RECEIVERSHIP

Who, What, When, Where, Why, and How

Issues and Problems

Practical Suggestions – Making it Work

Part One

1. What is a Receivership
2. Who is a Receiver
3. Why have a Receiver appointed?
4. When should a Receiver be appointed?
5. Where does Receivership come from?
6. How is a Receiver appointed?

What Is A Receivership?

- In law, **receivership** is the situation in which an institution or enterprise is being held by a **receiver**, a person "placed in the custodial responsibility for the property of others, including tangible and intangible assets and rights."[1] The receivership remedy is an equitable remedy that emerged in the English Chancery courts, where receivers were appointed to protect real property.[2] Receiverships are also a remedy of last resort in litigation involving the conduct of executive agencies that fail to comply with constitutional or statutory obligations to populations that rely on those agencies for their basic human rights.[2] Various types of receiver appointments exist:[1]
- a receiver appointed by a (government) regulator pursuant to a statute;
- a privately appointed receiver; and
- a court-appointed receiver.[1]
- The receiver's powers "flow from the document(s) underlying his appointment – a statute, financing agreement, or court order.

Source - Wikkipedia

What is Receivership, continued

- Receivership as being discussed in this class is a receivership is granted under the auspices of California State Health and Safety Code Section 17980.7 (c), which states, in part:

  (c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists.

What is Receivership, continued

In short, receivership as defined by this section of the Health and Safety Code is the court (government) or an agent of the court taking control of real property, usually residential property, for the ultimate purpose of abating substandard conditions, preserving the property, and protecting the public health and safety.

Who is a Receiver?

As someone appointed by the court a receiver is, first and foremost

AN AGENT OF THE COURT

A receiver should also be someone with a demonstrated ability to take impartial, positive and affirmative control of an out-of-control company, asset, or property

Who is a Receiver, continued

Health and Safety Code Section 17980.7 (c)(2) has the following requirement for a receiver:

The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building.

Who is a Receiver, continued

Finally, 17980.7 (c)(2) also states

A court may appoint as a receiver a nonprofit organization or community development corporation. In addition to the duties and powers that may be granted pursuant to this section, the nonprofit organization or community development corporation may also apply for grants to assist in the rehabilitation of the building.

Why have a Receiver appointed?

1. First and best answer – money. Fixing substantive board and nail violations takes money. Lots of money. More often than not the underlying financials of substandard property, driven by market forces **PRECLUDES AND PREVENTS** this investment. To date, by being given priority over all interested parties of record, receivership breaks this financial chain binding the property to remaining in substandard condition.
2. Because the sovereign power tasked with preserving the local housing stock – a municipality or a county – is committed to preserving those portions of its housing stock that are worth preserving.

Why have a Receiver appointed, continued

Experienced Code Enforcement personnel know that substandard, abandoned, and dangerous buildings present very real threats to the public health and safety – both to members of the public that live in those buildings, those that live near those building, and to those that go into those buildings, frequently 'first responders' – police and fire personnel. The following section of 17980.7 spells out the real 'why' of receivership – it allows an agent of the court to take total positive control of out of control or chaotic buildings and properties.

Why have a Receiver appointed, continued

(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties…

(A) **To take full and complete control of the substandard property.**

(B) **To manage the substandard building and pay expenses of the operation of the substandard building and real property upon** which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) **To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.**

(E) **To collect all rents and income from the substandard building.**

Why have a Receiver appointed, continued

(F) To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, with court approval, secure that debt and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located.

Why have a Receiver appointed, continued

(H) ……6) If the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard building by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then **the receiver shall provide relocation benefits** in accordance with subparagraph (A) of paragraph (3) of subdivision (d). (7) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation assistance.

Why have a Receiver appointed, continued

Receivership is the logical extension of the police power of the Building Official. The Building Official has enormous power to regulate buildings – he or she can vacate buildings, order them repaired, hire contractors to make repairs, demolish buildings, etc. But these codes do not contemplate giving the Building Official day to day or total control over a property. They do not contemplate giving the Building Official the same powers as an owner would have. In short, by giving someone all the power and control that a property owner would have, 17980.7 is a very direct remedy for the bad property management practices of owners who either don't care about their property or don't have the ability or the expertise to comply with regulatory directives and positively control their properties.

