Vacant Building Ordinances:
Strategies for Confronting Vacant Building Challenges



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Metropolitan Mayors Caucus

Thank You

In researching and preparing this publication, the most important things we learned were from the staff and local officials who are working to address the challenges of vacant properties in their communities. We are enormously grateful to all of the municipalities who attended our workshops and shared their stories and experiences.

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Aurora
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Berkeley
Blue Island
Bolingbrook
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Sauk Village
Schiller Park
Shorewood
South Chicago Heights
South Holland
Streamwood
Villa Park
Waukegan
Westchester
Woodridge
Yorkville

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Business and Professional People for the Public Interest

BPI is a public interest law and policy center that has worked to create a just society for 47 years. BPI strives to resolve compelling issues of social justice and quality of life in the Chicago region by addressing the many challenges of urban poverty, increasing housing and educational opportunity, building vital communities, and improving Illinois' criminal justice system. BPI lawyers and policy specialists use legal and policy research, advocacy, organizing, litigation, and collaboration with nonprofit, community, business, academic and governmental organizations to accomplish its mission.

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The Metropolitan Mayors Caucus represents the local elected officials of the six-county Chicago region. The Caucus is a forum for independent thinking and discussion regarding important public policy issues. And, when there is consensus, it is also a powerful voice and force for change, creating programs and supporting legislation that improve our well-being and overall quality of life.

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These can be found online at either of the websites listed below:

http://www.bpichicago.org/programs/housing-community-development/affordable-housing/resources

http://mayorscaucus.org/initiatives/housing-and-community-development/vacant-property-issues

Appendix 1: Examples of Statutory Language
Appendix 2: Resources for Identifying Responsible Parties
Appendix 3: Municipal Lien Checklist

Introduction

While the worst of the foreclosure crisis is behind us, many communities continue to grapple with foreclosure filings and the myriad problems posed by vacant and abandoned properties. Vacant properties pose health and safety risks, threaten the value of adjacent properties, destabilize neighborhoods, and frustrate local economic recovery efforts. This report provides information about an effective strategy that municipalities around the country have used to get vacant property problems under control.

In 2010, BPI, the Chicago Metropolitan Agency for Planning (CMAP), and the Metropolitan Mayors Caucus produced a guidebook, *How Can Municipalities Confront the Vacant Property Challenge? A Toolkit*, highlighting key strategies communities across the nation were using successfully to respond to the challenges of vacant properties.[1]

Many Illinois municipalities report that one of these strategies, a vacant building ordinance (VBO), is an especially effective way to address these challenges. VBOs are a useful supplement to code enforcement efforts. They help to quickly identify who is responsible for problem properties. In addition, new fees and fines for noncompliance get the attention of responsible parties and help get problems resolved more quickly.

Most VBOs have very similar requirements:

- They require owners to **register** vacant buildings with the municipality and **provide contact information** for someone responsible for the property. Many also require financial institutions with a legal interest in the property to register if the owner cannot be found. This helps local governments identify who is responsible for a vacant property and contact them quickly when necessary.

- Most require registrants to **pay a registration fee**, which helps local governments offset the substantial costs they incur when dealing with vacant property challenges. These fees can be used to motivate responsible parties to act quickly to address troubled properties.

1 The *Toolkit* and other publications can be found at http://www.bpichicago.org/programs/housing-community-development/affordable-housing/resources.

- Many also require registrants to **maintain, secure, and insure vacant properties** as well as to prepare and implement plans to demolish them or return them to productive use.

In Illinois, there are now more than 100 municipalities with vacant building ordinances—more than twice as many as in 2010. Non-home rule municipalities have many of the same powers as home rule municipalities to implement building registry programs and have created programs that are essentially identical in their key features.[2] In addition, Cook and Kane Counties have enacted vacant building ordinances.

With VBOs flourishing in Illinois and around the country, we have been able to draw on a wealth of experience from municipal officials and staff working on the frontlines to address vacant property challenges. This document features some of the most important lessons they have learned.

Section 1 provides an overview of the principal features of vacant building ordinances. These program requirements are important, but how they are implemented is even more critical.

Section 2 discusses implementation and enforcement strategies, highlighting the practices that program administrators identify as key to their success.

The online **Appendices** provide examples of statutory language, more detailed information about resources for identifying responsible parties, and a checklist for pursuing various types of municipal liens related to property maintenance.

2 The authority for non-home rule municipalities derives from their broad power to "define, prevent, and abate nuisances." 65 ILCS 5/11-60-2.

Section 1 Key Features of Vacant Building Ordinances

Most vacant building registry programs share the same basic structure, though there is a great deal of variety with regard to program details. If your interest is in specific statutory language, excerpts from a variety of VBOs that illustrate different approaches to significant ordinance features are included in Appendix 1 (online). [3]

When designing a VBO, municipalities need to answer a few key questions:

- Who should register?
- What does it mean for a building to be vacant?
- When should a property be registered?
- What should the registration fee be and how should it be structured?
- What contact and property information should registrants provide?
- What other requirements should be included?
- What Happens If Someone Doesn't Comply?

The discussion below highlights some of the factors municipalities should consider when answering these questions.

3 In addition, Safeguard Properties maintains a matrix of known ordinances which can be accessed by state: http://www.safeguardproperties.com/Resources/Vacant_Property_Registration.aspx.

Who Should Register?

Effective VBOs require owners to register vacant properties. Some ordinances also require banks holding the mortgage on the property and mortgage servicers to register. Including banks and servicers in a registry is especially important in communities where abandoned homes are a problem.

There are different ways to apply a VBO to banks and servicers. Most ordinances define "owner" as any person or entity "having a legal or equitable interest" in the property. This language is broad enough to include both owners and banks. Some municipalities, like Waukegan, include a definition that explicitly includes "mortgagees," like banks and servicers.

