the WVSBC, unsafe property ordinances do not require following industry standards, which include the utilization of commonly accepted construction practices, standards, and materials
- Required enforcement agency may not have the technical expertise to determine whether a particular building is structurally sound or fit for human habitation
- Does not require certification or training to enforce its provisions, unlike the WVSBC
- Communities' unique standards can be inconsistent and create confusion for developers
- If standards are similar to the WVSBC, which is the only building code allowed in West Virginia, the ordinance risks being invalidated
- Lack of clear standards increases the likelihood of litigation based on the standards being arbitrary

Funding

Similar to communities that have adopted the building code, communities with ordinances under Sections 8-12-16 or 7-1-3ff may place liens to recoup the cost of fixing unsafe properties.⁸ See chart on liens below detailing this process.

Municipalities and counties may also institute a civil action for their expenses, including attorney's fees and court costs.⁹ In addition, county commissions are authorized "to receive and accept grants, subsidies, donations and services in kind consistent with the objectives of [West Virginia Code Section 7-1-3ff]."¹⁰

Usage in West Virginia

Several communities around the state have adopted unsafe property ordinances. However, confusion remains as to the difference between these ordinances and the WVSBC. It is important for local governments to understand that unsafe property ordinances and the WVSBC are two separate provisions with different requirements.

The WVSBC outlines what building materials to use, how structures should be built, instructions on how to identify building code violations, how to remedy violations, and a process for notice of violations. The WVSBC provides additional framework for a community, as well as providing some certainty for the local government, property owner, and developer. The WVSBC also requires that any local code enforcement officer enforcing the state building code be certified and attend annual continuing education classes.¹¹ By comparison, ordinances to regulate unsafe properties do not require any certification or training of those enforcing the ordinances, do not explain what specifically constitutes a violation, and lack many standards and processes that are found in the WVSBC.

For more detailed information on the WVSBC, see Section on the Building Code.

Notification Requirements & Special Procedures

Equitable rules of procedure must guide the enforcement agencies in the investigation of dwellings and in conducting hearings.¹² Prior to enacting or enforcing an ordinance, local governments should review Sections 7-1-3ff and 8-12-16 in detail for necessary procedural steps.

Municipalities

Under a municipal unsafe property ordinance, either the enforcement agency or the State Fire Marshal may order a property owner to pay the costs of repairing or demolishing a structure.¹³ See chart on lien process and Section on Demolition Liens.

In order to institute a civil action, a municipality must first provide notice to the owner at least ten days prior by certified mail of its intention to file suit.¹⁴ If the property owner does not receive the notice by certified mail, the municipality must then place a legal advertisement in a generally circulating newspaper and post notice on the property.¹⁵

A property owner is entitled to (1) an appeal to the circuit court for a temporary injunction to restrain the municipal enforcement agency¹⁶ and (2) a hearing within 20 days of an enforcement agency order.¹⁷

Counties

Under a county unsafe property ordinance, complaints are initiated by citation from the county litter control officer or by petition of the county engineer, at the direction of the county enforcement agency.¹⁸ Complaints must be brought before the county commission, and the commission must give notice of the complaint to the property owner.¹⁹

How to Create, “Perfect,” and Enforce Unsafe Properties Liens:

	Municipalities	County Commissions
Create the Lien	“[F]ile a lien against the real property in question for an amount that reflects all costs incurred by the municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building” ²³	“A civil proceeding may be brought in circuit court by the county commission against the owner or owners of the private land or other responsible party that the subject matter of the order of the county commission to subject the private land in question . . . [t]o a lien for the amount of the contractor’s costs in making these ordered repairs, alterations or improvements or ordered demolition, removal or clean up, together with any daily civil monetary penalty imposed” ²⁴
“Perfect” the Lien	Record the lien in the clerk’s office of the county where the property is located. ²⁵	Record the lien in the clerk’s office of the county where the property is located. ²⁶
Enforce the Lien	“[I]nstitute a civil action . . . against the landowner or other responsible party for all costs incurred,” with notice provided to the owner at least 10 days prior to commencing such an action. ²⁷	File a complaint with the circuit court “to order and decree the sale of the private land in question to satisfy the lien.” ²⁸

1 W. VA. CODE ANN. § 8-12-16 (West 2015).

2 *Id.* § 7-1-3ff.

3 *Id.* § 7-1-3ff(c) (instead of the county engineer, the county may appoint a “technically qualified county employee or consulting engineer”).

4 *Id.* § 8-12-16(b).

5 *Id.*

6 *Id.* §§ 7-1-3ff(e), 8-12-16(c).

7 *Id.* § 7-1-3ff(a).

8 *Id.* § 8-12-16(e)(1).

9 *Id.* § 8-12-16(e)(2).

10 *Id.* § 7-1-3ff(i).

11 W. VA. CODE R. § 87-7-4 (2013).

12 W. VA. CODE ANN. §§ 7-1-3ff(e), 8-12-16(c) (West).

13 *Id.* § 8-12-16(d).

14 *Id.* § 8-12-16(f).

15 *Id.* § 8-12-16(g).

16 *Id.* § 8-12-16(j).

17 *Id.* § 8-12-16(k).

18 *Id.* § 7-1-3ff(f)(1).

19 *Id.* § 7-1-3ff(f)(2).

20 *Id.* § 7-1-3ff(f)(3).

21 *Id.* § 7-1-3ff(f)(4).

22 *Id.* § 7-1-3ff(f)(6).

23 *Id.* § 8-12-16.

24 *Id.* § 7-1-3ff.

25 *Id.* § 38-10C-1.

26 *Id.*

27 *Id.* § 8-12-16(e)(2), (f).

28 *Id.* § 7-1-3ff(h); see *City of Parkersburg v. Carpenter*, 203 W. Va. 242, 244, 507 S.E.2d 120, 122 (1998).

Tax Sale

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At a tax sale, a local government sells a property's tax lien at auction.

Many neglected properties are also tax-delinquent properties. When a property owner fails to pay property taxes, local governments and other "taxing units" may impose a property tax lien on the property, representing the debt owed.¹ Tax liens may then be sold at public auction, subject to procedural and notice requirements.² If all procedural requirements are met and the original owner does not pay the taxes owed within a specified time limit, the tax lien "ripens" into a deed to the property,³ at which point the lienholder becomes the property owner. In sum, after a period of about three years, a tax-delinquent property may be transferred from a delinquent owner to a new owner through a tax sale.

Prerequisites

Correct Tax Assessment. Counties must conduct assessments correctly for tax sales to be valid. "A tax deed is only as valid as the assessment on which it is based. If the tax lien is based on a void assessment, then the tax deed is likewise void. The passage of time beyond the three-year statute of limitations for remedies relating to tax sales and tax deeds does not save a tax deed that is void."⁴ For comprehensive guidance on the duties of county assessors in West Virginia, see the *Guide for County Assessors* from the State Tax Department's Property Tax Division.⁵

Advantages

- Can put neglected properties back into productive use by transferring them to new owners
- Local governments can recover unpaid taxes
- May motivate other property owners to pay their taxes on time

Disadvantages

- Relatively long process potentially lasting three years, taking up time and resources
- During the long process, property can fall into a worse state of neglect
- Uncertainty over ownership can also cause neglect: a lien purchaser is not technically the owner while the tax lien is "ripening," but the original owner may not realize this and may continue to neglect the property as a result⁶
- No guarantee that the new owner will be responsible
- Out-of-state speculators often outbid local purchasers at auction and leave properties to fall into further disrepair
- Potential lien purchasers may simply seek to profit from the interest that accrues on a lien up and until an owner redeems the property, and thus, in order to receive the interest, may choose to purchase liens on properties that owners actually wish to keep
- When an infant or mentally incapacitated person loses property by tax deed, they may have 20 years to set aside the tax deed,⁷ meaning that even a fully ripened deed may be subject to redemption rights for 20 years⁸

Tax lien sales can put low-income property owners, including many seniors, veterans, and people with disabilities at risk of losing their homes. These three groups may qualify for certain tax relief programs and credits that should be brought to their attention. For instance, senior citizens may qualify for the Homestead Exemption Program, the Senior Citizen Property Tax Deferral Credit, and the Homestead Excess Property Tax Credit. Local governments may consider targeting properties that are abandoned or uninhabited for tax lien foreclosure, rather than those that are inhabited. Special considerations and additional procedures will also apply if the owner of a tax-delinquent property lives in the property or files for bankruptcy. See Appendix K for more details.

Funding

In theory, the tax lien foreclosure process should fund itself, or at least bring in revenue that would otherwise be lost to tax delinquency. When delinquent taxes are redeemed or when a lien is sold at auction, the purchaser will pay the delinquent taxes, interest, and charges due.¹⁰

Community Highlight

The City of Spencer tends not to use tax lien sales directly because the three-year process can be too cumbersome. However, if City officials learn that a tax lien was purchased on a property that the City has worked on or that needs repairs, it will approach the purchaser and negotiate for the tax lien interest, using the existing or potential City lien as a bargaining chip to motivate the tax lienholder to sell the interest. The City has successfully acquired interests in properties this way, and where the properties were not redeemed, the City took title and worked to market them to new owners.

