

Foreclosure Blight:  
Local Government Options in  
North Carolina

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2008 NCCDA Fall Conference

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“State jobless rate at 6-year high.”

Raleigh News & Observer, 10-18-08

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“It looks like this recession  
will be one of the worst  
since World War II.”

Mike Walden, Economist, N.C. State  
Raleigh News & Observer, 10-18-08

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**It's Not All Bad News**

**“This quarter and the next quarter  
will likely be the worst.”**

Mike Walden, Economist, N.C. State  
Raleigh News & Observer, 10-24-08

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**The Good News**

**“Economists now predict the slump  
here [in North Carolina] will last at  
least through next year.”**

Raleigh News & Observer, 10-18-08

**“...the slowdown could go on for  
eighteen months or more.”**

Karl Smith, Economics Bulletin #1,  
UNC School of Government  
August 2008

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**More Good News**

**“...the effects may be felt well into  
2010, experts say.”**

Raleigh News & Observer, 10-24-08

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## Universal

- "Delinquency and foreclosure rates for subprime borrowers were comparable across communities of all income levels."

Michael Rubinger, President and CEO, Local Initiatives Support Corporation  
LISC Press Release 10-29-08

- "What's unusual this time, compared to the late 1980s and early 1990s, is that much higher-ticket homes are also involved."

Rick Sharga, President of RealtyTrac  
NY Times 10-04-08

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What does this mean for  
community development  
professionals?

Local elected officials are  
paying ATTENTION

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"A crisis is a terrible thing  
to waste."

Jennifer Granholm  
Michigan Governor

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### Bottom Line Up Front

- Local elected officials paying attention to foreclosure blight
- Ample legal authority exists for comprehensive blight-fighting programs
- Code enforcement is key component
- Grants, loans, purchase programs (\$\$\$)
- A few innovations to mention

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### Not the focus today

- Foreclosure process: State-regulated function
- Funding sources
  - NSP
  - HOME
  - CDBG
  - TIF (Project Development Financing)
  - NMTC and HTC
- Area redevelopment

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### Local Government Tool Box for Foreclosure and Blight

- Inventory of local government tools used across the nation
  - U.S. Conference of Mayors Report
  - NeighborWorks America (Neighborhood Reinvestment Corporation)
  - Federal Reserve Bank of Atlanta
  - City of Charlotte Foreclosure Strategy
  - Many others
- Analysis of authority under N.C. law

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**Very basics of foreclosure**

1. Loan and Deed of Trust
2. Default Notice → 45-day notice for subprime
3. Substitution of Trustee → First public record available?
4. Notice of Hearing
5. Foreclosure Hearing
6. Notice of Sale
7. Sale
8. Upset Bid → Ain't over 'til it's over
  - bankruptcy halts process
  - enjoining the sale

Process time – not too late?  
 - counseling/negotiating  
 - legal aid  
 - COB review with 30- or 60-day stay  
 - NCHFA program with 120-day stay

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**Foreclosure Intervention**

- Mortgage counselors
- Legal aid attorneys – many procedural hurdles
- NCHFA Home Mortgage Protection Program
  - 120-day stay
  - Job loss only, but the screening is the key
- Commissioner of Banks reviews
  - 30-day stay with foreclosure prevention program
  - 60-day stay for violations of law in origination

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**Foreclosure Intervention:  
Home Still Occupied**

- Get troubled borrowers to counseling
  - Data: Identify the borrowers
  - Conduct awareness campaigns and outreach
  - Hotline
  - Partners
- Honest broker; trusted resource
  - Who or what will convince troubled borrowers to seek counseling?
  - Local governments? Local nonprofits? Both?

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### Foreclosure Intervention: Home Is Vacant

- Once vacant, *speed up* foreclosure process?
  - Tax foreclosure initiated by local government
    - Forces bank to act – clears all liens
    - Bank may simply pay the property taxes to halt process
  - Innovation: “Fast-track” vacant properties
    - Not in NC: Foreclosure process governed by state law

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### Nuisance Regulations and Minimum Housing Standards

Encourage the owner to  
maintain the property.

