

PENNSYLVANIA'S ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP ACT



**Conservatorship  
Implementation  
and  
Best Practices  
Manual**



**Executive Summary**



**Regional Housing Legal Services**

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# PENNSYLVANIA'S ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP ACT



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## Implementation and Best Practices Manual

### A Complex New Tool to Revitalize Abandoned Properties and Blight in Pennsylvania Communities and Urban Neighborhoods

#### Executive Summary

In cities, suburbs, and towns across Pennsylvania, roughly 300,000 homes and commercial and industrial buildings sit vacant. In many cases, the owners have simply abandoned the properties. A recent report<sup>1</sup> documents the impact: immediate neighbors suffer lost property values; municipalities incur high costs to maintain or demolish the properties; real estate taxes. Restoring these properties to productive use can revitalize communities and strengthen neighborhoods and business corridors. Historically, neighboring property owners and local non-profits have watched in frustration as the properties languish. The only viable options, when appropriate, are tax sales and condemnations, which are remedies only available to government entities.

The PA Conservatorship Law is a potentially expeditious way for non-profits to eliminate a spot of blight in a key location without acquiring the parcel via condemnation. It is also a tool for municipalities to address a problem property, and for owners of neighboring residential and commercial properties to remediate blight at an adjacent property.

Regional Housing Legal Services has drafted a **Conservatorship Implementation and Best Practices Manual** to streamline and facilitate the use of the law. Our preliminary manual, issued in December, 2009, has been widely circulated. In addition, the First Judicial District of Pennsylvania's Court of Common Pleas of Philadelphia County has issued and amended a General Court Regulation, together with sample pleadings that the Court has posted online for use of conservatorship petitioners in Philadelphia County.<sup>2</sup> This finalized **Conservatorship Implementation and Best Practices Manual** will be a useful toolkit to:

- evaluate a property as a candidate for conservatorship,
- gather all pertinent facts and documents, and
- enable legal counsel to prepare a conservatorship petition for e-filing.

There is a great deal of excitement about being able to use this new law to address long blighted properties. But the process is complex and not suitable for many blighted properties.

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<sup>1</sup> Econsult Corporation, Penn Institute for Urban Research and May 8 consulting for the redevelopment Authority of the City of Philadelphia and Philadelphia Association of Community Development Corporations. "Vacant Land Management in Philadelphia: The Costs of the Current System and the Benefits of Reform", November, 2010.

<sup>2</sup> The General Court Regulation and sample pleadings, available at <http://www.courts.phila.gov/pdf/regs/2009/pjgcr2009-01-Amended-10-18-10.pdf> and <http://www.courts.phila.gov/forms/word/Petition-for-Appointment-of-Conservator-Notice-Order-to-Show-Cause-Lis-Pendens.doc> have been amended to reflect the decision in *Appeal of: The Germantown Conservancy, Inc. in the matter of In Re: a Conservatorship Proceeding IN REM by the Germantown Conservancy, Inc., concerning minimally 319 properties in the 12th, 13th, 59th, 22nd and 9th Wards in the City and County of Philadelphia Commonwealth Court of Pennsylvania* (Commonwealth court of Pennsylvania)(April 30, 2010).

## A Complex New Tool to Revitalize Abandoned Properties and Blight in Pennsylvania Communities and Urban Neighborhoods

The Commonwealth Court has succinctly stated the purpose of Pennsylvania's Abandoned and Blighted Property Conservatorship Act: "The conservator is responsible for bringing buildings into municipal code compliance when owners fail to do so."<sup>3</sup>

The **Conservatorship Implementation and Best Practices Manual** is a crucial guide to practical use of Pennsylvania's Abandoned and Blighted Property Conservatorship Act. Those seeking conservatorship of a blighted property in their neighborhood or community will be able to achieve the law's goal by following the detailed step-by-step guidance provided in the Manual. Under Court supervision, the conservators will be able to remediate the blighted conditions and return the property to productive use.

Conservatorship is likely to become an important tool to eliminate blight in Pennsylvania. The law is comprehensive, as it can be used to revitalize property in a residential neighborhood, commercial corridors and industrial areas. Entering the process is flexible, since many different interested parties, including non-profits and adjacent homeowners and businesses, can petition the Court to establish a conservatorship. Petitioners with development capacity may seek to be appointed as conservator, and others may recommend a neighborhood non-profit Community Development Corporation or a for-profit developer. It is important for those considering conservatorship to recognize that it is only one tool that is available to remove blight from neighborhoods and that more traditional tools for returning properties to productive use (including condemnation, tax sales, and code enforcement actions) may be more appropriate in some circumstances.

