

Battling Blight In Pennsylvania: The Abandoned And Blighted Property Conservatorship Act

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ABSTRACT

This article discusses the application of the Abandoned and Blighted Property Conservatorship Act to address the problem of derelict property throughout Pennsylvania. Enacted in 2008 and amended in 2014 and 2022, the Act creates a legal process by which a court-appointed conservator can take possession of a blighted property to remediate the blight and return it to productive use. This article provides a brief review of the conservatorship process and shares cases demonstrating who is using the Act and how it is being applied throughout the Commonwealth. Benefits of and concerns about the Act's application are presented along with suggested reforms and policy changes.

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I. BACKGROUND

The Abandoned and Blighted Property Conservatorship Act has been a valuable tool for fighting blight, but it could benefit from amendments suggested in this article.

The legislative purpose of the Act of November 6, 2008, P.L.1936, No.135), known as the Abandoned and Blighted Property Conservatorship Act (hereinafter referred to as Act 135), which took effect on February 1, 2009, and was amended in 2014 and 2022, 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 and grow, and to improve the quality of life for neighbors.”⁴ 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.”⁵

The statute establishes the requirements to commence a conservatorship case.⁶ Those requirements include what parties in interest are eligible to file;⁷ miscellaneous conditions regarding occupancy, ownership, foreclosure and marketing;⁸ and a list of nine physical conditions, three of which must be proved.⁹

Once a property is identified and an eligible party decides to file a petition, the process moves to court. The judge presides over the entire conservatorship process, including holding hearings to appoint the conservator and approve the preliminary

4. 68 P.S. §1102(5).

5. 68 P.S. §1102(6); see also Hearing on H.B. 2188 Before the House Urban Affairs Committee, 2007-2008 Regular Session (2008) (“Blighted and abandoned buildings . . . significantly reduce the average value of properties adjacent to them and cost the municipalities where they are located millions of dollars annually in demolition costs and loss of tax revenue.”)

6. Rather than summarize the law and its amendments in this article, for a summary of the original law see Blaine A Lamperski and Sarah P. Hinton, *Pennsylvania’s Recently Enacted Abandoned and Blighted Property Conservatorship Act*, 80 PA BAR ASSOC. Q. 134 (2009); and for a summary of the current law see Margo Hu, et al. *Impact of the Abandoned and Blighted Property Act (Act 135) on Vulnerable Homeowners in Philadelphia* November 2023, <https://www.law.upenn.edu/live/files/12861-act-135-report?>

7. 68 P.S. §1104.

8. 68 P.S. §1105(d).

9. *Id.*

plan for remediation of the blight, approve the final plan, authorize the sale of the property, and approve the distribution of the proceeds from the sale. The 2014 amendments improved the law by removing some of the challenges for conservators and adding developer fee incentives, which resulted in a substantial increase in filings in Philadelphia and Allegheny Counties. In 2022, the legislature amended Act 135 to add land banks as eligible parties in interest.¹⁰ Land banks are local governmental entities authorized by state law and created by ordinance for the purpose of returning vacant, abandoned, and tax-delinquent property to productive use.¹¹

Act 135 gives the owner one final opportunity to abate the nuisance conditions and violations before the court appoints a conservator, provided that the owner commits to a reasonable timetable for the repairs and posts a bond in the amount of the estimated repair costs. If a conservator is to be appointed, the law provides that first consideration should be given to the most senior nongovernmental lienholder on the property and then to a nonprofit corporation located within the jurisdiction.¹² The court supervises the repairs whether performed by the owner or the appointed conservator.

II. APPLICATION OF THE LAW STATEWIDE

Initially, Act 135 was used sparingly. The pace of filings increased significantly after the 2014 amendments. To date, Act 135 has been used in many counties across Pennsylvania by a variety of parties in interest. Most of the petitions in Philadelphia and Allegheny Counties are filed by nonprofit corporations. Outside of those two jurisdictions, governmental entities such as redevelopment authorities and townships are petitioning for conservatorship.¹³ In a recent twist, conservatorship petitions are being filed *against* municipalities that own deteriorated and vacant properties. Recent and pending cases are further shaping conservatorship law in Pennsylvania.

A. Conservatorship in Philadelphia

Early cases in the First Judicial District helped to shape the application of Act 135 statewide. In Philadelphia, there are Civil and Orphans' Court Divisions. It was unclear if actions against a decedent's estate or a defunct non-profit should be brought in Orphan's Court which appeared to have exclusive jurisdiction. To further complicate Act 135's application, the Germantown Conservancy filed a petition seeking conservatorship of 319 properties in one unwieldy petition that included essentially all vacant and abandoned properties in the Germantown, Mt. Airy and Chestnut Hill neighborhoods in northwest Philadelphia.¹⁴

To address the need for consistent case management, a working group assembled by the court and Real Property Section of the Philadelphia Bar Association, including title insurance attorneys, private and public interest attorneys, and other stakeholders, met frequently. They started with the concept that after conclusion of the conservatorship action, the property could be sold with clear title and also wanted

10. Act of November 3, 2022, P.L. 1936, No. 126, amending 68 P.S. §1103.

11. 68 Pa.C.S. §§2101-2120.

