

# Receivership Best Practices Handbook

Created by the Hampden County Bench-Bar Receivership Subcommittee

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# What is a Receivership?

A receivership is the use of the enforcement authority of the State Sanitary Code, as authorized by M.G.L. Chapter 111, § 127I, to place the management of a distressed building under the control of a judicially supervised receiver when the owner is unable or unwilling to make the necessary repairs to return the building to code compliance.

In a typical scenario, the Board of Health or the Code Enforcement Department, working in conjunction with the municipality's law department or the Massachusetts Office of the Attorney General's Abandoned Housing Initiative<sup>1</sup>, petitions the Court for the appointment of a receiver after having exhausted all other remedies to secure a property's compliance with the State Sanitary Code. Receivership can expedite a community's intervention when a property poses a hazard because it has been abandoned and/or when tenants are at risk. Ideally it is part of a municipality's overall housing strategy and used only when all other efforts to secure the owner's cooperation have failed. If an owner is unwilling and/or unable to comply with the State Sanitary Code, and all other enforcement avenues have been exhausted, a municipality's law department or the Attorney General's Office can file a motion requesting that a receiver be appointed to assume care and control of a property. Once appointed, receivers are tasked with addressing all code violations.

The process of obtaining a receiver generally begins when a property owner fails to comply with orders issued by a municipality's Board of Health or Code Enforcement Department. The act of appointing a receiver, is one of an emergency nature and is considered a last resort enforcement action. If the Court deems the municipality's request for a receiver valid, it then appoints a receiver to step in to stabilize and manage the distressed property. The receiver arranges for repairs and management of the property and funds this through his/her own money, rental income from the property or by borrowing money using the statute's priority lien provision. Receivers may be property management firms, Community Development Corporations, lawyers, contractors or other responsible parties qualified by the Court.

Receivers place a priority lien on the property for the total costs incurred during the duration of the receivership. Once the property has been rehabilitated, the receiver is authorized to auction the property to satisfy their priority lien. A receiver's priority lien stands in front of any other lien on the property including any mortgages, but does not have priority over any unpaid municipal taxes, assessments, penalties or interest owed. Ideally, a property owner steps back in to take control of the building, but in the absence of a responsive owner, the receiver can foreclose or sell the property to collect the outstanding debts. Any excess income in the hands

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<sup>1</sup> Additional information about the Office of the Attorney General's Abandoned Housing Initiative can be found at [www.mass.gov/ago/ahi](http://www.mass.gov/ago/ahi), which includes sample documents and the Potential Receiver Questionnaire for those interested in serving as a receiver for cases filed by the Office of the Attorney General.

of the receiver after the auction or sale will be applied to payments due any mortgagee or lienor of record in the order of their priority.

The receiver is a product of the Court, and as such, the Court may dissolve a receivership upon a showing of a failure by the receiver to diligently correct violations and bring the property into compliance with the State Sanitary Code; if dissolution is in the best interests of the occupants and/or immediate surrounding community; at the request of the receiver by motion before the Court; if all violations having been sufficiently addressed and the lien has been satisfied via a foreclosure auction or sale. A lienholder and/or owner may also petition the Court to dissolve a receivership at any time.

## **Statutes and Standards**

- Receiverships are derived from the general equity powers of the Court under M.G.L. Chapter 214, section 1 and Chapter 185C, sections 2 and 3.
- The conditions needed for appointment and the operating parameters of a receivership are included in M.G.L. c. 111 § 127I.
- The State Sanitary Code, Chapter II: 105 CMR 410.000: Minimum Standards of Fitness for Human Habitation sets forth the standards that the property must be returned to.

Receiverships are governed under MGL. c. 111, § 127I and requires a receiver to bring the property into compliance with the minimum standards of the State Sanitary Code, Chapter II: 105 CMR 410.000. Whenever a petitioner shows that violations of the Sanitary Code will not be promptly remedied unless a receiver is appointed and the court determines that such appointment is in the best interest of occupants residing in the property, the court shall appoint a receiver of the property.

Massachusetts Courts have held that General Laws c.111, §§127A-127N, reflect a comprehensive legislative attempt to effectuate compliance with minimum health and safety standards for residential premises, and that these sections of Chapter 111 address the need to protect the health and safety of occupants of buildings as well as that of the general public where vacant buildings pose a threat of harm. *Negron v. Gordon*, 373 Mass. 199, 202 (1977) and *City of Boston v. Rochalska*, 72 Mass. App. Ct. 236, 244 (2008). Therefore, it is appropriate to petition the Court for receivers in both occupied and vacant dwellings.

### **MGL c. 111, § 127I**

Once appointed, a receiver is responsible for promptly repairing the distressed property and bringing it into compliance with the State Sanitary Code in accordance with M.G.L. c. 111, § 127I, which is included below in its entirety:

Upon the filing of a petition to enforce the provisions of the sanitary code, or any civil action concerning violations of the sanitary code by any affected occupants or a public agency, whether begun in the district, housing or superior court, and whether brought under section one hundred and twenty-seven C or otherwise, the court may: issue temporary restraining orders, preliminary or permanent injunctions; order payment by any affected occupants to the clerk of court, in accordance with the provisions of section one hundred and twenty-seven F; or appoint a receiver whose rights, duties and powers shall be specified by the court in accordance with the provisions of this section.

Upon receipt of service of any petition in which the appointment of a receiver is sought, the owner shall provide to the petitioner, within three days, a written list of all mortgagees and lienors of record. At least fourteen days prior to any hearing in any such proceeding, the petitioner shall send by certified or registered mail a copy of the petition to all mortgagees and lienors included in the owner's list as well as to all other mortgagees and lienors of which the petitioner may be aware, and shall notify them of the time and place of the hearing. Upon motion of the petitioner, the court may order such shorter periods of prior notice as may be justified by the facts of the case.

Whenever a petitioner shows that violations of the sanitary code will not be promptly remedied unless a receiver is appointed and the court determines that such appointment is in the best interest of occupants residing in the property, the court shall appoint a receiver of the property. Any receiver appointed under this paragraph may be removed by the court upon a showing that the receiver is not diligently carrying out the work necessary to bring the property into compliance with the code, or that it is in the best interest of any tenants residing in the property that removal occur.

No receiver shall be appointed until the receiver furnishes a bond or such other surety and provides proof of such liability insurance as the court deems sufficient in the circumstances of the case. Upon appointment, the receiver shall promptly repair the property and maintain it in a safe and healthful condition. The receiver shall 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, and, notwithstanding any special or general law to the contrary, shall not be subject to any public bidding law nor considered a state, county or municipal employee for any purpose. In order to secure payment of any costs incurred and repayment of any loans for repair, operation, maintenance or management of the property, the receiver shall have a lien with priority over all other liens or mortgages except municipal liens, and such lien priority may be assigned to lenders for the purpose of securing loans for repair, operation, maintenance or management of the property. No such lien shall be effective unless recorded in the registry for the county in which the property is located.

