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## Forging Opportunity Through the Housing Crisis

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**“So much can be done for our families, our neighborhoods, and our communities in the fields of affordable housing and mortgage law. Now is the time to set the basic parameters for the future.”**

“Housing and mortgage markets lie at the convergence of how and where we live as individuals and families, of the stability of our neighborhoods, and of the viability of our local government communities,” says Frank S. Alexander, renowned expert on affordable housing and community development. “The Great Recession exacerbated the proliferation of homelessness and of vacant, substandard housing.

“We are in the midst of the greatest upheaval in these markets in our lifetimes. This presents not just challenges but opportunities to envision the future anew,” Alexander says. “So much can be done for our families, our neighborhoods, and our communities in the fields of affordable housing and mortgage law. There is so much room for creativity and clarity, and now is the time to set the basic parameters for the future.”

To this end, Alexander’s research focuses on determining how the housing and mortgage markets reached their current status, and his practice focuses on assisting local and national governments with the development of laws and practices that will lead to new perspectives on home ownership, create stability in the market, and perhaps prevent a repeat of today’s housing situation.

“What this country is seeing is the downside of unconstrained experimentation and creativity with mortgages over the last 10 to 15 years,” he says. “The parameters that we’re beginning to embrace are an acknowledgment of our own ignorance and the fact that just because we can do something doesn’t mean we should. This is manifest already in that we are seeing a return to much tighter mortgage underwriting.”

## Excerpt: "Neighborhood Stabilization Strategies for Vacant and Abandoned Properties"

### Introduction

The housing and economic crises of the past five years have had deep and far-reaching consequences for America's communities. Consequently, municipalities across the country face a growing incidence of vacant and abandoned properties. There is extensive debate on what drives a community's "life-cycle," from periods of decline and deterioration to their renaissance and rejuvenation. However, a much greater consensus exists as to the harms vacant and abandoned properties inflict. As potential fire hazards and sites for drug trafficking, vacant and abandoned properties signal to society that a neighborhood is on the decline, undermining the sense of community and discouraging any further investments. These disinvestments often spread across neighborhoods and affect the overall health of a municipality.

Throughout most of the United States, residential mortgage foreclosures have risen to levels not experienced in 75 years, while some communities simultaneously experienced declines in property values of 25 percent or more. With an overwhelming concentration of foreclosures in particular neighborhoods, the number of vacant and abandoned properties has reached record levels as well. But perhaps nothing better underscores the real estate market's inability to function efficiently than the governmental restructuring of the two largest guarantors of residential mortgages, Fannie Mae and Freddie Mac, and the largest insurance company, AIG.

Together, the ongoing national mortgage crisis and the steady economic decline of older, industrial areas have created increasing numbers of vacant and abandoned properties that are placing ever greater stress on communities across the country. The sudden collapse of the mortgage markets and the drastic increase in foreclosure rates may be most intense in Southern and Southwestern regions, while the gradual economic decline and property abandonment may be more characteristic of the "Legacy" cities in the Northeastern and Midwestern parts of the country. Despite their differences, the neighborhoods, schools, and local governments of all metropolitan areas bear the costs induced by these large inventories of foreclosed, vacant, and abandoned properties.

Further complicating recovery, most local governments lack efficient and effective tools for halting and reversing such a serious consequence. First, this article describes the problems associated with vacant, abandoned, and foreclosed properties facing many communities across the country. Second, this article outlines various legal strategies and tools that communities can utilize to help return these inventories to productive use. Ultimately,

the concepts discussed in this article can help communities turn vacant spaces into vibrant places.

### Understanding the Problem

Our country's communities face a growing inventory of vacant, abandoned, tax-delinquent, and foreclosed properties. These properties create problems and impose costs on both the municipality and its residents, such as higher annual maintenance costs, reduced property values, and increased property tax delinquencies resulting in declining revenue for local governments.

While both pose significant problems, vacancy and abandonment are not synonymous. Vacancy can be defined as property that is unoccupied. It is more common in commercial areas, and oftentimes a property is vacant simply because a property owner is holding on to it as a long-term investment. Abandonment, on the other hand, is a far stronger concept. An abandoned property suggests that the owner has ceased to invest any resources in the property, is foregoing all routine maintenance, and is making no further payments on related financial obligations such as mortgages or property taxes. Though abandoned by the owner, tenants may still occupy the property, or squatters may live there without permission.

