

REHABILITATING NEW JERSEY'S ABANDONED PROPERTY LEGISLATION

Samantha N. Palma
*Jason M. Santarcangelo, Esq.**

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* Samantha N. Palma is a J.D. Candidate of Seton Hall University School of Law Class of 2017. Jason M. Santarcangelo, Esq. is a licensed attorney and received his J.D. from Seton Hall University School of Law in 2005.

I. INTRODUCTION

Abandoned properties contribute to the blight of communities across the country, negatively affect property values, strain municipal resources, and create an atmosphere of hopelessness. The problem of vacant and abandoned properties is not self-healing, for it is unlikely that the housing market, acting alone, will operate to remedy these problem properties.¹ The New Jersey Legislature has acknowledged the burden vacant and abandoned properties pose to municipalities.² Section II of this Note highlights the burdens abandoned properties pose to the community. Section III of this Note directly addresses vacant and abandoned properties in New Jersey and reviews the State's Abandoned Properties Rehabilitation Act ("APRA"). Section IV is written by Jason M. Santarcangelo, Esq. who serves as special town counsel to the Township of Montclair and is a practitioner in the field of vacant and abandoned properties. Mr. Santarcangelo explains the difficulties municipalities face when attempting to take action under APRA to rehabilitate abandoned properties. Section V of this Note provides suggested amendments to APRA that would serve to clarify the notice requirements, provide for private receivership actions, and permit municipalities to rehabilitate abandoned non-residential properties. These amendments would facilitate the elimination of blight by incentivizing the rehabilitation of abandoned properties.

II. BLIGHT AND THE PROBLEM OF ABANDONED PROPERTIES

A blighted area is defined as a district which is not what it should be.³ The term "blight" describes the dilapidation process, or condition, of neighborhoods that have fallen below the standards of the community. A blighted community is frequently plagued with decrepit, vacant, and abandoned properties. The withering structures are detrimental to the safety, health, and morale of residents.⁴

The Great Recession and housing market crash of the mid 2000s brought a dramatic increase in the number of vacant and abandoned properties.⁵ During the Recession, foreclosure rates increased and

¹ Lavea Brachman, *Vacant and Abandoned Property: Remedies for Acquisition and Redevelopment*, LAND LINES NEWSLETTER OF THE LINCOLN INST. OF LAND POL'Y, Oct. 2005, <http://www.lincolninst.edu/publications/articles/vacant-abandoned-property>.

² See generally, Abandoned Properties Rehabilitation Act, N.J. STAT. ANN. § 55:19-79 (2017).

³ Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and The Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305, 306 (2004).

⁴ *Id.* at 310.

⁵ See generally, Hye-Sung Han, Dissertation, *A Longitudinal Analysis of the Linear and*

economic conditions worsened, forcing people to walk away from properties that were of marginal value.⁶ These properties were often left vacant and abandoned as a result of the previous owner's inability to survive tough economic times.⁷ In turn, the abandoned properties jeopardized the entire neighborhood's ability to survive.

An abandoned property is an epicenter emitting ripples of negative effects throughout the neighborhood. The closer surrounding properties are to the epicenter, the greater the negative effects are felt. The longer the property remains abandoned, the further the ripples of blight radiate into the community.⁸ The existence of abandoned properties diminishes the property values of neighboring properties.⁹ For example, "a Philadelphia study found that the presence of one abandoned property on a block reduced the value of the other properties on the block by nearly \$6,500."¹⁰ Furthermore, vacant and abandoned properties create a risk of property damage to neighboring properties because the vacant and abandoned properties are targets for arson, vandalism, and the presence of criminal activity.¹¹

It has been proven that abandoned properties bring an increase of crime to the community as they offer a haven for prostitution, drug trafficking, and other criminal activities.¹² A study in Austin, Texas found that thirty-four to forty-one percent of abandoned properties were being used for illegal activities.¹³ Another study in Pittsburgh, Pennsylvania revealed that vacant and abandoned properties led to a fifteen percent increase in violent crimes.¹⁴ High crime rates make neighborhoods undesirable to current residents and new homebuyers, which perpetuates blight because no one steps in to rehabilitate the problem vacant and abandoned properties. Furthermore, high crime rates inevitably increase the burden on municipalities to provide a police presence in order to combat the criminal activities.

Nonlinear Impacts of Housing Abandonment on Neighborhood Property Values, UNIV. OF N.C. AT CHAPEL HILL 26 (2013), <https://cdr.lib.unc.edu/indexablecontent/uuid:3296ba2a-147f-4d73-abda-ab65c1044986>.

⁶ *Id.* at 1.

⁷ *Id.*

⁸ *Id.* at 66.

⁹ N.J. STAT. ANN. § 55:19-79(b).

¹⁰ Allan Mallach, *Abandoned Property: Effective Strategies to Reclaim Community Assets*, 6 HOUSING FACTS & FINDINGS 6 (2004).

¹¹ N.J. STAT. ANN. § 55:19-79(b).

¹² Allan Mallach, *Restoring Problem Properties: A Guide to New Jersey's Abandoned Property Tools*, HOUSING AND Cmty. DEVELOPMENT NETWORK OF N.J. 4, 5 (2005).

¹³ Han, *supra* note 5, at 9.

¹⁴ Han, *supra* note 5, at 9.

Moreover, abandoned properties create a massive fiscal burden on municipalities as they incur the costs of preventing fire and public safety hazards. Further, “[t]he National Fire Protection Agency report[ed] that, in 1999, an estimated 11,400 structure fires in vacant properties caused 24 civilian deaths, 66 civilian injuries, and \$131.5 million in direct property damage.”¹⁵ The estimated “cost of police and fire services per block showed an annual increase of \$1,472 for each vacant property.”¹⁶ Municipalities also incur costs when they are forced to take action to secure abandoned properties to maintain public health standards. Depending on the number of abandoned properties in the municipality, the cost to board-up, clean-up, or demolish abandoned properties can amount to millions of dollars.¹⁷ The municipality is forced to bear in these direct costs in addition to being faced with lost tax revenue as the properties sit abandoned.¹⁸

III. VACANT AND ABANDONED PROPERTY IN NEW JERSEY

New Jersey is not immune to the plague of blighted vacant and abandoned properties. New Jersey “leads the nation in foreclosure rates” and with this leading status comes many vacant and abandoned properties.¹⁹ A sampling of the municipalities in the state reveals the extent of the problem: East Orange has identified 582 abandoned properties; Jersey City has at least 1,400 vacant properties; Camden has acknowledged 3,417 abandoned properties; Montclair has about 80 vacant properties; Washington Township has approximately 175 abandoned properties.²⁰ Though distressed large cities experience abandonment in greater numbers, small towns, rural areas, and affluent communities all share this problem.²¹

¹⁵ Allan Mallach, *Abandoned Property*, *supra* note 10, at 6.

