White Paper

Law Reform Analysis of
Neighborhood Stabilization Strategies for
Communities in Miami-Dade & Broward Counties:
Active Receivership, Rental Registration & Code Enforcement Partnership Programs

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authored per requested of Neighborhood Housing Services of South Florida, Inc.
August 2012
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I.

Executive Summary

This document describes the state of current law in Florida as it relates to housing policy reform in three areas. Neighborhood Housing Services of South Florida (“NHSSF”) has commissioned this whitepaper in order to explore (1) the use of court-appointed receivers over distressed properties in order to rehabilitate them; (2) the implementation of a program requiring the registration of rental property; and (3) the establishment of community partnership programs by local code enforcement offices. These policies are considered in light of NHSSF’s neighborhood stabilization efforts in Miami-Dade and Broward Counties. Many moderate to low-income communities have been unable to keep up with the negative impact of increases in the number of vacant or abandoned homes and of distressed or substandard rental housing. This whitepaper offers an analysis of the three aforementioned proposed policy reforms. It also includes sample local ordinances for those that require legislation to become effective.

Stabilization Receivership

A “stabilization receivership” is created where a court appoints a receiver to take possession of a distressed property that poses a threat to tenants or to neighboring property owners in order to then repair and rehabilitate it. Stabilization receivership exists in a variety of forms in many state and local jurisdictions outside of Florida. While it does not yet exist in Florida, a stabilization receivership mechanism can be created here by either local ordinance or state statute. Corporations that are not financial institutions are currently prohibited from serving as receivers in Florida. A state statute would be required to allow mission-driven not for profit entities to serve as receivers.

Stabilization receivership is a powerful tool. It enables communities to rehabilitate properties that threaten the stability of neighborhoods where property owners are unable or unwilling to make basic improvements to their properties relative to safety and habitability. Because this mechanism can be adapted to fit a wide variety of circumstances, policy-makers would have several decisions to make in tailoring its use. The sample county ordinance attached creates a two-track receivership mechanism. One addresses abandoned properties, the other substandard rental properties. If enacted it would enable a county, tenants, neighboring property owners or not for profit community development corporations to initiate a petition for the appointment of a receiver (note that here the non-profit would be a litigant asking for receivership, and would not itself be seeking to serve as receiver). To get a receiver appointed, under the sample ordinance, the initiating party must prove serious and repeated code violations and conditions at the subject property that threaten harm to residents or neighboring properties. They must also demonstrate that a stabilization receivership is viable; namely, that the value or income stream of the subject property can support the necessary repairs. Once appointed, receivers enjoy broad powers under the supervision of the court, including the ability to borrow against the property.
While it is a powerful tool, stabilization receivership requires significant resources and technical capacity to implement. The section on receivership below concludes by describing the challenges of funding the repairs that a receiver would otherwise be empowered to make; and offers a few limited suggestions on other policies or programs that local governments might create alongside receivership to enhance its feasibility for properties under greater stress. Because it is resource-intensive and can only be used where certain conditions are present, other strategies must be considered alongside stabilization receivership that are less resource-intensive and wider in scope. One of these is considered next.

**Rental Registration Programs**

Local government programs requiring property owners to register their properties are very common in Florida and elsewhere. The two most common categories of property registration programs are those that focus on residential tenancies and those that focus on vacant properties, the latter often in the context of foreclosure. These programs can be further subdivided into those which simply require property owners to register or declare the existence of vacant/rented property and those which include an added requirement that the properties be inspected for compliance with local code. Fortunately there are ample models for both vacant property ordinances and rental registration ordinances. Most of these require inspection. They are fairly straightforward and, in Florida, do not vary greatly from one another.

NHSSF’s interest in registration programs is primarily in residential tenancies rather than in vacant property. As such, a sample county ordinance creating a rental registration program in Miami-Dade County is attached. These programs, in contrast to stabilization receivership, have a broad reach. They have the potential to bring every residential tenancy within a jurisdiction ‘into the light’ for policy makers to take stock of. Where a registration requirement is coupled with an inspection requirement its effect can be potentially far-reaching where resources are available to make sure that all residential rental units are inspected for code compliance.

**Code Enforcement Community Partnerships**

Local jurisdictions have experimented with a wide variety of programs meant to enhance enforcement of local housing codes by involving members of the community or community organizations in the enforcement process. Some jurisdictions have used technology to make it easier for member of the public to report suspected code violations. Others have gone further and trained community residents to serve as volunteer ‘code rangers,’ issuing courtesy notices to suspected violators; or partnered with non for profit organizations in the community for assistance in managing their response to code violations.

Community partnership programs should be encouraged wherever there are resources to establish them and wherever there is political will to implement them in a way that builds credibility and trust in the community. Partnership programs can provide valuable information to code enforcement authorities and allow them to use scarce resources more effectively. If implemented correctly, these programs can also help to build trust and credibility among
residents in communities suffering from a glut of distressed properties. As such, community partnership programs are worth implementing where possible. Still, relative to the other initiatives described in this report these programs appear to be relatively low-impact. No draft legislation is included for community code enforcement partnerships since no legislative changes are needed.

**Recommendations**

**Stabilization Receivership:**
- Conduct case studies to evaluate the feasibility of the stabilization receivership ‘business model’ for distressed properties
- Decide on the scope of a stabilization receivership mechanism
- Explore supplementary funding mechanisms
- No change recommended regarding Florida’s prohibition on most corporations acting as receivers

**Rental Registration:**
- Set priorities in designing a rental registration program to determine if an inspection requirement is needed
- Assess the reach and feasibility of a potential inspection program

**Code Enforcement Community Partnerships:**
- Conduct qualitative inquiries to find South Florida jurisdictions with favorable conditions for establishing community partnerships
II.

Introduction:
Stronger Mechanisms to Address Vacant or Substandard Housing Needed

In stable, healthy neighborhoods residents are confident enough in their neighborhood’s future to invest resources in their home and to involve themselves and their families in neighborhood life. They are places where – whether modest or affluent – urban residents chose to live. Many moderate to low-income neighborhoods where NHSSF is most active have been set upon by the combined forces of the foreclosure crisis, the actions of unscrupulous landlords and the inaction of absentee landlords, often of estate-owned properties. By consequence, the health of many stable South Florida communities is threatened while the livability of less stable neighborhoods continues to deteriorate.

New tools are needed to stabilize and prevent further deterioration in South Florida’s communities. The traditional strategies available locally – including code enforcement, nuisance abatement and other legal tools discussed in further detail below – have not kept pace. Vacant or abandoned properties which could be returned to viable residential use are left empty. Tenants in substandard rental units continue to live in unsafe or unsanitary buildings in need of basic repair.

As part of its neighborhood preservation and stabilization efforts NHSSF is exploring strategies which have proven successful in other jurisdictions in acquiring and rehabilitating vacant housing and in addressing rental properties in disrepair. Three related strategies are explored for use in South Florida. They are:

1. naming court-appointed receivers over distressed properties authorized to rehabilitate distressed properties for neighborhood stabilization purposes;
2. creating a registration and inspection program for rental properties; and
3. establishing community partnership programs with local code enforcement offices.

The discussion which follows provides a survey of the legal landscape enabling or constraining these three related strategies. It also offers an analysis of reforms that would be needed to bring these strategies to life and includes, as an appendix, two sample local ordinances. The analysis of authorities contained in this document does not constitute a legal opinion by the author (though otherwise competent to provide one). This document is meant instead to provoke further discussion and factual research as these strategies are evaluated and/or pursued.
III.

**Stabilization Receivership:**
A Potentially-Powerful Stabilization Tool

Receivers are impartial custodians appointed by a court over property which is the subject of litigation or other court action. The types of legal actions in which receivers are appointed, and the purposes for which they are appointed, can vary greatly. This is because the court’s authority to appoint a receiver can derive either from a statute or from the court’s powers in ‘equity’ (its power to regulate the conduct of those subject to its jurisdiction under principles of fairness). Because it is considered an extraordinary remedy, courts require a showing of necessity before appointing a receiver. Once appointed, the costs of receivership generally constitute a first charge against the funds or property in receivership.¹

Where the word “active” is used to modify “receiver” in this report, this signals that such a receiver has broad powers over the assets under its custody. The distinction between “active” and “passive” receivership is described in a relevant and useful article about lenders’ use of receivership over distressed development properties that appeared in the *Florida Bar Journal* in 2009. It states “passive receiverships are crafted to simply conserve the property, while active receiverships employ broader powers, such as the power to sell and to contract.”² While “passive receiverships are limited by design to ensure that the asset in receivership does not depreciate during the pendency of the primary action, active receiverships are meant to enhance the value of the assets.”³

The core stabilization tool explored in this report will be referred to as a “stabilization receivership.” This is a term whose use is unique to this report. Stabilization receiverships are mechanism empowering communities to have an active receiver appointed specifically to take control of, and then rehabilitate, vacant or distressed residential properties so that they can be returned to viable residential use. This tool exists in a variety of forms in other jurisdictions in the United States where traditional nuisance abatement and code enforcement mechanisms have failed or cannot reach properties that threaten the health and economic stability of urban neighborhoods. Stabilization receivership does not yet exist in Florida.

