

Working With Your Delinquent Tax Collection Attorney to Help Clean Up the City

By: Brandon Davis
BDavis@olsonllp.com

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Introduction

- Goals of municipal abatement of nuisance properties/
substandard buildings
 - Protect the health and safety of neighbors/community
 - Protect the health and safety of occupants
 - Improve aesthetics/increase property values
 - Reduce crime

Examples



May 10, 2021 at 10:34:59
609 Washington St
Liberty TX 77575
United States



Dec 28, 2021 at 1:49:11 PM





Municipal Abatement Authority

- Municipal authority to define and abate substandard structures comes from several statutory provisions, particularly Chapters 214 and 54 of the Local Government Code

Traditional Abatement Procedures

- 3 traditional methods for municipal abatement process:
 1. Adopt an ordinance under chapter 214 LGC relating to the condition of structures in the city, provide for notice and a public hearing
 - Public hearing can be in front of city council, an appointed building and standards commission, or the city's municipal court acting in civil capacity
 2. Bring a civil action under chapter 54 LGC in district court, county court, or city's municipal court of record to make a judicial determination that a structure is substandard ; or
 3. Provide for an alternative enforcement process under section 54.044 LGC by creating an administrative adjudication hearing, under which an administrative penalty may be imposed for the enforcement of a substandard structure ordinance

Common Problems/Complications with Traditional Abatement Methods

- Someone is living in the house
 - City must pay to relocate if City evicts and demolishes (LGC 214.001 (m))
- It can be political
- Results can be temporary
 - Grass grows
 - Hoarders continue to hoard
 - Individuals continue to not take care of their property

Tax Collection to Abate Nuisances

- In practice, many nuisance properties will also be subject to liens for delinquent ad valorem property taxes
 - Vacant Structures
 - Properties with multiple owners/undivided interests
 - People that generally don't take care of their stuff

Delinquent Tax Collection 101

- Ad valorem taxes are due on January 31st for preceding tax year
 - Texas Tax Code 31.02
- Notice of delinquency mailed by Tax Collector
 - Texas Tax Code 33.04
- Penalty for collection fees kicks in July 1st
 - Texas Tax Code 33.07
- Tax Collection Attorney mails out demand letter after July 1st

Delinquent Tax Collection 101

- Lawsuit filed against property owners and lienholders
 - Texas Tax Code 33.41
 - Must serve all property owners and lienholders
 - Court appoints an attorney ad litem to represent owners who are unknown or are unable to be located
 - **City can use this title search information to help with their notices for nuisance abatement**
- Set tax suit for trial and obtain judgment for all unpaid taxes, costs and liens

Delinquent Tax Collection 101

- Property is sold at a public foreclosure auction
 - Minimum bid is the lesser of delinquent taxes plus costs or the appraised value
 - Auctions are typically held on the courthouse steps of the county where the property is located on the first Tuesday of the month
 - Texas Tax Code 34.01
- Property that isn't purchased at auction is "struck off" and becomes property that is held in trust by the taxing entities
 - Texas Tax Code 34.01
- Tax trust properties can then be sold by the taxing entities for less than the minimum bid amount
 - Texas Tax Code 34.05
- Property owners have a statutory right to redeem the property
 - Texas Tax Code 34.21

Tax Collection to Abate Nuisances

- Scenarios where using delinquent tax collection process to abate nuisance properties may be beneficial
 - Occupied Substandard Structures
 - Perpetual hoarders and junk collectors/junk vehicles
 - Property owners that never maintain their property

Tax Collection to Abate Nuisances

- Overlap between nuisance properties and delinquent tax properties
- Check taxes at onset of nuisance abatement process, and if taxes haven't been paid notify your tax collection attorney and ask them to start the lawsuit process
 - There are hundreds/thousands of delinquent tax properties and notifying the tax collection attorney can move that property to the top of their list (squeaky wheel gets the grease)

Tax Collection to Abate Nuisances

- Tax foreclosure lawsuit can move in the background while at the same time the City is working towards abating the nuisance under regular city authority
- Nuisance abatement liens can be added to the tax lawsuit and judgment
 - Nuisance abatement liens are subordinate only to tax liens
 - Texas Local Government Code 214.001(o)

Tax Collection to Abate Nuisances

- Unlike traditional nuisance abatement methods where the property owner can clean up the property and continue to own/occupy the premises, the tax foreclosure process can result in a permanent ownership change (subject to the property owner's right of redemption)
- Many times the tax sale purchaser is somebody looking for a place to live and take care of themselves, or an investor looking to rent or sell for a profit
 - Both have an incentive to get the property cleaned up and in compliance

Real-Life Scenario

(based on a true story)

- Susie owns a house in the middle of an older but well-kept residential neighborhood that doesn't have deed restrictions. Susie is a known drug user that doesn't pay her utilities or her taxes. Susie's utilities are disconnected by the city, due to her inability to pay. As a result of her lack of utilities, Susie occasionally takes naked baths in a kiddie pool in her front yard.
- Susie is also a hoarder who collects all types of items and leaves them in her yard and has violated numerous city ordinances.