12. 68 P.S. §1105(e). Eligible nonprofits in Philadelphia County must have participated in a development within 5 miles of the property.

13. See e.g., *Upper Chichester Township v. Jeannette Smith*, Docket No. 2022-005068 (Delaware Cty. Ct. Com. Pl. 2022); *Redevelopment Authority of the County of Butler v. Green*, Docket No. 14-40078 (Butler Cty. Ct. Com. Pl.).

14. *The Germantown Conservancy, Inc. v. Meyers, et al.*, First Judicial District Case No. 11101991.

to ensure that the Civil Court and the Orphan's Court divisions followed the same procedures. The Philadelphia working group called the law "condemnation light."

The First Judicial District then drafted a General Court Regulation ("GCR") for conservatorship actions. The GCR was promulgated during the pendency of *The Germantown Conservancy* case and reportedly in direct response to it.¹⁵ Act 135 provides that the record owner (and other required parties) be notified of the proceeding by certified mail, return receipt requested.¹⁶ But the Pennsylvania Rules of Civil Procedure require personal service of process.¹⁷ To ensure that proper notice is given to record owners and clear title could be conveyed, the working group recommended that the GCR should provide that service of process must occur pursuant to the PA Rules of Civil Procedure. The group also drafted a special coversheet Notice that warned respondents that title to the property was at risk.

In October 2009, the First Judicial District issued General Court Regulation 2009-01 regarding conservatorship petitions, setting forth detailed procedures and offering sample pleadings.¹⁸ The GCR stated clearly that "[a] separate action must be filed for each property."¹⁹ Relying in part on the GCR, the court dismissed Germantown Conservancy's petition without prejudice because it covered more than one property and otherwise failed to meet the requirements of Act 135 and the GCR.

Commonwealth Court affirmed the dismissal, writing:

Here, the Act 135 Petition in this case was not limited to a single property so the common pleas court appropriately dismissed the Petition without prejudice because the Petition was not properly pleaded.²⁰

The court did rule in Germantown Conservancy's favor regarding its challenge to some of the requirements in the GCR as requiring more details in the pleadings than the statute required.²¹ Even so, the court acknowledged the need for local rules and court regulations as being essential to the orderly administration of justice and the smooth and efficient operation of the judicial process. GCR 2009-01 has aided both the courts and the litigants in the application of Act 135 in the First Judicial District.²²

Other early cases drove the development of conservatorship law. One of those cases was brought by a neighboring property owner, Joel Palmer, against a blighted VFW post in Queen Village - *Palmer v. Scioli Turco V.F.W. Post 593*.²³ It was a complicated case regarding a long-abandoned property owned by a defunct nonprofit organization, necessitating the involvement of the Pennsylvania Attorney General. The property was rehabilitated and sold at a profit. Joel Palmer then established a §501(c)(2) non-profit organization (named after the VFW post) which has gone on to file numerous Act 135 petitions in Philadelphia.

In a few situations, community groups have petitioned to intervene. In one case involving a Chinese Cultural Center with Mandarin-style façade that was owned by

15. *In re Conservatorship Proceeding In Rem by Germantown Conservancy, Inc.*, 995 A.2d 451, 461 (Pa. Cmwlth. 2010).

16. 68 P.S. §1104(d).

17. Pa.R.Civ.P. No. 400.1.

18. First Judicial District of Pennsylvania, General Court Regulation No. 2009-01, *In re: The Abandoned and Blighted Property Conservatorship Act*, <https://www.courts.phila.gov/pdf/regs/2009/pjgcr2009-01.pdf>.

19. *Id.*, paragraph 1.

20. *Germantown Conservancy, Inc.*, 995 A.2d at 460.

21. *Id.* at 463-464.

22. General Court Regulation No. 2009-01 was replaced by General Court Regulation No. 2022-01. See discussion *infra*.

23. First Judicial District Case No. 101200990.

a defunct non-profit, the court allowed Philadelphia Chinatown Development Corporation (“PCDC”) to intervene since it met all of the requirements of a party in interest. PCDC and its counsel were able to sit at the table, cross-examine witnesses and file briefs. The conservator remediated the exterior of the property to historic standards including the Mandarin-style façade and the installation of historic windows facing a back alley. The interior remained a basic shell. The court then terminated the conservatorship and appointed an interim trustee, who commenced an action in Orphans’ Court to obtain approval to sell the property. It was sold for \$1,801,000. A two-day trial was then held to determine how the net proceeds should be distributed pursuant to the *cy pres* doctrine.²⁴ The building remains vacant to this day.