This section will provide an overview of Florida law with respect to receivership in order to explain the legislative changes necessary to create stabilization receivership in a Florida jurisdiction. It begins by surveying stabilization receivership in other jurisdictions. Under what circumstances are active receiverships available and for what purposes? Who may initiate an action for the appointment of a receiver? What powers does a revitalization receiver have? Finally, how does a receiver fund needed repairs?

¹ *Knickerbocker Trust Co. v. Green Bay Phosphate Co.*, 62 Fla. 519, 523 (1911)
³ *Id.*
After the national survey described above, this section will return to Florida. It reviews the state of Florida’s laws with respect to the preceding questions before describing the reforms that would be necessary to create revitalization receivership here. Finally, this section suggests some of the practical challenges a successful revitalization receiver would confront even after enabling laws were put place.

a. Powers and Purposes of Stabilization Receivership Vary Greatly Across Other Jurisdictions

Across the country there is great variability in the local use of active receivership as a stabilization strategy dealing with abandoned buildings, tenant-occupied buildings in distress, or both. Mechanisms to do so in jurisdictions outside of Florida vary significantly in the powers granted to a receiver and the purposes for which a receiver may be given control over a property.4 What follows is a comparison of some aspects of those state and local mechanisms, but not a comprehensive survey of receivership nationally. The discussion is intended merely to illustrate that for virtually any active receivership mechanism Florida-based advocates might propose, a model exists outside of Florida that can serve as a guide.

Active receiverships for stabilization purposes have been understood as “privatized nuisance abatement” in that they make up for deficiencies in existing nuisance abatement systems by involving outside parties; or as in rem5 code enforcement since they make up for deficiencies in code compliance strategies that rely on coercion of property owners by instead emphasizing the property itself rather than on the violator.6 As such, their purposes vary greatly. Many focus on ameliorating dangerous conditions for inhabitants. In the District of Columbia, for example, an action for the appointment of a receiver can be initiated by demonstrating a “pattern of neglect” which poses a serious threat to the health, safety, and security of the tenants.7 Other active receivership laws focus on buildings that threaten the safety and viability of the surrounding neighborhood or city, with the most common directed at abandoned buildings. City of Baltimore officials may petition a court for the appointment of a receiver “to raze a vacant building, rehabilitate a vacant building, or to sell a vacant building to a qualified buyer.”8 In New Jersey, an action similar to the appointment of a receiver over abandoned property may be initiated where “there are sound reasons that the building should be rehabilitated rather than demolished based upon the physical, aesthetic or historical character of the building” or its relationship to those “in

4 Receivership also exists in federal law. See, e.g., Fed. R. CIV. P. Rule 66. Because this whitepaper focuses on local stabilization efforts, receivership under federal law is of little relevance when compared with state and local law. Federal receivership is most commonly used in enforcement actions by the Securities and Exchange Commission, the Federal Trade Commission or the Department of Justice; in federal tax actions or criminal proceedings; or by private parties in stockholder derivative suits or creditor actions.
5 in rem as opposed to in personam
7 §42-3651.01 et seq., D.C. CODE
8 §121.2, CODE OF PUBLIC LAWS OF BALTIMORE CITY
its immediate vicinity.” With nearly identical language, Louisiana law allows for the appointment of a receivership (albeit with the consent of its owner), over “blighted property” to rehabilitate the property for its “physical, aesthetic, or historical character” in relation to the neighborhood.

Nationally, the trend has been toward the increasing involvement of private parties as initiators or participants in actions for the appointment of stabilization receivers. Many jurisdictions have no role or a limited role for private parties. In Oregon, for example, only a city or county may initiate an action for “for the appointment of a receiver to perform an abatement;” but in New Jersey, a locality may delegate this right to “a qualified rehabilitation entity.” A few jurisdictions go much further and allow private parties with no ownership or security interest in the property to petition for receivership.

Tenants in New York – in what the law describes as “a special proceeding by tenants of a dwelling in the city” – may petition the court “for a judgment directing the deposit of rents into court and their use [by a receiver] for the purpose of remedying conditions dangerous to life, health or safety.” Where such conditions exist – such as lack of running water or heat that are not caused by tenants – an action for the appointment of a stabilization receiver may be initiated where one-third or more of the tenants in a building participate in the action. In addition to a mechanism similar to New York’s, Pennsylvania’s tenants have broad rights to the maintenance of utility service. Pennsylvania public utilities may petition for the appointment of a receiver over a rental property two months in arrears in order to collect rent from tenants and have utility bills paid. Going still further, in Ohio an action for the appointment of a receiver may be commenced not just by a local government or by tenants, but by neighbors living within five hundred feet of the subject property or by nonprofits that “ha[ve] as one of [their] goals the improvement of housing conditions.”

Many jurisdictions express a preference in their active receivership laws for the appointment of not for profit organizations devoted to community development. Texas’ community receivership law, for example – which is applicable to abandoned homes, vacant lots, and rental properties – allows a court to “appoint as a receiver for the property a nonprofit organization with a demonstrated record of rehabilitating residential properties.” Similarly, qualified non-profit receivers are given first priority in the City of Ann Arbor and may have a bond requirement waived for the purpose. In Indiana, community development organizations with a specific

9 New Jersey Stats. §55:19-85
10 Louisiana Revised Statutes §40:600.37
11 Or. Rev. Stat. § 105.430
12 New Jersey Stats. §§55:19-90
15 Pa. Code §§5901-5907
16 Pa. Code §1533
17 Ohio Rev. Code Ann. §3767.41
18 Texas Local Government Code §214.003(b)
19 §8:519(3), Ann Arbor City Code
geographic focus or with threshold levels of membership from among households in the community may be appointed.20

b. Current Florida Law Envisions Only a Limited Role for Active Receivers

Stabilization receivership does not exist in Florida. Even further, the very notion of an active receiver appointed in an independent legal action is foreign to Florida and exists only in a few limited special circumstances. Where receivers are appointed in Florida, they are most commonly passive receivers in actions such as foreclosure or bankruptcy (in which trustees play a role similar to that of a receiver) where receivership is an ‘ancillary’ remedy. That is, receivership is not an end in itself but rather ‘ancillary’ to some other purpose and can be obtained only in connection with a legal action brought to achieve that other purpose.21 Thus, while a private litigant can, for example, file a lawsuit seeking foreclosure – in which a passive receiver may be appointed over the property while the action is pending – they cannot file a lawsuit whose purpose is the appointment of a receiver in Florida.

For any meaningful use of active receivership as a stabilization tool our state legislature or a properly-empowered local government would need to create an independent legal action for the appointment of a receiver for stabilization purposes. This would grant legal standing to a party empowered to initiate such proceedings and authority to a receiver competent to rehabilitate distressed properties. Before describing legal reforms needed to do so, this discussion will review current law.

Two types of existing Florida receiverships are described in the paragraphs which follow. The first type is an active receivership initiated by a public agency to accomplish a specific public purpose. This type of receivership includes a limited class of state agencies acting in specific circumstances, albeit with broad powers. A much broader category of passive receiverships are available in actions enforcing, not public interests, but rather private rights. This second category includes such actions as bankruptcy and foreclosure proceedings as well as disputes over property, where the objective is to conserve contested funds or property until a court determines their disposition (hence their passive character).

Active Receivership is Available to a Narrow Class of State Agencies acting in the Public Interest

There are a number of areas in Florida law where the state is empowered to seek the appointment of a receiver over regulated businesses in order to protect the public interest. Some of these statutorily-created receivership mechanisms are exceptions to the general rule that receivership is only an ancillary remedy. The ability to apply to the court to have a receiver appointed is available to state agencies that regulate child-placing agencies unable to meet their

21 See generally 27 FLA.JUR. RECEIVERS, § 37. See also 75 C.J.S. RECEIVERS § 92 (1952); 66 AM.JUR.2D RECEIVERS, §§ 192-193;
obligations, insolvent or unlicensed insurance companies, corporations subject to judicial dissolution, and funeral service providers that have abandoned the premises or demonstrated an unwillingness to comply with governing laws. These statutes often empower the court to appoint the agency itself as the receiver.

