

**Pennsylvania's Abandoned and Blighted
Property Conservatorship Act**

Implementation and Best Practices Manual

By

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Disclaimer:

This manual only provides general guidance. Please consult an attorney for legal advice.

I. Introduction

The new PA Conservatorship Law is a potentially expeditious way for non-profits to eliminate a spot of blight in a key location without acquiring the parcel via condemnation. It is also a tool for municipalities, and owners of neighboring residential and commercial properties, to remediate blight at an adjacent property.

The goal of Regional Housing legal Services during the summer of 2009 was to work on implementation of the conservatorship law by drafting a Project Manual. Our goal was exceeded, since the results of our work include a new General Court Regulation issued by the First Judicial District, together with sample pleadings that the Court has posted online for use of conservatorship petitioners in Philadelphia County. RHLS hopes this Project Manual will be a useful toolkit to:

- evaluate a property as a candidate for conservatorship,
- gather all pertinent facts and documents, and
- enable legal counsel to prepare a conservatorship petition for e-filing.

There is a great deal of excitement about being able to use this new law to address long blighted properties. But the process is complex and not suitable for many blighted properties. Before reading the Project Manual in detail, here is a quick check list of “first steps” to consider as you decide whether or not to file for a conservatorship or agree to serve as a conservator:

- Budget for costs—Title Report, Court Filing Fees, Service of Process, Design and Construction Professionals
- Order a full title report to verify record owner, and ascertain extent of liens and judgments
- Eliminate any other methods of eliminating the blight, e.g. private acquisition, untangle title problems, condemnation, tax sale, code enforcement
- Gather evidence on the physical condition of the property
- Make sure the petitioner is an eligible interested party
- Consult development experts to draft the preliminary plan
- Review the First Judicial District’s General Court Regulation and sample pleadings, since the local court rules supersede the statute in some key respects
- Assemble a legal team (a litigator and a real estate lawyer)
- Determine the scope of work required and seek financing
- Weigh the risks—if the costs and fees cannot be recovered, if required rehab is too expensive, if the owner comes back, if title can be cleared to sell the property

A. Pennsylvania’s Conservatorship Act

The legislative purpose of Pennsylvania’s new Abandoned and Blighted Property Conservatorship Act, which took effect on February 1, 2009, is to “[p]rovid[e] a mechanism to transform abandoned and blighted buildings into productive reuse [which] is an opportunity for communities to modernize, revitalize grow, and to improve the quality of life for neighbors who are already there.”¹ The statute uses police power language to justify the creation of a new mechanism to combat blight by providing further that “[i]f the owner of a residential, commercial or industrial building fails to maintain the property in accordance with applicable municipal codes or standards of public welfare or safety, it is in the best interest of the Commonwealth, the municipality and the community for the court, . . . to appoint a conservator to make the necessary improvements before the building deteriorates further.”²

¹ § 1102 (5)

² § 1102 (6)

Conservatorship under Court supervision is likely to become an important tool to eliminate blight. The law is comprehensive, as it can be used to revitalize a property in a residential neighborhood, commercial corridors and industrial properties. Entering the process is flexible, since many different interested parties, including non-profits and adjacent homeowners and businesses, can petition the Court to establish a Conservatorship. Petitioners with development capacity may seek to be appointed as Conservator, and others may recommend a neighborhood non-profit Community Development Corporation or a for-profit developer. It is important for those considering Conservatorship to recognize that it is only one tool that is available to remove blight from neighborhoods and that more traditional tools for returning properties to productive use (including condemnation, tax sales, and code enforcement actions) may be more appropriate in some circumstances.

B. History of Conservatorship

Conservatorship initially developed in the 1960's to combat landlords who neglected their properties. The process is known by a variety of terms depending on the jurisdiction, with Receivership and Conservatorship being the most common. The process typically allows tenants in a multi-family apartment building to petition a Court to appoint a Conservator, who collects rents and arranges for the code violations to be remediated. After a rocky start, including a constitutional challenge in New York, Conservatorship has become an effective tool for tenants to ensure that landlords keep their properties safe and habitable. **[Note:** Pennsylvania's law does not apply to vacant lots or to legally occupied properties.]

Since the 1990's, an increasing number of jurisdictions have recognized that Conservatorship could also be effectively used against absentee property owners who allow their properties to become blighted. In states like Massachusetts and Ohio, and in cities like Baltimore and Chicago, Conservatorship has been as an especially effective tool in situations where an abandoned property has been resistant to traditional code enforcement tools. Since Conservatorship is an *in rem* action, it provides a Conservator with the authority to abate the blight, under court supervision, without requiring the consent of the owner.

The experience of the other jurisdictions has informed the recommendations in this Manual. All jurisdictions require notice to owners and lienholders of property that is being considered for conservatorship and report that the notice results in the absentee owner agreeing to take action. Usually, any abatement by the owner is under Court supervision, which avoids the all too common problem of an absentee owner doing piecemeal repairs as ordered by code enforcement officials. In the more likely scenario where an owner or senior lienholder does not respond or is unwilling to perform repairs, the Court can appoint a Conservator, who develops a plan to abate the blight. Regardless of whether an owner or the Conservator abates the blight, the community benefits when the property is returned to productive use.

C. This Manual

The purpose of this manual is to assist a potential petitioner understand the Conservatorship process, identify a suitable property, help the Conservator take the property through the Conservatorship process, and result in a successful out-sale of the property. This manual, in conjunction with the General Court Regulation 2009-1 issued On October 2, 2009 by the Court of Common Pleas of Philadelphia County in the First Judicial District of Pennsylvania ("GCR") governing Conservatorship actions in Philadelphia, together with sample Conservatorship forms and petitions posted on the First Judicial District's website <http://fjd.phila.gov/pdf/regs/2009/pjqcr2009-01.pdf> will allow a prospective petitioner and an appointed Conservator to better understand the process.

This manual starts by describing the steps that a prospective petitioner should follow to determine whether the property qualifies for Conservatorship under the Pennsylvania statute, and if so, whether Conservatorship is the best tool to remove blight from the property. After

describing how to select a property, the manual next discusses how to identify a possible Conservator, who is appointed by the Court and is responsible for the project.

Once a petitioner has identified a property that is suitable for Conservatorship and has identified a person or organization to serve as Conservator, it is now time to begin preparing the petition. The manual discusses how the GCR that governs Conservatorship actions filed in Philadelphia differs from the statute, the requirement to file electronically, how to prepare the petition and supporting documents, the methods to serve interested parties, and what to expect to occur in Court during the pendency of the case.

After discussing how to file a petition, the manual turns to the development requirements of undertaking a Conservatorship project. Here, there is a discussion on how to develop a complete plan to submit to the Court; how to obtain environmental assessments, architectural and engineering work, bids from contractors, and the other pre-development activities that the Court will need before authorizing the work to commence.

Finally, the manual describes the process for terminating the Conservatorship, after the Conservator has abated the nuisance. The manual refers to potential methods of selling the property, as well as the responsibility of the Conservator to file a final accounting with the Court.

DRAFT FOR DISCUSSION ONLY

II. Identifying a Property for Conservatorship

A. Eligibility to Petition the Court for Conservatorship

The statute establishes who is eligible to petition the Court to place a property in Conservatorship to “parties in interest”.³ Before taking any other steps, it is important that a person or entity considering filing a Conservatorship action determine whether the requirements are met in order to file a petition seeking the appointment of a Conservator. If the prospective petitioner is not qualified as a “party in interest”, then it is essential to locate another person or entity which does meet the requirements and is willing to serve as the petitioner.

The following parties are eligible to be petitioner:

- A lienholder and other secured creditor of the owner.
- A resident or business owner within 500 feet of the building.
- A non-profit corporation, including a redevelopment authority, which is located in the municipality where the building is located.
 - In Philadelphia, the non-profit corporation must be located in the city and have “participated in” a project within a one-mile radius of the location of the building.
- A municipality or school district in which the building is located.

Although the statute is unclear what level of participation in a previous project is required for a non-profit corporation in Philadelphia to be eligible to be a petitioner, best practices suggest that to meet the prior participation requirement, a CDC should demonstrate: the current capacity to successfully undertake the development in question, past experience engaging in similar or more complex developments, a target area that includes the neighborhood where the property is located, the capacity to act as a Conservator where the petitioner also seeks to be appointed as Conservator, and identify legal counsel who will represent the non-profit in the Court and legal counsel that will represent the CDC during the development process.

B. Is the Property Eligible for Conservatorship?

The first step in the Conservatorship process is to evaluate whether a property meets the requirements to be placed under Conservatorship and identify any characteristics of the property that would make it unsuitable for the Conservatorship process. It is extremely important to note that Conservatorship is only available for vacant structures. The law prohibits petitioning for a Conservatorship for vacant land.

A Court could consider consolidating a separate petition for a parcel of vacant land that is adjacent to a property with a blighted structure, especially if both parcels are owned by the same owner and it would be impractical to rehabilitate the blighted structure without including the adjoining land in the Conservator’s plan. An example of this would be where there is an abandoned building, with a separately deeded parking lot on an adjacent lot and including the parking lot in the plan is required to secure zoning for the intended use of the blighted property after rehabilitation. **[Note: the GCR requires a petitioner to file a separate petitioner for each property having a Board of Revision of Taxes number, so such a petition could require the filing of two petitions, with a request that they be consolidated or linked as related cases.]**

³ 68 P.S. § 1104(a)

1. Practical Bars to Conservatorship

Although a property may meet the technical requirements for Conservatorship, a potential petitioner must first determine whether any of the following circumstances exist. These conditions would make Conservatorship more difficult and in most cases unadvisable. Although none of the following circumstances would legally bar a petitioner from filing for Conservatorship, a best practice would be to avoid such a property, unless the petitioner understands the risks and is willing to face challenges that may be difficult to resolve successfully.

