



"This Is Not My Beautiful House..." (Strategies for Dealing with Dilapidated Properties)

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There is at least one in every community: the house or shop with a junk-cluttered yard, shuttered windows, and badly deteriorating siding. Sometimes the culprit is an absentee landlord. Sometimes, the problem is complicated by illness or the owner's financial challenges. For whatever reason, incentives that compel most property owners to keep up with necessary maintenance have no discernible impact.

Bringing these properties into compliance with applicable building codes can be difficult. Although it is natural to sympathize with unique challenges faced by individual owners, dilapidated properties can pose serious health and safety hazards to the larger community. This article discusses tools available to municipalities trying to reach workable solutions, including municipal citations, formal declarations of "nuisance," and the possible rehabilitation, razing or sale of a property through a receiver.

Wisconsin Stat. § 800.02 allows municipalities to authorize building inspectors to issue citations for building code violations. This is a good practice, as inspectors are better equipped to issue citations for these violations than the police department. Once a citation is issued, the defendant's appearance in municipal court affords an opportunity to gain compliance. If possible, having the inspector appear for the pretrial allows a full and candid discussion of the issues, and the inspector can address any technical questions from the property owner.



Pretrials should be handled with a sense of urgency. The enemy of progress is delay. It is common for defendants to request significant additional time to complete work. However, the outdoor construction season in Wisconsin can be short. Depending on how often your municipality holds court, even a few adjournments can quickly push a spring court date into fall. Soon a defendant is claiming no work can be done until the following spring. Before you know it, another year has gone by with no compliance.

At the pretrial, an effective tool is to reach an agreement where the defendant pleads no contest, but the forfeiture payment deadline is set within a reasonable time period that allows repair work to be completed. If work is complete and approved by that date, the forfeiture can be reduced or dismissed on court costs. This provides the owner an

incentive to comply, with the forfeiture still being imposed if the deadline remains unmet. The owner can either spend the money to bring the property into compliance, or to pay the citation.

If the defendant doesn't appear in court, or doesn't complete the work by the stipulated deadline, additional citations can be issued. Each day a violation exists technically constitutes a separate offense. However, keep in mind that continuing to issue citations daily for an indefinite period of time could raise constitutional issues relating to imposition of excessive fines.

If citations produce no results, a municipality may, pursuant to Wis. Stat. § 823.21 and Wisconsin Stat. § 66.0413, ask a circuit court to declare a property a "public nuisance." Wisconsin Stat. § 823.21 addresses "dilapidated buildings" that may be declared "public nuisances":

Dilapidated buildings declared nuisances. Any building which, under § 66.0413 (1) (b) 1., has been declared so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or has been determined to be unreasonable to repair under § 66.0413 (1) (b) 1. is a public nuisance and may be proceeded against under this chapter.

Wisconsin Stat. § 66.0413 more specifically defines “public nuisance”:

‘Public Nuisance’ means a building that, as a result of vandalism or any other reason, has deteriorated or is dilapidated or blighted to the extent that windows, doors or other openings, plumbing or heating fixtures, or facilities or appurtenances of the building are damaged, destroyed or removed so that the building offends the aesthetic character of the immediate neighborhood and produces blight or deterioration.

First, an inspection will be needed to gather evidence to support any nuisance declaration. If a property owner is uncooperative, obtaining an inspection warrant under Wisconsin Stat. § 66.0119 is prudent.¹ The “inspection purposes” that a warrant can be applied for include the need to evaluate compliance with “building, housing, electrical, plumbing, heating, gas, fire, health, safety, environmental pollution, water quality, waterways, use of water, food,” and “zoning” standards. It can be issued to any municipal “employee charged under statute or municipal ordinance with

powers or duties involving inspection of real or personal property...” It also covers “a local health officer... or... designee.”

