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**MEMORANDUM**

**TO:** PA Senate and House Democratic Policy Committees  
**FROM:** Michael G. McCabe, Esquire  
Mandi L. Culhane, Esquire  
GRB Law  
**DATE:** March 23, 2021  
**RE:** Testimony Related to PA Abandoned and Blighted Property  
Conservatorship Act

**Introduction**

My name is Mandi Culhane. I am a Shareholder with the Pittsburgh based law firm, GRB Law, where I have practiced since 2004. We also maintain a law and taxpayer assistance office in Center City, Philadelphia. I help manage our firm’s municipal tax practice, including our Philadelphia Office. I am also active in our firm’s real estate and municipal law groups. I would like to thank the Senate and House Democratic Policy Committees for this opportunity to provide testimony regarding Pennsylvania’s Abandoned and Blighted Property Conservatorship Act (the “Conservatorship Act”).

GRB Law represents the City and School District of Philadelphia, the County of Allegheny, including its Treasurer, John K. Weinstein, the City and School District of Pittsburgh, and dozens of other municipalities and school districts in the collection of past due and delinquent real estate taxes and municipal claims. We also act as solicitor to dozens of townships, boroughs, school districts, authorities, and commissions. My municipal practice includes representation of the Tri-COG Land Bank, whose members include 22 municipalities, 6 school districts, and Allegheny County.

GRB has extensive experience assisting its municipal clients in effectively handling blighted, vacant and tax delinquent properties. We work hand in hand with our clients to develop broad based enforcement programs, as well as targeted property specific strategies. These strategies include ordinance development, strategic code enforcement, property donation, condemnation, eminent domain, land banking, and conservatorship.

GRB has represented both our municipal clients and private property owners in actions filed pursuant to the Conservatorship Act. We frequently enter our appearance on behalf of our municipal clients in order to protect their delinquent real estate tax and municipal claims, which

have been filed as liens against the subject real estate. We have also pursued the appointment of conservators on behalf of the Tri-COG Land Bank in order to put abandoned and blighted properties back into productive use.

### **History and Purpose of the Conservatorship Act**

The legislative purpose of the Conservatorship Act, which took effect on February 1, 2009, includes providing a mechanism to transform abandoned and blighted buildings into productive reuse as an opportunity for communities to modernize, revitalize, grow, and to improve the quality of life for neighbors. We often hear it described as an additional tool in the anti-blight tool box.

The General Assembly concluded that, if 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.

The Conservatorship Act was most recently amended in 2014. Important amendments included defining exactly what is meant by “abandoned property.” The Conservatorship Act as originally enacted did not include such a definition. Pursuant to the amended Conservatorship Act, an “abandoned property” is any property that meets the conditions for conservatorship listed in section 5(d) of the Conservatorship Act.

The amendments also clarified that vacant lots on which a building had previously been demolished are eligible for conservatorship. In addition, a single petition may now be filed against one or more adjacent properties, but only if the properties are owned by the same owner and the properties are or were used for a single or interrelated function. A single or interrelated function does not simply mean that both properties will be put to the same use - two separate rental properties for example. In order to be combined into one petition, the properties must be used together for a single or interrelated function. For example, a vacant side yard that is separately assessed from the main parcel with a structure on it. Or a parking lot next to a commercial building.

The 2014 amendments also expanded the definition of “party in interest,” meaning who may file a petition for the appointment of a conservator. Originally, only neighboring residents or business owners within 500 feet of the subject party were eligible. This was enlarged to 2,000 feet in 2014. In Philadelphia, a non-profit that has participated in a prior rehabilitation project within 5-miles of the subject property, instead of the original 1-mile radius, are also considered to be a party in interest. In all other municipalities, any non-profit located in the municipality has standing as a party in interest.

The 2014 amendments also made it easier for conservators to recoup the costs they put into rehabilitating a property by including a “conservator’s or developer’s fee” in the costs of rehabilitation and confirming the right of the conservator to file a lien against the property in order to recover its costs incurred during the conservatorship, including, the costs of rehabilitation (including the conservator’s or developer’s fee), attorney fees and court costs.