- **Properties owned by the Government-** The statute bars petitioning for Conservatorship for any property that is owned by the United States Government or that is regulated by the Public Housing Act. Although state and locally owned property is technically eligible for Conservatorship, a petitioner is likely to face litigation when petitioning to place such property under a Conservatorship. Short of a last ditch effort to grab the attention of the state or local government or agency owner of a blighted property, it would be better to acquire such a property through traditional methods.
- **Drug forfeitures-** Properties can be subject to seizure by government if the owner has been convicted of drug-related offenses, so clearing title can be an impossible task. In order to determine whether a property under consideration for Conservatorship is subject to a drug forfeiture proceeding, contact the local District Attorney's Office.
 - In Philadelphia, contact the Chief of the Philadelphia District Attorney's Forfeiture Unit, Beth Grossman, at (215) 686-5819, to inquire whether a property is subject to drug forfeiture proceedings.
 - In other Pennsylvania counties, contact the local District Attorney's Office.
- **Brownfields** or other known **environmental hazards-** Many abandoned properties, especially industrial properties, are likely to have environmental hazards that would make development difficult and more expensive, but not impossible.
 - Most properties in Philadelphia contain lead-based paint hazards, and some are contaminated with asbestos and above-ground or-underground oil tanks. Others which have been used for industrial purposes or "dumping" may have more serious contamination with hazardous and toxic waste. If a property is suspected to contain environmental hazards, a petitioner should undertake an informal inquiry to determine whether the property is unsuitable for development. Petitioners should determine as much about the past uses of properties, especially former industrial sites, as possible. Determining whether there have been any code enforcement citations or other government agencies have taken action due to environmental hazards is another avenue of inquiry. [**Note:** After the Conservator has been appointed, one of the first steps will be to seek Court authorization to order a Phase I Environmental Assessment, to be followed by a Phase II Environmental Assessment, if appropriate. State and local funding may be available from state and local governments to remediate brownfields conditions. A Court is likely to require that hazardous conditions must be remediated and using the most stringent applicable federal, state and local requirements, using safe work methods and proper disposal of hazardous materials that are removed.]
- **Historic properties and districts-** Properties that are historically certified can be considered for Conservatorship, but the petitioner must be aware that historical certification is likely to require more time and funding, and may preclude a plan to demolish a building. Prospective petitioners should determine whether a property is

listed on a historical register (or if the property is in a historic district) and if so, the petitioner should determine the affect the historical certification would have on a rehabilitation project. After determining how historical designation will impact the rehabilitation, a petitioner can then decide whether filing a Conservatorship petition is practical.

- To check if a property is listed on the **National Register of Historic Places**- Go to the website of the National Park Service, which allows you to search the National Register. <http://nrhp.focus.nps.gov/natreghome.do?searchtype=natreghome>. It is also possible to search for Pennsylvania properties listed on the National Register at <http://www.arch.state.pa.us/search-form.asp>.
- To check if a property is listed by a **Local Historical Commission**- Contact the historical commission for your city or county to determine whether your property is listed. In Philadelphia, the Philadelphia Historical Commission can be contacted at City Hall, Room 576 Philadelphia, PA 19107. Telephone: (215) 686-7660. Facsimile: (215) 686-7674.
- Properties in a **floodplain** or with other conditions that would make conservatorship difficult- Petitioners should determine if the property is in a floodplain or if it will need significant other work to make the property safe for its intended purpose. Although these circumstances do not exclude a property from Conservatorship, a petitioner should be very cautious and realistic about any property involving additional City Code requirements, such as handicap accessibility, storm water management elements, or other requirements specific to the Petitioner's intended use of the property.
- **Zoning must be compatible** with intended use- Petitioner should review the Licenses and Inspections records, which are now online in Philadelphia at <http://webapps.phila.gov/zoningarchive/> to check the zoning for the property and determine whether any variances have been granted in the past. If the zoning is not compatible with the intended use of the property, then the petitioner must determine whether it will be possible to obtain any necessary variances. If neither variances nor changes to a project plan to bring it in conformity with zoning laws are possible, then a petitioner should not petition for Conservatorship.
- Determine whether federal, state, local **tax or other government liens** (including the Philadelphia Gas Works in Philadelphia) exist on property- Under the statute, federal, state, and local tax and other municipal liens retain their priority over the Conservator's lien, so a prospective petitioner must determine if the post-Conservatorship sale price is likely to cover the total of such liens (including interest and penalties), as well as the Conservator's anticipated fees and costs. If not, the petitioner must determine whether to proceed, knowing that it is unlikely that it is unlikely to recover the entire Conservator's lien.
 - In some cases a municipal or government lienholder may be willing to negotiate to reduce the amount of the taxes owed on a property being considered for Conservatorship, especially if the project will bring a long blighted property back to productive use. It is important for a petitioner or Conservator to investigate the possibility of getting some or all of the taxes and liens forgiven before committing to rehabilitate the property through the Conservatorship process.

2. Minimum Standards

The statute requires that a property meet **four basic conditions** to be eligible for Conservatorship⁴:

- (1) The building has **not been legally occupied** for at least the previous 12 months
 - If a prospective petitioner does not have personal knowledge of whether the building has been legally occupied within the previous 12 months, contact neighbors and community group leaders who may have such personal knowledge. If one with personal knowledge that the building has not been legally occupied, the petitioner should request that the neighbor sign an affidavit to that effect and attach it to the petition.
- (2) The building has **not been actively marketed** during the 60 days prior to the date of the petition.
 - The statute defines “actively marketed”⁵ as occurring only when a “for sale” sign has been placed on the property with accurate contact information and the owner has done at least one of the following:
 - engaged the services of a licensee under the act of February 19, 1980 (P.L. 15, No. 9), known as the Real Estate Licensing and Registration Act, to place the property in a Multiple Listing Service or otherwise market the property;
 - placed weekly or more frequent advertisements in print or electronic media; or
 - distributed printed advertisements.
 - To demonstrate that the property being considered for Conservatorship is not being “actively marketed”, the petitioner should take photographs (labeled with time and date the photos were taken) of the building that show there is no “for sale” sign on the property. These photographs should be included as an exhibit attached to the petition.
 - If there is a “for sale” sign on the property, the prospective petitioner must undertake a more thorough investigation to determine whether the building is being “actively marketed”:
 - First, determine whether the contact information on the “for sale” sign is accurate. This can be done by calling the phone number and taking other steps to ascertain whether the broker/agent is still in business, if the sign was placed by a broker/agent.
 - If the contact information is valid, determine whether the property is listed on the Multiple Listing Service, which is exclusively for residential properties. To check whether a residential property is listed in MLS, go to <http://www.realtor.com> and enter the address of

⁴ 68 P.S. § 1105(d)

⁵ 68 P.S. § 1103

the property. Print the results, showing that as of at least 60 days prior to the filing of the petition, the property is not listed and attach this proof as an exhibit to your petition.

- Commercial properties are not listed in MLS, so contact local commercial real estate brokers to determine whether the building is listed. Maintain a list of brokers contacted and include this in the petition or a separate affidavit, to show that a good faith effort has been made to ascertain whether the commercial property is listed for sale.
- If the contact information is correct and the property is not listed in MLS or with a commercial real estate broker, then a potential petitioner must determine whether there have been weekly or more frequent advertisements in print or electronic media, within the last 60 days. At minimum, local papers and classified websites, such as Craigslist, should be checked. Once again the petitioner should maintain a list of steps they have taken to determine if the property has been advertised, with copies of any pertinent information, to include in the petition or in an affidavit that will be filed with the Court, together with any Exhibits to prove the efforts taken.
- Finally, if the contact information is correct AND the property is not in MLS or listed with a commercial broker AND there is no evidence of advertising, the petitioner must determine whether the owner has distributed printed advertisements offering the property for sale within the past 60 days. The petitioner should investigate whether neighbors or community group leaders have seen any advertisements offering the property for sale within the neighborhood and, especially whether they have seen such advertisements within the past 60 days. Once again, it is very important that the petitioner document the steps taken and be prepared to provide this information in the petition or an affidavit.
- If the petitioner undertakes all reasonable investigation, a property with a valid “for sale” sign can still be suitable for Conservatorship, assuming the petitioner can show the Court that the property is not listed with MLS or a commercial broker, there have not been weekly or more frequent advertisements, and the owner has not distributed printed advertisements offering the property for sale. [**Note:** Some Philadelphia law firms have provided advice to clients to list abandoned properties for sale to avoid the Conservatorship process, so the efforts to determine whether a property has been listed for may need to be taken quietly and possibly by trusted colleagues so as maintain confidentiality of the due diligence process.]

(3) The building is not subject to an existing foreclosure action.

- In Philadelphia, the First Judicial District provides online access to their Court of Common Pleas Civil docket at <http://fjd.phila.gov>. The website provides the ability to search by party name, and the name of the record owner of the property should be entered. First check for the identity of the record owner by checking the most recent deed recorded for the address on Philadox (<http://philadox.phila.gov> – fee for use). Then, when searching for the record owner on the Civil Court Docket, the address of the property should appear in the caption in the event the property is the subject of litigation. If such a

case record is located, check all of the docket entries carefully, to ensure that the property is not subject to a foreclosure action and to learn if the matter is on appeal.

- In other Pennsylvania counties, a prospective petitioner should consult with the local county Prothonotary's office to determine how to search the Civil Court Docket to check if the property is subject to an existing foreclosure action. Each county has a different method for captioning foreclosure cases (some are done by address, rather than by name of the record owner) and for searching their docket, so the process in each county may vary. If the county in question does not post Civil Dockets online, go to the courthouse to research the appropriate court dockets.
- While the statute is clear that a mortgage foreclosure action precludes a Conservatorship, the Courts may interpret the law to mean that tax sales and other similar actions also make a property ineligible for Conservatorship. Petitioners considering properties that are subject to a pending tax sale (or other similar action) should consult with legal counsel to determine whether the law has been amended to include such legal proceedings or whether Courts have ruled on this issue.
- It is very important that petitioners document all steps they have taken to determine whether a property is subject to a foreclosure action, so they can demonstrate to the Court that the property is not subject to foreclosure, to the best of their knowledge. [Note: While a title report may include a pending action, Petitioners should not rely on title reports to determine whether a property is subject to a foreclosure action.]

(4) The current owner fails to present sufficient evidence of acquisition of the property within the preceding six months. The evidence of a recent acquisition of the property may not include instances where the prior owner is a member of the immediate family of the current owner, unless the transfer of title results from the death of the prior owner, or where the current or prior owner is a corporation, partnership or other entity in which either owner or the immediate family of either owner has an interest in excess of 5%.