The receiver shall be authorized to collect rents and shall apply the rents to payment of any repairs necessary to bring the property into compliance with the sanitary code and to necessary expenses of operation, maintenance, and management of the property, including insurance expenses and reasonable fees of the receiver, and then to payment of any unpaid taxes, assessments, penalties or interest. Any excess of income in the hands of the receiver shall then be applied to payments due any mortgagee or lienor of record.

Nothing in this section shall be deemed to relieve the owner of property of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner, nor shall appointment of a receiver suspend any obligation the owner or any other person may have for payment of taxes, of any operating or maintenance expense, or of mortgages or liens, or for repair of the premises.

The receiver shall be liable for injuries to persons and property to the same extent as the owner would have been liable; however, such liability shall be limited to the assets and income of the receivership, including any proceeds of insurance purchased by the receiver in its capacity as receiver. The receiver shall in no instance be personally liable for actions or inactions within the scope of the receiver's capacity as receiver. No suit shall be brought against the receiver except as approved by the court which appointed the receiver. Nothing herein shall

be construed to limit the right of tenants to raise any counterclaims or defenses in any summary process or other action regarding possession brought by a receiver.

The remedies set forth herein shall be available to condominium unit owners and tenants in condominium units. Whenever used in this section, the term "petitioner" shall include a condominium unit owner or tenant, the term "owner" shall include a condominium association, the terms "mortgagees" and "lienors" shall include mortgagees and lienors of individual condominium units, and the term "rents" shall include condominium fees. The receiver shall have the right to impose assessments upon individual condominium units for payment of expenses incurred in the exercise of his powers, which liens shall have priority over all other liens and mortgages, except municipal liens.

The receiver shall file with the court and with all parties of record, on a bimonthly basis, an accounting of all funds received by and owed to the receiver, and all funds disbursed, and shall comply with such other reporting requirements mandated by court, unless, for cause shown, the court determines that less frequent or less detailed reports are appropriate; provided that said notice shall not be less than five days.

# Receivership and Code Enforcement

## Step 1: Enforcing the State Sanitary Code

- The Board of Health/Code Enforcement must cite the property under 105 CMR 410.000 *et seq.*: Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)
- In Massachusetts, the State Sanitary Code governs what it means to provide a habitable place in which to live. In general, “habitable” means a place that is comfortable and clean enough for a person to live safely.

The purposes of 105 CMR 410.000 *et seq.* are to protect the health, safety and well-being of the occupants of housing and of the general public, to facilitate the use of legal remedies available to occupants of substandard housing, to assist boards of health in their enforcement of this code and to provide a method of notifying interested parties of violations of conditions which require immediate attention. 105 CMR 410.000 is adopted under authority of M.G.L. c. 111, §§ 3 and 127A. The State Sanitary Code covers everything from kitchen facilities, bathroom facilities, water supply, hot water facilities, provisions of oil, lighting and electrical facilities, metering of electricity and gas, asbestos material, smoke detectors, exits, maintenance of structural elements, insects, rodents, garbage and rubbish storage and disposal, and security.

## Step 2: Cite the Property & Property Owner

Pursuant to the State Sanitary Code, upon receipt of an oral, written or telephone request, the board of health and/or Code Enforcement is required to inspect a dwelling, dwelling unit or rooming unit for possible violations of Chapter II. All interior inspections shall be done in the company of the occupant or the occupant's

representative. [105 CMR 410.820]. The board of health and/or Code Enforcement must conduct a complete inspection if requested to do so. [105 CMR 410.822(B)] The board of health and/or Code Enforcement shall attempt to initiate and complete an investigation at a time mutually satisfactory to both the inspectors and the occupant within a time frame dependent upon the nature of the violation but not exceeding five days. [105 CMR 410.820(A)]. The board of health and/or Code Enforcement may order a dwelling or dwelling unit condemned and vacated if, as a result of an inspection, it is determined that the unit or any portion of it is unfit for human habitation. [105 CMR 410.831]

The board of health and/or Code Enforcement must use an standardized inspection form which lists, but is not limited to, the following: Inspector's name, inspection date and time, location of inspection, date and time of additional inspections, description of violation, specific references to violated regulations of Chapter II, by-laws or ordinances, and an investigator's statement if the violations appear to endanger the safety or health and well-being of the occupants. [150 CMR 410.821]

Each inspection form must contain the statement: "This inspection report is signed and certified under the pains and penalties of perjury," followed by the signature of the inspector. [105 CMR 410.821(A)] and the inspection report form must include a brief summary of the legal remedies available to the occupant and owner of the affected premises. [150 CMR 410.821(B)]

At the termination of the inspection the owner of the property and the occupant or his/her representative must receive a written report of the violations noted during the inspection. The need for an additional inspection by a specialized inspector shall be noted on the report. [105 CMR 410.882(C)]

### **Step 3: Set a Time Table for Compliance**

- An effort to correct any violations of Chapter II of the Sanitary Code must be made within a specific time period which is dependent upon the nature of the violation.
- All affected tenants shall receive written copies of all inspection reports and orders sent to the owner.
- Set up a re-inspection to determine compliance with the violation letter.
- If there is not compliance with the time set forth with the violation letter, or such additional time as agreed upon, move forward to file a petition with the Court.

## **Step 4: File a Petition in Court to Enforce the State Sanitary Code**

- Cite the owner(s), tenant(s) and lienholder(s) of the subject property as Defendants, all of whom will need to be served.
- It is important to document the history of code enforcement involvement with the property in question prior to filing the petition with the Court. Document how many inspections have taken place, when the notice of violations was sent, what the violations entail, when the re-inspections took place to verify that the violations were not corrected. Use the Notice of Violations Forms sent by the code enforcement department as your exhibits.
- The prayers for relief listed in your petition should include a request to appoint a Receiver to take control of the subject property.
- File Motion for Order to Correct. To successfully petition the court for a Receiver it is important to show a history of non-compliance. After service on the owner and/or lienholders file a motion requesting that the court order the owner to remedy the State Sanitary Code violations by a date certain with an inspection to determine if the owner has complied with the owner. Draft your affidavit in support of the motion to appoint a Receiver to include as much information as possible (date of first inspection, dates of notice, all subsequent inspections, all court orders/agreements, dates of service, dates of notice, keep track of your certified mail green cards!)

## **Step 5: Motion to Appoint Receiver**

- Pursuant to MGL c. 111 sec. 127I the petitioner must give the lienholders 14 days notice of the hearing requesting the appointment of a Receiver
- You must send a copy of the motion and affidavit to the lienholder/mortgagee by certified or registered mail along with a copy of the petition.
- Identify a potential Receiver: After you file your motion to appoint a Receiver contact the Western Division Housing Court for the list of court approved potential Receivers.

M.G.L c. 111, § 127I states that “upon the filing of a petition to enforce the provisions of the sanitary code...by any affected occupants or a public agency, ... the court may...appoint a Receiver whose rights, duties and powers shall be specified by the court...Upon receipt of service of any petition in which the appointment of a Receiver is sought, the owner shall provide to the petitioner, within three days, a written list of all mortgagees and lienors of record.”

