

## NUISANCE ABATEMENT LAWSUITS AND RECEIVERSHIP

When approached correctly, nuisance abatement lawsuits are a very effective method of forcing action on problem buildings in a neighborhood. This may be the fastest and most effective way of solving the problem of an abandoned building. The process can sometimes be very quick and sometimes quite long and drawn out, but either way, the owner is forced into making a decision about fixing up the building or selling it, or risk losing the building. Any one of the above outcomes is positive - a bad building ceases to deteriorate because it is taken out of bad hands and put in the hands of a good owner.

The overriding reason for filing a nuisance abatement lawsuit must be to ***take the building out of bad hands and put it into good hands***. While ending up with title to a building may sometimes be the desired outcome, there are many different avenues that this process can take, all of which will be positive for the neighborhood. The most important element is the first step - "forcing action." If a building has continued to go down hill, and it is clear that this situation is not going to improve, a nuisance abatement lawsuit can be the best way to force the hand of the owner who has been able to avoid city building orders, in some cases, for years.

Properties are left to deteriorate for many reasons. While the perception tends to be that only a neglectful, absentee owner would allow this to happen, sometimes it is an owner who lacks the resources to properly maintain the building. It could be that there are so many liens on the property that it is not worthwhile for the owner to fix it up. Perhaps the owner has died, and there are no heirs. In any event, it is important to know ahead of time the situation of the owner in order to plot the proper strategy. Every situation is unique.

The ability to take on these cases will always be dependent upon the resources of the organization bringing the suit. Before any group goes down this road, they must know ahead of time what they are capable of doing; namely, does the organization have the ability to abate the nuisance. This would include the knowledge and skill of rehabilitation, financing and other resources necessary to make it happen. In most if not all cases, these projects are not financially feasible unless the organization has money to lose on the project. Remember, the reason that these buildings are in bad shape to begin with is that they are usually not economically viable any longer.

Being appointed receiver may be the desired outcome if the organization has the money to properly bring the property back to life. The organization should be ready and willing to take this step, although more often than not, a negotiated sale, a property sale to a third party or repair of the building by the owner may very well be the outcome. Again any of these outcomes should be viewed as positive, as long as your goal is to take the building out of bad hands and put it into good hands.

Taking court action which ends up forcing the sale of a building to a third party can also

be a satisfactory outcome. The building may have a great deal of potential while its owners are unwilling or unable to properly repair and maintain it. This can be an amicable way of removing bad or less able property owners and replacing them with good ones. An organization has the ability to search for a good replacement owner who may share the goals of the neighborhood. A non-profit could be very helpful in brokering a positive exchange.

Taking over the building through a sale between the plaintiff and the defendant is also a possible outcome. If all other avenues appear impossible, an organization may be forced to take this route. Because of the expense, an organization should know ahead of time what it is getting into and be prepared for many different outcomes when filing for receivership since these cases can change rapidly during the course of the lawsuit.

When an organization is appointed receiver of a property that does not mean that they own it. To be the receiver is to have control over the property as well as to be charged with the duty of abating the nuisance. While this can mean many things, the Community Board has taken a rather liberal approach to this, often cutting down overgrown or dangerous trees and putting on new roofs as well as emptying all of the contents of an abandoned building. We then paint the building and put in new windows. At this point in time, we go back to the judge to report that we have abated the nuisance. The interior work to make the building habitable can be done at a later date when a purchaser has been found. Many of these measures should not be attempted without a bit of experience in receivership, and it would be best to speak with an attorney before doing anything drastic.

In sum, there are two important items to remember about receivership. First, you are trying to take a bad building and put it in the hands of a good owner. Next, you need financial resources to make the whole project possible. If you can make these two things possible, the nuisance abatement lawsuit can be an invaluable tool in the improvement of your neighborhood.

The Camp Washington Community Board, Inc. filed its first nuisance abatement lawsuit in 1994. We believe that we were the first organization in Hamilton County to take this type of action to improve our neighborhood. Now fourteen lawsuits later, we are still firm believers that the nuisance abatement lawsuit is an effective legislative tool in dealing with vacant buildings and deteriorated property in our neighborhood. We have listed below three case summaries that illustrate the positive results of nuisance abatement actions. After these three cases, we have listed a summary of six other cases and the positive outcomes.

## 3085 MASSACHUSETTS AVENUE

3085 Massachusetts sat empty for about five years after the death of the two sisters who owned the property. They had no known heirs and willed the property to two neighbors that helped to take care of them and the house in their final years. The neighbors did not probate the will which allowed the house to go empty for so long. In that time, the roof developed large holes, allowing the weather to damage all three floors of the house. The weeds grew over in the back yard, and people found their way into the building and proceeded to destroy the place and steal many of the fixtures.