- The statute defines "Immediate Family" as a parent, spouse, child, brother or sister.⁶
- Philadox (<http://philadox.phila.gov> – fee for use) allows the public to view deeds, mortgages, and other recorded documents for property within Philadelphia dating back to the early 1970's. Reviewing deeds on Philadox allows a prospective petitioner to determine whether there has been a transfer of the property within the past six months and if so, whether it the sale was between family members, which would not prohibit an application for conservatorship.
- For other Pennsylvania counties, contact the county's Recorder of Deeds, to determine how to access real estate records for the county. Then review the chain of title to the property to determine whether the property has been subject to a transfer in the last six months, which would preclude a petition for Conservatorship.
- Although the statute puts the burden of providing evidence of a sale within six months on the current owner, it is a best practice and strongly recommended that

⁶ § 1103

a potential petitioner determine whether a transfer has taken place within the past six months. Checking the title or ordering a title report early in the process ensures that a petitioner does not waste time or money conducting due diligence on a property which was recently sold.

3. Showing Blight

The Act also requires a petitioner to present evidence that the structure meets the requirements of three (3) of the nine (9) statutory categories of blight in order for the property to be eligible for Conservatorship.⁷

Although a petitioner must only show three of these conditions exist, it is a best practice to gather proof of all the blight on the property and make a detailed allegation in the petition regarding all such conditions. This will avoid the Court's dismissal of the petition in a situation where the Judge finds that one of three alleged blighted conditions is not supported by the evidence. If the petitioner provides evidence that more than three conditions exist, a Court will likely appoint a Conservator, as long as it determines that at least three conditions cited by the petitioner exist. Furthermore, since the documentary evidence used to show the existence of conditions often overlaps (code enforcement citations, photographs, and affidavits of neighbors are required for many), it will usually add a significant amount of additional work for a petitioner to cite as many of the nine conditions as are applicable to the property.

The nine conditions, along with guidance on how to show a Court that they exist on a property being considered for Conservatorship, are:

1. The building or physical structure is a **public nuisance**.

- The Act states that a public nuisance is “[a] property that, because of physical condition or use, has been declared by the appropriate official a public nuisance in accordance with the local housing, building, health, fire or related code or is determined to be a public nuisance by the court.”⁸
- A petitioner can only claim that the structure is a public nuisance if it has been declared a public nuisance by the municipality or if the Court determines that it is a public nuisance. Petitioners should determine whether the municipality or code enforcement authority has cited the building as a public nuisance, and if so, obtain a copy of the pertinent records. If the local municipality has not declared the structure a public nuisance, then the petitioner will need to show the Court that the building meets the requirements of a public nuisance. This can be done through photographs, affidavits from neighbors, and attaching code enforcement citations.

2. The building is **in need of substantial rehabilitation** and no rehabilitation has taken place during the previous 12 months.

- The statute defines “Substantial Rehabilitation” as repairs to the building where:

(1) the cost of repairs, replacements and improvements exceeds 15% of the property's value after completion of all repairs, replacements and improvements; or

(2) more than one major building component is being replaced.

Major building components include:

⁷ § 1105(d)

⁸ § 1103

- (i) roof structures;
- (ii) ceilings;
- (iii) wall or floor structures;
- (iv) foundations
- (v) plumbing systems;
- (vi) heating and air conditioning systems; and
- (vii) electrical systems.

- In order to show that the rehabilitation being proposed in the preliminary plan is substantial under this test, the petitioner will need to show evidence of the anticipated fair market value of the property after completion of the rehabilitation work proposed for the Conservatorship, so a Court will be able to determine whether the cost of such work will exceed 15% of the expected value.
- Any preliminary plan should make clear which major systems are being replaced. Any petitioner claiming to show blight exists by virtue of the plan to replace a major system should be able to provide evidence of the condition of the system, if in need of replacement, or if it is missing, in the case of vandalism.
- The petitioner must also determine whether any rehabilitation has taken place within the previous 12 months. An affidavit should be obtained from a neighbor or other person with knowledge that no work has taken place within the past 12 months. The petitioner should also determine whether any permits were applied for to do work on the property in the past, although owner may have applied for permits and never actually commenced construction.

3. The building is **unfit for human habitation, occupancy or use.**

- Photographs, affidavits from neighbors or others with knowledge, and the preliminary plan, if drafted by an architect or other design professional and showing the structure is in need of significant rehabilitation, can serve as evidence that the building is unfit for human habitation, occupancy, or use. If there are code enforcement violations issued by Licenses and Inspections that the building is unfit, this evidence should be cited and attached as an exhibit.

4. The condition and vacancy of the building **materially increase the risk of fire** to the building and to adjacent properties.

- If there have been previous fires in the building, this should be documented as evidence, either by attaching reports from the Fire Department or affidavits executed by neighbors or others with knowledge regarding previous fires.
 - In Philadelphia, the Philadelphia Fire Department will provide information regarding violations of the City's Fire Protection Code, permits for storage tanks, previous fires, and information about hazardous chemicals. The department refers to this as an "Environmental Search" and charges \$80.00. The form is attached to this manual and is available on the Fire Department's website.
- If there have not been fires in the past, the petitioner should determine if there are any code enforcement violations, such as excessive garbage or flammable materials in the building, that would indicate that the blight causes a material increase in the risk of fire. If such conditions exist, but have not been cited by code enforcement authorities, then photographs and affidavits should be used to support the allegations.

5. The **building is subject to unauthorized entry** leading to potential health and safety hazards and one of the following applies:
- a. The owner has failed to take reasonable and necessary measures to secure the building.
 - b. The municipality has secured the building in order to prevent such hazards after the owner has failed to do so.
- A photograph and/or an affidavit from a neighbor or other person with knowledge should be sufficient to establish that the owner has not taken steps to secure the building. If the building has been illegally entered, especially if it has been used for illegal purposes, proof can be provided by means of an affidavit from neighbors or others with knowledge detailing this activity, and/or any police reports describing the activity.
 - If the building is sealed, then a petitioner will need to determine whether the building was sealed by the owner or by the municipality. If it was sealed by the municipality, then a petitioner should obtain proof of this, in order to allege such municipal action as an element proving the building is blighted. Petitioners should examine the property records at the Department of Licenses and Inspections to determine whether the structure was secured by the municipality.
6. The property is an **attractive nuisance to children**, including, but not limited to, the presence of abandoned wells, shafts, basements, excavations and unsafe structures.
- Photographs of the dangerous conditions should be attached to the petition.
 - If children have trespassed onto the property in the past, obtain affidavits regarding the details of such entry on the property by children from neighbors or others with knowledge. If children have been injured by the unsafe conditions on the property, affidavits and/or other appropriate evidence of such injuries should be included in the petition.
 - If there have been L&I violations issued regarding any such dangerous conditions, copies should be attached to the petition.
7. The **presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration** of the structure or grounds has created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards.
- Once again, if there are code enforcement violation citations documenting that such conditions exist, describe the debris, vegetation or other conditions on the grounds of the property in the petition and attach copies of the violation notices to the petition. Photos, as well as affidavits, documenting the condition of the property (including information on how long it has been in this condition) can also be used to show such health and safety hazards exist on the property.
8. The **dilapidated appearance** or other condition of the building **negatively affects the economic well-being** of residents and businesses in close proximity to the building, including decreases in property value and loss of business, and the owner has failed to take reasonable and necessary measures to remedy appearance or the condition.

- Relying on economic blight as one of the three criteria for appointment of a Conservator should be avoided. The economic impact of a deteriorated property, without proof of at least three other strong criteria may pose Constitutional challenges to the breadth of the statute. In addition, this economic criteria could be abused as tool for forcing low income owners of a vacant property, who could not afford to hire legal counsel to defend a Conservatorship petition, out of a gentrifying neighborhood. For these reasons, petitioners are strongly discouraged from relying on economic blight as one of the three criteria to justify the need for a Conservatorship.
 - If a petitioner decides to cite the economic impact the structure has on the well-being of a neighboring property, photographs should be attached. If there is other evidence, such as affidavits from neighbors or experts who can attest to the drop in value caused by the blighted structure, that evidence should also be attached. Again, if a petitioner wishes to include economic blight, in addition to three of the other elements, this would not be inappropriate.
9. The property is an attractive nuisance for **illicit purposes, including prostitution, drug use and vagrancy.**
- Police reports are the best evidence of a property's history as an attractive nuisance. If the building is actively being used for illicit purposes, a potential petitioner may want to consider calling the police and building a record of police reports, which can be attached to the petition. Petitioners should also obtain copies of any prior police reports involving arrests or 911 calls regarding illegal activity at the property.
 - If past police reports are unavailable and it is not possible or advisable to call the police when illicit activity is occurring, seek affidavits from neighbors willing to come forward or others with knowledge attesting to the illicit activities and attach such affidavits to the petition. If a petitioner is relying on affidavits, it is very important that they contain as much detail about the illegal activities as possible.

III. Next Steps After Identifying a Property

After identifying a blighted property and a petitioner eligible to file the petition, the prospective petitioner must take several more steps before filing a petition for Conservatorship with the Court. The court will require evidence that the property is blighted (as described in the prior section) as well as ensuring that adequate notice and service of process is given to the correct owner and lienholders. So, working with legal counsel to conduct thorough due diligence before filing a petition reduces the chances of discovering information later that would result in challenges to the petition or adversely impact the Conservatorship after investing time and money in the process.

A. Obtain a Title Report

After making an initial determination that a property is appropriate for Conservatorship, the **petitioner must obtain a full title report**. [Note: a lien and judgment search is not sufficient.] Title reports will contain very important information such as: who owns the property, when the owner acquired the property, whether there are any liens or judgments against the property, and whether there are any judgments against the owner (such as IRS tax liens) that could be problematic. The title report is an essential exhibit that must be attached to the petition for Conservatorship. [Note: Because the record owner may be deceased or an owner entity may have been merged or sold, the prospective petitioner also must not only make an inquiry into the status and whereabouts of the record owner, but must also ascertain the identity and whereabouts of any owners with legal or equitable interests in the property. See requirements regarding service of process below.]

When examining the title report, petitioners should **pay careful attention to federal, state and local tax and other municipal liens**, as they cannot be superseded by the Conservator's priority lien. This means that unless the government agency holding the lien waives it or is willing to compromise the amount due, any proceeds from the eventual sale of the property will go first to satisfy all tax and other government liens, before the Conservator can recover any costs related to the Conservatorship. Therefore, when considering a property with substantial tax or other government liens, study the market conditions to make an educated projection that the anticipated sale price will be adequate to pay back all federal, state and municipal obligations, as well as the Conservator's expenses. If not, this property may not be suitable for Conservatorship and evaluate traditional methods of acquisition of blighted property or municipal remediation of the dangerous conditions. Condemnation is a possibility, as well as a tax sale, which is where the government auctions the property to recover the taxes that are owed. The potential petitioner could bid at the tax sale and proceed to remediate the blight without using the Conservatorship process.