What Does It Mean for a Building to Be Vacant?

At what point does a building become "vacant" and require registration? The definition varies among municipalities.

- Every ordinance reviewed for this report applies not only to vacant buildings, but also to buildings that are illegally occupied.

- Some ordinances define "vacant" based solely on how long the property has been vacant or unoccupied. For example, Waukegan's ordinance considers a building to be vacant if it has not been legally occupied for 30 consecutive days.

- Other ordinances provide a number of options for determining whether a building is vacant. Under these ordinances, it is not enough for a building to be without legal occupants. Vacancies must co-exist with any one of a number of physical conditions or illegal activity, or must exist for a specified amount of time. For example, Evanston's ordinance includes eight different criteria, any of which would meet the definition of vacancy; for example, a building would be considered vacant if it is unoccupied and has multiple code violations or is unoccupied and has been the site of unlawful activity within the previous six months.

- Some ordinances, like both Waukegan's and Evanston's, provide exceptions to registration for certain types of vacant property, such as seasonal homes or properties under active construction, rehabilitation, or repair.

How should a municipality decide which definition of "vacant" to use, and which properties should register? It depends on the goals of the registration program and which properties municipalities believe should be closely monitored. For example, if a municipality's primary concern is ensuring that vacant properties don't cause problems for neighbors, it could apply registration requirements only to buildings with code violations or other signs of trouble. But if a municipality wants information about more properties that may be potential threats and the ability to act quickly if problems arise, it could require all properties to register after they have been empty of legal occupants for a specified amount of time.

Practical Tips

Applying VBOs to Banks

Municipalities definitely have the power to apply VBOs to banks that own vacant properties, but there has been some question about whether municipalities can make banks responsible for cleaning up and securing properties they don't own—for example, if they simply hold a mortgage. When the City of Chicago applied its VBO to banks and servicers, including those with a legal interest but not an ownership interest in vacant properties, it was sued by the Federal Housing Finance Agency (FHFA).

In 2013, in *Federal Housing Financing Agency v. City of Chicago*, the court found that federal law imposed some limitations on how local governments can regulate Fannie Mae and Freddie Mac. However, following the court decision the City entered into a settlement with FHFA under which Fannie Mae and Freddie Mac agreed to register properties for which they hold the mortgage and to comply with the maintenance and security requirements. The only thing they don't do is pay the registration fee.

For all other banks and servicers working with non-Fannie Mae or Freddie Mac loans, the City enforces its ordinance in its entirety, including the requirements that apply pre-foreclosure and the requirement to pay a registration fee, and has been successful in achieving compliance. Several suburban communities—both home rule and non-home rule—have also been successful in enforcing their ordinances against mortgage holders pre-foreclosure.

When Should a Property Be Registered?

The timing of when a property must be registered varies. Some ordinances require registration within a certain time after a property becomes vacant or after the owner learns that the property is vacant. But many communities, like Evanston and South Chicago Heights, **require responsible parties to register as soon as they should know that the property is vacant.** Municipalities typically apply this standard by saying that if there is a problem at the property, the owner should know that it is vacant. That means that a municipality can issue a violation notice if a responsible party fails to register, regardless of whether the responsible party actually knows the property is vacant and regardless of whether the municipality has notified them that they must register. This puts the burden on the responsible party to monitor its own properties and makes it immediately accountable if the municipality finds a problem. The ability to issue a violation notice gives the municipality added leverage to prompt registration.

What Should the Registration Fee Be and How Should It Be Structured?

Municipalities have taken several different approaches to registration fees.

- ***Require a fee.*** Nearly all VBOs require payment of a fee at the time of registration and at regular intervals afterwards, as long as the property is vacant. Revenue from the fees helps municipalities defray the costs of administering their programs, including monitoring and enforcement. (In some municipalities, the fee-generated revenue may go back to the vacant property program; in others, the revenue goes to the general revenue fund.) Many local officials believe that fees with regular renewals are a critical factor in motivating owners to act quickly to maintain their vacant properties.

- ***Require a fee, but offer waivers.*** On the flip side, some municipalities say that their primary goal is to ensure that properties are returned to productive use, and that offsetting related local government costs isn't an issue. These municipalities waive fees if the owner or responsible party is actively engaged in rehabbing or demolishing the property or in actively marketing the property for sale or lease.

- ***Do not require a fee.*** Similarly, some municipalities say that the primary purpose of their program is to get properties registered in order to make it easier to find who is responsible for the property if there is a problem. In these programs, the ordinance encourages maximum participation by imposing no registration fee or a minimal one.

Practical Tips

Designing a Registration Fee

How much should the fee be? Determining the amount of the registration fee involves a number of considerations. The most important thing to consider is the intent of the program. **If a municipality wants to encourage the largest possible number of people to register, it should consider setting the fee as low as possible. But if the municipality needs revenue to help cover program expenses, or wishes to use the fee as an incentive to keep properties maintained, it should set a higher fee.**

Both home rule and non-home rule municipalities have the authority to impose fees, though in both cases, the fee should not be more than is necessary to cover the cost of administering a vacant property program. Even though there are no formal requirements to document program expenses, municipalities should be able to justify the fee if challenged. **Program costs can include not only costs of maintaining the registry but also costs related to implementing the program**, including, for example, staff time and gas mileage related to monitoring and inspecting properties, as well as issuing and enforcing citations.

However, fees may never be high enough to actually cover all related local government expenses. Even those Illinois communities with fees in the higher ranges—Evanston at $400 a year, Mount Prospect at $500 a year, and Waukegan at $250 every six months—say the actual costs of implementing the program exceed the fee revenue. But they say that even if a compelling case can be made for a higher fee, there are other considerations. For example, if a fee is set too high, it may discourage people from registering, and then most of the program's potential benefits will be lost.