Philadelphia Chinatown Development Corporation petitioned to intervene in another case involving the Trigen Building, a steam generation plant that had stacks of bags filled with raw asbestos.²⁵ Although PCDC’s office was within a city block of the building and it had developed affordable housing between the building and its offices meeting all the requirements of a party in interest, a different judge denied the petition which is discretionary under the law. Air quality code enforcement proceedings regarding the asbestos clean-up and the conservatorship proceedings were listed together for hearings. While PCDC was unable to officially sit at the table, counsel could monitor the case by attending all the hearings. The property was remediated by the owner under the conditional relief provisions of Act 135.²⁶

Currently, Judge Ann Butchart hears most Act 135 cases in the First Judicial District. As the COVID pandemic eased and courts re-opened, Judge Butchart held virtual hearings on pending Act 135 cases. She convened a group of stakeholders including court personnel to review how to handle the cases more efficiently and effectively. She also sought assistance from the public interest attorneys to create a handout for self-represented parties that summarized Act 135 and provided links to legal services and other resources. The First Judicial District issued a revised GCR in August 2022.²⁷

B. Conservatorship in Allegheny County

Like the First Judicial District, the Fifth Judicial District in Pittsburgh has seen a growing number of conservatorship petitions since the 2014 amendments. Until he retired in 2020, Judge Donald Walko, Jr., handled most of the conservatorship cases in the Allegheny County Court of Common Pleas. Before being elected to the bench in 2010, Judge Walko was a state representative who drafted and advocated for the passage of Act 135. Judge Walko’s retirement and the pandemic resulted in a backlog of cases and long delays for hearings. Currently, Judge John T. McVay, Jr., is specially assigned to manage conservatorship cases, although he does not hear all cases.²⁸ According to data from the Western PA Regional Data Center, between June 2021 and September 2023, 320 conservatorship petitions were filed in the Allegheny Court of Common Pleas.²⁹

24. Chinatown Building and Education Foundation, First Judicial District Orphans’ Court, No. 278NP-2017; Control No. 180338; Opinion Sur Decree.

25. Scioli Turco, Inc. v. Tran et al., First Judicial District Case No. 161200232.

26. 68 P.S. §1105(f).

27. General Court Regulation 2022-01, *In re: The Abandoned and Blighted Property Conservatorship Act*. The GCR no longer requires personal service and only requires services pursuant to Act 135.

28. Judicial Special Assignments, Fifth Judicial District, <https://www.alleghenycourts.us/civil/about/special-case-types/>.

29. Allegheny County Conservatorship Filings, <https://catalog.data.gov/dataset/allegheny-county-conservatorship-filings>.

East Liberty Development Inc. (“ELDI”), a nonprofit community development organization serving the East Liberty neighborhood in Pittsburgh, was an early adopter of conservatorship as a tool for fighting blight and revitalizing neighborhood housing. ELDI reports having about 40 cases in the conservatorship pipeline and successfully bringing 15 properties out of conservatorship.³⁰ ELDI’s most significant conservatorship case involved the landmark Saints Peter and Paul Church in East Liberty. ELDI acquired title to the property at the conclusion of the conservatorship in 2018 and is moving forward with plans to renovate the church into a community arts and entertainment center.³¹

The use of conservatorship has come under attack in a few cases in Allegheny County.³² In *Tube City Renaissance v. Kowalski*, a community development corporation filed for conservatorship of a property that was occupied.³³ The occupants claimed they owned the property and received no notice of the conservatorship proceeding, and the petitioner claimed they were squatters. The court sided with the petitioner and ordered the forcible eviction of the occupants. With the help of public interest lawyers, the occupants appealed the eviction and filed a federal lawsuit against the petitioner alleging, among other things, inadequate notice and due process. Shortly thereafter, the petitioner filed a motion to terminate the conservatorship which the court granted, and the case was dismissed. As in this case, the threat of protracted litigation can thwart a conservatorship.

C. Government as Petitioner

Local governments have primary responsibility for addressing blighted properties. Some have found success pairing strong code enforcement with conservatorship. Municipalities, redevelopment authorities, school districts, and land banks are among the parties in interest authorized to file conservatorship petitions.³⁴

The first conservatorship petition was filed by the Borough of St. Clair, in Schuylkill County, in 2009.³⁵ The Borough filed the petition to force the demolition of a deteriorated and blighted house on the property. The Borough was appointed conservator, and the court approved the demolition and sale of the property to the neighboring property owner. To date, St. Clair Borough has used conservatorship to demolish twenty-two blighted structures.³⁶

The City of Bethlehem used conservatorship to mitigate an imminently dangerous commercial building. The property owner fought aggressively to prevent the conservatorship and other efforts by the City to bring the property into code compliance.³⁷

30. *Conservatorship: a powerful weapon in fighting Pittsburgh’s blight problem* (ELDI, August 8, 2023), <https://www.eastliberty.org/spotlight-conservatorship-a-powerful-weapon-in-fighting-pittsburghs-blight-problem/>.

31. *Id.*

32. See Kate Giammarise, *Pa. conservatorship law pits anti-blight advocates against property owners*, Pittsburgh Post-Gazette, April 8, 2019, <https://www.post-gazette.com/local/region/2019/04/08/Anti-blight-law-spurs-property-fights-conservatorship-houses-pittsburgh/stories/201903220127>.