The title report will also provide vital information regarding lienholders. The GCR requires service of process in accordance with Court Rules on the owner of the property and lienholders. [Note: the GCR requires more service of process and notice than is required by the statute. In Philadelphia County, compliance with the GCR will be required.] The service of process and notice requirements, as well as the importance of complying with such procedures in order to obtain title insurance to sell a property at the end of a Conservatorship, are discussed at length below.

B. Take Photographs

Petitioners should take **exterior photographs** of the property being proposed for Conservatorship, as well as **surrounding properties**. The photographic evidence of the structure and property allows the Court to understand the nature of the blight and will enhance verbal descriptions in the petition. In addition, photographs document the condition at the time the petition was filed and can be useful if the owner makes minor cosmetic improvements in an effort to avoid the appointment of a Conservator. Therefore, documenting the blight of the

structure and the property is very important and it is essential that a petitioner documents the condition of the property with photographs well before filing the petition.

In addition to taking photographs of the property being considered for conservatorship, the petitioner is strongly advised to also **take photographs of the neighboring properties and the block**, which will allow the Court to observe the impact of the blighted property on the area and understand the positive impact that remediation of the blight will have on the neighborhood.

The **property should not be entered** to take photographs, as dangerous conditions are likely to exist and the Court has not yet authorized entry on property. Exterior photographs should be sufficient for the Court to determine whether Conservatorship is appropriate. After a Conservator is appointed and the Court authorizes a right of entry on the property, then interior photographs can be taken to better show the Court the level of rehabilitation that is needed.

C. Obtain Official Documents

Petitioners should obtain copies of all official documents pertaining to the property, especially those that can be used as evidence of blight. Courts will likely require a copy of the **most recent deed for the property**. Deeds and other recorded documents, such as mortgages, are available on the City of Philadelphia's Department of Records website (PhilaDox has records extending back to the early 1970's) for a fee or can be obtained from the title agent preparing the title report. If not, it is possible to obtain a copy (or have a copy certified, if required for evidentiary purposes) from the County Recorder of Deeds where the property is located. Even if the Court does not require a copy of the most recent deed to be submitted with the petition, it is a best practice for the petitioner to ensure that they have a copy available in their records.

Petitioners should also obtain copies of all documentation that can be used to show the blighted conditions of the property. **Code enforcement** departments of local municipalities can provide copies of code violations and other **citations** issued on the property to attach as exhibits to the petition.

In addition to getting copies of code enforcement citations, prospective petitioners should also get copies of **police reports**, if there has been illegal activity at the property. Consult with your legal counsel regarding the time frame that is pertinent. If neighbors have called the police to complain about illegal conduct, then an Incident Report documenting the police report should be attached to the petition as evidence of the activities that have occurred at the property. Police Reports and Incident Reports are available at the Department of Records.

Finally, prospective petitioners should contact the local fire department to determine whether there have been fires at the abandoned property or whether the property has ever been cited for violating the fire code. If so, obtain **documentation of fires** and any copies of **citations for violating the fire code**. This information will help a Court understand the risk that the blighted structure poses to neighboring properties.

D. Consult with Neighbors and Local Community Groups

Although not required by the statute, in many cases it will be advisable for the prospective petitioner to **discuss the proposed conservatorship with neighbors and local community groups**. Although there may be circumstances when a petitioner would like to file the petition prior to discussing it with neighborhood and community groups, in most cases it would be a best practice to hold these discussions before a petition is filed.

Discussing the project with neighbors and community groups will allow a petitioner to determine whether there is support for the project in the neighborhood. This is important, since neighbors and community groups may wish to intervene in the case to support or oppose the petition, or simply to monitor the pending case to ensure that the Conservator work is completed

in accordance with the Court's Orders. Therefore, developing good relations with the community early on and maintaining communications during the due diligence process, if feasible, may be useful to support the goal of removing the blight and to prove the benefit to the community if a Conservatorship is established.

A final reason to consider discussing the project with neighbors and community groups is to provide and document detailed information about the property to prove the elements of the legal case. **Neighbors may also be willing to sign affidavits** about the condition of the property, which will be useful when the petitioner is unable to testify personally to conditions existing on the property (for example, neighbors would be better able to attest to illegal activities taking place at night, or children frequently playing on a dangerous property).

E. Contact the Owner

Each prospective petitioner will need to consult with legal counsel to determine whether or not to contact the record owner of the property (assuming the record owner can be located), prior to filing a petition. The risks of contacting the owner before filing a petition are substantial, since the owner could take steps that would disqualify the property from the Conservatorship process (such as listing it for sale before the petition is filed). The benefit of contacting an absentee owner is that the owner may be willing to sell the property to the prospective petitioner or tangled title issues may be possible to resolve, and the expense of the Conservatorship process can be avoided.

Due to the risk of an absentee owner taking minimal steps to avoid Conservatorship, it **may be unwise to contact the owner prior to filing** in many cases. Rather, negotiations to purchase the property can take place after the petition is filed and the petitioner can have the case dismissed if the parties reach an amicable resolution. If the owner agrees to rehabilitate the blighted property after the petitioner has filed for Conservatorship, then the Court can supervise the rehabilitation (and require a bond, if appropriate), making sure that the owner completes all of the repairs that the Court ordered.

F. Contact the Senior Lienholder

The statute provides that the senior lienholder has priority to be considered for appointment as Conservator.⁹ Prospective petitioners should identify the senior lienholder from the title report and consult with legal counsel about contacting the senior lienholder prior to filing the petition. In some cases this will be difficult, since mortgages are often paid in full but the satisfaction piece (or release) has not been recorded and it may be difficult to track down successors and assigns of old lenders, or the status and whereabouts of an individual purchase money lender. Prospective petitioners should make an effort to determine who is the senior lienholder (likely by contacting the lienholders of record in order of lien priority until locating one who has not been paid in full) and then inquire whether the senior lienholder is interested in being appointed Conservator.

Determining whether the senior lienholder would accept an appointment to serve as Conservator before filing the petition provides more certainty that the petitioner's recommendation for Conservator is likely to be appointed. Therefore, determining who the senior lienholder is and whether the lienholder would accept the appointment before going to Court can help ensure that the petitioner does not spend time and money pursuing a case where the senior lienholder steps in to serve as Conservator, rather than the petitioner's recommended Conservator. **[Note: a senior lienholder is more likely to agree to increase its loan, which is in first lien position, to finance the work to remediate the blight than to offer to serve as Conservator.]**

⁹ § 1105(e)(2)

G. Notify the Department of Public Welfare¹⁰

In cases where the prospective petitioner determines that the record owner died after August 15, 1994, notice must be given to the Pennsylvania Department of Public Welfare (DPW), in order to determine whether DPW has a claim against the property for medical assistance provided in the last five years of the recipient's life. DPW administers such claims through its Medical Assistance Estate Recovery Program ("MAER"). For more information, see: <http://www.dpw.state.pa.us/LowInc/MedAssistance/MAEligibility/003670689.htm>

It is essential to send notice to DPW at the outset of the due diligence process and to determine whether such claims exist prior to filing the petition. Also, consult with legal counsel to determine whether the names of any deceased heirs of the record owner should also be checked for medical assistance claims, as legal title passes at death in Pennsylvania, even if a deed is not recorded, and the estate of a record owner's heir could also be subject to a DPW MAER claim.

A sample notice to DPW follows this page. **[Note:** In Philadelphia, to determine the value of real property, use the Board of Revision of Taxes (BRT) valuation of the property, less any liens on the property.]

Within 45 days of receiving the notice discussed above, DPW must respond with a statement listing the amount of medical assistance paid on behalf of the record owner, in order to assert a claim against the decedent's estate. If DPW does not respond within 45 days, any right that DPW may have to place a lien on the decedent's estate property is deemed waived. If DPW responds with a statement of claim, it is deemed to have a claim against the assets of the estate, but it does not record a lien against the property. If this is the case, then a petitioner must carefully consider the amount of the DPW claim to determine whether the claim renders a Conservatorship financially impractical. **[Note:** There are provisions to claim a waiver for undue hardship <http://www.pabulletin.com/secure/data/vol31/31-44/1957a.html> (see 258.10), but a vacant property is unlikely to be covered by a hardship waiver.]

¹⁰ Adapted from Philadelphia VIP Probate Training Materials, May 2009

Notice to Department of Public Welfare

[DATE]

Third Party Liability Section
Department of Public Welfare
Estate Recovery Program
Post Office Box 8486
Harrisburg, PA 17105-8486

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

RE: Estate of [DECEDENT]
Date of Birth: [DATE]
Date of Death: [DATE]
Social Security Number: [NUMBER]

Dear DPW:

I am counsel for [NON-PROFIT ORGANIZATION], a non-profit organization based in [CITY] that develops low income housing. I have determined that the owner of a property my client is considering for Conservatorship under 68 P.S. § 1101-11 is likely deceased. I am sending this notice to DPW in compliance with 62 P.S.A Section 1412.

The record owner of the property is [DECEDENT] and [HIS/HER] last known address at the time of [HIS/HER] death was [ADDRESS], and I believe that [HE/SHE] actually died at [LOCATION]. The estimated gross value of property that is being considered for Conservatorship is [AMOUNT].

[DECEDENT] was age [AGE] at the time of [HIS/HER] death and I have no knowledge of whether [HE/SHE] received no medical assistance during the five years preceding [HIS/HER] death. Therefore, I am sending you this notice in the event that the Department has a claim under the statutory provision. As I understand it, if no claim is submitted within forty-five (45) days of your receipt of this letter, any claim that the Department might have will be forfeited.

If the Department does submit a claim, it should be sent to my attention. Should you have any questions regarding this matter, I can be reached at [PHONE NUMBER].

Sincerely,

[NAME]

cc: [CLIENT]

H. Determine Whether The Owner or a Lienholder is on Active Duty in the Armed Services

Federal law prohibits a Court from entering a judgment against a member of the active duty military, if the person does not appear to defend him/herself in Court. The five branches of the military have developed procedures that allow a petitioner to determine whether a defendant is actively serving in the military prior to filing a legal action. Below is information from Philadelphia VIP on how to determine whether someone is on active duty in the military. (See sample letter on the following page.)

Once the record owner, anyone who may have a legal or equitable interest in the property, or an individual who is a lienholder, are identified, letters should be sent to all five branches of the military to determine whether any such persons are on active duty in the armed services. It is important to do this as soon as possible. Retain the responses in the event such evidence is required to support the allegation regarding military service in the petition.

