How Cities Can Abate Nuisance Properties at No Cost

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

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I. WHEN ARE RECEIVERSHIPS USED?

Almost every city has properties that have been abandoned, occupied by squatters, run by a slumlord, owned by a deceased owner, or some other reason for typical code enforcement efforts not to work. Receiverships are an effective remedy when voluntary and administrative enforcement fails. Nearly every city in California has a Code Enforcement Department ("Code Enforcement"). The objective of Code Enforcement is to ensure that municipal code violations, including dangerous building and fire code violations are abated.[1] Common issues that Code Enforcement addresses include overgrown grass, illegal dumping, buildings with dry rot, deteriorated fencing, and other nuisances, which could negatively impact public health, safety, and welfare.[2] To resolve these problems, Code Enforcement typically issues property owner's administrative citations which directs the owners to remediate or remove the code violations on their property or pay fines.[3] In certain circumstances, a city may even obtain an Inspection and Abatement Warrant to resolve the violation itself.[4] In most circumstances, these code enforcement procedures are effective..

These difficult nuisance properties endanger neighborhoods, decrease property values, cause constituents to lose faith in their city leadership, are a drain on municipal resources, and cause headaches city wide. These sort of nuisance properties leave entire cities frustrated and questioning what they can do. Thankfully, the California legislature came up with a brilliant statutory scheme to address issues cities have with severe nuisance properties. The answer to these problems is codified at California Health and Safety "H&S" Code §§ 17980.6 and 17980.7. These are informally known as health and safety "H&S" receiverships. These codes are an extension of the typical receivership statutes found at California Code of Civil Procedure "CCP" § 564 *et seq*. The California Supreme Court has recognized that Health and Safety receiverships are the ultimate

[1] See, e.g., *What is Code Enforcement?*, California Association of Code Enforcement Officers, <https://www.caceo.us/page/WhatIsCodeEnforcement> (Last visited December 2, 2020).
[2] *Id.*
[3] California Government Code, §§ 36901 & 38771-38773.5
[4] California Civil Code § 1822.50

remedy cities can use to abate nuisance properties that substantially endanger public health and safety. [5]

II. HOW DO SUBSTANTIALLY DANGEROUS PROPERTIES SURFACE IN CITIES?

Difficult nuisance properties typically involve a property owner who is unavailable, unwilling, and/or unable to remediate or remove the code violations. Scenarios may include a property owner who passes away without heirs, a property owner with hoarding issues and/or other mental health crises, a property owner involved in bankruptcy proceedings, property owner who is a "slumlord," or a property owner in "zombie foreclosure."[6] Below is an explanation of how these scenarios play out and how a receivership can help.

A. Deceased Owner on Title

When a person passes away, a death certificate is issued, but any property remains vested in their name unless affirmative steps are taken to remove them from the title.[7] Therefore, if an owner dies without children, is estranged from their children, or has children that are unable or unwilling to deal with the property, the deceased owner remains on the title.

In this scenario issuing repeated citations and engaging in enforcement efforts upon a deceased owner will not accomplish anything. Often cities give up in these scenarios thinking there is no solution. Other cities think that the County will resolve the matter through a tax sale, or some relative will eventually fix the problem. However, county tax sales take at least five years to come about.[8] Five years is a long time to have a significant substandard property, especially if the property suffers from fire hazards.[9]Furthermore, there is no requirement that the County sell the property within five years. Finally, hoping for some responsible relative to come out of the woodwork is usually not in the cards. Therefore, the nuisance property can linger on the County's books for decades. In these scenarios a receiver can be appointed over a property owned by a deceased owner as long as the case is captioned correctly,) as spelled out in CCP 762.030(b)(2).[10] Furthermore, specific facts explaining the decedent's status must be