The closest analogy to stabilization receivership in Florida law occurs in a series of related statutes governing facilities that serve vulnerable populations. Certain Florida government agencies may petition the court for the emergency appointment of a receiver over facilities such as nursing homes or group homes where it is in the “best interest of the health, safety, or security of the residents.” The state may seek the appointment of a receiver where it can show that the facility (1) is operating without a license, (2) intends to close without giving sufficient notice of the same, (3) presents a danger to the health, safety, or welfare of the residents, or (4) cannot meet its financial obligations for providing care. Where appointed, a receiver has broad powers to operate the facilities. These powers include being able to “correct or eliminate any deficiency in the structure, furnishings, or staffing of the facility which endangers the safety or health of resident.”

The principal strategy explored in this report contemplates an independent action for the appointment of receiver. As described above, however, in Florida there has traditionally been no such thing as an action for the appointment of receiver. Whether the primary remedy is the enforcement of private rights to property – such as in bankruptcy or foreclosure actions – or the enforcement of public interest regulations – such as in actions by the Florida Department of Financial Services – receivers are appointed to take custodial responsibility of assets subject to those remedies. In actions to enforce private rights, the traditional bases for the appointment of a receiver over property is “to prevent fraud or to save the property from injury or threatened loss or destruction.”

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22 FLA. STAT. §409.1675
23 FLA. STATS. §§440.386, 631.031 & 631.141
24 FLA. STATS. §§617.1430 & 617.1432
25 FLA. STAT. §497.160
26 FLA. STAT. §400.966 (centers for the care of the developmentally disabled); FLA. STAT. §393.0678 (residential habilitation centers or group home facilities); FLA. STAT. §394.903 (residential treatment facilities); FLA. STAT. §400.126nursing homes; FLA. STAT. §429.22 (assisted care communities)
27 See, e.g., FLA. STAT. §429.22(3)(e) (example in assisted care communities but same lang)
28 County Nat. Bank of North Miami Beach v. Stern, 287 So.2d 106, 107 (Fla. 3d DCA 1973); All Seasons Condominium Ass’n, Inc. v. Busca, 8 So.3d 434, 435 (Fla. App., 2009) (overturning an order appointing a receiver for a condominium association in a suit against it by owners of condominium units for money damages “because there is simply no cognizable basis for such an appointment in such a case” even though the receiver had been appointed “apparently in order to conduct that process more efficiently”).
29 Apalachicola Northern R. Co. v. Sommers, 79 Fla. 816, 817 (1920); Warrington v. First Valley Bank, 531 So. 2d 986, 987 (Fla. 4th DCA 1988).
While the use of receivers is codified in Florida’s procedural rules of court, passive ancillary receivership is not generally created or regulated by statute. Instead the power of the court to appoint a receiver, where called for, derives from its inherent equitable powers (generally, powers to regulate the conduct of persons who are subject to its jurisdiction under principles of fairness). When it exercises its equitable powers, the court is required to properly apply and analyze the facts at hand to ensure that a proper basis exists for the receiver’s appointment and that other means are not available (in legal terms, an “abuse of discretion” standard). In the context of mortgage foreclosure, for example, courts have – in keeping with the traditional bases described above – required a showing that the property is subject to waste, destruction or the risk of serious loss, or that there is evidence of fraud or self-dealing, as a predicate for the appointment of a receiver over it.

In Florida, Only Natural Persons, Banks or Trust Companies May Serve as Receivers

Florida statutes prohibit corporations other than banks or trust companies from serving as receivers. “Only natural persons, banks or trust companies, incorporated under the laws of [Florida] and having trust powers, and national banking associations or federal associations, located in this state and having trust powers, may serve as receivers.” This may come as a disappointment to NHSSF because of an expressed interest in the possibility of mission-driven non-profits serving as receivers. Unlike in many other states, Florida’s mission-oriented corporations, such as not-for-profit community development corporations, cannot act as active receivers. Changing this would require an act of the Florida Legislature. No change in local law would be effective. Still, if stabilization receivership were created locally with no change in state law, advocates might find ways to partner with financial institutions.

Recent Developments Toward Receivership as Primary Relief: Blanket Receivership

Until recently, applications for the appointment of receivers in Florida have been exclusively ancillary proceedings (aside from the exceptions contained in the public interest statutes described above). It was not until 2009 that Florida courts recognized, albeit in limited circumstances, applications for receivership where receivership itself was the primary relief sought. This section focuses on “blanket receiverships” that have emerged in the context of condominium and homeowner associations.

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30 FLA.R.CIV.P. 1.620
32 ANJ Future Invs., Inc. v. Alter, 756 So.2d 153 (Fla. 3d DCA 2000)
33 Alafaya Square Ass’n v. Great W. Bank, 700 So. 2d 38 (Fla. 5th DCA 2000); ANJ Future Invs., Inc. v. Alter, 756 So.2d 153 (Fla. 3d DCA 2000); Atco Constr. & Dev. Corp. v. Beneficial Sav. Bank, F.S.B., 523 So.2d 747, 751 (Fla. 5th DCA 1988); Seasons P’ship 1 v. Kraus-Anderson, 700 So.2d 60, 62 (Fla. 2d DCA 1997).
34 FLA. STAT. §660.41(2)
35 Brickell Station Towers, Inc. v. JDC (America) Corp., 560 So. 2d 1391, 1391 (Fla. 3d DCA 1990)
Prior to “blanket receiverships,” condominium and homeowners associations faced with swelling numbers of delinquent units could lien and foreclose units, then request a receiver be appointed for each individual unit. Associations on the brink of collapse claimed this was burdensome and costly, particularly where they were already struggling to maintain common property. Starting in 2009 several associations began successfully petitioning courts for the appointment of a single receiver empowered to collect rents from all tenants living in units that were under foreclosure or, importantly, that may come under foreclosure in the future.

The propriety of blanket receivership orders newly in effect was quickly challenged. That same year, in Village at Dadeland Associates, LLC v. Village at Dadeland Condominium Association, Inc. 3D09-1784,36 the Third District Court of Appeals (“Third DCA”) upheld the creation of the mechanism. In Village at Dadeland Associates, a condominium association had ceased maintaining elevators, discontinued security and lawn service, and incurred over sixty code violations due to the high number of association fee delinquencies.37 The association’s argument in seeking blanket receivership hinged on section 718.116(6)(c) of the Florida Statutes. That statute merely entitles an association to the appointment of a receiver to collect rent during the pendency of a foreclosure action if the unit is rented or leased. The Association had nonetheless applied for emergency relief in its Emergency Petition for Appointment of Receiver.38 The petitioner seeking to overturn the creation of a blanket receivership, an investor owning several delinquent units, pointed to the fifteen different foreclosure proceedings that the Association had pending against delinquent owners; it argued among other things that no independent legal remedy (or cause of action) for blanket receivership existed.39 The Third DCA disagreed and allowed the blanket receivership to proceed.

A revitalization receivership contrasts with a “blanket receivership” in several important, if obvious, ways. First, while the objective of the blanket receivership is to protect an otherwise deteriorating building, it is a passive receivership. It is meant only to collect rent from leased units in foreclosure. Second, condominium and homeowner associations are unique creations of state laws which also grant them standing in the case of blanket receivership.

While limited, the advent of blanket receivership should be welcomed by advocates of stabilization receivership. First, as mentioned above, it is an instance of receivership as primary relief. In Village at Dadeland Associates, the action for appointment of a receiver was independent of several pending foreclosure actions involving the association and its unit owners. Second, blanket receivership orders are styled as arising from the court’s equitable powers. They do not appear to be based merely on section 718.116, but upon the courts inherent equitable powers.40 This can be argued since the relief ordered appears to go beyond section 718.116 in that it applies not just to units in foreclosure but also to units not yet in foreclosure; the order also

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36 Order Appointing Receiver, In re: Village at Dadeland Condominium Association, Inc., 09-40773 CA 02 (June 4, 2009)
37 Respondent’s Response to Petitioner’s Petition for Writ of Prohibition, 09-40773 CA 02 (Jul. 15, 2009)
38 Order Appointing Receiver, In re: Village at Dadeland Condominium Association, Inc., 09-40773 CA 02 (June 4, 2009)
39 Petition for Writ of Prohibition, Village at Dadeland Associates, LLC v. Village at Dadeland Condominium Association, Inc., 09-40773 CA 02 (June 29, 2009)
40 Order Appointing Receiver, In re: Village at Dadeland Condominium Association, Inc., 09-40773 CA 02 (June 4, 2009)
applies, until removed, in a continuing nature to different units at different times as they become or cease to be delinquent.\textsuperscript{41}

c. A Florida Statute or a County Ordinance can Create Stabilization Receiverships

The preceding survey of existing receivership law in Florida is important for two reasons. First, in the process of drafting and advocating for policy changes, existing mechanisms, while limited, provide valuable models that allow advocates to reduce the perceived distance between current law and what is advocated for. Second, they allow advocates to identify the areas of Florida law most in need of change and to chart a course for using existing law, where possible, to accomplish at least part of the goal of using receivership as a stabilization tool.

