



## LEAGUE OF CALIFORNIA CITIES CITY ATTORNEYS CONFERENCE – MAY 2021

### HEALTH AND SAFETY RECEIVERSHIPS: THE COST NEUTRAL WAY TO ABATE DIFFICULT NUISANCE PROPERTIES



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## AGENDA

### THE PROBLEM

- Nuisance Properties
- Some Solutions for Nuisance Properties
- Receivership: the Ultimate Solution

### THE RECEIVERSHIP PROCESS

- Overview of the Receivership Process
- What is the Average timeline for a property?
- What are the cost to the city to implement?
- What are the risks?

### QUESTIONS AND DISCUSSION

- New Questions?

### WHAT'S THE NEXT STEP?



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## WHAT RECEIVERSHIP PROPERTIES TYPICALLY LOOK LIKE



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## WAYS TO DEAL WITH DIFFICULT NUISANCE PROPERTIES

- **Fines and Citations** – Usually effective, but when it is not, what can you do?
- **Vacant Property Ordinances** – Often overbroad and only results in fines.
- **Eminent Domain**- Complicated and once property controlled very difficult for city to manage (see *Kelo v. City of New London* (2005) 545 U.S. 469, 473) – Still a vacant lot.
- **City Funded Demolition** – Very expensive, difficult to recover costs, and ultimately left with a vacant lot.
- **Receivership** - Allows a neutral court agent to take control and address the issues with court supervision at no cost to the city. The City is authorized to recover its attorneys' fees and enforcement costs pursuant to California Health and Safety Code 17980.7(c)(11) and (d)(1); *City and County of San Francisco v. Jen* (2005) 135 Cal. App.4th 305, 311-312.

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## A BRIEF HISTORY OF RECEIVERSHIPS

- Receivership comes from old English Chancery Courts and was used to bring properties into compliance; in Europe it is not uncommon to find castles that ended up in receivership.
- Oldest cited source of receivership is 1371 A.D. ancient petition of the chancery and the exchequer.
- Receivership is now used to bring various things that are out-of-control into compliance i.e., prison receivers; bankruptcy receivers; corporate receivers, and health and safety receivers.
- Health and Safety receivership was codified as HSC 17980.6 & 17980.7 by the California legislature in 1988, and the first case specifically involving 17980.7 was in 1993, but it was only as a footnote. However, in the 1995 case *Jen* allowed cities to recover its attorney's fees and enforcement costs for receivership actions.



## A BRIEF HISTORY OF RECEIVERSHIPS

- After *Jen* more cities began using receivership, and in *City of Santa Monica v. Gonzalez* (2008) 43 Cal. 4th 905, a HSC 17980.7 receivership reached the California Supreme Court, which broadened the Receiver's powers.
- In 2012 the California legislature enacted California Health and Safety Code section 17980.7(c)(15), which made it easier for Receivers to recover their fees.
- In *City of Riverside v. Horspool* (2014) 223 Cal. App. 4th 670 Court grants Receiver right to overcome automatic stay in bankruptcy.
- In *City of Sierra Madre v. SunTrust Mortgage, Inc.*, (2019) 32 Cal. App. 5th 648 Court grants Receiver super-priority lien status.



## HOW IT WORKS

Receivership allows cities to petition a court to appoint a Receiver to take control of nuisance properties and use equity from dangerous properties to repair them. Most cases result in equity being taken from mortgage holder banks, but it can also come from the owner.



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## How Receivership Benefits the City

- Abatement of a longstanding dangerous and blighted property which was a drain on municipal resources.
- Likely a new owner who will make productive use of the property.
- City will likely recover its costs, including attorneys' fees and enforcement officer's time.
- Increased property taxes for the City once the property is sold.

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## **COMMON PROBLEMS RECEIVERSHIP RESOLVES**

- A) Deceased Owner Issues
- B) Zombie Foreclosure Issues
- C) Owners in Bankruptcy
- D) Hoarder Issues/Owner Mental Health Issues
- E) Abandoned Properties
- F) Slumlords/Crime Issues

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## **DOCUMENTS USED TO APPOINT RECEIVER**

- 1) Courtesy or Correction Notices from Code Enforcement
- 2) Administrative Citations from Code Enforcement
- 3) Inspection Warrant
- 4) HSC § 17980.6 Notice
- 5) HSC § 17980.7 3-Day Notice
- 6) Petition, Which Includes Exhibits
- 7) SUM-145 Special Summons HSC § 17990.
- 8) Declaration of Code Enforcement Officer. Fire; Police; Building are Good as Well, But Not Necessary.
- 9) Declaration of Attorney
- 10) Memorandum of Points & Authorities for Court
- 11) Proposed Order.

