

**Before You Evict: Creating “Win-Win” Situations When  
You Acquire Occupied Properties**

Community Legal Resources  
220 Bagley • Suite 900  
Detroit • Michigan • 48226

As a real estate developer, a nonprofit organization will more than likely encounter at least one situation in which a piece of property they acquire is occupied at the time of the acquisition. How the nonprofit handles the situation can make a significant difference in the community's perception of the organization, in the lives of the occupants, and in the cost and time associated with the development of the project.

Nonprofits that are able to acquire property for a greatly reduced fee, such as through Revitalife or other tax foreclosure program, generally exist to improve community conditions. They want to subsidize their work and maintain their operations, but not at the expense of the community as a whole. Fairness and neighborhood-building are core concepts to most community organizations, and the organization should be careful to adhere to all legal requirements, as well. Given these basic principles, nonprofits are well-advised to begin thinking about occupied property issues from the very beginning of the acquisition process. This publication is intended to help you start thinking about these issues.\*

### **In the Beginning – Is it Occupied?**

Before obtaining a piece of property, or even beginning the acquisition process, the organization should ascertain whether there is anyone occupying the property. Sending a letter to “occupant,” driving by the property and, if it is safe, knocking on the door are often the most practical first steps.

If the property appears to be vacant, a standard title search should reveal whether there are any known owners or other clouds on the title. In Detroit, the nonprofit should also check with the Department of Building and Safety Engineering to be sure that the property is not the subject of a Nuisance Abatement Ordinance contract. If it is, the home may be empty but be a “work in progress.”

### **There's Someone There – Who Is It?**

If you discover that there is indeed someone living in or improving the property, you will need to ascertain who they are before you can really decide what your options are. While the legal requirements may be largely the same, fairness should dictate that you treat a former homeowner differently than, say, a drug dealer.

Among the types of occupants you are likely to find are:

1. Former homeowners, who may have lost the property for unpaid taxes (or be in the process of disputing a foreclosure). You may also find relatives of a former owner, such as a widowed spouse whose name wasn't on the title, but has lived there continuously.

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2. Tenants of a former owner, who may or may not be aware of the change in ownership. Many times, these individuals may or may not be paying rent. In worst case scenarios, they may be paying rent to someone who does not own the property and never has – a defrauded “tenant” has many of the same rights as a tenant of a legitimate former owner.
3. Someone who purchased the property from the former owner, but somehow avoided being put into the chain of title.
4. A contractor who is improving the property under the City of Detroit’s Nuisance Abatement Ordinance or Rent-to-Own programs. If the contractor is still working on the property and has not defaulted on the contract, the contract takes precedence. If the contractor has defaulted on the contract with the City, you may need to look more carefully at the situation to see what is fair.
5. “Homesteaders,” or someone who took possession of the property without any contract, purchase or lease, but is making repairs and working to make the home livable.
6. Homeless individuals or families, who may be living in the structure on either a short-term or longer-term basis. Many times, these individuals may be “tenants” of fraudulent “owners” who don’t really own the property, they are just collecting rent.
7. Drug dealers or others who are engaging in illegal activities. If someone is genuinely engaging in illegal activities, police involvement will be the quickest way to have them removed. If, however, you have any doubts about whether allegations of illegal activity are true, you may wish to treat them the same as you would any of the other groups discussed above.

### **I Know Who’s There – Now What Do I Do?**

The course of action you choose will depend on your goals for the property, the condition of the property and the type of occupants you are working with. If someone has demonstrated that they genuinely care about the property, and have been acting as responsible occupants (making repairs and improvements when possible, maintaining the property), they may be just the type of resident you want to work with. You should consider all of these factors, as well as your budget and timeline for the project, when deciding what your next steps should be.

1. Renting the property to the occupants

If you intend to rent the property in the same condition it is in now, you may want to approach the current occupants about becoming your tenants. This is particularly true if they have invested time and money to improve the home already, and the building meets all of the applicable safety and building codes. Remember – as a landlord you are responsible for obtaining the necessary

licenses and registrations, and for maintaining compliance with codes – even if the individual was there before you acquired the property.

