

Testimony submitted by
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to the Pennsylvania Democratic Senate and House Policy Committees

Hearing on Abandoned and Blighted Property Conservatorship
March 26, 2021

Good morning, Senator Muth and Members of the Pennsylvania Democratic Senate and House Policy Committees. Thank you for the opportunity to testify today on the Abandoned and Blighted Property Conservatorship Law. My name is Winnie Branton. I am an attorney, consultant, trainer, and author. Through my firm, Branton Strategies, I help communities develop and implement effective and innovative strategies for preventing, remediating, and redeveloping vacant and blighted properties. I educate local leaders and stakeholders about available legal tools and best practices and help them figure out how to use those tools and practices to mitigate blight and prepare for reinvestment.

Blighted properties impose significant costs on municipalities, steal household wealth, and undermine quality of life and health. Over the past fifteen years, the legislature has passed new laws to help fight blight. Among them is the Abandoned and Blighted Property Conservatorship Law, enacted in 2008 and amended in 2014.

Conservatorship is a powerful blight elimination tool that gives interested parties the right to petition the court for temporary possession of a nearby blighted, abandoned property for the purpose of making repairs and bringing it up to code, or demolishing it. Let us break that sentence down and highlight the key elements of conservatorship. Conservatorship is a tool for blight remediation. That tool can be used by defined “parties of interest” which includes owners, lienholders, neighbors, the local municipality, redevelopment authority, and school district. It is a legal process that involves the court and a judge. After a hearing, the judge may appoint a conservator and give them temporary possession – not ownership – of the property to make needed repairs and otherwise bring the property into code compliance. I have attached to this written testimony a one-page overview of conservatorship entitled *Conservatorship 101* (Attachment 1).

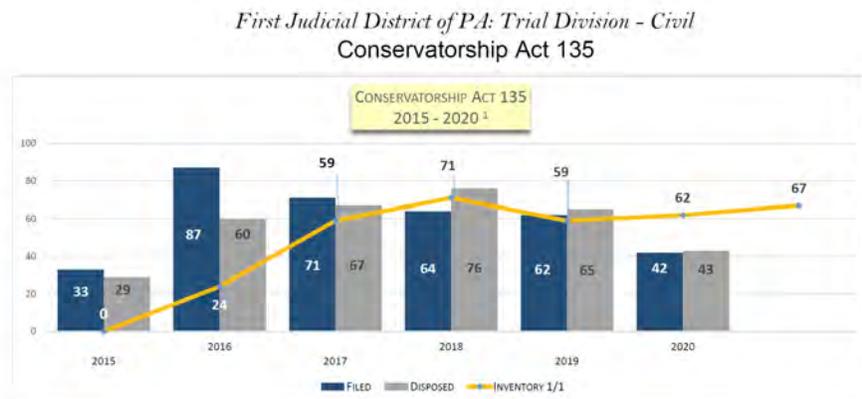
Case studies with before and after photos can show first-hand the effectiveness of conservatorship. Attachment 2 to my testimony includes a slide presentation from a conservatorship webinar I presented with the Housing Alliance of Pennsylvania as part of the Local Government Academy’s Blight Mitigation Initiative webinar series. Case studies within the slides show successful conservatorship project examples from Butler County, Northampton County, and the City of Bethlehem. I have also included slides with examples from Pittsburgh and Philadelphia where the conservatorship action was settled – a frequent outcome.

Based on my review of conservatorship cases, observations, and discussions with attorneys, judges, developers, conservators, and government officials, I believe the Abandoned and Blighted Property Conservatorship Law is an effective tool for mitigating blight where the owner has refused to act to keep their property safe and in compliance.

What makes conservatorship an effective blight tool?

- The law is flexible and relatively inexpensive to use.
- The threat of conservatorship motivates owners to bring a property up to code.
- Properties do not have to be tax-delinquent to be eligible for conservatorship.
- Local governments and redevelopment authorities like it as an alternative to eminent domain because it is less costly and does not put the liabilities of ownership on them.
- Non-profits and private developers like it because it provides a mechanism to get site control quickly and move ahead expeditiously with stabilizing and improving the property under the court’s supervision.

Conservatorship is growing in popularity, especially in communities with stronger real estate markets. Data collected from courts and other sources around the Commonwealth in 2018 (“2018 data”) showed that more than 350 conservatorship petitions were filed between 2009 and 2017, with over 70% of those petitions being filed in Philadelphia and about 15% being filed in Allegheny County. Data from the First Judicial District, Civil Trial Division, in the chart below shows cases filed and disposed from 2015 to 2020. To date in 2021, ten additional petitions have been filed in the First Judicial District.