Contact Information for Military Branches:

Air Force

Air Force Worldwide Locator, AFPC
MSIMDL
550-C Street West, Suite 50
Randolph AFB, TX 78150-4752

(202) 493-1697

Marines

Marines Worldwide Locator
CMC MMSB-10, HQ USMC
2008 Elliot Road, Suite 201
Quantico, VA 22134-5030

Army

Army Worldwide Locator
U.S. Army Enlisted Records and Evaluation
Center
Fort Benjamin Harrison, IN 46249-5301
Attn: Personnel Actions Branch

Navy

Navy Worldwide Locator
Navy Personnel Command
PERS-312F
5720 Integrity Drive
Millington, TN 38055-3120

Coast Guard

Coast Guard Locator Service (for active duty
personnel)

The next page contains a sample letter to determine whether a defendant is currently in the military.

Letter to Determine Whether Owner is in Military¹¹

[DATE]

[MILITARY LOCATOR ADDRESS]

To Whom It May Concern:

I am counsel for [NON-PROFIT ORGANIZATION], a non-profit organization based in [CITY] that develops low income housing. I am searching for an absent party in a real estate case. The party's name is [NAME, a.k.a. ANY ALIASES]. [HIS/HER] social security number is [SOCIAL SECURITY NUMBER-IF KNOWN], and [HIS/HER] date of birth is [DATE OF BIRTH-IF KNOWN].

I would greatly appreciate it if you could search your records to determine:

- whether [HE/SHE] is a member of the United States [AIR FORCE/ ARMY/MARINES/NAVY]
- whether [HE/SHE] has received notice of induction or notice to report for service in the United States [AIR FORCE/ARMY/MARINES/NAVY], or
- whether [HE/SHE] is an officer of the Public Health Service detailed for duty with the United States [AIR FORCE/ARMY/MARINES/NAVY].

[NON-PROFIT ORGANIZATION] is a non-profit organization principally supported by voluntary contributions. It works to improve conditions in neighborhoods in [CITY] and develops housing for low-income residents. Therefore, I would request that you waive the fee normally charged for locator services.

If you have any questions, please do not hesitate to call me at [PHONE NUMBER].

Sincerely,

[NAME]

Cc: [Client]

Enclosure: self-addressed, stamped envelope

¹¹ Adapted from Philadelphia VIP Probate Training Materials, May 2009

IV. Identify a Conservator

After identifying a petitioner and an eligible property, the petitioner must then decide on a Conservator to recommend for Court appointment as Conservator. **[Note:** the petitioner can serve as Conservator, if appropriate.] The Conservatorship statute outlines the legal requirements a party must meet to be eligible for appointment as Conservator, but equally important are the practical requirements that all Conservators should meet. A prospective petitioner should be confident that the recommended Conservator has the expertise and capacity necessary to assume responsibility for the work to remediate the blight, whether rehabilitation or demolition. The responsibilities of a Conservator are discussed below and will aid a prospective petitioner in evaluating the merits of the potential Conservator.

A. Comply with Legal Requirements

First, a petitioner must inquire whether the senior lienholder is interested in being appointed Conservator, since the statute requires that the “court shall give first consideration for appointment as conservator to the senior lienholder on the property.”¹² The priority given to the senior lienholder to be appointed Conservator is the reason why the petitioner must identify the senior lienholder early in the due diligence process (which may be challenging, as many paid-off mortgages never have a satisfaction recorded) and determine whether the senior lienholder has interest in accepting an appointment as Conservator. If the petitioner determines that there is no senior lienholder or that the senior lienholder will decline a Conservatorship appointment, such facts can be alleged in the petition and the senior lienholder is less likely to object to the petitioner’s recommended Conservator.

The statute provides for the likely situation where the senior lienholder declines the appointment or the court determines that the senior lienholder is inappropriate to serve as Conservator. The next priority established by the statute is a nonprofit entity “or other competent entity”, which is not defined in the law:

The court may appoint a nonprofit corporation or other competent entity. If the property is located in a city of the first class [Philadelphia], the nonprofit corporation or entity must be located in the city and must have participated in a project within a one-mile radius of the location of the property.

In appointing a conservator, the court shall:

- (i) consider any recommendations contained in the petition or otherwise presented by a party in interest; and
- (ii) give preference to the appointment of a nonprofit corporation or governmental unit over an individual.¹³

If the senior lienholder is not willing to serve as Conservator or if the petitioner has concerns about the capacity of the senior lienholder to act as Conservator, then the petitioner should follow the priority of the statute in proposing a Conservator. The petitioner should first determine whether there is a non-profit corporation (that has participated in a project within one mile, if in Philadelphia) that is willing and able to serve as Conservator. If there is no non-profit with the capacity to serve as Conservator or if another party is more suitable, the petition should contain allegations regarding the process that the petitioner followed in making a recommendation of a potential Conservator.

¹² § 1105(e)(2)

¹³ § 1105 (e)

The petitioner should document what steps it took to develop a recommendation for the Conservator. The petitioner should be especially careful when a non-profit in Philadelphia is being proposed as Conservator, as the non-profit must be able to show that they have “participated in” a project within a one mile radius of the property that is being proposed for Conservatorship, as well as follow the procedures for non-profits outlined in the First Judicial District’s General Court Regulation and in the sample pleadings.

B. Consider Practical Requirements

The statute provides for minimal prerequisites for the appointed Conservator. However, the prospective petitioner should include allegations in the petition regarding the qualifications of the recommended Conservator to serve and the capacity to perform all necessary activities. Although the level of sophistication required of the Conservator will vary depending on the complexity of the remediation of the blight at the property, a petitioner seek an experienced Conservator capable of handling unforeseen complications which commonly arise in real estate development. The petition should provide the Court with detailed documentation of the background and experience of the Conservator to demonstrate capacity to complete the project.

A Conservator will have many responsibilities, including:

- Preparing and submitting proposals for the blight remediation to the Court for approval, including all aspects of the development, design, construction, budgeting, bidding, financing, and out-sale process.
- Assuming responsibility putting the project out for bid, and supervising architects, engineers, contractors, and other design and construction professionals.
- Ensuring the project has:
 - Permits, zoning variances, and other required approvals
 - Insurance, to protect the Conservator, owner, lienholders, and other parties
 - Environmental assessments
 - Permission to modify historically certified property
 - Required storm water management plans
 - Financing
 - Title insurance
- Working with legal counsel and the petitioner to make regular reports to the Court and secure court approvals for each step of the process, as required by the Court.
- Maintaining financial records and working with financial professionals to complete the final accounting required by the Court.
- Working closely with legal counsel and a title insurance agent during process to make sure the Court will approve the Conservator’s lien and the public or private sale process to dispose of the property with clear title.

If the Conservator being considered does not have the experience and capacity to perform all of these tasks on a project of the size being considered for Conservatorship, then the petitioner should determine whether appointing co-Conservators is feasible (where a more sophisticated party also serves as Conservator and is responsible for the more complex aspects of the Conservator’s duties). If a co-Conservator arrangement is impractical, then the petitioner must identify a Conservator who has the skills necessary to successfully complete the Conservatorship project together with legal counsel and other professionals, such as an owner’s representative, including the reporting requirements to the Court.

C. Recommend the Conservator

The petition for Conservatorship includes the petitioner's recommendation to the Court regarding the proposed Conservator. The petitioner can recommend that the petitioner be appointed to serve as Conservator. The petition should document the reasons that the proposed Conservator qualifies under the statute and describe facts supporting why the Conservator merits appointment, as described above. Therefore, the petitioner should consider attaching an exhibit to the petition that includes a list of past projects that the proposed Conservator handled, including details regarding the proposed Conservator's specific role and level of involvement in each development. Details should include a description of each project, the total budget, the scope of work performed, the names of responsible staff members, and the date each development was completed. The petitioner should include any other information from the proposed Conservator's background that would support the allegations in the petition that the proposed Conservator has the experience and capacity to undertake the Conservatorship project under consideration.

Providing a list of prior projects is especially important for a non-profit organization in Philadelphia, since a non-profit petitioner must have previously participated in a project within a one mile radius of the current Conservatorship project and a list of prior projects will show the Court whether this requirement has been fulfilled. **[Note:** It is assumed that the non-profit will also seek to be appointed as Conservator, and the allegations regarding the non-profit's capacity will provide documentation for both roles.] Although the statute does not specify what level of participation in the prior project was required, it is a best practice that the Conservator was previously involved in project of similar scope and size as the blight remediation at issue in the Conservatorship matter.

V. Develop a Preliminary Plan

The Pennsylvania Conservatorship statute requires that every petitioner submit a “preliminary plan with initial cost estimates for rehabilitation of the building to bring it into compliance with all municipal codes and duly adopted plans for the area in which the building is located and anticipated funding sources.”¹⁴ The preliminary plan must be filed as an exhibit to the initial petition. It should provide as much information as possible regarding the best way to remediate the blighted property, given that entry on the property is not yet authorized. The petitioner should work with design and construction professionals to develop a preliminary plan and an initial good-faith cost estimate based on as many specifics as can be obtained without an on-site physical inspection of the blighted structure.

Financing Issues

In addition to submitting a preliminary plan with cost estimates, the statute also requires the petitioner to include information about anticipated funding sources. At this time, it is unknown whether private and/or public funding sources will be available for Conservatorship projects. It is likely that the initial successful Conservatorship projects will be self-funded, and public and private funders monitor the initial cases and see if a track record of success is established, including the final resolution of any challenges to the statute or amendments to tweak the law, before providing funding.

Since the Conservator does not own the property while it is under the Court-supervised Conservatorship, it will not be possible for public and private lenders to have a first lien position for financing, unless there are no government liens on the property. The Pennsylvania law provides that the Court can authorize a lender to have a lien that is subject to government liens, but superior to other lienholders, in order to finance the development. It is unlikely that public or private lenders would be willing to provide funding in such circumstances. In other jurisdictions, some banks have been willing to lend on Conservatorship projects if the Conservator has a line of credit with the bank, where the line of credit is collaterally secured by an assignment of the Conservator’s future lien against the property. At this time it is unknown whether lenders in Pennsylvania will be willing to provide such financing, but in other jurisdictions lenders have limited such funding to the unimproved ground value or to 50% of the expected final value of the remediated property, due to the unpredictability of the Conservatorship process.

