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Testimony to the Committee on Public Health and Human Services
of the Council of the City of Philadelphia

March 4, 2014

Submitted by Judy F. Berkman, Managing Attorney
Regional Housing Legal Services

Good afternoon. My name is Judy Berkman, and I am Managing Attorney at Regional Housing Legal Services. Regional Housing Legal Services is a nonprofit law firm with unique expertise in affordable, sustainable housing and its related components — community and economic development, utility matters and preservation of home ownership. RHLS provides innovative project and policy solutions that help create sustainable communities offering decent, safe and affordable housing for lower-income Pennsylvanians.

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 improve the quality of life for the neighbors." The statute uses police power language to justify the creation of a 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." Succinctly stated, the law provides that the conservator is responsible for bringing buildings into municipal code compliance when owners fail to do so.

Since the enactment of the law, conservatorship under Court supervision has become an important tool to eliminate blight in Philadelphia. The law is comprehensive, as it can be used to revitalize property in a residential neighborhood, commercial corridors and industrial areas. 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 to recognize that Conservatorship 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.

Regional Housing Legal Services has produced an Implementation and Best Practices Manual on how to use the Conservatorship Act. I have provided copies as of the Manual, the Executive Summary, and also a page with links to the Manual and Executive Summary on our website. The Manual includes extensive guidance on how to use the law. The Appendix contains a copy of the current law, as well as the First Judicial District of Pennsylvania Court of Common Pleas of Philadelphia County General Court Regulation No. 2009-01 (as amended October 18, 2010) (with Model Forms) that was the result of a working group of attorneys that met with Court personnel to develop the procedures. We have also participated in numerous trainings for attorneys, and for-profit and non-profit developers, on how to use the law, and have worked with Licenses and Inspections to identify sample properties for Conservatorships.

I will briefly outline some of the key provisions of the current Pennsylvania law, and then will suggest some ideas for how Philadelphia could consider initiatives to improve the effective use of the law on the local level.

The statute establishes who is eligible to petition the Court to place a property in Conservatorship to "parties in interest". Parties that are currently eligible to be petitioner are:

- 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.

At least three (3) of the following nine (9) criteria about the property must be proven:

- The building or physical structure is a public nuisance
- The building needs substantial rehabilitation and non has occurred during the last year
- The building is unfit for human habitation, occupancy or use
- The condition and vacancy of the building materially increase the risk of fire to the building and to adjacent properties

- The building is subject to unauthorized entry leading to potential health and safety hazards OR the municipality has secured the building in order to prevent such hazards
- The property is an attractive nuisance
- 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
- The dilapidated condition of the building injures the economic well-being of residents and businesses
- The property is an attractive nuisance for illicit purposes

Properties must also meet four (4) basic conditions that are specified in the law:

- Property has not been legally occupied for the previous 12 months
- Property has not been actively marketed during the past 60 days
- Property is not subject to an existing foreclosure action
- Property was not acquired within the preceding 6 months

Properties excluded from Conservatorship actions are:

- Property owned by or held in trust for the Federal Government and regulated under the United States Housing Act of 1937
- Properties whose owners are deployed for military service

Once a property is identified and an eligible party decides to file a petition, the process moves to the Court. The Judge presides over the entire Conservatorship process, including holding hearings to appoint the Conservator and approve the preliminary plan for remediation of the blight, to approve of the final plan, to authorize the sale of the property, and to approve the distribution of the proceeds from the sale.

As a result of the RHLS Implementation and Best Practices Manual and our involvement in trainings on the Conservatorship law, I am contacted on a regular basis by attorneys, individuals, and non-profit and for-profit developers with questions about whether the property that is a blight in their neighborhood is a good candidate for a Conservatorship.

The Pennsylvania legislature is considering amendments to Act 135 that will remove some of the some of the challenges to proceeding with Conservatorships in Philadelphia and statewide.

I have also observed some issues that are potential obstacles to Conservatorships for many of the blighted properties I have been consulted on. Some of these issues may have local solutions.

Funding. Since the owner retains ownership of the property during the Conservatorship, there is no source of funding to handle the costs of the remediation, as well as out-of-pocket costs and attorney fees. So far, commercial lenders have not been willing to provide funding for these projects. If interested stakeholders would be willing to establish a fund for a pilot program for the costs of Conservatorship cases, examples of how other jurisdictions handle these matters could be instructive.

For example, in 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 need to establish a line of credit with a bank or find a lender willing to accept a subordinate lien.

Municipal Liens. Many of the properties I have been consulted about have municipal liens for real estate taxes, water/sewer service or nuisance remediation. Unless the amounts of the liens are modest, in most neighborhoods the Conservator will not be able to recoup its costs when there are municipal liens. As noted above, the existence of municipal liens are an impediment to filing Conservatorship petitions for potential lenders as well. If these properties are not candidates for the new Philadelphia Land Bank, which would remove the liens, perhaps the City could establish criteria when the municipal liens could be removed from Conservatorship properties in order to bring the properties back into productive, and taxable, use.

Code language. Some of the terms in the Conservatorship law regarding criteria for meeting the definitions of a blighted property are not in the City's Code. An analysis of the language of Act 135 and an effort to define some of the terms in the City codes to correspond to the terminology in Act 135 would help potential petitioners prove their cases in Court.

Thank you for the invitation to testify and for the opportunity to provide the Committee with information about this important tool to eliminate blight in Philadelphia.

Committee on Public Health and Human Services
of the Council of Philadelphia

March 4, 2014 Hearing

Regarding the Abandoned and Blighted Property
Conservatorship Act of Pennsylvania

**Pennsylvania's Abandoned and Blighted
Property Conservatorship Act
Implementation and Best Practices Manual
April, 2011**

Link to the RHLS Executive Summary:

<http://rhls.org/wp-content/uploads/Conservatorship-RHLS-Manual-Executive-Summary-final.pdf>

Link to the RHLS Manual:

http://rhls.org/documents/ConservatorshipManual_Final_05102011.pdf

Disclaimer:

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

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