Usage in West Virginia

Tax lien foreclosures are used frequently throughout West Virginia, but local governments are concerned about the lengthy and labor-intensive process itself and its effect on blight. For instance, the City of Huntington expressed concern in its home rule application that “[d]ilapidated properties can linger for years in a tax lien limbo and greatly contribute to the spread of slum and blighting conditions, reduction in property value, and a direct correlation to increases in crime.”¹¹

The Herald-Dispatch reported in 2007 that “for Huntington’s rapidly deteriorating housing stock, a tax lien sale can be its worst enemy. ‘Very rarely is there a happy ending for a piece of property that ends up in a tax lien sale,’ said Tom Bell, Cabell County’s [former] chief tax deputy. ‘These are properties that people have walked away from because they have little or no value.’ And most of the time, they fall back into the hands of people who already have abandoned them or a land speculator who is looking for a quick profit rather than a home to redevelop. Neither outcome helps the city’s vexing problem with its housing stock.”¹²

“At the Cabell County 2006 tax sale, 501 tax tickets were sold. Of those, 121, or 24%, were purchased by Sun Rise Atlantic LLC, an investment company based in Atlanta, GA. Thirty other tax tickets were purchased by a group listed as Sass Muni V DTR, which, according to the Cabell County Clerk’s Office, is an investment company based in Philadelphia, PA.”¹³

By the time a tax lien purchaser actually owns the property, as stated by former Cabell County chief tax deputy Tom Bell, “it has been three-and-a-half years from the time that the original property owner stopped paying their taxes . . . The whole process is crazy, because we’re teaching people to not pay their taxes . . . In the meantime, nothing productive is happening with the property.”¹⁴

Notification Requirements & Special Procedures

Notification requirements and special procedures are very important in the tax lien foreclosure process to ensure that sales are not vulnerable to legal challenges. For a step-by-step guide to the tax lien foreclosure process, see Appendix K.

FAQs

Q: Who owns the property after a tax lien is sold?

A: The original owner still owns the property until the tax lien “ripens” into a tax deed.¹⁵ It is important to note that the property itself is not bought at a tax lien sale; the debt on the property, i.e., the lien, is bought. After the first auction, the lien does not turn into an actual deed until 18 months after being purchased.

Q: Do property tax liens have to be recorded?

A: No. These liens are exempt from the usual requirement that deeds be recorded.¹⁶

Q: At auction, what does “sold to state” mean?

A: “Sold to state” is a reference to when no one buys the tax lien, but this expression is arguably outdated. The two sales in the tax lien foreclosure process are sometimes referred to as “the sheriff’s sale” and “the state sale.” If no one buys the lien at the first county sale—the sheriff’s sale—the sheriff certifies the property to the State Auditor’s office, where it is held for 18 months.¹⁷ The Auditor’s office then certifies the property to the Deputy Land Commissioner, who then has a second sale—the state sale.¹⁸ If no one buys the property after the state sale, it remains with the Deputy Commissioner, and anyone can make an offer on the property. However, the state never actually “owns” the property, just the lien. In 1992, the West Virginia Legislature changed the West Virginia Constitution so that unsold titles to tax-delinquent properties no longer automatically become state property.¹⁹

Q: Is a tax lien purchaser required to provide notice of the sale to the owner or any other party?

A: Yes, the tax lien purchaser must provide notice to the owner and all parties entitled to notice. This arguably presents a conflict of interest because purchasers who want their liens to ripen into ownership would not want the original owner to redeem the property or have knowledge of the tax lien sale. In essence, the state “assigns to a private party the State’s Fourteenth Amendment obligation to notify property owners of their right to redeem their property interest.”²⁰ The tax lien purchaser is required to conduct the search and notification, including searching public records, with “reasonable diligence.” If the purchaser deliberately does a less than thorough search, the tax deed may be set aside.²¹

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- 1 W. VA. CODE ANN. § 11-8-4 (West 2015); *George F. Hazelwood Co. v. Pitsenbarger*, 149 W. Va. 485, 489, 141 S.E.2d 314, 317 (1965).
- 2 W. VA. CODE ANN. § 11A-2-10 (West); *Rebuild America, Inc. v. Davis*, 229 W. Va. 86, 92–93, 726 S.E.2d 396, 402–03 (2012).
- 3 W. VA. CODE ANN. § 11A-3-18(d) (West).
- 4 D. Kevin Moffatt, *West Virginia Tax Sales and Tax Deeds: The Effect of Tax Deeds on Oil and Gas Leases and Easements*, ANNUAL INST. THE ENERGY AND MINERAL LAW FOUND. §WW.05(1) (2014).
- 5 *Guide for County Assessors: State of West Virginia*, STATE TAX DEP'T, available at <http://www.state.wv.us/taxrev/publications/propertyTax/countyAssessorsGuide.pdf>.
- 6 See *Huggins v. Prof'l Land Res., LLC*, No. 1:12CV46, 2013 WL 431770, at *1 (N.D. W. Va. Jan. 25, 2013) (After the tax lien is sold at public auction, "the property has not left the hands of its original owner; the State has simply sold its tax lien against the property to a third-party.").
- 7 W. VA. CODE ANN. § 11A-4-6 (West).
- 8 Moffatt, *supra* note 4, at §WW.05(3).
- 9 W. VA. CODE ANN. §§ 11-6B-3, 11-21-24 (West); W. VA. TAX DEP'T, WEST VIRGINIA TAX TIPS FOR SENIOR CITIZENS (2009), available at <http://www.state.wv.us/taxrev/tsdPublications/tsd413.pdf>; W. VA. TAX DEP'T, SENIOR CITIZENS TAX CREDIT (2014), available at <http://www.state.wv.us/taxrev/publications/tsd/tsd411.pdf>.
- 10 W. VA. CODE ANN. §§ 11A-2-18, 11A-3-5 (West).
- 11 CITY OF HUNTINGTON, HOME RULE PILOT PROGRAM: REVISED APRIL 2013 6 (2013), available at http://www.cityofhuntington.com/assets/pdf/document-center/Home_Rule_Plan.pdf.
- 12 *Id.* at 12.
- 13 *Id.* at 11.
- 14 *Id.* at 10.
- 15 See *Huggins v. Prof'l Land Res., LLC*, No. 1:12CV46, 2013 WL 431770, at *1 (N.D.W. Va. Jan. 25, 2013).
- 16 See *City of Parkersburg v. Carpenter*, 203 W. Va. 242, 245, 507 S.E.2d 110, 123 (1998).
- 17 W. VA. CODE ANN. § 11A-3-8(a) (West).
- 18 *Id.* § 11A-3-45(a).
- 19 The shift away from unsold titles to tax-delinquent properties automatically becoming state property is detailed in the following:
- A proposal to amend Article XIII of the West Virginia Constitution by repealing Sections three, four, five, and six was adopted during the 1992 legislative session and placed on the ballot for the election held on Tuesday, November 3, 1992. Following the approval of the constitutional amendment by the voters in that election, the legislature adopted statutes patterned after the West Virginia Law Institute's proposal. The new statutes were codified as West Virginia Code Chapter 11A, Article 3, Sections 1 through 74, and Article 4, Sections 1 through 7, effective July 1, 1994. . . . As noted above, the 'new' statutes shifted the burden of satisfying 'due process' by appropriate notice to the former owner and others with a substantial property interest to the purchaser of the tax lien.
- John W. Fisher, II, *Delinquent and Non-Entered Lands and Due Process*, 115 W. Va. L. Rev. 43, 60 (2012).
- 20 *Huggins*, No. 1:12CV46, 2013 WL 431770, at *2.
- 21 W. VA. CODE ANN. §§ 11A-3-55, 11A-4-4 (West); *Huggins*, No. 1:12CV46, 2013 WL 431770, at *1. In *Huggins*, the United States District Court for the Northern District of West Virginia concluded that the tax lien purchaser charged with notifying interested parties could be considered a state actor, and thus, could potentially be held liable for constitutional rights violations under 42 U.S.C. § 1983 by failing to meet the due diligence standard. *Id.* at *4–6.

Partition Suit

Partition is a court-ordered division of real estate owned by two or more people.¹

Dilapidated and vacant properties are often owned by multiple people or multiple organizations. Working with multiple owners, each with limited investment or interest in a property, is more complicated than working with one owner. While a partition action is not a tool frequently used by local governments, it is occasionally used to clear title when a local government holds partial title.

No Prerequisites

Advantages

- Can clear disputes over property ownership and clarify ownership rights and responsibilities
- May consolidate title, allowing the property to be put to productive use
- Clears title to the property



Disadvantages

- Only a co-owner of property can petition a court for partition
- No guarantee the court will grant partition
- The community must pay legal fees to go through the partition process

Tom Whittier, Counsel for the City of Spencer, says, “I see how partition can be valuable in this context, but most communities in West Virginia do not have the resources to commit to the process.”