The primary strategies that exist at the local level for addressing the deleterious effects of abandoned properties or rental units in disrepair are the code enforcement and nuisance abatement systems. Both have limitations. The code enforcement system relies on liens for unpaid fines and assessments for the cost of repairs done by local government in order to coerce property owners into compliance with building, housing and health codes\textsuperscript{42} This process can be time consuming. By relying on the enforcement resources of already-overstretched local governments, there are often many more delinquent properties than can be addressed, particularly in urban areas. Nuisance abatement authorities, while having greater powers that code enforcement authorities, face similar resource constraints and, more importantly, have a narrower scope. Public nuisances are by definition those where criminal and drug-related activity occurs.\textsuperscript{43} Stabilization receivership, rather than relying on coercion of the property owner for compliance, places properties directly into the hands of a receiver. This strategy also allows a community to leverage private resources more effectively, rather than relying so heavily on scare local government resources. What follows below explains how a law creating stabilization receivership would come about.

\textit{Authority to Create Stabilization Receivership Exists at State and Local Level}

Under Florida’s Constitution, counties and cities are afforded, in principle, broad home rule powers. Local government is granted “any power for municipal purposes, except when expressly prohibited by law.”\textsuperscript{44} An express prohibition, which must be specific,\textsuperscript{45} does not exist with respect to local power to create stabilization receivership. Two other legal hurdles, however, must be overcome in determining whether localities have constitutional authority to implement

\textsuperscript{41}Order Appointing Receiver, In re: Village at Dadeland Condominium Association, Inc., 09-40773 CA 02, ¶14 (June 4, 2009) (stating “it is anticipated that multiple units will come within the jurisdiction of this Order on different dates and times”)

\textsuperscript{42}Fla. Stat. §§162.01-162.13

\textsuperscript{43}See, e.g., Fla. Stat. §§823.05, 823.10 & 893.138, ; §2-98.5, Code, Miami Dade County, Fla.; §46-1, City of Miami Code.

\textsuperscript{44}Fla. Stat. §166.021, Fla. Stats.; Art. VIII, §2(b), Fla. Const.

\textsuperscript{45}See City of Hollywood v. Mulligan, 934 So.2d 1238, 1243 (Fla. 2006)
the strategies discussed in this report. Both are doctrines related to the state’s power to preempt (or supersede) local laws: that of conflict preemption and that of implied preemption.

If Miami-Dade or Broward County were to create a stabilization receivership mechanism, no person required to comply with it would, in doing so, be in violation of any existing state law. As such no conflict exists under the doctrine of conflict preemption. With respect to implied preemption, counties and cities may be prevented from exercising their powers on subject matters where the state legislative scheme is so pervasive as to indicate an intent by the legislature to supersede local regulation of that subject. Local governments in Florida have an active role, in some cases a lead role, relative to the state in regulating and enforcing housing and building standards, in creating neighborhood stabilization schemes, in addressing vacant properties and foreclosures and in many other areas related to receivership for Stabilization. Moreover, as is described in later sections, very few statutes regulate receivership in Florida; the law applicable to receivership is mostly court-created case law. As such the case for implied preemption, if anyone were to assert it, is a very difficult one to make and unlikely to prevail.

In addition to regulatory powers given them by Florida law, Miami-Dade and Broward Counties are both charter counties. This means that they can grant themselves regulatory powers not otherwise inconsistent with Florida law. Both currently have sufficient authority to enact an ordinance creating stabilization receivership. Municipal governments properly empowered by their charters within these two counties also have sufficient authority to act. Cities in Miami-Dade County are granted all powers of policy-making and self-regulation not inconsistent with Miami-Dade County’s laws; and while the delegation of powers to cities in Broward County is not as strong, there is no prohibition on a city creating a receivership ordinance. As such, the authority to create a stabilization receivership exists both at the state and local levels in Florida. Each jurisdiction can regulate only property within its borders, and venue is proper in a court with the same jurisdictional scope.

Once Created, Successful Stabilization Receivership Demands an Adequately-Resourced Receiver

In Village at Dadeland Associates, section 718.116 provided the plaintiff Association with statutory standing to seek the appointment of a receiver – rooted in the rights of its member property owners as well as its own direct interest in the units – and with a defined role for the receiver of collecting rents from leased units in foreclosure. No corollary exists in the context of

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46 Browning v. Sarasota Alliance for Fair Elections, 968 So.2d 637, 649 (Fla. 2nd DCA 2007)
47 Id. at 645
48 See, e.g. Seminole County v. City of Winter Springs, 935 So.2d 521 (Fla. 5th DCA 2006) (upholding preemptive land use regulatory power of charter counties)
49 Art. VIII, §1(g), Fla. Const.
50 Art. 1 §1.01, MIAMI DADE COUNTY CONSTITUTIONAL AMENDMENT AND CHARTER; Art. I, §1.02, CHARTER, BROWARD COUNTY.
51 Art. 1 §6.02, MIAMI DADE COUNTY CONSTITUTIONAL AMENDMENT AND CHARTER; Art. XI, CHARTER, BROWARD COUNTY.
52 See FLA. STAT. §47.011 & 47.031
stabilization receivership. As such, the first of two policy questions relating to the nature of any proposed stabilization receivership laws is to determine for what purposes a petition for the appointment of a receiver may be initiated. The second question is to determine what persons or entities ought to have standing to bring an action for the appointment of a stabilization receiver.

Another challenge is the fact that a “blanket receivership,” in contrast to any contemplated stabilization mechanism, is a passive receivership. The resources required of a stabilization receiver whose mission is to conduct repairs to a building which is out of compliance with minimum housing standards far exceeds the resources required of a blanket receiver charged with simply collecting and then properly applying rental payments. This highlights the necessity of identifying or developing receivers with sufficient qualifications, expertise and resources to carry out the revitalization of a property under court supervision. Stabilization receivers will need sufficient liquidity to make repairs to a building and then to later submit to the court for the ability to reimburse themselves with income from the property or the ability to lien the property if so empowered. A stabilization receivership also requires a significant amount of technical expertise, and particularly legal expertise. This is because court proceedings for stabilization receivership can take a long time to complete. In Ohio, for example, they can take from one year to a year and a half.\(^5^3\)

d. An Aggressive Stabilization Receivership Ordinance Provides Greatest Reach

The Sample Stabilization Receivership Ordinance included in the Appendix to this Whitepaper was drafted for unincorporated Miami-Dade County or for Broward County. As stated above cities also have the power to enact the same. Drawing on a combination of the statutes mentioned above, especially Florida’s public interest statutes, the sample ordinance provides for an aggressive two-prong stabilization receivership mechanism. One part is aimed at abandoned properties and the other at substandard residential rental properties. A few features to note:

- to prevail in getting a receiver appointed, a party seeking receivership must show both an inability or unwillingness on the part of the owner to maintain the property and that conditions of imminent harm exist.
- receivers are given very broad powers, subject to court approval, to take whatever action is necessary to rehabilitate the subject properties including to borrow against the property to finance the cost of repairs;
- the County, neighbors, tenants and not for profits are given standing to initiate receivership;
- the value or income stream of the property must be able to support the costs of needed improvements;
- the cost of relocating and temporarily housing displaced residents is include in the costs of receivership; and
- a 30-day notice and opportunity to cure is required, except in cases of emergency.

A more compelling preamble to the ordinance might cite statistics related to the effects of substandard dwellings and abandoned properties in the relevant jurisdiction.