¹⁶ Han, *supra* note 5, at 11.

¹⁷ Allan Mallach, *Restoring Problem Properties*, *supra* note 12, at 5.

¹⁸ Han, *supra* note 5, at 11.

¹⁹ Joe Tyrell, *Initiatives to Acquire, Revive Abandoned Homes Are Making Progress in New Jersey*, NJ SPOTLIGHT (Mar. 17, 2015), <http://www.njspotlight.com/stories/15/03/17/initiatives-to-acquire-revive-abandoned-homes-are-making-progress-in-nj/>.

²⁰ *Id.*; Molly Shauger, *Montclair Looks For Help With Vacant Property Maintenance*, NEWJERSEY.COM (Jan. 17, 2017) <http://www.northjersey.com/story/news/essex/montclair/2017/01/17/montclair-looks-help-vacant-property-maintenance/96555296/>; Michelle Caffrey, *N.J. Law Would Levy Hefty Fines against Abandoned Homes, Absentee Creditors*, (Aug. 24, 2014), http://www.nj.com/gloucester-county/index.ssf/2014/08/abandoned_homes_absentee_creditors_face_hefty_fines_under_new_law.html.

²¹ Diane Sterner and Alan Mallach, *The Abandoned Properties Rehabilitation Act New Tools for the Fight Against Blight*, N.J. MUNICIPALITIES 68 (Mar. 2005).

It has been noted that “blight was the disease, slums were the result, and redevelopment was the cure.”²² The New Jersey State Legislature has diagnosed property abandonment as a problem that must be addressed locally.²³ As such, the State government has not taken a direct role in the rehabilitation of vacant and abandoned properties. Instead, the Legislature has viewed its role as to “provide local governments, local community organizations, citizens, and residents with the tools to address the problem.”²⁴ This approach has been largely ineffective. The State government’s inability to fully understand the difficulties local governments face when addressing vacant and abandoned properties has led the Legislature to provide tools that are inept to address the problem.

IV. ABANDONED PROPERTIES REHABILITATION ACT

This Section of the note analyzes New Jersey’s Abandoned Properties Rehabilitation Act which purports to enable municipalities to address vacant and abandoned properties. The inadequacies of the legislation will then be exposed in Section V by Jason M. Santarcangelo, Esq. who is a practitioner working to address the problem of vacant and abandoned properties and serves as special town counsel to the Township of Montclair.

On the cusp of the Great Recession, New Jersey enacted the Abandoned Properties Rehabilitation Act (“APRA”) which was intended as a tool for local governments to use in encouraging the rehabilitation of abandoned properties.²⁵ Ideally, under APRA a municipality can establish an abandoned property list and take action to rehabilitate the properties on the list. However, APRA’s many procedural and substantive deficiencies inhibit municipalities from being able to confidently establish a course of action leading to abandoned property rehabilitation.

APRA sets guidelines for a municipal public officer to use in determining whether a property is abandoned without providing any criteria for whom may be designated as a public officer.²⁶ To be classified as abandoned, a property must not have been legally occupied

²² Gordon, *supra* note 3, at 327.

²³ N.J. STAT. ANN. § 55:19-79(e).

²⁴ *Id.*

²⁵ The Great Recession refers to the sharp decline in economic activity which took place during the early 2000s and is considered the largest economic downturn since the Great Depression. INVESTOPEDIA, *The Great Recession*, (Apr. 1, 2016 at 9:15 A.M.), <http://www.investopedia.com/terms/g/great-recession.asp>.

²⁶ N.J. STAT. ANN. § 55:19-81.

for a period of at least six months.²⁷ Additionally, the property must meet at least one of the following criteria to be deemed abandoned, unless the property is of seasonal use then it must meet two of the additional criteria:²⁸

- A) the public officer determines the property is in need of rehabilitation and no rehabilitation efforts have taken place for six months;²⁹
- B) construction on the property was undertaken, but stopped before completion, leaving the building in a condition that is unsuitable for occupancy, and there has been no construction for at least six months;³⁰
- C) there is at least one delinquent instalment of property taxes.³¹ This criteria is not met if the tax lien has been sold to a third party which continues to pay current taxes or a foreclosure proceeding has been initiated; or³²
- D) the public officer has determined the property is a nuisance.

The public officer may determine the property is a nuisance if:

- 1) the property is unfit for human habitation, occupancy, or use;³³
- 2) the condition and vacancy of the property materially increase the risk of fire to the property and adjoining properties;³⁴
- 3) the property is subject to unauthorized entry leading to potential health and safety hazards and the owner has failed to secure the property, or the municipality has acted to secured the property;³⁵
- 4) vermin, debris, uncut vegetation, or deterioration of the structure and grounds create potential health and safety hazards and the owner has failed to take action to remedy said conditions;³⁶ or

²⁷ N.J. STAT. ANN. § 55:19-81(4).

²⁸ N.J. STAT. ANN. § 55:19-83(6)(a).

²⁹ N.J. STAT. ANN. § 55:19-81(4)(a).

³⁰ N.J. STAT. ANN. § 55:19-81(4)(b).

³¹ N.J. STAT. ANN. § 55:19-81(4)(c).

³² N.J. STAT. ANN. § 55:19-83(6)(a).

³³ N.J. STAT. ANN. § 55:19-82 (a).

³⁴ N.J. STAT. ANN. § 55:19-82 (b).

³⁵ N.J. STAT. ANN. § 55:19-82 (c).

³⁶ N.J. STAT. ANN. § 55:19-82 (d).

5) the dilapidated appearance or other condition of the property materially affects the welfare, including economic welfare, of the residents in close proximity to the property and the owner has failed to remedy the condition.³⁷

When determining whether a property is a nuisance, the public officer must serve the owner and lienholders with notice of the conditions that make the property a nuisance and provide a hearing.³⁸ At the hearing, the property can be officially declared a nuisance. It is only after this notice and hearing procedure that the nuisance classification may be used to determine a property is abandoned under APRA.