[5] *City of Santa Monica v. Gonzalez* (2008) 43 Cal. 4th 905, 920
[6] *Article: Bankruptcy Weapons to Terminate a Zombie Mortgage,* 54 Washburn L.J. 451
[7] California Code of Civil Procedure § 762.030
[8] California Revenue and Taxation Code § 3691
[9] *City and County of San Francisco v. Jen* (2005) 135 Cal. App. 4th 305, 310
[10] California Code of Civil Procedure § 377.40

submitted to the court.[11] However, whether an heir shows up or not a responsible party is put in place to fix the property. The property can then be sold to a responsible owner.[12] Thereafter, any remaining funds from the proceeds of the sale can be interpled with the court for any relative that may eventually step forward.[13]

B. Hoarder/Mental Health Issue

A difficult situation arises with hoarders or property owners with mental health issues. These hoarders often may be functional people, but can have fifty propane tanks covered in combustible debris in their home and not see the danger. Or have junk falling out of all aspects of the house, which leads to infestation and endangers the surrounding community. Repeated fines and enforcement efforts are often ineffective when dealing with mental health issues. This is where a receiver can come in and take control of the situation in a respectful and compassionate manner. A receiver has the authority to dispose of everything at the property, which includes demolishing any structures. [14]However, a receiver is a neutral agent of the court and has to act in the best interest of all parties pursuant to California Rules of Court Rule 3.1179.[15]

As a result of a receiver's status as an agent of the court, a receiver is answerable to the court if he or she exceeds their authority. For example, if a receiver comes in and throws away valuable property in an effort to resolve the matter expeditiously, then the receiver is accountable. A receivership is an equitable remedy.[16] Therefore, a receiver is encouraged to treat the owner and all stakeholders with respect, dignity, and kindness. If the receiver does not do this, the city, owner, or even neighbors can report inappropriate actions to the court. Furthermore, a receiver is required to file monthly reports to all interested parties pursuant to California Rules of Court Rule 3.1182. Therefore, in a difficult hoarder situation where prior enforcement efforts have fallen short, a receivership can be the answer.

C. Owner in Bankruptcy

If an owner files bankruptcy it can lead to zombie foreclosure, which is discussed in more detail below. It can also lead to enforcement agencies being frightened of violating the automatic stay. However, it has been held numerous times that H&S receivership action falls under the police power exception to the automatic stay pursuant

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[11] California Code of Civil Procedure § 762.030
[12] California Code of Civil Procedure 568.5
[13] California Code of Civil Procedure 386
[14] *City of Santa Monica v. Gonzales* (2008) 43 Cal. 4th 905, 931
[15] *Shannon v. Superior Court* (1990) 217 Cal. App. 3d 986, 992
[16] *O'Flaherty v. Belgium* (2004) 115 Cal. App. 4th 1044, 1101

to 11 United States Code 362(b)(4).[17] Therefore, if a bankruptcy case is preventing enforcement against a nuisance property, a H&S receivership can be the solution.

D. Zombie Foreclosures

A "zombie foreclosure" occurs when a bank starts the foreclosure process by issuing a Notice of Default to the property owner/borrower without finishing the foreclosure process.[18] Most property owners, being unfamiliar with the nuances of foreclosure law, erroneously believe the bank's Notice of Default is a foreclosure. Based on the property owner's mistaken belief that their property was foreclosed on, they vacate the property. When a city brings an enforcement action against the property, the property owner mistakenly tells the city that the bank foreclosed on them. When the city reaches out to the bank, the bank will correctly say the property owner still owns the property.[19] This results in both the bank and the owner pointing the finger at the other and the city left with nobody taking accountability for the substantially dangerous property.

In these scenarios when neither party will take responsibility for the property a H&S receivership is the ultimate remedy. This is because one of two things will happen. A party with an interest in the property will suddenly realize it will lose control of the property and oppose the receivership. Once opposed, the city will have the bank, owner, or other responsible party in a courtroom confirm in front of a judge, that they will abate the property, alternatively a judge will appoint a receiver over the property to abate the substandard violations.