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### Most nuisance regulations

<ul style="list-style-type: none"> <li>– “<u>Detrimental</u> to health, safety, or welfare”           <ul style="list-style-type: none"> <li>• Debris</li> <li>• High grass</li> <li>• Stray animals</li> </ul> </li> <li>– “<u>Dangerous</u> or prejudicial to the public health or public safety”</li> </ul>		<ul style="list-style-type: none"> <li>– General Police Power Process           <ul style="list-style-type: none"> <li>• Fines/civil penalties</li> <li>• Court order to abate</li> <li>• Costs are low-priority lien</li> </ul> </li> <li>– Summary abatement           <ul style="list-style-type: none"> <li>• Immediate “self-help”</li> <li>• Costs are high-priority lien – collect like taxes</li> </ul> </li> </ul>
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### Dwellings are different

<ul style="list-style-type: none"> <li> – Dwelling in decent shape</li> <li> – Dwelling unfit for human habitation             <ul style="list-style-type: none"> <li>• Can be repaired at “reasonable cost”</li> <li>• Cannot be repaired at “reasonable cost”</li> </ul> </li> <li> – Dwelling is an imminent danger</li> </ul>		<ul style="list-style-type: none"> <li>– General Police Power</li> <li>– Minimum Housing Standards</li> <li>– Abatement of Public Health Nuisances</li> </ul>
<ul style="list-style-type: none"> <li>– <i>Non-dwelling nuisances</i> <ul style="list-style-type: none"> <li>• Debris, high grass, animals</li> </ul> </li> </ul>		<ul style="list-style-type: none"> <li>– General Police Power</li> <li>– Abatement of Public Health Nuisances</li> </ul>

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## Vacant – but habitable

Convince the owners to maintain it.

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 **Convince the owners to maintain it.**

### General Police Power

- G.S. 153A-121 (counties), G.S. 160A-174 (cities)
- Conditions “detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city/county”
- N.C. Supreme Court: *State v. Jones*, 305 N.C. 520 (1982)
  - “aesthetic considerations may constitute a valid basis for the exercise of the police power”
  - Must weigh private harm versus public benefit
    - “protection of property values”
    - “preservation of the character and integrity of the community”
    - “promotion of the comfort, happiness, and emotional stability of area residents”

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 **Convince the owners to maintain it.**  
**General Police Power**  
 Detrimental to health, safety, welfare, peace, dignity?

- Widely-regulated nuisances:
  - High grass (versus "noxious weeds")
  - Debris and cleanliness
  - Dead trees
- Others specific to vacant properties?
  - Lack of paint and weatherproofing
  - Not in good repair
    - Broken window
    - Broken lock
  - Non-structural: Graffiti? Fences? Others?

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 **Convince the owners to maintain it.**  
**General Police Power**

- Even stronger basis for using general police power to regulate vacant properties
  - Broken Windows Syndrome (Wilson & Kelling)
  - "Vacant Properties: The True Costs to Communities" (2005)
    - Blight begets blight: "Cumulative Impact"
    - Lowers neighboring property values
    - Increased local government costs
      - Crime and cost of police services
      - Nuisance abatement and fire prevention

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 **Convince the owners to maintain it.**  
**General Police Power**

- Enforcement of ordinances under general police power
  - Civil penalties and fines (decriminalize?)
    - NC debt setoff program (taken out of tax rebate)
  - Abatement of the nuisance
    - Requires court order
    - Costs: Lien on property (acts like mechanics' lien)
    - Unless "dangerous" to "public health or public safety"
      - Imminent threats abated pursuant to G.S. 160A-193 (cities) and G.S. 153A-140 (counties --but hearing required)
      - Dwellings: *Monroe v. City of New Bern*, 158 N.C. App. 275 (2003)
      - Regulation seeks to prevent homes from getting that bad

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Convince the owners to maintain it.

General Police Power

- Innovation: Vacant property registration
  - All vacant properties must be registered
  - Pay an annual or monthly fee to cover the cost of regular inspections/monitoring (code, police, fire)
    - *Homebuilders v. City of Charlotte*, 336 N.C. 37 (1994)
  - Hire local property management company to maintain the property; post contact information
  - Fee waivers for:
    - Reoccupation within certain number of months
    - Approval and action on a development plan

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Convince the owners to maintain it.

General Police Power

- Authority for vacant property registration
  - Inspections ensure property preservation, protect values
    - Prevent theft of copper piping
    - Deter breaking and entering
    - Monitor for frozen or broken pipes
    - Monitor for arson attempts or fire hazards
  - No specific case law
  - NC examples?
  - Not unprecedented: Counties may implement annual registration of mobile homes (G.S. 153A-138)

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Get it occupied *quickly*

- Speed up foreclosure process?
  - Fast-track for vacant properties
    - Not available in North Carolina
    - Foreclosure process determined by the state
  - Tax foreclosure as an option
- Loan or grant programs for buyers of long-vacant homes
  - Buyers agree to occupy home for length of time
  - Tie into a vacant home registration program?
  - HUD 203(k) rolls rehab costs into loan

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### Spectrum of Authority

-  – Dwelling in decent shape
-  – Dwelling unfit for human habitation
  - Can be repaired at “reasonable cost”
  - Cannot be repaired at “reasonable cost”
-  – Dwelling is an imminent danger

– General Police Power

– Minimum Housing Standards

– Abatement of Public Health Nuisances

At any time:  
Get someone else to buy it  
Local government buys it

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### “Unfit for human habitation” but “reasonable cost” to repair

Encourage owners to repair it.