In May of 2000, the Camp Washington Community Board filed a nuisance abatement lawsuit and requested to be appointed receiver of the property. The judge declared the property a nuisance, but did not grant receivership due to questions about the title because the will had not been probated. He did, however, give the Community Board the opportunity to secure the property at our own cost. Work included spraying of all weeds, and removal of overgrowth and a large tree from the rear of the property, securing all doors and windows on the ground floor, changing the cylinder in the front door deadbolt lock, patching a large hole in the roof, removal of a significant portion of the debris inside of the building, repair of the fencing enclosing the property and the installation of locks on the gates. In all, this work cost approximately \$5,800. While this was more than what was required to secure the building, it allowed us to prevent likely future damage.

While we were busy doing this work, the court case was just getting under way. One of the women mentioned in the will had stepped forward to express an interest in probating the will. The other needed to be contacted in order to see what she wanted to do. The day before we were to appear in court to take the property, one of the women named in the will, who lived nearby, retained a lawyer, which caused the case to be put off ninety days to give her time to decide if she wanted to probate the will as well as to give her time to bring her attorney up to speed. Right before the ninety days were up, the other heir was found, and they were given an additional thirty days for the same reasons. About a week before the next appearance, one of the two heirs died an untimely death. This woman's husband then became the new heir, and he too was granted thirty days to decide if he wished to probate the will. In the meantime, Camp Washington and this heir made a couple of attempts at negotiating a settlement which would allow the Community Board to be appointed receiver of the property. A financial settlement could not be reached, so the heir decided to probate the will.

This was not the end the process, however. It was in the best interest of the Community Board to insure that this person would do a good job in both abating the nuisance and making this property viable again. While he was considering what to do and sending contractors through the building to ascertain the costs of renovation, we called in the city's building department for a full home inspection. We also had a list of the cost breakdown of completing the required work. The latter was used in our case before the judge when we requested receivership. The cost breakdown and the inspection report were used to insure that this heir knew what to expect if he decided to

probate the will. It also served to let him know what our expectations of him would be. If he tried to do the minimum, the Community Board as well as the City would be armed with an inspection report spelling out exactly what needed to be done to be in compliance. Because we had previously secured the building, we oversaw any contractors that he sent to look at the building while he was making his legal decision. They were all provided with the inspection report and were given a thorough and proper guided tour of the house.

When the heir decided that he wanted to keep the property we recognized that, while this would have been a very good property for us to take over, his ownership of the property may have been the next best thing. Our cost of \$5,800 was well spent in preventing the building from deteriorating any further. The new owner would be abating the nuisance and would rehabilitate the property and either sell it to an owner occupant, increasing the vital homeowner numbers in our neighborhood and the city, or it would become a rental unit, increasing the city's population and tax base. And, of course, it would rid the neighborhood and the city of an abandoned building. While his work was not likely to be as extensive or impressive as ours, it would free our resources for another project and result in a significant upgrade in the quality of that building and that block.

We thought that his decision would end the process for a while if not for good. But of course these things change rapidly, and on the day of the scheduled court appearance, his attorney and the attorney of the other heir called us to make a deal - they wanted a total of \$2,000 in return for relinquishing any rights that they may have had to the property. In court that afternoon, we demanded a recorded statement and a quit claim deed from both parties which they agreed to give us. We were then appointed receiver by the judge.

The heirs saw the property as a potential money maker - a notion that we feel their attorney possibly encouraged. The first heir was going to probate the will and look into her options with the property when she died. Once her husband took over, he began sending in contractors to get estimates. He truly believed that there was some way to turn this property into a money maker. After the third contractor came through, it was clear to him that this wasn't possible. The third bidder - who came in a few hours before the final court hearing - was probably the most competent of the contractors, and he was unable to come up with a way to make it work. He tried to work it out in his mind how he might turn the property into two or three units, but that wasn't feasible. He then asked what the Community Board's interest was in the property. When he learned that we would probably spend \$100,000 for a \$70,000 return, this confirmed his suspicions. While his work probably would not be as extensive and expensive as ours, it would still not be economically sensible to do the project. After three contractors said the same thing to the heir, he decided that there was no money to be made by probating the will and dropped his case. Thus almost a year after we filed the original lawsuit, we were ready to proceed to abate the nuisance.