Why have a Receiver appointed, continued

Bottom line reason to have a receiver appointed is that if it makes programmatic and fiscal sense to have a receiver appointed, the result will be the complete and total repair (we had one house in receivership where everything from the roof to the sewer lateral, and everything in-between was either replaced or repaired) of properties that are extremely substandard, eyesore properties.

When should a Receiver be appointed?

1. **When conditions warrant it.**

   Don't try and have a receiver appointed over a property where the only violation is a dead lawn. The violations need to substantive and pervasive.

When should a Receiver be appointed?

2. **When a property is truly worth preserving.**

What does this mean? Question – are some properties economically obsolete, meaning can they ever be used or 'brought back on line' in such a way that they will continue to attract the capital necessary to sustain their operation? Will managing them in a businesslike manner after they are repaired prove impossible? Is a 45 year old fourplex with one parking space per door worth saving? Is a car dealership on a surface street – as opposed to the freeway – worth saving?

When should a Receiver be appointed?

3. **Single family properties – almost always.** Particularly in established residential neighborhoods that are still zoned for residential use. The alternatives is what the Planners called the gap toothed smile. Or, occupied house, occupied house, **vacant lot with weeds trash and debris,** occupied house, etc. Every neighborhood deserves a good house. No neighborhood is beyond repair.

When should a Receiver be appointed?

4. **When there is sufficient equity in the property for it to finance its repair, or it can be sold to an investor at a price that will allow all regulatory parties to recover their costs**.

   Having a receiver perform the rehabilitation is preferable to an investor. But sometimes the financials don't allow for it.

Where does Receivership come from?

As stated by Wikkipedia, receivership has a long history in common law. For the purposes of our discussion, the real question is where did the idea of receivership as a remedy for substandard properties come from. Two answers – first the code itself, second, from some public agencies starting to use this code section to address the problem of substandard properties.

Where does Receivership come from?

The practical use of receivership as a public agency remedy for substandard properties goes back to at least 1999, when the City of Ontario had a receiver appointed over a four unit building. That to the best of my knowledge, that was the first 17980.7 receiver appointed over residential property in the State of California. Since that time, Ontario has made consistent use of the remedy – over 40 receivership petitions have been granted – and several other agencies have made use of this remedy – most notably the City of Riverside.

Where does Receivership come from?

What does this mean? It means receivership as methodology for addressing substandard properties now has a strong track record.

How is a Receiver appointed?

1. **Make certain that the violations are worthy of a receivership**. They need to be substantive and pervasive. The condition of the property should support the idea that the property is not and will not be brought into compliance with the code unless something drastic is done – remember – the courts see receivership as drastic.
2. **Issue a Notice and Order of the Building Official, based on a code of equal dignity to State Housing Law.** Do not issue a Notice of Violation – a Notice of Violation just doesn't have the same weight as a Notice and Order.

How is a Receiver appointed?

3. **Provide proper notice.** This is defined by the code that you are using. It will usually involve mailing the Notice and Order certified mail, return receipt requested to the owner of record. You should also mail copies of the Notice and Order to the interested parties of record telling them that the attached Notice and Order has been issued against property where they might have an equity interest. Most codes allow owners and interested parties of record the right to appeal a Notice and Order.

How is a Receiver appointed

4. **Wait and see if anyone appeals.** Most of the time, they will not appeal. This is true for both owners and lenders. Why not? Because the Building Appeals Board is a technical review board, meaning they should only consider the following - did you correctly identify conditions at their property, and are these conditions in violation of the law? If you did your work properly, an appeal is almost pointless.

How is a Receiver appointed

5. **You get an appeal.** Schedule a hearing in front of your Building Appeals Board. The Building Appeals Board should consist of individuals from outside your agency that are technical experts. Architects, engineers, Building Officials, Fire Marshalls, contractors, etc. The meeting is a public hearing. Work with your attorneys to make certain that proper notice is given and that standard protocols for public meetings in your jurisdiction are followed.