- An interested party may be outbid by other owners
- Heirs who have been living on land for generations may lose title to family land (See Section on Heirs Property)

West Virginia utilizes three types of partition:

Partition in kind is the division of the property itself. For example, if one person owns 40% and another owns 60% of a ten-acre property, the court could give four acres to the first owner and six acres to the other. Partition in kind is not always this straightforward, however. For example, if the ten-acre property includes a nice home, one owner might be given half an acre and the home, while the other is given the remaining nine and a half acres. Partition in kind is the preferred method of partition.

Partition by allotment occurs when one owner is willing to buy out some or all of the other owners' interest in a property.²

Partition by sale means a property is sold and the proceeds from the sale are split between the owners in proportion to their interests.³ If a property is worth \$100,000, an owner with a 40% interest would be given \$40,000 and an owner with a 60% interest would be given \$60,000. Note, however, that the costs of the partition action and the costs of the sale would be deducted from the sale amount prior to dividing the proceeds. Partition by sale may only occur where partition in kind and partition by allotment would not be practical, convenient, or fair.⁴ In practice, however, courts generally order partition by sale.⁵

1 59 AM. JUR. 2D Partition § 1 (2015).

2 *Id.*

3 *Id.*

4 *Id.* (may not be "conveniently made" and "if the interests of one or more of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, and the interest of the other person or persons so entitled will not be prejudiced thereby").

5 UNIF. PARTITION OF HEIRS PROP. ACT, Prefatory Note, at 2 (2010); Phyllis Craig-Taylor, *Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting*, 78 WASH. U.L.Q. 737, 753–55 (2000). In ordering partition by sale, courts most often order a sale by public auction. UNIF. PARTITION OF HEIRS PROP. ACT, Prefatory Note, at 2.

Highlight

Heirs Property

A common challenge in West Virginia is property that has passed down automatically from one generation to the next without a will (or through wills that give the property to “all of the children equally”), giving multiple—sometimes hundreds—of heirs ownership interests.¹ “Heirs property,” “heirs’ property,” and “land in heirs” are all colloquial terms that describe a form of ownership where at least some owners have acquired a property through inheritance.²

“[Economic development is] frequently impeded, unduly delayed, or wholly frustrated by imperfections in the title to essential land and other real properties, by lost heirs or widely scattered owners of undivided interests in essential lands and other real properties and by owners of relatively small but essential parcels of a proposed land development site who refuse to sell their land or other real property[.]”

- West Virginia Code § 7-12-7a

Heirs’ property can raise several problems, most of which result from land being held by numerous owners or the failure of co-owners to agree on land use:

1. Significant difficulties arise in identifying and locating heirs in order to give notice.
2. The title to heirs’ property is often unclear, which makes it more difficult to demolish, rehabilitate, and repurpose abandoned and dilapidated structures, and to transfer properties for development or repurposing.

3. Owners can be forced to give up ownership by a partition action, even if they do not wish to do so.³ This may be of particular concern where a family has owned land for generations—any owner can file a partition action.

4. In reality, each owner has a reduced right to use the land because all of the owners share the right to full use of the land. For example, constructing a residential house on a property would infringe upon co-owners’ rights.

5. The land’s resources, such as timber or minerals, may remain undeveloped.⁴

6. Rarely is heirs’ property used as collateral.⁵ Land maintenance and development is further hindered when co-owners cannot agree on borrowing money against a property.

Recommendations to owners of heirs’ property include:

1. Create a family tree.
2. Make a plan for the land, including decisions about who pays bills and who lives on the land.
3. Confirm who has rights to the property and begin to transfer the property through more formal processes, especially by drafting a will.⁶

1 Heirs’ property proves particularly prevalent in poor African American and Native American communities, as well as in low-income areas of Appalachia. B. James Deaton et al., *Examining the Consequences of Heirs Property*, 68 *ECOLOGICAL ECON.* 2344, (2009) (citing B. James Deaton, *Land in Heir’s: Building a Hypothesis Concerning Tenancy in Common and the Persistence of Poverty in Central Appalachia*, 11 (1-2) *J. APPALACHIAN STUD.* 83 (2005); B. James Deaton, *Intestate Succession and Heirs Property: Implications for Future Research for the Persistence of Poverty in Central Appalachia*, 41 *J. ECON. ISSUES* 927 (2007)).

2 B. James Deaton, *A Review and Assessment of the Heirs’ Property Issue in the United States*, 46 *J. ECON. ISSUES* 615, 615–16 (2012).

3 *Id.* at 617; Deaton et al., *supra* note 1, at 2348.

4 Deaton et al., *supra* note 1, at 2346.

5 *Id.*

6 WHAT YOU NEED TO KNOW ABOUT HEIR PROPERTY, USDA, available at www.fsa.usda.gov/Internet/FSA_File/whatyouneedtoknowheirproperty.pdf.

Part 4

Land Banks

Systematic Approaches to Repurposing Properties

Addressing vacant and dilapidated properties takes a great deal of time, funding, and expertise. Instead of addressing properties one by one, some communities use a more systematic approach by creating a staffed entity whose sole mission is addressing neglected properties. Often called “land banks,” these entities specialize in the acquisition, redevelopment, and sale or lease of neglected properties for the purpose of converting them to a more productive use. Frequently, land banks have an inventory or “bank” of properties that are targeted for redevelopment. Two West Virginia statutes authorize the creation of independent public entities intended to convert neglected properties to productive use: the Urban Renewal Authority Law of 1951¹ and the West Virginia Land Reuse Agency Authorization Act of 2014.²

Urban Renewal Authorities (URAs) and Land Reuse Agencies (LRAs) redevelop properties with long-term community priorities in mind. In this sense, the organizations act as responsible landowners. URAs and LRAs typically acquire properties that are undesirable to the average homebuyer, business, or developer.

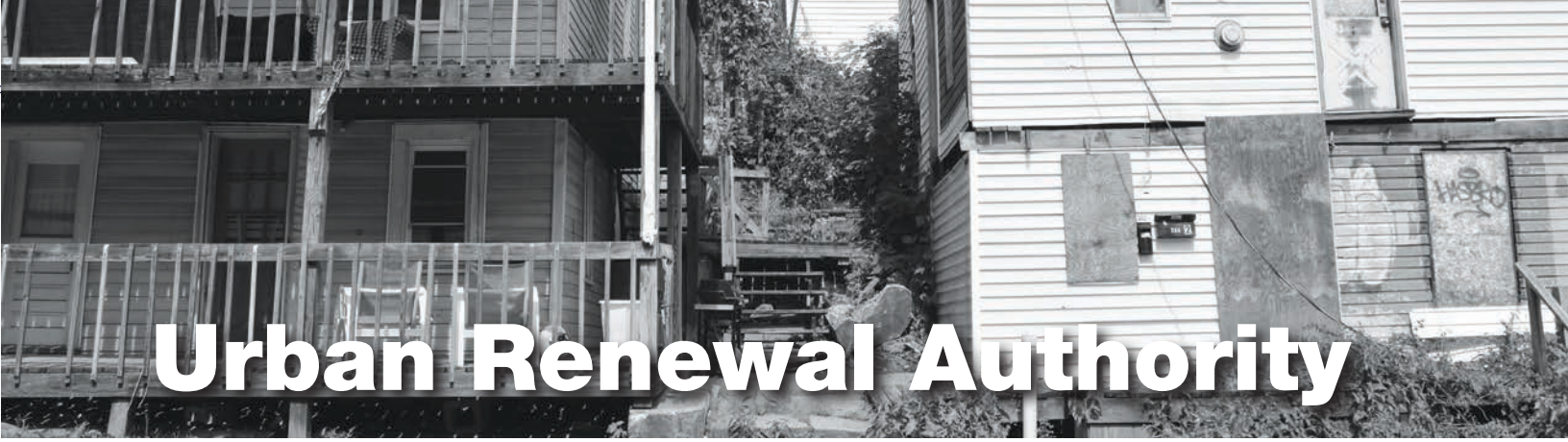
URAs and LRAs may clear title issues, address contamination issues, redevelop the property, or take other action to make the property more desirable to responsible purchasers.

URAs and LRAs generally can do anything a traditional landowner can do. For example, both can design, develop, construct, demolish, reconstruct, deconstruct, rehabilitate, renovate, relocate, and otherwise improve real property. Both entities are also authorized to collect rent and to grant or acquire licenses, easements, leases, or options for their properties.

This Part outlines key differences between URAs and LRAs. Other authorities are enabled under West Virginia law to acquire, redevelop, and dispose of real property as well. This Part does not identify all government authorities enabled to acquire property, but does highlight the use of development authorities. Also note that the purpose of a URA may be broader than addressing neglected property, however, this toolkit only addresses issues related to abandoned and neglected properties.

¹ W. VA. CODE ANN. §§ 16-18-1 to -29 (West 2015).

² *Id.* §§ 31-18E-1 to -18.



