

## QUICK GUIDE TO NON-HOME RULE ENFORCEMENT: LEGAL STRATEGIES FOR TARGETTING BLIGHTED PROPERTY

To bolster the efforts of non-home rule municipalities, Ancel Glink has prepared the following quick guide to Illinois property maintenance authority. The following guide catalogues the most effective actions that non-home rule municipalities can take to address deteriorating structures and blighted property.

### A. Priority Liens for Abandoned Property

For vacant structures, municipal liens for property maintenance costs can be perfected (i.e. notice and recording) in a manner that gives the lien priority status over all other liens, except taxes. While priority liens are not a silver bullet, they do strengthen the municipalities' position with regard to other interested parties in the property, such as mortgage holders. Without a priority lien, banks and mortgagees can avoid the legal responsibility for addressing property code violations. When a municipality enforces its code using priority liens, the bank is forced to address the property maintenance issue to preserve their interest in the property and maintain control over its disposition.

A municipality may file a lien on an abandoned property to recover the costs it has incurred repairing, maintaining, or enclosing the property. 65 ILCS 5/11-20-15.1. A municipality may recover the costs it incurs removing weeds, trees, bushes and grass, exterminating pests, removing garbage, boarding up, or putting a fence around an abandoned residential property. This statute defines "abandoned residential property" to be any type of permanent residential dwelling unoccupied for ninety days in which the municipality has been unable to contact the property's owner. *Id.*

To enforce this lien, the municipality must file in the county recorder's office a statement detailing: 1) a description of the abandoned residential property; 2) the costs the municipality has incurred to repair or enclose the property; 3) the date on which the municipality incurred these costs; and 4) how the municipality incurred these costs. *Id.* All of the costs the municipality incurs are combined into one lien, which maintains priority status over other liens. The municipality must maintain detailed records of all its expenses repairing or maintaining the property. *Id.*

These records must indicate the date on which the property was first observed as abandoned, the actions taken by the municipality to contact the property's legal owners, including the date that these actions were taken, a statement that no contact was made with the property's legal owners, a dated certification describing the work performed, a copy of any agreements with third parties to perform this work, all invoices and vouchers used to pay for this work, a statement as to whether a

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competitive bidding process was used, and a copy of the proposals submitted by the bidders for this work.. The municipality must present these records at the foreclosure sale in order to maintain the priority status of its lien. *Id.* The municipality may not file a lien if a party with an interest in the property states that it will repair the property and begins these efforts within thirty days. *Id.*

For non-abandoned property the “priority lien” statute, 65 ILCS 5/11-20-15 (not 11-20-15.1) has exceptions that essentially rule out all value—notably, the lien is inferior to “any mortgagee, judgment creditor, or other lienor whose rights in and to the underlying parcel arose before the filing of the notice of lien.” 65 ILCS 5/11-20-15(c). This covers the bulk of other interests in blighted property, leaving the non-abandoned property “priority” lien with little actual priority.

#### **B. Traditional “Removal Activity” for Non-Abandoned Property**

Chapter 11 of the Municipal Code outlines numerous actions that non-home rule municipalities can take to directly address property code violations and blighted conditions, including: Weed and Grass Removal (65 ILCS 5/11-20-7); Pest Extermination (65 ILCS 5/11-20-8); and Removal of Garbage, Debris and Graffiti (65 ILCS 5/11-20-13). For all of these removal activities, the municipality does not need a court order and can lien the property for all of the costs of its removal activity. As discussed above, the lien can be turned into a “priority” lien for abandoned property.

#### **C. “No Cash” Bids and Forfeiture Purchases**

Many blighted properties are tax delinquent. For many of these properties, the municipality has the option of directly acquiring the property via the “No Cash” bid scavenger and forfeiture sales. 35 ILCS 200/21-90; 21-145. During the County scavenger sale, municipalities have an opportunity to acquire tax delinquent property with no money down (i.e. “No Cash Bid”). 35 ILCS 200/21-90; 35 ILCS 200/21-145; 35 ILCS 200/21-260, *et seq.* In Cook County, the scavenger sales occur every other year and include properties that have been delinquent for two or more years. The highest bidder—typically the municipality—is awarded a certificate of purchase, which can be turned into deeds after the redemption period. 35 ILCS 200/21-145. Using the tax sale process, municipalities control vacant and abandoned houses without lengthy demolition and abandonment proceedings.