If you intend to rehab the property and then rent it out, the current occupants may still make good tenants, you just may not be able to keep them in the building while you are making improvements (depending on the nature of the work).

## 2. Selling the property to the occupants

If you intend to sell the property immediately, its current occupants may be ideal purchasers if you are able to come to a reasonable agreement as to price and payment options. The same holds true if you intend to rehab the home first. In a scenario where the occupant has already been making repairs, you may find it advantageous to allow them to continue to make the repairs in return for a reduction of the sale price. You may want to approach the current occupants about becoming your tenants. This is particularly true if they have invested time and money to improve the home already, and the building meets all of the applicable safety and building codes. Remember – as a landlord you are responsible for obtaining the necessary licenses and registrations, and for maintaining compliance with codes – even if the individual was there before you acquired the property.

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3. If you intend to demolish the property, you will obviously not be interested in turning the occupants into residents. You must still, however, be sure that you follow the legal procedures that you would if you were moving the current occupants out in order to move new ones in.

## **Creative Ways to Turn Occupants Into Homeowners**

If you decide that you would like to work with the current occupants, you are likely to have a number of concerns regarding their ability to meet their obligations. How can you be sure that they won't lose the property for failure to make payments, or failure to pay their taxes? How can you be sure that they won't turn around and sell the property to an absentee-landlord, or a local drug dealer, or another individual who is likely to let the property "slide"? While there is no "one-size-fits-all" solution, the following options have been used with some success by various nonprofits.

### 1. Silent second mortgages

If your primary concern is seeing continued improvement in the property and the neighborhood, a silent second mortgage may be a suitable option. With a silent second, you in effect have a mortgage for whatever amount you are willing to

deduct from the sale price. In return, the occupant commits to meeting some obligation, such as living in the home for a certain period of time. This protects against the buyer deciding to sell to an undesirable investor. If the buyer fails to meet their commitment, you can foreclose on the silent second mortgage.

## 2. Land contracts

Using a land contract, your nonprofit may be able to sell the property to someone who would be unable to obtain a traditional mortgage. In a land contract, you can make the contract for the time necessary to pay off the full sales price or for a shorter time with a balloon payment. The issue of the person obtaining a mortgage could then be revisited at the time the balloon is due. If payments have been made on time, and some equity has built up, the occupants may then be able to obtain a mortgage.

**A WORD OF CAUTION:** You should be very careful not to force persons into predatory loans, however, if you want to retain some control over your community and do not want the individuals to be victimized. Predatory lenders are not going to care what happens to the home or your community as long as they get their money.

## 3. Lease with option to purchase.

A well-drafted lease with an option to purchase can be good option for an occupant who would make a better tenant than purchaser to start out with. If the person has credit problems, or you otherwise question their ability to make consistent payments, a lease-option makes sense. The buyer could remain a tenant, and if he complies with the terms of the agreement (pays on time etc.), then he could have an exclusive option to purchase. **THE SAME CONCERNS ABOUT PREDATORY LENDING APPLY HERE**, so you may need to “think outside the box,” perhaps allowing the lease to turn into a land contract instead of a purchase, for example.

## 4. Reducing the sale price based on improvements done by the occupant, work performed for your organization to create some equity in the property, etc.

### **But What if We Need Them to Leave?**

If, after considering your options, you still need the occupants to vacate the property, you should be very careful in how you do so. You want to be sure that you comply with all of the legal requirements, but also think about the long-term effects on the occupants and the community.

1. Consider paying the occupants to vacate the residence. Often, a reasonable payment and time to move out can be the smoothest and easiest way to get an occupant to leave a property. While the amounts will obviously vary, you will want to consider the amount of work and money that the occupant may have invested in the property,

how reasonable their belief was that they had the right to be in the property, and your own budget. It may be unpleasant to think about paying them to leave if you challenge their right to be there in the first place, but it may be much more reasonable than the alternative costs associated with filing an eviction action.

2. Remember that, depending on your sources of funding for the project and your particular situation, you may have a legal obligation to relocate the occupants (which includes an investment of time and money). Be sure not to compromise the success of your project by overlooking these requirements.

