

Conservatorship Act Is Pa.'s Best Property Restoration Tool

By **Gaetano Piccirilli and Monica Platt** (March 24, 2020)

Like many communities in the northeastern U.S., Pennsylvania has its fair amount of derelict, abandoned and blighted properties.

Historically, the commonwealth, its counties and municipalities, and quasi-governmental entities have relied upon traditional code enforcement and condemnation proceedings to manage these properties or attempt to place them back into beneficial use.

Neither approach facilitated the reuse of properties in a way that did not involve public expenditure.

This article offers recent developments in Pennsylvania legislation, existing alternatives to traditional condemnation procedures, and our recommendation to a better approach to fighting blight in Pennsylvania — the Abandoned and Blighted Property Conservatorship Act.

In 2008, the Pennsylvania state Legislature passed the Conservatorship Act to “provid[e] a mechanism to transform abandoned and blighted buildings into productive reuse.” Since its passage, the Conservatorship Act has allowed for an expanded universe of stakeholders, including governmental entities and private entities and individuals, to deal with problematic properties.

And, unlike the traditional approaches, the Conservatorship Act utilizes the inherent economic value of the property to promote transformation, regardless of whether it is being used by public or private stakeholders.

Since its passage, private entities and individuals have successfully used the Conservatorship Act to promote reuse throughout the commonwealth. Public entities, however, have been slow to catch on. Undeterred, the General Assembly has moved forward with seemingly Conservatorship Act-inspired legislation to codify additional mechanisms to handle abandoned and blighted properties.

For example, effective Jan. 6, Pennsylvania’s rules of statutory construction were amended to specifically define the term “blight” where it is not otherwise clear from the context of a statute— tracking heavily the conditions of blight in the Conservatorship Act. And, through H.B. 2185, introduced in January 2020, the General Assembly seeks to expand Conservatorship Act principles into the realm of tax sales.

Indeed, it appears that since public entities aren’t jumping to use the Conservatorship Act itself, the General Assembly wants to bring the same policy goals, remediation and reuse, directly to their doorstep. While that is likely helpful, we believe that the Conservatorship Act remains the best method of promoting the General Assembly’s stated goals.

Common Threads of Blight Among Problem Properties

As a starting point, when discussing abandoned and blighted property we need a common understanding.



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Looking at the properties eligible for condemnation and conservatorship, which are largely the same under the Redevelopment Law, the Eminent Domain Code, and the Conservatorship Act, we are discussing privately owned residential, commercial or industrial properties that share common characteristics.

While each law contains its own nuances, in general abandoned and blighted properties are those that have not been legally occupied for some period of time, have been declared a public nuisance either at common law or through code enforcement, are attractive nuisances for children and/or illegal activity, are fire hazards, are infested with vermin or overgrown, contain unsafe structures or excavations, or are otherwise uninhabitable. Vacant lots also may qualify as blighted.

The newly amended rules of statutory construction track these items, as does H.B. 2185. Therefore, if a property qualifies as blighted for purposes of one remedy, it likely qualifies for all.

Properties typically suffer numerous conditions of blight. Most frequently, blighted and abandoned properties will have a history of code violations, ranging from basic quality-of-life issues such as short-dumping and being overgrown with weeds to more serious safety concerns.

In more extreme cases, we have seen properties with significant municipal liens resulting from removal or repair of dangerous and structurally unsound portions of the property or environmental abatement. With respect to pressing quality of life issues, it is not uncommon to see properties that have become havens for drug use or prostitution.

Often, properties are also encumbered with real estate tax liens. Frequently, neighbors have tried unsuccessfully for years to redress the conditions at the property, calling code-enforcement hotlines, seeking the assistance of neighborhood associations, and reaching out to elected officials/representatives.

Traditional Approaches in Dealing With Abandoned and Blighted Properties

With limitations, both code enforcement and condemnation are significant tools available to municipalities to address blight. Code enforcement presents as a straightforward way to enforce community standards evidenced in municipal life, safety and health codes. Generally, and with an aim towards over-simplification, relying upon complaints and observations, municipal inspectors would find and investigate violations, and provide the owner with notice.