Similarly, when setting the registration fee, municipalities should take into account other related fees, such as inspection fees, as well as fines and penalties that may be imposed for violations of the program requirements. For example, some municipalities include the cost of property inspections as part of the registration and thus set a higher fee; others charge a separate inspection fee but a lower registration fee. Some municipalities believe higher fees and fines may be more effective in encouraging compliance.

How often should fees be collected? Municipalities can structure collection of fees in different ways to promote different goals.

- Some municipalities seek to get as many properties registered as possible, and so just require a **one-time registration fee**.

- Some municipalities use fee revenue to help cover program expenses, so they require **periodic renewals**, typically once or twice a year. While renewal fees are generally due on the anniversary date of the original registration, Wilmington, Delaware, has established a single date for all fee renewals, regardless of the anniversary date, and prorates the initial registration fee accordingly. According to the program director, this has greatly simplified program administration, streamlining the issuance of renewal notices and making it easier to track compliance.

- A number of municipalities that use the fee to encourage compliance develop **creative combinations of fees and payment schedules**. For example, Burlington, Vermont, sets a high fee—$500—and requires that it be renewed four times a year. On the positive side, that may create an incentive to get buildings occupied. On the negative side, the frequent renewals also mean more work for municipal officials.

- Wilmington, Delaware, has **a progressive fee structure** that kicks in after the property has been vacant for a year and increases for each year the property remains vacant. This is intended to account for the increasing local government costs that result from continued vacancy. The City of Chicago imposes a flat registration fee on owners, renewable every six months. However, to motivate responsible parties to keep their vacant buildings maintained and safe, the renewal fee increases progressively with each renewal if the property is in violation of any provision of the building or fire codes.

Some communities provide fee-based incentives to encourage timely compliance with program requirements. For example, Wilmington and Burlington waive fees for a certain period of time under specified conditions—for example, if the owner is in the process of actively repairing, rehabbing, demolishing, selling, or leasing the property. This means the ordinance is used primarily to target property owners who are not taking action to maintain or transfer their property.

Similarly, other communities, like Evanston and Waukegan, use their definition of vacancy to encourage owners to fix up the properties. Properties undergoing active construction or rehabilitation are exempt from the registration requirement. Mount Prospect's definition of vacancy incorporates an incentive that essentially exempts code-compliant properties from registration. Unless a property has been condemned, declared an immediate hazard, or has been unoccupied and unsecured, the obligation to register an unoccupied property and pay the fee does not kick in unless there is a code violation, or the building has been boarded for 30 days or more.

What Contact and Property Information Should Registrants Provide?

To speed resolution of code violations or other problems related to the property, all programs require registrants to provide information that will help the municipality identify whom to contact. **The most critical information includes the actual street address of the property (not a P.O. box), contact information for the owner/responsible party, 24-hour contact information for the person or property management firm responsible for day-to-day management, and designation of and contact information for a local agent authorized to receive legal notice**. Some municipalities collect additional information as well. Timely and accurate information is essential, and virtually all programs require prompt notice of any changes.

What Other Requirements Should Be Included?

Securing and Maintaining Vacant Buildings

Nearly all programs require responsible parties to secure and maintain vacant properties. These requirements are designed to prevent unauthorized persons from entering the building, maintain the structural integrity of the building for code enforcement and public safety officers, and minimize adverse effects on adjacent properties and the larger neighborhood. Some ordinances do this by specifying that vacant buildings are required to follow existing building code requirements; some create additional maintenance and security requirements that apply solely to vacant property.

Requiring and Recovering Costs for Property Inspections

Ordinances should require that vacant properties undergo a formal inspection to be conducted by a code enforcement officer. This allows municipalities to assess and document the condition of vacant buildings and ensure compliance with safety and maintenance requirements. Chicago requires owners to give building inspectors access to conduct interior and exterior inspections every six months.

Many municipalities recover the costs of doing inspections by building them into the program registration fee. Others require building owners to pay an inspection fee. For example, after a determination that a property is vacant, Evanston requires the owner to allow a code compliance inspection of the interior and charges a $500 inspection fee.

Liability Insurance

Many ordinances require owners to maintain liability insurance to spread the risk of injury associated with vacant property. The amount of insurance typically depends on the number of units in the building. The added cost can also provide another incentive for owners to act quickly to fix or demolish their buildings. However, insurance requirements need to be carefully drafted. Only property owners can purchase property liability insurance—banks and others with a legal interest in a property cannot—so even if a VBO generally applies to anyone with a legal interest in a property, a requirement to maintain liability insurance should apply only to owners.

Practical Tips

To Post or Not to Post?

Some communities require that 24-hour contact information be posted on the building itself. Such posting requirements help police and fire officials or concerned neighbors know whom to contact without having to check the registry or contact the municipality. Municipalities have found that contacts by neighbors can increase pressure on responsible parties and help expedite corrective action. Some municipalities, however, believe that posting requirements may advertise a vacancy that may otherwise not be apparent, thereby inviting vandalism or negatively impacting the immediate neighborhood.

Developing a Vacant Property Plan

Many programs also require that the person or company responsible for a property create a detailed plan to take care of it. The requirements usually include a timeline for maintaining, rehabbing, reoccupying, or demolishing the property. Several municipalities have found this to be an effective way to engage with motivated property owners early on and help them identify concrete steps that should be taken to address problems with their properties. **Getting something in writing, even if it is very simple, also creates a reminder that the responsible party has an obligation to care for the property and creates a record of what the registrant promised to do**. Some ordinances give the municipality extra leverage by saying that failure to have an approved plan or to comply with an approved plan constitutes an ordinance violation. The violation may result in fines, or in getting the owner to come in and meet with municipal officials. In either case, it is an added incentive to take care of the property.