33. *Tube City Renaissance v. Kowalski*, Docket No. GD-18-006867 (Allegheny Cty. Ct. Com. Pl.).

34. 68 P.S. §1103 (definition of “party in interest”).

35. *St. Clair Borough v. 311 Broad Street*, No. S-2883-2009 (Schuylkill Cty. Ct. Com. Pl.).

36. *St. Clair Borough News Bulletin*, August 2023, <https://stclairpa.gov/wp-content/uploads/2023/08/August-2023-Newsletter.pdf>.

37. See *e.g.*, *City of Bethlehem v. Kanofsky*, Pa. Cmwlth. No. 181 C.D. 2017, filed August 11, 2017 (appeal from appointment of City as conservator); *Commonwealth v. Kanofsky* (Pa. Cmwlth. No. 1938 C.D. 2016, filed August 14, 2017) (involving summary criminal charges for violations of City’s codified ordinances relating to maintenance of building and failure to obtain certificate of occupancy); *Kanofsky v. City of Bethlehem* (Pa. Cmwlth. No. 1503 C.D. 2016, filed May 17, 2017) (involving blight certification); *Kanofsky v. City of Bethlehem* (Pa. Cmwlth. No. 2163 C.D. 2015, filed Sept. 28, 2016) (involving violations of City’s codified ordinances relating to maintenance of Building and failure to obtain certificate of occupancy).

The petition was filed in October 2016, and the court approved the sale of the property to a developer in June 2017. Commonwealth Court affirmed the trial court,³⁸ and the owner's petition for allowance of appeal was denied.³⁹ Due to the litigious, self-represented owner, the property continued to decline over many years until the redeveloper was finally able to break ground in 2022.

Local municipalities are working with county redevelopment and housing authorities to use conservatorship to remediate blighted properties. The Columbia County Redevelopment Authority was appointed conservator of an abandoned hotel and restaurant in the Borough of Berwick.⁴⁰ The owner lived out of state, paid the taxes, but did nothing to maintain the property. The building was demolished, and the property was sold free and clear to the Columbia County Housing Development Corporation for the development of one of 24 new single-family homes using low-income housing tax credits. All three taxing bodies agreed to extinguish the liens on the property, reducing the overall costs of the conservatorship.

In 2015, the Northumberland County Housing Authority joined forces with Shamokin and Coal Townships to seek conservatorship of 13 blighted and abandoned properties owned by members of one family with a long history of serious code violations, empty promises to comply, and evasion of their legal responsibilities.⁴¹ The owners were current in payment of the property taxes, so tax sale was not an option. The court approved the townships as conservators for the properties within their jurisdictions and authorized demolitions. But the process proved lengthy and costly. Most of the properties have been sold to neighboring property owners for side yards. But, some eight years later, one of the petitions is still open, awaiting a buyer for the property.⁴²

D. Government as Defendant

The tool that was created to help municipalities fight blight has recently been turned against Pittsburgh and Philadelphia where conservatorship petitions have been filed on city-owned properties. The only restriction on filing Act 135 actions against municipal entities is the restriction against filing against properties subject to a federal Department of Housing and Urban Development Declaration of Trust that is usually recorded against Housing Authority properties but which HUD sometimes releases. Otherwise, many properties owned by municipal entities may qualify as abandoned and blighted properties under Act 135.

The City of Pittsburgh owns thousands of surplus properties that have deteriorated over the years becoming "blighted."⁴³ For years, local community development corporations, neighbors, nonprofit organizations, and real estate investors have tried to buy these properties, but the City has refused to sell. Exasperated yet interested buyers have turned to Act 135 in hopes of moving the City to remediate or transfer its large inventory of blighted surplus properties.

38. *City of Bethlehem v. Kanofsky*, 175 A.3d 467 (Pa. Cmwlth. 2017).

39. *Kanofsky v. City of Bethlehem*, (Pa. Sup. Ct., No. 114 MM 2017), October 12, 2017 (petition for leave to file a petition for allowance of appeal *nunc pro tunc* denied).

40. *Columbia County Redevelopment Authority v. Lola Group Limited, Inc.*, No. 2013-CV-127 (Columbia Cty. Ct. Com. Pl.).

41. *See, e.g., Township of Coal v. Pauline Kolody et al.*, No. CV-14-2146 (Northumberland Cty. Ct. Com. Pl.). This is one of the thirteen petitions filed.

42. Comments by Pat Mack, Deputy Executive Director, Housing Authority of Northumberland County, at the Pennsylvania Housing and Redevelopment Authority conference, June 6, 2023.

43. *See Michael Korsch, PG INVESTIGATION: City inflates prices for crumbling homes*, Pittsburgh Post Gazette, September 11, 2023.