We did the exterior shell renovation ourselves, asked the court's permission to sell the

property, and then listed it with a realtor who found a buyer that had enough knowledge and experience to take control of the interior rehabilitation. At closing, we conveyed a Deed of Receiver to the purchaser who had arranged for financing for the purchase and rehab. After the renovation was completed, the new owner moved in.

## **2873 COLERAIN AVENUE**

On April 10, 1998, the Camp Washington Community Board, Inc. filed a nuisance abatement lawsuit under ORC 3767.41 against the owners of 2873 Colerain Avenue. The building, known as “the Pie Building” or “the Wedge,” was a small building, but it occupied a prominent position on the corner of Colerain and Township. Therefore, this building was important to us not only to abate the nuisance but also to make it into a “showpiece.”

The owners responded to the lawsuit by filing an affidavit that they did not have the resources to fix the building up nor were they willing to fix it up. One reason was because there were over \$115,000 worth of liens on the property. Thus because of this, we were given a default judgment on July 15, 1998.

We then went about fixing up the property. We installed a new roof, flashing, gutters, and downspouts after replacing a number of rotted roof rafters and decking. Next we tuckpointed the entire building and gave it a three coat paint job. We then installed all new commercial grade replacement windows. We wrecked out the interior walls and removed all the debris. Finally, we replaced all the floor joists on the first floor and re-sheeted it with plywood.

We then went back to court and showed the judge that we abated the nuisance. The judge gave us a judgment approving our costs as a first lien against the property. There are a couple of side points that need to be mentioned. First our judgment lien was for \$19,125. This did not include the cost for the replacement for the first floor joists since this work was done after we got the judgment lien on the improvements. Secondly, we did not have to fix up the interior of the building in order to abatement the nuisance. Basically we removed an eyesore. The improvement of the inside would come later.

After we had our judgment lien in place, we approached the Internal Revenue Service with the request to drop its liens which amount to over \$87,000 plus interest. The IRS however would not drop its liens since the common pleas judge has no jurisdiction over the IRS. The IRS did however agree that the other liens on the property which were recorded before the IRS recorded its liens were superior. Therefore based on an appraisal of the property, we settled with the IRS on a payment of \$2,000 for release of its liens. In hindsight, we should have negotiated with the IRS before we began our work. Then the building would have been appraised at a lower value, and the IRS may have quite possibly settled for less, perhaps even nothing. This whole process took over a year. It probably shouldn't have taken that long, but we felt we were “blazing a

trail” in the hope that it would never take this long again.

In the meantime, we had negotiated a deal with an architect whom we knew to purchase the building and rehabilitate the interior into offices on the first floor and an apartment upstairs. Once we had our issues with the IRS straightened out, we went back to the judge with a signed purchase agreement between us and the architect. The architect agreed to acquire the property from us and rehab the building if we could deliver to her the title to the property. The judge then granted our motion for us as receiver to sell the property to the architect. Thus on July 20, 2000, we were able to close the deal by giving a “Deed of Receiver” to the architect.

This then closed the court case. We agreed to participate financially in the interior renovation of the building. The renovation was completed in May of 2001. After everything was finished, we figured that our total financial contribution to this project was somewhere in the neighborhood of \$65,000, \$20,000 of which was covered by a grant from the city of Cincinnati.

This is the first time we had taken a building all the way through the receivership process and actually delivered title to a third party in the form of a receivership deed. As you can see, the process can be long and drawn out, although we think we have learned much in “going the distance.” It can also be costly, but in the end, this building is now a neighborhood asset.

## **3037 HENSHAW AVENUE**

3037 Henshaw Avenue was the first nuisance abatement lawsuit case that we filed. This building was purchased by the current owner in September of 1992. It remained vacant and boarded up from then up to the time we filed the lawsuit in January of 1995.

A hearing on our complaint was held in March of 1995 at which time the defendant, the owner of the property, agreed that it was in fact a public nuisance, but that we wanted time to fix the place up. After a month or two of negotiation, we came to an agreement as to the extent of the repairs. The judge then gave him ninety days to complete the work.

However the work was not completed in the time approved by the court, so another hearing was held in September of 1995. At this hearing, the defendant agreed that he was in contempt of court, but that he would suffer no penalty if he agreed to complete the work within a month. This was accomplished, and the case was finished and dismissed in November of 1995.

There are two salient points in this case. First of all, since the owner agreed to fix up the property, he became "a partner" of ours in one sense. We didn't have to worry about using our resources on this building so that we could move on to another building that needed our attention. Secondly, although the owner was able to avoid the orders of the building inspector for over two years, he could not avoid the nuisance abatement lawsuit, unless he wanted to risk losing his building.