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**D. Demolition and Abandonment**

1. Demolition by Court Order: 65 ILCS 5/11-31-1(a)

The Illinois Municipal Code permits “[t]he corporate authorities of [a] municipality [to] demolish, repair, or enclose or cause the demolition, repair, or enclosure of dangerous and unsafe buildings or uncompleted or abandoned buildings within the territory of the municipality.” 65 ILCS 5/11-31-1(a). Prior to doing so, municipalities must take the following steps.

(1) The municipality’s chief code official should declare the property dangerous or unsafe and prepare a written report detailing the particular conditions on the property.

(2) The municipality must mail written notice to the owner(s) of record and all lienholders<sup>1</sup> that the building is in an unsafe condition and must be repaired or demolished. The notice should detail the unsafe conditions identified by the municipality’s chief code official.

(3) If the owners or lienholders do not remedy the violations within 15 days of receiving the notice, the municipality may petition the circuit court for an order authorizing the municipality to take action (e.g., demolition, repair, etc.) to address the property.<sup>2</sup> The petition must identify the unsafe and dangerous conditions that must be addressed.

(4) The municipality will attend a hearing, which statute requires to be expedited, and obtain a court order to take action regarding the property. Within 180 days of demolishing the structure, the municipality should file a notice of lien for demolition costs, attorneys’ fees and court costs. A lien filed within 180 days takes priority over all liens other than taxes and may be enforced by foreclosure proceedings. 65 ILCS 5/11-31-1(a).

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<sup>1</sup> If a municipality cannot determine the identity or whereabouts of the owners or lien holders, the municipality may provide notice to the person in whose name the property was last assessed.

<sup>2</sup> Alternately, the municipality may petition the court for an order requiring the property owner to repair or demolish the property, although it may be challenging to obtain compliance from a non-responsive property owner.

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2. Demolition by Notice (“Fast Track”): 65 ILCS 5/11-31-1(e)

Municipalities may also follow an expedited process to remove certain buildings that constitute a continuing hazard to the community. See 65 ILCS 5/11-31-1(e). The expedited process applies only to buildings that are three stories or less in height (as defined by the municipality’s building code), and only to those buildings that the municipality’s chief code official determines to be “open and vacant and an immediate and continuing hazard to the community.” *Id.* Assuming these conditions are met, the municipality must:

(1) Post notice on the front of the building on a sign measuring no less than two feet by two feet stating that the municipality may demolish or repair the building if it is not otherwise demolished or repaired by the owner or lienholders.

(2) Within 30 days of posting notice on the building, the municipality must:

(a) send by certified mail a notice to all owners of record and lienholders identifying the municipality’s intent to demolish or repair the building unless the owners or lienholders demolish or repair the building;

(b) publish in a newspaper for three consecutive days a notice identifying the property’s address and PIN, an acknowledgment that the property constitutes an immediate and continuing hazard, and a statement that the municipality intends to repair or demolish the building if the owners and lienholders fail to do so; and

(c) record the notice sent to the owners and lienholders with the recorder of deeds.

(3) If the building is not repaired or demolished within 30 days of mailing the notice to the owners and lienholders, or within 30 days of the last day of publication of the notice, whichever is later, and no owner or lienholder seeks court intervention and serves a complaint on the municipality’s chief executive officer, the municipality may demolish or repair the building. Such demolition or repair must occur within 120 days from the date the notice to owners and lienholders was sent.

(4) The municipality may file a lien within 180 days of demolition or repair for the costs incurred. The lien has priority over the parties (i.e., the owners and lienholders) that received the notice of the municipality’s intent to demolish or repair (see 2(a)).

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3. Abandonment: 65 ILCS 5/11-31-1(d)

In some cases, the best way to control property maintenance on vacant property is to control the property itself. Municipalities can obtain title to abandon property and control its future use by pursuing an abandonment order from a circuit court. 65 ILCS 5/11-31-1(d). Properties must meet certain conditions before a court will declare them abandoned. Namely, the property must be (i) tax delinquent for 2 or more years; or (ii) have water service bills that are 2 or more years overdue; and (iii) the property is not occupied by persons legally in possession; and (iv) the property is in a dangerous and unsafe condition. *Id.* Municipalities with properties meeting these criteria should take the following steps.

(1) The municipality's chief code official should declare the property dangerous or unsafe and prepare a written report detailing the property's conditions and deficiencies.

(2) Prepare a petition naming the property owner(s) and all lienholders as defendants. The petition must identify the property's dangerous and unsafe conditions, and all defendants must be served with process in accordance with Section 2-206 of the Illinois Code of Civil Procedure. Further, notice of the petition shall be served on all defendants by certified or registered mail.