At least fourteen days prior to any hearing in any such proceeding, the petitioner shall send by certified or registered mail a copy of the petition to all mortgagees and lienors included in the owner's list as well as to all other mortgagees and lienors of which the petitioner may be aware, and shall notify them of the time and place



of the hearing. Upon motion of the petitioner, the court may order such shorter periods of prior notice as may be justified by the facts of the case. It is recommended that an affidavit of service be filed after all certified mail green cards are returned documenting that the motion was sent to all lienholders pursuant to M.G.L c. 111, § 127I.

The Western Division Housing Court maintains the list of Court approved receivers, and there is an application process that is opened once a year (usually in the summer). If an applicant is accepted as a receiver, they remain on the list for one year and must reapply every year. When you have filed a motion to appoint a receiver, you should contact the Western Division Housing Court to determine the next eligible receiver from their list and contact that individual/entity to determine if they are willing to accept the appointment. Once you have identified a receiver you should inform them of the court date. A receiver must have an attorney that represents them at all court proceedings, with the exception of the motion to appoint the receiver. In an effort to save the potential receiver on costs, a receiver may appear without counsel at the hearing to appoint a receiver in the event that the motion is not granted by the Court.

The list of Court approved receivers is governed by Supreme Judicial Rule 1:07, as a receiver is a fee generating appointment. The goal of this rule is to assure that all fee-generating appointments made by the courts of the Commonwealth are made on a fair and impartial basis with equal opportunity and access for all qualified candidates for appointments. The Justices have concluded that the fairest way to accomplish this goal, and at the same time avoid favoritism or the appearance of favoritism, is by requiring each court to create lists of qualified candidates and then generally make appointments from those lists in rotation or sequential order. In some cases, it may be appropriate to request a receiver that is not on the Court approved list or to request a receiver on the list not in sequential order. Such a request may be granted by the judge, however, it is important to substantiate this request by providing valid reasons for the request of appointment in your motion to appoint a receiver.

## **Determining the Owners and Lienholders of a Distressed Property**

The Petition to Enforce and the Motion for Appointment of a Receiver both need to be served upon the proper owner and lien holders, which in many cases may be difficult to determine.

**Is the owner an individual?** Use the Registry of Deeds to determine the following information: Who is the owner and what is their address? Consider subscribing to an “advanced person search database” to determine the most current addresses of individuals you are trying to locate. (LexisNexis and Westlaw are two such examples). Determine the address on file with the tax assessor’s office as well as the most probable

address identified by your advance person search database and serve owner at both addresses. Notice by publication should be used if you are unable to obtain service or if the only address you have for the owner is the vacant, distressed property in question.

**Is the owner a corporation?** Is that corporation still active? Or has it been dissolved? Who are the managing partners? Has the corporation changed names since the deed was recorded? Check the MA Secretary of State's website for the principal place of business address as well as the corporation's resident agent. Upon the dissolution of a corporation, all debt having been paid and no receiver having been appointed, the property of a dissolved corporation passes to its former shareholders. This equitable doctrine was developed in *Cumington Realty Assoc. v. Whitten*, 239 Mass. 313 (1921) and cited in *Springfield v. Schaffer*, 12 Mass.App.Ct. 277(1981). Citing *Cummings Realty*, the court noted that because more than three years had elapsed (statutory winding-up period) from the date of the dissolution of the corporation, the shareholder became the owner of all of that corporation's real property by reason of being the corporation's sole shareholder upon dissolution.

**Is the owner a trust?** Who is the trustee? Read the trust document recorded with the Registry of Deeds and make sure you search for any amendments recorded that changes the trustee.

**Is the owner deceased?** Advanced person databases are helpful with this search and sometimes death certificates are recorded with the Registry of Deeds. Was the estate probated? Check probate court's website. Can you find the obituary? Try a Google search with your local newspaper to confirm that the owner is in fact deceased and identify any possible heirs. Advanced person databases are helpful in identifying addresses for heirs as well.

- Obtaining Service of Petition on Deceased Owners: if the owner is deceased every attempt should be made prior to filing a petition to determine whether an estate was taken out after the owner's death. Every attempt should be made to name the estate and/or all possible heirs and serve the petition on those individuals.
  - If an Estate has been taken out, the petition should name the estate and the personal representative of the estate.
  - If there is no estate taken out, attempts should be made to find an obituary for the deceased that names potential heirs and name those heirs in the petition.
  - If no potential heirs can be found and no estate was taken out service can be obtained through a motion for publication.
  - If the estate was closed and no transfer deed was recorded, the property should have been transferred pursuant to the decedent's will. Therefore, the petition should name the potential heirs/interested parties listed in the probate case. You can also go to the probate court and determine if there is a will on file that grants the property to a specific individual.

- Once a receiver is appointed in a case where the owner of the property is deceased a receiver is tasked with determining the heirs via probate court.

**Are there mortgages or other liens on the property?** You must also determine all lienholders and mortgagees of the property. While MGL c. c. 111 § 127I requires the owner of the property to supply the petitioner with a list of all mortgagees and lienholders, it is also your obligation as the petitioner to determine lienholders on the property. Therefore, you must check for mortgages, liens, executions, and attachments recorded with the Registry of Deeds. It is important to take note of whether any liens have been assigned and whether there are any foreclosure documents on record. You should read all such documents that are recorded. Many times banks assign their mortgages and don't record them until they are ready to foreclose. Notice of foreclosure documents will often list different lending institutions as holding the mortgage. When in doubt send notice and cite all lienholders that you can find of record to prevent a challenge to the receivership at a future date for lack of notice and or service to a lienholder.

**Does the Federal Government hold a mortgage or lien on the property?** Pursuant to 28 USC, § 2410, The United States may be named in a party in a civil action to foreclose a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien. An example would be if there is an IRS lien on the property in question or if the mortgagee is held by a division of the federal government, such as HUD, USDA Farmer's Home Administration or Veteran's Affairs. In this case you must set forth with particularity the nature of the interest or lien of the United States. If an IRS lien, the petition must include name and address of taxpayer, identity of IRS office that filed notice and date and place notice of lien was filed. Service upon the United States must be made to the US Attorney for the district in which the action is brought and by certified mail to the Attorney General of the United States. The United States has sixty (60) days to appear and answer. As of January 2018 the following addresses should be used:

Andrew E. Lelling, Esq.  
United States Attorney  
1 Courthouse Way, Suite 9200  
Boston, MA 02210

Jeff Sessions, Esq.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

28 USC, § 2410 also requires that an action to foreclose a mortgage or other lien, naming the United States as a party must seek judicial sale. Where the sale is made to satisfy a lien prior to that of the United States, the United States has one year from the date of sale within which to redeem, except that for an IRS lien the period is 120 days.

To determine the address of a lienholder or mortgagee look to the documents recorded with registry of deeds and use the following websites to assist you in your search:

- FDIC website will identify the principal place of business and will also will alert you to any name changes for the bank that holds the mortgage
- Federal Financial Institutions Examination Council (FFIEC). National Information Center is a central repository of data about banks and other institutions, for which the Federal Reserve has a supervisory, regulatory, or research interest and will provide principal place of business addresses.
- MA Secretary of State Corporation search for resident/registered agent and principal place of business address of mortgage companies
- Check Bloomberg or other trusted sites to determine if the corporation holding the lien has gone out of business since the lien was put on record, and who is holding the papers now. This is most applicable in subprime mortgages prior to 2008. If the Mortgage company has since gone out of business or filed for bankruptcy and you can sometimes find bankruptcy documents or press releases identifying who the bank is that bought out the company when they went bankrupt.

