

CLEVELAND HOUSING COURT—A PROBLEM-SOLVING COURT ADAPTS TO NEW CHALLENGES

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Since 1980, the Cleveland Housing Court has been developing unique solutions to Cleveland's many and ever-changing housing challenges. It provides a model both for dedicated housing courts and for general courts seeking a problem-solving approach to nuisance abatement, foreclosure, vacancy, and abandonment.

Background and Formation

Over the past several decades, many courts have recognized the value of creating specialized housing or environmental dockets to address the unique challenges posed by these cases. Such dockets allow courts and judges to develop expertise in the applicable law, produce consistent results, and, most of all, adopt a problem-solving approach to cases. The Cleveland Housing Court takes this specialty approach one step further. As a legislatively established special-purpose court, its very mission is to adjudicate cases and solve problems comprehensively and holistically.

The journey to the housing court's creation began well before its establishment in 1980. Clevelanders began calling for a special court to address housing issues as early as the 1950s. The years that followed brought a flurry of housing-related activity, both locally and nationally. The Ohio legislature enacted a comprehensive landlord-tenant law in 1974 (O.R.C. Ch. 5321). Northeast Ohio saw a wave of housing advocacy, as numerous groups fought for fair housing and lending practices. Congress passed the Community Reinvestment Act in 1977 as a response to the chronic red-lining and disinvestment of inner-city minority and racially diverse neighborhoods. Neighborhood advocates called out for greater code enforcement as housing crumbled from neglect. At the same time, serial offenders and absentee landlords avoided consequences by exploiting weaknesses in the enforcement system. By early 1980, as a result of the extensive efforts of committed housing advocates and local officials, Cleveland had its court (O.R.C. Ch. 1901). In that first year, the Housing Division of the Cleveland Municipal Court handled 6,452 eviction cases and 599 criminal-code-compliance cases (Jacquay, 2005).

The Cleveland Municipal Court and its housing division has territorial jurisdiction over the city of Cleveland and the adjacent village of Bratenahl. The housing division, often referred to as the housing court, has exclusive subject-matter jurisdiction over all landlord-tenant civil actions (R.C. 1923 and 5321), as well as over municipal, state, or common-law claims involving housing, environmental, or other land-use matters. It has ancillary jurisdiction over all claims or issues arising in any case over which the housing court has original subject-matter jurisdiction. In any case properly before it, the housing court's powers to issue orders are the same as that of the state of Ohio's constitutional courts. In all of these matters, the housing court is free from the monetary jurisdictional limits applicable in the general division of the municipal court. All appeals from the housing court go directly to the Ohio District Court of Appeals.

The housing court, along with the rest of the Cleveland Municipal Court, the state trial courts for the county, and city and county law-enforcement agencies, are housed in the 23-story Justice Center in downtown Cleveland. The housing division of the municipal court is a single-judge court; the general division of the same court has twelve judges. The housing court uses two courtrooms located ten floors apart—one for evictions on the third floor and the main courtroom for criminal and civil cases other than eviction on the thirteenth floor. Magistrates and staff directly involved in cases work from a few small offices and desks in a hallway on the thirteenth floor, while bailiffs and administrative staff occupy space elsewhere in the Justice Center. With more than 11,000 civil and nearly 7,000 criminal cases filed in 2011, the housing court is one of the busiest single-judge courts in the state. The limitations imposed by its working space present an ongoing challenge for the court.

There has not been a time in the memory of most people now living in this nation when the stability and fabric of neighborhoods and communities have been so threatened in so many places all at once.

The Mortgage Crisis and Its Impact on the Court

When I took the bench as housing court judge in 1996, the Cleveland housing market already was being destabilized through the failure of many absentee investor-owners to keep their properties up to code. The court began to see the same owners repeatedly on building- and housing-code violations. As the market began to come apart and foreclosures rose, investors purchased dilapidated properties at sheriff's sales. Once they acquired the properties, many investors failed to maintain them. These properties often ended up mortgaged for far more than their actual value (Paynter, 2000: 1A; Perkins, 2000; Lind, 2008: 239; Kotlowitz, 2009). As the owners were cited for code violations, it became apparent that the problem was not just the failure to comply with housing codes, but also speculative investment and irresponsible flipping practices. These schemes not only kept properties in substandard condition, but eventually landed them with inexperienced property owners without the knowledge or ability to perform needed repairs.