What follow are a few characteristics of the strongest cases that might be brought under the ordinance. These are also the most important areas of inquiry for policy makers interested in creating the remedy:

- **Serious Harm or the Threat of Harm.** A compelling factual record would demonstrate the threat of property damage to surrounding residents and property owners or threats to health and safety posed by the subject abandoned or distressed property. This is particularly true of an emergency petition for stabilization receivership since it would call upon the court’s equitable powers.
- **Public Interest.** This element is similar to the showing of harm. Though not necessary, some attention should be put to describing how the public interest is served by stabilization receivership.
- **Limited Alternative Remedies.** Though not necessary, a compelling factual record might also illustrate why existing mechanisms fail or are insufficient. Whether the record demonstrates the inadequacies of the nuisance abatement or code enforcement systems, or explains the shortcoming of possible bankruptcy or foreclosure proceedings, a court would need confidence that alternative remedies do not exist or are insufficient.
- **Pattern of Non-compliance.** Related to the inadequacy of other possible remedies, it is a requirement to demonstrate a property owner’s inability or unwillingness to either maintain or rehabilitate the subject property. Establishing a pattern of neglect or an inability to meet obligations, such as repeated and unabated code violations, is important since equitable principles are rooted in fairness. Such a showing will allow the court to balance the public’s interest in stabilization against the intrusion into the rights of the property owner effected by the imposition of a receiver.
- **Standing on Other Grounds.** While not necessary to a petition itself, it is helpful for potential litigants to have other grounds to call upon the court’s jurisdiction, another basis for standing. If the plaintiff is a neighboring property owner, for example, perhaps that property owner might be one who has standing to assert an action for private nuisance. If the plaintiff is a tenant, for example, the tenant might be one who could assert claims as a consumer against the property owner under the Florida Deceptive and Unfair Trade Practices Act.\(^54\)
- **Income Stream.** The subject property must have sufficient value, whether rental income or net resale value, to finance stabilization. Perhaps an obvious point, but the goals of a stabilization receiver must be achievable. The sample ordinance codifies this and requires a showing of viability when the petition is initiated. This section on receivership concludes below by considering possible funding mechanisms for repairs to property.

\(^54\) Fla. Stat. §501.201 et seq.
Policy Makers Might Also Consider Funding Mechanisms that Facilitate Stabilization Receivership

A receiver must be able to recover the costs of rehabilitating a property. In many areas, receivers may face challenges in doing so. A stabilization receiver who, for example, takes a single family property from a delinquent or absentee landlord that struggled to maintain the property based on a limited income stream, might be left in close to the same position as that landlord. If a rental property owner in a distressed neighborhood cannot demand higher rent even after repairs, then improvements financed by increases in rent alone are not feasible. For this reason the sample ordinance included the ability to borrow against and lien the property for the cost of repairs under a plan approved by the court. This is in keeping with other jurisdictions. In New Jersey, for example, the equivalent of a stabilization receiver may “borrow money and incur debt” and recover its costs “by a lien or security interest in the building or other assets subject to the receivership.” Stabilization receivers in Massachusetts “have full power to borrow funds and to grant security interests or liens on the affected property, to make such contracts as the receiver may deem necessary,” recoverable by a priority lien. Both jurisdictions go further, however.

While most stabilization receivership statutes permit repairs to be recovered by priority liens, this alone may not be enough. Lenders are often reluctant to invest in distressed properties because of limited revenue streams or because of preexisting liens attached to the property, rendering the property difficult to sell. This phenomenon has frustrated receiverships in other jurisdictions. Both states mentioned above have responded by instituting supplemental programs to support rehabilitation efforts where such economic realities exist. Massachusetts’ receivers “may petition the court for leave to apply for financial assistance … to supplement funds otherwise available from rents, if [the court] deems that the rents are insufficient to effectuate the necessary repairs or rehabilitation.” New Jersey’s Affordable Housing Trust Fund at one time included access to revolving loan funds for revitalization receivers. In the current economic climate sources of such funds may be hard to come by. Nonetheless solutions may be available.

Municipalities have long used tax exempt revenue bonds and joint powers agreements in order to leverage private resources in community development. Given their complexity, such funding mechanisms have proven viable for only very large-scale projects of the type not contemplated here; a court-appointed receiver is not a mechanism suited for such strategies. However, a form of revenue bonding meant for small-scale viability is exemplified by the Property Assessed Clean Energy (“PACE”) program. Florida recently granted local governments authority to create

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55 New Jersey Stats. §2A:42-128(e)
56 New Jersey Stats. §2A:42-130
57 G.L. C. 111, §127J
59 G.L. C. 111, §127J
PACE programs. These allow property owners to work directly with qualified contractors for energy efficiency and renewable energy projects using upfront funding by local governments paid through proceeds of a revenue bond issuance; property owners then repay local governments through an assessment on their property tax bills. The assessments that property owners voluntarily assume are expected to be offset by the savings generated by more energy efficient buildings. PACE programs are mentioned here as a possible model for the use of municipal bonding authority to create a funding pool for viable receivership rehabilitation opportunities.

61 FLA. STAT. §163.08
IV.

**Property Registration Programs:**
Tools to Target Enforcement of Minimum Housing Standards

As part of an effort to ensure compliance with minimum standards, local governments across the country have instituted programs that require properties to register the existence either of residential tenancies or of vacant property. These are, respectively, ‘rental registration ordinances’ (or ‘programs’) and ‘vacant property registration ordinances’ (or ‘programs’). Together they will be referred to as ‘property registration ordinances’ (or ‘programs’). These two similar programs can provide added tools for local governments interested in better targeting the enforcement of minimum housing standards.

Stabilization receivership promises a powerful, albeit resource-intensive, tool to acquire and rehabilitate distressed properties where a specific set of conditions exist. By contrast, property registration programs offer a much less intensive tool, but whose reach is as wide as possible. The least intensive of property registration ordinances simply catalog properties and offer jurisdictions valuable information about their housing stock. The most intensive add penalties for failing to comply with minimum standards, aimed at bringing properties into compliance with the widest possible reach.

a. Property Registration Programs Vary in Purpose, Scope and Enforcement

Laws requiring property registration are very common across the country and vary widely with respect to the types of properties covered, registration requirements and penalties for failure to comply. This section provides a non-exhaustive selection of a few examples for illustrative purposes.

The first distinction among property registration programs is between rental registration programs aimed at tenancies and those requiring registration of vacant property. Both rental property and vacant property must be registered in Dallas (with a $25 fee). In most jurisdictions, however, only one type of registration requirement exists. Some jurisdictions’ rental registration programs, such as Kansas City’s (Missouri), require all tenant-occupied properties regardless of the number of units to register. The City of Houston’s rental registration ordinance, by contrast, applies only to multi-family rental buildings with three or more units. Others are directed at vacant properties. The City of Chicago’s vacant property ordinance requires an owner to register vacant buildings within 30 days after they become vacant (charging a $250 fee). Many of the vacant property ordinances in Florida, discussed below, are aimed specifically at vacant properties in foreclosure.

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63 §§27-60, 27-62 & 48B-6, **Dallas City Code**
64 §§56-352, **Kansas City, Missouri, Code of Ordinances**
65 §§10-152 & 10-154, **Houston, Texas Code of Ordinances**
66 §13-12-125, **Municipal Code of the City of Chicago**
Property registration ordinances can be further divided into registration-only ordinances and those that require an inspection. Ordinances requiring registration only are generally intended to collect information and generate revenue with which to enforce minimum standards. Many programs go further by including code compliance inspections as part of the registration process. In Chicago mortgagees must inspect their properties monthly to determine whether or not they are vacant.67 Other programs simply tie code compliance to registration. The City of New Hope, Minnesota may revoke or decline to renew a registration for code violations.68 Penalties for failure to register can include more than fines. Under New Jersey’s Landlord Registration Act a landlord cannot complete the eviction process against a tenant without first complying with the registration requirement (judgment for possession cannot be entered if the landlord has not complied).69 In Raleigh, NC a tenant cannot be held liable for rent to an unregistered landlord (it is “unlawful for an owner to rent, to receive rental income from” an unregistered property).70 These programs can become a useful tool in revitalizing neighborhoods beset with substandard rental housing and/or vacant buildings; but aggressive inspection programs can also be felt as onerous and overreaching by both landlords and tenants.71

b. Authority and Precedent Exists for Registration Programs in South Florida

Local legislation would be needed in order to create a new rental registration program in South Florida. Fortunately local jurisdictions have the authority to create such programs. The preemption analysis in the preceding section, describing broad regulatory powers at the local level, is likewise applicable to rental registration programs. There is no state law that would conflict with a local registration program. In addition because local governments in Florida have a lead role in ensuring compliance with minimum housing and building standards,72 implied preemption does not apply.

Not only are they permissible under Florida law, but property registration programs are common in Florida. A non-exhaustive list of local jurisdictions with a program in place, usually a vacant/foreclosed property registration program, includes the cities of Casselberry (Seminole), Cocoa (Brevard), Coral Springs (Broward), Cutler Bay (Miami-Dade), Palm Coast (Flagler), Palm Bay (Brevard) and Sanford (Seminole) as well as the counties of Charlotte, Hillsborough, Marion and Miami-Dade. In fact, Miami-Dade County’s vacant property registration program, discussed in further detail below, targets properties in foreclosure and has served as a model for other Florida jurisdictions considering a similar strategy.