A. Demolition or Rehabilitation?

The threshold question that every petitioner and Conservator must answer is whether the structure they are considering for Conservatorship will be rehabilitated or demolished. This will be a case-by-case decision that must be made before filing a petition, but it is essential that the petitioner and Conservator determine whether it is desirable (or economically feasible) to rehabilitate the blighted structure, or if demolition is a more appropriate option.

To determine whether rehabilitation or demolition is appropriate, the petitioner will need to look at the expected final use of the property, the condition of the building, the zoning of the property, the level of funding available, and many other factors. After determining whether to rehabilitate or demolish the blighted structure, the petitioner should retain the appropriate professionals (architect, engineer, or contractor) to develop a preliminary plan and cost estimate.

B. Preliminary Plan

The Community Design Collaborative has issued a proposal to a non-profit in Philadelphia that includes the following elements of a preliminary plan. These steps are best

¹⁴ § 1104(b)(3)

practices and can be used as a model for design professionals to help the petitioner prepare a preliminary plan to submit with a conservatorship petition:

- Introduction: A written narrative of background information on the petitioner, especially if the petitioner is a non-profit, as well as a description of any community consultation process and the goals reached during the consultation process
- Map: Property location map, including site location within the city
- Photographs: Exterior photographs of the site, the buildings and the immediate context
- Feasibility Study/Limited Preliminary Code Review: Preliminary evaluation of the reuse of the property based on the proposed program uses desired by the client after consultation with the community, as well as building, zoning, life safety and accessibility code requirements, and existing site and building conditions.
- Historic Preservation Assessment: Review and recommendations regarding historic designation and reuse of the site.
- Structural Assessment: A report based on a visual survey of the **exterior only** of the building and limited to conditions that can be observed without removal of finishes, obstructions or debris. Based on the findings during the assessment, recommendations will be made for securing, sealing, and stabilizing the structure, as well as recommendations for reuse.
- Existing Conditions Context Map: Showing the neighborhood, identifying key elements, such as commercial corridors, schools and other neighborhood institutions, and adjacent neighborhoods. The proposed property will be identified as well as building and land use, and streets. The plan is to be based on information provided by the client, a Planning Commission building and lot line map, and field investigation, and is to be drawn at an appropriate scale to be presented no larger than 11" x 17" format.
- Existing Site Plan: Of the proposed site and drawn at an appropriate scale to be presented at 11" x 17". This plan will show the existing building(s) and any adjacent buildings and lots. Streets, sidewalks, alleys and existing streetscape elements will be indicated. The plan is to be based on information provided by the client, a Planning Commission building and lot line map, and field investigation.
- Conceptual Site Plan: Based on the existing site plan, the plan will indicate the proposed re-use of the site based on program use as determined by the client after consultation with the community, the feasibility study, and the historic preservation and structural assessments. The plan might illustrate strategies for reuse which may consider different degrees of renovation, preservation and demolition.
- Conceptual Floor Plan Diagrams: As appropriate, plan diagrams indicating how the proposed program may be accommodated on the proposed site.
- Proposed Building Rendering: As appropriate, a perspective rendering of an aspect of the proposed design to be presented no larger than 11" x 17".
- Opinion of Probable Cost: A preliminary cost estimate based on the proposed conceptual design and structural recommendations. A separate cost for securing, sealing, and stabilizing the structure will be provided. The estimates may be generated using overall cost per square foot numbers.

VI. Preparing and Filing a Petition to Appoint a Conservator

A. Finding an Attorney

Pennsylvania law requires that an organization be represented in Court by an attorney; therefore any non-profit or for-profit petitioner will be required to retain an attorney to file a Conservatorship petition. Individuals are allowed to represent themselves in Court, but it is strongly recommended that an individual petitioner retain an attorney, as the Conservatorship process is complex. Petitioners can find an attorney by contacting the county bar association referral service where the property is located. Non-profits should determine whether they qualify for *pro bono* legal assistance. In Philadelphia, non-profits and CDCs should contact VIP (<http://www.phillyvip.org>) for a referral to a *pro bono* attorney, if the organization qualifies for free legal assistance. [Note: At the time of writing of this manual, VIP will consider referring new applications to volunteer attorneys to handle new conservatorship case only after the initially referred pilot conservatorship cases have been resolved successfully.] [Note: In other jurisdictions where non-profits typically engage in demolitions, rather than rehabilitations, the legal fees and costs are all included in the conservator's lien, together with all other expenses, in order to ensure that the it surpasses other lienholders' interests and deters the Owner from asserting a claim. So there may be an advantage in some cases to retaining a lawyer and including the legal fees in the Conservator's accounting.]

The general process for filing a petition for Conservatorship, requirements may vary in different Pennsylvania judicial districts. The following sections are only a guide. A petitioner's legal counsel is responsible for compliance with local rules, practices and procedures and for researching any cases interpreting the law, as well as checking for potential amendments to the statute. [Note: The conservatorship process is far too complex for most petitioners to handle on a *pro se* basis.]

The following discussion does not constitute legal advice and all parties interested in the Conservatorship process should consult an attorney or law firm with appropriate background and experience in litigation and real estate development.

B. Which Court?

Petitioners will have to consult their local Prothonotary's office to determine if the Court has adopted local rules to govern consideration and assignment of Conservatorship cases. There have been questions over whether Orphans' Court has jurisdiction over cases where the owner is deceased, but there are no definitive answers and most Courts are expected to assign all Conservatorship cases to either their Civil or Orphans' division.

In Philadelphia, the Court of Common Pleas has determined that all Conservatorship cases will be filed electronically with the Civil Division, but cases involving decedents' estates and properties owned by non-profit organizations will be assigned for hearing by the Orphans' Court. [Note: See GCR.]

B. Filing an Action

The Conservatorship statute provides general guidelines commencing a petition to seeking appointment of a Conservator to remediate a blighted property, as follows:

A petition for the appointment of a conservator to take possession and to undertake the rehabilitation of a building may be filed by a party in interest in a court in the county in which the building is located. The proceeding on the petition shall constitute an action in rem.¹⁵

¹⁵ § 1104(a)

The petition must be filed in the County where the property is located.

The petitioner must be considered a “party in interest”, as discussed above.

The petitioner must include a “sworn statement that, to the best of the petitioner's knowledge, the property meets the conditions for conservatorship” and that the petitioner should take steps to obtain and include copies of “any citation charging the owner with being in violation of municipal code requirements or declaring the building to be a public nuisance.”

A “recommendation as to which person or entity should be appointed conservator.”

A “preliminary plan with initial cost estimates for rehabilitation of the building.”¹⁶

These pleading requirements are reflected in the sample petition that is posted online and including in the Appendix to this manual. It is very important that a petitioner assemble all of the evidence required and draft a petition that meets all of these requirements. Petitioners and their legal counsel should refer to previous sections in the manual for detailed guidance on the due diligence process and suggested evidence to include in and attach to a petition for Conservatorship. [Note: In Pennsylvania, corporations (including non-profits and CDCs) are required to have an attorney represent them in Court and all other petitioners are also strongly recommended to retain legal counsel.]

Electronic Filing

Philadelphia’s Court of Common Pleas requires all pleadings to be electronically filed, though the Court’s website at <http://fd.phila.gov>. In Philadelphia, the Court has established a specific conservatorship petition in the e-filing system. Legal counsel for petitioners in other counties must follow local rules and procedures.

The first page of the electronic filing system, where petitioners designate that they are filing a “PET-Appt Conservator-Act 135.” This alerts the Court that the petition being filed is for the appointment of a Conservator under Act 135—The Abandoned and Blighted Property Conservatorship Act.

The next page requires petitioner’s counsel to enter all party information, including the identity of the petitioner, owner, and all lienholders. This allows the Court to keep track of which parties have received service of process and notice as the case progresses.

Details about the property being proposed for Conservatorship are entered next. The General Court Rules for Philadelphia require that a separate petition be filed for every BRT number. It is essential that petitioners provide an accurate BRT number, as this is how the Court will identify the property.

Another screen is used by legal counsel to enter an appearance with the Court on behalf of the petitioner and provide accurate contact information. The Court uses this feature to provide notices to the attorney, including electronic notices sent to the provided e-mail address.

The petition and all exhibits are filed electronically with the Court on the next page by uploading files. It is very important to note that each file be less than 3 megabytes. If a petition includes photographs, scanned documents, or other large files, it may be necessary to add these as separate files, to ensure they are received by the Court.

¹⁶ § 1104(b)

The court filing fee can be paid either by credit card online through the e-filing system, or by payment in person at the Prothonotary's office at Philadelphia City Hall. Payments made at City Hall must be made within five (5) business days of filing the petition online. The petition is not deemed filed until the day the fees are paid.

The final screen of the e-filing process is a summary of the filing. A copy of this summary should be retained, as it contains important information that may be needed in the future.

Filing a Lis Pendens

The statute also requires the petitioner to record a *lis pendens* with the Recorder of Deeds for the county where the property is located.¹⁷ A *lis pendens* is designed to notify anyone examining the real estate records for a specific property that there is pending litigation that could affect the title to the property. A sample *lis pendens* can be found in the sample forms provided with this manual and posted online on the Court's website. The form can be adapted to conform to local rules and practices in other counties, and for filing with the Recorder of Deeds, as is the practice in Philadelphia, or with the Prothonotary, in accordance with local practice.

C. Serving the Petition

The conservatorship statute provides for mail notice to be provided to the owner, political subdivisions and lienholders. **As a best practice, all petitioners should follow the Pennsylvania Rules of Civil Procedure and follow GCR regarding required service of process on all parties, rather than relying on the mail notice provisions in the statute.** Serving all parties eliminates possible challenges that the Conservatorship process violated the notice and due process that the owner and lienholders are entitled to receive. Ensuring that all parties are correctly served increases the likelihood that a property sold after Conservatorship will be marketable and insurable by a reputable title insurance company. Title insurers are likely to be unwilling to provide title insurance for financing the Conservator's work and to insure the out-sale of the property after completion of the work, in a case where the only notice to owners and lienholders is by mail. It will be impossible to cure deficient notice after the Conservatorship process is completed, so it is very important that the petitioner properly notify the parties at the beginning of the case.