Since at least 2018, there have been numerous conservatorship petitions filed against properties owned by the City of Pittsburgh creating a backlog of cases due to the pandemic plus court retirements and reassignments. On April 28, 2022, Judge John McVay, the Allegheny County Court of Common Pleas judge assigned to manage Act 135 cases, held a status conference to address conservatorship petitions pending against City of Pittsburgh properties.⁴⁴ Judge McVay acknowledged that he delayed scheduling hearings to provide the new city administration with time to come up with a proposed plan for its properties and to allow for an assessment of the court's management of conservatorship cases.⁴⁵

At the conference, the City advised the court that more than 70 conservatorship cases involving city properties were pending before the court.⁴⁶ The City also argued that Act 135 did not apply to city-owned property.⁴⁷ The court invited the City to brief the question of the applicability of Act 135 to government-owned property if it wished to pursue that argument.⁴⁸ The City filed a motion for judgment on the pleadings making two arguments. The court rejected both arguments, holding that Act 135 and the Second Class Treasurer's Sale Act do not conflict with each other, and if there is a conflict they can easily be read together.⁴⁹ The court further concluded that Act 135 does not place a new financial burden on the City because the City already has the burden of maintaining its properties under the Treasurer's Sale Act.⁵⁰

The court continues to encourage the parties to seek settlements and, on numerous occasions, has urged the City to propose a consent decree detailing how these cases should be handled and resolved. Recently, the court ordered the City to provide a list of properties with sale prices and any liens to petitioners within ten days. After several extensions of time, the City finally provided the list of properties and set unexplained high sale prices.⁵¹ Settlement discussions continue.

In Philadelphia, there have been a few conservatorship petitions filed against the Philadelphia Redevelopment Authority ("PRA"), the Philadelphia Land Bank, and the Philadelphia Housing Authority. One petition against the PRA concerned an imminently dangerous property. The City of Philadelphia then immediately sought a demolition permit, hired a contractor and demolished the structure.⁵² The litigation involved the question of whether the conditions for conservatorship existed at the time of filing the Act 135 petition entitling the petitioner to recover fees and costs and whether Act 135 petitions can be filed in Common Pleas courts against municipal respondents.

The trial court held that since the PRA is not a Commonwealth agency, it had jurisdiction:

The General Assembly did not exempt local agencies or, more specifically, redevelopment authorities, from Act 135. *See* 68 P.S. §1101, *et seq.* Ownership by a redevelopment authority, or any other state or local government entity, is not a

44. *Blight 2 Light Inc. v. City of Pittsburgh*, No. GD-18-006857 (Allegheny Cty. Ct. Com. Pl.).

45. *Id.*

46. *Id.*, Order of Court, dated April 28, 2022.

47. *Id.*

48. The cases involving Pittsburgh properties were consolidated solely for consideration of the motion for judgement on the pleadings. *See Wholesale Properties, LLC v. City of Pittsburgh*, No. CS-21-000115 (Allegheny Cty. Ct. Com. Pl.), Order of Court dated May 17, 2022.

49. *Wholesale Properties, LLC*, Order of Court and Memorandum Opinion, January 11, 2023.

50. *Id.*

51. *See Korsh, supra* note 43.

52. *Philadelphia Community Development Coalition, Inc. v Philadelphia Redevelopment Authority*, 2022 WL 3446301 (Phila. Cty. Ct. Com. Pl., June 23, 2022).

condition of ownership that would exclude property from being placed into a conservatorship. *See* 68 P.S. §1105(d)(1)-(4). Nothing in the Legislative Findings and Purpose indicates a desire by the General Assembly to exclude property owned by PRA from the statutory conservatorship scheme of Act 135.⁵³

The lower court awarded the petitioner fees, legal costs, and a developer's fee. On appeal, the Commonwealth Court affirmed the lower court's decision, *inter alia*, that the conditions at the time the Act 135 petition control and allow the petitioner to then seek reimbursement of all costs incurred in preparing and filing the petition in accordance with the requirements of Section 4 of the Act and the conservator's or developer's fee.⁵⁴

A case against the Philadelphia Land Bank was resolved by a court order confirming a settlement agreement between the parties that the petitioner's fees and costs would be paid and that the respondent, the Philadelphia Land Bank, would remediate a specific list of blighted conditions on the property.

A case against the Philadelphia Housing Authority has been filed against a property that is subject to a partial release of HUD's Declaration of Trust.⁵⁵ The case is in the process of being settled, and, if so, the property will be sold to a buyer.

III. BENEFITS OF THE LAW

A. Holding Property Owners Accountable

Many of the owners whose properties wind up in conservatorship have been given multiple opportunities to bring their properties into code compliance. Property owners ignore decades of code violations issued by municipal officials while their properties deteriorate, attracting rats and posing serious public safety risks.

Not all Act 135 cases proceed through the courts. Many are settled with owners agreeing to sell the properties. The possibility of losing the property through conservatorship can prod reluctant owners to act, especially in strong or appreciating real estate markets.

Some have argued that conservatorship undermines and violates an owner's property rights. A closer look at Act 135 and how the courts are applying it shows that the rights of property owners are being adequately protected, although the imposition of high fees is viewed as unfair to owners without the capacity to rehabilitate a family property with tangled title. The property owner must be given notice of the proceedings,⁵⁶ can present proof to the court showing that a conservator is not necessary and can challenge the schedule of encumbrances.⁵⁷ The owner can also step in at any time to terminate the conservatorship and, after reimbursing all costs and paying fees, regain control of the property.⁵⁸ The court will consider the owners' history and intentions and decide whether the owner or a conservator should be given responsibility for the property. In *County of Montour v. Hadden, LLC*, the Commonwealth Court affirmed the trial court's rejection of the owner's claim that the terms of sale of a blighted former hotel property were not reasonable or acceptable.⁵⁹

53. *See* 68 P.S. §1102.