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## STEPS BEFORE RECEIVERSHIP

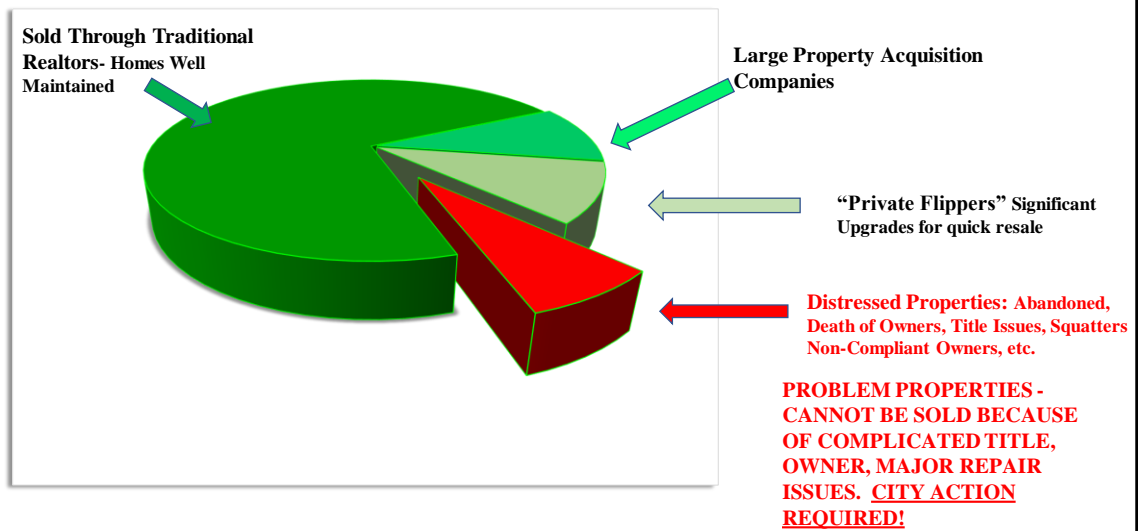
- Receivership is an extreme remedy and should not be the first option.
- Before a Receiver can be appointed you must show the Judge that the property substantially endangers public health and safety, and the owner had reasonable time to fix the nuisance.

Therefore, the City should do the following before seeking a receiver:

- A) Obtain a litigation guarantee/title report to identify all recorded interests.
- B) Send a courtesy notice to owners and all recorded interests
- C) Issue administrative citations
- D) Obtain an inspection warrant
- E) If those do not result in voluntary compliance, then receivership may be the answer



## The Problem Only the City Can Solve





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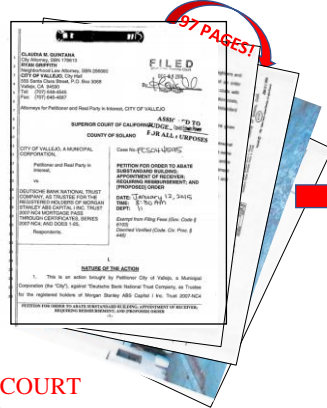
# Case Study: Vallejo

Neighborhood Problem Start Date

Start of Case Sept 11, 2013

End of Case Jan 12, 2015

Unknown



CITY ATTORNEY/COURT FINAL DOCUMENTATION 97 PAGES



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## Receiverships HSC § 17980.7



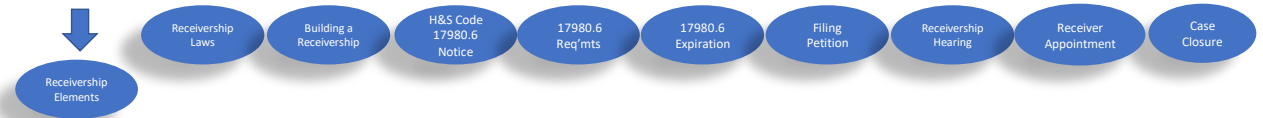
### In a Nutshell

- Elements of a health and safety receivership.
- Applicable laws for health and safety receivership.
- Building the receivership case: necessary documents.
- HSC § 17980.6 notice.
- Requirements of the HSC § 17980.6 Notice.
- What happens when the reasonable time in the HSC § 17980.6 Notice expires.
- Filing of the Petition.
- What happens at the receivership hearing.
- What happens when the receiver is appointed.
- Closing the case.