¹ Conservatorship Act 135 added March Term 2015

As more cases are brought and litigated, we learn lessons that can inform options for improving conservatorship and its success in eliminating blight. Here are some recommendations that I offer for the Committees’ consideration:

1. **Authorize land banks to file conservatorship petitions.** Land banks are fully engaged in the fight against blight and often serve as the central hub for blight elimination efforts. Amending the definition of “party of interest” to include land banks would allow land banks to initiate conservatorship actions as well as intervene in them. Conservatorship properties could serve as another source of properties for acquisition by land banks which have unique powers to extinguish liens, clear title, and prepare the property for transfer to a new owner. At last count, there were 29 land banks established in Pennsylvania.

2. **Allow a pre-hearing conference and extend the timeline for a hearing on the merits to 90 days.** The current law provides for a hearing on the merits within 60 days of filing the petition. More time is recommended to allow for a pre-hearing conference. This will give the petitioner and the respondent (if they appear) a chance to settle the case before significant repair costs are incurred. It will also give the court an opportunity to address any service of process or legal representation issues.
3. **Require Notice language that expressly warns the Respondent that property rights could be lost if the Respondent does not file an Answer or otherwise defend against the Petition.** The property owner often does not attend the conservatorship hearing, leaving the judge to decide a case with only one side of the story. Emphasizing the serious risks and consequences that could result from the hearing may motivate owners to defend against the petition.
4. **Gather and analyze data on the payout of conservator's fees to determine whether conservators are being unjustly enriched.** Concerns have been raised that the conservator's fee is too generous where there is an outsale of the property. The law provides a conservator's fee equal to 20% of the sale price of the property. Before changing that, data on conservator's fee payouts should be gathered from the final accounting documents for a sample of conservatorship cases in Allegheny County and Philadelphia. The data should be analyzed to see if conservators are unfairly benefitting at the expense of the owner's equity. This conservator's fee provision was added when the law was amended in 2014. Those amendments were intended to encourage greater use of conservatorship by nonprofit corporations and community development corporations and to spur private investment into these projects. The amendments have succeeded in doing that, but the conservator's fee data may show a need for further refinement or amendment.

That last recommendation leads me to address several concerns that have recently come to light in conservatorship cases in Allegheny County. How are the rights of the property owners being protected under conservatorship? How do we ensure that they have notice and a real opportunity to participate in the process? How do we balance the owner's property rights against holding the owner accountable for maintaining a safe and properly maintained property?

The law includes certain safeguards. Owners must receive notice of the proceedings. Even if mailing or service of process does not reach the owners, notice must be posted at the property. But determining the owners is often a challenge due to tangled title, fraudulent conveyances, ownership being fragmented, and owners being deceased or dissolved. My experience has been that judges are very mindful of ensuring that proper service is made on all those with ownership rights before the cases proceed. The courts have the ability to resolve issues regarding ownership within the conservatorship cases, and we have seen examples of that.

Let us assume that the owners are notified. To protect their interests, they must participate in the conservatorship litigation. To do that effectively requires having legal counsel. For some owners that may not be financially possible, even with their ownership rights in the property. Other owners may not realize the consequences of the conservatorship action. What can be done?

In Philadelphia, Judge Ann Butchart has organized a working group of lawyers and court personnel to review how the court manages the conservatorship process and make recommendations to improve the process. One of the actions being undertaken through the working group is to put together resources for owners, including a list of attorneys who may be able to assist them in defending against the petition. Another initiative is expanding continuing legal education programs on conservatorship so that more lawyers become proficient in handling these cases and representing owners.

While I certainly support ensuring that owners understand the process and can fully participate, I want them to be held accountable for their property. Many of the owners whose properties wind up in conservatorship have been given multiple chances and often many years to bring their properties into code compliance. Conservatorship is often the last resort for local governments trying to address an unsafe, blighted property. This tool is needed to address those properties where owners have ignored directives from governments and pleas from neighbors to clean up and repair or demolish the property.

I have saved my request for more funding until last. Owners need access to grants and loans to repair and maintain their properties. Most of the available programs are underfunded, limited to owner-occupants, and income-restricted. These programs would not be available for conservatorship properties. Please consider ways that you can encourage or incentivize banks, lenders, CDFIs to make loans or letters of credit available to owners who want a chance to repair their properties under the court's supervision during conservatorship.

Thank you for the opportunity to testify today. And thank you for all your work to give local governments the tools they need to fight blight and create healthy, thriving communities across Pennsylvania.

