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### Mechanics of a Receivership

Once a city identifies a property for repair or demolition and a third party that is willing to rehabilitate the property, who will act as receiver, the legal process for initiating the receivership can begin. A receivership begins like most other lawsuits. The City prepares and files a complaint for the appointment of receiver pursuant to Indiana Code 36-7-9-20. A copy of the receivership complaint along with the summons must be served on the property owner. The complaint and summons need to be filed with the county court which has original jurisdiction over building violations.

A receivership action can proceed along the same timeline as an ordinary civil case. The defendant property owner has 20 days to answer the complaint. The [trial] court will conduct a hearing to receive evidence before entering an order in favor of the City and putting the property into receivership.

A receiver must be appointed by motion. Accordingly, the City must file a motion for the appointment of receiver, and the court will receive evidence concerning the fitness of a receiver to act as a fiduciary. A receiver has fiduciary duties to the landowner and to the court because the receiver is an agent of the court. As such, the receiver's rights and powers are strictly those requested in the motion for the appointment of a receiver and set forth in the order appointing the receiver. Thus, it is imperative that the City prepare a draft order for the court that expressly sets forth all powers it desires a receiver to have.

A receiver's powers normally include the authority to issue receiver certificates pursuant to Indiana Code 32-30-5-7. Through sales of receiver certificates, the receiver acquires cash needed to fund the rehabilitation of the subject property. It is also very important to describe the activities that the City expects the receiver to undertake in the motion for appointment and draft order appointing receiver. Last, it probably is a good idea for the City to include some form of "necessary and proper" powers for the receiver so that the receiver may have a degree of discretion when carrying its duties.

A receivership case can proceed an expedited track. In order to do this, the City must seek the appointment of a receiver on an emergency basis in its complaint, and it must request an expedited, or *ex parte*, hearing on the appointment of a receiver. The statute doesn't identify a number of days that the court must wait before conducting a hearing on the appointment of a receiver, but the shorter the period of time between the service of process on the property owner and the hearing, the more due process concerns are implicated. Therefore, a week is probably the shortest amount of time that a court can set for an emergency receivership hearing or to conduct a receivership hearing on an *ex parte* basis. Indiana's replevin statute requires that a hearing be held no earlier than five business days after the party in possession of the property is served with the complaint and notice of the hearing when an *ex parte* order of possession is sought. The same legal interests are at issue in the receivership proceeding, so this is probably the best barometer by which to measure the City's right to impose a receivership on an emergency basis.

To seek an *ex parte* order for an emergency appointment of a receiver, it is necessary for the City to submit evidence to the court. An affidavit of someone from the County Building Inspection Office or designee who is an expert in unsafe buildings that could testify from personal knowledge regarding the subject property is appropriate evidence. It will be necessary to have the affiant available to testify to the building inspection process and the administrative process leading to the City's conclusion that the building is ripe for demolition.

At the hearing on the motion for the appointment of the receiver, the property owner may defend against the receivership. The property owner has three primary lines of resistance: (1) the property is not unsafe; (2) the authority requested for the receiver is excessive; or, (3) the receiver is not fit to serve. The City has the burden of proof of convincing the courts the property is in a condition requiring the appointment of receiver. Thus, the City must be prepared to put on compelling evidence that the extraordinary remedy of receivership is needed to ameliorate an unsafe condition and promote the general welfare.