How is a Receiver appointed

6. **You don't get an appeal, but the owner does want to talk about it.** Far more common than having an appeal filed. What do you? Talk to the owner. (Again, lenders almost never respond to these Notices). This is where your professionalism and skill comes into play. As a Code Enforcement officer you are paid to know when someone is credible and when they are not. You are paid to know how much time to give them when you know they won't comply and you are paid to know how much time to give them when you believe they will comply.

How is a Receiver appointed

Talking to the owner, continued….

If an owner wants to talk and says they want to bring their property into compliance, unless the circumstances are very extreme, you really have to give them the chance to fail – even when you know they will. Things you can an reasonably ask them to prove out their ability to comply are – Do you have the money to make the repairs? Do you have the ability to make the repairs yourself? If you can't make the repairs, do you know someone who can? Even when they can't show you either the money or the ability at the first meeting, you should give them time get the money and find the expertise.

How is a Receiver appointed

Talking to the owner continued….

Why all this emphasis on patience? ***Because it's what the spirit of the law requires. If you don't give them the time to prove out their inability to perform, it is certain the judge will. And you will be paying for your attorney to attend multiple hearings…Remember – equity hates a forfeiture…..***

How is a Receiver appointed

Talking to the owner continued….

When is enough enough? Every situation will be a little bit different. Again, that's what your paid to know. Err on the side of caution. Time is your friend. But on average, it takes about 3 months for a property owner to not perform to a court's satisfaction….

How is a Receiver appointed

7. **What if you don't hear anything from anybody?**

   Things you can do – you can send a Final Notice and Order stating your intent to seek the appointment of a receiver. Not required by law. Not a bad idea during normal times. You have nothing to lose. Their appeal rights have been exhausted. It might prompt someone to come talk to you. Or…

   You can simply refer it to the City Attorney asking them to go get a receiver appointed.

How is a Receiver appointed

8. **Manage your attorneys.** Filing a receivership petition isn't difficult for a competent attorney. What is difficult is getting some attorneys to appreciate that receivership is a serious and harsh remedy. As law, 17980.7 is very, very simple. But it strikes right at the heart of one of the things that defines us Americans – specifically that our private property rights are not to be violated by the government unless it is absolutely essential. A good Code Enforcement officer understands this – sometimes better than an attorney. **BEWARE OF THE EX-PARTE MOTION….**

How is a Receiver appointed

Managing your attorney, cont.

But while you don't want your attorney to be heavy handed, you also don't want them to be too timid. You don't want your attorney giving the property owner endless chances to comply. You've already done that, haven't you? If you've given them ample opportunity before referring the case to the attorney, at most your attorney should give the one, possibly two chances to comply before you go to court. More than that, you are now paying someone $200+ an hour to manage your cases. There are attorneys out there who know the difference between being aggressive and assertive. **You want assertive – you don't want aggressive.**

How is a Receiver appointed

9. **How long does this take?** If there is no response to the Notice and Order, and no opposition to the motion to appoint a receiver, 4 to 6 months from the first inspection until the time the receiver is appointed. If there is opposition (or conversation) at every step, it can take 6 to 14 months from the first inspection until the time a receiver is appointed.

501 South Euclid Before Receivership



501 South Euclid: After Receivership



Issues and Problems

1. Title and Priority
2. Equity
3. Is every structure worth saving?

Title and Priority

1. Per old case law (1915) receivers have enjoyed priority over other parties with financial interests. Or, whatever fees a receiver charges and costs they incur need to be paid first. If this isn't true, no one would allow themselves to be appointed a receiver –you would go broke.

Title and Priority

2. Since the beginning of the use of 17980.7 receiverships, this case law has applied. This has made receivership financially possible. The underlying equity of the house, freed from having to service an existing debt service, is 'released' and can be used as collateral to obtain the funds necessary to make the repairs. Remember – fixing really substandard property costs money – a lot of money.

Title and Priority

3. For two reasons this guarantee of priority is now in question. First, the mortgage crisis has raised the issue of whether or not proper notice can be given to interested parties of record – the paper trails are frequently chaotic. Second, the legitimacy of the receiver's priority is being attacked in the trial courts. As a result of all this, title companies are now increasingly reluctant to issue title insurance. If the receiver cannot obtain title insurance, then the receiver cannot sell the property in the open market to buyers using conventional financing.