Real-Life Scenario (based on a true story)

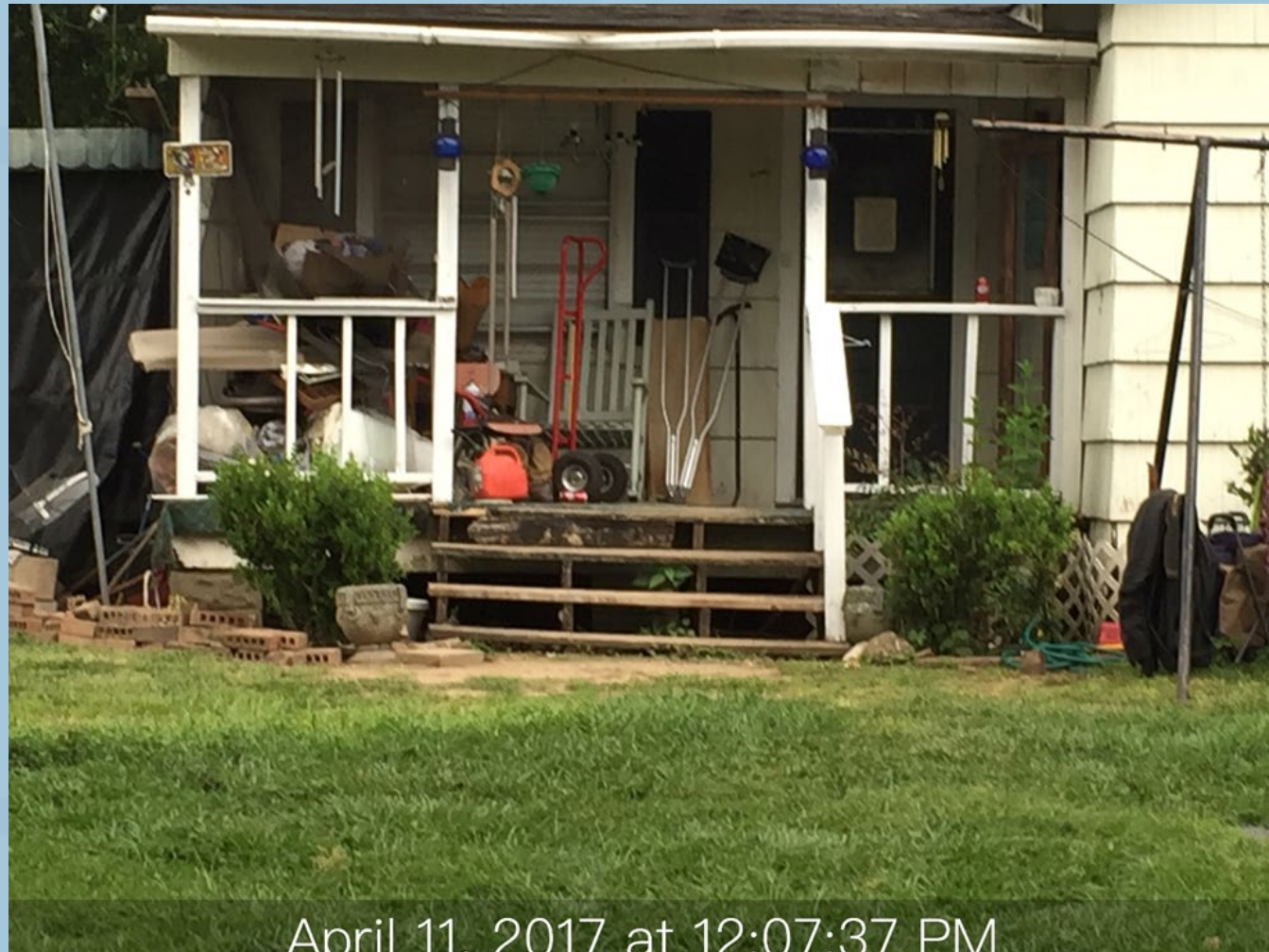


Real-Life Scenario (based on a true story)



