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Code Compliance Enforcement in the Mortgage Crisis

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Center for
COMMUNITY PROGRESS

Turning Vacant Spaces into Vibrant Places

CODE COMPLIANCE ENFORCEMENT IN THE MORTGAGE CRISIS

Paper by Kermit J. Lind, J.D.

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INTRODUCTION

The Center for Community Progress is preparing to launch an expanded program of research, consultation and capacity building services to help communities achieve healthier, safer and more secure residential neighborhoods. We believe that new strategies and models for effective compliance with locally determined standards that serve both residents and investors are urgently needed. Recovery of the housing market will not occur without restoring a sense of confidence and stability to distressed communities. This publication is just an initial signal of what we intend. A longer and more detailed paper is being prepared for publication. It is intended as a resource for development of better communities through more effective code compliance and enforcement. We welcome suggestions and advice as we prepare to engage more significantly in code compliance enforcement.

ABOUT THE CENTER FOR COMMUNITY PROGRESS

Initial funding to launch Community Progress has come from the generous support of the Ford Foundation and the Charles Stewart Mott Foundation. We are also grateful for support from the Foundation for Louisiana, the Greater New Orleans Foundation, the Surdna Foundation, Enterprise Community Partners and Fannie Mae, as well as to Bank of America, the Kresge Foundation, the Local Initiatives Support Corporation, the Rockefeller Foundation and Smart Growth America, which have supported our work in the past.

ABOUT KERMIT J. LIND, J.D.

M.A., J.D.; Professor Lind is a former Clinical Professor of Law at Cleveland-Marshall College of Law, Cleveland State University, where he was on the faculty for sixteen years. He has supervised students in the Urban Development Law Clinic, a teaching practice providing legal services to neighborhood and community-based nonprofit organizations engaged in housing and community development. Prof. Lind was co-counsel in two civil suits filed in 2008 to require that global banks owning hundreds of homes in Cleveland abate public nuisance conditions in the houses they own, as required by state and local laws. He provides an array of Continuing Legal Education courses for lawyers. Currently Prof. Lind consults with public and public interest agencies on community development law and public policy.

CONTEXT

Home financing has changed drastically from the model portrayed in the iconic movie, “It’s a Wonderful Life.” Borrowers asked for a loan from their friendly banker, George Bailey, who kept the borrower’s note and mortgage, staying in touch with the borrower through thick and thin until the loan was paid. Borrower and lender had a mutual interest in both paying off the loan and keeping the house serving as loan collateral in good condition.

New laws and financing processes emerged in the 1980s and ‘90s enabling big banks to buy and assemble large bunches of mortgage loans to be reconstituted into streams of mortgage debt payments, packaged as investment securities sold the world over. Investors were providing so much money for the purchase of mortgage loans that reasonable standards for borrowing were abandoned. While good loans were made, many borrowers were urged into bad loans they could not afford by loan sellers who had no stake in either the payment of the loan or the condition of the dwelling used as loan collateral. The abusive lending and servicing practices resulted in a tsunami of loan defaults on over-valued dwellings. The collapse of housing markets has created a crisis in communities all across the country.

Abandoned vacant houses became the emblem of the new mortgage financing fiasco. Appearing first in the oldest neighborhoods of industrial cities during the 1990s, then spreading to the booming cities of the south and west after 2007, vacant houses spread like a cancer out of neighborhoods with the most high-risk loans. High foreclosure rates made the problem even worse, as it put damaged houses of lowered value into markets with declining demand dragging down the value of neighboring properties. Trillions of dollars worth of housing value held by homeowners evaporated along with jobs providing income for loan payments and home maintenance. Now blighted and vacant houses are overwhelming the capacity of local governments to protect neighborhoods from serious loss of health, safety and security.

This simplified sketch of the mortgage crisis is the background for the following menu of ideas and practices for reforming and strengthening code compliance enforcement to meet the challenge of the mortgage crisis. The changes in the mortgage and banking businesses – with the resulting consequences for neighborhoods hit with mortgage failures, foreclosures, abandoned and vacant housing – pose new and virulent threats to the public health, safety and security in neighborhoods and communities. Local land use, building, health and safety code enforcement – the laws traditionally relied on to protect and preserve the public welfare – are overwhelmed by the extreme number of blighted properties left in the wake of foreclosures. Local governments are also faced with the challenge of dealing with obscure and absent mortgagees and commercial homeowners with little regard for local laws. Code enforcement, the first line of defense against waves of neglected and abandoned housing, must now be reinforced and retooled to meet what the mortgage crisis has wrought.

FIRST, A WORKING DEFINITION:

***Code compliance enforcement** is the exercise of municipal police power to secure compliance with laws protecting the public right to health, safety and security. The adoption and the enforcement of laws that set standards for public health, safety and security are a fundamental police function of government in a civilized society. The establishment of agencies and mechanisms for enforcing those standards when responsible persons fail or refuse to comply is an equally essential police function in a civilized society.*

ACHIEVING CODE COMPLIANCE IN THE MORTGAGE CRISIS

1. Be strategic

Specify and declare what counts most as the measure of success – e.g. elimination of dangerous vacant structures, more rehabbed houses, compliance before public auctions, collection of nuisance abatement costs, prosecution that results in compliance, sentencing that changes the practices of frequent offenders.