E. Slumlords

Slumlords or negligent property owners are also a significant source of difficult nuisance properties, especially when it comes to unpermitted construction of multi-unit properties. One can look to the Ghost Ship Fire in Oakland as an example of what happens when a city is unable to effectively enforce code violations. In that case, despite repeated notices from the City of Oakland, the property owners failed to remediate or remove the violations. The property owners continued to let numerous people occupy the building, until December 2016, when 36 people burned to death as a result of the unsafe building conditions.[20] Despite the City's attempts to use common code enforcement procedures, the City of Oakland ultimately had to pay out $32.7 million dollars to the Ghost Ship victim's families.[21]

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[17] *City of Riverside v. Horspool* (2014) 223 Cal. App. 4th 670, 685

[18] *Article: Bankruptcy Weapons to Terminate a Zombie Mortgage,* 54 Washburn L.J. 451

[19] *Id.*

[20] Andrew Limbong, *Ghost Ship Fire Victims to Receive $32.7 Million Settlement from City of Oakland* (Jul. 17, 2020) National Public Radio <https://www.npr.org/2020/07/17/892266014/ghost-ship-victims-to-receive-32-million-dollar-settlement-from-city-of-oakland>

[21] *Id.*

Ghostship was a horrific situation, but this scenario is not uncommon across California. There are certain individuals that will simply not pay fines and ignore the law. Criminal prosecution for unsafe buildings is rare, unless tragedy strikes as it did with Ghostship. However, there is a way to hold slumlord owners accountable and prevent tragedy. A receiver can be appointed over properties owned by slumlords and control is wrestled away from them. Slumlords can be litigious, but H&S receivers are well versed in handling them.

III. WHY IS A RECEIVERSHIP BETTER THAN OTHER NUISANCE REMEDIES SUCH AS EMINENT DOMAIN AND VACANT PROPERTY ORDINANCES?

Cities have tried using a variety of creative procedures to resolve the issues presented with difficult nuisance properties. In 2005, the City of New London, Connecticut tried to use eminent domain. However, the City of New London had to litigate all the way to the United States Supreme Court to obtain rights to the lot they wanted to revitalize.[22] The city ultimately gained control of the property but was left dealing with how to resolve the property now in their possession. The city has yet to agree on how to move forward with the property and it remains a vacant lot to this day.[23] This costly, litigious, and difficult route of eminent domain has borne no fruit for the City of New London.

Cities can also decide to demolish blighted properties. The legal processes associated with doing so, poses a significant expense[24], and it may be difficult to collect these costs. Furthermore, once a property is demolished, the city is left with a vacant lot that nobody is responsible for. Cities have also implemented vacant property ordinances.[25] However, vacant property ordinances only give cities the power to fine and do not necessarily resolve all code enforcement issues. Therefore, while the vacant property ordinance sounds effective and may resolve some issues, they have no teeth to deal with a deceased owner, zombie foreclosure, bankrupt owner, or slumlord, which a H&S receivership does.

IV. LEGAL HISTORY OF H&S RECEIVERSHIPS IN CALIFORNIA

This H&S receivership process was created by the California legislature in 1988.[26] However, receiverships were rarely, if ever, used until 2005, when the First District Court

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[22] *Kelo v. City of New London* (2005) 545 U.S. 469.

[23] Ilya Somin, *The 15th Anniversary of Kelo v. City of New London* (June 23, 2020), Reason Magazine <https://reason.com/volokh/2020/06/23/the-15th-anniversary-of-kelo-v-city-of-new-london/>

[24] *Leppo v. City of Petaluma* (1971) 20 Cal. App. 3d 711

[25] Vallejo Municipal Code § 7.54.150(c)(5)

[26] Sen. Bill No, 2799 (1987-1988 Reg. Sess.).

of Appeal opined that cities could recover their attorney fees and enforcement costs in nuisance abatement receiverships.[27] Then, in 2008, the California Supreme Court empowered receivers and authorized receivers to demolish buildings.[28] Since that decision, there have been two additional legislative changes in 2012 and 2019 that have expanded the receiver's powers and expedited the City's ability to file a receivership petition.[29]

V. WHAT IS A RECEIVER/SHIP AND HOW MUCH DOES IT COST?

The history of receiverships dates back to the Chancery Courts of England and the earliest recorded receivership appears to have occurred in 1373 A.D.[30] The Chancery Court used receiverships to control estates that were in turmoil.[31] A common occurrence would be a king dying without a son.[32] In those situations, a court-appointed receiver was brought in to take temporary control of a castle until a permanent replacement was found.