Municipalities that use this requirement emphasize the need for flexibility in its enforcement. For example, one community development official noted that in cases where banks do not hold title to the property, the municipality emphasizes the maintenance and security aspects of the plan, such as making sure the windows and doors are secure, rather than making the building ready for occupancy so that it can be offered for sale or rent. Banks usually want these buildings to be secure in order to protect their investment in them, so they have typically been very willing to comply with these important provisions.

What Happens If Someone Doesn't Comply?

Most vacant property ordinances provide that failure to comply results in a fine. Typically, each violation and each day's failure to comply constitute a separate offense. Fines typically range between $100 and $750 per day per violation but can be higher. Municipalities may not always collect all the money they charge in fines, **but the financial penalties provide an additional incentive for compliance and help to cover costs incurred by the municipality in the event of noncompliance.** These fines are in addition to whatever penalties the municipality may impose through their code enforcement and nuisance abatement programs. Mount Prospect's VBO provides that any violation of the VBO is also a nuisance; those same violations are therefore subject to a penalty for violating the vacant property ordinance as well as the daily nuisance fee.

In addition to imposing financial penalties, the enforcement provisions in vacant property ordinances commonly make it clear that the municipality may pursue other appropriate remedies, including demolition, condemnation, making repairs, foreclosure of liens, appointment of a receiver (where a judge appoints someone to repair or rehab a troubled property), and injunctive relief (where a judge requires the responsible property to take a specific action or face serious consequences).

One remedy that some home rule municipalities have found to be both effective and easy to administer is refusing to issue a real estate transfer stamp if fees are owed under the ordinance. A similar remedy, available in both home rule and non-home rule communities, is a requirement that before a vacant building can be occupied, the municipality must inspect the property and issue a certificate of code compliance, and all fees imposed under the ordinance must be paid.

Appeals

VBOs can result in serious consequences for property owners. For example, a determination that a property is vacant may trigger a requirement to register, pay a fee, purchase liability insurance, and prepare a vacant property plan. Failure to comply with such requirements can result in the imposition of a large fine. When the stakes are this high, it is important to give owners and others with a legal interest in a property an opportunity to appeal. For example, Evanston's VBO sets forth an administrative process for contesting a determination of vacancy. Mount Prospect's ordinance allows responsible parties to appeal administrative actions under its VBO through a hearing before the village's administrative law judge. Municipalities should discuss this issue with their municipal attorneys to determine whether appeals should be addressed in their VBOs.

Section 2 Implementation and Enforcement Strategies

While thoughtful design of a building registry program is essential, implementation and enforcement of these programs determine how effective they will be. This section explores several strategies that have been key to successful program implementation and enforcement.

Developing a Process to Identify Responsible Parties

Identifying the party responsible for a vacant property is critical for ensuring that properties are maintained and minimizing the burden they impose on municipalities. Tracking down the party responsible for a property can be difficult. Some vacant property owners have decided that they are better off if they just walk away from a property. Some financial institutions frequently transfer ownership of mortgages. In both cases, it is harder to get up-to-date, accurate information.

Municipalities in the Chicago area use several different resources to identify responsible parties. All provide information on property ownership, mortgagees, and lien holders that can expedite the process of identifying a responsible party, and many are either free or relatively low-cost. Local officials asked to identify the most helpful resources cited these four most often:

- ***County Recorder.*** The Recorder of Deeds office in each county in the Chicago region has a website that provides digital access to all information filed with the Recorder. Costs vary by county. Some are free, and others charge for downloading and printing. Some require a subscription to search. The Recorder is usually a good, inexpensive source of basic information and is a good place to start.

- ***Safeguard Compliance Connections.*** This free service identifies property owners, servicers, lien holders (including banks that hold mortgages), and points of contact for single-family (1-4 units) properties throughout the country that have a lien holder, not just those for which Safeguard is the servicer. Municipal officials can conduct unlimited searches. In addition, they can upload violation notices and pictures of damage. Safeguard can pass this on to the point of contact for each property, which can expedite the maintenance and collection process.

- ***Real Info Target Property/Target Express.*** These two services cover eight Chicago-area counties and make available outstanding deeds, mortgages and liens posted against a property, all in a single, clear form. Target Property is a monthly subscription service, while Target Express charges $10 per property ($15 with a credit card) and has more limited access to search types.

- ***Record Information Services (RIS).*** RIS provides access to information about properties located in nine Chicago-area counties. RIS includes real estate transactions, mortgage transactions, liens and judgments, foreclosures and auctions. The one-time search service costs $5.95 per record and displays results from all databases at once, while the unlimited search requires a subscription to each separate database.

More details on these services can be found in Appendix 2 (online).

Practical Tips

Persistence Pays Off

When tracking down the party responsible for a vacant property, persistence and ingenuity go a long way. When an official in Berkeley, Illinois, contacted the loan servicing company that had once been responsible for maintaining a troubled property, he spoke to someone who said that the bank the servicer worked for had sold the mortgage to another institution, so neither the servicer nor the bank were responsible for the property anymore. The servicer representative said they weren't open to further discussion and ended the conversation. The building official waited about half an hour, called the service company again, and this time spoke with a different agent. The official explained the situation and suggested that the servicer contact the new bank. The servicer placed the building official on hold, and in a matter of minutes had contacted the new bank, regained the service contract, returned to the call with the building official, and begun to address the problem.