APRA has a notice and appeals process that must be followed in order to add a property to the abandoned list. Once a public officer makes a determination that a property is abandoned, he or she must publish the list in the official municipal newspaper.³⁹ APRA requires, within ten days of publication, the public officer send notice to the owner of record by certified mail return receipt required and regular mail. If the owner of record is unknown, and not able to be ascertained by the tax collector, notice is required to be posted on the property.⁴⁰ In addition to the owner of record, notice is required to be sent to any entity that receives a duplicate copy of the property's tax bill.⁴¹ Notice must also be put on record, having the same force and effect as a *lis pendens*, with the county clerk or register of mortgages and deeds for the county in which the property is located.⁴²

An owner or lienholder may challenge the property's inclusion on the abandoned property list.⁴³ When an owner or lienholder appeals the determination that the property is abandoned the public officer is required to hold an appeals hearing.⁴⁴ The only grounds by which an owner or lienholder may challenge the property's inclusion on the abandoned properties list is to present evidence that the property is not abandoned.⁴⁵ The public officer must issue a decision within ten days of the

³⁷ N.J. STAT. ANN. § 55:19-82 (e).

³⁸ N.J. STAT. ANN. § 40:28-2.5.

³⁹ N.J. STAT. ANN. § 55:19-55(d)(1).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*; *Lis pendens* is an action that involves real property. Notice of the action is filed with the recording agent who proscribes it on the title of the property. This is done to give the owner, and the public, notice of the action involving the property. LAW.COM, <http://dictionary.law.com/default.aspx?selected=1172> (search legal terms and definitions for *lis pendens*).

⁴³ N.J. STAT. ANN. § 55:19-55(e).

⁴⁴ *Id.*

⁴⁵ *Id.*

hearing.⁴⁶ The owner or lienholder may challenge an adverse appeal ruling by filing an action for summary proceeding in the Superior Court of the county where the property is located. The sole ground for appeal is that the property is not abandoned.⁴⁷

Once a municipality has placed a property on the Abandoned Properties List and the appeals process has expired, the municipality may take legal action to address the abandoned property.⁴⁸ There are three courses of action a municipality may take to facilitate the rehabilitation of properties on its Abandoned Property List: (1) hold a special tax sale, (2) take the property pursuant to eminent domain, or (3) file a summary action proceeding with the Superior Court to take possession of the property and complete the necessary rehabilitation.

In the summary action to take possession, APRA requires the municipality to inform the property owner and parties of interest of its intention to take possession of the property thirty days before the suit is filed with the court.⁴⁹ Once the complaint is filed, the owner and lienholders must be served notice according to New Jersey Court Rules.⁵⁰ The municipality is also required to file *a lis pendens* with the county recording officer within ten days of filing the complaint.⁵¹

At any point in this process the owner may submit a rehabilitation plan to the court in order to prevent the municipality from taking possession of the abandoned property.⁵² The rehabilitation plan must be accompanied by a bond equal to 125 percent of the projected cost of rehabilitation.⁵³ If the property owner does not exercise his or her rights by submitting a rehabilitation plan, mortgage holders and lienholders have the ability to exercise their rights to the property by submitting a rehabilitation plan.⁵⁴ This process is intended to ensure that those with secured rights in the property have the opportunity to take action before the municipal government assumes control of the rehabilitation process. Upon the failure of the owner or lienholders to effectuate the rehabilitation according to the court approved plan, the court may order

⁴⁶ *Id.*

⁴⁷ N.J. STAT. ANN. § 55:19-55(f).

⁴⁸ N.J. STAT. ANN. § 55:19-55(h).

⁴⁹ N.J. STAT. ANN. § 55:19-86(9)(b).

⁵⁰ N.J. STAT. ANN. § 55:19-86(9)(b). New Jersey Court Rule 1.5-2 explains service of papers on individuals. According to this rule a moving party is required to notify individuals by personal service or certified mail, return receipt requested. If no address is known, the filing of papers with the clerk of the court shall satisfy notice.

⁵¹ N.J. STAT. ANN. § 55:19-86(a).

⁵² N.J. STAT. ANN. § 55:19-84.

⁵³ N.J. STAT. ANN. § 55:19-87(a) (West 2004).

⁵⁴ N.J. STAT. ANN. § 55:19-84 (West 2004).

the bond forfeited and provide the municipality with the bond proceeds to be used to complete the property's rehabilitation.⁵⁵

The municipality is the third, and final, entity in the statutory line of succession which has the ability to possess and rehabilitate the property.⁵⁶ If the property owner and lienholder fail to submit rehabilitation plans, the municipality may submit such a plan to the court and be awarded possession of the property.⁵⁷ Additionally, the municipality has the power to designate a qualified rehabilitation entity for the purposes of undertaking the rehabilitation efforts.⁵⁸ The qualified rehabilitation entity may exercise the municipality's rights to further the rehabilitation, but the municipality retains ultimate responsibility for the property throughout the rehabilitation process.⁵⁹

The municipality may fund the rehabilitation by borrowing against the property, but it first must seek financing from the senior lienholder.⁶⁰ If the senior lienholder fails to provide financing, a priority lien may be placed on the property to induce another financial institution to fund the municipality's rehabilitation efforts.⁶¹

When there are six months left until the rehabilitation project is completed, the municipality is required to file a Notice of Completion with the court and serve notice on the owner and parties of interest.⁶² The owner then has a thirty-day period to petition the court for reinstatement of the property.⁶³ In order to have the property reinstated, the owner must reimburse the municipality for the cost of rehabilitation and pay all delinquent taxes and municipal liens.⁶⁴ The court also has the option of requiring the owner to post an additional bond which is held to ensure the future maintenance of the property.⁶⁵

When the owner fails to seek reinstatement of the rehabilitated property, or fails to abide by the conditions of reinstatement, the court may authorize the municipality to purchase the property at fair market value.⁶⁶ The municipality then has the burden of selling the property.⁶⁷

⁵⁵ N.J. STAT. ANN. § 55:19-87(c)(2) (West 2004).

⁵⁶ N.J. STAT. ANN. § 55:19-84 (West 2004).

⁵⁷ *Id.*

⁵⁸ N.J. STAT. ANN. § 55:19-90 (West 2004).

⁵⁹ N.J. STAT. ANN. § 55:19-90 (West 2004).

⁶⁰ N.J. STAT. ANN. § 55:19-91(b) (West 2004).

⁶¹ *Id.*

⁶² N.J. STAT. ANN. § 55:19-91(d) (West 2004).

⁶³ N.J. STAT. ANN. § 55:19-92(15) (West 2004).