ATTACHMENT 1

Conservatorship 101

- A powerful blight remediation tool that gives interested parties the right to petition the court for temporary possession of a nearby blighted, abandoned property for the purpose of making repairs and bringing it up to code, or demolishing it.
- Authorized by the Abandoned and Blighted Property Conservatorship Act, enacted in 2008, amended in 2014, and codified at 68 P.S. §1101 *et seq.*
- Not designed for large scale revitalization, but for that one problem property where all else has failed.
- 5 Primary “Players” in a conservatorship action – Petitioner, Property, Conservator, Respondent/Owner, and Court. Intervenor may also be allowed to participate.
- **Petitioner** may be (1) the owner, (2) lien holder or secured creditor of owner, (3) resident/business owner within 2000 feet, (4) a nonprofit corporation, including a redevelopment authority, (5) municipality or school district.
- Petitioner must demonstrate that the property is eligible, recommend a person/entity to serve as conservator, provide a plan for bringing the property into compliance with local property maintenance code, and notify the owner, lienholders and all parties with any interest in the property.
- **Property:** can be residential, commercial, industrial, plus vacant lot if structure was formerly on property; to be eligible:
 - ALL** must apply:
 - Not legally occupied for 12 months
 - Not marketed for past 60 days
 - No mortgage foreclosure action
 - Current owner longer than 6 months
 - Owner not on active duty military service
 - PLUS** three (3):
 - A public nuisance
 - Needs substantial rehab and none done in past 12 months
 - Unfit for occupancy
 - Increased risk of fire
 - Subject to entry and dangerous
 - Attractive nuisance
 - Health or safety hazard
 - Decreases property values or business activity
 - Illicit Activities
- **Conservator:** third party that has capacity to take possession, and rehabilitate or demolish the structure on the property; liabilities for the property remain with the owner and not the conservator; senior lienholder given first consideration as conservator.
- **Respondent/Owner:** must oppose the petition or risk losing the property. Owner may seek conditional relief to make all necessary repairs by a date certain, provided that the owner reimburses all costs and attorney’s fees and pays conservator’s fee (greater of \$2500, 20% of rehab costs, 20% of sale price).
- **Court:** holds a hearing and gives petitioner, owner, and all interested parties an opportunity to present testimony in support of or in opposition to the appointment of a conservator. Court may grant conditional relief if owner commits to sell property or bring it into compliance. Court approves plan (from owner or conservator) to bring property into compliance and supervises completion of the work. Court may authorize free and clear sale of property to reimburse costs/fees of conservatorship.



ATTACHMENT 2

Case study slides can be found beginning at page 22.



Conservatorship

LGA Blight Mitigation Initiative

May 2020

In This Session

- Overview of the Abandoned and Blighted Property Conservatorship Act (Act 135)
- The Conservatorship Process and How it Works
- Owner's Rights and Duties
- Conservator's Rights and Duties
- Case Studies
- Challenges and Limitations of Conservatorship



Housing Alliance
of Pennsylvania

Abandoned and Blighted Property Conservatorship Act



A powerful blight remediation tool that gives **interested parties** the right to petition the **court** for **temporary possession** of a nearby **blighted, abandoned property** for the purpose of making repairs and **bringing it up to code, or demolishing it**

Abandoned and Blighted Property Conservatorship Act

- Not designed for large scale revitalization, but for that one problem property where all else has failed
- Act 135 of 2008
- Took effect on February 1, 2009 and was amended in 2014
- Codified at 68 P.S. §§ 1101-1111

“[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.”



The Conservatorship Process

What is a Conservatorship?

Conservatorship is a court process whereby a judge may appoint a person or organization (the Conservator) to take possession of a neglected property after conducting a trial to determine that the conditions for appointment of a conservator are satisfied.

The Conservator

- Takes possession – not ownership – of the offending property.
- Rehabilitates the property or demolishes the structure.
- Uses own funds to remediate the blight and is reimbursed upon the out-sale of the Property.

Conservatorship



4 Primary Players in a conservatorship action –

1. Petitioner
2. Property
3. Conservator
4. Court

Conservatorship



Petitioner must be an “interested party” which includes:

1. the owner
2. lien holder or secured creditor of owner
3. resident/business owner within 2000 feet
4. a nonprofit corporation, including a redevelopment authority
5. municipality or school district



Conservatorship

Property can be residential, commercial, industrial, plus vacant lot if structure was formerly on property.