In present day, some recent high-profile receiverships include the United States Attorney's appointing a receiver to locate and seize Bernie Madoff's assets after his Ponzi scheme was uncovered.[33] Additionally, several well-known financial institutions were placed into receiverships during the mortgage meltdown. Washington Mutual Bank was placed into a receivership to preserve over $20 billion in assets before it became Chase.[34] In summary, a receiver brings order to an out-of-control situation. While receiverships can be applied to castles, Ponzi schemes, and failed financial institutions, receivership can also be applied to nuisance properties.

Cities are not responsible for paying receivers. A receiver is a neutral agent of the court and cannot be paid by any of the parties.[35] Courts have specifically held that receivers act as hands of the court.[36] The receiver is usually paid an hourly rate determined by the court and is paid that amount through property in the receivership estate.[37] This setup incentivizes the receiver to improve the property and sell it at a fair

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[27] *City and County of San Francisco v. Jen* (2005) 135 Cal. App. 4th 305, 312.
[28] *City of Santa Monica v. Gonzalez* (2008) 43 Cal. 4th 905.
[29] Assem. Bill No. 2314 (2011-2012 Reg. Sess.); Assem. Bill No. 957 (2019-2020 Reg. Sess).
[30] Great Britain Court of Chancery, Ancient Petitions of the Chancery and the Exchequer (1902) <https://babel.hathitrust.org/cgi/pt?id=hvd.32044081283459&view=1up&seq=80&q1=receiver>
[31] *Id.*
[32] *Id.*
[33] Daniel Gill, *Madoff & Co. – Recoveries from the Biggest Ponzi Schemes* (Mar. 12, 2018), Bloomberg Law <https://news.bloomberglaw.com/business-and-practice/madoff-co-recoveries-from-the-biggest-ponzi-schemes/>
[34] FDIC. , *Status of Washington Mutual Receivership*, Oct. 23, 2020) https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/wamu-settlement.html
[35] California Rules of Court, rule 3.1179.
[36] *Takeba v. Superior Court of San Joaquin County* (1919) 43 Cal. App. 469, 473-474.
[37] *Investor Bulletin: 10 Things to Know about Receivers* (Aug. 27, 2015) U.S. Securities and Exchange Commission Investor Alerts and Bulletins <https://www.sec.gov/oiea/investor-alerts-bulletins/ib_receivers.html> (Last visited December 2, 2020).

price, which benefits any interest holders in the property Each receivership is unique, but with California properties, the sale proceeds of the property usually exceed the receiver fees. This typically allows cities to recover its attorney fees and enforcement costs related to appointing the receiver.[38] Therefore, not only is the receivership cost neutral, but the city may also recover the administrative costs it incurs in the normal course of practice (such as unpaid fines or citations, city staff fees and hard costs such as board up costs expended by the city prior to receivership). Most importantly, the once dilapidated property is abated and even assessed with a new tax base, which generates increased revenue for years to come.

VI. IF A CITY DECIDES A RECEIVERSHIP IS APPROPRIATE, HOW IS A RECEIVER APPOINTED?

To appoint a receiver, a city must file a petition (or complaint) and schedule a hearing, proceed *ex parte* if warranted, or follow any other rules of court to schedule a hearing as imposed by each individual county.[39] At the hearing, the city must prove the following three elements: (1) the property substantially endangers public health and safety; (2) the owner was provided a reasonable amount of time to correct the dangerous conditions; and (3) the proposed receiver is qualified to address the issues presented by the property.[40]

To prove the property substantially endangers public health and safety, the city needs to document the violations at the property. A city does this by taking pictures and having a code enforcement officer, building inspector, fire prevention officer, police officer, or other enforcement official submit a declaration documenting the dangerous conditions to the court.