67 §13-12-127, MUNICIPAL CODE OF THE CITY OF CHICAGO
68 §3-31(j), NEW HOPE, MINNESOTA, CODE OF ORDINANCES
69 NEW JERSEY STATS. §§46:8-28.5 & 46:8-33
70 §12-2177, RALEIGH, NORTH CAROLINA, CODE OF ORDINANCES
71 Margaret Ramirez, Apartment inspection law riles Westmont landlords – some landlords, tenants call it an invasion of privacy, The Chicago Tribune (Apr. 2, 2010).
72 See, e.g., FLA. STAT. §509.032(7); AGO Op. Atty Gen. Fla. 94-41 (1994); but c.f. 509.032 (2)(d) (Florida Building Code and the Florida Fire Prevention Code are preempted)
Advocates of a rental registration program for Miami-Dade County are fortunate since Miami-Dade has had, since 2009, the other form of property registration: a vacant property ordinance that targets properties in foreclosure. Intended to monitor and track single family dwellings subject to foreclosure actions, Miami-Dade requires registration of single family dwellings subject to foreclosure proceedings (registration required upon lender’s filing of a *lis pendens*) with the County’s Office of Neighborhood Compliance. It is significant to note that the responsible party for compliance is not the property owner but the holder of a mortgage or the party pursuing foreclosure of an instrument secured by the property. Once registered, mortgage holders must have the registered property inspected by code enforcement (the County’s Minimum Housing Enforcement Officer) to ensure, for example, that the property’s yard is being maintained, that the dwelling is secured at all windows and doors, and that an appropriate pool barrier, where necessary, is in place. Registering parties under Miami-Dade’s foreclosure registry must pay a $125 fee to register in addition to the cost of inspection. The fine for noncompliance is $500.

Property registration ordinances elsewhere in Florida do not vary greatly. Most vacant property ordinances require an inspection and annual registration; most rental registration ordinances are registration-only ordinances. Most of both types apply broadly to all properties. The City of Cocoa enacted a foreclosure registration ordinance similar to Miami-Dade County’s. Coral Springs requires mortgagees to inspect their properties upon default and, if found vacant, register them within ten (10) days (paying a $150 registration fee). Cutler Bay’s ordinance is very similar, as are those in Marion County, Charlotte County, and Hillsborough County. Palm Coast has both a vacant property ordinance – similar to Coral Springs’ but aimed at abandoned properties and those in foreclosure (also with a $150 fee) – and a rental registration ordinance requiring all rental units to be registered and annually inspected for compliance, enforceable by fines for noncompliance. Sanford’s vacant and foreclosed property ordinance does not require inspection but provides code enforcement officials broad latitude to inspect for violations and issue citations; its rental registration ordinance is directed at “owners of single-family residential property or two-family rental property.” None provide harsh sanctions, except for the theoretical exception of Casselberry. Casselberry’s foreclosure registration ordinance requires

73 Ord. No. 08-134, Miami-Dade County, codified at section §17A-19, CODE, MIAMI DADE COUNTY, Fla.
74 §17A-19, CODE, MIAMI DADE COUNTY, Fla.
75 §17A-20, CODE, MIAMI DADE COUNTY, Fla.
77 §17A-13, CODE, MIAMI DADE COUNTY, Fla.
78 Id.
79 CODE, CITY OF COCOA, FLORIDA, §§6-202 - 6-2029
80 CODE OF THE CITY OF CORAL SPRINGS, FLORIDA §§16½-9 - 16½-11
81 ORDS. NO. 08-16 (Aug. 20, 2008) and 10-14 (Sept. 15, 2010), TOWN OF CUTLER BAY, FL
82 MARION COUNTY, FL CODE OF ORDINANCES, §§11-221 - 11-230
83 CHARLOTTE COUNTY, FL CODE OF ORDINANCES, §§ 3-2-111 - 3-2-123
84 ORD. NO. 09-59 (Sept. 3, 2009), HILLSBOROUGH COUNTY, FL.
inspection, registration and maintenance of properties in foreclosure and is enforceable by a $500 or at least the possibility of sixty (60) days’ imprisonment by reference to a general provision related to violation of its city code.\footnote{87 CODE OF ORDINANCES, CITY OF CASSELBERRY, FL, §§58-126 – 58-136, 1-13}

c. Rental Registration Programs Can Expand on South Florida’s Existing Property Registration Ordinances

The preceding paragraphs have discussed closely-related rental registration and vacant property programs together. NHSSF, however, has expressed an interest specifically in rental registration. As such, attached to this whitepaper in the Appendix is a \textit{Sample Rental Registration Ordinance}. It was drafted to be applicable to unincorporated Miami-Dade County and is styled in such as was as to expand the County’s foreclosure registration program to rental properties. It is a standard version of rental registration including an inspection requirement. A few notable features are described below:

- All rental property owners, regardless of how many units they own, must register their units. However, only owners of five or more units must have them inspected. The number five was chosen only because it reflects an existing threshold already in use in distinguishing building classes.
- In contrast to the existing foreclosure registration program, the inspections required are under housing as well as building codes. Landlords can forgo inspection if they can prove that they had their own inspection done.
- There are no fees for landlords with less than five units or for landlords with five or more but who pass inspections.
- Tenants are not liable for rent during periods where their units are unregistered. This means that they could not be subject to eviction for nonpayment as long as the unit they rent was unregistered. In addition, landlords must be registered in order for a writ of possession to issue in an action for eviction. Note: please see commentary below, as these provisions are included for illustrative purposes and are not necessary recommended.

As with the stabilization receivership ordinance described in the preceding section, a more compelling preamble to the rental registration ordinance might cite statistics related to the effects of substandard dwellings in the relevant jurisdiction.

The more tenant-friendly enforcement provisions in the attached sample ordinance (described in the final bullet point above) are drawn from jurisdictions outside of Florida. These do not yet exist anywhere in Florida. A local government would not be preempted from implementing these provisions.\footnote{88 \textit{See}, e.g., Fla. Att’y Gen. Op. 94-41 (1994) (issuing opinion that city may, by ordinance, extend the notice provisions for the termination of residential tenancies)} They would nonetheless be out of step with other Florida jurisdictions and would likely be perceived as onerous and extreme, particularly when coupled with a mandatory inspection requirement. As such, section 17A-23 in the attached ordinance is included only for illustrative purposes in case advocates chose to advocate for a strongly pro-tenant version.
A registration ordinance that includes mandatory inspection must confront the practical reality that housing and building inspectors are not likely to be able to quickly develop the capacity to inspect nearly every rental unit in, for example, all of unincorporated Miami-Dade County. Moreover the building inspection process is widely perceived as being capricious, posing further problems. Political considerations are beyond the scope of this discussion. However, to the extent that, as part of a legislative package including rental registration, reforms are proposed to the inspection process that are friendly to property owners, this may go a long way in gaining support.
V.

**Code Enforcement Partnerships:**

Community Involvement to Improve Compliance with Minimum Housing Standards

It is hard to imagine any comprehensive effort addressing neighborhood stabilization that succeeds without community involvement. In addition to ambitious new tools like stabilization receivership and rental registration, this whitepaper considers strategies that can be implemented by local code enforcement authorities aimed at partnering with those in the community. These partnerships can build trust among residents of distressed communities and increase the effectiveness of existing code enforcement efforts. Through leveraging relationship with partners in the community, these same code enforcement authorities can also expand the reach of their enforcement efforts.

Strategies in other parts of the country have partnered with different sectors of the community. For a time the City of Atlanta operated a “neighborhood deputies” program, training residents in largely low-income communities about housing code violations and involving them in expanding its code enforcement corps.89 One program in the City of West Jordan, Utah focuses not on working with residents but rather on working with landlords. Its “Good Landlords Program” provides discounts to landlords on city fees for participating in an education program designed to increase compliance with fire and safety standards.90 The City of Cleveland developed an extensive partnership with community development corporations which were tasked with helping manage complaints and prioritizing the city’s enforcement efforts.91

South Florida jurisdictions have had varying levels of success with enhanced code enforcement activities. The City of Coral Springs (Broward) uses trained volunteer “Code Rangers” to provide property owners with courtesy notices for minor violations prior to issuing a formal warning, enabling code enforcement officers to focus instead on more serious code violations.92 Two other Broward cities, Miramar and Hollywood, have similar programs.93 Cities such as Miami Beach (Miami-Dade) and Pembroke Pines (Broward), have made it easier for every day residents to get involved in code enforcement by the use of mobile smart phone applications to report suspected violations.94

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91 Cleveland City Council, City of Cleveland Building and Housing CDC Code Partnership (Nov. 16, 2010), *available at* [http://www.clevelandfed.org/Community_Development/events/20110411/cdc_partnerships.pdf](http://www.clevelandfed.org/Community_Development/events/20110411/cdc_partnerships.pdf)
93 Id.
None of the community partnership programs described above, nor any that might be expanded to other South Florida jurisdictions, require law reforms (and so there is little to no legal analysis implicated in considering them). At most these fall into the category of ‘soft policing’ where residents help generate complaints or issue non-binding courtesy warnings without the force of law. None contemplate legally ‘deputizing’ residents to enter properties, issue binding citations or make emergency improvements. Such efforts at deputizing residents, if proposed, would require law reforms but are probably ill-advised and might prove counter-productive.95 The most important considerations in community partnership programs or ‘soft policing’ initiatives relate to designing effective programs, building trust with the community and allocating resources effectively.