To be eligible:

ALL must apply:

- Not legally occupied for 12 months
- Not marketed for past 60 days
- No mortgage foreclosure action
- Current owner longer than 6 months
- Owner not on active duty military service
- Not held in trust or owned by Federal Government and regulated under U.S. Housing Act of 1937

PLUS three (3):

- A public nuisance
- Needs substantial rehab and none done in past 12 months
- Unfit for occupancy
- Increased risk of fire
- Subject to entry and dangerous
- Attractive nuisance
- Health or safety hazard
- Decreases property values or business activity
- Illicit Activities

Conservatorship



Conservator is appointed by the court to bring the property into municipal code compliance.

- Must have the capacity to take possession, effectuate rehabilitation and manage the conservatorship process.
- Senior lienholder given first consideration as conservator.
- Liabilities for the property remain with the owner and are not imposed on the conservator – environmental liabilities, taxes, etc.

Conservatorship



Courts of Common Pleas have jurisdiction

- File petition alleging property meets statutory requirements, proposing a plan for the property, and recommending a possible conservator
- Court reviews petition and schedules a hearing to be held within 60 days of filing petition
- Give notice to all owners, lienholders and others by personal service and posting of the petition on the property
- At hearing, court hears from petitioner, conservator, owner and any other interested parties.
- Court determines whether to appoint conservator and proceed with the plan (decision issued within 30 days of the hearing)
- Final plan hearing
- Application for approval of sale of property
- Sale of the property, approval of accounting and distribution of proceeds

When considering this remedy, will the county/local government objective likely be acquisition of the property and transfer to a new owner?

What Rights Does the Owner Have?

- ✓ Notice
- ✓ Full participation in the litigation
- ✓ Conditional Relief – court allows owner to abate the code violations in a reasonable amount of time under court's supervision
- ✓ Owner can step in at any time to terminate the conservatorship, but must reimburse petitioner and conservator for all costs incurred before regaining control of the property, plus pay a conservator's fee - greater of (1) \$2,500, adjusted upward 2%/year, (2) 20% markup of costs and expenses, and (3) 20% of sale price

What Rights and Duties Does the Conservator Have?

Possesses but doesn't own or hold title

All powers and duties necessary or desirable to bring the property into code compliance including:

- ✓ Borrow money and incur credit
- ✓ Maintain, safeguard and insure the building
- ✓ Submit status reports to court and parties
- ✓ File a full accounting of all income and expenditures
- ✓ Implement the final plan
- ✓ Sell the building

Due Diligence

Building your case requires careful planning and due diligence

- ✓ Get a title report
- ✓ Track down all owners
- ✓ Make sure property is eligible and meets statutory requirements
- ✓ Take photographs to demonstrate conditions
- ✓ Documentation of code violations and unsafe property conditions
- ✓ Conservator's qualifications
- ✓ Prepare a plan for the property – demolition or rehab
- ✓ Identify funding for the plan



Case Studies

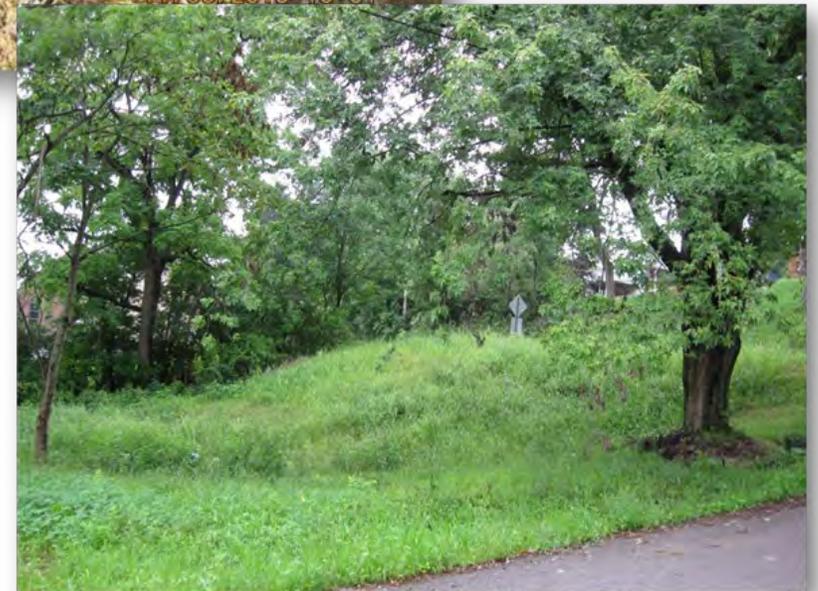
Case Study: Butler County

Redevelopment Authority
was Petitioner and
Conservator

- Petition filed in July 2015
- Conservatorship granted
- Plan was demolition using CDBG funds
- Court approved sale of the property for \$500