⁶⁴ N.J. STAT. ANN. § 55:19-93 (c) (West 2004).

⁶⁵ N.J. STAT. ANN. § 55:19-94 (West 2004).

⁶⁶ N.J. STAT. ANN. § 55:19-96(a) (West 2004).

⁶⁷ N.J. STAT. ANN. § 55:19-95; N.J. STAT. ANN. § 55:19-96(a) (West 2004).

In order to clear title, the proceeds of the sale are put in escrow and used to satisfy any liens on the property.⁶⁸ The order of distribution for the sale proceeds is as follows: (1) the costs incurred by the sale; (2) other government liens; (3) priority municipal rehabilitation liens; (4) development fee for the municipality; (5) other liens following in the order of priority; (6) any remaining sale proceeds are to be distributed to the owner.⁶⁹ APRA does not, as written, permit a municipality to profit from the rehabilitation of abandoned properties.

Instead of completing the rehabilitation and selling the property, the municipality has the option of holding a special tax sale on the property.⁷⁰ A municipality's use of this tool is limited to abandoned properties that have delinquent taxes. During a special tax sale, tax liens on the abandoned properties can be auctioned off. The successful bidder may then foreclose on the lien thereby taking title to the abandoned property through the foreclosure.⁷¹ When employing the special tax sale provision of APRA, a municipality can establish eligibility requirements for bidders to ensure their ability to successfully rehabilitate the property.⁷² Additionally, the municipality may require the bidder to rehabilitate the property according to specific municipal plans and regulations.⁷³ If the successful bidder fails to carry out the rehabilitation according to the approved conditions, the property shall revert to the municipality and any amounts paid are forfeited to the municipality.⁷⁴

The third method a municipality can use to rehabilitate abandoned properties under APRA is to exercise the municipality's eminent domain powers. The Takings Clause of the Fifth Amendment permits the government to take private land to use for the public good.⁷⁵ In the abandoned property context, municipalities would take the private abandoned property to rehabilitate it, thus serving the public good by eliminating the cause of blight. APRA provides the formula a municipality must use when determining the fair market value of abandoned properties being taken pursuant to eminent domain.⁷⁶ Fair market value of the abandoned property is to be determined by subtracting the cost of rehabilitation from the realistic market value of the

⁶⁸ N.J. STAT. ANN. § 55:19-96(a) (West 2004).

⁶⁹ N.J. STAT. ANN. § 55:19-97(a)-(f) (West 2004).

⁷⁰ N.J. STAT. ANN. § 55:19-101(a)-(f) (West 2004).

⁷¹ N.J. STAT. ANN. § 55:19-101(a) (West 2004).

⁷² N.J. STAT. ANN. § 55:19-101(a)-(b) (West 2004).

⁷³ *Id.*

⁷⁴ N.J. STAT. ANN. § 55:19-101(d) (West 2004).

⁷⁵ U.S. CONST. amend. V.

⁷⁶ N.J. STAT. ANN. § 55:19-102 (a)-(c) (West 2004).

rehabilitated property.⁷⁷ Where the cost of rehabilitation exceeds the resale value of the rehabilitated property, there is a rebuttable presumption that the fair market value of the property for the eminent domain proceeding is zero dollars.⁷⁸ Through the eminent domain proceeding the municipality will gain title to the abandoned property and is then left with the challenges of rehabilitating it.

As written, APRA seems to empower municipalities to take action to rehabilitate abandoned properties. However, to date, no municipality has taken action under APRA and followed through to the final result of rehabilitating abandoned properties.

V. USING THE APRA TOOLKIT

While on the surface APRA appears to delineate a process for municipalities to use to address abandoned properties, the legislation has numerous gaps and fails to adequately address the problem. This leaves municipalities to guess how to legally fill the gaps. Municipalities are not motivated to employ the APRA toolkit because in addition to a lack of clear statutory guidance there is no case law interpreting and applying APRA.⁷⁹ Many municipalities are hesitant to take action to rehabilitate abandoned properties without clear statutory guidance, case law or examples of success stories from other towns. Furthermore, some municipalities lack the resources needed to attempt to fully execute APRA. This has resulted in municipalities adopting abandoned property ordinances as an acknowledgment of the purported power APRA grants them, but then failing to take further action to rehabilitate the abandoned properties.

The Township of Montclair is an example of one such municipality, which has begun the process of addressing vacant and abandoned properties. The Township of Montclair is a mixed neighborhood with sections that are very affluent and sections that are depressed. There are 1920s art deco apartment buildings, new condominiums and townhouse developments, multi-family homes, and modest to sprawling single family residences. The Township has easy train access to New York City, a vibrant cultural, shopping, restaurant and theater district, but also blighted impoverished areas. The Township commissioned Jason M.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *City of Newark v. Orr Invs., Inc.*, No. A-1072-13T3, 2016 N.J. Super. Unpub. LEXIS 749 (N.J. Super. Ct. App. Div. 2016) is the only case found in the New Jersey courts that has referenced APRA. However, the claims involve a condemnation proceeding that does not appear to have been taken under APRA. As such, the Court does not apply nor analyze the procedures outlined in APRA.

Santarcangelo, Esq. as special town counsel to address the problems of vacant and abandoned properties. In the course of his work and meetings with other municipalities, Mr. Santarcangelo has identified numerous statutory inadequacies in APRA and obstacles in the process it purports to delineate. Below, Mr. Santarcangelo draws upon his experience to explain the difficulties that a municipality faces when trying to interpret APRA and rehabilitate abandoned properties.

A. A Practitioner's Experiences from the Front-Line

Vacant and abandoned properties create a fiscal burden on municipalities and pose numerous risks to the health and safety of the community and its residents. The vacant properties, by their very definition, are not habitable yet many are broken into by youth, criminals, and squatters. Not only are the properties unsafe for those who are illegally entering them, but vacant properties are often host to illicit activities that can further damage the property and contribute to blight of the neighborhood.

Legislation permits municipalities to enact ordinances that require vacant property registration and maintenance to help ensure that the properties are kept safe.⁸⁰ The registration fees and fines help to offset the financial burden that these properties place on the municipality. However, the ultimate goal is to return the properties to use. Although APRA attempts to empower the municipality to be able to take action to rehabilitate abandoned properties there is a disjunction between the legislation and the functional realities. Every step taken is like fresh footprints in the snow; the courts have limited virtually all judicial intervention regarding vacant and/or abandoned properties.