Depending upon the nature, severity, exigency and longevity of the violation, an already overburdened municipality may then dedicate additional resources to seek equitable relief to remedy conditions and chase owners to pay liens or judgments.

Code enforcement is not, however, a mechanism for reuse. Rather, its place is in managing and responding to life, safety and health concerns. Moreover, code enforcement places the remedial burden on the municipality. In addition, just as with any other remedy, economic realities or bad actors can impact enforcement mechanisms.

For example, the accumulation of liens and fines may make a property less marketable. And, there is little one can do if an already neglectful owner is satisfied to let violations accumulate, knowing he will not lose the property except in the extreme instance of a

municipal lien sale — and even then have the opportunity to redeem or otherwise retain ownership and control by doing the bare minimum.

Concerning reuse, condemnation is a mixed bag that may be too drastic and time-consuming to make sense for single properties that could easily be returned to productive use. Under both the Eminent Domain Code and the Urban Redevelopment Law, municipalities and redevelopment agencies, or RDAs, must first declare a property blighted, file a declaration of taking and a bond for the use of the property, and pay damages (just compensation and costs) to the owner.

Frequently, litigation involving the technical aspects of a declaration or the amount of just compensation ensues. Under the Urban Redevelopment Law, RDAs must take several other steps to acquire blighted properties, including a planning commission determination of blight and a certification process, during which the owner may eliminate the blight or challenge the certification.

And, with condemnation, title passes to the condemnor, leaving the owner with no incentive or opportunity to make the necessary repairs or redeem the property after they have been made. Moreover, under the Eminent Domain Code, even if the owner is not otherwise entitled to fees, the condemnor still must reimburse the owner up to \$4,000 per property regardless of actual expenses. In short, condemnation may be a drastic, sprawling and expensive proposition.

Given its expensive, expansive and fractious nature, condemnation is a political decision reserved for certain projects. The administrative, legal and bureaucratic energy spent dealing with condemnation requires scale and maximum impact — typically leaving discrete parcels out of range.

While necessary and vital, both code enforcement and condemnation rely heavily upon the public purse to achieve their ends. Absent dire scenarios, neither option offers the opportunity to directly impact specific properties. This is where the Conservatorship Act comes into play.

The Conservatorship Act

The Conservatorship Act provides for proactive litigation that allows a not-for-profit, municipality, redevelopment authority or a neighboring business or individual to place derelict properties under the jurisdiction of the court, complete remedial work and obtain compensation secured by the property itself.

Starting with a petition action in the county court, each conservatorship claim focuses on a specific property and the conditions of that property. Once the petitioner proves the elements of abandonment and blight, detailed above, the court can either appoint a conservator (which need not be the same entity as the petitioner) or allow the owner an opportunity for conditional relief.

The Conservatorship Act provides a conservator with wide powers to act under the court's supervision to rehabilitate blighted property. Once appointed, the conservator prepares a plan for remediating blighting conditions. Ultimately, the conservator may dispose of the property through a court-approved sale, although that is not the only possible outcome.

Unlike in condemnation, a petitioner or conservator seeking to remediate blight is not required to post a bond — reducing the structural costs of conservatorship. Moreover, if the

court authorizes the conservator to sell the property, the conservator may immediately recoup out-of-pocket costs incurred in rehabilitation, court costs, costs of sale, attorney fees, and a fee in a sale.

Alternatively, if a sale is not imminent, the conservator may lien the property for the costs of rehabilitation, attorney fees and court costs.

Regarding the conservator's fee, the Conservatorship Act allows a compensation equal to the greater of \$2,500 (adjusted for inflation), 20% of the costs of rehabilitation or 20% of the sale price. The conservator's costs and fees, whether recouped in a sale or by lien, take priority over most other liens and security interests already encumbering the property.

Moreover, because the sale is at market, the value of the asset is maximized — in contrast to a lien or tax sale — and the compensation is paid by a third-party buyer, not (as in condemnation) the petitioner. Once liens, mortgages and other expenses are paid in a sale, the owner receives the remaining proceeds.