## **Municipal Use of the Conservatorship Act to Fight Blight**

The Conservatorship Act is a critical tool in a municipality's or land bank's anti-blight tool box. Sometimes it is the only available tool.

When faced with an abandoned and blighted property, municipalities have limited options. If there are delinquent taxes or municipal claims filed as liens against the property, they can put the property through the Sheriff's Sale process pursuant to the Pennsylvania Municipal Claims and Tax Liens Law, the Real Estate Tax Sale Law, or the City of Pittsburgh Second Class City Treasurer's Sale Act, but property owners may come forward and pay the liens in full. The property remains in the hands of the neglectful owners.

Even if a property does make it all the way to Sheriff's Sale, there may not be anyone interested in purchasing the property in order to get it back into productive use and on the tax rolls. Sheriff's Sales are an excellent collection tool, but may not be as effective to fight blight if there is no market for the property at Sheriff's Sale. Land banks have dramatically changed this analysis however, since a land bank may acquire title to property through Sheriff's Sale. If there are no delinquent tax or municipal claim liens filed against the property, of course the Sheriff's Sale process is not going to be an option.

Municipalities and land banks may also accept donations of property pursuant to the Municipal Claims and Tax Liens Law. However, because a significant number of the abandoned and blighted properties at issue are owned by deceased record owners, it may be impossible to locate everyone with an interest in the property to obtain an agreement for the donation.

Absentee owners also limit the effectiveness of traditional code enforcement activities. The Neighborhood Blight Reclamation and Revitalization Act (Act 90 of 2010) provides a variety of powerful tools to fight blight by allowing municipalities to take action against property owners with serious code violations, or whose property is determined to be a public nuisance. Under Act 90, municipalities may place a lien against an owner's personal assets; deny municipal permits (included building permits and zoning approvals); require owners to remedy existing violations and/or delinquencies with regard to other property they own prior to being granted municipal permits; extradite out-of-state property owners back to Pennsylvania to be charged with property-related violations; and magisterial districts may establish housing courts. Similarly, the Municipal Code and Ordinance Compliance Act of 2016 specifies instances where problem properties may be denied certificates of use and occupancy after resale. However, Act 90 and the Municipal Code and Ordinance Compliance Act cannot be effectively used against an owner that cannot be located.

If none of the above remedies are available to a municipality or land bank, the Conservatorship Act gives them another option – the appointment of a conservator to clean up the property and make any repairs and improvements necessary in order to bring the property back into compliance with local property maintenance and building codes.

## **Use of the Conservatorship Act by For-Profit Entities**

The costs of combating blight fall on the Commonwealth, municipalities, and taxpayers. The Conservatorship Act was meant to provide interested parties with a process for rehabilitating abandoned properties in order to decrease the negative economic and social impacts such properties have on a community. While municipalities, land banks, and nonprofit corporations have successfully used the Conservatorship Act to return abandoned properties back to productive use, most of the petitions that are filed, at least in Allegheny County where I practice, are filed on behalf of for-profit real estate developers or local landlords.

The Act permits a “party in interest” to file a petition with the court seeking the appointment of a conservator. The definition of “party in interest” includes the owner, a lienholder or other secured creditor, a resident or business owner within 2,000 feet of the building, a nonprofit corporation, including a land bank or redevelopment authority, or a municipality or school district in which the building is located. Important to the definition of a “party in interest” is that the person or entity have some relationship to the property, and to the community as a whole.

When appointing a conservator, the court is supposed to give first consideration to the most senior nongovernmental lienholder. If the senior lienholder is not competent or declines the appointment, the court may appoint “a nonprofit corporation or other competent entity.”

The only way a for-profit private person or entity may seek the appointment of a conservator is if they live or own a business within 2,000 feet of the subject property. A “business owner” is not defined in the Conservatorship Act. Real estate developers and landlords file conservatorship petitions on the basis that they are business owners located within 2,000 feet of the property. However, most of the time the petitioners do not own a commercial storefront within 2,000 feet of the property. Nor are they neighbors living near the property. They simply own another property in close proximity to the abandoned property, which they rent to tenants.

These for-profit entities usually seek to have themselves, or a related entity, appointed as the conservator. In some cases, an individual or business with no connection to the neighborhood at all will locate a neighbor willing to act as the petitioner in order to have the outside person or company appointed as conservator.