These programs can be important strategies to enhance efforts at enforcing minimum standards. They can provide valuable information to code enforcement authorities and allow them to use scarce resources more effectively; and where implemented correctly, they can also help to build trust in communities suffering from a glut of distressed properties.96 Community partnership programs are worth implementing where there is political will to do so and where resources are made available for the purpose. Still, relative to the other initiatives described in this report these programs appear to be relatively low-impact.

95 It should be noted, for example, that Coral Springs does not dispatch its Code Rangers to their own neighborhoods. Anthony Cave, Citizen Volunteers Seek Out Code Violators, The Miami Herald (Jul. 28, 2012).

96 As a cautionary tale, one initiative by the City of Miami aggressively targeting abandoned and unsafe structures generated controversy recently after displacing dozens of low-income Little Havana residents, shutting down their building with little notice. Hank Tester, East Little Havana Residents Being Evicted Getting "A Rough, Rough Deal," One Says Operation Clean Sweep determined that 402 NW 12th Ave. was unsafe, NBC 6 South Florida (Jul. 16, 2012)
VI. Conclusion and Recommendations

Stabilization receivership is an intensive mechanism that can directly take a distressed property and put it into the hands of a receiver for rehabilitation. It is a targeted and resource-intense strategy. Because of this, however, its scope is limited. Registration programs, by contrast, have the possibility of reaching every vacant or rented property in a jurisdiction. For this reason they complement receivership very well. Programs that encourage partnership between code enforcement and the community, if implemented correctly, can enhance any compliance effort.

a. Stabilization Receivership: A Potentially Powerful Tool whose Economic Viability Must be Further Evaluated

Local jurisdictions establishing stabilization receiverships would create a legal action for the appointment of an active receiver. In doing so they would create a category of receivership which differs significantly from mechanisms under existing Florida law. Fortunately there are many examples of jurisdictions outside of Florida with receivership laws as aggressive as the attached sample ordinance incorporated into this whitepaper at NHSSF’s request.

The greatest challenges with the creation of an aggressive stabilization receivership relate to the viability of the receivership ‘business model.’ While it is a powerful tool, it requires significant resources and technical expertise to bring about. Moreover, in attempting to rehabilitate distressed properties, stabilization receivers should not be placed in the same position as struggling landlords or property owners once they acquire the properties. With insufficient income, resale value or access to credit, it may be impossible to finance needed repairs. For the most distressed among target properties, stabilization receivership may need to be implemented alongside other policies or programs which provide funding, incentives or inexpensive credit.

Recommendations:

- A list of distressed properties, both vacant and tenant-occupied, should be identified in order to conduct a series of case studies. Running through the ‘business cycle’ of a stabilization receivership with experienced professionals of different disciplines will enable advocates to evaluate the feasibility of this type of receivership for the communities in which it is most needed.

- Advocates, in collaboration with local policy-makers, should decide on the scope of a desired stabilization receivership mechanism. Policy-makers would need to decide what parties can initiate a petition for the appointment of a receiver; what ‘triggers’ a receivership or under what circumstances a court can put a property into receivership; and what powers a receiver has, whether it includes for example borrowing against the property or selling it. Once advocates and policy-makers decide on the specific form of receivership to pursue, visiting a jurisdiction that has implemented an analogous receivership model would be valuable.

- Further study is needed of supplementary funding mechanisms that may be available at the local level, such as revolving funds financed through municipal bond issuances.
• Finally, while the attached sample ordinance includes a significant role for non-profits, they cannot themselves serve as receiver under current Florida law. Community development corporations (“CDC”) are given standing, under the sample ordinance, to bring a petition for the appointment of a receiver. Still, under Florida law, they would not themselves be able to serve as receivers. No change to Florida law is recommended here with respect to the prohibition on corporations serving as receivers. None of the functions contemplated by a stabilization receiver necessarily require the receiver to be a mission-driven non-profit; and a receiver might partner or contract with a CDC for the performance of some of its duties.

b. Rental Registration: a Common Tool Whose Scope Should be Decided Based on Enforcement Priorities and Capacity to Implement

Property registration programs are common and straightforward. The challenges in creating new rental registration ordinances are in designing them to be effective at collecting information and encouraging compliance while ensuring that they are not too onerous on property owners.

Recommendations:
• Advocates, in collaboration with local policy-makers, should set priorities in designing a rental registration program to determine if registration is needed as primarily an information-gathering tool or if it is need as also an enforcement tool. This will facilitate the decision on the scope of the ordinance and whether it will include inspection requirements and/or strong enforcement provisions.
• Assessing the reach and feasibility of a potential inspection program will also be important in assessing the cost and effectiveness of a registration program as an enforcement tool as well as how onerous it will be on property owners.
• Once advocates and policy-makers decide on the specific form of registration, contact with a jurisdiction that has implemented an analogous program would be valuable.

c. Code Enforcement Community Partnerships: An Advisable Initiative Where Local Conditions Permit

Code enforcement community partnerships are common and vary from jurisdiction to jurisdiction based on the needs of that community and the political will to implement programs in partnership with community members. Compared with the other tools described in this report, these programs have a lower impact. Still, they should be implemented where possible.

Recommendation:
• Advocates should conduct qualitative inquiries in the neighborhoods and jurisdictions most suffering from distressed vacant and rental housing. Where there are willing parties and where local authorities are prepared to invest resources into a partnership, these programs are worth pursuing.
Appendix

A. Sample Stabilization Receivership Ordinance

B. Sample Rental Registration Ordinance
A.

Sample Stabilization Receivership Ordinance
SAMPLE FOR DISCUSSION PURPOSES ONLY

ORDINANCE NO.________________

TITLE: [...]

* * *

BODY:

WHEREAS, abandoned properties in close proximity to occupied residences constitute a barrier to urban stabilization by fostering criminal activity, creating threats to public health, lessening the value of neighboring property and otherwise diminishing the quality of life for residents [insert facts and figures where available]; and

WHEREAS, substandard rental dwellings that fail to provide safe and sanitary housing accommodations for the public to whom such accommodations are offered constitute a threat to the wellbeing of residents and a threat to the character and stability of urban neighborhoods [insert facts and figures where available]; and

WHEREAS, it is hereby declared to be the policy of Miami-Dade County[/Broward County] in the exercise of its police power for the public safety, health and general welfare, to prevent neighborhood deterioration and eliminate substandard housing by the establishment of an action for the appointment of a receiver empowered to repair and rehabilitate abandoned or substandard housing and ensure their valuable use and suitability as dwellings;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF [MIAMI-DADE COUNTY/BROWARD COUNTY], FLORIDA:

SECTION 1.

Chapter 17C97 of the Code of Miami-Dade County[/Broward County], Florida, is hereby created to read as follows:

Chapter 17C – Receivership for Purposes of Community Stabilization

Sec. 17C-1. - Definitions

(a) “abandoned property” shall mean any property which has been used or was intended for use as a residential dwelling, in whole or in part, that is vacant and has been maintained in a condition of disrepair for ninety (90) days or more.

(b) “interested party” shall mean any owner, mortgagee, lienholder, tenant, or person that possesses an interest of record in any property that becomes subject to the jurisdiction of a court pursuant to this chapter, and any applicant for the appointment of a receiver under to this chapter.

97 For Broward County: “Article IV, Sections 5-74 through 5-77, are hereby amended to read as follows:”
(c) “neighbor” shall mean any owner of property that is located within five hundred feet of a property eligible to become subject to the jurisdiction of a court pursuant to this chapter.

(d) “not for profit community development corporation” shall mean a nonprofit corporation duly organized for the purpose of incorporated to provide programs, offer services and engage in other activities that promote and support community development.

(e) “substandard residential rental property” shall mean any non-owner occupied residential property substantially out of compliance with health and safety codes pertaining to habitability.

(f) “tenant” shall mean a lawful occupant who resides as her/his primary residence, pursuant to a rental agreement, at a property eligible to become subject to the jurisdiction of a court under this chapter.

(g) “qualified receiver” shall mean a natural person or a corporation authorized to transact business in this state with sufficient experience and resources, as determined by the court, to carry out the duties of a receiver under this chapter and to give such bond as the court may require.