The wave of foreclosures leading up to the mortgage crisis of 2008 struck early in Cleveland and struck hard (Mallach, Levy, and Schilling, 2005; Lind, 2008; Kotlowitz, 2009). In many cases, loan failures followed quickly from the flipping schemes of the late 1990s and early 2000s. By the time the mortgage crisis reached the rest of the country in late 2008, the court already was hearing repeated cases against global banks and post-foreclosure owners for serious code violations. These cases often involved extensive code violations at bank-owned REO (real-estate-owned) properties purchased at sheriff's sales, or investor-owned properties acquired in bulk transactions from lenders or other investors.

These new investor-owners, often organized as out-of-state LLCs, were difficult to identify and notify when their properties were cited. Many invested in the worst of the housing stock, hoping to profit from the quick resale of vacant nuisance properties without making repairs. Many of the investor-owners neglected to file deeds, hiding their ownership by keeping their deeds out of public records, making it difficult for the city to hold these owners responsible for nuisance conditions.

Even when identified and served, a good number of these organizational owners simply refused to appear in court. It had become "cheap and easy" to speculate in blighted housing in Cleveland (Mallach, Levy, and Schilling, 2005: 14). While the

city spent more on nuisance abatement and demolition, residential property values and tax receipts were falling (Weinstein, 2008: 27). Blight spread like a disease from individual properties, infecting whole city blocks and, in some areas, entire neighborhoods. As the foreclosures increased, so did the number of abandoned and vacant houses feeding into this cycle. These houses threatened well-established and largely successful neighborhood-recovery investments made by nonprofit developers and responsible owners throughout the city.

The increase in foreclosures brought another challenge, as homeowners who had left their property after foreclosure found themselves summoned to court for code violations at their former homes. These defendants discovered that their lenders had abandoned foreclosure cases or refused to purchase the properties at sheriff's sales, leaving legal title to the property in the foreclosed owners' names.

As the complexity of cases before the court increased so, too, did their sheer number. In 2010, its 30th anniversary year, the court's caseload reached an all-time high with the filing of 11,104 civil cases and 6,813 criminal cases—more than ten times the number of criminal cases filed in the court's inaugural year. The steady volume of evictions over the years and the rise in criminal cases are all the more remarkable in light of Cleveland's loss of over 80,000 residents, a full 17 percent of its population, over the prior decade (Smith and Exner, 2011: A6).

Institutional and Jurisdictional Features

The people of Ohio placed a great responsibility on the court some 30 years ago, but they gave it unique tools as well. The court's broad jurisdictional grant and uniquely specialized mission require special staffing roles critical to the court's ability to respond to the ever-evolving challenges facing this city. The court

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employs nine persons as housing specialists, a statutorily created position essential to the problem-solving mission of the court. They work with first-time defendants in a diversion program, conduct special inspections ordered by the court, monitor compliance of defendants both before and after sentencing, and work with community organizations to increase education and awareness of code-enforcement issues. The specialists operate the housing clinic, as well, where landlords and tenants can receive information free of charge regarding landlord-tenant law and housing court procedure. There are also six magistrates, two staff attorneys, two judicial clerks, and twelve bailiffs, who oversee evictions, serve papers, and provide security, along with administrators, clerks, and interns. This year the court is implementing budget cuts, which will most likely result in some staff reorganization and reduction.

The Cleveland Housing Court is the largest of three specialized housing and environmental courts in Ohio; the others are the Environmental Division of the Franklin County Municipal Court and the Housing and Environmental Division of the Toledo Municipal Court (O.R.C. §1901.011). Ohio's statutory housing courts have original subject-matter jurisdiction limited to state and local land-use laws. The Cleveland and Toledo courts have exclusive jurisdiction in eviction and other housing-related civil actions; all three courts have exclusive jurisdiction in misdemeanor criminal actions for violations of local building, housing, air-pollution, sanitation, health, fire, zoning, or safety codes (O.R.C. §1901.181). This exclusive subject-matter jurisdiction enables the court to develop expertise in its subject area and to interpret the law consistently.

While at first glance, this subject-matter jurisdiction might appear quite limited, the statute also provides for extensive ancillary jurisdiction—if a claim is properly filed in the housing court, the court has the power to resolve all related claims and issues in the case. To do so, it may exercise all the power of a common-pleas court to make findings, render judgments, or issue orders, including injunctive relief (O.R.C. §1901.131). The Cleveland Housing Court has an additional jurisdictional asset: its unlimited monetary jurisdiction (O.R.C. §1901.17). This jurisdictional feature prevents parties from moving cases out of the housing division by raising counterclaims or cross-claims on matters not within the original jurisdiction of the housing division. Perhaps more important, it permits the housing court to

resolve completely all claims raised by the parties, greatly increasing the likelihood of a comprehensive solution and furthering the court's holistic, problem-solving mission.