It is recommended to obtain service on all lienholders and mortgagees prior to petitioning the Court for a receiver to protect the receivership from challenges in the future. It is also important to remember that when serving a corporation such as a bank or a mortgage company that all addresses known to you are used to obtain service and that the service address be directed to a designated individual at the corporation or bank, such as an officer, managing agent, a general agent, the person in charge at the location where service is being attempted or an agent specially authorized to receive service of process. If a designated individual cannot be determined, attempt to serve the corporation and/or bank “to the attention” of a generic title such as “Legal Department”, “General Counsel” or “President”.

#### **Helpful Websites include:**

Hampden County Registry of Deeds: <http://www.registryofdeeds.co.hampden.ma.us/>

Links to other Massachusetts Registry of Deeds: <http://www.masslandrecords.com/>

FDIC: <https://research.fdic.gov/bankfind/>

FFIEC: <https://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx>

MA Sec. of the Commonwealth Corp. Search: <http://corp.sec.state.ma.us/corpweb/corpsearch/CorpSearch.aspx>

Probate Court and Housing Court Search: <https://www.masscourts.org/eservices/home.page.2>

Springfield Republican Obituary Search: <http://obits.masslive.com/obituaries/masslive/>

Massachusetts Public Notice Search: <http://ma.mypublicnotices.com/PublicNotice.asp>

#### **Questions to Ask:**

1. Is the owner in bankruptcy? If yes, file a motion of relief from stay in bankruptcy court prior to filing your motion to appoint a Receiver.

2. What are the taxes owed? Potential Receiver's should be made aware of the outstanding taxes and fees owned to your municipality prior to accepting the Receivership as their priority lien does not take priority over municipal taxes
3. Is the owner deceased? Check probate to determine if an estate has been taken out. If yes, check the probate file for a determination of heirs, the administrator of the estate, and any MassHealth liens. If there are MassHealth Liens, you must list them as lienholders to the property. Their address is: Commonwealth of Massachusetts, Executive Office of Health & Human Services, One Ashburton Place Boston, MA 02108. Try to find an obituary that might list next of kin with help identifying potential heirs.
4. What is the property zoned for, are the number of assessed units and/or the number of units found in the dwelling in compliance with the zoning regulations that apply to the dwelling?
5. Are there any restrictions on the deed (e.g. restrictions put on the property when it was sold, outlined in the deed, for things such as property must be owner occupied etc.)?

## After a Receiver is Appointed

### MY CLIENT HAS BEEN APPOINTED RECEIVER, NOW WHAT?

1. **Read the Order!!!** This Order includes all the required steps to get this receivership off the ground and running- title examination, recording the order, insurance, posting the property, reports, etc. It also includes deadlines for filing the Receiver's Motion to Approve the Rehab Plan and first Receiver's Report as well as a due date to provide proof of insurance coverage to the Court. A copy of the court approved order is attached as Appendix A.
2. **Title Examination.** The Order Appointing Receiver requires the Receiver to conduct a title examination and send a copy of the Order to all parties, including the owner, mortgagees and lienholders of record.
  - Get it done early! The sooner you notify lienholders, persons/party of interest, mortgagees and owners that the property is in receivership the better. Preferably you complete the title examination before you serve a Motion to Approve a Rehab Plan.
  - Make sure the Defendant owner's name matches the deed- check the spelling too! If the owner's name or a party's name is incorrect, file a Motion to Amend sooner rather than later.
  - Serving the Order on the parties as required – First Class and Certified mail is best practice.
  - Proper notice is also important for the end result- if your client ends up the successful bidder at the auction and wants to put title insurance on the property and/or wants to refinance the property and/or sell, you want to ensure that everyone with an interest in the property has received notice

of its sale. Without proper notice, old title defects or issues continue to exist (OR new ones are created!) and will make it more difficult for your client.

- What if my title examination determines there is a title defect? Consult with your title insurance company sooner rather than later about steps to resolve the issue, if its resolvable, before your client really starts spending big money on the rehab.

**3. Taxes.** The Order Appointing Receiver also requires that the Receiver determine what outstanding real estate taxes and/or other municipal charges are due and include that information in its first report to the Court. So if you didn't check into this before appointment- do it now! Why is this important? Municipal liens have priority over the Receiver's lien. This includes Code Enforcement liens, trash fee liens, water liens, sewer liens etc., which may be due to a municipal department other than the Tax Collector. And remember, interest continues to accrue on unpaid taxes and that balance can add up quickly. It is often better to get a handle on the taxes at the beginning of the receivership or at least educate your client on continuing interest (which by statute, the City cannot waive or release!).

**4. Record the Order Appointing Receiver.** The Order Appointing Receiver must be recorded in the Registry of Deeds. Why? Not only does the Order require you to do so but the statute does as well for your lien to be effective: "No such lien shall be effective unless recorded in the registry for the county in which the property is located." G. L. c. 111, § 127I. Recording lets the world know (prospective purchasers, mortgagees looking to foreclose, etc.) that a receiver is in control of the property and that receiver has a statutory priority lien.

- Request a certified copy of the order - \$20.00 from the Clerk's Office
- Record- \$75.00 at the Registry of Deeds.

Record as soon as possible to protect your client's interests!

#### **5. Insurance**

- Order requires that the receiver put general liability insurance in an amount consistent with industry standards on the property and casualty loss insurance.
- The cost of insurance is part of your lien.
- Protect your investment - consider how much the property is worth and how much money you will be spending to complete rehab
- Order requires that you provide proof that the property is insured to the court.

#### **6. Can the Receiver Borrow Money?**

- Yes!!! Pursuant to the statute, "The receiver shall have full power to borrow funds and to grant security interests or liens on the affected property . . . ." Additionally, "lien priority may be as-

signed to lenders for the purpose of securing loans for repair, operation, maintenance or management of the property.” G. L. c. 111, s. 127I.

- Before borrowing, consider not only the amount and interest rate but the timing for repayment- how long will it take you to complete your project? Again, fast forward to the auction, and you are the only bidder and end up as the owner- will you be able to pay off the lender on time?
- Best practice- file a Motion to Approve Borrowing the Funds before your client signs on the dotted line so all parties are aware of the loan and its terms, and parties are given the opportunity to object if warranted.

**7. What if the Defendant Owner is Named as “Heirs and Assigns of” or you determine the record Owner to be deceased at the time of appointment?**

- Check to see if an heir of the deceased owner filed a petition with the Probate Court in the county where the owner died or lived.
- If no probate filed, your client, as a creditor of the deceased owner, may have to file a petition with the probate court to establish intestacy and determine heirs.
- Why is this important? If the owner is dead and no heirs have been formally determined by the Probate Court, notice of the receivership and service on the owner is arguably not proper. If notice and service is not proper, a title issue may arise when you sell the property at auction.
- It is always worth running the situation by the title insurance company you intend to use as they may have requirements involving the question of the owner before insurance would issue post-auction.