Urban Renewal Authority

An Urban Renewal Authority (URA) is a public body created to acquire, prepare, develop, redevelop, and sell or lease neglected properties in slum or blighted areas.

Historically, URAs have been used to redevelop a particular property for a particular purpose. As URAs have matured, they have been used to target entire blocks and neighborhoods that have vacant and dilapidated properties.

URAs can only be active after both a comprehensive plan and a redevelopment plan are created and adopted. As a result, URAs have advanced systems for inventorying and prioritizing properties. URAs have potential to gain enough resources and expertise to redevelop all slum or blighted areas within their communities. While the URA statute limits the area where a URA is authorized to purchase property, designated areas may change over time.

Benefits of Targeting Designated Areas

Public Participation: Both comprehensive plans and redevelopment plans require a certain amount of public participation. The public designation of redevelopment areas helps ensure that public dollars are spent in areas of importance to the community.

Grant Funding: Certain foundations and sources of funding may require or favor projects within designated areas. For example, the West Virginia Development Office requires that a community develop a Community Development Plan to be eligible for a Small Cities Block Grant.¹ A comprehensive plan may be considered in lieu of a community development plan.

Prerequisites

Comprehensive Plan: URA property development must be in accordance with general plans.² A general plan is assumed to mean a comprehensive plan under the current West Virginia land use planning laws. A comprehensive plan “is a process through which citizen participation and thorough analysis are used to develop a set of strategies that establish as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning commission.”³ See Appendix A for more information about comprehensive plans.

Resolution: Whether working individually or as part of a regional URA, municipalities and counties must adopt a resolution before the URA may transact business or exercise its powers.⁴

Redevelopment Plan: URA property development must be in accordance with a redevelopment plan. A redevelopment plan means “a plan for the acquisition, clearance, reconstruction, rehabilitation, or future use of a redevelopment project area.”⁵

West Virginia Code § 16-18-6

A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area, and shall include, without being limited to:

1. The boundaries of the redevelopment project area, with a map showing the existing uses and conditions of the real property therein;
2. A land use plan showing proposed uses of the area;
3. Information showing the standards of population densities, land coverage, and building intensities in the area after redevelopment;
4. A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances;
5. A site plan of the area; and
6. A statement as to the kind and number of additional public facilities or utilities that will be required to support the new land uses in the area after redevelopment.⁶

For excerpts on the relevant statutory language related to redevelopment plans for a URA, see Appendix E.

Designation that the area is slum or

blighted: In order for a community to utilize URAs to address slum or blighted property, it must contain property designated as slum or blighted according to the following definitions.⁷

Slum area means “an area in which there is a predominance of buildings or improvements or which is predominantly residential in character, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.”⁸

Blighted area means “an area, other than a slum area, which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.”⁹

Note: To help interpret the complex definitions of “slum area” and “blighted area,” the LUSD Law Clinic worked with the City of Wellsburg to create a “Slum & Blighted Property Checklist.” This checklist is available in Appendix H.

Area of Operation: Municipal URAs may address slum or blighted areas within the municipality and the area within five miles of its territorial boundaries. County URAs may address slum or blighted areas within the county. Regional URAs may address slum or blighted areas within the communities for which the regional authority is created. A URA’s area of operation can never extend into the territorial boundaries of a municipality without a resolution from that municipality. URAs may not address slum or blighted areas within the jurisdictional boundaries of another URA without the neighboring URA’s consent.¹⁰

Advantages

- URAs make acquisition and disposition decisions based on formal processes that incorporate input from the community
- Dedicated URA staff with the expertise and capacity to address neglected properties may be able to address neglected properties in a more efficient and cost-effective manner than groups addressing properties on an individualized basis
- URAs are long-term landowners with the patience to hold onto property until an appropriate reuse can be identified
- URAs have the power of eminent domain, with limitations¹¹
- URAs may compete with developers and other purchasers during the tax sale process
- URA property is tax-exempt until it is granted to a redeveloper for redevelopment¹²

Funding

URAs are not self-financing. Given the low value of most vacant and dilapidated properties, URAs face difficulties earning significant income from sale, rent, or leasehold payments. However, URAs are authorized to receive grants and loans from other public and private sources. URAs may also issue a bond or mortgage their property.

Disadvantages

- The acquisition, redevelopment, and marketing of properties is time-consuming and expensive
- URAs are not authorized to acquire property unless they do so in a community that has a comprehensive plan, a redevelopment plan, and areas designated as slum or blighted
- Plans and processes may require additional resources to pay staff or consultants
- URAs lack the right of first refusal during the tax sale, a form of preferential treatment.

Community Highlight

Charleston, West Virginia, established the state's first URA in 1952 and began its first project in 1958. The mission of the Charleston Urban Renewal Authority (CURA) is "to provide expertise and resources to partner with public and private entities to develop and enhance the City of Charleston to be a relevant place to work and live."¹³ CURA's primary areas of focus relate to acquiring property, improving infrastructure, addressing blight and private redevelopment, developing community projects, and providing assistance to other agencies. Its accomplishments range from the development of entire city blocks to funding grants such as façade easements. CURA maintains a list of its properties on its website. Listings include general real estate information and describe any additional incentives offered, such as "the City is matching up to 5000 dollars to redo outside of building."¹⁴

Usage in West Virginia

As of July 2015, the following West Virginia communities have an Urban Renewal Authority:

City of Charleston¹⁵

City of Huntington¹⁹

City of Clarksburg¹⁶

Town of Nutter Fort²⁰

City of Fairmont¹⁷

City of Parkersburg²¹

Fayette County¹⁸

City of Wellsburg²²

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- 1 W. VA. DEV. OFFICE, SMALL CITIES BLOCK GRANT PROGRAM: 2012 APPLICATION FORMS, *available at* http://www.wvcommerce.org/App_Media/assets/doc/peopleandplaces/small_cities_block_grant/2012_SCBG_Application.pdf (last accessed Jul. 7, 2015).
 - 2 W. VA. CODE ANN. § 16-18-2 (West 2015).
 - 3 *Id.* § 8A-3-1.
 - 4 *Id.* § 8A-3-1(b).
 - 5 *Id.* § 16-18-3(r).
 - 6 *Id.* § 16-18-6(d).
 - 7 *Id.* § 16-18-4(b)(1).
 - 8 *Id.* § 16-18-3(t).
 - 9 *Id.* § 16-18-3(c).
 - 10 *Id.* § 16-18-3(a).
 - 11 *Id.* § 16-18-8.
 - 12 *Id.* § 16-18-15(b). Note that exceptions exist for remedies related to mortgages, pledges, or liens given by an authority on its rents, fees, grants, or revenues.
 - 13 CHARLESTON URBAN RENEWAL AUTHORITY, 2013-2014 ANNUAL REPORT (2014), *available at* http://curawv.org/PDFs/CURA_AR2013-2014.pdf.
 - 14 JAMES EDWARD PROPERTY LISTINGS, <http://www.showcase.com/jedwardscura@wvdsi.net#&&/wEXAQRV29ya2Zsb3dlaXN0b3J5SUQFJDYzZGRkMDczLWUxOTktNDE1Zi04NWQ1LTNlY2I3ZGUwYjVjOzZ7YakuKxILr3htzWE5fHbF45R> (last visited Jun. 30, 2015).
 - 15 CHARLESTON URBAN RENEWAL AUTHORITY, <http://curawv.org> (last visited Jun. 30, 2015).
 - 16 CLARKSBURG, WV, URBAN RENEWAL AUTHORITY, <http://www.cityofclarksburgwv.com/government/boards-a-commissions/urban-renewal-authority> (last visited Jun. 30, 2015).
 - 17 THE CITY OF FAIRMONT WEST VIRGINIA, URBAN RENEWAL AUTHORITY, <http://www.fairmontwv.gov/352/Urban-Renewal-Authority> (last visited Jun. 30, 2015).
 - 18 FAYETTE COUNTY, WEST VIRGINIA, URBAN RENEWAL AUTHORITY, http://www.fayettecounty.wv.gov/urban_renewal_authority/Pages/default.aspx (last visited Jun. 30, 2015).
 - 19 LAND BANK, HUNTINGTON'S URBAN RENEWAL AUTHORITY, <http://hurlandbank.com> (last visited Jun. 30, 2015).
 - 20 NUTTERFORT, W. VA., ORDINANCE §§ 1132.01-1132.07 (2003), *available at* https://www.townofnutterfort.com/uploads/Ordinance_1132.pdf.
 - 21 *Meetings*, THE CITY OF PARKERSBURG, <http://parkersburgcity.com/wp/meetings/> (last visited Jul. 6, 2015).
 - 22 See EPA BROWNFIELDS SITE-SPECIFIC HAZARDOUS CLEANUP GRANT APPLICATION, BUSINESS DEVELOPMENT CORPORATION OF THE NORTHERN PANHANDLE (2014), *available at* <http://wvbrownfields.org/wp-content/uploads/2014/12/2014/12/wellsburg-brooke-glass-fyis-cleanup-grant-application-draft-12-1-14.pdf>.