Organize and evaluate all code enforcement operations and institutions for contribution to the ultimate success identified.

Distinguish activity measured in units of work or volumes of closed cases from movement toward the goal of fewer harmful properties and more compliance.

Allocate resources to maximize results that are most important for success.

Work hard to achieve success; but recognize that hard work alone does not guarantee success. All hard work must be goal-directed.

2. Treat code enforcement as an organic system, not separate sets of programs

Recognize that legislative councils, municipal departments, courts and administrative hearing offices, along with inspectors, investigators, administrators, clerks, prosecutors, judges, magistrates, hearing officers and other personnel are all necessary parts of code enforcement systems.

Each agency, department and program must make a positive impact on the system as a whole.

All agencies, departments and programs need to interact constructively to reduce friction and duplication of effort. Performance failure in one part impedes the effectiveness of all.

Within a system, routine information sharing needs to replace information hoarding, resulting in better use of resources.

Code enforcement systems are affected by private debt collection operations, mortgage failures, mortgage and tax foreclosures, mediation programs, loan modification programs, tax certificate transactions, bankruptcy proceedings, land banking, and must therefore interact with these external systems to effectively function as a system.

3. Focus on neighborhoods more than individual houses

Housing maintenance codes regulate property use in relation to the neighborhood environment; building and construction codes regulate the design and construction of individual buildings.

Current crisis conditions – especially abandoned vacant dwellings – are undermining whole neighborhoods where residents rely on lawful use of property for health, safety and security.

Regular inspections of neighborhood space and care for the interior of vacant houses is a necessity and a deterrent to more lawless neglect.

As noncompliance increases in a neighborhood, the health, safety and security of people in the houses decreases.

Improving code compliance in the whole neighborhood encourages residents not in default to maintain and repair their houses, and to make sacrifices to pay mortgages and property taxes.

4. Establish sustainable collaborations

Public officials and community partners managing publicly assisted code compliance institutions and programs benefit greatly from regular meetings to counsel and collaborate with each other.

Structured collaboration needs to occur at various levels – within large departments, between managers of different departments, between branches of municipal government, between municipal and other public agencies and between the public and private sector.

Active block and neighborhood associations keep members informed and encourage each other in voluntary compliance, especially with the small stuff.

Coordination and collaboration gives code compliance advocates a clearer and stronger voice in legislative and public policy discussions about responses to the mortgage crisis.

Since 2005 an informal council of private and public interest leaders in Cleveland was convened at the recommendation of a study done by the National Vacant Properties Campaign, a predecessor of the Center for Community Progress. The group calls itself the Vacant Abandoned Property Action Council (VAPAC.) While it is essentially a coordinating and consultative body, its members are from key institutions and agencies working on vacant housing and neighborhood blight in the region. It has *coordinated* funding requests to avoid conflicts and duplication; *promoted* development of a powerful public real property data base; *lobbied* the state legislature for expanded county-wide land banking; *held discussions* with mortgage servicers, legislators, special mortgage fraud prosecutors, foreclosure judges and magistrates; *sponsored conferences and commissioned special studies* on the abandoned vacant property issues, including current collaboration to get more demolition resources after the NSP grants are exhausted. In its seven years of monthly meetings, VAPAC has become an essential tool for dealing with the most serious code compliance issues.

5. Develop a comprehensive, reliable and accessible, real property data base

Reliable information about real property records – condition, use, past permits and citations, ownership identification and addresses, title, taxes, liens, foreclosure, bankruptcy, probate and more – are essential throughout a code compliance system. Access to as much of the public record as possible from a single Internet source is a powerful, time and cost-saving tool.

Development of a useful depository for public records from many different record-keeping sources requires the sustained cooperation of many different public officials. That cooperation will most likely require persistent effort.

Successful data sharing systems in operation for five years or more probably took years to develop. A commitment to constant maintenance and continued development is essential for data sharing systems that remain effective.

Because real property information is kept in different unrelated public record depositories and because information is so indispensable, assembling a data system for all real property data can be a uniting factor for making code enforcement systematic. A mutual interest in developing, using and maintaining a trustworthy source of real property data draws together all those who rely on information for their operation.

The ability to use parcel-based property data for analysis, planning, implementing and evaluating is critical for operating strategically. Without it, everyone – public officials, program administrators, budget analysts, community and private developers – is working without light.

6. Enact ordinances that fit

Effective policies for maintaining healthy, safe and secure communities do not come in “one size fits all” models; they must be tailored to fit a specific purpose and a specific place.

An ordinance can only be as effective as the capacity to use it as its authors intend; measure capacity first, then legislate.

There is no such thing as a legislative silver bullet to improve code compliance. Legislate for a better system, not a one-shot solution.

Take advice from experts who know the locale as well as the law.