Getting the Attention and Cooperation of Responsible Parties

Merely identifying the party responsible for a particular property does not guarantee responsiveness. Responsible parties are more likely to be responsive in communities with a healthy real estate market where a maintained property will be likely to sell. But even under the best of circumstances, it can be challenging for municipalities to get the attention of responsible parties. Here are a few strategies municipalities have found to be helpful:

- Many **issue citations to everyone** with any responsibility for the property—owners, banks, servicers, or property managers—to maximize the chance of getting a response from at least one.

- When the traditional owner cannot be found, informing banks or servicers about the specifics of the building's condition can grab attention and result in a quicker response. **Sending photographs of the property** can be especially helpful.

- Others have found that **having neighbors call the responsible party to complain** increases the pressure to respond. Often there is a contact number posted on the building, or municipalities will provide the contact information.

- If the responsible party does not respond and conditions on the property warrant, the municipality may choose to clean up the property or undertake some repair and then seek to recover its costs from the responsible party. **Sometimes, when a municipal employee tells a servicer or owner that the municipality is going to do the work itself and bill the servicer or owner, it is enough to spur the responsible party to action**—since it may cost less to do the work itself than to pay the municipality.

Proactive communication. Municipalities have found it useful to reach out to building owners, banks, and loan servicers about new registry programs, even before problems arise at a specific property. Early communication with banks and servicers can help clarify who is responsible on each end and can sometimes speed up bank action. For example, the City of Chicago periodically sends banks a list of newly vacant properties, which gives them a head start in identifying those they are responsible for and allows them to take the necessary steps to register and correct problems. Similarly, before Evanston sends a bank the official legal notice of a VBO violation, it sends an email notice about the violation so that the responsible party can begin to comply.

Quick and consistent enforcement. Compliance is improved when responsible parties know that enforcement is swift and certain. Thus, when there is a violation, municipalities should issue violation notices promptly. If the violation is not corrected, municipalities should move as soon as possible to refer the matter for judicial action or administrative adjudication (an option available in many home rule communities that is often faster than going to court). Responsible parties are more likely to act quickly when they are facing penalties, especially if the penalties make it more difficult to sell the property in question.

Practical Tips

Personal Relationships Achieve Results Faster

The building director in the Village of South Chicago Heights was unable to get responses from the right people at some of the banks responsible for many of the vacant properties in his community. However, after he issued violation notices and the banks' attorneys began to show up in court, the building director began to develop constructive working relationships with them. Now, when a problem arises, **rather than working directly with the mostly unresponsive banks, he contacts their attorneys**, who then convey the information to their clients. Once the attorneys are involved, the banks often move quickly to resolve the problem. As a result, the Village may be able to get a work order issued quickly, without having to expend time in court.

Through this informal process, South Chicago Heights **gets problems addressed 30 to 60 days faster**. Moreover, good working relationships can lead to others. Now, when the building director has to deal with a new bank, he often asks an attorney with whom he has a good working relationship to introduce him to the attorney for the bank he does not know. This often results in better, faster responses.

Taking steps to ratchet up enforcement will almost always elicit a response. As one director of community development observed, "It helps to get a reputation for bringing cases forcefully to court." The department head from another municipality noted that communities must be willing to utilize the full arsenal of enforcement tools, including demolition or declaration of abandonment, if necessary: **"A credible threat of tough enforcement gets cooperation."** (See box on pp.20-21 for more detailed discussion of demolition and abandonment.) Once the municipality demonstrates that it is serious about enforcement, banks and servicers are less likely to push back. However, as one municipal official emphasized, it is important to keep careful records and document every action taken with respect to a vacant property as if it were a potential court case.

Firm but flexible enforcement. While quick and consistent enforcement is fundamental to an effective program, municipal officials emphasize that it is important to exercise common sense and flexibility.

- Even if a municipality gets a responsible party to the table and may be able to recover outstanding fees, fines, and costs, it may benefit the municipality to forego full recovery of the money if doing so makes it more likely the building will be repaired and reoccupied.

- Similarly, if a property is not in full compliance, but the responsible party is working in good faith to complete the desired work within a designated time frame, a municipality may agree to forego or reduce fines as long as the work continues on schedule, or it might allow an extension of time before pursuing further enforcement.

- Some municipalities use flexibility in enforcing the requirement to create a vacant property plan. One local official explained that even though the municipality always requires plans for returning properties to occupancy, when he is working with banks that do not have title, he will focus on those plan requirements that ensure the property is safe, secure, and maintained. Banks without title are more likely to comply with those provisions, and he would rather spend time and energy to ensure that banks do the work that has the biggest impact on surrounding properties.

A veteran building department director summed up the "firm but flexible" guidance this way: **"Issue citations to get their attention and let them know you mean business. Follow up if they don't do what they say they are going to do when they say they are going to do it. And be flexible once there is trust in the relationship."**

Using Demolition and Abandonment Proceedings to Get Results

When other strategies aren't producing the results you need, or if you need to quickly address a serious or chronic problem, taking steps to demolish a building or have it declared abandoned may offer the best alternative.

The Demolition Statute—A Powerful, Flexible Tool

If a property owner allows a property to decline to the point that it poses a danger, Illinois law gives municipalities power to step in and address the problem directly. What is sometimes referred to as the Illinois "demolition statute" can be used to demolish a dangerous property, or to get it fixed up or cleaned up. And sometimes it is used to give the owner a strong incentive to act. The real threat of demolition—in the form of a request for court authorization to demolish a building, or the granting of such a request—will often bring the owner or responsible party to the table and ultimately get a property cleaned up.