Those properties that are vacant and abandoned are often tax-delinquent as well. In fact, property tax delinquency is the most significant common denominator among vacant and abandoned properties. In addition to negatively affecting the health of a neighborhood, an increase in tax-delinquent properties typically leads to a reduction in a local government's revenue. While some property owners may fail to pay property taxes due to a lack of financial resources, others choose to "milk" the equity from the property and then abandon it. The lengthy periods of time required by antiquated property tax foreclosure systems only encourage a property owner's decision to neglect further investments. In the vast majority of cases, a continuous failure to pay property taxes signals the intent of the owner to abandon the property.

Properties in mortgage foreclosure present yet another challenge to communities, providing an additional reason to leave a property vacant or abandoned. When a property is in foreclosure, the party responsible for maintaining it is often unknown, unaware, or unwilling to expend the time or effort to do so. Frequently, the culprit is not the homeowner, but the lender who becomes the owner through a foreclosure. Consequently, with the drastic rise of foreclosures, the correlation between a community's *(continued on following page)*

rate of foreclosure and its inventory of vacant or abandoned properties has increased as well. Mortgage foreclosures alone, independent of subsequent abandonment, have been found to reduce property values within one-eighth of a mile of the foreclosure by 0.9 percent in value. Multiple foreclosures had even greater cumulative adverse effects.

Municipalities often struggle with how to respond to the rise of vacant and abandoned properties, dwindling property tax revenues, and foreclosures forcing families out of their homes. In general, the legal and political cultures in America are not well equipped to deal with vacant, abandoned, and substandard properties. Even with the advent of zoning and building codes during the past 80 years, it is not a singular solution. The regulatory framework has two dominant characteristics. First, it is overwhelmingly prospective and anticipatory in nature. Second, it is largely locally driven with wide divergence among and within the states in both form and in substance. Consequently, communities are left without a mechanism for addressing these problems.

Thus far, legal and political cultures have been strikingly unwilling to acknowledge, much less address, the impact of vacant, abandoned, and substandard properties. In most jurisdictions, practitioners and politicians alike accept the proposition that advance planning and minimum standards benefit both individuals and the community. However, they have been incredibly reluctant to acknowledge the damages and dangers caused by the functional abandonment of real property.

While some argue that this is consistent with a general aversion to collective control over property usage, a more pernicious premise of the human condition seems to drive much of this attitude. American culture, at least thus far, views real property as a disposable asset—a consumable item. It is only valued as long as it is “useful,” and then it is disposed of. The catch, of course, is that land is not a disposable item. It is not something to be consumed and then discarded. Land, by definition, is a fixed commodity, permanently existing in a community and possessing an inherent relationship with its surroundings. Vacant, abandoned, and substandard properties impose costs on neighbors, on communities, on local governments, and on society.

A reformation of the cultural false premise that land is a disposable item cannot be accomplished by the legal system alone. However, reforms in the legal

and regulatory systems can add legal significance to the meaning of being a responsible property owner by eliminating the incentives that encourage abandonment and creating disincentives for abandoning property. The next section describes the legal tools that a municipality can utilize in its strategy addressing vacant, abandoned, tax-delinquent, and foreclosed properties.

### Legal Strategies and Tools

In any community where there is a significant amount of vacant and abandoned inventory, the initial task is to evaluate the properties and identify the dominant characteristics of that inventory. In some jurisdictions, the dominant characteristic of abandoned property is the prevalence of multiple years of tax delinquency. In others, it is the absence of housing and building codes or general nuisance abatement ordinances, and in those communities with adequate ordinances, it may be the lack of a strong enforcement mechanism. In yet other communities, the dominant characteristic may be the nature of the mortgage foreclosure process with incentives for inaction rather than property preservation.

General economic decline within a community—with accompanying joblessness, population loss, and disinvestment—may well explain a rise in vacant and abandoned property inventories. It rarely, however, serves as an adequate justification for legal systems that encourage abandonment, and it never justifies having high rates of abandonment in concentrated neighborhoods in an otherwise stable community.

Regardless of differences between inventories, all legal strategies dealing with vacant, abandoned and substandard properties have three key features. The first is the ability to identify at all times the legal owner(s) of the property. The second is to impose legal liability for the financial costs of abandonment. The third is to be able to force a transfer of ownership and control if the problems are not resolved. With these common features in mind, the following subsections highlight multiple areas for legal reform. These areas include: property tax foreclosure; code enforcement; receivership actions; vacant property registration; and land banks and land banking.