Sec. 17C-2.- Stabilization Receivership, Generally

(a) Venue. An application for a receivership under this chapter may only seek receivership over property located in unincorporated Miami-Dade County and must otherwise comply with any applicable venue requirements of Florida or federal law.

(b) Bond. The court may require a surety bond as a condition for the appointment of a receiver.

(c) Notice. In non-emergency cases, any party authorized to bring an action under this chapter must provide thirty (30) days’ prior written notice (“thirty-day time period”) to interested parties of an intent to bring an action for Stabilization receivership identifying the subject property and specifying the grounds pursuant to this chapter upon which receivership is sought, and shall make reasonable attempts to serve the notice in the manner prescribed in the Rules of Civil Procedure; the responsible party shall have the opportunity to cure during this thirty-day time period. Parties seeking to bring an emergency action under this chapter need not provide written notice prior to commencing an action.

(d) Duties and Powers of Receivers.

(i) Receivers appointed pursuant to this chapter shall prepare and submit for court approval a plan for the stabilization of the subject property with a target completion date. Subject to the approval of the court and after such notice and hearings as the court may prescribe, the receiver may exercise broad powers and take any action it deems necessary or appropriate to reform and revitalize the subject property, including the authority to borrow against the property in order to finance the cost of repairs.

(ii) To the extent that relocation of residents or tenants of a property is required either for their safety or for purposes of the property’s rehabilitation, the cost of relocation and temporary housing shall be borne by the receiver and included in the costs of rehabilitation for which the receiver may recover.

(iii) According to a schedule set by the court, receivers appointed pursuant to this chapter shall file with the court a full accounting of all costs and expenses incurred and income received from the property.
(iv) Where a receiver is appointed pursuant to this chapter and income exceeds the cost and expense of rehabilitation, the rehabilitated property shall be restored to the owners and any net income shall be returned to the owners; if, however, the costs and expenses exceed the income received during the receivership, the receiver shall maintain control of the property until the time all rehabilitation and maintenance costs are recovered.

(v) Receivers appointed pursuant to this chapter are entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages and may have a lien for the repair of the property.

(vi) In any proceeding the court shall give first priority to appointment of a qualified not for profit Stabilization organization.

(vii) Receivers appointed pursuant to this chapter are not personally liable except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of the receiver.

(viii) To the extent not otherwise governed by the provisions of this chapter, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver.

(c) Costs. A party successfully bringing an action to appoint a receiver shall be entitled to a judgment for costs against parties defending the action.

Sec. 17C-3. - Receivership Over Abandoned Property

(a) Commencement. Miami-Dade County [Broward County], a neighbor of the subject structure or not for profit community development corporation alleging sufficient grounds may petition a court of competent jurisdiction for the appointment of a Stabilization receiver over a subject abandoned property.

(b) Grounds. A petition for the appointment of a stabilization receiver over an abandoned property must establish all of the following as grounds for relief:

(i) serious and repeated violations of building, housing, and/or health codes or other evidence demonstrating an inability or unwillingness on the part of the owner to maintain the property;

(ii) conditions exist in the structure of serious loss or wasting which threaten to cause neighborhood degradation and harm to adjacent property;

(iii) the value or income stream of the subject abandoned property can support the cost of needed improvements; and

(iv) other grounds which the court deems good and sufficient for instituting receivership.

(c) Relief. After a properly noticed hearing and upon sufficient proof, the court shall appoint a qualified and impartial receiver as Stabilization receiver to take possession of the property for a period sufficient to accomplish and pay for repairs and improvements.

(d) Termination. The court shall terminate a receivership when the court determines that the receivership is no longer necessary because the conditions that gave rise to the receivership no longer exist.

Sec. 17C-4. - Receivership over Substandard Residential Rental Property
(a) Commencement. Miami-Dade County [/Broward County], a tenant of the subject property or a not for profit community development corporation alleging sufficient grounds may petition a court of competent jurisdiction for the appointment of a Stabilization receiver over a substandard residential rental property.

(b) Grounds. A petition for the appointment of a stabilization receiver over a substandard residential rental property must establish all of the following as grounds for relief:

(i) serious and repeated violations of building, housing, and/or health codes or other evidence demonstrating an inability or unwillingness on the part of the owner to maintain the property;

(ii) conditions exist in the property which present an imminent danger to the health, safety, or welfare of the residents of the property or that conditions exist of serious loss or wasting which threaten to cause neighborhood degradation and harm to adjacent properties; and

(iii) the value or income stream of the subject substandard residential rental property can support the cost of needed improvements; and

(iv) other grounds which the court deems good and sufficient for instituting receivership.

(c) Relief. After a properly noticed hearing and upon sufficient proof, the court shall appoint a qualified and impartial receiver as Stabilization receiver to take possession of the property for a period sufficient to accomplish and pay for repairs and improvements.

(d) Termination. The court shall terminate a receivership when the court determines that the receivership is no longer necessary because the conditions that gave rise to the receivership no longer exist.

SECTION 2. SEVERABILITY AND INCLUSION IN CODE

If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the County Code and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," article," or such other appropriate word or phrase in order to accomplish such intentions

SECTION 3. EFFECTIVE DATE

This ordinance shall become effective [for Miami-Dade County: “ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.”] [for Broward County: “upon its adoption.”].

Coding: Words in struck-through type are deletions from existing text. Words in underscored type are additions.
B.

Sample Rental Registration Ordinance
ORDINANCE NO.___________

TITLE: [...]  

* * *

BODY:

WHEREAS, rental housing buildings that are unfit for occupancy due to conditions rendering such buildings, or parts thereof, unsafe and unsanitary, are imimical to the welfare of the County and will be aided by an inventory of rental dwellings that [insert facts and figures where available]; and

WHEREAS, it is hereby declared to be the policy of Miami-Dade County in the exercise of its police power for the public safety, health and general welfare, to more effectively target enforcement of minimum housing and building standards by establishing a rental registration system;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF [MIAMI-DADE COUNTY/BROWARD COUNTY], FLORIDA:

SECTION 1.

Chapter 17A98 of the Code of Miami-Dade County[/Broward County], Florida, is hereby amended to read as follows:

Chapter 17A - VACANT STRUCTURES STANDARDS, MINIMUM  

* * *

Sec. 17A-20. - Registration inspection and enforcement procedure.

(a) Upon registration of any dwelling unit as set forth in section 17A-19 or by a property owner with five (5) or more units subject to section 17A-22, the Minimum Housing Enforcement Officer or his or her assistant shall conduct an inspection of the registered real property to determine its compliance with the provisions of this Chapter 17A and/or the provisions of Chapter 19 of the County Code.

(b) Upon registration of any dwelling by a property owner with five (5) or more units subject to section 17A-22, a building official with the Department of Permitting, Environment and Regulatory Affairs shall conduct an inspection of the property to determine its compliance with the provisions of the building code.

98 For Broward County: “Chapter 20, Article XI is hereby created as follows:”
(c) A property owner required to register under Sec. 17A-22 may avoid inspections under subsections (a) and (b) above by demonstrating that within the six (6) month period prior to registration the property owner obtained a valid and passing inspection.

* * *

Sec. 17A-22. - Registration of Residential Rental Property

Upon the occupation of any non-owner occupied dwelling by a lawful occupant who resides in the dwelling as her/his primary residence pursuant to a rental agreement in unincorporated Miami-Dade County, the owner shall within seven days (7) register the dwelling with the Office of Neighborhood Compliance. The registration shall be upon forms as are designated by the Director of the Department and shall be renewed on a schedule established by the Department but in no case shall renewal be required more than once per year. For any property owner with fewer than five (5) units or any property owner passing inspection under Sec. 17A-20, there shall be no fee associated with registration or renewal as long as the property continues to remain in compliance. For property owners with five (5) or more units, there shall be a fee for registration and renewal as established by a fee schedule in a duly enacted administrative or implementing order for those units not passing inspection.

Sec. 17A-23. - Failure to Register Residential Rental Property†

In addition to any fines for the violation of this chapter, where a property owner referenced in section 17A-22 fails to register a dwelling, it shall be unlawful for that property owner to receive rental income from that dwelling unit for any period of time during which the dwelling unit was unregistered; in addition, no writ for possession against a tenant in the owner’s favor can be entered until the owner has complied with the registration requirement of section 17A-22.

* * *

SECTION 2. SEVERABILITY AND INCLUSION IN CODE

If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the County Code and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," article," or such other appropriate word or phrase in order to accomplish such intentions

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Coding: Words in struck-through type are deletions from existing text. Words in underscored type are additions.

†: see author’s note in body of whitepaper.