The GCR requires petitioners to serve parties in accordance with the Pennsylvania Rules of Civil Procedure. Courts in other counties may also require such service of process. Whether or not Courts in other counties mandate that all parties be served, it is a best practice and strongly recommended that all petitioners follow the Pennsylvania Rules of Civil Procedure. In Philadelphia, the local practice provides that service can be made by the Sheriff or by an adult, subject to certain requirements. Outside Philadelphia, the local Sheriff handles the service of process. It is very important that petitioners understand and follow the Rules governing service, to ensure that the Conservatorship is not challenged on due process grounds.

D. Court Hearing

The statute requires that the "court shall act upon a petition submitted by holding a hearing within 120 days of receipt of the petition and rendering a decision no later than 30 days after completion of the hearing."¹⁸ At the hearing, the statute allows "any party in interest . . . to present evidence to support or contest the petition."¹⁹ The right of any "party in interest", which includes owners, lienholders, and immediate neighbors, to appear in Court and offer evidence opposing (or supporting) the petition for Conservatorship underscores the importance of the petitioner's thorough evaluation of the merits of a Conservatorship for the property in question

¹⁷ § 1104(d)

¹⁸ § 1105(a)

¹⁹ § 1105(c)

prior to filing and the necessity of complying with the GCR's requirements to file a detailed petition.

If there are no objections and the Court determines that the petitioner has met the burden of establishing that it has met the requirements of for a Conservatorship, the Court will appoint a Conservator and authorize the Conservator to take immediate possession of the property and begin gathering the information needed to develop a final plan of remediation.

If the owner appears at the hearing and offers to abate the blight, the Court is not prohibited from considering whether the property meets the requirements for Conservatorship. However, the court may afford the owner a reasonable period in which to remediate the blight under Court supervision.²⁰ Under the statute, the Court has discretion to require the owner to post a bond to ensure that the repairs are made.²¹ **[Note:** Petitioner's legal counsel can request that the Court require the owner to post a bond as assurance that the owner will complete the repairs ordered by the Court. In the event the owner does not complete the Court ordered repairs, the statute authorizes the Court to appoint a Conservator and proceed to file a final plan to remediate the blight.²²

E. Taking Possession and Developing a Final Plan

The Court will determine whether the petitioner's evidence is sufficient to prove that the property meets at least three of the criteria for blight enumerated in the statute. If so, the Court then considers the qualifications of the petitioner's recommended Conservator, and appoints Conservator. The Court's order appointing the Conservator will require the conservator to "promptly take possession of the building and other property subject to the conservatorship and shall immediately be authorized to exercise all powers of this act."²³ It is vital that the proposed Conservator have the ability to immediately begin acting as Conservator upon appointment by the Court.

As soon as the Conservator is appointed, the conservator has an "ownership interest in and legal control of the property for the purposes of filing plans with public agencies and boards, seeking and obtaining construction permits and other approvals and submitting applications for financing or other assistance to public or private entities."²⁴ While the Conservator has the power to act as the owner of the property in many respects, a series of Court orders will likely authorize the Conservator to take each step, so that insurance agents, design and construction professionals, bonding agencies, lenders, and other third parties can be comfortable providing insurance for, contracting with, and financing the activities of the Conservator. The Court order will detail the Conservator's rights to obtain such insurance, enter contracts, and secure funding, and can be attached as an exhibit to pertinent documents so the Conservator's authority is clear. **[Note:** Non-profit organizations serving as Conservators will need both the non-profit's Board of Directors authorization and Court approval of each anticipated action.]

Prior to entering on the property, the Court will issue a Right of Entry Order so that the Conservator and/or the Conservator's design and construction entities have authority to enter the building. The Right of Entry Order should specify the time frame it is in effect, the scope of testing that may be performed, and the insurance requirements and the named parties to add as additional insureds on the insurance policies, such as the Owner, the Lienholders and the Conservator.

²⁰ § 1105(f)

²¹ § 1105(f)(3)

²² § 1105(f)(2)

²³ § 1105(g)

²⁴ § 1107(a)

F. Affirmative Duties of Conservator

The statute places affirmative duties on Conservators,²⁵ requiring all Conservators to do the following:

- **Maintain, safeguard and insure** the building.
 - The Conservator's first priority immediately upon appointment is to procure appropriate liability and property insurance. The Conservator should obtain Court approval to obtain appropriate insurance, together with certificates of additional insurance covering the owner and lienholders, so that any and all policies are in effect as of the date the Conservator is appointed. **[Note:** Consult legal counsel and an insurance broker for guidance on appropriate insurance coverage.]
 - The Conservator must also seek Court approval to immediately secure the building and/or safeguard the public from known imminent dangers on the premises as of the effective date of the Conservator's appointment.
 - In the event an inspection of the building after appointment reveals the necessity for additional emergency repairs, the Conservator must seek Court approval to make such repairs prior to submission of the final plan for remediation.
- Apply all revenue generated from the building consistent with the provisions of this Act.
 - This situation is unlikely to arise for most Conservators, since all properties subject to a Conservatorship will be vacant and blighted. This obligation is applicable in the event the Conservator leases the building during the pendency of the Conservatorship is terminated by the Court. **[Note:** It is a better practice to sell the property and terminate the Conservatorship, rather than lease it.
- Develop and implement the final plan upon approval by the Court. The next section details the procedure for developing and submitting a final plan of remediation for Court approval.

G. Final Plan for Conservatorship

Develop a Final Plan

The statute requires the Conservator to create a final plan for abatement of the blight and to submit the plan to the Court within 90 days of the effective date of the appointment of a Conservator.²⁶ The Court must hold a hearing within 30 days after the final plan is submitted, at which time the Court can approve or reject the Conservator's final plan.²⁷ Or the Court hold another hearing within sixty (60) days to provide the Conservator with the opportunity to amend the plan. The statute provides specific requirements for the final plan of remediation. The Conservator must:

²⁵ § 1106(b)

²⁶ § 1106(c)(2)

²⁷ § 1106(c)(1)

Develop a final plan for abatement of the conditions which caused the petition to be granted or, if no such feasible final plan can be developed, to develop alternatives, including the closing, sealing or demolition of all or part of the building.

When the building has been designated a historic property, rehabilitate architectural features that define the property's historic character.

When demolition of a property in a historic district is necessary, design any replacement construction on the site to comply with applicable standards under current law.²⁸

In cases where the Conservator is proposing demolition of the blighted structure, it is important to include documentation in the final plan regarding why rehabilitation of the property is impractical. **[Note:** the statute clearly imposes additional responsibilities on a Conservator remediating a property that has been designated as historic or is in an historic district. Conservators who are supervising the remediation of such historic properties should consult with experienced historic preservation design professionals, to ensure that the work being proposed meets the requirements of the applicable local and state historic commissions.

Depending on the size and complexity of the project, an architect, contractor, engineer, or other professional will likely be responsible for drafting the details of the final plan under the supervision of the Conservator. Such plans will vary widely, and will be similar in scope to any plans submitted to lenders for financing and to the City to obtain necessary permits and approvals. The Conservator submits the final plan after the Court has authorized the Conservator and its design and construction professionals to enter the property and the statute only allows 90 days to develop a plan, so it may be a challenge to meet the deadline. The statutory final plan requirements follow:

[t]he plan shall include a cost estimate, a financing plan and either a description of the work to be done for the rehabilitation of the building or, if rehabilitation is not feasible, a proposal for the closing, sealing or demolition of the building.

The plan shall conform with all existing municipal codes, duly adopted plans for the area and historic preservation requirements.²⁹

The plan should provide detailed information on the work that is being planned and three estimates for all of the work. Although the statute only requires three estimates if the work exceeds \$25,000, Conservators are strongly recommended to get three estimates for all work, except in the event of the need for emergency repairs.³⁰ The proposed contracts for should be submitted to the Court for approval at the time the final plan is submitted to the Court, together with copies of building permits, zoning variances, and/or other applicable approvals demonstrating that the Conservator has met the requirements of the statute and is in compliance with all applicable codes and regulations governing the project.

Financing the Plan

The statute also requires the Conservator to submit a financing plan as a component of the final plan. Conservators should determine what funding sources are available for Conservatorship projects and documentation of the funding commitments (such as loan documents or grant approval letters), together with evidence regarding the anticipated settlement date on the funding, which should be as close in time as possible to the date the Court approves

²⁸ § 1106(b)(3)

²⁹ § 1106(c)(3-4)

³⁰ § 1106(a)(4)

the final plan. Ninety days is a short timeframe to arrange for financing for Conservatorship projects and lenders are unlikely to be able to secure loans with a mortgage in first lien position. In other jurisdictions. [Note: Financing Conservatorship projects is expected to be challenging, so petitioners and Conservators are strongly recommended to determine whether financing is available before filing a petition for Conservatorship. If a Conservator or petitioner decides to self-finance the remediation, the risks must be evaluated. Also, the loan to the Conservator and all expenditures must be sufficiently documented to be included in the Conservator's lien.]

In other jurisdictions with conservator or receivership statutes, such as Massachusetts, lenders have been willing to fund Conservatorship projects, but with the caveat that the Conservator must borrow against a line of credit established with the bank and also must assign the right to the Conservator's lien to the bank, to the extent of the funds borrowed. In Pennsylvania, the law authorizes the Court to give a lender lien priority, but the lender's lien will not be in first position if there are any federal, state or local liens. So Conservators in Pennsylvania seeking bank financing will likely need to establish a line of credit with a bank or find a lender willing to accept a subordinate lien. In other jurisdictions, lenders may also limit funding to the value of the property as unimproved ground at a minimum, with the potential of loans up to 50% of the anticipated value after the improvements are made. So, at best, Conservators will find limited availability of private financing for the remediation work.

Public funding and foundation grants may be available for Conservatorship projects, but Conservators will likely have difficulty obtaining funding for these projects for the same reasons that private lenders may be reluctant to invest.

Petitioners and Conservators seeking funding must consult potential lenders to determine the possibility of funding a Conservatorship project prior to filing a petition. Otherwise, the Conservator and Court could spend a substantial amount of time on a project that is economically impractical.

Hearing on the Final Plan

After the Conservator submits the final plan to the Court and gives notice required by GCR to all other parties to the action, the Court is required to hold a hearing on the final plan within thirty (30) days.³¹ At the hearing, all parties in interest are afforded the opportunity to comment on the plan and the Court "shall take all comments into consideration when assessing the feasibility of the plan and the proposed financing"³² Within fifteen (15) days of the hearing, the Court will either approve the plan or require that the Conservator amend the plan for reconsideration.³³ If the Court requires the Conservator to amend the plan, the court shall hold a new hearing within 60 days of the decision to require the plan to be amended.³⁴

Assuming that the Conservator's final plan meets the statutory requirements and has secured approvals for financing the work, the most likely reason for a Court to require a Conservator to amend a plan is to meet concerns presented by community groups or neighbors. If neighbors and community groups have been actively involved in the Conservatorship process, their concerns can be addressed and changes incorporated in the final plan to gain their support.