As is seen in this case, being appointed receiver and acquiring ownership does not have to be the outcome to be successful with a nuisance abatement action. Improving the property must be the goal.

## 3073 MASSACHUSETTS AVENUE

This particular house was a flipped property. Its value at the time it was flipped was barely half of the \$75,000 flipped "sale price." Because the building was vacant and the property was not being maintained, we decided to file a nuisance abatement lawsuit in April 2007,

Eventually the owner was foreclosed on by Wells Fargo Bank, and in early 2008, Wells Fargo got back the title to the house after the Sheriff's Sale was confirmed in court. Shortly thereafter, the property was listed for sale, and without dismissing our lawsuit, we signed a purchase contract for \$7,000 through the listing agent which was accepted by the owner on July 23, 2008.

About a week later, we were told that Wells Fargo had changed listing agents, and that our previously accepted offer was now null and void. Instead of fighting this legally, we decided to wait for the property to be listed again by another realtor in order to make another offer.

Nothing happened with this house until December of 2008 when the city of Cincinnati filed a lawsuit against Wells Fargo because of the deteriorated condition of this property. Although we had no knowledge that the city was going to take this action, we welcomed the added pressure. Wells Fargo then revealed that it had sold this house back on July 30, 2008 to Blue Spruce Entities LLC out of Rapid City, South Dakota for \$4,000. The city of Cincinnati obtained a copy of the deed which showed the transaction, but the new deed was never recorded. In addition, the closing statement showed that there were no transaction fees or prorated property taxes paid at the closing on this property.

After conferring with our attorney, we then decided to file a new nuisance abatement lawsuit against Blue Spruce Entities LLC in January 2009. Instead of answering the complaint, Blue Spruce sold the property to Go Invest Wisely LLC out of North Ogden, Utah for \$4,000. We then had our attorney amend the complaint to add Go Invest Wisely LLC to the lawsuit, and this prompted GIW to deed the property over to Eco Dream Affordable Housing Inc. out of Pittsburg, California. This deed was recorded in Hamilton County of March 12, 2009. Needless to say, we had our attorney once again amend the complaint to add Eco Dream to the lawsuit. To date, Eco Dream has not answered the lawsuit. Our next court hearing is scheduled for July 30, 2009 at which time we are asking the court for a default judgment against Eco Dream for not answering the complaint. If this is granted, then we can proceed to hold a hearing to establish that this house is in fact a public nuisance. Our attorney is hoping that this hearing can be held on August 19<sup>th</sup>. At this hearing, we will also ask that we be appointed receiver of the property. Once this is granted, we can proceed to abate the nuisance.

## OTHER NUISANCE ABATEMENT CASES

**2812 Colerain** - This vacant building was involved in a Chapter 13 Bankruptcy (reorganization). It had been in this legal state for a couple of years. We filed the nuisance abatement lawsuit, and when the trustee for the bankruptcy realized that this building was in fact not an asset but a liability, the building was allowed to be released from the bankruptcy and was sold for \$7,500.

**1060 & 1062 Township** - The owner of these two vacant and deteriorated houses was running into a number of financial problems and was able to avoid the building inspector for years. We filed the lawsuit, and because of this, the owner decided to negotiate with us on the sale of these two properties. We bought them for \$26,000, rehabbed them, and now we have two new homeowners.

**3078 Henshaw** - This house suffered severe fire damage and was sold for \$1,000. Unsure of the future of this building, we filed a nuisance abatement lawsuit. The new owner eventually fixed up this house, and we dropped the lawsuit.

**2809 Colerain** - We had negotiated the purchase of this property for \$5,000 and signed an agreement with the owner. However he could not get his former spouse and her new husband to sign off. Therefore we filed a nuisance abatement lawsuit and gained control of the property.

**1216 Bates** - The owner lived in this house until all the utilities were shut off for nonpayment. He abandoned the property, and we filed the nuisance abatement lawsuit. We were then appointed receiver of the property, found a buyer rehabbed it, gave them a deed of receiver. Now the neighborhood has a new homeowner.

**1043 Rachel** - In this case, we filed a nuisance abatement lawsuit after many years of seeing this building standing vacant and deteriorating, the owner not willing or able to fix it up, and the city not able to get the owner to fix it up. The building was in the process of being condemned by the city, and so he decided to sell the property to the church across the street. The church then demolished the house, mainly with summer volunteer work crews.

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