54. *Philadelphia Community Development Coalition v. Philadelphia Redevelopment Authority*, 298 A.3d 172 (Pa. Cmwlth. 2023).

55. *Philadelphia Community Development Coalition, Inc. v. Philadelphia Housing Authority*, No. 23051921 (Phil. Cty. Ct. Com. Pl., 2023).

56. 68 P.S. §1104(d). Notice must also be given to all lienholders, all political subdivisions in which the property is located and all municipal authorities known to have provided services to the property.

57. *Id.* at §1105(c).

58. *Id.* at §1105(f).

59. *County of Montour v. Hadden, LLC*, 285 A.3d 344 (Table) (Pa. Cmwlth. 2022) (Unreported decision).

Act 135 aims to strike the balance between respecting the rights of property owners and ensuring that neighboring residents do not have to live next to blighted properties.⁶⁰ By holding owners accountable and encouraging them to comply, Act 135 promotes public health and safety and results in payment of taxes, rather than remaining a burden on the municipality.

B. Creating a Tool to Address Blighted Properties

Local governments have primary responsibility for adopting and enforcing housing, building, and property maintenance codes to compel property owners to comply with local codes. Conservatorship is one of the tools available to local governments to remediate the blighting conditions of a property. Some local governments and redevelopment authorities like conservatorship as an alternative to eminent domain because it is less costly, does not rely on delinquent taxes, and does not burden them with the liabilities of ownership.⁶¹

C. Empowering Neighbors and Nonprofit Organizations

Blighted properties can have a devastating effect on neighbors and communities. They reduce nearby property values and deter private reinvestment. Act 135 gives neighboring residents, businesses and local nonprofit organizations the power to pursue conservatorship to repair or demolish blighted and vacant properties.⁶² Where a local government fails to act against a property, Act 135 allows interested parties to file a conservatorship petition.

D. Attracting Private Investment to Help Rehab and Repurpose Blighted Properties and Recover Tax Arrears

There is not enough public money to rehabilitate or demolish all of the vacant and blighted properties in Pennsylvania. So, the 2014 amendments to Act 135 were designed to attract private sector developers to invest in remediating blighted property through conservatorship.⁶³ Philadelphia and Allegheny Counties have seen a rise in the number of 501(c)(2) nonprofit corporations pursuing conservatorship—these nonprofits are not federally tax exempt.

In stronger markets, the sale of a conservatorship property can attract a purchase price that covers the costs of the conservator, as well as payment of all encumbrances. For example, in Allegheny County, the court appointed Impact Neighborhood Redevelopment Group, a nonprofit corporation based in the Borough of Wilkensburg, as the conservator of a blighted residential property in the borough.⁶⁴ Fourteen months after filing the petition, the conservator was authorized to sell the property for \$204,136.77.⁶⁵ The sale clears any remaining unpaid liens, resulting in free and clear title being passed to the new buyer.⁶⁶

60. House Co-Sponsorship Memorandum, HB 1363 amending Act 135, Representative John Taylor, August 29, 2013.

61. Conservatorship does not relieve the owner of any civil or criminal liability or of any obligation to pay taxes or other charges whether incurred before or after the appointment of the conservator, and no such liability transfers to the conservator. 68 P.S. §1107(b).

62. 68 P.S. §1103 (definition of “party in interest”); see 68 P.S. 1104(a).

63. House Co-Sponsorship memo, *supra* note 60.

64. Impact Neighborhood Redevelopment Company v. Parker, Case No. GD-15-018053 (Allegheny Cty. Ct. Com. Pl.).

65. *Id.*, Consent Order filed July 13, 2017.

66. 68 P.S. §1109(c)(2).

IV. CONCERNS ABOUT THE LAW

A. Costs and Fees

While the original concept of Act 135 was to enable municipalities, 501(c)(3) non-profit community groups with development experience, and neighbors to file Act 135 petitions, the implementation of Act 135 has veered away from that goal⁶⁷ because there are numerous obstacles to conservatorship. Ironically, while governmental entities in Philadelphia and Pittsburgh have not often used the law, Act 135 petitions have successfully been brought against them.⁶⁸

It is expensive to file and pursue Act 135 petitions. Generally, even though Regional Housing Legal Services created a detailed manual for attorneys and the Housing Alliance of Pennsylvania created user-friendly handbooks to enable individuals to petition, in Philadelphia very few individuals embarked on this journey as self-represented petitioners.⁶⁹ Unless the record owner's name and address are known, it can be challenging and expensive to locate missing owners and heirs who may have interests in a property. If there is a decedent, an estate may have to be raised. There may be numerous status hearings resulting in yet more attorneys' fees. Community groups may seek to intervene, again potentially raising the costs of handling the case. Since the conservator merely acts in place of the owner under court supervision, the conservator is unlikely to be able to obtain conventional financing. Accordingly, the conservator must self-fund the fees and costs or obtain a letter of credit.