Land Reuse Agency

A Land Reuse Agency (LRA) is a public body created to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.

LRAs are very similar to Urban Renewal Authorities. Key differences include that LRAs may operate in communities that lack comprehensive plans and redevelopment plans, may not exercise the power of eminent domain, may not compete with other purchasers at a tax lien sale, and may collect a portion of the property taxes on property it holds if authorized by the county taxing authority. Arguably, LRAs have fewer powers but have the potential to hold properties in a broader geographic area. Therefore, the creation of an LRA may be appropriate in communities where properties are very scattered and preparing redevelopment plans would be impractical.

LRAs may only hold property located within the jurisdiction of the entities that create them.¹ In other words, a municipal LRA may only hold properties within that municipality, and a county LRA may only hold property within that county. Two or more municipalities or counties may also establish and maintain an LRA by entering into an intergovernmental cooperation agreement.² In this case, the LRA may hold property within the jurisdiction of the authorizing municipalities or counties.³

Prerequisites

Local Ordinance: A county or municipality must adopt an ordinance to create an LRA. The ordinance must specify the (1) name of the LRA; (2) number of members of the board; (3) names of the initial board members; (4) qualification, manner of selection or appointment, and terms of office for members of the board; and (5) methods of community input.⁴

The ordinance must be filed with the Secretary of State and the West Virginia Housing Development Fund. After receipt of the ordinance, the Secretary of State issues the appropriate documentation indicating the formation of the entity.⁵

Consideration of Existing Land Use Plans: LRAs must consider all land use plans, such as a comprehensive plan, redevelopment plan, or overlay district within a zoning ordinance, in the disposition of properties.⁶ According to national research, the most successful land banks incorporate local land use plans in making their acquisition and disposition decisions.⁷

Advantages

- LRAs typically make acquisition and disposition decisions with the long-term interests of the community and surrounding property owners in mind. LRAs must consider land use plans and have a process to collect community input.
- Dedicated LRA staff may be able to address neglected properties in a more efficient and cost-effective manner than groups addressing properties on an individualized basis.
- LRAs are long-term landowners with the patience to hold onto property until an appropriate reuse can be identified.
- Property held by an LRA is tax exempt for 5 years or as long as the property is continuously leased to a non-profit organization or a governmental agency at substantially less than fair market value.⁸
- LRAs must maintain an inventory of their property that is available for public review and inspection.⁹

- LRAs have standing to file an action in circuit court to quiet title to real property in which they have an interest.¹⁰
- LRAs may receive a portion of the county's real property tax if authorized by the taxing jurisdiction. See Funding Subsection below.

Disadvantages

- LRAs may not obtain property through eminent domain, directly or indirectly.¹¹
- LRAs may not acquire any interest in oil, gas, or minerals that have been severed from the property.¹²
- If purchasing property from a URA, the property must be fee simple.¹³ For more information on fee simple properties, see Appendix I on Title Opinions.
- LRAs are not typically self-financing and may be expensive to administer. See Funding Subsection below.
- LRAs may purchase tax liens only when no other person at the tax lien sale makes a minimum bid on the taxes, interest, and charges owed.¹⁴
- In West Virginia, LRAs currently lack the right of first refusal during the tax sale (in other states, LRAs have a right of first refusal, which is the option to purchase property according to specified terms before any other interested third parties at the tax sale).

Funding

As with URAs, LRAs are not self-financing. Given the low value of most vacant and dilapidated properties, LRAs may find it difficult to earn significant income from sale, rent, or leasehold payments. However, LRAs are authorized to receive grants and loans from other public and private sources. LRAs may also issue a bond or mortgage their property.

LRAs may collect a portion of the property tax revenue generated by their own properties if they are authorized by the county taxing authority and do not collect more than 50% of the aggregate property tax revenue generated by a property.¹⁵

Current State of the Tool

As of July 2015, no established LRAs exist in West Virginia.

Notification Requirements/ Special Procedures

LRAs must submit an annual report to the West Virginia Housing Development Fund within 120 days after the end of the fiscal year. The report must include an audit of income and expenditures and a report of activities for the preceding year.¹⁶

A duplicate copy of the annual report must be filed with the governing body of the jurisdiction that created the LRA and the political subdivisions participating based on an intergovernmental agreement.¹⁷

LRA boards must keep minutes and records of proceedings.¹⁸

LRAs are subject to the Open Governmental Meetings Act.¹⁹

LRAs must maintain an inventory of their property that is available for public review and inspection.²⁰

When filing an action to quiet title, LRAs must follow the procedural requirements outlined in the West Virginia Code.²¹ For more information on actions to quiet title, see Section on Title Opinions and Appendix I.

Key Similarities Chart

URA	LRA
To purchase, lease, acquire property by gift & devise	To acquire property by any means the LRA considers proper
To hold, improve, clear, or prepare for redevelopment	To design, develop, construct, demolish, reconstruct, deconstruct, rehabilitate, renovate, relocate
To sell, lease, assign, mortgage	To convey, exchange, sell, transfer, lease, grant, or mortgage
To enter into contracts	To enter into contracts
To borrow money and issue bonds	To borrow money and issue bonds
To sue & be sued	To sue & be sued

* For excerpts on the relevant statutory language related to membership in URAs and LRAs see Appendix E.

Key Differences Chart

URA	LRA
Power of Eminent Domain	No power of Eminent Domain
Must have a Comprehensive Plan and Redevelopment Plan	Must take into account land use plans if they exist
May only work in areas designated as slum or blighted and pursuant to a redevelopment plan	Flexibility to work throughout the LRA's jurisdiction
May compete with other potential buyers at a tax lien sale	May only purchase a tax lien if no other potential buyers make a minimum bid
The Board must have between 5 & 7 members. Note there are special requirements when a regional authority is created.*	The Board must have an odd number of members, between 5 & 11. At least one member must be a resident of the LRA jurisdiction, not a public official or municipal employee, and must maintain membership with a recognized civic organization.*

1 W. VA. CODE ANN. § 31-18E-9(f) (West 2015).

2 *Id.* § 31-18E-4(c).

3 *Id.* § 31-18E-9(f)(2)

4 *Id.* § 31-18E-4(a).

5 *Id.* § 31-18E-4(b).

6 *Id.* § 31-18E-10(f).

7 FRANK S. ALEXANDER, LOCAL SUPPORT CORP., LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS 12 (2005), available at http://www.communityprogress.net/filebin/pdf/new_resrcs/alexander_land_bank_lisc.pdf.

8 W. VA. CODE ANN. § 31-18E-9(a)–(b) (West).

9 *Id.* § 31-18E-10(a).

10 *Id.* § 31-18E-16. "For purposes of an action under this section, the land reuse agency shall be deemed to be the holder of sufficient legal and equitable interests and possessory rights so as to qualify the land reuse agency as an adequate complainant in the action." *Id.* § 31-18E-16(a)(3).

11 *Id.* § 31-18E-8.

12 *Id.* § 31-18E-9(c).

13 *Id.* § 31-18E-9(d)(3).

14 *Id.* § 31-18E-9(g) ("[]f no person present at the tax sale bids the amount of the taxes, interest and charges due on any unredeemed tract or lot or undivided interest in real estate offered for sale, the sheriff shall, prior to certifying the real estate to the auditor for disposition . . . provide a list of all of said real estate within a land reuse jurisdiction to the land reuse agency and the land reuse agency shall be given an opportunity to purchase the tax lien and pay the taxes, interest and charges due for any unredeemed tract or lot or undivided interest therein as if the land reuse agency were an individual who purchased the tax lien at the tax sale.")

15 *Id.* § 31-18E-11 ("Allocation of property tax revenues in accordance with this subsection, if authorized by the taxing jurisdiction, begins with the first taxable year following the date of conveyance and continues for a period of up to five years and may not exceed a maximum of fifty percent of the aggregate property tax revenues generated by the property.")

16 *Id.* § 31-18E-18(a).

17 *Id.* § 31-18E-18(b).

18 *Id.* § 31-18E-13(a).

19 *Id.* §§ 31-18E-13(a), 6-9A-6, 29B-1-1.

20 *Id.* § 31-18E-10(a).

21 *Id.* § 31-18E-16.

Highlight

Development Authority

In addition to URAs and LRAs, other authorities such as Development Authorities are enabled under West Virginia law to acquire, redevelop, and dispose of real property. A development authority is a public agency created by a city council or county commission.¹ The purpose of a development authority is “to advance business and industrial development and maintain the economic stability of the municipality or county.”²

Development authorities hold very broad powers to purchase property and, in limited circumstances, exercise eminent domain. However, the purpose of development authority property should be for “use in industrial, economic and recreational development.”³ Logically, development authorities should limit their actions to nonresidential properties. Development authorities may address neglected properties, although neglected properties are not the main focus. For communities dealing primarily with commercial and industrial properties, a development authority may be worth considering.

1 W. Va. CODE ANN. § 7-12-2 (West 2015).

2 *Id.* § 7-12-2.