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### Encourage owners to repair it. Minimum Housing Standards

- G.S. 160A-441 *et seq.*
  - Once a property is “unfit for human habitation,” must use this process (unless imminent danger)
    - *Newton v. Winston-Salem*, 92 N.C. App. 446 (1988)
  - Must enact an ordinance using the language in the statute
  - Two items to customize:
    - Definition of “unfit for human habitation”
    - % of dwelling’s value that is considered “reasonable cost” of repair

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### Spectrum of Local Government Authority



- Vacant but in decent shape – keep it that way
- **Vacant and “unfit for human habitation”**
  - **Can be repaired at “reasonable cost”**
    - ORDER: repair **OR** vacate and close
  - **Cannot be repaired at “reasonable cost”**
    - ORDER: repair **OR** remove/demolish
- Dangerous nuisance – imminent danger

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### Encourage owners to repair it. Minimum Housing Standards

- Definition of “unfit for human habitation”
  - Statutory (G.S. 160A-441)
    - Dilapidation
    - Increased risk of fire, accidents, or “other calamities”
    - Lack of ventilation, light, or sanitary facilities
    - Other conditions dangerous or detrimental to health, safety, morals, or otherwise inimical to citizen welfare
  - Discretion (G.S. 160A-444): local ordinance “may provide additional standards to guide the public officers”

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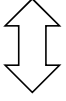
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### Spectrum of Local Government Authority





Adjust “unfit for human habitation”

- Vacant but in decent shape – keep it that way
- **Vacant and “unfit for human habitation”**
  - **Can be repaired at “reasonable cost”**
    - ORDER: repair **OR** vacate and close
  - **Cannot be repaired at “reasonable cost”**
    - ORDER: repair **OR** remove/demolish
- Dangerous nuisance – imminent danger

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 **Encourage owners to repair it.**  
**Minimum Housing Standards**

- Town of Cary “additional standards”
  - Sample from “lack of adequate weatherization”
    - All exterior finishes shall be weathertight with no holes, cracks or rotted boards which permit outside air or water to penetrate rooms.
    - Windows shall be easily openable, shall have panes without cracks or holes, and the sash shall fit properly.
    - no deterioration due to the elements because of lack of preventive maintenance consisting of painting, waterproofing and repair

Town of Cary Code of Ordinances sections 8-117 and 8-119

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 **Encourage owners to repair it.**  
**Minimum Housing Standards**

- Advantages over general police power
  - Statute and case law – certain authority
  - Self-help by local government: Costs are lien collected like special assessments (property tax)
  - Self-help by citizens: 5-person petition compels investigation
  - Process
- Disadvantages
  - Process
  - Small jurisdictions stuck if “vacate and close.”
    - Municipalities in counties with population over 71,000 (or by local act) have time limits

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**The “Vacated and Closed” Wait**

- Population over 71,000 (and a few others): 1 year wait
- Under 71,000: Wait until no longer “reasonable cost” to repair

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
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**Spectrum of  
Local Government Authority**


 – Vacant but in decent shape – keep it that way

– **Vacant and “unfit for human habitation”**

• **Can be repaired at “reasonable cost”**  
– ORDER: repair **OR** vacate and close

 Adjust “reasonable cost” as % of dwelling value

• **Cannot be repaired at “reasonable cost”**  
– ORDER: repair **OR** remove/demolish

 – Dangerous nuisance – imminent danger

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**“Unfit for human habitation”  
and cannot be repaired at  
“reasonable cost”**

Order owners to repair or demolish it.

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  **Nonresidential buildings, too**

- G.S. 160A-439 (cities)
- G.S. 153A-372.1 (counties)
- “Vacate and close” wait period is two years

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“That which does not kill you makes you stronger.”