### **What About Eviction?**

If you choose to pursue an eviction action, you must be sure that you follow the letter of the law in doing so. It can be a lengthy process, taking anywhere from 2-5 months from the time you initiate the process. However, cutting corners is likely to increase the cost of the proceedings and the time necessary to see it through to completion.

1. First and foremost, you cannot take any legal action to evict an occupant until you are the legal owner of the property.
2. If an occupant has any legal right to possession, then you **MUST** provide them with notice before you evict them. In many cases, a person may be entitled to notice even though their legal right to be there is unclear (for instance, if they've been there a long time, they are probably entitled to notice). Failure to properly provide an occupant with notice will result in you having to start the process over again.

A general timeline of the eviction process would look something like this:

1. A 30-day Notice to Quit is given. If you mail it first class mail add one business day for the mailing. The time period is the date and time in one month to the same date and time in the next month. Eg. A notice mailed first class on September 15th for a tenant to move by October 16th would be adequate.
2. Complaint and summons is filed and a court date is given. Court dates are usually 10 - 14 calendar days from the date of filing.
3. If there are no defenses to the complaint, when you appear in court the occupant will usually be given 10 days to move, file a motion or appeal. If there are defenses see #6, below.
4. If the occupant does not move in the time allotted by the court, and does not appeal or file a motion, then the owner may request an order of eviction.
5. Once the order is signed it goes to the bailiff. The time to get an order approved and to the bailiff varies considerably. It could take a few days or a few weeks. The bailiff contacts the owner, who must pay the bailiff. Once payment is secured, the eviction typically takes place in a few days.

6. If there are defenses, then the occupant may ask for a jury trial. This could be 3 to 8 weeks or more from the date of the first hearing. The jury would then determine if the occupant should be evicted. To get a jury trial, the defense only needs to be alleged, not proven (it is up to the jury to determine if it is proven or not). The occupant could also have a bench trial and the judge could make the determination.

7. If there is a motion filed, then the process could also be delayed. There is no specific, unified process that all the judges adhere to with regard to motions. The filing of a motion could result in a no delay, or in a delay of several weeks. If the motion raises a claim that results in the case being dismissed, then it could mean that you would have to start over.

8. If an appeal is filed it can take 11 - 16 weeks to be heard. The transcripts must be ordered, briefs filed and an oral argument set.

9. If the parties agree to a consent judgment, the post judgment rights are very limited. A party that is unrepresented has 3 days to set aside a consent if they can show that they did not understand what they were doing. In a consent judgment, each side should give up something (a consent judgment for the tenant to move in 10 days when he would have gotten that anyway opens the door for a claim that the tenant did not understand what he was doing).

### **What Resources are Available For Us? What About the Occupants?**

In addition to Community Legal Resources' assistance for nonprofit organizations, there are a variety of resources available to help occupants and/or property owners in these situations. Some of these resources include;

#### A. Legal

1. Legal Aid and Defender - 964-4111, for low income persons and seniors. They cover a variety of different civil legal needs for free.
2. United Community Housing Coalition - 963-3310, provides legal help for housing-related problems. Services are free to eligible persons in the city of Detroit.
3. Wayne County Neighborhood Legal Services – 964-1975, provides a wide range of civil legal services on a sliding scale based on ability to pay.
4. Detroit Bar Association – 961-3545, provides referral services to appropriate private attorneys for legal problems.

B. Housing relocation assistance -- There are a number of agencies that provide help in finding housing for persons in need. Generally persons must be homeless, but being on the verge of an eviction will often qualify. The types of services and population served varies based on each project's funding, and in each case the person would have to be eligible for that agency's services. Agencies include:

1. United Community Housing Coalition - 963-3310
2. Wayne County Neighborhood Legal Services – 964-1975
3. Traveler's Aid – 835-1141 or 962-6740
4. St. John Community Center - 823-8323
5. Matrix off the Streets - 873-0607
6. Care Givers - 964-5070
7. Cass Community Social Services - 883-2277

C. Homeless Shelters are frequently filled to capacity, but the homeless shelter hotline to try to find available space is 963 - STAY.

*This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130*