To prove the owner was provided a reasonable amount of time to correct the dangerous conditions, the city must draft a Health and Safety Code section 17980.6 Notice that specifically identifies the code violations at the property. The 17980.6 notice must also provide a reasonable amount of time for the owner to respond. There is no exact science as to what a "reasonable" amount of time is. These 17980.6 Notices usually range somewhere between 10-60 days. The 17980.6 Notice must provide a way to contact the city and include a phone number so the owner can contact the city and must include language that landlords cannot retaliate against tenants. The 17980.6 notice must then be conspicuously posted at and mailed to each affected residential unit.[41]

Once the reasonable time in the section 17980.6 Notice expires, "notice of the petition", known as (section 17980.7 Notice) must be prominently placed on the property

[38] California Health and Safety Code § 17980.7, subd. (c)(11); § 17980.7, subd. (d)(1).
[39] *City of Crescent City v. Reddy* (2017) 9 Cal. App. 5th 458, 465.
[40] *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal. App. 4th 1281, 1293-1294.
[41] California Health and Safety Code § 17980.6.

and mailed by first-class mail to all parties with a recorded interest in the property. "Notice of the petition" is not defined in the Health and Safety Code, nor is there any case law that has defined what "notice of the petition" entails. The intent of the section 17980.7 Notice is to ensure that the owner, and anyone with a recorded interest in the property, has one final warning before a receivership Petition is filed. Typically, Cities satisfy the section 17980.7 Notice by providing a draft of the Petition and a letter which indicates that the City will file a receivership Petition in no less than three days.[42] Because no petition has been filed at the time the section 17980.7 Notice is sent, the section 17980.7 Notice does not include a case number, hearing date, or hearing time. This creates some confusion, but it is the way the statute is worded and is something that is often explained to a judge hearing these petitions for the first time.

To complete this step, a city generally obtains a title report or litigation guarantee to identify all parties with a recorded interest in the property.[43]

The California Legislature in 2019, pursuant to AB 957, amended Health and Safety Code section 17980.7(c) to make the noticing requirements of the section 17980.7 Notice easier for Cities to accomplish. Prior to the amendment Cities had to serve the section 17980.7 Notice on all interest holders three days prior to filing the petition. Which resulted in increased expenses for City's and the difficult task for having to serve the heirs of deceased property owners. Often to complete this service requirement, Cities would seek permission from the Court to serve by publication pursuant to California Code of Civil Procedure section 415.50, which again increased the City's costs and extended the potential abatement date for the substandard property. However, with AB 957 now the City just needs to post and mail the section 17980.7 Notice.

Three days after the section 17980.7 Notice is noticed by posting and mailing the city can then file the receivership Petition. This petition should include a Title Report, the section 17980.6 Notice, the section 17980.7 Notice, and any other declarations or other evidence showing that the property substantially endangers public health and safety. The public agency typically also has reached out to a proposed receiver to see if they want the proposed appointment. The proposed receiver submits a declaration concurrently with the Receivership Petition. The receiver's declaration explains their qualifications and the judge uses this declaration to evaluate whether the receiver is qualified to handle the property's issues.

AB 957 also amended the service requirements for the Petition. Prior to AB 957 Cities were required to serve the petition on all interest holders of the property. However, now Cities are only required to serve the petition on the property owner. AB 957 demonstrates the California Legislature's intent to expedite the City's ability to abate dangerous properties through the appointment of a Health and Safety receivership. This is

[42] *City of Santa Monica v. Gonzalez* (2008) 43 Cal. 4th 905, 925-926.
[43] *Id.*

also evidenced by Health and Safety Code section 17990 which only gives a ten day summons to file a written response.

As with any noticed motion, a party can oppose it. It is not uncommon for owners or banks to show up in court to ask for more time to abate the nuisance conditions. Courts sometimes grant this continuance. These continuances usually last for 30-60 days. However, more often than not, the owner or bank fails to bring the property into compliance and the receiver is appointed. Or the owner or bank actually solves the problem, which is also a win for the community.