**8. Can the Receiver Collect Rent?**

- If the property is occupied, immediately after the Receiver is appointed, the Receiver should make contact with all occupants of the Receivership property to discuss and review the occupants’ tenancies with the owner of the property. The Receiver should request a copy of any and all leases or rental agreements between the owner and the occupants and/or copies of rent receipts, if no written lease or rental agreement exists. The Receiver shall report the status of the tenancies in its Report(s) to the Court. The Receiver is authorized to collect rent from the occupants at the amount the occupants agreed upon with the owner of the property, or at a lesser amount if agreed to by the Receiver based upon the condition of the property and necessary repairs. In the event of a dispute between the Receiver and the occupants as to the amount of rent to be paid monthly to the Receiver by the occupants, the Receiver shall request in writing an inspection from the Housing Specialist Department of the Housing Court to determine the monthly rent based upon the condition of the occupants’ apartment and associated common areas. After inspection, the Housing Specialist

Department shall make a recommendation on the monthly rent which shall be binding on the parties. Any interested party may seek modification of the monthly rent upon written motion to the court. All rent collected by the Receiver shall be accounted for and documented by the Receiver in its Reports and may be applied against the Receiver's priority lien.

- If the property is not occupied, once the Code violations have been remedied in a unit or units and a certificate of occupancy obtained from the municipality, the Receiver may rent the units through a month to month tenancy or seek Court approval to enter into a lease for a longer time period.

### **Proposed Rehabilitation Plan:**

As noted above, the Order Appointing Receiver will include the deadline for the receiver to file a proposed rehabilitation plan and first report.

- The receiver may need to coordinate a comprehensive inspection of the property with the municipality, especially if the municipality has only cited exterior code violations.
- The proposed rehabilitation plan must include a description of the work necessary to bring the property back up to Code, the estimated costs of the work, estimated dates of completion, plus estimated "soft costs: such as attorneys' fees, insurance, utilities, taxes and potential auction costs.
- A Motion to Approve Rehabilitation Plan will be filed by the receiver's attorney.
- If it later turns out that additional work is needed or additional costs will be incurred, a Motion to Amend Rehabilitation Plan will need to be filed.

### **Receiver Reports and Court Reviews:**

Approximately every eight (8) weeks, a review before the Court will be held and a receiver must file a report prior to the review. Receiver reports should contain:

1. The total amount of the lien prior to the reporting period.
2. The total amount money spent for the reporting period.
3. The total amount of the lien to date.
4. The time frame of the reporting period (for example: 3/1/14 through 5/31/14).
5. Copies of receipts or vendor invoices for all funds expended in the reporting period.
6. For in-house invoices issued by the Receiver (or a closely held entity), submit the dates of the work, the hourly rate, and the total amount charged.
7. The total amount of rent received during the reporting period.
8. Evidence that a title run down was performed during the reporting period.
9. A list of the work to be done in the next reporting period.



10. A certificate of service indicating that the report was sent to all lienholders and parties of record.

11. Pictures of progress/work performed are suggested, but not required.

- Best practice for submitting reports is two weeks in advance of the next review date. While this means that the reported lien may be slightly lower than actual funds expended on the review date, it is necessary to allow staff for the municipalities and Court an opportunity to audit the reports.
- If a supplemental report is requested, due to missing documentation, please submit an addendum that contains those additional items. There is no need to recreate the entire report, only the specific items highlighted by the municipality or Court.

### **Inspections:**

The municipality's inspections of the property should be kept up to date and should be conducted every eight weeks to coincide with the Receiver's reports. Reports and rehabilitation plans should be reviewed by the Petitioner to ensure that all work outlined by the Receiver is necessary to bring the property to the minimum standards of the State Sanitary Code and that all proposed work coincides with the violation report submitted by the Board of Health/ Code Enforcement departments. Special attention should be paid to any additional management fees or costs outlined by the Receiver to make sure that they correspond with industry standards and are reasonable. Every attempt should be made to keep Receivers accountable to their deadlines and completion dates. Receivers should be treated the same as homeowners and should stay on track with their construction schedule. Upon completion of the work by the receiver, the municipality should conduct final inspections to determine that the Code violations have been corrected and the property is habitable.

## **Financing a Receivership**

One of the more challenging aspects of a receivership is securing financing. Although, as previously stated, the receivership statute, M.G.L. c. 111 § 127I, provides for the financing of a receivership and allows the use of the receivership lien as collateral: “. . . the Receiver shall have a lien with priority over all other liens or mortgages except municipal liens, **and such lien priority may be assigned to lenders for the purpose of securing loans for repair, operation, maintenance or management of the property.**” Sources for funding may be difficult to secure due to the relative rarity of receiverships that require financing and the fact that receiverships are governed exclusively by Massachusetts law. It is also important to obtain commitments for financing from lenders at the start of the receivership and to anticipate all of the costs of financing early in the process. In this way the costs of obtaining, maintaining and ultimately paying off the loan can be approved as part of the proposed rehabilitation plan and the success strategy of the Receiver.

## **When to Seek Financing**

Every Receivership requires resources for materials, labor, management, legal fees and many other miscellaneous costs. Before committing to a receivership, a potential receiver should estimate the costs of the rehab project and determine whether she is prepared to proceed through self-funding or funding through a third party. The funding method and costs should be determined prior to the Receiver filing her proposed rehab plan. A motion to assign the lien as collateral to secure financing described in the rehab plan should be filed to be heard on the same day that the rehab plan is allowed if the Receiver is pursuing financing through a third party.

## **Typical Financing Costs**

Receivership financing costs are similar to costs associated with a commercial refinance. Following is a list of common financing charges with estimated costs, servicing costs and payoff considerations of receivership financing. Note: these are only estimated costs and guidelines. Each Receivership appointment is unique and all factors will be reviewed by the Housing Court:

Closing Costs. A third party lender will require origination which may include all of the following; anticipate \$2000 - \$5,000 in costs for a moderate loan (under \$100,000):

- Origination Fee (Varies)
- Tax Servicing Fee -\$85
- Flood Check Fee -\$65
- Appraisal - \$400+
- Title Examination or Title Update - \$200+
- Municipal Lien Certificate - \$50
- Plot Plan - \$150-\$300
- Recording Costs - \$140 - \$290
- Lender's Title Insurance (\$3.50/thousand)
- Attorney Fees \$1000+
- Additional Insurance (pre-paid/ varies)
- Escrows (taxes and/or insurance/ varies)

Servicing Costs. The Receiver should take into consideration on-going servicing costs including monthly interest payments, home owner's association or condominium fees, and quarterly or semi-annual taxes. All of these costs should appear in the Receiver's rehab plan.

Payoff Considerations. The receivership loan will typically be paid off by the high bidder at the auction/sale if the high bidder or Buyer is a third party. If the Receiver, herself, is the high bidder at the auction, the loan would be paid off through proceeds from a subsequent sale or refinance. It is important that the Receiver considers that the duration and carrying costs of the loan will continue 30 to 60 days from the auction date, given the time

necessary to schedule the motion to approve the Receiver's sale and the 30 days that the Buyer has to close. If the Receiver, herself, is the high bidder, she may in turn require additional time to refinance the loan to a more permanent financing product or re-sell the property through a Realtor.