B. Unknown Property Conditions

On the practical side, the petition is filed before the petitioner has access to the property to assess its condition. In Philadelphia, petitioners often seek court approval to enter the building with representatives from the Department of Licenses and Inspections to document whether there are any additional code violations before filing the preliminary plan. Even after the conservator is appointed and rehabilitation commences, additional problems can arise which add to the costs. Finally, there is the question of whether the conservator should simply remediate the blight, seal the building and sell it to someone who will complete the renovation with conventional financing, or handle the full rehabilitation. Initially in Philadelphia, the properties were often fully rehabilitated, including granite countertops, which meant that the owner could object if not fully apprised of the extent of the work in the final plan. More recently, conservators in Philadelphia have performed the minimum work necessary to remediate the blight and resolve all code violations prior to pursuing court approval of a sale.

C. Risks

In Philadelphia, few 501(c)(3) non-profits have embarked on Act 135 petitions due to the risks involved. Generally, only such non-profits in gentrifying neighborhoods

67. See generally, Quick Guide: New Tools to Address Blight and Abandonment (Housing Alliance of Pennsylvania, 2012), <https://housingalliancepa.org/resources/quick-guide-new-tools-to-address-blight-and-abandonment-2012/>, p. 20 .

68. See discussion *infra*.

69. Conservatorship resources, Regional Housing Legal Services, <https://www.rhls.org/2011/12/conservatorship-law-manual/>. The Housing Alliance of Pennsylvania blight resources can be found at <https://housingalliancepa.org/blight-library/>, along with a handbook at https://housingalliancepa.org/wp-content/uploads/ConservatorshipManual_General-final.pdf.

have been able to petition because the sales prices in their communities are high enough to cover the fees and costs. There are no subsidies available to underwrite Act 135 petitions that would turn a blighted property into a home for an income-eligible buyer. Even the PRA, which is an eligible petitioner under the law, concluded after filing one petition that the costs are not worth pursuing as a tool to revitalize neighborhoods.

D. Outstanding Municipal Liens

A further complication in Philadelphia is that the City demands full payment of all municipal liens with interest and penalties, although 501(c)(3) non-profit petitioners have sometimes been able to negotiate lower payments. In other counties, municipalities have been willing to waive payment of their liens.

E. Disproportionate Impact

Some self-represented respondents argue that the petitioners are stripping them of equity in a family home. Even if a respondent agrees to sell the property, the petitioner's fees and costs take a huge bite out of any net proceeds. Some respondents with financial means decide to "pay off" the petitioner's fees and costs at the outset and make the necessary repairs themselves.

The University of Pennsylvania Carey Law School's Advocacy for Racial and Civil (ARC) Justice Clinic has issued an analysis of the Impact of the Abandoned and Blighted Property Act (Act 135) on Vulnerable Homeowners in Philadelphia.⁷⁰ It studied the 487 Act 135 petitions that were filed in Philadelphia between January 2015 and December 2022 after the law was amended to increase and clarify the fees for the petitioner and the conservator. The study's findings suggest that "Act 135 petitions are disproportionately filed in communities vulnerable to, or actively experiencing, gentrification,"⁷¹ and that the data shows that Act 135 petitions are disproportionately filed against Asian American property owners and, to a lesser degree, Black property owners.⁷² Further investigation on the impact on low-income property owners is needed.

V. OPTIONS FOR REFORM

For nearly fifteen years, conservatorship has provided an opportunity to remediate blighted and abandoned properties through a court-supervised legal process. Pennsylvania courts and hundreds of cases have helped to shape the application of the law. What have we learned, and what is needed to improve the law? The following amendments might be considered.

A. Personal Service

Service of process under Act 135 can be accomplished by registered or certified mail, and by posting a copy of the notice on the property.⁷³ But personal service under Pa.R.C.P. 400.1 enables the conservator to sell the property with title insurance, rather than with a potential cloud on title. The law should be amended to require personal service pursuant to the rules of civil procedure.

70. See *supra* note 6.

71. *Id.* at 3.

72. *Id.*

73. 68 P.S. §1104(d)(1). Note that the General Court Regulation 2022-01 removed the requirement for personal service under Pa.R.C.P. 400.1.

B. Notice

Cover Page. The notice required by the Philadelphia Court’s GCR provides that the cover page for the Petition include language notifying the Respondent and any occupants that property rights could be lost. This language heightens the importance of the notice to a property owner.⁷⁴

Posting Notice on the Property. Also, in Philadelphia, the local court rules require posting of this Notice on the property at the outset of the case alerting any occupants who may have legal rights to reside in the property about an opportunity to obtain legal counsel and appear in court to present evidence that they are legally occupying the property, for example that they are heirs of the record owner. It also alerts the neighbors and local community groups that they may want to follow the case and possibly petition to intervene.