(3) At the hearing, the municipality must prove that the dangerous and unsafe conditions exist. If the property owner does not enter an appearance or enters an appearance and waives his rights (i.e., he admits that he abandoned the property), the court will declare the property abandoned.

(4) The municipality must then send notice by certified or registered mail to all persons with an interest in the property stating that title will transfer to the municipality 30 days after the date of the notice unless an interest holder (i) files with the court a request to demolish or repair the building; or (ii) the property owner files an appearance and proves that he does not intend to abandon the property.<sup>3</sup>

(5) If no parties appear, the municipality should file a petition requesting a judicial deed transferring the property's title to the municipality. The judicial deed

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<sup>3</sup> If the owner appears and the court finds that he does not intend to abandon the property, the court will vacate its abandonment order. The municipality may then amend its complaint to seek demolition under 65 ILCS 5/11-31-1(a) or may request that the court order the owner to demolish structures located on the property.

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extinguishes all ownership interests and liens relating to the property. 65 ILCS 5/11-31-1(d).

4. Remediation by Court Order: 65 ILCS 5/11-31-1(f)

Municipalities may also seek the court's permission to remediate environmental contamination on abandoned properties. See 65 ILCS 5/11-31-1(f). This statute considers a property to be abandoned if (i) the property has been tax delinquent for 2 or more years; and (ii) the property is unoccupied by persons legally in possession. If a municipality suspects that an abandoned property is contaminated with petroleum or other hazardous substances, it should:

(1) Petition the circuit court for an order authorizing an inspection of the property. The petition should present "preliminary evidence" indicating the "presence or likely presence" of a hazardous substance or a "substantial threat" of a release of a hazardous substance on, in, or under abandoned property. Preliminary evidence includes evidence of past use, visual inspections and records of past investigations.

(2) If the inspection reveals that the property does not meet the applicable remediation standards, the municipality should ask the court for authorization to remediate. All hearings held under this statute are expedited.

(3) All costs incurred by the municipality inspecting abandoned properties (other than sites that are found not to be contaminated) and remediation, including court costs and attorneys' fees, may be recorded as a lien against the property. This lien has priority over all other liens except tax liens if it is recorded within 180 days of the completion of inspection, testing or remediation. The municipality may foreclose on the lien to recover its costs. 65 ILCS 5/11-31-1(f).

**E. Nuisance Ordinances**

Non-home rule municipalities may "define, prevent, and abate nuisances." 65 ILCS 5/11-60-2. Pursuant to this broad grant of authority, non-home-rule units may implement ordinances that identify and regulate property conditions as nuisances. Traditionally, a municipality's determination as to what constitutes a nuisance will be upheld unless it is clearly erroneous. Specifically, vacant structures can be defined as nuisances and subject to local regulation, unless preempted by State or federal law. *Vill. of Northfield v. BP Am., Inc.*, 403 Ill. App. 3d 55, 58 (2010).

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#### **F. Municipal Code Adjudication and Judgment Liens**

When enforcing local code violations, non-home rule municipalities could seek a municipal court judgment and lien the property for the amount of the judgment. 65 ILCS 5/1-2.1-8; 1-2.2-55. If the judgment is not paid, the municipality can foreclose and force a judicial sale of the property. Short of foreclosure, the lien secures payment at the point of sale and

#### **G. Deeds-in-Lieu of Foreclosure**

For properties that satisfy the following criteria, a deed in lieu of foreclosure may be an option: 1) property is tax delinquent; 2) cooperative landowner; and 3) a municipal lien on the property. For these properties, the municipality could approach the owner and discuss the option of transferring title to the property (donation or purchase) in exchange for the release of the lien. Under Section 21-95 of the Illinois Property Tax Code, the municipality can extinguish the back taxes and re-market the property.

#### **H. Land Banking**

Non-home rule municipalities can create or join a regional land bank, which can help acquire, hold and dispose of vacant property. Land banks and other regional support entities can dramatically increase a municipality's capacity to enforce and willingness to take title to property (and convey to the land bank).

### **II. CONCLUSION**

While home rule authority—especially licensing authority—increases enforcement capacity, non-home rule municipalities have numerous tools that can be used to combat blight. The tools outlined above will allow non-home rule municipalities to compel improvements, both indirectly (citations and liens) and directly (taking removal action/ownership of property). Working with other municipalities to share and outsource services, non-home rule communities can leverage their resources and maximize the return on their efforts.

4829-0200-6816, V. 1