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## Elements of a Health and Safety Receivership



- Property substantially endangers public health and safety.
- The owner has had a “reasonable” time to abate the property.
- The Receiver is qualified to abate the property.

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## Applicable Receivership Laws



- HSC § 17920.3 (Laundry List of Violations)
- HSC § 17980.6 (First Receivership Notice)
- HSC § 17980.7 (Receivership Laws)
- CCP § 564 *et seq.* (General Receivership Statute)
- CCP § 568.5 (Power to Sell Property)
- HSC § 17980.7 (c)(11) and (d)(1) (City Cost Recovery)

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## Building The Receivership Case



Code Enforcement must prove the property is a “substantial endangerment to health and safety & the owner had a “reasonable” time to abate all conditions.

- Send a courtesy abatement notice to owner and all parties with a recorded interest, get a litigation guarantee to identify all recorded interests..
- If not corrected, send NOV to all parties with a recorded interest.
- Obtain an inspection & abatement warrant (Cal. Civ. Procedure 1822.50).
- When executing Inspection Warrant identify all code violations.
- Take pictures throughout the whole process.
- Once all the violations are identified create a HSC § 17980.6 Notice.
- Post and mail the HSC § 17980.6 Notice to each affected residential unit.

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## Health and Safety Code § 17980.6 Notice



- The HSC § 17980.6 Notice is the **first** official step to appointing a Receiver pursuant to HSC § 17980.7.
- It is imperative to identify each violation of the City’s Municipal Code, California State Building Code, and the HSC in the 17980.6 Notice.
- This is because an owner or recorded interest can say once the violations in the HSC 17980.6 Notice are completed that the receivership should end.

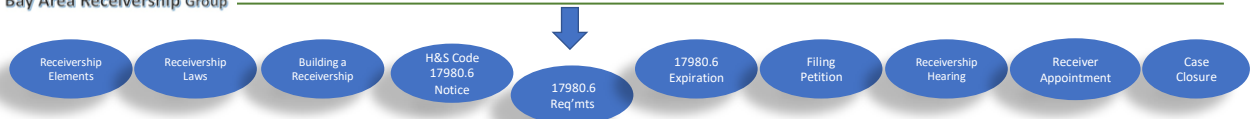
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## Requirements of the HSC § 17980.6 Notice



- Every identifiable violation.
- The HSC § 17980.6 Notice must also provide a “reasonable” time for the owner to abate the substandard conditions.
- What is a reasonable time? There is no specific answer, but seven to thirty days is the usual time that is used.
- The HSC § 17980.6 Notice must be posted on each affected residential unit, as well as mailed to each affected residential unit.
- Send a 17980.6 Notice to any party with a recorded interest.
- Substantial compliance with 17980.6 Notice is sufficient. (*City of Santa Monica v. Gonzalez* (2008) 43 Cal. 4<sup>th</sup> 905.)

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## What Happens When the 17980.6 Notice Expires?



- Once the “reasonable” time provided in the HSC § 17980.6 Notice expires, Code Enforcement should notify the City Attorney.
- The City must issue a 3-day Notice of Hearing on all parties with a recorded interest before filing a petition with the court.
- After 3-day Notice the City Attorney’s Office must then draft a Receivership Petition.
- The Petition should include all Code notices and enforcement actions, as well as the HSC § 17980.6 Notice and HSC § 17980.7 Notice of Hearing.
- The City Attorney will draft a declaration for the Code Enforcement Officer to explain the previous abatement efforts and dangers of the property.

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## Serving the Section HSC § 17980.7 Notice

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- Prior to October 8, 2019, and the passage of AB 957, the City had to personally serve a 3-day HSC § Notice of Hearing on all parties with a recorded interest before filing a Petition.
- However, with the passage of AB 957, the 3-day Notice only needs to be posted on the property and mailed, but there would be no harm in personally serving the 3-Day Notice (except potential delay).

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## Filing The Receivership Petition With County Court

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- The Petition will include all notices that Code Enforcement sent to the owner and recorded interests, if an inspection warrant was obtained that can be attached, a memorandum of points and authorities, and the HSC § 17980.6 Notice to show the specific violations and that a reasonable time was granted.
- There is a special summons, SUM-145, for receivership cases, that allows a default to be entered in 10 days instead of the usual 30 days. However, not all Courts permit defaults on petitions.

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## What Happens At the Receivership Hearing?