## **Funding Sources**

Grants or low-interest loans: grants or low-interest loans may be available to Receivers from the following sources:

- The Office of the Attorney General: The Office of the Attorney General has provided funding for receivers that is administered by a Grantee. Additional information can be found at [www.mass.gov/ago/ahi](http://www.mass.gov/ago/ahi).
- Community Development Block Grant (CDBG): CDBG funds can provide low or no-interest loans for Receivers. These loans are administered by municipalities. A Receiver can apply for a loan directly from the municipality in which the receivership project is located. These funds come with many restrictions and the Receiver must work closely with the local CDBG funds administrator to ensure compliance with Federal regulations.
- Municipal loans or grants: The City of Pittsfield offers funding to receivers for projects within the City, and other municipalities may have other sources of funding available as well.

Institutional Lender: It is possible for a local bank to loan the funds necessary for a receivership project, but these may be difficult to acquire. As receivership appointments become more commonplace, additional lending sources should become available.

Private Funding: Private funding sources may be available to the Receiver. However, in order to include the costs of securing and servicing (paying) such funding as part of the receivership lien, this funding must be disclosed and approved by the Housing Court. The Housing Court will review the private funding source to insure that it is an arms-length source, i.e., the receiver has no financial interest in the lending source and the lending source is not an entity controlled or owned by the Receiver, herself. The private funding source interest rate and origination costs should also be aligned with current commercial interest rates and costs.

# Winding Down a Receivership

Once the receiver has brought the property into code compliance or otherwise has accomplished the objectives set out by the Court, the receiver should file a motion to seek approval of their lien amount. This is done in order to provide the owner of the property or any interested parties with the amount necessary to discharge the receiver's lien. If it appears unlikely that the receiver's lien would be satisfied by an owner or interested party, the receiver should then move forward with a motion for authority to foreclose on its lien or with a motion for authority to hire a real estate agent to list the property for sale.

When a receiver requests authority to foreclose on their lien, most courts will require that the receiver hire a licensed auctioneer to conduct the sale. Furthermore, the receiver must advertise the sale in a newspaper with a general circulation in the town or city where the property is located. The advertising should run once a week for three consecutive weeks, with the first advertisement being run at least twenty-one (21) days before the auction. In addition to advertising, the receiver should provide written notice of the auction to all parties with an interest in the property. Once the auction occurs, the receiver should file a motion to seek court approval of the sale. A receiver is not disqualified from bidding at the receiver's auction.

When the receiver seeks authority to list the property for sale with a real estate agent, the receiver should retain an agent that is experienced with selling property in the area. The receiver should provide the court with the proposed listing price and the reasoning as to how the price was calculated. The determination of the list price should be based on the broker's suggested value and other factors such as the assessed value, a mortgagee's appraisal (if available) and on-line research (Zillow.com, MLS comparables, etc.). The duration of time that the property should be marketed will vary on the circumstances, but a suggested period of time would be 30 to 60 days. If the receiver does find a buyer, the receiver should file a motion to approve the sale with notice to all interested parties. The motion should contain all of the offers received and the reasons why the receiver is seeking permission to sell to a certain party. Again, a receiver is not disqualified from making an offer to purchase the property.

After the Court approves the sale of the property to the identified buyer, the receiver will close on the sale of the property and record a deed transferring the property to a new owner. In the event that there are surplus funds remaining after satisfaction of any municipal taxes and fees and the receiver's lien, there may be a motion filed by the receiver or by an interested party for distribution of the surplus funds. Once the property has been transferred and any surplus funds are distributed, the Petitioner should dismiss the case.

**APPENDIX A**

**COURT APPROVED ORDER TO**

**APPOINT A RECEIVER**

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

WESTERN DIVISION HOUSING COURT  
Civil Action. No. 18 CV \_\_\_\_\_

v.	Petitioner,
	Respondents.

**Re: Premises:**

**Hampden County Registry of Deeds Book No. \_\_\_ Page \_\_\_**

**ORDER ON PETITION TO ENFORCE THE STATE  
SANITARY CODE AND FOR APPOINTMENT OF A RECEIVER  
AT \_\_\_\_\_, MASSACHUSETTS**

Pursuant to the general equity powers of this Court and G.L. Chapter 111, Sections 127F-  
I, following hearing(s) on \_\_\_\_\_, the Court hereby finds with respect to  
\_\_\_\_\_, Massachusetts (“Property”):

1. **Background:** On \_\_\_\_\_, the Petitioner filed its Petition to  
Enforce the State Sanitary Code and for Appointment of a Receiver. Particularly, the Petitioners  
sought equitable relief to address a number of serious State Sanitary Code (“Code”) violations.  
After a hearing on \_\_\_\_\_ on the Petitioners’ motion for the appointment of a  
receiver, the Court determined that the Property would not promptly be brought into compliance  
with the Code without the appointment of a receiver, and therefore allowed the motion and  
appointed \_\_\_\_\_ as receiver for the Property.

2. **Description and Conditions of the Premises.** The Property is a \_\_\_\_\_  
dwelling. It has been abandoned by its owner and has long-standing Code violations which pose  
a serious risk to the health, safety and well-being of the general public, abutters, emergency

personnel and residents of the community. The \_\_\_\_\_ Board of Health has cited the Property for violations of the State Sanitary Code including, but not limited to:<sup>2</sup> The Respondent(s) have been unable or unwilling to complete or comply with repairs necessary to return the Property to Code compliance.

3. **Available remedies.** G.L. c. 111, §127I authorizes appointment of a Receiver where violations of the State Sanitary Code will not be promptly remedied unless a Receiver is appointed, and where such appointment is in the best interest of future occupants and of public safety. The Respondent has failed to manage and maintain the Property in compliance with the Code and the violations will not be promptly remedied unless a Receiver is appointed. The Respondents' failure to manage and maintain the Property, and failure to promptly come into compliance with the Code, endangers or materially impairs the health and safety of the current and/or future occupants of the Property, as well as the surrounding community. Appointment of a Receiver is in the best interest of all future occupants of the Property and of public safety.

THEREFORE, following hearing(s) on \_\_\_\_\_, at which the Respondents: \_\_\_\_\_ (appeared/did not appear), and with notice to all known mortgagees and lienor pursuant to M.G.L c. 111, sect. 127I, which ***MORTGAGEE/LIENHOLDER*** (did/did not appear), the Court hereby **ORDERS** as follows:

4. **Receiver.** \_\_\_\_\_ (“Receiver”) is hereby appointed Receiver of the Property. At any time, any party to these proceedings or the Housing Specialist Department may request a review or modification of this appointment and the terms thereof, as set forth below. Upon completion of the necessary repairs, the Receiver shall immediately notify the court. Until the review date, the Receiver's powers and duties are limited to cleaning the Property, boarding

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<sup>2</sup> An exhaustive list of the outstanding violations can be found in the inspection reports attached to the Petitioner's petition and amended petitions, as set out in the attached exhibits.

and securing the Property, posting the Property with the Receiver's contact information (as detailed in Exhibit A), and assessing the Property to create a rehabilitation plan for approval by the Court. The Receiver may also address any emergencies, as defined in Paragraph 5(d)(i), that arise at the Property. After the review date, the Receiver's authority and duties shall be as set out in paragraph 5, below.