The Illinois Municipal Code allows municipalities to obtain court authorization to demolish, repair, enclose, or remove garbage, debris, and other hazardous or unhealthy material from buildings that are "dangerous and unsafe" or "uncompleted and abandoned." 65 ILCS 5/11-31-1(a). If the court grants a request to demolish a building, the municipality has the legal authority to demolish it, but isn't required to do so. Instead, it can use the court authorization to repair a building, secure it, or remove garbage or debris. Once a municipality has the legal authority to take such action, responsible parties will often bring a property into compliance.

If a municipality acts to clean up a property using the demolition statute, it has the legal right to recover the costs of doing the work, including court costs, attorneys' fees, and other related enforcement costs. Those costs can become a lien on the property. If the municipality follows the proper procedures to "perfect" the demolition lien, it takes priority over all other liens, except for tax liens. This means that if the property is sold and after the taxes are paid, the municipality is next in line to be paid back for demolition costs; if there is enough money left over, the municipality will be reimbursed in full.

For further discussion of demolition liens, see p. 22 below. See Appendix 3 (online) for a checklist on how to obtain a demolition lien.

Fast Track Demolition

State law also provides a process by which municipalities can demolish, repair, enclose, or remediate smaller properties without seeking court authorization. Fast-track demolition is available for buildings no larger than three stories tall. It requires that the top local building code official make a determination that a building is "open and vacant and an immediate and continuing hazard to the community," 65 ILCS 5/11-31-1(e) and that the demolition or repair "is necessary to remedy the immediate and continuing hazard." Once the official makes such a determination, the municipality—after proper notice has been given and no one with a legal interest in the property has objected—may demolish or repair

the building at any time without going to court. However, if the municipality wants to be reimbursed for demolition costs, it must follow the same process to "perfect" a demolition lien as under the court-authorized demolition procedure.

Declaration of Abandonment
Sometimes a municipality prefers to take ownership of a troubled property so that it can control how it is ultimately used. Like demolition, the threat of asking the court for a declaration of abandonment can be an effective way to motivate a responsible party to take corrective action.

A property can be declared abandoned if (i) it has been tax delinquent or has outstanding water bills for two or more years and (ii) it is not legally occupied, and (iii) it contains a dangerous or unsafe building. 65 ILSC 5/11-31-1(d). When a municipality files for abandonment, the property owner has 30 days from the date of the notice to file an appearance and prove he does not intend to abandon the property. During that time, anyone with an interest in the property can file a request to demolish or repair the property. If no party appears or takes action to demolish or repair the property within the required time, the municipality may petition the court for a judicial deed to the property. The judicial deed extinguishes all ownership interests and liens relating to the property, including tax liens and the rights of holders of a certificate of purchase of the property for delinquent taxes. That means the municipality owns the property and can demolish it, fix it up, or transfer it to a new owner entirely free of any debt or questions about who owns it.

When to Use Demolition vs. Fast-Track vs. Abandonment
A municipality may be able to achieve its objectives by using either demolition or abandonment. Often a municipality may choose to pursue both strategies simultaneously for a single property. If the local court is more familiar with one or the other of these processes, the municipality may prefer to pursue the more familiar process. Depending on the circumstances, however, there may be reasons to pursue one process or the other.

For example, if recovering costs is a high priority, a municipality should try to get a demolition order from a court, or a determination from a municipal official that it is eligible for fast track demolition. Under either approach, the municipality can get a demolition lien and try to get paid for the work it has done. If a municipality wants to save the time and expense of going to court, fast track demolition may be an option, though it requires "an immediate and continuing hazard," and fast track isn't an option if it is contested. If the municipality wants to transfer ownership of the property, abandonment may be the best option. Municipalities can transfer ownership of a troubled property using any of these approaches, but a declaration of abandonment makes it possible to transfer ownership in the fewest number of steps.

For more details on the process for pursuing demolition and declaration of abandonment, see Lien on Me: Using Liens to Collect Municipal Debt and Expenditures, *edited by Stewart H. Diamond, Mark R. Heinle, and David Silverman; Ancel, Glink, Diamond Bush, DiCianni & Krafthefer, P.C., 2007, available at the Ancel Glink Library, ancelglick.com.*

Recovering Costs

Despite best efforts to have owners, banks, or servicers take responsibility for their vacant properties, there are times when municipalities have no choice but to undertake the work themselves. In those cases, municipalities have several options to recover some or all of the money they spend on vacant property maintenance.

Refusal to issue real estate transfer stamp. A number of home rule communities, including Evanston, Mount Prospect, and Park Forest, require sellers to obtain a real estate transfer stamp from the municipality before they sell their properties. These municipalities refuse to issue the real estate transfer stamp until the seller pays everything it owes to the municipality, including outstanding registration or inspection fees, fines for noncompliance with VBO requirements, or bills from the local government for work done to secure or maintain vacant properties.[4] Because sellers are usually eager to have these deals move forward, most quickly pay what they owe.

Refusal to issue certificate of occupancy. Home rule and non-home rule communities alike often require a certificate of code compliance and payment of outstanding fees before they will issue a certificate of occupancy to allow someone to begin occupying a currently vacant building. Since building owners lose money until the certificate of occupancy is issued, this can also be a very effective tool to motivate owners to comply and to help municipalities recover their costs.

Demolition liens (not limited to demolition). As described above, municipalities that successfully pursue demolition or clean-up through court authorization or the fast-track process may obtain a lien for the cost of demolition, repair, enclosure, or removal of garbage, debris, and other hazardous or unhealthy materials, plus court costs, attorneys' fees, and other related enforcement costs. To make these liens enforceable, the municipality must file a notice of lien with the county recorder within 180 days of the demolition, repair or enclosure. This demolition lien then takes priority over all other prior liens, except for tax liens. A municipality can foreclose on the lien and if the owner doesn't pay what is owed, the municipality can obtain title to the property. 65 ILCS 5/11-31-1 (a) and (e).