Once the for-profit developer or landlord is appointed as the conservator, it begins to rehabilitate and improve the property. While this work requires the conservator to spend money in order to fix up the property, the Conservatorship Act permits the conservator to file a lien against the property in the amount of the total costs incurred by the conservator. If the property is sold to a third party, the conservator’s lien is paid in full out of the proceeds of the sale. There are few checks and balances in place to prevent the conservator from placing a lien against the property that is so high that it eliminates the potential that any third party will want to purchase the property.

Even when there are other interested purchases for a property, willing to pay far in excess of the unpaid liens, the court has historically shown preference for the conservator and allowed it to take title to the property. If the conservator takes title to the property, as it commonly does, the conservator gets the property for whatever it cost to rehab it, which may be far below the fair market value of the property as improved.

Conservators may also spend more on the property at the expense of the municipalities who are owed unpaid real estate taxes and municipal claims. The Conservatorship Act was not meant to be used to avoid the payment of liens for unpaid property taxes and municipal liens. In fact, Section 9 of the Conservatorship Act establishes priorities for the distribution of the proceeds of the sale of a property by a conservator. First, all court costs are paid. Then, liens of the Commonwealth and liens for unpaid property taxes and properly recorded municipal liens must be paid. As written, the local taxing bodies' delinquent real estate tax and municipal claim liens have priority over everything but court costs. The conservator's lien is number 5 on the list of priorities. Neither it nor any other liens, including liens given priority to facilitate borrowing for the costs of rehabilitation, should be given priority over payment of unpaid property taxes and property recorded municipal liens. But in practice we have frequently seen the court give priority to the conservator's lien over the liens of the taxing bodies and municipal authorities.

There is language in the Conservatorship Act that could allow a conservator to sell the property free and clear of all liens, claims and encumbrances, but only if the proceeds of the sale are distributed pursuant to the priorities mentioned above. In the event that the proceeds of the sale are insufficient to pay all existing liens, claims and encumbrances, the proceeds are to be distributed according to the priorities established and all unpaid amounts due are extinguished.

For-profit conservators are using this free and clear language to seek court approval to extinguish all or part of the delinquent real estate tax and municipal claim liens against a property. This is especially common if the conservator is taking title to the property and is not required to pay any consideration above its conservator's lien. Our municipal clients are required to enter their appearance in every conservatorship action where they have liens filed in order to make sure their liens are protected. While there are circumstances where a municipality may agree to take less than the full amount of the taxes or municipal claims due them, the Conservatorship Act should require that all taxes and claims be paid by the conservator or the purchaser absent an agreement with the impacted municipalities.

We have also seen the Conservatorship Act being used by for-profit entities attempting to avoid the competitive bidding process of a Sheriff's Sale, where they would be required to pay the delinquent real estate tax and municipal claims owed to the school district, county and municipality. Pursuant to the Conservatorship Act, a property does not meet the conditions for conservatorship if it is subject to a pending foreclosure action by an individual or nongovernmental entity. The same is not true if the property is subject to a pending upset sale or judicial sale pursuant to the Municipal Claims and Tax Liens Law, the Real Estate Tax Sale Law, or the City of Pittsburgh Second Class City Treasurer's Sale Act. We are seeing more and more conservatorship petitions being filed on the eve of Sheriff's Sale. Rather than being required to competitively bid on the property at Sheriff's Sale, these developers and landlords are attempting to gain control over the property through the Conservatorship Act. We are even aware of at least one case where a company was the successful bidder at a Sheriff's Sale but subsequently forfeited its bid and turned around and filed a conservatorship petition. Amending the Conservatorship Act to prohibit the filing of a petition if a writ of execution has been issued in a delinquent real estate tax or municipal claim enforcement action would put a stop to this practice.

## **Conclusion**

The Conservatorship Act has been and will continue to be a critical anti-blight tool for municipalities, land banks, and other non-profits. We appreciate the Committees' interest in evaluating the implementation of the Conservatorship Act over the last 12 years, and discussing legislative policy solutions for the continued eradication of blights in our communities. Thank you for the opportunity to provide this testimony. I'd be happy to answer any questions which the Committee Members may have.