5. **Authority and Duties of the Receiver**. The authority and duties of the Receiver shall be as follows:

- (a) To employ companies, persons or agents to perform duties hereunder.
- (b) To receive and collect all rental revenues due from any tenants/occupants of the Property as an agent of the Court for and after the first rental period following the effective date of the Receiver under this paragraph and Paragraph seven (7):
  - (i) to account for all receipts according to the standards set forth in subparagraph 5(f) below. The Receiver shall not be authorized to raise rents without further leave of Court.
- (c) To deposit all amounts received on account of the Property into a separate account under the control of the Receiver and to disburse said funds in accordance with the Court's instructions;
- (d) To inspect the Property to determine what "Emergency Repairs" are needed to correct violations of the State Sanitary Code and of any and all applicable fire safety, electrical, building, zoning and plumbing codes existing at the Property, and to perform or cause to be performed, if necessary such Emergency Repairs.



(i) For purposes of this section, “Emergency Repairs” are repairs necessary to eliminate violations which materially endanger or materially impair the health or safety of the occupants of the Property, or which may materially endanger or materially impair the health or safety of the tenants/occupants or public safety in the near future if corrective action is not taken;

(e) To disburse funds received by the Receiver on account of the Property as follows, in the following order of priority:

**First-** To reimburse the Receiver for actual out-of-pocket expenses incurred in the capacity as Receiver, including without limitation reasonable legal fees, allocable overhead and labor costs, and costs of liability insurance (“Receiver Out-Of-Pocket Expenses”);

**Second-** To secure any vacant units;

**Third-** To make Emergency Repairs to occupied and vacant units of the Property.

**Fourth-** To pay the Receiver for costs incurred in the capacity of Receiver, as set forth below:

- (i). A reasonable management fee consistent with industry standards in the area; and
- (ii). A reasonable hourly rate consistent with industry standards for maintenance work performed by the Receiver, or agents thereof, in repairing or maintaining the Property.

**Fifth-** To make repairs, to the extent possible, of conditions that may

violate the Code or applicable fire safety, electrical or building codes or ordinances, but which do not rise to the level of “Emergency Repairs” as defined above.

**Sixth-** To make payments, to the extent possible, toward any unpaid taxes, assessments, penalties or interest.

**Seventh-** To make payments, to the extent possible, due any mortgagee or lienor of record.

- (f) The Receiver shall file periodic reports with the Court, setting forth all expenses and disbursements of the Receivership, with attached receipts, and an accounting of all funds received by the Receiver during the period covered by such report, including a list of all tenants/occupants residing at the Property, together with a list of current rental amounts and the status of their rent payments to date and funds from other sources.
- (g) On or before \_\_\_\_\_, 2018, the Receiver shall file its first report, and shall in that report include a detailed list of what repairs have been performed to date and what will be completed within the next eight (8) weeks. The Receiver shall also file a motion to approve a rehabilitation plan at that time, with a schedule prioritizing the order in which such repairs shall be completed. A rehabilitation plan shall include a list of all repairs to be made, accompanied by firm start and completion dates as well as all estimated costs and fees associated with the rehabilitation.<sup>3</sup>
- (h) The Receiver shall file with the Court and serve upon all parties a copy of

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<sup>3</sup> Although it is the Receiver’s duty to prepare the reports and supporting documentation, it is the duty of counsel for the Receiver to cause the reports to be filed with the court and sent to all parties and lienholders; a certificate of service confirming service of the report will be timely filed with the court and parties.

this report **no later than** \_\_\_\_\_, **2018, and every eight (8) weeks thereafter**, unless a different schedule is authorized by the Court.

The Receiver shall also conduct a title run-down every eight (8) weeks and shall notify all parties to this action as well as the Court of any changes, if any are identified.

- (i) *The Receiver shall forthwith determine what outstanding Municipal Real Estate Taxes as well as any outstanding utilities and fees are due and shall include that information in its first report. Copies shall be sent to any mortgagees or lienors as well as all parties to this action each time any report is filed with the court in this matter, and each report will be accompanied by a certificate of service documenting that the reports have been forwarded as called for herein.*
- (j) The Receiver shall be represented by an attorney at all future proceedings relative to this Receivership. The Receiver has identified \_\_\_\_\_ as their attorney in this matter.

6. **Bond and Inventory.** The Receiver shall not be required to file a bond, nor shall the Receiver be required to file an inventory, list of encumbrances, list of creditors or any other report required to be filed by Rule 66 of the Massachusetts Rules of Civil Procedure, except as otherwise specifically provided herein.

7. **Tenancies and Rental Income:**

- (a) Once necessary repairs are made and a certificate of occupancy is obtained, the Receiver may begin locating suitable tenants and begin collecting rent at

the current fair market rate. Rent payments may be timed so as to coincide with the receipt of public benefits checks.

- (b) The Receiver may rent vacant apartments already in compliance with the Code, and may repair vacant units so as to bring them in compliance with the Code. The Receiver is authorized to enter into lease agreements on a month to month basis. If the Receiver wishes to enter into a lease agreement of a term longer than one month, further leave of Court is required.
- (c) The Receiver is authorized to set rental fees with a tenant/occupant if the tenant/occupant is in agreement with said terms and fees. Any disputes regarding rental fees shall be settled and/or determined by the Court, upon the request of the Receiver or any party by written motion with notice to all interested parties.
- (d) If any tenant/occupant or the Receiver believes that the amount of rent required to be paid hereunder should be increased or decreased with respect to any unit because of the conditions in or affecting that unit, the tenant/occupant and/or Receiver shall make a written request for modification to the Court, with copies to all parties.
- (e) The Receiver shall complete such documentation and perform such functions as may be necessary in order for tenants to receive public benefits and housing subsidy benefits (such as fuel assistance, food stamps, Section 8, and the MRVP Program), provided that the Receiver's obligations shall not exceed those customarily performed by residential landlords of low/moderate income tenants. The Receiver is hereby authorized to execute any documents neces-

sary to be executed by the tenants' landlord in connection with such benefits programs.

(f) **Evictions for Nonpayment of Rent.** Evictions for non-payment of rent shall be governed by the Uniform Summary Process Rules, and G.L. Chapters 186 and 239, and the Receiver shall not collect rent for the period of time prior to his appointment.

(g) **Evictions for Cause.** The Receiver is granted the right to bring evictions for cause. The Receiver shall not have the right to terminate tenancies at will without cause, or bring summary process actions without cause.

(h) Pursuant to the M.G.L. c. 111 § 127I, nothing herein shall be construed to limit the right of tenants to raise any counterclaims or defenses in any summary process or other action regarding possession brought by a receiver.

8. **Notice of Receivership.** The Receiver shall forthwith complete and post the Notice of Receivership, attached hereto as Exhibit A, in an area visible to the public at the Property at all entrances, or an equivalent sign with all the required information listed in Exhibit A.

