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PERSPECTIVE

How cities can fix dangerous properties and increase revenue

By Ryan Griffith

Almost every city or county has abandoned, fire damaged, or otherwise dilapidated properties. The majority of the time these properties sit abandoned and dilapidated for years with no solution in sight. However, a solution for these long-standing dilapidated properties exists under California Health and Safety Code Sections 17980.6 and 17980.7.

Dilapidated properties come up in a variety of ways, but some of the most common are:

- Deceased property owners without heirs;
- Zombie foreclosure properties — this is when a bank initiates a foreclosure but does not follow through with it, resulting in the owner vacating the property believing the bank is responsible, while the bank claims the owner is responsible; property in a state of limbo without anyone responsible for it;
- Hoarders and other mental health conditions;
- Slumlords who allow dangerous conditions at their property;
- Owners who file bankruptcy and abandon their property believing their creditors will take it. Receiverships under the Health and Safety Code supersede the automatic stay of bankruptcy under the state police power. See 11 U.S.C. Section 362(b) (4); *City of Riverside v. Horspool*, 223 Cal. App. 4th 670, 676 (2014).
- Properties with substantial criminal activity.

Health and Safety Code Section 17980.7 allows a city to obtain judicial approval to appoint a receiver over a dangerous property. The receiver is then authorized to borrow funds to rehabilitate the property. The receiver can then sell the rehabilitated property to a responsible owner pursuant to California Code of Civil Procedure Section 568.5. See *Santa Monica v. Gonzalez*, 43 Cal. 4th 905, 930 (2008).

Abating a dangerous property is great for a community, and the city recovers all its attorney fees, costs, as well as any outstanding city liens from the sale of the property. HSC Section 17980.7(c)(11), (d)(1); *City and*

County of San Francisco v. Jen, 135 Cal. App. 4th 305, 310-11 (2005). In addition to improving a community by removing a dangerous property and recovering money for the city through the receivership process, the receivership process has two other great collateral effects.

The first — adding new housing stock. Almost every city in California is dealing with limited housing stock,

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and these abandoned properties can be brought into a productive use and provide additional housing.

The second — increasing property tax revenue. We are all aware of Proposition 13, which limits property taxes on homes owned for a long time. However, when a property is sold the assessed value becomes the new tax basis. When these dangerous properties are sold a new tax base is established.

Many cities' first question when presented with a Health and Safety Code receivership is, how much does it cost? The answer is nothing. The receiver cannot be paid by the city or any party. This is because a receiver is a neutral agent of the court who must act in the best interest of all parties. California Rule of Court 3.1179; *Shannon v. Superior Court*, 217 Cal. App. 3d 986, 992 (1990).

So what is the catch? The answer is that it takes a substantial amount of work for the agency to appoint a receiver. To appoint a receiver an agency must generate many notices to comply with due process, which makes sense because the appointment of a receiver is a drastic remedy.

The notices that need to be used are codified at HSC Section 17980.6 and 17980.7. *Gonzalez*, 43 Cal. 4th at 920. The Section 17980.6 Notice is the first step in the receivership process and it must be posted and mailed at each residential unit. The contents of the notice must detail the specific violations at the property and provide a reasonable

time to abate the dangerous conditions. There is no specific time period that constitutes a reasonable time, but often cities provide between 10 to 30 days to start addressing the dangerous conditions.

Once the reasonable time in the Section 17980.6 expires the city must then issue a HSC Section 17980.7 three days prior to the filing of the petition to all parties with a recorded interest.

Gonzalez, 43 Cal. 4th at 920. This Section 17980.7 notice is therefore sent to banks, judgement lien holders, and other parties that may have a lien in the property. After the three days of on the Section 17980.7 Notice expires the city can file a receivership petition seeking the appointment of a receiver.

At the hearing the city must prove: (1) the property substantially endangers public health and safety; (2) the owners and recorded interest had a reasonable time to abate the dangerous conditions; and the receiver is qualified to address the issues at the property.

Assuming all three elements are met, the receiver is appointed and then granted authority to borrow funds with a super-priority lien, which is recorded as a receiver certificate against the property. *City of Sierra Madre v. SunTrust Mortgage*, 32 Cal. App. 5th 648, 661 (2019). In most cases the receiver obtains an initial receiver certificate of \$50,000 to begin immediately abating the dangerous conditions at the property. If necessary, the receiver can come back to borrow more funds.

Throughout the entire process, the receiver must submit monthly reports to the court and all parties pursuant to California Rule of Court 3.1182 and any party may object to the receiver report pursuant to California Rule of Court 3.1183.

During the pendency of the receivership, the receiver will almost always take one of three paths: fully rehabilitate and sell the property, demolish

the property and sell the lot, or sell the property as-is with conditions to a responsible buyer.

Once one of three paths are chosen, a receiver is authorized to sell and even demolish a property pursuant to CCP Section 568.5. *Gonzalez*, 43 Cal. 4th at 931. Once the property is sold the receivership fees and expenses are paid from the sale of the property. The city's attorney fees and enforcement costs are also paid from the sale of the property. The receiver and the city are entitled to be paid ahead of all other recorded interests under the super-priority concept. *Hozz v. Varga*, 166 Cal. App. 2d 539, 543 (1958); *SunTrust Mortgage*, 32 Cal. App. 5th at 661.

Once the property is sold and the receivership fees and city expenses are paid there is usually a substantial amount of money left and these remaining funds are usually distributed to the owner, or the recorded interests. It is not uncommon for all parties to actually have a windfall at the conclusion of a health and safety receivership, because bringing these dilapidated properties into productive use has a net positive effect.

In summary, receivership is a great way to address dangerous conditions at nuisance properties. Although it can be a substantial amount of work for the agency pursuing receivership all attorney fees and enforcement costs are recovered. Furthermore, housing stock is increased and the tax basis for these abandoned properties are brought back into productive use. ■

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