Before



After

Case Study: Northumberland County

Coal Township and Shamokin were Petitioners and Conservators

- Coordinated effort involving 13 properties owned by the same family
- Evasive and negligent owners
- 30 years vacant, decades of citations and code enforcement issues
- Plan for most properties – demolition
- Court authorized sale of many of the properties in September 2017

IN THE COURT OF COMMON PLEAS OF NORTHUMBERLAND COUNTY,
PENNSYLVANIA

TOWNSHIP OF COAL, : CIVIL DIVISION
Petitioner, :
 :
 : NO. CV-14-2146
v. :
 :
PAULINE KOLODY; WALTER KOLODY, :
RUSSEL KOLODY, HELENE KOLODY, and :
DANIEL KOLODY as apparent heirs of PAULINE :
KOLODY; and the unknown heirs of :
PAULINE KOLODY, :
Respondents. :
 :

FINAL PLAN FOR ABATEMENT SUBMITTED PURSUANT TO 68 P.S. § 1106(c)

AND NOW, comes Petitioner, Township of Coal, by and through its attorneys, Stepanian & Menchyk, LLP, per Andrew M. Menchyk, Jr., Esquire, and Rovito & Rovito, per Vincent Rovito, Jr., Esquire, and files the within Final Plan for Abatement Submitted Pursuant to 68 P.S. § 1106(c):

A. Description of work to be done for the rehabilitation of the building or, if rehabilitation is not feasible, a proposal for the closing, sealing or demolition of the building.

Rehabilitation of the building is not feasible. Technical specifications for demolition are attached hereto and incorporated herein as "Exhibit A."

B. Cost estimate.

The cost estimate to complete rehabilitation will be determined through a public bidding process. A request for bids was advertised on October 5-8, 2015 with bids due on November 2, 2015. Bids will be opened on the evening of November 2, 2015 at Coal Township's public agenda session and will be held until a special meeting of the Board of Commissioners on the evening of November 23, 2015.

C. Financing plan.

There is no financing plan. The costs of rehabilitation will be funded and paid in full by or on behalf of the Petitioner.

Case Study: City of Bethlehem, Northampton County

Goodman Theatre

City was Petitioner and
Conservator

- Petition filed in October 2016, conservatorship granted
- Unresponsive owner with long history of violations



Before



Case Study: City of Bethlehem, Northampton County

Goodman Theatre

- Conservatorship plan approved May 2017
- Court approved the sale of the property to developer in June 2017
- Lots of litigation with property owner serving as his own counsel



Planned

Under what circumstances
have you considered filing a
petition to appoint a
conservator for a property?

Case Study: City of Pittsburgh, Allegheny County

- Nonprofit corporation is the petitioner and the conservator
- Petition filed in April 2017
- Petition withdrawn upon agreement of the parties and conservatorship terminated January 2018



Do you see any opportunity for nonprofit organizations and nearby property owners (as opposed to government agencies) to use conservatorship to address blighted properties?

What Makes Conservatorship an Effective Tool for Mitigating Blight?

- ✓ The law is flexible and relatively inexpensive to use.
- ✓ The threat of conservatorship motivates owners to bring property up to code.
- ✓ Properties do not have to be tax-delinquent to be eligible for conservatorship.
- ✓ Local governments and redevelopment authorities like it as an alternative to eminent domain because it is less costly and does not put the liabilities of ownership on them.
- ✓ Non-profits and private developers like it because it provides a mechanism to get site control quickly and move ahead expeditiously with stabilizing and improving the property under the court's supervision.

Challenges and Limitations

- ✓ Uncertain outcome
- ✓ Cost and funding
- ✓ Length of process
- ✓ Notice and service of process
- ✓ Educating judges and court personnel
- ✓ Incentivizing private investors
- ✓ Protecting property owners from overzealous private developers

Of the obstacles discussed,
which of them would make
you really pause and
reconsider using
conservatorship?



Wrap up and Questions

Philadelphia

2318 St. Albans Street

Neighbor is petitioner and conservator

- Historic property on garden block
- Neighbor had experience in renovating historic properties
- property was an eye-sore on the beautiful historic garden block of St. Albans St.
- Rather than go to trial, owner elected to sell the property to the petitioner at fair market value.
- The property has since been fully rehabilitated to high historic standards.

Before



After

