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PERSPECTIVE

How neighborhoods can fight nuisance properties

By Ryan Griffith

Every city has a fire damaged, abandoned, vacant or otherwise-blighted property within its borders. Severe nuisance properties surface for numerous reasons. These reasons can include property owners dying without heirs, zombie foreclosures (see "Zombie foreclosure: What is it and how can it be fixed," Daily Journal (April 29, 2020)), drug houses with substantial criminal activity, or myriad other issues. Dealing with severe nuisance properties presents unique challenges for cities, because typical code enforcement efforts of notifying and fining owners are ineffective. For example, if the owner is deceased, no amount of city fines, phone calls, or written notices can make the owner fix the problem.

This leaves the city wondering how to fix the severe nuisance property. These nuisance properties become a major issue because while these properties are abandoned, squatters begin occupying them. Without running water toilets do not flush. Debris is also thrown everywhere, windows are broken, drugs are used, untrained dogs roam loose, and so on. Police can be and are called. However, police officers arresting for trespass is a rarity, and prosecutions for trespass are even scarcer. Furthermore, squatters regularly draft fake leases claiming to be tenants, which patrol officers cannot question.

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Neighbors next to these properties are kept up all hours of the night, have their cars broken into, their lawns urinated on, are attacked by dogs, see drug needles on their sidewalks, and encounter a host of other nuisance issues. These property issues happen in wealthy, middle class, as well as poor areas and leave neighborhoods desperate for solutions. In the city of Vallejo, for example, frustrated neighbors became so irate they took over a Vallejo City Council meeting demanding action.

Fortunately, there is a legal solution to this challenging problem known as a receivership that can solve problems such as the one Vallejo faced. Receiverships are an ancient remedy dating back to the 1300s when English Chancery courts would appoint knowledgeable, educated, receivers to take over castles in disarray. An example of receivership in the 1300s could involve a king dying without an heir. Figuring out a successor would be a challenge, but temporary control would be crucial to keeping the castle under control. Therefore, a receiver would take temporary control until a new king was named.

When it comes to blighted properties, California has a brilliant statutory scheme to assist cities with the nuisance properties, known as Health and Safety Receivership, codified at California Health and Safety Code Sections17980.6 and 17980.7. *See* "How cities can fix dangerous properties and increase revenue," Daily Journal (April 1, 2020). These laws impose statutory notice requirements that ensure due process is satisfied by providing owners an opportunity to address the nuisance themselves, before the drastic remedy of a receiver is utilized. *City of Santa Monica v. Gonzalez*, 43 Cal. 4th 905, 920 (2008). Health and Safety Receivership is an excellent remedy that numerous cities and counties throughout California have implemented. *See* "Receivership: Fix problem properties at no cost," California Association of Code Enforcement Officers (Oct. 1, 2020). However, cities and counties, like other government agencies, are overworked, understaffed and underfunded. Therefore, what happens if your neighborhood is terrorized by a severe nuisance property that your city cannot deal with?

In a Bay Area neighborhood, a severe nuisance property problem arose and a receivership was necessary. The owner of the property had an issue with his estate, which led to the property severely deteriorating. The neighbors had to hire exterminators and debris haulers to address the pests and debris that were emerging from the property. The city health department cited the property for rodent infestation, noxious insect harborage, and overgrown vegetation. The department supported the neighbors doing the legal work to appoint a receiver, but the city did not want to pursue receivership litigation itself.

The owner and the neighborhood then sought a nuisance order pursuant to California Civil Code Sections

3479-3481 and several municipal codes. The superior court determined the property was a nuisance and then appointed Gerard F. Keena from Bay Area Receivership Group. Gerard Keena was appointed over the nuisance property pursuant to California Code of Civil Procedure Section 564(b)(3) (4) & (9). These statutes allow a receiver to be appointed to enforce a judgment, which can be used to enforce abatement proceedings. *City and County of San Francisco v. Daley*, 16 Cal. App. 734, 743 (1993).

There have been questions in the receivership world, whether or not a private citizen would have standing to bring a receivership action to abate a nuisance. HSC Section 17980.6 provides standing to an "enforcement agency" to bring a receivership action, but an "enforcement agency" has not been specifically defined. Instead, courts simply acknowledge that the purpose of Section 17980.6 is to allow enforcement agencies to protect the health and safety of residents, but who has standing to enforce under Section 17980.6 remains hazy. *County of Sonoma v. Quail*, 56 Cal. App. 5th 657, 677 (2020). However, a neighborhood used California's nuisance statutes and civil procedure rules to carry a nuisance judgment into a receivership abatement that resolved the nuisance issues in their neighborhood.

At this time, the property remains under receivership. The occupants have been removed and the property is being rehabilitated. This appears to be one of the first cases where a neighbor utilized nuisance law to appoint a receiver to abate a nuisance. It is not uncommon for neighbors to obtain nuisance money judgments, but money judgments are ineffective at abating nuisance conditions. The nuisance conditions are what terrorize neighborhoods and receiverships are how to end these property ownership nightmares. This is because a court-appointed receiver is allowed to take complete control of the property. The receiver can then sell the property to a responsible owner or even demolish the property. *City of Santa Monica v. Gonzalez*, 43 Cal. 4th 905, 918 (2008). This case was a great example of a neighborhood banding together to protect themselves from nuisance conditions and using the judicial system effectively. ■

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