3 *Id.* § 7-12-11.



Special Considerations

When using any of the tools described in this toolkit, there are at least three issues that deserve special attention: historic properties, contaminated properties, and the Municipal Home Rule Pilot Program. When working with historic properties and contaminated properties, there may be local, state, and federal regulations that affect how to proceed. However, there may also be grants and other incentives that support improvements to historic or contaminated properties. The Municipal Home Rule Pilot Program is discussed as an opportunity for communities to experiment with new tools to address dilapidated properties.



Historic Properties

West Virginia is rich with historic properties of significant architectural and cultural value. Unfortunately, despite the intrinsic value of these properties, owners are sometimes unable to maintain them, leaving many neglected and dilapidated. Given the importance of historic properties, regulations exist to help protect them, and incentives are available to help fund their restoration. This Section discusses regulations and incentives for historic properties.

Regulations

The National Historic Preservation Act¹

Under the National Historic Preservation Act, the federal government provides technical and financial assistance and administers regulations to protect prehistoric and historic resources. One of the primary laws regulating historic properties is Section 106 of the National Historic Preservation Act. Under Section 106, federal agencies consider the effects of their projects on historic resources and must provide opportunities for public input. Section 106 applies when a federal agency “undertaking” could affect historic properties. Federal undertakings include 1) federally owned or federally controlled properties; 2) federally funded projects, including grants and loans; and 3) federally licensed and federally permitted projects.

Historic properties are properties that are listed in the National Register of Historic Places or that meet the criteria for the National Register. The criteria generally require that the property be significant, of a certain age, and have integrity.²

“Old buildings are more resilient than we think. Constructed with durability and longevity in mind, the materials were better quality, and the craftsmanship often unparalleled. The building itself reminds us of our shared past and the forces that shaped our communities. Wholesale demolition of old, historic buildings has the potential to create more community instability than investing the funds to address a leaking roof or a broken window. Luckily, we have the tools to help rehabilitate these historic structures before they are lost.”

— Sandra Scaffidi, President, Preservation Alliance of West Virginia

Criteria for Listing in the National Register of Historic Places

The National Register of Historic Places is the nation's official list of properties recognized for architecture, archeology, engineering, and culture, making them worthy of preservation.³

Significance: historical, architectural, archaeological, engineering, or cultural value.

Age: typically over 50 years old, or enough to be considered significant.

Integrity: the property still generally looks the way it did during its period of significance. Considerations include location, design, setting, materials, workmanship, feeling, and association.⁴

The property must also meet one of the four following criteria for evaluation:

Criterion A. Property is associated with events that have made a significant contribution to the broad patterns of our history; or

Criterion B. Property is associated with the lives of significant persons in our past; or

Criterion C. Property embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

Criterion D. Property has yielded, or may be likely to yield, information important in history or prehistory.⁵

If a federal project has the potential to affect a historic property, the lead federal agency consults with the State Historic Preservation Officer or Tribal Historic Preservation Officer⁶ to determine the area of potential effect, identify properties, and make an assessment of adverse effects. Adverse effects could include 1) physical destruction or damage; 2) change in the character of the property's use, setting, or location; 3) introduction of incompatible visual, atmospheric, or audible elements; 4) neglect and deterioration; and 5) transfer, lease, or sale of a historic property out of federal control without adequate preservation restrictions. If an adverse effect is identified, consultation will continue and may result in a Memorandum of Agreement that describes measures the federal agency will take to avoid, minimize, or mitigate adverse effects. In some cases, adverse effects are unavoidable based on another public interest, and a project may move forward as planned. For a flowchart outlining this process, see <http://www.achp.gov/regsflow.html>.

West Virginia State Historic Preservation Office.

Similar to review of historic properties for federal projects, the West Virginia Division of Culture and History reviews impacts to historic properties prior to any undertaking "permitted, funded, licensed or otherwise assisted, in whole or in part, by the state."⁷ Adverse effects on historic properties include 1) "physical destruction, damage, or alteration of all or part of the property"; 2) "isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the State or National Register"; 3) "introduction of a significant change to visual, audible, or atmospheric elements that are out of character with the property or alter its setting"; 4) "neglect of a property resulting in its deterioration or destruction"; and 5) "transfer, lease, or sale of the property without protective restrictions."⁸ If the relevant state agency and the Division of Culture and History find that there will be an adverse effect on a historic property, they are required to seek ways to avoid or reduce the effects.⁹ Similar to the federal process, a Memorandum of Agreement may be developed to describe measures that the agency will take to avoid adverse effects.

Historic Landmark Commission (HLC) Requirement for a Certificate of Appropriateness.

Many communities in West Virginia have created historic landmark commissions.¹⁰ HLCs must hold public meetings to establish local historic landmarks. Prior to designating a property as historic, the commission must develop a report on the historical, cultural, and architectural significance of each proposed building, structure, site, and district based on specific standards. If designated by local ordinance, an HLC may also have the authority to review building design and issue Certificates of Appropriateness for properties designated as historic landmarks. If a property is designated a historic landmark, a Certificate of Appropriateness may be required prior to any alteration of a designated structure or earthwork, including restoration, demolition, and excavation.¹¹ Working outside the scope of the Certificate of Appropriateness can cost a landowner up to ten percent of the total cost of the project in fines or \$500, whichever is greater. In addition, a court is authorized to imprison a violator in the county jail for not more than six months, or issue both a fine and a jail sentence.¹² Over 60 HLCs have been established in West Virginia, although only about four have design review authority.¹³

Historic as defined by Historic Landmark Commissions

“No building, structure, site or district shall be deemed to be an historic one unless it has been prominently identified with or best represents, some major aspect of the cultural, political, economic, military or social history of the locality, region, state or nation, or has had a major relationship with the life of an historic personage or event representing some major aspect of, or ideals related to, the history of the locality, region, state or nation. In the case of buildings or structures which are to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current times.”

-West Virginia Code § 8-26A-6

Zoning Regulations

Communities with zoning ordinances have several requirements related to historic landmarks. First, “preserving historic landmarks, sites, districts and buildings” must be considered when enacting a zoning ordinance.¹⁴ Zoning ordinances may include the designation of historic districts and the design of buildings within the historic district.¹⁵ For example, the City of Charleston has designated historic districts in its zoning ordinance. These historic districts are designated by the City’s Historic Landmark Commission and are smaller in scope than the designation by the National Register district. In Charleston, as with all HLCs, only those areas designated by ordinance are subject to design review.¹⁶ Other HLCs with design review requirements include those in Martinsburg and Lewisburg.¹⁷

As stated above, historic preservation is a mandatory element for all comprehensive plans in West Virginia. The plan must “[i]dentify historical, scenic, archaeological, architectural or similar significant lands or buildings, and specify preservation plans and programs so as not to unnecessarily destroy the past development which may make a viable and affordable contribution in the future.”¹⁸ Communities interested in historic preservation may also create a separate historic preservation plan that is adopted by the local governing body, but this is not required.

Conflict with Historic District and Zoning Regulations

Historic properties and districts within the boundaries of a zoning district are subject to the regulations for both the zoning district and the historic district. If there is a conflict between the requirements of the zoning district and the requirements of the historic district or property, the zoning district requirements apply.¹⁹

Historic Properties and the Building Code

Historic properties are given flexibility in the building code. The provisions of the State Building Code relating to the construction, repair, alteration, restoration, and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places.²⁰ However, additions constructed on a historic building must comply with the State Building Code.²¹

In addition, provisions of the International Property Maintenance Code are “not mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.²²” Note that code enforcement officials are given leeway to define public safety.

Incentives for Historic Properties

20% Federal Tax Credit for the Certified Rehabilitation of Certified Historic Structures. This federal tax credit equals 20% of the amount spent in a certified rehabilitation of a certified historic structure.²³ A certified historic structure is a building listed individually in the National Register of Historic Places or located in a registered historic district and certified by the National Park Service. A certified rehabilitation means that the National Park Service must approve that a rehabilitation is consistent with the historic character of the property and does not damage, destroy, or cover materials or features, whether interior or exterior, that help define the building’s historic character. The NPS assumes some alteration is necessary for modern use of historic structures.

10% State Income Tax credit for Commercial Buildings. This tax credit is intended for commercial buildings with substantial rehabilitation and the expenditure of 1) more than \$5,000 or 2) more than the adjusted basis in the building, whichever is greater.²⁴ Projects are only eligible for the 10% state income tax credit if they are eligible for the 20% federal tax credit.

10% Federal Tax Credit for the Rehabilitation of Non-Historic, Non-Residential Buildings Built Before 1936.²⁵ To qualify for this tax credit, non-historic buildings placed in service before 1936 must be rehabilitated for non-residential use and meet certain criteria that aim to preserve the original structure.

20% state income tax credit for private homeowners for approved rehabilitation work on their own residence. The building must be listed on the National Register of Historic Places either individually or as a building in a historic district that is listed on the National Register of Historic Places.²⁶

State Development Grants. These are competitive grants for the rehabilitation of properties listed on the National Register of Historic Places, a contributing property in a historic district, or archaeological development of a site listed on the National Register of Historic Places.²⁷ State development grants as well as the state tax credits are managed by the State Historic Preservation Office.