One of the most troublesome aspects of the legislation are the mandated notice requirements. To place a property on the abandoned property list APRA requires the municipality to provide notice to the owner of record of the property using certified mail, return receipt requested and regular mail. However, these are abandoned properties, many with absent owners and, as such, the records only list the abandoned property as the address. Sending mail to the abandoned property is a futile attempt to provide notice to the owner. APRA permits notice to be satisfied by a posting on the property if the owner of record is unknown or cannot be ascertained by the tax collector.⁸¹ Often the tax collector lacks a more current address for the property owner because the creditors are often paying the taxes. This does not include properties that are

⁸⁰ N.J. STAT. ANN. § 40:48-2.12s.

⁸¹ N.J. STAT. ANN. § 55:19-55(d)(1).

delinquent in taxes or do not have updated records. It appears as if the legislature contemplated that the owner of record would receive a property tax bill and the bank that provided the mortgage would receive a duplicate tax bill; however, it is the opposite. The mortgage holder receives the tax bill in many cases allowing the property owner to “run and hide” as they only receive duplicate bills. Most tax collections for mortgaged properties are done electronically and physical addresses for notice mailings are not available (other than the address of the vacant property). Therefore, the current address of owner of record of the property usually cannot reasonably be ascertained through the use of tax records.

APRA also requires that notice be sent via regular mail to any mortgage servicing organization or property tax processing organization that receives a duplicate copy of the property’s tax bill.⁸² As discussed, the duplicate bill often goes to the owner of record who has left the vacant property. This further frustrates the ability to provide proper notice. The municipality reversing process should be able to provide notice to the owner of record (if they can be found) and any parties with an interest in the property. The legislature underestimated or chose not to look at the complexity of the mortgage system.

Once the municipality clears the notice hurdles, APRA provides three methods that a municipality can use to rehabilitate the abandoned properties: (1) summary action in court; (2) eminent domain; and (3) special tax sales.⁸³ Each option poses its own unique problems of implementation.

The summary action proceeding is uncharted territory. There is no precedent for the municipality, counsel or courts to follow. On its face it appears that the summary action should be a straightforward proceeding by which the court determines that a property is abandoned and if the owner fails to present a rehabilitation plan, the municipality is awarded possession of the property to undertake the rehabilitation.⁸⁴ However, if the municipality is able to navigate the Superior Court and “take” the property the municipality becomes a real estate developer. Most, if not all, municipalities do not have the know-how or the resources to undertake residential rehabilitation projects.

Despite the fact that APRA permits the municipality to recoup the costs of rehabilitation through the sale of the property, the municipality

⁸² *Id.*

⁸³ N.J. STAT. ANN. § 55:19-84; N.J. STAT. ANN. § 55:19-102; N.J. STAT. ANN. § 55:19-101.

⁸⁴ N.J. STAT. ANN. § 55:19-84.

becomes potentially liable for the reconstruction and safety of its citizens and interlopers once the property is “taken” by the municipality. The unforeseen costs (i.e. insurance) are not contemplated by the Legislature despite the stated ability to be reimbursed for summary action legal expenses, the rehabilitation project expenses, and real estate broker fees by the sale of the property. Further, APRA does not account for the upfront capital expenditures the municipality must bear.

As written, APRA contemplates that the Court would have continued oversight, and approval power, over the entire rehabilitation process and subsequent sale of the property, even if the municipality took on the responsibility of rehabilitation. Relying on and educating the already overburdened judicial system will undoubtedly result in an even longer process to rehabilitate the abandoned properties. It is neither an economical, practical nor efficient method for the municipality to use to address the problem of abandoned properties.

Eminent domain takings are generally not politically favored by municipalities. In active communities, a municipal taking of a property often stirs much political discord resulting in the hesitation to use eminent domain as a rehabilitation effort. APRA provides a formula to determine the fair market value of abandoned properties subject to eminent domain.⁸⁵ This formula deducts the cost of rehabilitation from the appraised market value of the rehabilitated property. If the cost of rehabilitation exceeds the market value of the rehabilitated property, the presumption is the fair market value of the property is \$0.00. So the municipality will have to pay \$0.00 to the owner in the eminent domain proceeding to take title to the property.

There are two major problems with this appraisal method. First, it does not compensate municipalities for the additional costs of rehabilitation, rather it sets the amount at \$0.00. For example, if the cost of rehabilitation is estimated at \$400,000 and the rehabilitated property is appraised at \$375,000, the fair market value for the eminent domain proceeding is \$0.00. In this transaction, the municipality that is undertaking the rehabilitation incurs the additional expenses of \$25,000 without being adequately compensated. The second problem with the valuation mechanism is that it fails to consider municipalities that have high property values. For example, Montclair has traditionally high property values, as opposed to East Orange or Newark. As a result, in an eminent domain proceeding it is likely that the abandoned property will be appraised at an amount greater than the cost of rehabilitation. Therefore, in this example, Montclair will have to pay compensation to

⁸⁵ N.J. STAT. ANN. § 55:19-102(a)-(c).

the property owner in addition to the cost of performing the rehabilitation, which makes eminent domain difficult not only politically, but also practically, as the expenses will likely far outweigh the potential return.

Lastly, APRA permits municipalities to hold special tax sales for properties that are: (1) delinquent in property taxes and (2) on the abandoned property list.⁸⁶ Although it seems counterintuitive, many abandoned properties are not delinquent in property taxes. Typically, the bank that financed the mortgage for the abandoned property will continue to pay the property taxes with the hope of recouping the value from the property owner or through foreclosing on the property. It seems the state legislature did not anticipate this limitation on using special tax sales to facilitate the rehabilitation of abandoned properties.

Furthermore, another poorly written section of APRA permits municipalities to designate a “qualified rehabilitation entity” to exercise a municipality’s rights under APRA.⁸⁷ However, the statute does not provide guidance on how to determine whether an entity is a “qualified rehabilitation entity.” Thus, municipalities are left guessing at who and what may qualify as a rehabilitation entity under APRA. Even more troublesome is the lack of explanation as to what powers the qualified rehabilitation entity may exercise. It is unknown whether the qualified rehabilitation entity is limited in scope to performing the construction or may exercise the broad municipal rights of adding properties to the abandoned list, engaging in summary judgment actions for possession, eminent domain takings, or organize special tax sales. As written, the qualified rehabilitation entity is a bureaucratic design lacking a clear role in the process of rehabilitating abandoned properties.