Another specialty tool employed in the housing court is the nuisance-abatement-receivership action of Ohio Revised Code 3767.41. Championed by many of the same people and organizations who had pushed for the creation of the housing court, the statute permits a city, a neighbor within 500 feet, tenant, or housing-related nonprofit corporation to file a lawsuit against the owner of a nuisance property, seeking as relief an injunction to remedy the nuisance, the appointment of a receiver to manage the property and resolve the nuisance conditions, or both. The receiver, upon completion of the abatement, receives a super-priority lien for the costs incurred. The statute grants authority to the housing court to hear these cases, which have been used by nonprofit community-development corporations to demolish or rehabilitate nuisance properties.

Recognizing the unique nature of housing cases, both civil and criminal, the drafters of the housing court's enabling statute created a special staff position to help the court—and the people it serves—in a number of distinct ways (O.R.C. §1901.331). The court's housing specialists have become a critical resource in the court's problem-solving toolkit. They bring a wide variety of professional experience to their position, with backgrounds in social work, banking/finance, real estate, property management, urban and regional planning, and consumer affairs. Every specialist is well versed in the city's building, housing, and zoning codes.

In criminal cases, the specialists work with defendants, in particular first-time offender owner-occupants, to help them access community-based financial assistance or home-repair services. Specialists also serve as probation officers, supervising community control sanctions and reporting to the court on the defendant's progress in complying with the terms of the sentence.

In civil cases, the court offers assistance to property owners, landlords, and tenants through its housing clinic. Landlords and tenants can appear without an appointment to obtain information about their housing rights and responsibilities. The clinic provides standardized forms for many common motions and case-related



Cleveland Housing Court efforts have reduced blight through enforcement of code compliance related to maintenance of properties until completion of sale.

filings, as well as information on rent deposit and eviction procedures and related mediation. The clinic assists Cleveland residents in resolving landlord-tenant disputes involving illegal lockouts, utility shutoffs, and other housing conditions requiring immediate attention. The specialists are not attorneys and cannot give legal advice. However, they do help people understand court procedures, notices, and processes. More than 6,000 people seek information or assistance through the clinic each year.

Key Procedures and Programs of the Court

The legislature provided the Cleveland Housing Court with special tools to carry out its mission. The court, particularly in recent years, has developed additional processes and resources of its own to meet the dynamic nature of Cleveland's housing challenges.

While Cleveland's ordinances permit the city to name corporate officers as defendants in code-violation cases against properties owned by an organization, the city routinely charges only the organization. When a corporation or other business

entity fails to respond to a summons, the law does not provide a means for the court to arrest the organization and compel its appearance.

In response, the court developed its corporation docket. When an entity, having been properly served, fails to appear in a criminal matter, the case is referred to this special docket, and a series of notices are issued to its official address, as well as to corporate officers. If the entity again fails to appear, further notices are sent. The case then proceeds to hearings at which the entity must show cause why it should not be held in contempt of court for ignoring the order to appear. If the entity still fails to appear and is found in contempt, the court can impose substantial daily sanctions, typically \$1,000 per day.

These contempt sanctions continue to accumulate until the entity appears to answer the charges against it. As of March 2012, the court has levied more than \$108 million in sanctions for contempt of court and ordered them converted into civil judgments. Unfortunately, a large percentage of the contempt penalties have gone uncollected. Neither the clerk of court nor the city's law director, both of whom have the authority to do so, have undertaken vigorous collection efforts. Despite the lack of collections thus far, however, this program has increased the proportion of organizational defendants who appear in court, and recently was upheld by Ohio's 8th District Court of Appeals in *Cleveland v. Paramount Land Holdings*, 2011 Ohio 5382.

The court also has been able to compel criminal defendants to appear through the "clean hands" program. The court routinely reviews its civil eviction docket to identify property owners with outstanding warrants who have filed eviction actions. In these situations, the court imposes the equitable doctrine of "clean hands" and requires the plaintiff-owner to appear and enter a plea in the pending criminal cases before that same person or entity can invoke the court's jurisdiction in eviction actions.