9. **Liability and Agency**

(a) The Receiver shall forthwith acquire general liability insurance in the amount of \$1,000,000.00, or such other amount as is consistent with industry standards, and casualty loss insurance and provide proof of coverage to the court no later than \_\_\_\_\_, 2018. The cost of insurance shall be given first priority under paragraph 5 of this order.

(b) The Receiver shall have no responsibility whatsoever to make any

advances on account of the Property, except as approved by the Court.

- (c) The Receiver's liability for injuries to persons and property shall be subject to the limitations set forth in G.L. c. 111, section 127I.
- (d) Pursuant to the M.G.L. c. 111 § 127I, no suit shall be brought against the receiver except as approved by the court which appointed the Receiver, except certain counterclaims and defenses that may be made by tenants as described in M.G.L. c. 111 sect. 127I (see paragraph 7(h))

10. **Right to Resign**. The Receiver shall have the right to resign at any time by giving seven (7) days prior written notice to the Court and to the parties, the Receiver shall request a comprehensive inspection to be conducted by the town or city in which the property is located prior to the hearing date to determine the status of the repairs that have been completed by the Receiver and the current status of any violations of applicable state or local codes still present at the Property. Such resignation shall be effective upon order of the Court. The notice of resignation shall include the reason for resignation, a copy of any rent roll and rental history the Receiver has compiled, an accounting of all funds received and disbursed during its term, a thorough list of repairs made to date and the amount of the Receiver's asserted lien to date. The Court may require the Receiver to take additional actions after the date of resignation if the Court determines that such actions are required to protect the health or safety of the tenants/occupants and that the Receiver has the capacity to perform such functions consistent with the terms of this Order. Unless otherwise ordered, on the effective date of such resignation, the Receiver shall assign any and all amounts received by it to the Court or to a successor Receiver.

11. **Right to Borrow Funds**. Pursuant to the M.G.L. c. 111 § 127I, the Receiver shall have full power to borrow funds and to grant security interests or liens on the affected property,

with leave of Court upon a motion served upon all interested parties. The Receiver shall also have full power to make such contracts as the Receiver may deem necessary, and, notwithstanding any special or general law to the contrary, shall not be subject to any public bidding law nor considered a state, county or municipal employee for any purpose.

12. **Priority Liens and Mortgages**. The Receiver shall have a lien with priority over all other liens or mortgages except municipal liens and taxes on the Property pursuant to the “super-priority” provision of G.L. c. 111 § 127I, as amended, third paragraph, upon the recording of this Order.

13. **Notice to Creditors and/or Potential Heirs**. The Receiver shall cause a title exam to be conducted and shall send a copy of this Order to all mortgagees and lienors of record as well as any mortgagee and lienors provided to them by the owner/respondent and any mortgagees and lienors of which the petitioner and/or the Receiver may be aware. To the extent that it is applicable, a copy of this Order shall also be sent to any potential heirs or determined heirs in a probate action of a deceased respondent.

14. **Sale and/or Assignment of Lien of the Property**. The Property shall not be transferred, foreclosed upon, sold, encumbered or placed under contract for sale without prior leave of the court. Furthermore, any Owner and/or Holder of a Mortgage and/or Security Instrument on the subject property shall not sell, transfer, assign, grant or convey their right, title and/or interest of said Mortgage and/or Security Instrument without notice of same to the Court and to all parties to this action.

15. **The Respondent(s)**. To the extent not already completed, the Respondent(s) shall: (i) within 48 hours of the signing of this Order transfer to the Receiver all keys to apartments and common areas of the premises and their rent roll for all apartments at the Property; (ii) within

seven (7) days of the signing of this Order, the Respondent(s) shall provide to the Receiver copies of all documents necessary to manage and maintain the Property and shall provide at least the following information:

- (a) Residential Units: the name, address, and telephone number of the owner and contact person for each of the units at the Property; the amount and due date of the rent; and copies of any leases or written tenancy agreements.
- (b) Mortgages and Liens: the name and address of all mortgagees and lienors of record; the amount of the lien or mortgage.
- (i) Insurance: the name, address, and telephone number of all insurance companies and their agents providing insurance coverage for the Property; the amount and type of coverage; and the amount and due dates of premiums.
- (j) Utilities: the amount of the most recent water, sewer, gas, and electric bills; the amount of any outstanding balance; and the date and amount of the last payment.
- (k) Real Estate Tax: the amount of the most recent real estate tax bill; the amount of any outstanding balance; and the date and amount of the last payment.
- (l) Contracts: copies of all warranties for prior work done, service contracts for ongoing maintenance (e.g. for extermination), and all contracts or bids for repairs.
- (m) Other: all information relevant to any outstanding expenses relating to the property.

The Respondent(s) shall not enter any part of the Property without prior approval of the Receiver or the Court. The Respondent(s) shall not terminate any insurance coverage to the



Property without first seeking leave of this Court.

16. **Motions and Notices**. Any interested party shall have the right to request from the Court, by motion and with advance notice, further orders consistent with G.L. c. 111, § 127I, common law, or the terms of this Order. In the event of emergencies, service of motions to parties on this action by facsimile and/or by email transmission shall be acceptable.

17. **Recording**. The Receiver shall forthwith record a copy of this Order at the registry of deeds in the applicable county.

18. **Inspection(s)**. The \_\_\_\_\_ shall conduct a comprehensive inspection of the Property prior to the next review date. The municipality shall also be authorized to conduct inspections every 8-10 weeks to verify that rehabilitation work at the Property is in compliance with the Court Approved rehabilitation plan. Upon the completion of the rehabilitation work at the subject Property the Receiver shall obtain a certificate of compliance and/or a certificate of occupancy from the municipality in which the subject Property is located and shall file said certificate with the Court via affidavit with copies to all parties and lienholders.

19. **Review by Court**. The foregoing Order shall remain in effect until further order of the Court. The Receiver and all other affected parties shall report on the Receiver's progress to the Court on \_\_\_\_\_, at \_\_\_\_\_ **in the Springfield session.**

20. **Effective Date**. This Receivership shall take effect on \_\_\_\_\_, at 12 o'clock p.m.

So entered this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Dina E. Fein, First Justice  
Western Division Housing Court

\_\_\_\_\_  
Robert Fields, Associate Justice  
Western Division Housing Court

# Exhibit A

# **NOTICE OF RECEIVERSHIP**

The Housing Court – Western Division has ordered that the property located at

\_\_\_\_\_, *MA*

be placed into Receivership as of \_\_\_\_\_. The following entity has been appointed as Receiver by the Court to take over management and control of the subject property:

**[NAME, ADDRESS AND PHONE # OF RECEIVER]**

The Receivership will be conducted under the supervision of the Court. Any person with questions or concerns should contact the Receiver at the above, but may also **contact the Court at (413) 748-7838.**

The Receiver for the property has the authority to board and secure the property, make any necessary repairs, rent units and collect rents for units that are fully compliant with local and state codes. A copy of the order imposing this Receivership may be obtained from the Court. **The Housing Court – Western Division is located at 37 Elm Street, Springfield, MA 01103.**

Please reference docket number: \_\_\_\_\_