Finally, the last major statutory ineptitude of APRA is its failure to address commercial property. APRA permits a mixed-use property, containing both residential and commercial space, to be determined abandoned if two-thirds or more of the total net square footage was previously used as a residence; only then may the municipality act under APRA.⁸⁸ This greatly limits the Township’s power to address vacant and/or abandoned properties in need of rehabilitation. Abandonment is not limited to residential properties. Vacant and/or abandoned commercial property are arguably an even greater burden on the community because it shows a failure of business and industry. Investors and entrepreneurs likely do not want to invest or start businesses next to abandoned properties or take responsibility for large industrial parcels when it is

⁸⁶ N.J. STAT. ANN. § 55:19-101.

⁸⁷ N.J. STAT. ANN. § 55:19-90.

⁸⁸ N.J. STAT. ANN. § 55:19-81.

apparent others have failed in similar ventures. The state legislature has failed to address commercial abandonment even though it contributes to a similar amount of blight when compared to residential abandonment.

In identifying abandoned properties as a problem, the state legislature provided APRA as a toolkit, but failed to provide the necessary tools to rehabilitate abandoned properties. The numerous inadequacies of the APRA scheme make the vacant and/or abandoned property landscape the wild west, leaving the municipalities hoping to rehabilitate vacated properties in a cost-effective means to protect public health and safety.

VI. SUGGESTED AMENDMENTS TO NEW JERSEY ABANDONED PROPERTY LEGISLATION

A. The APRA Notice Requirements Must Be Clarified

APRA contains inconsistent and contradictory notice requirements which hinders a municipality's ability to ensure that the provided notice adheres to the United States Constitution. First, APRA inefficiently relies on the tax records to provide notice to the owner of record and mortgage holder when adding a property to the municipal abandoned property list. Then, under a summary judgement proceeding, in order to take possession of the property, the statute requires a municipality to notify and serve the complaint on the owner and parties in interest, without clearly defining who is a party of interest.⁸⁹ Lastly, the owner, mortgage holder or lien holder may submit plans of rehabilitation; however, it is never clearly stated that each of these parties have been given notice that the property has been designated as abandoned.⁹⁰

APRA unnecessarily requires a municipality to follow a breadcrumb trail through New Jersey statutes to guess how notice must be executed. The United States Constitution recognizes the importance of safeguarding private property.⁹¹ Accordingly, the United States Supreme Court has recognized a "nuisance exception" to the Takings Clause, which permits municipalities to employ their police powers to abate nuisances, *i.e.* address abandoned properties that are blighting their communities.⁹² However, proper notice of actions that affect abandoned

⁸⁹ N.J. STAT. ANN. § 55:19-86(b).

⁹⁰ N.J. STAT. ANN. § 55:19-84.

⁹¹ U.S. CONST. amend. V. The U.S. Constitution's Takings Clause states, "private property [shall not] be taken for public use, without just compensation."

⁹² James J. Kelly, Jr., *Refreshing the Heart of the City: Vacant Building Receivership As a Tool for Neighborhood Revitalization and Community Empowerment*, 13 JRNL AFFORDABLE HOUSING & COMM'N DEVELOP 2, 220 (American Bar Association Winter 2004).

properties that are privately owned must be effectuated to ensure the constitutionality of the actions. The following suggested amendment to APRA should be applied uniformly to all actions taken under APRA because it clarifies the notice requirements, ensures all affected parties are provided notice, and offers municipalities the guidance necessary to confidently take action to rehabilitate abandoned properties.

Suggested Amendment:

[§ XX Notice Requirements]

A municipality taking action to identify abandoned properties, and or include a property on the municipality's abandoned property list pursuant to N.J.S.A. § 55:19-54 et. seq., or taking any action pursuant to the Abandoned Properties Rehabilitation Act, N.J.S.A. § 55:19-78 et. seq. shall comply with the following notice requirements:

- a. Publish notice of the action in the official newspaper of the municipality for a timeframe of at least three (3) sequential publications;
- b. Post notice of the action on the subject property;
- c. File notice in the office of the county clerk or register of deeds and mortgages wherein the property is situated, this filing shall have the same force and effect as a notice of lis pendens;
- d. Send notice via certified mail return receipt requested, via regular mail and via any other method of delivery used in the regular course of municipal business to the owner of record. The public officer shall extend a reasonable effort to ascertain the whereabouts of the property owner. Reasonable effort shall include consulting with the tax collector and municipal clerk to review property records in an attempt to ascertain an address for the owner of record. Where it exists that the owner of record cannot be reasonably ascertained the public officer shall compose an affidavit affirming such reasonable effort was undertaken;
- e. Send notice via certified mail return receipt requested, via regular mail, and via any other method of delivery used in the regular course of municipal business to any person or entity, other than the owner of record, which receives a property tax bill;
- f. Send notice via certified mail return receipt requested, via regular mail, and via any other method of delivery used in the regular course of municipal business to any mortgage holder; and

g. Send notice via certified mail return receipt requested, via regular mail, and via any other method of delivery used in the regular course of municipal business to any lien holder. The public officer shall consult with the municipal clerk, county office responsible for recording liens, state UCC filings, and any other reasonably ascertainable source of lien filings to determine the identity and address of lien holders.

This amendment will offer guidance to municipalities by clearly identifying the actor responsible for providing notice to all parties who have an interest in the abandoned property. The public officer appointed by the municipality as having the authority to compose the Abandoned Properties List should have the explicit duty to extend a reasonable effort to notify the property owner, mortgage holder, and other lien holders. The public officer should be required to consult with other governmental offices, but the legal responsibility should not shift from the individual that the statute designates as having authority over abandoned properties.

The proposed amendment also clearly identifies all parties the municipality must give notice to, as well as the methods by which notice must be served. The suggested provisions ensure notice is provided to all parties that have a legal interest in the property as well as notice to the general public through publication, posting, and filing. This ensures that the municipality does not trample upon rights and engage in an unjust taking of private property. Furthermore, the notice amendment honors the legislative intent to facilitate the rehabilitation of abandoned properties. As explained by Mr. Santarcangelo, municipalities lack the resources and know-how to effectively engage in large scale rehabilitation of numerous abandoned properties. By providing notice of all actions taken under APRA to all parties who have an interest in the property, it is more likely that one of the affected parties will exercise their rights and rehabilitate the property.