For properties that qualify for the fast-track process (see the box on pp. 20-21), Illinois law offers an expedited way to get a priority lien to recover the costs of demolition or any other authorized activity "necessary to remedy the immediate and continuing hazard," such as repairing the property, enclosing it, or removing garbage. 65 ILSC 5/11-31-1 (e). One municipal attorney describes fast-track demolition as an aggressive strategy that sends a strong message to banks or other parties with an interest in the property that they need to step up within 30 days or the municipality will do the work and saddle the property with a lien that trumps all other liens except unpaid taxes.

Demolition is discussed in greater detail in the box on pp. 20-21. See Appendix 3 (online) for a checklist on how to obtain a demolition lien.

4 This tool is not available to non-home rule communities in Illinois. Home rule communities that do not already have a real estate transfer tax but wish to create one may do so only by referendum. 65 ILCS 5/8-3-19.

Priority liens for securing and maintaining abandoned residential property. Illinois law provides another option for municipalities to recover the costs of specified work they undertake on abandoned residential property if properties are not eligible for the fast-track process or the municipality has determined not to use it. The law applies to any type of permanent dwelling unit that has been unoccupied for at least 90 days and for which the municipality attempted to contact the owner(s) or the owner's agent(s) but was unable to reach anyone. It covers the removal of weeds, trees, bushes, grass, garbage, debris, or graffiti, and securing or enclosing the property. 65 ILSC 5/11-20-15.1. Liens obtained under this law are superior to all other liens, except taxes. **Under this law, municipalities recover their expenses after taxes are paid but before the mortgage is recovered.** Thus, municipalities will recover even when the value of the property is less than the value of the mortgage. Municipalities are paid after the lender has foreclosed on the property at the hearing where the sale of the property is confirmed.

While the process under this law may be slightly more time consuming than the fast-track demolition process, it provides another way for municipalities to recover their costs. Many municipalities report that they have used this provision successfully. Park Forest (home rule) and South Chicago Heights (non-home rule) report that a checklist prepared by their legal counsel makes it easy to comply and allows them to do all the work in-house easily and cost-effectively without incurring the expense of using an attorney. *See Appendix 3 (online) for a checklist on how to obtain a priority lien for abandoned residential property.*

However, a municipality that wants to take a more aggressive enforcement stance could spend money to clean up a vacant property, use this statute to get a lien for that work, and then foreclose on that lien to force the sale of the property rather than waiting for the mortgage lender or other lien holder to foreclose. This approach could help municipalities get reimbursed more quickly for their vacant property-related expenses. It could also help get troubled properties into the hands of more responsible owners, which would be better for both the neighbors and the municipality. At the time of this publication, we are not aware of any examples of municipalities that have foreclosed on this type of lien, but some municipal attorneys believe that local governments have the authority to do so.

Judgment liens. If a municipality is owed money from unpaid fines or costs imposed by a court, there is a straightforward process the municipality can use to convert the money judgment to a lien on any property owned by the same owner. For example, if a property owner hasn't paid a VBO fee or fine, the municipality can have a lien placed on any property owned by that owner and then use the lien to put pressure on the owner to pay the municipality what is owed. The lien on another property can be a powerful incentive for owners to quickly pay the municipality what they owe.

Once a municipality has a judgment lien, it can either foreclose on the lien and force a judicial sale of the property or wait until the owner sells the property, at which point the lien must be paid before the property can change hands. While obtaining a judgment lien may be time consuming and costly, it can be an effective strategy, especially when there is a large judgment involved. *See Appendix 3 (online) for a checklist on how to obtain a judgment lien.*

In jurisdictions that use an administrative hearings process, municipalities can also get judgment liens for fines imposed by an administrative hearing officer. 65 ILCS 5/1-2.2-55. However, if a non-home rule community wants a lien for fines imposed by a hearing officer for building code violations, the municipality must first file an action in court to seek a judgment on the hearing officer's order. 65 ILCS 5/11-31.1-11.1.

Abandoned Property Program. The Illinois Housing Development Authority (IHDA) administers the Abandoned Property Program under which it **provides grants to municipalities and counties to cover the costs of securing, maintaining, demolishing, and rehabbing abandoned residential properties.** Created by legislation that went into effect in 2013, the program imposes new foreclosure filing fees on financial institutions.[5] **Grant funds may be used to reimburse previously completed activities as well as for planned activities**, as long as such activities fall into the categories listed above. In the spring of 2014, IHDA awarded grants totaling approximately $7 million to 53 municipalities, counties, and land banks across the state. Grant amounts ranged from $20,000 for Woodridge to $2 million for Chicago, with most grants somewhere between $50,000 and $250,000. IHDA expects to announce at least one funding cycle per year, depending on the rate at which funds accumulate. More information about the program, including links to the program rules and an FAQ, is on the IHDA website, **http://www.ihda.org/government/AbandonedPropertyProgram.htm.**

Program Administration

In some municipalities, several different departments have responsibilities related to vacant properties. Departments of community development, economic development, housing, police, fire, and public works may all play a role. Municipalities can deal most effectively with vacant properties when the work of all of these departments is well-coordinated, with up-to-date and accurate information about vacant properties that is available to all the relevant departments. This can be achieved by better information sharing, coordination of personnel and activities, and interdepartmental collaboration, as described below.

Information Sharing. At a minimum, **municipalities should establish a system to share vacant property information among all relevant individuals across departments**. This will ensure that each department has the information it needs to do its job effectively and that critical information does not fall through the cracks. For example, code enforcement officers should provide police and fire departments with lists of vacant properties and information about property conditions. Police are thus alerted to which properties may require extra vigilance, and fire officials know which properties pose extra danger to firefighters. In return, police and fire officials can alert code enforcement officials to suspected vacant properties or new problems with vacant properties already on the registry.