The purpose of the **Conservatorship Implementation and Best Practices Manual** is to assist a potential petitioner to understand the conservatorship process, identify a suitable property, help the conservator take the property through the conservatorship process, and result in a successful out-sale of the property. This manual will allow a prospective petitioner and an appointed conservator to better understand the process. The manual should be used in conjunction with the General Court Regulation 2009-01, as amended on October 18, 2010 by the Court of Common Pleas of Philadelphia County in the First Judicial District of Pennsylvania ("GCR") governing conservatorship actions in Philadelphia, together with sample conservatorship forms and petitions. See the GCR and sample pleadings in the Appendix to the manual and posted online on the First Judicial District's website at <http://www.courts.phila.gov/pdf/regs/2009/pjgcr2009-01-Amended-10-18-10.pdf> and in MS Word format at <http://www.courts.phila.gov/forms/word/Petition-for-Appointment-of-Conservator-Notice-Order-to-Show-Cause-Lis-Pendens.doc>

The Manual will be a constant companion for the potential petitioner—from the decision to pursue conservatorship to the sale to a new buyer—because it:

- describes the steps that a prospective petitioner should follow to determine whether the property qualifies for conservatorship under the Pennsylvania statute;
- helps determine whether conservatorship is the best tool to remove blight from the property;

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<sup>3</sup> See footnote 2 above, slip opinion, at p 1.

## PENNSYLVANIA'S ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP ACT

- assists in identifying how to select a possible conservator, who will then be appointed by the Court and become responsible for the project;
- explains how to prepare the petition and supporting documents, including the preliminary plan;
- ensures that proper notice methods are used to serve interested parties;
- discusses how to obtain environmental assessments, architectural and engineering work, bids from contractors, and how to undertake the other pre-development activities that the Court will need before approving the final plan and authorizing the work to commence;
- and
- details what to expect in Court during the pendency of the case.

Due to the complexity of the law, the Manual also includes some important “first steps” to take in determining whether or not to file for a conservatorship or agree to serve as a conservator:

- budget for costs—title report, court filing fees, service of process, design and construction professionals;
- order a full title report to verify record owner, and ascertain extent of liens and judgments;
- eliminate any other methods of eliminating the blight, e.g. private acquisition, untangle title problems, condemnation, tax sale, code enforcement;
- gather evidence on the physical condition of the property;
- make sure the petitioner is an eligible interested party;
- consult development experts to draft the preliminary plan;
- review the First Judicial District’s amended 2009—1 General Court Regulation and sample pleadings, since the local court rules supersede the statute in some key respects;
- assemble a legal team (a litigator and a real estate lawyer);
- determine the scope of work required to remedy municipal code violations and seek financing;
- be wary of expanding the scope of the conservator’s work beyond elimination of blighted conditions, as a new buyer can add amenities outside of the conservatorship process;
- and
- weigh the risks—if the costs and fees cannot be recovered, if required rehab is too expensive, if the owner comes back, if title can be cleared to sell the property.

Since the law is new and the risks are considerable, attorneys have been cautious about proceeding with conservatorship petitions until a few pilot cases have been through the entire court procedure and successfully sold to a buyer with title insurance. Teams of pro bono lawyers have carefully selected properties for these sample cases. Some of the cases have settled before a conservator was appointed, and the petitioner has been able to successfully acquire the properties. Other cases have encountered other obstacles, such as a bankruptcy filing by the owner or municipal liens in excess of the value of the property. To date, no case has gone through the entire Court process in accordance with all the requirements of the Conservatorship Law. Updates will be provided as those cases make their way through the legal system.

To enhance the ability of neighboring owners and non-profit organizations to make full use of the Conservatorship Law, please consider the following list of recommended changes and amendments to the law.

## Recommendations for Reform

RHLS recommends adopting the following reforms to the Pennsylvania Blighted and Abandoned Property Act:

- **Provide for notice and service of process on owners, lien holders and other secured creditors, as required by the First Judicial District of Pennsylvania.** If all courts follow this procedure, the conservator will be able to seek court approval to sell the property and a title insurance company will be able to provide the purchaser with title insurance.
- **Establish priority of the conservator's lien superior over all state and local liens (only federal liens would be superior).** Ideally, as in Ohio, the conservator's lien would only be subject to federal liens, in order to encourage abatement of blighted properties. In the alternative, legislation could be enacted to enable local jurisdictions to convert existing municipal liens for taxes, water/sewer fee liens, and nuisance liens into forgivable loans in exchange for abatement of blight and payment of real estate taxes for a period of time.
- **Add a definition of "Abandoned Property" for purposes of the Conservatorship Law: "Any property that meets the requirements of "Conditions for Conservatorship" set forth in §1105(d)." The title of the law includes the words "Abandoned and Blighted Property" but there is currently no definition of "abandoned" in the law. This proposed amendment would clarify the purpose of the law regarding use of the word "abandoned" and would not leave the courts with the task of interpreting the words in the law's title on a case by case basis.**
- **Clarify the existing law's exemption of federal property.** This clarification involves a simple restatement of §1101(a) which now reads "General Applicability.—This act shall not apply to commercial and residential buildings, structures or land owned by or held in trust for the Federal Government and regulated under the United States Housing Act of 1937" to read with more specific clarity that the Act should not apply to:
  1. commercial and residential buildings, structures or land owned by the Federal Government.
  2. or that is held in trust for the Federal Government and regulated under the United States Housing Act of 1937.
- **Add an exclusion to the applicability of the act for all property owned by any state or local government or quasi-governmental agency.** Governmental entities have authority to remediate blight and should not have land they own be subject to conservatorship proceedings. If a petitioner files such an action, the government owner would assert its rights as Owner under the law, and take appropriate action to remediate the blight. So in virtually all cases, the Petition for Conservatorship would be hotly contested and the petitioner's costs and efforts would be in vain. This change would prohibit such private actions against government owners.
- **Consider narrowing some potentially overbroad language in the statute, such as "improvement" and "productive reuse."** Narrowing the scope of the law will avoid potential legal challenges on constitutional or equitable grounds where the conservator seeks power to add amenities unrelated to bringing the property into compliance with applicable code requirements. Any improvements not related to bringing the property into compliance with applicable code requirements should be made by the new purchaser after termination of the conservatorship.

## Recommendations for Reform

- **Include a right to petition to include properties adjacent to conservatorship-eligible blighted properties, in situations where the owner is identical and the adjacent property is an integral part of the use of the blighted property.** This change will enable a petitioner to seek conservatorship for an adjacent vacant lot, for example, where the adjacent lot was always used for parking.
- **Add blighted vacant lots as eligible properties for conservatorships.** There have been numerous inquiries about seeking conservatorships for vacant lots. Amending the law to allow use of the Conservatorship Law for elimination of blight on vacant land will allow neighboring individual and business owners and non-profits to have Court-supervised entry onto these properties. They will then be able to abate the problems that are often as severe as the problems caused by vacant buildings, including some lots with dangerous conditions and hazardous environmental contamination. This process would encourage the environmental remediation and development of such vacant land. There would ultimately be a sale of the property to a new owner under Court supervision, rather than informal “adverse possession” of such a vacant parcel without any Court supervision.
- **Authorize the creation of a new nonprofit in any county—or authorize the designation of an existing non-profit—with capacity to serve as conservator for any court-ordered conservatorship properties in that county where the individual or entity proposed by the petitioner does not have sufficient capacity to serve as conservator.** This establishment of an experienced non-profit will protect the community from a partially completed renovation of a property, and yet another abandoned building.
- **Encourage courts to use Judges Pro Tempore or Court-appointed Masters to assist the Courts with the management of the cases, which are essentially real estate developments best overseen on behalf of the courts by knowledgeable real estate attorneys who are familiar with the development process.** Otherwise, the courts could appoint conservators without the knowledge of when to seek environmental assessments, how to require remediation of environmental hazards that can cause risks to public health, such as asbestos insulation.
- **Establish requirements for public and private sales of properties at the end of the conservatorship, including requirements for sale to the conservator and/or petitioner or to an entity created by or controlled by the petitioner and/or conservator.** There should be a known process in place for the conservator, under Court supervision, to be able to sell the property after the blight is abated. The purchaser needs to have confidence that all the procedures followed were appropriate, and be able to obtain title insurance that will protect against later claims by a secured creditor or persons claiming an equitable interest.

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## Resources

Copies of the  
**Conservatorship Implementation and Best Practices Manual**  
are available on request by contacting:



**Regional Housing Legal Services**  
2 South Easton Road, Glenside, PA 19038  
(215) 572-7300  
[info@rhls.org](mailto:info@rhls.org)

The Manual is also available online at [www.rhls.org](http://www.rhls.org)  
and will be updated as revisions to Act 135 are enacted.

For trainings on how to use the Conservatorship Law and for further information on these and other cases filed in Pennsylvania, check the Conservatorship Clearinghouse on the website of the Housing Alliance of Pennsylvania, which is leading the effort to implement the new law: [http://www.housingalliancepa.org/issues/post\\_list.php?topic\\_id=84](http://www.housingalliancepa.org/issues/post_list.php?topic_id=84)