Through late-night infomercials and other media attention, the real estate market has attracted individuals with promises of great wealth to be made with little effort or capital. Individuals involved in real estate investment and rehabilitation often may have a dozen or more other properties falling into disrepair; the single property

for which a defendant has been cited by the city may be only the “tip of the iceberg.” As a result, the court often includes in plea agreements and sentences solutions that address all problem properties owned by the defendant in the city of Cleveland. The court encourages the defendants to make a realistic assessment of their capabilities and, if necessary, begin to transition the properties to responsible, beneficial owners. In extreme cases, it may be necessary for an individual to transfer the properties to beneficial owners to remain out of jail.



Code compliance related to maintenance until completion of sale applies to commercial as well as residential properties.

Abandoned properties are quick targets of vandalism, graffiti, and scrapping. To help keep homes occupied and intact, the court sends informational letters to foreclosure defendants in Cleveland, encouraging them to remain in their homes as long as possible and informing them that their responsibility for code compliance continues until the property is sold to a new owner. The court tracks the letters returned because of vacancy and forwards that information to the court of common pleas, which determines whether the properties are appropriate for its expedited foreclosure docket for abandoned properties.

The court also uses the Court Community Service (CCS) program to multiple ends. Not only does it provide a valuable sentencing option for misdemeanors, but also serves as a resource for addressing some property issues, lessening the impact of blighted properties on the surrounding neighborhood. Through CCS,

the housing court can order community service workers, i.e., misdemeanor offenders sentenced to perform community service hours, to clean up vacant lots, perform yard work, secure vacant structures, and make minor repairs at properties that are the subject of pending cases in the court.

Housing court also has implemented a placard program to connect neighbors with information about abandoned properties that are the subject of pending court cases. When a property under the jurisdiction of the court is identified as vacant and abandoned, bailiffs post notices on the premises forbidding trespassing and providing contact information for the person or entity responsible for the property, as well as the assigned housing specialist. This enables neighbors to contact the responsible parties about any issues with the property and to track the progress of the court case.

Reflections and Lessons Learned

I have learned a great deal in my nearly 17 years on the bench. Nothing I have done or could do to serve my community is more important or more fulfilling than being the housing court judge. I came to the bench after working as an executive director of a community-development corporation and then as a member of the Cleveland City Council. These experiences—where I developed firsthand knowledge of housing and land-use issues at the neighborhood level—were great preparation for my role with the court. As with other specialized courts, the housing court needs judges and staff members with subject-matter expertise and passion for the issues heard here. The quality of service provided by this housing court is a result of the dedication and expert knowledge of the court’s staff and is reflected in the number of people who look to the court as a source of informed and just public service.

It is a surprise that there are not more housing or environmental courts in Ohio and elsewhere. We have hosted delegations from other cities and counties—many on more than one occasion—who were interested in establishing a special-purpose court under Ohio’s enabling statute. While others have taken ideas for programs or techniques, none have established new housing or environmental divisions. The hurdle, apparently, is political. Cleveland’s housing division was established over opposition from powerful political figures, including judges, because of public demand for better housing conditions by a coalition of neighborhood organizations,

along with the persistent determination of city council members and a few state legislators. Given the urgent needs at this time, it is unfortunate that there is so little success against the political barriers to new housing and environmental divisions.

In cities in which statutory housing courts are not in place, courts nevertheless have been able to use many of the procedures, programs, and policies profiled in this article. In turn, this court has benefited from the examples of prosecutors and courts around the country—from Buffalo to Memphis, from Baltimore and Boston to San Diego and Los Angeles. There has not been a time in the memory of most people now living in this nation when the stability and fabric of neighborhoods and communities have been so threatened in so many places all at once. Never have we seen so many powerful, external man-made forces spreading disruption in housing and the residential environment. I find that the “broken window” theory attributed to the work of the late John Q. Wilson is more relevant than ever in the face of the breakage so many local courts are now seeing on their dockets.

Of course, like all other courts, the housing court can only adjudicate cases that are brought before it. The agenda for a court in many ways is set by the decisions made by the executive branch and prosecuting attorneys in deciding which cases to bring. Preparation and planning by the prosecution in those cases is necessary to enable the court to address the merits of the cases and, often, to reach the underlying reasons why a property is out of compliance with city codes. Without these solid foundations, it can be difficult, if not impossible, to reach the court’s ultimate goal in most cases—safe, habitable housing and commercial structures.

The Cleveland Housing Court’s deep commitment to the goal of code compliance for safer, healthier, law-abiding neighborhoods keeps us looking for even more ways for the law to protect people where they live. The proper perspective for a special-purpose, remedial court is to solve problems using all the tools at its disposal. And where new tools are needed for new problems, the court can, and should, take an active role to develop the necessary mechanisms to meet that need.

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