VII. WHAT HAPPENS ONCE THE RECEIVER IS APPOINTED AND WHEN DOES THE RECEIVERSHIP END?

Once a receiver is appointed, several California Rules of Court go into effect. The receiver must file an Oath, Bond, Inventory and Receiver Report with the court, within the first thirty days of appointment.[44] Furthermore, the appointment order must be recorded against the property.[45] The appointment order should include language that authorizes law enforcement to immediately remove anyone occupying the property due to health and safety hazards present at the property. This allows law enforcement to immediately remove any squatters residing at the property. The appointment order should also contain an amount the receiver can initially borrow against the property. Typically, this amount is $50,000, but each case is unique. The receiver then uses this $50,000 to immediately clean out and secure the property. Cleaning out and securing the property means the receiver removes debris, boards up the property, obtains insurance, and completes other measures to abate the immediate safety hazards. Therefore, within a few days after the receiver's appointment the community receives some semblance of peace from the difficult nuisance property.

Once the receiver abates the immediate dangers, they create a long-term plan for the property. There are three typical plans, (1) the receiver fully rehabilitates and sells the property; (2) the receiver abates the immediate dangers, then sells the property as-is; or (3) the receiver demolishes the property and sells the vacant lot. To determine which of these plans to take, the receiver will obtain contractor bids regarding rehabilitation, obtain a broker's price opinion of value, and utilize other formulas to complete a cost-benefit analysis on the property. The receiver must submit a report documenting their action plan to all parties with an interest in the property. Any party with a recorded interest, including the city, can object to the receiver's monthly report.[46] Again, a receivership is an equitable remedy and a neutral agent of the Court. Accordingly, a receiver should provide a Court a plan favorable to all interested parties for the Court to ultimately choose.

[44] California Rules of Court, rules 3.1178-3.182.
[45] California Health and Safety Code § 17985, subd. (b)
[46] Cal. Rule of Court, rule 3.1183.

Should additional funds be needed to accomplish the receiver's proposed plan, the receiver will file a motion seeking to increase their authority to borrow against the property. For example, if the receiver obtains a bid stating that full rehabilitation of the property will cost $108,000, the receiver will likely request to borrow an additional $150,000 to cover the costs of the rehabilitation, the receiver fees, and any unforeseen costs. Any party with a recorded interest can oppose the receiver's motion. However, assuming the court grants the receiver's motion and grants the authority to borrow $150,000, the receiver would monitor the construction of the property until the rehabilitation is finished.

Once the property is rehabilitated, the receiver files a motion to list the property for sale.[47] The receiver then determines whether to auction the property or use its equitable powers to list the property on the open market.[48] Once offers on the property are secured, any new potential property owners are vetted by the receiver and the court must confirm the receiver's sale.[49]

The final steps in the receivership action are the city files a motion to recover its attorney fees and enforcement costs pursuant to H&S § 17980.7(c)(11) & (d)(1) if a fee motion is required by the court. The receiver then files their Final Report and Accounting to approve their fees and be discharged by the court.[50]

VIII. WHAT IF THERE IS NOT ENOUGH MONEY TO PAY ALL LIENHOLDERS?

The above sounds great, but what happens if the property sells for $300,000 and the bank has a mortgage $250,000, the receiver's fees are $50,000, the city fees are $50,000 and there are $50,000 in unpaid taxes? In that scenario there is only $300,000 to pay off a $400,000 debt. This is a shortfall of $100,000, so how can a receiver sell the property with a clear title if unpaid liens exist?

This is an important answer to know. The answer to providing clear title is through lien-stripping and the issuance of super-priority liens. In the hypothetical above, the proceeds are not enough to cover the liens, which is problematic. Receivers however can use lien stripping, which is a process numerous California courts have upheld.[51] Lien stripping is not unique to the receivership process and it is routinely used in bankruptcy

[47] Cal. Civ. Pro., § 568.5.
[48] *People v. Riverside University* (1973) 35 Cal. App. 3d 572, 583-584.
[49] Cal. Civ. Pro., § 568.5.
[50] Cal. Rule of Court, rule 3.1184.
[51] *County of Sonoma v. Quail* (2020) 56 Cal. App. 5th 657, 686.

courts.[52] Lien-stripping is exactly what it sounds like, the liens are stripped from title, which allows the property to be sold with clear title. However, the proceeds of the sale are monitored by the court. The proceeds of the sale are then distributed subject to a receiver's super-priority lien.