Real-Life Scenario

(based on a true story)



April 11, 2017 at 12:07:37 PM

Real-Life Scenario

(based on a true story)

- Neighbors constantly called the City to complain
 - Most importantly, they also routinely called the city attorney to complain
- City first used the nuisance abatement rules to have her yard cleaned and liens were assessed
 - SURPRISE, it was filthy again within a month
- Code enforcement issued citations for various violations
 - SURPRISE, she didn't pay the fines
- City didn't want to use substandard structure abatement process because of the requirement to pay for relocation (however, relocating her to the next town over was discussed in detail)
 - BUT, Susie also owed thousands of dollars in delinquent property taxes

Real-Life Scenario

(based on a true story)

- City had their tax collection attorney file a lawsuit for failure to pay her taxes. The tax lawsuit was moving in the background while the other nuisance abatement measures were taking place.
 - Between the tax lawsuit process and the nuisance abatement process, Susie received numerous notices and opportunities to pay her taxes and bring her property into compliance.
- City ultimately received a tax judgment and were able to auction off the property to a new owner.
 - The new owner immediately evicted Susie, cleaned the property, and it hasn't been a problem ever since.
- As part of the tax judgment, the City was able to recover the nuisance abatement liens on the property.

Municipal Liens

- All expenses incurred by the city in vacating, securing, removing, or demolishing the structure or relocating the occupants may be assessed and a lien placed on the property upon which the structure is located, unless the structure is a homestead.
- Liens may also be filed that cover the costs associated with other nuisance abatement.
 - Mowing and trash cleanup
- Lien arises and attaches to the property when it is filed with the county clerk.
 - The lien is a “privileged lien” inferior only to tax liens. LGC 214.001 (o)
 - The lien is extinguished if the property owner or another party having an interest in the legal title to the property reimburses the city for the expenses incurred
- In practice, many of these properties will also be subject to liens for delinquent ad valorem property taxes. A home-rule municipality or Type A general-law municipality may foreclose a Chapter 214 abatement lien in a proceeding relating to the property for delinquent taxes.

Municipal Liens

- City needs to coordinate with tax collection attorney to make sure that municipal liens are included in the tax judgments (or else they may be extinguished)
- Municipal Liens included in the tax foreclosure judgment may be included in the minimum bid calculation.
- City may get reimbursed for prior nuisance liens at time of tax auction if included in the judgment.
- City may also be able to recover delinquent utility fees under a delinquent utility lien on the property.
 - Example: Restaurant where City got \$40,000 in delinquent utilities paid at the time of the tax auction.

Tax Trust Properties

- Properties not sold at tax auction are “struck off” and become trust property owned by the taxing entities
- City is most likely one of multiple owners
 - Example: County, ISD, Hospital District, etc.
- The taxing entities then have authority to evict any residents and clean up the property
- Taxing entities may recover costs for upkeep, maintenance, and environmental cleanup from the resale proceeds without further court order
 - Texas Tax Code 34.05(g)

Trust Properties & Interlocal Agreements

- Use Interlocal Agreements to work with other taxing entities to pay for nuisance abatement
- Example 1: Interlocal agreement between taxing authorities whereby City fronts the cost of demolishing a substandard structure located on tax trust property
- Under the interlocal agreement, the other taxing entities agree that the City gets reimbursed for cleanup costs prior to distribution of funds for taxes

Trust Properties & Interlocal Agreements

- Example 2: Interlocal agreement between taxing authorities whereby the various entities agree to split the cost equally for the demolition of a hazardous structure.
- Upon sale of the Property, the entities would reimburse themselves first for the cleanup costs prior to dividing the proceeds for taxes.

Key Points

- There is often a lot of overlap between nuisance properties and delinquent tax properties
- If a nuisance property is also delinquent in property taxes, work with your tax collection attorney to move this property to the top of their tax suit list.
- The tax foreclosure process can work in the background while the city proceeds with other abatement measures
- Liens can be assessed against the property and foreclosed on at the tax sale, allowing the city to recover its delinquent taxes, penalties, and interest and its nuisance abatement liens at the same time.
- The new owner, whether a tax sale purchaser or the taxing entities themselves, can work to clean up the property and bring it into compliance.

Nuisance Abated

(The End)