B. APRA Should Be Amended to Provide for Private Party Receivership to Bring Abandoned Property Rehabilitation Actions

As written, the APRA only permits the property owner, lien holders, and the municipality to submit rehabilitation plans for abandoned properties.⁹³ This statutory grant of power goes to a group of parties that either had a hand in causing the blight or who are ill-equipped to remedy it. These are the same parties who abandoned the property, so it is illogical, and almost laughable, to believe they will voluntarily act to rehabilitate it. And, as previously discussed, municipalities are ill-

⁹³ N.J. STAT. ANN. § 55:19-89.

equipped to manage the large number of abandoned properties found throughout New Jersey. Instead of limiting the availability of actors who can play a role in the rehabilitation of abandoned properties, the New Jersey legislature should expand APRA to allow private parties to have standing to bring a receivership action and take possession to rehabilitate abandoned properties.⁹⁴

As a general principal, receivership is effectuated through court action, whereby a receiver is appointed to the property and steps into the role of the owner.⁹⁵ The receiver has the power to, among other things: collect rents, remedy code violations, update the building, and lease the building.⁹⁶ APRA already comes close to providing a receivership tool by permitting municipalities to designate qualified rehabilitation entities to exercise a municipality's rights.⁹⁷ However, APRA currently fails to provide guidance on what a "qualified rehabilitation entity" is, the role it is to play in the process, and requires the already strained municipality to retain responsibility for the rehabilitation.⁹⁸

Once a municipality has designated a property as abandoned, a private party should be able to file a summary action for receivership in superior court, with the goal of having the court award him or her possession of the property for the purpose of rehabilitation. Additionally, the receiver should be held to the same notice and rehabilitation requirements as a municipality acting under APRA. As written, APRA permits a municipality to take possession of an abandoned property, rehabilitate it, and sell the property to recoup the expenses.⁹⁹ APRA does not permit the municipality to act when the owner or party of interest has submitted plans for rehabilitation. APRA makes the presumption that a six-month failure by an owner, mortgage holder or lien holder to submit plans or apply for financing is evidence that they have failed to take action to rehabilitate the property; after such the municipality can then take

⁹⁴ See generally *Standing*, THEFREEDICTIONARY, <http://legal-dictionary.thefreedictionary.com/standing>. For a party to be able to bring an action in court, he or she must have legal standing. Standing results when a party is directly affected by the actions the judicial proceedings are intended to address, or when the legislature has specifically granted a party standing.

⁹⁵ Frank S. Alexander & Leslie A. Powell, *Neighborhood Stabilization Strategies for Vacant and Abandoned Properties*, ZONING AND PLANNING LAW REPORT (Emory Univ. School of Law) Vol. 34 No. 8, Sept. 2011, at 7.

⁹⁶ ALAN MALLACH, NAT'L HOUS. INST., BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS 49, 75 (2006).

⁹⁷ N.J. STAT. ANN. § 55:19-90.

⁹⁸ *Id.*

⁹⁹ N.J. STAT. ANN. § 55:19-84.

action to address the property.¹⁰⁰ Furthermore, the municipality may not sell the property when the owner has petitioned to have the property reinstated.¹⁰¹

The receivership amendment should hold the private party to similar standards as is currently required of municipalities acting under APRA. To ensure the receivership provision does not interfere with constitutionally protected property rights, the private party should not be able to supersede rehabilitation plans submitted by the owner, mortgage holder, lienholder, or municipality. The receivership amendment can statutorily require a period of inactivity by the owner, mortgage holder, lienholders, and municipality; such a period of inactivity that must run before a private party may bring a receivership action. The amendment will then leave it to the court's discretion to approve the rehabilitation plan, such as the language already provides for in APRA.¹⁰²

Suggested Amendment:

[§ XX Private Party Receivership]

A receivership action for possession of any property designated as abandoned by a municipality under N.J.S.A. § 55:19-55 et. seq. may be brought by a private party in the Superior Court of the county in which the property is situated.

If the court shall find the property is abandoned pursuant to N.J.S.A. § 55:19-55 and N.J.S.A. § 55:19-81 and the owner, mortgage holder, lienholder, or municipality in which the property is situated have failed to take action, the court may authorize the private party to take possession and control the rehabilitation of the property. Failure of the owner, mortgage holder, lien holder, or municipality to submit plans for rehabilitation, obtain appropriate construction permits for rehabilitation, or submit formal applications for funding the cost of rehabilitation to local, state, or federal agencies which provide such funding within a six-month period from the property being designated abandoned shall be deemed prima facie evidence of a failure to take any action to further the rehabilitation of the property.

The complaint shall be served in accordance with the notice requirements of the APRA and rules of the court.

The receiver who is granted possession and control may commence and maintain further proceedings for the conservation, protection, or disposal of the property, or any part thereof, that is required to rehabilitate the property,

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See generally, N.J. STAT. ANN. § 55:19-87(c)(1) (“[T]he court shall approve any plan that, in the judgment of the court, is realistic and likely to result in the expeditious rehabilitation and reuse of the property which is the subject of the complaint.”).

necessary to recoup the cost and expenses of rehabilitation, and for the sale of the property, provided that the court shall not direct the sale of the property if the owner mortgage holder, lien holder, or municipality applies to the court for reinstatement of control of the property as provided in N.J.S.A. § 55:19-92.

The court shall award the cost and expenses of rehabilitation incurred by the receiver super priority status.

A court in any subsequent foreclosure of the receiver liens may issue a judicial decree to extinguish all other liens and encumbrances in order to provide clear title to the receiver.

The municipality in which the property is situated may adopt an ordinance providing for all municipal liens to be forgiven in subsequent foreclosure actions by the receiver.

The municipality in which the property is located shall indemnify the receiver in any actions challenging the receiver's right to take possession and control the rehabilitation of the property.

The ability of private parties to bring abandoned property receivership actions will help to ensure that rehabilitation of abandoned properties occurs even where municipalities lack the resources to undertake such efforts. It is preferable for a private party to undertake rehabilitation so municipal finances and resources are not drained. The granting of a public power to a private entity is not an anomaly in the realm of municipal governance. A great number of municipal services have been successfully privatized to alleviate the burden on municipalities.¹⁰³

This amendment will eliminate any confusion over what type of entity may engage in the rehabilitation of abandoned properties; any entity with the ability to undergo the rehabilitation will have the opportunity to petition the court to do so. By providing a private party standing, APRA will eliminate the municipal burden of being responsible for bringing abandoned property proceedings and acting as a real estate developer engaging in the rehabilitation of properties. Since APRA provides the courts with continuous oversight over the rehabilitation process, any concerns the public may have of entrusting private parties to perform the rehabilitation are ill founded; the private party is not given free rein to do as it pleases, he or she must act within the confines of judicial control.