The common rule when it comes to payment of liens is first in time first in right. (*Bear Creek Master Assn. v. Southern California Investors, Inc*. (2018) 28 Cal. App. 5th 809, 817.) However, H&S receiverships are anything, but typical cases. Over 100 years ago the California Supreme Court held that a receiver is entitled to be paid ahead of all lienholders. (*Title Ins. & Trust Co. v. CA Develop Co.* (1915) 171 Cal. 227, 233.) This principal of receiver taking priority over other lienholders had received little attention until 2019 when an appellate court decided that a health and safety receiver was entitled to have priority over a bank. (*City of Sierra Madre v Suntrust* (2019) 32 Cal. App. 5th 648, 661.) Then another bank challenged a health and safety receiver's priority in the County of Sonoma case and again the appellate court held that a receiver is entitled to super-priority over other lienholders. (*County of Sonoma v. Quail* (2020) 56 Cal. App. 5th 657, 664.) Therefore, the question regarding receiver priority seems well settled and a receiver is paid ahead of other lienholders. This is much to the chagrin of banks who let these nuisance properties sit and endanger communities but expect their loans to be paid in full. Based on the decisions above, it is quite clear that a receiver is entitled to priority over other recorded interests.

However, a more relevant question for cities is their priority status. Prior to 2020 the answer seemed clear that pursuant to H&S 17980.7(c)(11) and (d)(1) that cities were entitled to the same priority as receivers.[53] A 2020 appellate decision involving the County of Sonoma has created a split of authority as to whether or not a city is entitled to the same priority as a receiver for its fees and costs.[54] Therefore, it is possible that if there is not enough funds from the proceeds of a sale that a city may not recover its fees. Of course, this is not an issue with high equity properties.

IX. DO H&S RECEIVERSHIPS CONSTITUTE A TAKING OR INVERSE CONDEMNATION

A final concern that many cities have is whether or not receivership constitutes a taking or inverse condemnation. The answer is no. As the United State Supreme Court

[52] *HSBC Bank USA, N.A. v. Blendheim* (2015) 803 F.3d 477, 484

[53] *Hozz v. Varga* (1958) 166 Cal. App. 2d 539, 543.

[54] *County of Sonoma v. Quail* (2020) 56 Cal. App. 5th 657, 688; but see also *Winslow v. Harold Ferguson* (1944) 25 Cal. 2d 274, 284-85, a California Supreme Court case that held "[i]t would be wholly out of line with the traditional concept of equitable practice to pay the expenses of a receiver and the fees of his counsel prior to the participation of any creditor or beneficiary and at the same time to subordinate the payment of fees to the attorney who has invoked the powers of the court of equity to appoint that same receiver."

has held a taking is not found if the state is preventing injury to the community.[55] Furthermore, as the 9th circuit has held, the owner of a nuisance property is not losing all economic value of their property.[56] In summary, a city property exercising its police power by utilizing the H&S receivership remedy does not constitute a taking.

X. CONCLUSION

Typical code enforcement procedures are effective in most situations. However, receiverships remain an underutilized, under publicized and misunderstood remedy for difficult nuisance properties. In truth, H&S receivership is the ultimate abatement remedy to address difficult nuisance properties. California's statutory scheme ensures notice is provided and cities do not pay for receiverships. In fact, cities usually recover attorney's fees and enforcement costs for bringing receivership actions. Therefore, cities abate nuisances in their community and receive additional funding.

[55] *Keystone Bituminous Coal Ass'n v. DeBenedictis*, (1987) 480 U.S. 470, 491
[56] *Hotel & Motel Ass'n of Oakland v. City of Oakland* (9th Cir. 2003) 344 F. 3d 959, 965.