Health and fire department representatives should participate in any inspection. If a property is deemed unfit for human habitation, resources are immediately available to deal with human safety threats. Preparing for the unexpected is the best approach. In executing these warrants, inspectors have encountered everything from raccoons to bees to toxic mold to exposed wires, and everything in between.

Wisconsin Stat. § 66.0413(2)(b) allows a building inspector to declare a property a “nuisance,” and then give the owner written notice that they have 30 days to abate that nuisance. If an owner fails to comply, the statute dictates as follows:

(c) Failure to remedy; court order to remedy or raze. If an owner fails to remedy or improve the defect in accordance with the written notice under par. (b) within the 30-days specified in the written notice, the building inspector or other designated official shall apply to the circuit court of the county in which the building is located for an order determining that the building constitutes a public nuisance. As part of the application for the order from the circuit court, the building inspector or other designated officer shall file a verified petition which recites the giving of written notice, the defect in the building, the owner's failure to comply with the notice and other pertinent facts. A copy of the petition shall be

served upon the owner of record or the owner's agent if the agent is in charge of the building and upon the holder of any encumbrance of record under sub. (1)(d).²

The owner has 20 days to respond. Then a formal hearing is held, at which the court will take testimony and other evidence from witnesses per Wisconsin Stat. § 66.0413(2)(c)1. If a “nuisance” is found, the court then has the following options, including appointment of a receiver:

If the circuit court... determines that the building constitutes a public nuisance, the court shall issue promptly an order directing the owner of the building to remedy the defect and to make such repairs and alterations as may be required. The court shall set a reasonable period of time in which the defect shall be remedied and the repairs or alterations completed... The order of the circuit court shall state in the alternative that if the order of the court is not complied with within the time fixed by the court, the court will appoint a receiver or authorize the building inspector or other designated officer to proceed to raze the building...³

A municipality can also apply for appointment of a receiver under Wisconsin Stat. § 823.23. At least 60 days before filing that application, it must give written notice by 1st class mail to all owners of the property of “the intent to file the application.” The notice must identify “conditions of the

Resource: Single Family Housing Repair Loans & Grants in Wisconsin by USDA Rural Development

What does this program do? Also known as the Section 504 Home Repair program, the program provides loans to very-low-income homeowners to repair, improve, or modernize their homes, or grants to elderly very-low-income homeowners to remove health and safety hazards. <https://www.rd.usda.gov/programs-services/single-family-housing-repair-loans-grants/wi>

residential property that constitute a nuisance and that resulted in the decision to apply for a receiver.⁴ If the owner or other “interested party” informs the court that they intend to abate the nuisance, the court may require the posting of a “security in such an amount and character... appropriate to ensure timely performance of all work necessary to abate the nuisance...”⁵ If this does not happen, “the court shall make a determination as to whether the residential property is a nuisance,” and “determine the extent of the abatement necessary and the scope of work necessary to eliminate the conditions and shall appoint a receiver to complete the abatement.”⁶

Under either Chapter 66 or 823 the receiver has broad powers, including the ability to possess and manage the property, pay taxes/assessments, collect rent, and borrow against any equity to

pay contractors. If the process under Chapter 66 is utilized, a receiver may even “secure and sell... to a buyer who demonstrates to the circuit court an ability and intent to rehabilitate” the property.⁷

With respect to compensating the receiver, under Chapter 823 they “may charge an hourly rate approved by the court or a rate of 20 percent of the total cost of the abatement, whichever the court considers more appropriate.”⁸ Under Wisconsin Stat. § 66.0413(2)(e)2, “the circuit court shall set the fees... of a receiver and may discharge the receiver as the court considers appropriate.” The fee is a lien against the property.

The tools available under Chapters 66 and 823 are best utilized after all collaborative efforts with the property owner are exhausted, and citations proven ineffective. But under the

right circumstances, these tools allow municipalities to protect the public from harm from a nuisance property, in a manner where costs incurred by a receiver to abate the nuisance will not be borne by the municipality.

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About the Author:

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