Title and Priority

4. Why is title insurance important? Title insurance guarantees new buyers and their lenders 'clean title.' What is meant by 'clean title?' It means that the title company is warranting that there are no liens or encumbrances that threaten the new buyers or their lender. A title insurance policy means that if someone shows up after the sale of the property claiming a lien or an encumbrance, the title company will defend the matter in court, either by making the new lien holder go away, or by satisfying their claim, or by making the new buyers whole if the new found lien is valid. Without clean title guaranteed by a title insurance policy, buyers cannot use conventional lenders to buy houses.

Title and Priority

Until recently, obtaining title insurance for properties sold by receivers has not been particularly difficult, because no one challenged the priority of the receiver's lien. But now lenders – not owners – are starting to dispute that their position can be 'wiped out' by the granting of a receivership petition and the filing of a lien by a receiver. This is making title insurance companies reluctant to issue title insurance for properties being sold by receivers.

Title and Priority

What is true for the receivers lien would also be true for any legal fees that a public agency incurs getting a receiver appointed. Of, if the lender does enjoy priority over a receiver and the public agency then there would be little point to seeking the appointment of a receiver over a property where the proceeds of the sale of the property would not cover the costs of the rehabilitation of the property, the receivers fees, the public agencies fees, and the existing debt. As this is being written, the challenges are in trial court. It is likely that whoever loses in trial court will take the matter to the Court of Appeals.

Equity

The value of the property in its highest and best or rehabilitated condition should exceed the combined total of the cost of rehabilitation, the receivers fees and costs, and the public agencies attorney fees. If not, someone is going to ‘take a hit.’ Usually the public agency.

Equity

Before the real estate crash this was not a problem. During the 'boom' cycle, the proceeds from the sale of almost any house, not matter it's board and nail condition, would make everyone whole – even the lenders. This is no longer true.

Equity

Solutions? Know your street. You need to know what will work and what won't.

Alternatives? Sale of the property by the receiver to an investor. Why does this work?

Receivership is expensive. Acquiring the capital is expensive. Paying licensed and bonded contractors is expensive. Going into court for approvals of bids, scope of work, sale price, is expensive. The investor has the money, they have a crew that can and will do it for less, and they don't have to ask the court's for permission for anything once they own it.

Equity

Selling to an investor, the right investor, can be a good solution to the equity problem. Again, you need to know your street. You need to know who the good investors are. There are investors who take pride in their work, do the right thing board and nail to a property, and value to neighborhoods. And there investors who don't. You need to know the difference.

Equity

If it turns out that the best course is to have the receiver sell the property to an investor, then the receiver should not be discharged by the court until after the investor has done what the investor has said they were going to do. Or, even if the property is sold to an investor, the receiver or the court can retain jurisdiction over the property.

Is every structure worth saving?

Some structures may be economically obsolete. Economic obsolescence means that on the open market the building or the property will not attract tenants or uses that will sustain the building, where sustaining the building or the property means being able to service its debt, make ongoing and long term repairs, and offer a reasonable rate of return.

Is every structure worth saving?

Several things influence the economic sustainability or viability of a building

1. Age
2. Amenities
3. Location – within a community
4. Location – within a region
5. Debt Service
6. Condition

Is every structure worth saving?

Age –

Buildings, particularly residential housing, are subject to changing ‘retail’ expectations. Most forty five year old apartment buildings have a difficult time meeting these expectations – especially with regard to secured parking. Most older multi-family residential buildings have one space per door, frequently a carport.

Is every structure worth saving?

Amenities -

Are there laundry facilities? Are they common? Is there a pool? A clubhouse? What kind of countertops are in the kitchen? Older units frequently have a difficult time competing with newer units, dollar for dollar.

Is every structure worth saving?

Location within a community –

An older well maintained apartment building in a nice part of town, surrounded by single family homes will probably be more economically viable than the same building in a neighborhood dominated by apartment buildings. Why is this?

Is every structure worth saving?

Location within a community, continued

This is the problem of the dispersed ownership multi-family neighborhood – where the inadequate property management practices of just one or two property owners can ruin a neighborhood. Ontario had two four unit buildings go through receiverships where the units where completely rehabilitated – only to be back under Notice and Order within two years.

Is every structure worth saving?

