



**The 2018 amendments to the neighborhood preservation act:
A more powerful tool for blight eradication**

By R. Porter Field and Lani Lester

Memphis has plans: Plans for development, redevelopment and revitalization, from Downtown to the neighborhoods surrounding the central city.

Along with these plans, though, comes concern for the 13,000 vacant, abandoned and distressed properties across the city. These blighted properties negatively impact both the economic and physical health of surrounding communities. In Memphis, it is a real problem.

Led by Neighborhood Preservation, Inc., a local anti-blight nonprofit, citizens, city and county government, the University of Memphis and even Americorps have worked together this year to address this difficult issue.

We have a powerful state law on our side as well in the form of the Neighborhood Preservation Act ("NPA"). The city has brought more than 800 lawsuits against blighted property owners in Shelby County Environmental Court.

The NPA is a mighty sword against blight which should factor into the plans of every potential investor. In 2018, this sword became even mightier, updated to include the ability to sue property owners without first having to serve them personal notice of the suit, to create a priority lien to protect funds spent by the city and others on the preservation of a property, and to attach interest potentially as high as 18 percent on these funds, all for blight eradication. The city has filed 40 lawsuits using these 2018 Amendments.

Initially enacted in 2004, the NPA allowed residential property owners in Shelby, Davidson and Madison counties and in the city of Oak Ridge to bring suit against their neighbors who fail to maintain abandoned property to "community standards." Between 2015 and 2017, the city rehabilitated or demolished over 400 properties through the NPA.

Despite its many amendments, any NPA plaintiff still faced the obstacle of serving missing or unknown property owners with notice of the lawsuit - the problem was finding out who to serve. According to a 2017 presentation by Neighborhood Preservation, Inc., between January 2015 and June 2017, the city referred 75 NPA cases to administrative condemnation because it could not find an accountable property owner.

All that changed in 2018.

Now the NPA plaintiff may bring a direct action against a property and its owners without serving an owner in person. The suit can be brought *in rem* by suing the property itself. The 2018 Amendments require only that notice to be sent by mail to the owner, interested parties, and the occupant of the property to their "last known address," and posted on the property. This standard allows the NPA petitioner to bring the property and its owners before the court, even when an owner cannot be located and served.

In the past, almost every defendant who comes before the Environmental Court says they are attempting to sell their property to a responsible purchaser. Like a game of hot potato, the property passes between owners, preventing any one owner from being held accountable for remediating the blighted property. In 2018, the Amendments provide that an NPA lawsuit will serve as an immediate prohibition against all transfers, foreclosures, or any other judicial sale, until the NPA action is resolved. Generally, the city as petitioner will work with an owner to allow a sale to a responsible entity or person willing to undertake remediation, but the NPA now provides a powerful stick for the city to hold over the head of the owner. The game of hot potato ends, and the city has a better opportunity to eliminate the blight.

The NPA now allows for a private for-profit organization or investor, as well as a non-profit, to serve as a receiver under a plan approved by the court to improve or demolish a property. Once approved, the receiver would take possession of the property, and repair it to community standards, under court supervision. The property, as repaired, would remain the property of the legal owner, but a lien would arise to ensure repayment to the receiver of all costs the receiver incurred, plus interest.

The 2018 Amendments to the NPA included a powerful lien-stripping function, essentially placing the NPA lien on the same level of priority as the governmental lien for taxes. An NPA lien can include all expenditures for the rehabilitation of a property and the attorneys' fees incurred to bring and prosecute the action. The lien is a first-priority lien, meaning that if the lien is enforced by judicial sale, all prior recorded mortgages on the property would be stripped away and would be null and void.

In addition, the 2018 Amendments provide that the expenditures made by an NPA petitioner or receiver will carry an interest rate as high as 18 percent, but no lower than 12 percent, a rate approximately 4 to 10 points higher than the usurious rate applicable to private loans.

While the 2018 Amendments to the NPA reduce the constitutional protection provided to owners and lenders, they increase the potential costs of neglecting a property. These provisions will have a large impact on eradicating blight in Memphis.

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