Survey & Planning Grants. These grants enable architectural and archaeological surveys, National Register nominations, predevelopment plans, heritage education projects, and more.²⁸

The West Virginia State Historic Preservation Office, Division of Culture and History maintains a list of Historic Preservation Grants including the process, deadlines, and eligibility criteria to receive grants.

State Historic Preservation Office Grants Program Manual



Fish Detail, Stained Glass Window, Bramwell, WV.
Collection of the State Historic Preservation Office.

West Virginia Division Of Culture And History
State Historic Preservation Office
1900 Kanawha Blvd., East
Charleston, WV 25305
Phone: 304-558-0240
www.wvculture.or

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- 1 National Historic Preservation Act §106, 16 U.S.C. § 470(f) (2012); see also ADVISORY COUNCIL ON HISTORIC PROPERTIES, PROTECTING HISTORIC PROPERTIES: A CITIZEN'S GUIDE TO SECTION 106 REVIEW (2002), available at <http://www.achp.gov/docs/CitizenGuide.pdf>.
- 2 36 C.F.R. § 800.16(l)(1) (2014); see *Te-Moak Tribe of Western Shoshone v. United States Dep't of Interior*, 608 F.3d 592, 607–08 (9th Cir. 2010).
- 3 *National Register, Bulletin: How to Apply the National Register Criteria for Evaluation* (1995), available at <http://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf> (last visited July 17, 2015).
- 4 *Id.* at 44.
- 5 *Id.* at 2.
- 6 36 C.F.R. § 800.6(a) (2014).
- 7 W. VA. CODE ANN. § 29-1-8 (West 2015).
- 8 W. VA. CODE R. § 82-2-5(5)(a) (2013).
- 9 *Id.* § 82-2-5.
- 10 Any municipality by ordinance and any county by order of the county commission entered of record may establish a municipal historic landmarks commission or county historic landmarks commission. W. VA. CODE ANN. §§ 8-26A-4 to -5 (West).
- 11 *Id.* §§ 8-26A-6 to -7.
- 12 *Id.* § 8-26A-9.
- 13 Interview with Sandra Scaffadi, President, Preserve Alliance of West Virginia, in Morgantown, West Virginia (Jun. 18, 2015).
- 14 W. VA. CODE ANN. § 8A-7-2(a)(5) (West 2015).
- 15 *Id.* § 8A-7-2(b)(3).
- 16 CHARLESTON, W. VA., ZONING ORDINANCE art. 20-040 (2005).
- 17 Interview with Susan Pierce, Deputy State Historic Preservation Officer, West Virginia Division of Culture and History, in Charleston, West Virginia (Jul. 2, 2015).
- 18 W. VA. CODE ANN. § 8A-3-4(c)(13) (West).
- 19 *Id.* § 8-26A-3.
- 20 "[U]nder the provisions of section eight, article one of this chapter or the National Register of Historic Places, pursuant to 16 U.S.C. §470a." *Id.* § 29-3-5b(j).
- 21 W. VA. CODE ANN. § 29-3-5b(b), (j) (West). "Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Commission." *Id.* § 29-3-5(j). The State Fire Marshal is required to provide compliance alternatives for historic structures under the Building Code.
- 22 INT'L PROP. MAINT. CODE § 102.6 (2012).
- 23 Tax Reform Act of 1986, P.L. 99-514, 100 Stat. 2085.
- 24 *Historic Rehabilitation Tax Credits*, W. VA. DIV. OF CULT. AND HIST., available at <http://www.wvculture.org/shpo/tccommooverview.html> (last visited Aug. 10, 2015).
- 25 *Tax Incentives for Preserving Historic Properties*, NAT'L PARK SERV., <http://www.nps.gov/tps/tax-incentives.htm> (last visited Aug. 10, 2015).
- 26 *Historic Rehabilitation Tax Credit*, W. VA. DIV. OF CULT. AND HIST., available at <http://www.wvculture.org/shpo/tcresoverview.html> (last visited Aug. 10, 2015).
- 27 *State Development Grant Program*, W. VA. DIV. OF CULT. AND HIST., available at <http://www.wvculture.org/shpo/GrantManual/development.html> (last visited Aug. 10, 2015).
- 28 *Survey and Planning Grant Program*, W. VA. DIV. OF CULT. AND HIST., available at <http://www.wvculture.org/shpo/GrantManual/Surveyplanning.html> (last visited Aug. 10, 2015).



Contaminated Properties

In some cases, dilapidated properties are contaminated, adding a layer of risk for purchasers or others dealing with neglected properties. This Section introduces the primary laws that address hazardous waste and asbestos. As with all information presented in this toolkit, these summaries are merely an introduction to the issues. When faced with a contaminated property, the purchaser or manager of the property should seek legal counsel before taking any action.

Hazardous Waste

The primary source of hazardous waste liability is the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) also known as Superfund.¹ The statute's complexity has been referred to as "a black hole that indiscriminately devours all who come near it."² Liability under CERCLA requires a release or threat of release of a "hazardous substance" from a vessel or facility caused by a "responsible party." Hazardous substances include a wide range of pollutants and contaminants, but do not include petroleum, crude oil, or natural gas products.³ Hazardous substances are most commonly found at abandoned industrial sites, such as factories that manufactured chemicals or used chemicals in their production processes. Common commercial sites that create hazardous substances include gas stations, hospitals, exterminators, photo processing centers, and dry cleaners. A responsible party or potentially responsible party under CERCLA will fall under one of four categories: current owners and operators, past owners and operators, generators, or transporters.

There are two primary defenses to CERCLA liability: the bona fide prospective purchaser defense and the "innocent purchaser" defense.

The Bona Fide Prospective Purchaser. In order to promote the redevelopment of brownfields,⁴ CERCLA allows certain purchasers to acquire property with knowledge of hazardous substance contamination without incurring liability. There are several requirements to qualify for this defense. First, the bona fide prospective purchaser must have

acquired the facility after January 11, 2002.⁵ Second, the disposal of hazardous waste must have occurred prior to acquiring the property.⁶ The purchaser must make "all appropriate inquiries" into the previous ownership and uses of the facility in accordance with accepted good commercial and customary standards.⁷

Next, the purchaser must provide all legally required notices with respect to the discovery or release of any hazardous substance and take appropriate care to stop and prevent any threatened future release.⁸ The purchaser must fully cooperate with any other groups authorized to restore the property⁹ and cannot be affiliated with anyone who is potentially liable.¹⁰ Note that the government may place a lien on the property if the government carries out contamination response actions and does not recover all of its costs.¹¹

The "Innocent Purchaser." An innocent purchaser is a purchaser who did not know or had no reason to know that any hazardous substance was disposed of on, in, or at the property. The defense applies only to three types of current property owners: 1) non-governmental entities that intentionally acquired the site; 2) non-governmental entities that acquired it by inheritance or bequest; and 3) governmental entities that acquired the site by escheat or other involuntary transfer or by means of eminent domain.¹² New owners must establish that the hazardous substance was placed at the site before they acquired it, that they exercised due

care regarding the hazardous substance, and that they took precautions against foreseeable acts or omissions of third parties.¹³

Methods to evaluate a property's potential for environmental contamination.

“All appropriate inquiry” refers to the process of evaluating a property's environmental condition and assessing potential liability for contamination.¹⁴ Specific activities are required under this rule and explained in the EPA's All Appropriate Inquiries Rule Factsheet:¹⁵

An environmental professional¹⁶ must perform interviews with past and present owners, operators, and occupants; reviews of historical sources of information; reviews of federal, state, tribal, and local government records; visual inspections of the facility and adjoining properties; and inquiries of commonly known or reasonably ascertainable information and the degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination. Visual inspections might include obvious signs of contamination, including any evidence of drums, transformers, underground tanks, areas of distressed vegetation, stains, or buried waste, indicated by disturbed soil.¹⁷

Additional inquiries must be conducted by or for a prospective landowner or grantee:

Searches for environmental cleanup liens; assessments of any specialized knowledge or experience of the prospective landowner (or grantee); an assessment of the relationship of the purchase price to the fair market value of the property, if the property was not contaminated; and commonly known or reasonably ascertainable information.¹⁸

Alternatively, standards established by the American Society of Testing and Materials (ASTM) may be used to comply with the provisions of the rule. The following two standards apply:

For any property: ASTM E1527 – 13 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.¹⁹

For forestland or rural property greater than 120 acres: ASTM E2247 – 08 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property. This assessment is less rigorous than the ASTM E1527 site assessment process.²⁰

For more information on hazardous waste liability in West Virginia, please visit <http://www.dep.wv.gov/DLR/OER/Pages/default.aspx>.