The clause indemnifying the private party from any lawsuits brought by the property owner or lienholders is important to shield the receiver

¹⁰³ Mary Scott Nabor, *The Privatization of Public Services: We Have to Make It Work*, FORBES (July 13, 2012 at 1:17 PM), <http://www.forbes.com/sites/forbesleadershipforum/2012/07/13/the-privatization-of-public-services-we-have-to-make-it-work/> (explaining that “[p]ublic-private partnerships and government outsourcing offer much needed solutions at a critical time”).

from any claims arising from the designation of the property as abandoned or the court approved rehabilitation process. It is important that the receiver be protected in its quasi-governmental actions to rehabilitate problem properties. Without protection from certain liabilities, savvy private parties would likely be hesitant to assume the risks involved in the rehabilitation of abandoned properties. However, the receiver should retain the regular liabilities associated with construction because the receiver is in the best position to ensure the safety of the project.

Additionally, under this amendment the private party is provided with the ability to bring super priority liens against the property to finance the rehabilitation efforts.¹⁰⁴ This will ensure that any money the receiver expends will be recovered in the sale of the property. If the court does not sanction the sale of the property, the receiver will be able to foreclose on the super priority lien in a judicial proceeding. The receiver's foreclosure action would take priority, again ensuring the receiver is compensated for the rehabilitation costs. Furthermore, the amendment provides the Court the option to enter a judicial decree to extinguish all other liens thereby giving the receiver clear title to the newly rehabilitated property.¹⁰⁵ Clearing title for the private party receiver who expended the time and effort to rehabilitate the property furthers the legislative intent incentivizing the parties to rehabilitate abandoned properties.

However, it is possible that the courts will adopt a precedent that does not permit the inferior liens to be extinguished. If this is the case, the receiver's lien will be satisfied first, and the remaining funds will be distributed in the normal order of priority. Under this amendment, the municipality where the property is located has the power to adopt an ordinance forgiving municipal liens in subsequent foreclosure actions by the receiver. By doing this the municipality would forfeit its rights to collect government liens in exchange for incentivizing the private party to undertake the rehabilitation efforts.

¹⁰⁴ Amy Loftsgordon, *What Happens to Liens and Second Mortgages in Foreclosure?*, NOLO (March 18, 2017 at 1:19 P.M.), <http://www.nolo.com/legal-encyclopedia/what-happens-liens-second-mortgages-foreclosure.html> (explaining that liens with superior priority are paid prior to other liens regardless of recording dates).

¹⁰⁵ Alexander & Powell, *supra* note 95, at 8 (explaining that in a super priority jurisdiction the time at which the municipal lien [or receivership lien] comes into existence is irrelevant in the foreclosure process because the municipal lien [or receivership lien] preempts all private liens and mortgages. A valid foreclosure of a senior lien terminates the interests and claims of all other parties to the property. Once the other liens are extinguished the new owner has an unencumbered title free of clouds); Frank S. Alexander, *LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS* 18-19 (Local Initiatives Support Corporation 2005) (explaining a judicial decree asserting the constitutional validity of the foreclosure is necessary to convey clear title to the property).

If properly incentivized and protected, private parties can provide the much-needed cure to New Jersey's abandoned properties problem. The state legislature should amend APRA to provide private parties with the tools to bring receivership actions to rehabilitate abandoned properties and combat blight.

C. Expand to Include Commercial Property

Blight is not solely caused by the abandonment of residential properties. As Mr. Santarcangelo explained, commercial and industrial property abandonment contributes to the problem and similarly burdens municipalities.¹⁰⁶ As written, APRA addresses residential and mixed-use property, but wholly ignores purely non-residential properties.¹⁰⁷ APRA should be expanded to provide municipalities with the same toolkit to address both residential and non-residential abandonment. This suggested amendment will greater empower municipalities to combat blight.

Suggested Amendment:

[§ XX Non-Residential Properties]

Except as provided in section 6 of P.L. 2003 c. 210 (C. 55:19-83), any non-residential property that has not been legally occupied for a period of one year, has not been actively marketed for sale or rent for a period of one year, and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the public officer that:

- a. The non-residential property is in need of rehabilitation in the reasonable judgment of the public officer, and no rehabilitation has taken place for a period of one year;
- b. Construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least one year as of the date of a determination by the public officer pursuant to this section;
- c. At least one installment of property tax remains unpaid and delinquent on that property in accordance with chapter 4 of Title 54 of the Revised Statutes as of the date

¹⁰⁶ See *infra* Part V.A. at 18.

¹⁰⁷ N.J. STAT. ANN. § 55:19-81.

of a determination by the public officer pursuant to this section; or

d. The property has been determined to be a nuisance by the public officer in accordance with section 5 of P.L.2003, c.210 (C.55:19-82).

The suggested amendment draws from much of the criteria APRA uses to determine a residential or mixed-use property is abandoned.¹⁰⁸ The suggested amendment pertaining to non-residential properties expands the requisite time periods necessary for the determination of abandonment to one year, whereas the time periods for residential and mixed-use properties is six months. This additional time is provided out of consideration for the added difficulties an owner may face in rehabilitating and occupying the non-residential property. The amendment also protects the non-residential property owner who is actively seeking to sell or rent the property. In the suggested amendment, if the owner is actively marketing the property the municipality is prohibited from designating it as abandoned; a property that is being actively marketed is not likely to be in a state of disarray that would contribute to blight. This provision is necessary to protect the property interests of an owner who, acting in good faith, is unable to occupy the property.

This amendment is needed in order for a municipality to have a complete toolkit to address all abandoned properties. By not providing municipalities the power to take action to rehabilitate non-residential property the legislature is greatly curtailing the rehabilitation of New Jersey's abandoned properties.

VII. CONCLUSION

Abandoned properties create blight and negatively affect the safety and general welfare of the community. New Jersey has enacted legislation in the form of the Abandoned Property Rehabilitation Act in an attempt to enable municipalities to address the blight caused by abandoned properties. Unfortunately, this legislation fails to provide clear guidance and relies solely on the efforts of already strained municipalities. By adopting amendments to APRA to clarify the notice requirements, create private receivership actions, and permit the rehabilitation of non-residential properties, New Jersey could more meaningfully act to reduce blight by rehabilitating abandoned properties throughout the state.

¹⁰⁸ *Id.*