

**Foreclosure Blight:
Local Government Options in
North Carolina**

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2008 NCCDA Fall Conference

“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

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

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.

Most nuisance regulations


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

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Dwellings are different

<ul style="list-style-type: none">  – 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 		<ul style="list-style-type: none"> – General Police Power – Minimum Housing Standards – Abatement of Public Health Nuisances
<ul style="list-style-type: none"> – <i>Non-dwelling nuisances</i> • <i>Debris, high grass, animals</i> 		<ul style="list-style-type: none"> – General Police Power – Abatement of Public Health Nuisances


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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.




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

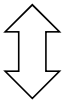
- Definition of “unfit for human habitation”
 - Statutory (G.S. 160A-441)
 - Dilapidation
 - Increased risk of fire, accidents, or “other calamities”
 - Lack of ventilation, light, or sanitary facilities
 - Other conditions dangerous or detrimental to health, safety, morals, or otherwise inimical to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

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Spectrum of Local Government Authority



- Vacant but in decent shape – keep it that way



Adjust “unfit for human habitation”

- **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

**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.

  **Nonresidential buildings, too**

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



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

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



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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