Vacant Property Registration (VPR) ordinances are sweeping across the country like wildfire. As of May, 2012, more than 800 were reported on a website maintained by Safeguard Properties, Inc. to keep track of them. Ordinances to compel registration of vacant residential buildings are a source of some contention between code enforcers and the servicers of mortgages and REO property. National code enforcement experts including Doug Leeper, Alan Mallach and Joe Schilling frequently write and speak about VPRs. The motivation for this type of legislation is the lack of any public record of all who must be served legally sufficient notice of citations and other police actions against orphaned properties. Absentee owners and business entities with a legal interest, such as a lienholder or a nominee title holder, are often not clearly identified to code enforcers. It seems to code enforcement officials that this obscurity is a deliberate attempt to evade compliance responsibilities and liabilities. The servicing industry at first resisted the ordinances, then sought to get them to conform to standards convenient to their interests and, more recently, have proposed preempting state legislation in some states barring or curtailing local decisions related to the features of ordinances. This controversy pits the exercise of municipal police power to protect the public against the business practices of unidentified absentee parties using real property for investment purposes. Resolution of this conflict is a goal both sides need to take seriously.

7. Deploy scarce resources for maximum results

Focus on frequent violators – e.g. bulk buyers of vacant dwellings, post-foreclosure speculators, flippers of noncomplying properties – for greater impact.

Inspect properties and investigate owners at critical points – the initiation of foreclosures or sheriff sales, at the time of vacancy, while those with legal interests are under the jurisdiction of a court.

Use teams of high-performing specialists to police high-profile targets.

Establish an effective single point of contact with mortgage and bank REO servicers, absentee and corporate owners of rental properties, and frequently cited local businesses.

Give system-driven inspections priority over scattered single complaint-driven inspections.

In Baltimore the City's code enforcement is strategically targeting compliance efforts to turn vacant properties into valuable assets for neighborhoods. Using a newly authorized administrative citation procedure, vacant houses in transitional neighborhoods with market potential are quickly moved into rehabilitation or demolished to simultaneously stabilize the market and attract new residents. The program is data driven to get maximum results from targeting both the enforcement procedures and the allocation of rehabilitation and development resources. The department uses a very effective automated data management process for swift and accurate record-keeping. The results are a 100% increase in cases handled and a 50% decrease in the time from citation to compliance.

8. Prosecute for compliance

Consider using civil actions to obtain injunctions and recover nuisance abatement costs.

Assist consumer defendants to comply before an initial hearing or trial; pressure commercial defendants to comply and to change noncomplying business practices.

Engage expert outside counsel for large or complex, high-stakes cases.

Work with neighborhood victims affected by noncompliance to present evidence of both offenses and compliance.

Present judges with the strongest case possible and seek sentences intended to obtain maximum compliance.

9. Adjudicate for compliance

Prefer timely compliance to punishment in criminal sentencing and civil judgments.

Make compliance a precondition for plea bargains or mitigation of sentences.

Convert unpaid fines against commercial offenders to civil judgments for collection.

Establish special dockets for cases with case management problems.

Use written judgment entries, websites, clinics and other means to educate defendants and the public about code compliance.

Municipal housing and environmental court judges are especially effective for achieving code compliance. Their positions in specialized housing and environmental courts allow judges to become innovative problem-solvers and community educators. The most successful judges devote their attention to complex cases and work closely with community groups, civic and political leaders, and professional organizations to determine how to reach the best outcome for individuals and the community. While not all jurisdictions have the resources that some states grant to housing and environmental courts, leading special purpose courts offers great examples of effective adjudication for code compliance cases. Housing and environmental courts in Buffalo, New York, Cleveland and Franklin County, Ohio and Memphis, Tennessee have been featured in national conferences of the Center for Community Progress and in published articles.

10. Engage neighborhood residents to help promote a culture of compliance

Establish means of regular communication with residents at the neighborhood level on code compliance; help residents see their self-interest in code compliance.

Recruit code enforcement resident-advocates to assist professionals in community education on codes, compliance assistance programs, enforcement procedures.

Provide a means for responsible reporting by citizens of serious violations and abandonment of dwellings.

Cultivate recognition of inspectors and compliance officials as protectors of public health, safety and welfare needed for safe houses, safe streets and stable neighborhoods.

Affirm actions by neighborhood volunteers and activists that enhance levels of compliance and reduce the need for enforcement actions.

CONCLUDING ADVICE

This list of ideas and practices is a menu, not a recipe or blueprint. A menu for making game-changing improvements can be a helpful starting point for boosting code compliance. A system for code compliance that works in current housing and neighborhood conditions will most likely take years. It will require the dedication of persistent leaders along with collaborators who recognize how critical it is to find better ways to deal with neglect, vacancy and abandonment.

Finally, a word from an old policy wonk, Niccolo Machiavelli: *“It must be remembered that there is nothing more difficult to plan, more doubtful of success, nor more dangerous to manage than a new system. For the initiator has the enmity of all who would profit by the preservation of the old institution and merely lukewarm defenders in those who gain by the new ones.”*



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