- The Judge will review the Petition and moving papers.
- The Judge will need to consider if the documentation provided by Code Enforcement shows the property substantially endangers public health and safety.
- The Judge will also consider whether the owner and recorded interests were provided a reasonable time to abate the dangerous conditions.
- Appellate courts have held that a Noticed Motion with Declarations is the proper way to appoint a Receiver, and live testimony is not necessary. (*City of Crescent City v. Reddy* (2017) 9 Cal. App. 5th 458.)
- It is also possible that the owner or a party with a recorded interest will oppose the Petition, which is why it is key to have all your documents in order.

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## What Happens When the Receiver is Appointed?



- If everything goes smoothly at the Receivership hearing, the Receiver will be appointed to take control of the property.
- The Receiver will then file an oath, bond, and inventory with the court.
- Receiver obtains funding to abate conditions in the HSC §17980.6 Notice.
- The Receiver submits monthly reports to the court, as well as all parties including the City explaining what is happening with the abatement.

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## What Happens When the Receiver is Appointed?



- Once the dangerous conditions are abated, or the property is sold to a responsible owner, the Receiver will seek a discharge from the court.
- The City can seek to recover attorney's fees, and enforcement costs pursuant to H & S 17980.7(c)(11) and (d)(1) or sooner by submitting a payment to the demand to the Receiver if Court approves.

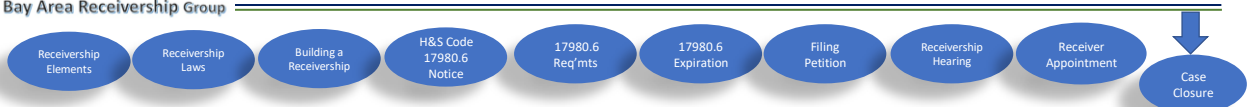
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## Wrapping Up the Case



- Once City Attorney recovers its attorney fees and costs, Receivers take the proceeds from the sale of the property to pay the Receiver fees as well as the City's fees.
- Once the Receiver and the City are paid, any remaining funds are distributed to the parties with a recorded interest in the property.
- The City can request that the case remain open for eighteen months pursuant to HSC § 17980.7(c)(10).
- In almost every case the City pays nothing and may make money through the Receivership process. *County of Sonoma v. Quail* (2020) 56 Cal. App. 5th 657, 688 raises issues for City's ability to collect money ahead of others.

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## COST RECOVERY & SUPER PRIORITY



- A final step in the Receivership is making sure everyone gets paid from the sale of the property.
- The Receiver is entitled to super-priority of their fees.
- The city is entitled to its attorney fees and costs, and typically these costs are granted super-priority over other recorded interests. Split of authority from *County of Sonoma v. Quail* (2020) 56 Cal. App. 5th 657, 688.
- Often banks and owners' interests are superseded by the Receivership process, and that can result in litigation, but in 2019 an appellate court confirmed super-priority for Receivers, *City of Sierra Madre v. SunTrust Mortgage, Inc.* (2019) 32 Cal. App. 5th 648, 661.

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## City Cost Recovery

- Receivers and Cities are paid through the sale of the nuisance property.
- What happens if there is not enough equity in the home to pay all lienholders?
- Receiver can ask for liens to be stripped to provide clear title. (*County of Sonoma v. Quail* (2020) 56 Cal. App. 5th 657, 686.)
- In lien stripping receiver is entitled to payment ahead of all others with super-priority lien. (*County of Sonoma v. Quail* at pg. 664.)
- Split of authority regarding whether City is entitled to same priority as Receiver. (*Hozz v. Varga* (1958) 166 Cal. App. 2d 539, 543; see also *Winslow v. Harold Ferguson* (1944) 25 Cal. 2d 274, 284-85; compare and *County of Sonoma v. Quail*.) Banks, judgment creditors and other interest holders that recorded liens before the receiver do not get paid first. Instead, the Receiver's super-priority lien supersedes the concept of first in time first in right (except tax liens).

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## DOES RECEIVERSHIP CONSTITUTE A TAKING?

- No! The U.S. Supreme Court has held Cities do not have to pay to enforce their nuisance laws. *Keystone Bituminous Coal Ass'n v. DeBenedictis*, (1987) 480 U.S. 470, 497.
- Also, an owner of a nuisance property is not losing the economic value of their property if the nuisance on their property is being abated. *Hotel & Motel Ass'n of Oakland v. City of Oakland* (9<sup>th</sup> Cir. 2003) 344 F. 3d 959, 965.

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## Successful Receiverships



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## Successful Receiverships



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## Contact Information

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