Location within a region –

Simply put, a four unit building in Pasadena is probably more economically viable than a four unit building in Ontario. Why? Demand. For instance, the median price of a single family home in Pasadena is much higher than Ontario – Pasadena average about $800,000, Ontario average - $214,000 – Source – Trulia, 9/10/12

Is every structure worth saving?

Location within a region, continued

Despite the high price of residential housing, people with disposable income still want to live in Pasadena – so they rent. And they will take whatever the market will give them. Which for the most part, are older apartments buildings.

Is every structure worth saving?

Debt service –

If someone paid too much for a building, or borrowed too much against it, they probably cannot maintain the building and service their debt. But once a property achieves a certain debt service, now the market believes that building is worth that amount – whether or not is really is in a true operational sense. Or, yes, each unit is throwing off $1200 a month – but how many households are behind each door to make that rent?

Is every structure worth saving?

Debt service, continued

Two problems. First, we are now back to fixing building costs a lot of money. Someone has to take a hit – usually two some ones – the owner and the lender. Receivership could reset the financials if the receiver is given priority. Right now that is up in the air.

Is every structure worth saving?

Debt service, continued

Second problem. Even if a receiver is appointed and sells the property, the market will still influence how it is valued. Or, the market could once again over value the property. Even if the receiver is able to sell the property for a low price, nothing is stopping the new owner from borrowing against the property. And the cycle begins again…..

Is every structure worth saving?

Condition….

SOMETIMES IT JUST COSTS TOO MUCH TO FIX THE BUILDING!!!

221 North Mountain Before



221 North Mountain Before



221 North Mountain, After



403 North Fern Avenue





403 North Fern Avenue



403 North Fern Avenue



Practical Suggestions – Making it Work

Getting started – finding the 'right property'

Property should be….

1. A single family home
2. Clearly abandoned
3. Preferably, the owners of record are deceased
4. Ideally, there will be no debt against the property
5. And the heirs, if there are any, aren't coming forward….

Practical Suggestions – Making it Work

Why a single family home? Much more desirable in the open market, easier to meet current retail expectations.

Why abandoned? No tenants to disrupt or relocate.

Why is it ideal to have deceased owners? They don't oppose receivership petitions.

Why no debt service? No lender to oppose the petition, title insurance should be easy to obtain.

Why no heirs? Again, no opposition.

Practical Suggestions – Making it Work

Do such properties exist?

ABSOLUTELY. Currently, Ontario has successfully petitioned for the appointment of a receiver over one property like this, and we have another petition pending where the judge has said he will grant the motion to appoint the receiver.

Practical Suggestions – Making it Work

And not only are these easy receiverships, but consider the alternative. If you don't do something, nobody will – at least not until the property is sold for back taxes. Do you want to wait that long? Do the neighbors want you to wait that long?

Practical Suggestions – Making it Work

What would be best for the neighborhood and your housing stock? Wait 3 to 5 years for an investor to buy it, where the quality of the rehabilitation is uncertain and the property may become a rental, or have a receiver do a high quality rehabilitation and sell the property to an owner occupant?

Practical Suggestions – Making it Work

This receivership would be easy to do – the idea of 'learning to walk before you run.' If it turns out well, you would have demonstrated what receivership could do in your efforts to protect, preserve, and enhance your neighborhoods.

Practical Suggestions – Making it Work

Picking a receiver.

In picking a receiver, I have found it is almost always best to PICK AN ATTORNEY to be your receiver. Why? Three reasons.

First, a non-attorney receiver will turn around and hire an attorney anyway. So now the receivership estate is paying $200 an hour for the receiver and $300 an hour for any legal work that needs to be done – and there is a lot of legal work that needs to be done by the receiver.

Practical Suggestions – Making it Work

Picking a receiver, continued.

Second, attorneys enjoy true standing before the court. Some judges will not allow non-attorney receivers to address them directly. You want as powerful an agent as you can have before the court.

Third, attorney receivers are usually very adept at defending their own motions if challenged. Non-attorney receivers…maybe yes, maybe no.

Practical Suggestions – Making it Work

What sort of an attorney should you look for?