Further, unlike blight certification or condemnation, the court, not the petitioner, determines the existence of blight based on evidence presented. Therefore, rather than the finding of blight being open for challenge in a trial court for a year, as under the Redevelopment Law, it is subject to the timing and rigorous standards of appellate review. Similarly, as the Conservatorship Act is not a taking, and a sale is at market value, there is no need to establish just compensation.

Last, because title remains with the owner throughout the action, owners have incentive to remedy conditions and keep the property. In fact, the Conservatorship Act contemplates the possibility of an uninvolved owner being spurred into action by the petition. Through conditional relief, the court may allow an owner who demonstrates a willingness and ability to remedy the blighting conditions an opportunity to do so, subject to the appointment of a conservator if the conditions are not remedied by a certain date.

We have seen firsthand that the threat of losing a property through conservatorship may prompt action by an owner who was otherwise unmotivated by violations, fines and liens. In our experience, this plays out in two ways: either the owner sells the property to someone who can and will rehabilitate it, maximizing the owner's return on a sale by avoiding drawn out litigation and the rehabilitation of a property that it has little interest in; or the owner rehabilitates the property within a court-imposed time frame and retains the property.

In this respect, a conservatorship action has teeth to back up the issuance of violations, provides a far less drastic remedy than condemnation, and uses the value of the property itself to fund rehabilitation and reuse.

H.B. 2185, Incorporating Post-2008 Principles Into Tax Sales

In January 2020, H.B. 2185 was introduced in the Pennsylvania General Assembly to provide yet another mechanism for remedying blight. Recognizing that when abandoned and blighted properties are purchased at a tax sale, remediation is not guaranteed, the bill's authors propose establishing a process to designate certain tax-delinquent properties as abandoned and ensure that these properties will be rehabilitated and put back into productive use.

Thus, the bill seeks to require that the purchaser of an abandoned property at tax sale enter into a redevelopment agreement with the municipality where the property is located or the

applicable RDA. That agreement would obligate the purchaser to redevelop or demolish the property in an agreed-upon time frame, subject to remedies for noncompliance, including the right of the municipality or RDA to acquire title of the property if work is not completed as agreed.

H.B. 2185 as an expression of public policy can have a considerable impact on communities as it promotes accountability for both municipalities and the purchasers of abandoned properties. Ideally, H.B. 2185 will prompt successful offerors to remedy properties within a time frame with some form of a policing mechanism.

Unlike the Conservatorship Act, H.B. 2185 suffers from three significant drawbacks.

On the front end, as with selling a property at a municipal lien sale, a tax sale does not maximize the property's value and may not provide a return to the owner.

On the back end, H.B. 2185 requires the municipality or RDA to enforce the redevelopment agreement and ensure the remediation of blight. Ultimately, if a purchaser does not perform under the redevelopment agreement, the property may simply end up in the municipality's hands, leaving it to remedy the blight and dispose of the property.

More than once we have encountered properties previously sold at tax/lien sale that still qualify as abandoned and blighted under the Conservatorship Act a year after being sold.

H.B. 2185's reach is limited. Because it only impacts properties already scheduled to be sold a tax sale, it does not address numerous other instances of blighted and abandoned properties.

For Individual Properties, Conservatorship Is an Ideal Way to Fight Blight

There is no one best way to deal with abandoned and blighted properties. The effectiveness of each tool discussed will be impacted by many factors, including necessary resources, time, real estate markets and goals.

When available and practical, we believe the remedies under the Conservatorship Act provide the best way to approach abandoned and blighted properties. Conservatorship not only ensures work will be done, liens paid off and the property put back into use, it does so in a time-sensitive and cost-effective way, uses the value of the property itself to combat the blight, and shifts the burden of rehabilitation away from thinly stretched municipalities.

Thus, in many cases, conservatorship is an ideal way to put a blighted and abandoned property back in the hands of an owner who will care for it.

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