5 Under the law, fees will be collected through 2017, and the program will continue until funds are no longer available.

Methods for interdepartmental sharing of information vary considerably. For example:

- The building director in the Village of South Chicago Heights, a community with a population of just over 4,000, prints periodic lists of vacant properties and reports that are shared with multiple individuals across departments and maintains detailed property information in paper files.

- Park Forest maintains its vacant property registry in a simple Excel spreadsheet and shares it among departments.

- Wilmington, Delaware, has developed a customized in-house vacant property database that can be shared across all departments.

Coordination of Personnel and Activities. Staff from a variety of municipal departments may come into contact with vacant properties. If they receive a little bit of training, they can be a valuable extra set of eyes and ears to help ensure that vacant property problems are identified and addressed quickly.

Staff can be trained to identify indicators of vacancy and signs of property maintenance failure and the best ways to report them. Requiring only a minimal investment of time, it can produce substantial benefits. For example, because code enforcement inspectors can be in only so many places at once, Evanston has trained inspectors in the health and public works departments to identify and report code violations common to vacant properties when they are conducting their own inspections.

Evanston inspectors use iPads on site to document violations (including those related to vacancy) and upload them to a 311 reporting system that the building department can access. This means more eyes on vacant properties more often and the ability to communicate with property owners in real time about the status of the property. This increases the likelihood that more code violations will be identified and resolved more quickly. A representative of an absentee landlord in Evanston reported that the system saves time, establishes a point of contact for the property owner, and provides clear and timely information about what the City has found and what the property owner's obligations are.

In another community, code enforcement and fire officials conduct joint inspections of vacant properties. They have found that this maximizes efficiency and facilitates greater sharing of knowledge of vacant property problems across relevant departments.

In addition to a municipality's own employees, private contractors may also come in contact with vacant properties. If the municipality takes the time to inform contractors about the vacant property program, contractors can provide valuable information when they observe a problem. For example, Park Forest coordinates with a scavenger hauler with which it has a contract and who is in the neighborhoods on a weekly basis; Evanston coordinates with its water meter readers and pest control contractors. These contractors can then share valuable information with the municipality at no extra cost to the municipality. It's almost like having extra staff for free.

Interdepartmental Collaboration. Some municipalities have developed structured ways to encourage or require collaboration across departments. Collaboration is a more intentional way to bring different stakeholders together to share information, identify problems, develop solutions, and coordinate activities around a specific issue or issues. For example, a municipality may convene representatives from all departments that have responsibility for vacant properties to address troubled properties or broader issues regarding neighborhood stabilization and revitalization. Collaboration can be formal or informal. Some municipalities have created a formal task force with regularly scheduled meetings of officials across relevant municipal departments. Others just encourage informal but purposeful exchanges of information. Collaboration can bolster communication and coordination and reduce redundancies in dealing with vacant properties.

Practical Tips

Creating a Culture of Collaboration

Park Forest's Troubled Buildings Task Force is one successful example of a formal collaboration. Created by the mayor and village manager in 2007, the Task Force included all department heads with a stake in vacant property management (public works, water, building, police, fire, health, and the village's attorney). They met monthly to work together to tackle their biggest problems with specific properties and to discuss issues relating to the village's efforts to ensure property maintenance, such as its crime-free housing program. These meetings encouraged department heads to get in the habit of sharing information about vacant or potentially vacant properties across the village government.

Within a few years, the department heads became so accustomed to working together to solve vacant property problems that they decided the formal monthly meetings were no longer necessary. The meetings were replaced with an informal system of regular communication among mid-level staff with in-person meetings arranged whenever necessary. In one Park Forest code enforcement officer's assessment, the formal meetings helped to set the direction and open the lines of communication across departments, conveyed the message that sharing information and collaborating across departments had the official sanction of the elected officials and upper level staff, and set the stage for the effective, informal collaboration that is now part of everyday operations.

Evanston instituted similar monthly meetings that also evolved into a more flexible, real-time collaborative structure. As in Park Forest, these meetings enabled building officials to pool information from any inspector or department head with knowledge about a vacant property. While these meetings no longer focus specifically on vacant property issues, the collaborative approach continues to pay dividends as officials work together across multiple departments to create policies and programs to meet local housing needs.

Conclusion

In Illinois and throughout the country, well-implemented VBOs have proven to be a powerful tool for confronting the challenges of vacant properties.

- VBOs can significantly enhance local code enforcement efforts.
- A vacant building registry that maintains accurate and up-to-date contact information about vacant properties makes it easier for municipal officials to quickly identify and contact responsible parties to take corrective action.
- Registration fees can help municipalities recoup some of the costs related to their vacant property programs and, along with fines, motivate responsible parties to act quickly to resolve problems.

With timely and consistent enforcement of their VBO requirements, municipalities have been successful in getting responsible parties, including banks (often before they have taken title), to maintain their vacant properties. Effective enforcement produces positive outcomes for communities by helping to contain the negative impact of vacant properties on neighbors and neighborhoods and reducing the drain on limited municipal resources.

For more information or assistance in establishing a vacant building registry program in your community or strengthening your existing program, call Betsy Lassar at BPI at 312.641.5570.

Online Appendices

Each of the appendices can be found online at either of the websites listed below:

http://www.bpichicago.org/programs/housing-community-development/affordable-housing/resources

http://mayorscaucus.org/initiatives/housing-and-community-development/vacant-property-issues

Appendix 1
Examples of Statutory Language

Appendix 2
Resources for Identifying Responsible Parties

Appendix 3
Municipal Lien Checklist

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