Notice to Others with Recorded Interests. The Act should also require notice to those with other recorded interests in the property, such as easements and long-term leases. While this should be obvious to petitioners, it should be added to the law to require notice to those with other recorded interests in the property.

C. Property Owned by a State or Local Government or Agency

Act 135 expressly does not apply to properties owned by or held in trust for the federal government and regulated under the federal Housing Act of 1937.⁷⁵ There is no similar exemption for properties owned by a state or local government entity.⁷⁶ Local governments bear the heaviest burden for mitigating blighted properties. Limited municipal resources should not be spent responding to conservatorship actions except where the threat to public safety is heightened. Creating a requirement for prior notice to government entities and requiring a higher standard of blight would afford those entities more control over using their funds to remediate blight. For example, the heightened standard could require that the property be imminently dangerous and a threat to public safety or the equivalent under the local codes.

D. Pre-hearing Conferences and Extensions

Judges in Philadelphia and Allegheny Counties have successfully used pre-hearing status conferences to manage Act 135 cases. The law should be amended to provide for a pre-hearing conference within 60 days of filing a petition, which can be continued until it is appropriate to hear the merits. A status conference gives the petitioner and the respondents (if they appear) the opportunity to settle the case before significant legal fees and rehabilitation costs are incurred. It also gives the court an opportunity to address preliminary issues such as service of process and the owner’s interest in remedying the property conditions under court supervision.

E. Requirements for Sales of Conservatorship Properties

Act 135 provides limited guidance on the sale of conservatorship properties. For a sale to be approved, the court must find that the “terms and conditions of the sale

74. See *supra* note 22.

75. 68 P.S. §1111(a).

76. See discussion *infra*.

are acceptable to the court, and the buyer has a reasonable likelihood of maintaining the property.”⁷⁷ The law should be amended to follow the requirements set forth in General Court Regulation 2022-1. In seeking court approval of a sale, a conservator should be required to reveal and describe any pre-existing relationship with the proposed buyer, proposed terms of the sale, estimated costs of transferring the property, and proposed distribution of proceeds. In addition, further clarity is needed on “free and clear” sales of conservatorship properties, and whether this language gives the court authority to extinguish delinquent real estate tax and municipal liens.

F. Fees for Owners’ Representatives

For affordable housing development, the Pennsylvania Housing Finance Agency provides that any owners’ representative or similar consultants’ fees must be paid from the developer fee, and not itemized as separate reimbursable costs. Such fees in Act 135 cases should be paid from the developers’ fee and not reimbursed as incurred costs.

G. “Public Nuisance” Language

Some of the terms in the Conservatorship law regarding criteria for meeting the definitions of a blighted property are not in the City of Philadelphia’s Code, such as “public nuisance.” Act 135 should be amended to provide alternative language that would enable petitioners to use existing provisions in local codes to correspond to the terminology in Act 135. This will enable Petitioners to prove to the court that the blighted properties meet the Act 135 criteria of “public nuisance.”

H. Developer’s Fee

The developer’s fee is statutory with no discretion given to the judge. If a petition is filed and the owner decides to sell the property, the owner must pay petitioner’s fees regardless of whether the conservator has done any work to stabilize or repair the property. Judges should have the discretion to reduce the fees where the net proceeds are high and the statutory fees would unjustly enrich the petitioner or the conservator. Another option to consider is reverting to the original statutory language where the fee calculation was based on PHFA’s standards for low-income housing tax credit projects.

I. Funding Rehabilitation

Since the owner retains ownership of the property during the conservatorship, it is a challenge to secure funding to handle the costs of the remediation, as well as out-of-pocket costs and attorney fees. So far, few commercial lenders have been willing to provide funding for conservatorship projects given the risk and uncertainty. Developing and identifying alternative funding sources for conservators and owners to perform repairs and redevelopment would lead to a greater use of this tool.

J. Underwater Properties and Lien Extinguishment

Many blighted properties in Pennsylvania have delinquent real estate taxes and other municipal liens that exceed their fair market value. Unless the amounts of the

77. See 68 P.S. §1109(b)(3).

liens are modest, the conservator will be unable to recoup its costs. Community organizations committed to local land use priorities, such as affordable housing and green space, could be encouraged to use conservatorship if the taxing authorities were more willing to waive or compromise their liens. Such entities should work with community development stakeholders to establish criteria for extinguishing municipal liens on conservatorship properties. If necessary, Act 135 could be amended to authorize such actions.

VI. CONCLUSION

The Abandoned and Blighted Property Conservatorship Law has proven to be an effective, albeit imperfect, tool for mitigating situations where the owners have not kept their properties free of blight. Conservatorship is often the last resort for neighbors, non-profits and local governments trying to address an unsafe, abandoned property. Owners who have ignored directives from governments and pleas from neighbors to clean up their properties should be held accountable. But the rights of the owners and lienholders must be protected in the process.

Further analysis of Act 135 cases would inform additional reform and policy changes to improve outcomes and achieve the legislative objectives of blight mitigation and community revitalization.