Probably one with construction defect litigation experience, or one that does a lot of work in real estate law. Either one will probably have contacts with contractors, property managers, and real estate professionals, or the team of experts that will make this whole process work.

Practical Suggestions – Making it Work

Keeping costs down.

This is where standard operating procedures that consistently extend and exhaust administrative remedies in timely, businesslike, and constitutionally acceptable manner are so important.

Practical Suggestions – Making it Work

Keeping costs down, continued.

This should be like a relay race, where your complete file is like a baton that you can hand to your attorneys and they can simply proceed.

You want them to check your work – but checking your work is not the same as doing your work. Your job is give them a good administrative process which will function as the platform and the core of their receivership petition.

Practical Suggestions – Making it Work

Credibility with the Court

The other very important thing about standardized procedures that produce high quality administrative processes – reflecting the requirements of both the letter and the spirit of the law – is that the courts will see your documents (your work) in the complaint that is filed by your attorneys. These documents are the core of the petition.

Practical Suggestions – Making it Work

Credibility with the Court, continued.

If the court sees the same high quality work over and over, year after year, the judge will eventually say things like…

'Your city does a good job enforcing these codes. Other cities should do what your city is doing.'

Do judges really say things like this? Yes, they have said it to me…

Practical Suggestions – Making it Work

Credibility with the court, continued.

Bottom line – as code enforcement personnel, the courts are our true and final audience. If they say we are doing it the right way, then we know that we are. This isn't to discount the elected officials and the public we serve, but the courts are, and should be are most objective critics.

Practical Suggestions – Making it Work

The Importance Of Clouding Title….

If you take nothing away from this class, please take away the importance of clouding title.

What does clouding title mean? It means issuing a lien against the property. Your lien can reference simultaneously nuisance conditions, substandard conditions, and money – fees and penalties.

Practical Suggestions – Making it Work

Clouding Title, continued.

When should you cloud title? Just as soon as you can – which is whenever it is reasonable for you to do so. This is frequently spelled out in the code, but that is usually a minimum standard. Apply this test. If you think that a significant nuisance property could be sold to an unsuspecting buyer – one that would not know about your regulatory concerns – place a lien against the property.

Practical Suggestions – Making it Work

Clouding Title, continued.

Why is this so important? Remember title insurance? If you are on title, all ships associated with the sale of the property must sale into your harbor and talk to you about getting you off title. Why is this so critical? Again, it's the money….

Practical Suggestions – Making it Work

Clouding Title, continued.

At the point of sale, the money is literally at the table. Let's say making the repairs called out in your notice will cost $20,000. If this is an honest transaction, meaning, you have a motivated seller and buyer, they will work that out between them. The seller may discount the property accordingly – not usually that big a deal, particularly if they owned the property for a long time. The seller may assume that as a part of the mortgage – easier to amortize $20,000 over the life a loan than come up with cash after the sale….

Practical Suggestions – Making it Work

Clouding Title, continued.

Let's say you've issued administrative citations or civil penalties against the property. Again, this deal won't close without you going off title. You won't go off title without getting your fines paid….

In all of these things, it's the money driving things along….it's always the money…follow the money…..

Practical Suggestions – Making it Work

Justice should be Swift and Certain…

Some people view the filing of a receivership petition as being the same as filing a lawsuit. Most municipalities require approval from their City Councils before a lawsuit can be filed. Ontario does not see receivership petitions in this light, and we do not need permission from our City Council to seek the appointment of a receiver. Does a police officer ask permission to make an arrest? Do we really need permission to ask a court to see to it that the law is obeyed? This really, really, speeds things up.

Practical Suggestions – Making it Work

So what if you know that the agency you work for will never ever let you seek the appointment of a receiver…or the courts rule in such a manner that receivership won't work for most properties…have you wasted your time in this class?

Hopefully not. Because in addition to doing things like clouding title, there are other benefits to embracing the idea of enforcing the Building Codes in an assertive fashion.

Practical Suggestions – Making it Work

What are other outcomes of enforcing the building codes besides receivership…..

DEMOLITION!!!

Nothing solves the problems associated with a bad building like getting rid of the bad building. Not the best solution in many cases, but better than doing nothing.

Practical Suggestions – Making it Work

Demolition, continued.