(unless it is an “imminent danger” and must be abated immediately)

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### Imminent Danger: Summary Abatement

- G.S. 160A-426: Unsafe buildings condemned
  - Residential or non-residential in municipalities
  - Process: Class 1 misdemeanor and costs become a lien and are collected like property tax
- G.S. 160A-193 (cities) & 153A-140 (counties):  
Abatement of public health nuisances
  - Summary abatement of any public health or safety nuisance (swimming pool, “noxious” weeds, dwelling)
  - Summary demolition of dwelling permitted only in cities and if “imminent danger” (*Monroe v. City of New Bern*)
  - Costs become a lien and are collected like property tax

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### Any time: Purchase Program



- Statutory authority to purchase & sell at less than FMV
  - Housing authority: G.S. 157-1 through -70
    - Cities granted same authority: G.S. 160A-456
    - Counties granted same authority: G.S. 153A-376
    - Housing for low- or moderate-income persons
  - Community development purposes
    - G.S. 160A-456 & -457 (cities), G.S. 153A-376 & -377 (counties)
    - Buy, rehab, demolish, redevelop, sell, or “retain”
    - For benefit of low- or mod-income persons or public purpose
  - Redevelopment authority in redevelopment area
    - G.S. 160A-513
  - At foreclosure sale to protect debt: G.S. 105-376
    - Speculators often outbid governments

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### Any time: Purchase Program



- Can local government sell property at less than FMV to someone who is not LMI?
  - Tax foreclosure: G.S. 105-376
    - Permitted to resell to former owners
  - Urban homestead: G.S. 160A-457.2 (cities only)
    - Cost of repair of property must exceed 60% of value
    - Sell to qualified purchaser who agrees
      - To use the property as primary residence for minimum time
      - To bring the property up to code
      - To maintain insurance on the property
      - To fulfill any other requirements set by the city
      - NOT affordable housing developer (use other statutes)

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### Any time: Loan/Grant Program



- If you can appropriate funds directly, then you can provide a loan/grant for same purpose:
  - Loans/grants to individuals of low or moderate income
    - Mortgage down-payment assistance
    - Rehabilitation assistance
    - Minneapolis: For purchasers on blocks with at least one foreclosed or vacant or abandoned building.
  - Loans/grants to developers in exchange for promise to produce low- or moderate-income housing
  - NSP-eligible financing mechanisms
    - Loan loss reserves
    - Shared equity loans

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### Any time: Government as Landlord



- Leases for public purpose
  - Proceed under the requirements for sale for such purpose. For example:
    - affordable housing
    - redevelopment
    - community development
- Lease-to-own
  - This is really a lease with an option to purchase.
  - Proceed under the requirements for sale.

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### Eminent Domain



- Housing Authorities Law
  - G.S. 157-9, -11, and -12.
- Urban Redevelopment Law
  - G.S. 160A-512 and 160A-515 (blighted parcels only)

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### Innovative Practices

- Land Banks
  - More a concept than an institution
  - Use existing authority to purchase land
  - Receive property by dedication
    - Nonprofit housing developers property tax exemption contingent on building housing within 5 years
- Community Land Trusts
  - CLT retains ownership of land (long-term lease to homeowners)

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### Innovations NOT permissible in NC

- Excessive fines or fees for owning vacant property.
  - Fees must reflect cost of providing inspection service (*Homebuilders v. City of Charlotte*).
- Receivership: Property transferred to receiver that rehabilitates. Costs are a lien on the property.

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### Innovations NOT permissible in NC

- St. Louis: Problem Property Courts
  - In cooperation with “problem property units”
- “Fast-track” foreclosure for vacant properties
  - Potentially tied into a vacant property registration process
    - Banks register property as vacant
    - Registered properties get benefit of fast-track foreclosure
    - Local governments can monitor registered properties

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### Stabilization Strategies in Literature

- Selective demolition in context of a community development plan.
- If projected to grow, preserve housing stock.
- Focus on neighborhoods – don’t diffuse resources with scatter-shot effort.
  - North Minneapolis identified “clusters” where:
    - Concentrations of blighted properties, and
    - Targeted investment would have “catalytic impact.”
    - Created parcel-by-parcel neighborhood plan and followed through.

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### Charlotte’s Full Court Press

- City-wide education, outreach, and advocacy
- Neighborhood-specific preservation strategy
  - Neighborhood preservation team – stakeholders
  - Set neighborhood preservation goals
  - Kitchen sink approach
    - Community safety
    - Code enforcement
    - Foreclosure prevention/counseling
    - Infrastructure improvements
    - Housing purchase/rehab/resale
    - Neighborhood capacity building (and participation)
    - Social services

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Questions and Comments

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