—from *Neighborhood Stabilization Strategies for Vacant and Abandoned Properties, Zoning & Planning Law Report* (September 2011) (with Leslie A. Powell)

Alexander is a national expert in land banks and land banking, a concept implemented in the '80s and '90s to address abandoned property, primarily in industrial cities experiencing population declines or in the unusual situation presented

by post-Katrina New Orleans. Land banks also were developed to address the specific problem created when taxes on a property exceed the market value.

“The properties were locked into a legal limbo,”

Alexander says. "The government couldn't sell because the minimum bid is taxes, and if taxes exceed the market value, no one buys. We created land banks and started working with them across the country, but the recession and the foreclosure volumes dramatically increased the inventories of vacant and substandard properties. The role of land banks has increased exponentially in light of the mortgage crisis."

There is an immense range of community development tools that can strengthen families and neighborhoods, Alexander says. However, the first step in repairing our communities is to realize the importance, not just to the family, but to the neighborhood, of keeping property occupied.

He says that mortgage banks are beginning to acknowledge they will lose when the mortgage exceeds the value and everyone might be better off if the homeowner is kept in the property.

"The new approach is to realize that all participants bear responsibility for what happens in a neighborhood. It is not enough for a bank to make a loan and think that it can then foreclose and that is the end of the story. Foreclosures will devastate a neighborhood as quickly as a vacancy."

There have been exciting developments in land banking and in Vacant Property Registration ordinances, he says. VPRS are local ordinances requiring a homeowner or mortgage company to notify the city or county when a property becomes vacant, identify the party with control, and allow the property to be inspected. Any code violations discovered must be repaired immediately.

"A VPR is an early warning system about deterioration," Alexander says. "We are learning from the current crisis that we failed to have an early warning system in place so a lot of folks engaged in a lot of crazy things and then blamed the other person, whether it is the bank blaming the borrower or the borrower blaming the bank."

VPRS also form part of the new approach to neighborhood stabilization recommended by Alexander. He says other new approaches include rational mortgage underwriting, the existence of a land bank or land banking program to receive unwanted properties and the enforcement of strong housing and building codes.

"It is necessary that we turn our heads away from thinking of land as litter that we can walk away from," Alexander says. "Instead, we must view land as not just the space but a place for people with the concept of stewardship."

Alexander testified before congressional subcommittees on the Housing and Economic

Recovery Act of 2008 and in 2009 on strategies to address the foreclosure crisis. He frequently speaks before city and state legislatures and assists them with drafting legislation and with analyzing problems concerning land banks or mortgage issues.

His article in *Land Use Planning by Design and by Disaster* highlights New Orleans, where, prior to Katrina, he had been consulting on ways to deal with the growing inventory of vacant, substandard structures. "Then Katrina hit in August 2005, and the problem grew exponentially," Alexander says. "In this article, I said Louisiana was hit really by two storms: the string of 2005 hurricanes named Katrina, Rita, and Wilma; and then the state's reaction to the U.S. Supreme Court's decision in *Kelo v. City of New London* concerning eminent domain."

Because of *Kelo*, Alexander says, Louisiana adopted constitutional amendments that made it virtually impossible for New Orleans to address the historic blight and the Katrina blight.

"In the past two years New Orleans has undertaken tough political decisions and dramatic systems reform and moved forward in stabilizing neighborhoods—more progress than in all of the last 20 years combined," he says. "That's one of the many things that makes this so exciting and fun—to see a community that is faced with overwhelming devastation and yet finds a way to pick up the pieces and say 'We can do it better; we can do it right.'"

## SELECTED PUBLICATIONS

### Books

*Georgia Real Estate Finance & Foreclosure Law* 2011–2012 ed. (Thomson-West, 2011)

*Land Banks and Land Banking* (Center for Community Progress, 2011)

*Property and Christian Theology in Christianity and Law: An Introduction* (Cambridge University Press, 2008) (Frank S. Alexander and John Witte Jr. eds.)

### Articles

Legislative Responses to the Foreclosure Crisis in Nonjudicial States, *Boston University Review of Banking & Financial Law* (2011) (with Dan Immergluck, Katie Balthrop, Philip Schaeffing, and Jesse Clark)

Neighborhood Stabilization Strategies for Vacant and Abandoned Properties, *Zoning & Planning Law Report* (September 2011) (with Leslie A. Powell)

Neighborhood Stabilization & Land Banking, 20 *Communities & Banking* 3, Federal Reserve Bank of Boston (Summer 2009)