Why can demolition be so important? It can really get rid of criminal habitat. It's the ultimate fix for the broken window of the 'Broken Windows' theory. Using demolition, Ontario has gotten rid of at least four high call for service liquor stores and bars and several no-tell motels. The Police really like that….

Practical Suggestions – Making it Work

Demolition and True redevelopment.

Redevelopment agencies are gone. Their mission had been to eliminate slum and blight. Blight is caused by the lack of investment. Redevelopment agencies would typically address blight in commercial and industrial areas by buying properties that weren't attracting investment, and then tearing down the buildings and holding onto the land – 'land-banking' until new development occurred at a later date.

Practical Suggestions – Making it Work

'Lack of investment' is a nice way of saying someone is not spending MONEY maintaining the property. Enforcing the building codes the right way, particularly with the threat of demolition, is a pretty good way to get someone to spend MONEY on a property if they think it makes economic sense for them. If they don't – or won't – and you tear down the building for lack of repairs, then you will have done the work that Redevelopment agencies used to do – only the private sector is banking the land.

Practical Suggestions – Making it Work

Seeing building code enforcement as a tool for true redevelopment is not unimportant. It is unclear if most of the voters really know what the lack of redevelopment agencies will mean in the future. But most voters do not like the appearance of run down commercial areas. (How many times have you had a resident say 'they should just tear that place down!') And even before Redevelopment law was repealed, Redevelopment agencies did not have enough money to deal with all the blight in a timely and businesslike manner.

Practical Suggestions – Making it Work

Fines and Penalties…

Failure to obey a legitimate directive of the Building Official or the Code Enforcement Manager should have some consequence. Again, if you have done everything the right way, issuing fines and collecting them (you did cloud title, DIDN'T YOU?) by placing them against the property tax if they go unpaid….Don't be unreasonable about this, know your target, but don't ignore the opportunities to gain compliance, change the word on your street, and increase revenue….

Practical Suggestions – Making it Work

Underlying all of this – whether it be the successful use of receiverships or getting buildings torn down, there is a fundamental mindset that you and your agency must possess. It is the idea that your agency is the sovereign governmental power tasked with important work. Or….

Practical Suggestions – Making it Work

LOCAL GOVERNMENT IS NOT LESSER GOVERNMENT!!!

Practical Suggestions – Making it Work

The role(s) of Government…

1. **The Federal government** defends the borders, delivers the mail, and treats with foreign nations.
2. **The States** provide schools, highways, prisons, etc.
3. **The County** provides social services and serves the unincorporated areas.
4. **Municipal government** polices the streets and picks up the trash.

Practical Suggestions – Making it Work

Embracing your role is more than just playing with words. It has a very practical application. This can most easily be seen in the proper exercise of the police power associated with office of the Building Official.

Practical Suggestions – Making it Work

If your Building Official correctly declares a building to be substandard or dangerous, no licensed expert of equal professional standing will contradict that declaration.

A building properly declared substandard or dangerous is substandard or dangerous in the eyes of the law. What does this mean?

Practical Suggestions – Making it Work

It means that a judge will defer to your Building Official as to what the law requires for the Building Official to lift the declaration of it being substandard and or dangerous. (This is assuming that the judge is intelligent and knows the law – which most of them do…) It means that your agency will get the relief it seeks in court to abate the substandard or nuisance conditions.

Practical Suggestions – Making it Work

Or…

If you act like a legitimate sovereign power, doing things the right way every time (remember standardizing your procedures?) the courts will treat you like a legitimate sovereign power…and not just in code enforcement matters.

Practical Suggestions – Making it Work

A very brief word about criminal prosecution…

If you are dealing with someone that makes a good living gaming the system by renting substandard rental property, criminal prosecution isn't much of a deterrent. It's the cost of doing business. But demolition or receivership? That could cost them their business. You will get their attention…..

1064 East Granada Court Before Receivership



1064 East Granada Court Before Receivership



1064 East Granada Court After Receivership



1064 East Granada Court After Receivership



Conclusion…..

Remember, we do not do this work for any purpose other than bringing properties into compliance with the law. We are not here to get receivers appointed or tear down buildings, or issue fines. Those are means to the end. The threat of receivership, or demolition, or issuing fines will usually work….