Asbestos

The National Emission Standards for Hazardous Air Pollutants regulations under the Clean Air Act regulate work practices for asbestos during demolitions and renovations of all structures, installations, and buildings. Residential buildings that have four or fewer dwelling units are exempt.²¹ Building owners or operators must notify the Asbestos Compliance Program within the West Virginia Department of Health and Human Resources before demolition or renovation of a building that may contain asbestos.²²

For more information on asbestos compliance in West Virginia, please visit <http://www.dep.wv.gov/DAQ/CANDE/Pages/AsbestosRemovalandDemolition.aspx>.

Lead

The State of West Virginia has established guidelines for the assessment and removal of lead hazards from homes and other buildings, particularly those built before 1978.²³

For more information on lead assessments, abatement projects, licensing inspections, and technical assistance in West Virginia, please visit <https://www.wvdhhr.org/rtia/lead.asp>.

West Virginia Department of Environmental Protection's (WV DEP) Voluntary Remediation Program

This program encourages voluntary cleanup of contaminated sites and redevelopment of abandoned and under-utilized properties. Applicants who remediate sites under the standards provided in this program also benefit from: 1) limited enforcement actions by the WV DEP; 2) limited liability under environmental laws and rules; 3) the ability to redevelop sites with existing industrial infrastructure at a lower price; and 4) financial incentives to invest in brownfields. Voluntary

Remediation Agreement and application requirements are available at <http://www.dep.wv.gov/dlr/oer/voluntarymain/Pages/default.aspx>.

For more information on voluntary remediation in West Virginia, please visit <http://www.dep.wv.gov/dlr/oer/voluntarymain/Pages/default.aspx>.

1 42 U.S.C. §§ 9601–9675 (2013).

2 Jerry L. Anderson, *The Hazardous Waste Land*, 13 VA. ENVTL. L.J. 1, 6–7 (1993).

3 42 U.S.C. § 9601(14).

4 "Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." *Brownfields and Land Revitalization*, U.S. EPA, <http://www.epa.gov/brownfields/> (last visited Aug. 24, 2015).

5 42 U.S.C. § 9601(40).

6 *Id.* § 9601(40)(A).

7 *Id.* § 9601(40)(B).

8 *Id.* § 9601(40)(C–D).

9 *Id.* § 9601(40)(E).

10 *Id.* § 9601(40)(H).

11 Memorandum from McDermott Will & Emery to Brandon Barnes, *Is there CERCLA Liability for Conservation Easement Holders?* (Dec. 3, 2010) (Land Trust Alliance Learning Center ID: 33582).

12 MAXINE I. LIPELES, *ENVIRONMENTAL LAW HAZARDOUS WASTE* 499 (3d ed. 1997).

13 42 U.S.C. § 9607(b)(3).

14 ALL APPROPRIATE INQUIRIES: FINAL RULE, U.S. EPA (2014), available at <http://nepis.epa.gov/Exe/ZyPDF.cgi/P1005DOD.PDF?Dockey=P1005DOD.PDF>.

15 *Id.*

16 An environmental professional is someone who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases on, at, in, or to a property, sufficient to meet the objectives and performance factors of the rule, and has: "(1) a state or tribal issued certification or license and three years of relevant full-time work experience; or (2) a Baccalaureate degree or higher in science or engineering and five years of relevant full-time work experience; or (3) ten years of relevant full-time work experience." *Id.*

17 See *The Nature Conservancy Environmental Assessment Form*, LAND TRUST ALLIANCE LEARNING CTR., January 2005, available at <http://tlc.lta.org/library/documents/6469>.

18 See 40 C.F.R. § 312.21 (2013) ("Results of Inquiry by an Environmental Professional"); 40 C.F.R. § 312.31 (listing specific reporting requirements for all appropriate inquiries).

19 See ASTM INT'L STANDARD E1527-13 (2013), available at <http://www.astm.org/Standards/E1527.htm>.

20 See ASTM INT'L STANDARD E2247-08 (2008), available at <http://www.astm.org/Standards/E2247.htm>.

21 40 C.F.R. § 61; *Asbestos: Building Owners and Managers*, U.S. EPA, <http://www2.epa.gov/asbestos/building-owners-and-managers#renovations> (last visited Aug. 25, 2015).

22 See *Asbestos Program*, W. VA. DEP'T HEALTH AND HUMAN RES., <http://www.wvdhhr.org/rtia/asbestos.asp> (last visited Aug. 25, 2015).

23 W. VA. CODE ANN. § 16-35-2 (West 2015).



Municipal Home Rule Pilot Program

West Virginia's Municipal Home Rule Pilot Program has had a significant impact on the management of neglected properties and promises to have an even bigger impact in the future. Already, at least three home rule proposals affecting neglected properties have led to statewide laws:

- Municipalities may establish Vacant Building Registration Programs.¹
- Municipalities and counties may obtain a lien on fire insurance proceeds for burned-out structures.²
- Municipalities may obtain a lien on property for unpaid fire, police, or street fees.³

The program enables communities to “test” a tool and demonstrate to the legislature whether the tool should be permitted statewide: communities are provided an opportunity to experiment with innovative ideas. In this way, even counties and towns that are not part of the Home Rule Program may eventually benefit from the lessons learned in test communities.

Definition of Home Rule

“Home rule” refers to a state constitutional provision or legislative action that provides a city or county government with a greater measure of self-government.⁴ Home rule involves two components: (1) the power of local government to manage “local” affairs; and, (2) the ability of local government to avoid interference from the state.⁵ West Virginia's home rule pilot program is not a traditional form of home rule because local proposals must still be approved by the state.⁶

-Chapter 60A (“Uniform Controlled Substance Act”) of the West Virginia Code,

-Chapter 61 (“Crimes and Their Punishment”) of the West Virginia Code, and

-Chapter 62 (“Criminal Procedure”) of the West Virginia Code.

The purpose of the legislation is expressed in the following two findings:

“Authorizing pilot municipalities and metro governments in West Virginia to exercise broad-based home rule will allow the Legislature the opportunity to evaluate the viability of allowing municipalities to have broad-based state home rule to improve urban and state development.”⁷

“It is the intent of the Legislature . . . to establish a framework for municipalities within which new ideas can be explored to see if they can or should be implemented on a statewide basis.”⁸

Communities are accepted into the Municipal Home Rule Pilot Program in phases. Currently, a third wave of applications is being considered.

Background

On March 10, 2007, the West Virginia Legislature passed Senate Bill 747, creating the Municipal Home Rule Pilot Program and codified at Section 8-1-5a. The Home Rule Pilot Program allows pilot cities to implement changes in all matters of local governance as long as the changes do not violate:

- the U.S. Constitution,
- the West Virginia Constitution,
- federal law,

Phase I

Only Class I, Class II, and Class III municipalities or metro governments were eligible to participate in Phase I of the pilot program. Up to five municipalities could have applied for the program, but only four submitted applications: Bridgeport, Charleston, Huntington, and Wheeling. Each municipality provided a written plan detailing the state laws, policies, rules, and regulations that prevented the municipality from carrying out its duties in the most cost-efficient, effective, and timely manner. Each plan also detailed the problems created by these laws, policies, rules, or regulations and proposed solutions to the problems, including possible changes to ordinances, acts, resolutions, rules, and regulations. If the Home Rule Board approved the proposals, the municipalities were able to implement them by passing ordinances, acts, resolutions, rules, and regulations, as long as the proposals did not violate any of the restrictions stipulated in the program.

A Special Report by the West Virginia Legislative Auditor on Phase I is available at http://www.legis.state.wv.us/Joint/PERD/perdrep/HomeRule_11_2012.pdf.

Phase II

The success of Phase I led to an expanded Phase II Home Rule Pilot Program in 2014, open to 16 new municipalities. Phase II received applications from 23 communities.

Phase III

Senate Bill 323, passed in 2015, continues the Municipal Home Rule Pilot Program until July 1, 2019. The ordinances enacted by the Phase I and Phase II participating municipalities may remain in effect until the ordinances are repealed.

Starting July 1, 2015, 30 Class I, Class II, and Class III municipalities and four Class IV municipalities, including those participating from Phase I and II, that are current on all state fees may participate in the Municipal Home Rule Pilot Program.

For a more complete analysis of what municipalities have proposed under the home rule program related to dilapidated buildings see Appendix G.

1 W. VA. CODE ANN. § 8-12-16c (West 2015).

2 *Id.* § 3B-10E-1.

3 *Id.* § 8-13-13.

4 BLACK'S LAW DICTIONARY (6th ed. 1990).

5 Michele Timmons et al., *County Home Rule Comes to Minnesota*, 19 WM. MITCHELL L. REV. 811, 816 (1993).

6 Jesse J. Richardson, Jr. et al., *Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management*, *Brookings Inst. Ctr. on Urban and Metropolitan Policy*, Jan. 2003, at 9, available at <http://www.brookings.edu/~media/research/files/reports/2003/1/01metropolitanpolicy%20richardson/dillonrule.pdf>.

7 W. VA. CODE ANN. § 8-1-5a (West 2007) (current version at W. VA. CODE ANN. § 8-1-5a (West 2015)).

8 *Id.*

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