H. Powers of Conservator

The Conservatorship statute also outlines fourteen (14) powers and duties of the Conservator, as set forth below together with best practices and suggestions to guide the

³¹ § 1106(c)(1)

³² § 1106(c)(5)

³³ § 1106(c)(6)

³⁴ § 1106(c)(7)

Conservator. The Conservator's "powers and duties shall include, but not be limited to, the power to:"³⁵

- (1) **Take possession and control of the building**, appurtenant land and any personal property of the owner used with respect to the building, including any bank or operating account for the building.
 - The Court will issue preliminary orders, giving the Conservator the right to act as owner and enter the building, hire design and construction professionals, obtain permits, approvals and financing in order to submit the final plan. The final order approving the final plan to demolish or rehabilitate the structure. [Note: the GCR requires the Conservator to provide notice to of the hearing on the final plan to the owner and lienholders.]
- (2) **Collect outstanding accounts receivable**
 - It is unlikely that bank accounts or accounts receivable will exist in situations where a property has been vacant for at least 12 months. In the event the Conservator is aware of a bank account or accounts receivable, possibly for back due rent, the Conservator can petition the Court for authorization to recover such funds.
- (3) **Pursue all claims or causes of action of the owner** with respect to the building and all other property subject to the conservator.
 - In the event the blight was caused by damage arising from a fire at the adjacent property or the damage arose from others' negligent or intentional actions or failures to act, the Conservator can petition the Court to pursue such potential causes of action in the place of he owner against such third parties. If there is insurance coverage for such claims or parties with deep pockets, there is an opportunity to potentially recover funds.
- (4) **Contract for the repair and maintenance of the building.** The contracts shall be appropriately documented and included in the reports and accounting which the conservator is required to submit or file under the provisions of this act. The conservator shall make a reasonable effort to **solicit three bids for contracts valued at more than \$25,000.**
 - This key provision is the Court's statutory basis to authorize the Conservator to act as the owner of the property to rehabilitate or demolish the structure, in accordance with the final plan.
 - Although the statute only requires three bids for any contract in excess of \$25,000, Conservators should obtain three (3) bids for all work, except in the event of an emergency.
 - The Conservator must retain copies of all contracts and submit them as exhibits to the final accounting to the Court, if not previously part of the record as exhibits to the final plan or any status reports filed with the Court. [Note: Most jurisdictions require Court review and approval of each contract prior to execution, and a non-profit Conservator will also need a Board resolution authorizing entry into the contract.]

³⁵ § 110(a)

- The statute provides that the Conservator cannot be held liable for environmental damage to the building or real property. 68 P.S. §1107 (c). All contracts should indemnify the Conservator and require the contractor removing or handling hazardous materials to carry appropriate insurance.
- (5) **Borrow money and incur credit** in accordance with section 8.
- The Court can authorize the Conservator to finance the work and include the costs expended in the Conservator's lien. It will be imperative for the Conservator keep detailed cost accounting records for all expenditures incurred during the pendency of the Conservatorship. The Court will require a Conservator to file a full accounting and be prepared to submit evidence in support of each item which comprises the Conservator's lien. **[Note:** It is a best practice to retain a cost accountant at the outset of the Conservatorship, and include the fees for such services, together with legal fees and other professionals fees, in the Conservator's lien.]
- (6) Contract and **pay for the maintenance and restoration of utilities** to the building.
- Utilities suppliers may require payment of past due bills on the property prior to reconnecting service at the property. Prospective petitioners should determine whether such arrears exist prior to filing the petition. **[Note:** In Philadelphia, there may be liens for water/sewer bills, but the liens may not include bills for excess water usage for decades. Also, arrears owing to the Philadelphia Gas Works are also liens on the property, and a prospective petitioner must determine the amount due prior to filing the petition. Such water and gas service liens are municipal liens in Philadelphia and the Conservator's lien will be under and subject to such obligations.]
- (7) **Purchase materials, goods and supplies to accomplish repairs** and operate the building.
- The guidelines for purchasing materials are similar to those for making contracts, discussed in (4) above. It is very important for the Conservator and the Conservator's design and construction professionals document all purchases and ensure that the purchases are eligible project costs in the Court-approved budget.
- (8) With the court's approval, **enter into new rental contracts and leases for a period not to exceed one year.**
- In a challenging real estate market, the Conservator can seek Court approval to lease the property for up to one year. A better practice, if feasible, is for the Conservator to seek court approval to terminate the Conservatorship, even if the Conservator ends up acquiring the property. The new owner, which could be the former Conservator, then can lease or sell the building.
- (9) Affirm, renew or **enter into contracts providing for insurance coverage** on the building.
- The Conservator must seek Court approval to obtain and maintain appropriate liability and property insurance, together with certificates of additional insurance covering the owner and lienholders, as soon as the Court appointment is effective.

- (10) **Engage and pay legal, accounting, appraisal and other professionals** to aid the conservator in the conduct of the conservatorship.
- Conservators should seek Court permission to retain legal counsel and hire design and other professionals and must keep detailed records regarding all such professional services provided. If possible, the Conservator should also document that the fees are reasonable, in case of questions from the Court, owner, or other interested parties, as these fees will be added to the Conservator's lien and may be used to defeat the interests of the owner and lienholders.
- (11) **Consult with the appropriate local, and/or if applicable, the state, historical commission** to determine what requirements they will impose on the renovation to preserve the building's historic character, or whether demolition will be allowed in cases where the building has been designated a **historic property or is in a designated historic district**.
- (12) Apply for and **receive public grants or loans**.
- Conservators should consult with public and private funding sources to determine whether funding is available for Conservatorship projects. It is likely to be a challenge to obtain financing for Conservatorship projects until funders become more comfortable with the process, so prospective petitioners and Conservators must know how the project will be funded prior to filing a Conservatorship petition with the Court.
- (13) **Sell the building** in accordance with section 9.
- In Philadelphia, the GCR authorizes a Conservator to present a plan to the Court to authorize a public or private sale. Such procedures are not spelled out in the GCR, but legal counsel can anticipate that both Civil and Orphans' Courts will adhere to public or private sale real estate disposition procedures typically followed in Orphans' Court. Pending the establishment of a track record for sales of properties at the conclusion of a Conservatorship, and potential statutory amendments or interpretation of the law by the Courts, legal counsel for Conservators will need to evaluate disposition options and determine the most appropriate way to sell the property that will convey marketable, insurable title. **[Note:** See sample form of court order to ensure that the deed will be recordable:
http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/Proposed_orders_re_fraudulent_conveyances.pdf]
- (14) **Exercise all authority that an owner of the building would have** to improve, maintain and otherwise manage the building.
- Although this catch-all provision provides flexibility to manage unexpected circumstances during the course of the Conservatorship, the Conservator must petition the Court for approval (and authority from a non-profit Board, in the case of a non-profit Conservator) prior to taking any action permitted by the statute. It will be imperative for legal counsel to remind Conservator clients not to exert authority beyond that authorized by the Court. **[Note:** Legal counsel may want to include authorization for the Conservator to remedy an imminently dangerous situation followed immediately by a report to the Court and approval of the action taken.]

I. Reporting to the Court

Courts must require Conservators to submit status reports,³⁶ at least annually, but Courts will likely require more frequent status reports, as may be appropriate. The status reports must include:³⁷

- A **copy of any contract** entered into by the conservator regarding the improvement of the building.
- An **account of the disposition of all revenue generated** from the building.
- An **account of all expenses and improvements**.
- The **status of developing and implementing the final plan** pursuant to this subsection.
- A **description of any proposed actions to be taken in the next six months** to improve the building.

In addition to the statutory reporting requirements required by the Court, Conservators will want to provide copies of similar status reports required by any funding sources. The Court may also want reports from regular development team meetings and construction site visits to monitor forward progress on predevelopment activities and construction progress.

In other jurisdictions that have implemented programs similar to Pennsylvania's Conservatorship law, the Courts provide close supervision of the process and require prior Court approval of virtually any and all Conservator actions. In Philadelphia, the GCR requires the Conservator to provide appropriate notice to the owner and lienholders of the hearing on the final plan, and the Court may require that similar notice be given at other key stages of the process, so that the owner and lienholder cannot wait to pursue objections until after the work is complete.

VII. Beginning construction or demolition

The Conservatorship statute³⁸, gives the Conservator an ownership interest necessary to remediate the blight on the property. From the perspective of third parties, the Conservator will act as the owner, under and subject to the authority granted by the Court's orders and subject to on-going supervision by the Court. The Conservator will need to adhere to any requirements for construction or demolition imposed by the Court, by the funders, and by applicable codes and regulations.

VIII. Terminating the conservatorship

Legal counsel for Conservators will file a final accounting of the Conservatorship with the Court of approval and for authorization of a procedure to follow to conduct a public or private sale. The Court may require the Conservator to provide notice of the hearing on the final accounting to the Owner and lienholders. **[Note:** For guidance on disposing of real estate, see Orphans' Court procedures on conducting public and private sales.] The final accounting will also include a proposal for distribution of the proceeds in accordance with the statute [Cite] and Court termination of the Conservatorship.

³⁶ The statute requires annual reports, but Courts are likely to require more frequent reports, especially when the Conservatorship process is new.

³⁷ § 1106(b)(5)

³⁸ § 1107(a)

Thanks.

RHLS wishes to thank The Honorable Pamela Dembe, President Judge of the Court of Common Pleas of Philadelphia County in the First Judicial District of Pennsylvania for the commitment of knowledgeable staff resources to implement the new law and the issuance of a General Court regulation and posting sample pleadings on the Court's website, the Fels Fund for its generous support of a summer intern in 2009 to create this Project Manual, the Housing Alliance of Pennsylvania for its work on the passage and statewide implementation of the conservatorship law, the law firm of Morgan Lewis & Bockius for drafting sample pleadings as a signature pro bono project, Philadelphia VIP for its technical assistance and support, the Community Design Collaborative for generously sharing its expertise on the required elements of the preliminary plan, and John Lyons, Esquire for his never-ending resourcefulness and extraordinary work creating this manual.

DRAFT FOR DISCUSSION ONLY