

# Act 135

ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP  
ACT, as amended, 68 P.S. §§ 1101, et seq (“Act 135”).

HOMES WITHIN REACH 2021

# State of Act 135 & Some Key Facts

## Established Law

- ▶ Enacted on November 26, 2008
- ▶ First Effective February 24, 2009
- ▶ Applies to All Cities, Township, Boroughs
- ▶ Planned Communities
- ▶ Significant Statutory Amendments Enacted in 2014

# Act 135 Conservatorships

## *What they are:*

- ▶ Petition Actions
- ▶ Brought by Private Neighbors, Non-Profits and Lienholders
- ▶ Quick
  - ▶ First Hearing within 60 Days. 68 P.S. 1105(a)
  - ▶ Decision within 30 Days After Completion of Hearings. 68 P.S. 1105(a)
- ▶ Temporary
- ▶ *In Rem* Actions

## *What they are not:*

- ▶ Civil Actions
- ▶ Eminent Domain
- ▶ Taking
- ▶ Does Not Include State Actors
- ▶ No Personal Liability
- ▶ Not an Alternatives to Property Maintenance Actions
- ▶ Not a Means to Take Title

# State of Act 135 & Some Key Facts

## Statewide Application

- ▶ Urban
- ▶ Rural
- ▶ Residential, Commercial & Industrial
- ▶ Cities, Township, Boroughs
- ▶ Planned Communities



# State of Act 135 & Some Key Facts

- ▶ Commonwealth of Pennsylvania is not Alone With its Enactment of an Abandoned and Blighted Property Conservatorship Statute.
- ▶ Nineteen Other States Have Adopted Blighted Property Conservatorship/Receivership Statutes
- ▶ Ten Jurisdictions Give Standing Exclusively to Municipalities
- ▶ None of the Statutes Have Been Successfully Challenged as a Taking

# The Conservatorship Process



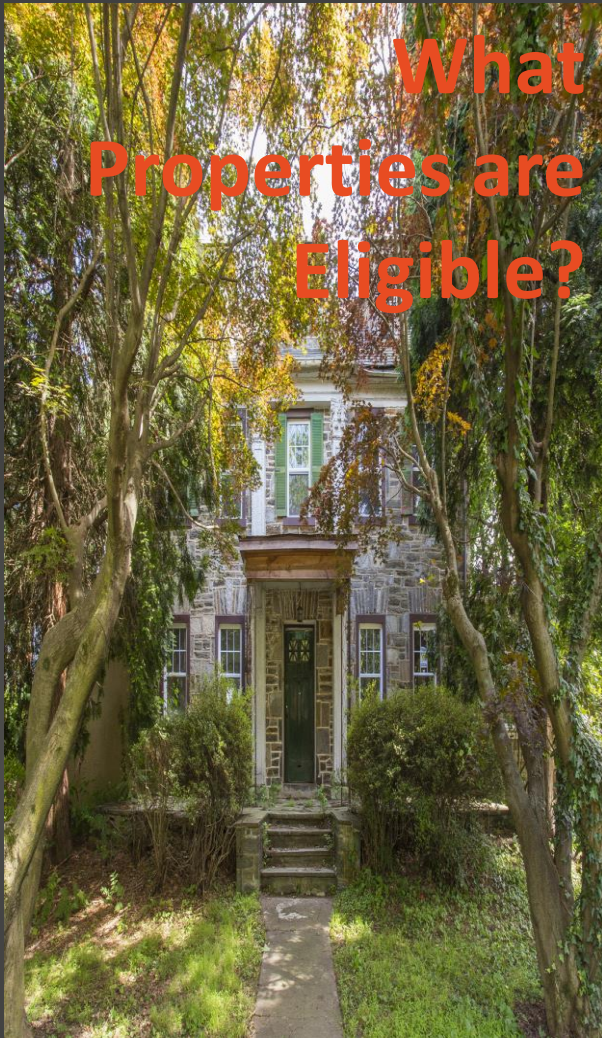
## What is a Conservatorship?

A **Conservatorship** is a court process whereby a Judge may appoint a person or organization (the Conservator) to take possession of a neglected property after conducting a trial to determine that the conditions for appointment of a conservator are satisfied.

## The Conservator

- ▶ Takes possession – not ownership – of the offending Property.
- ▶ Rehabilitates the property or demolishes the structure.
- ▶ Uses own funds to remediate the blight and is reimbursed on out-sale of the Property.





Blighted and Abandoned “buildings” including adjacent buildings and vacant lots.

- ▶ “Building” means:
  - i. A Residential, Commercial or Industrial building;
  - ii. Land appurtenant to the building; and
  - iii. A vacant lot on which a building has been demolished.
- ▶ To be an “Abandoned” building, the property must meet the requirements of conditions of conservatorship as set forth in 68 P.S. § 1105(d) of the Act.
- ▶ To be a “Blighted” building, the property must meet at least three additional criteria evidencing blight as set forth in 68 P.S. § 1105(d)(5) of the Act.



# The Statutory Prerequisite Conditions

(68 P.S. 1105)

**ALL** four conditions must be met as of filing date

1. Not legally occupied for the previous 12 months;
2. Not actively marketed for sale in last (60) days;
3. No existing foreclosure action; and
4. Not acquired in last six (6) months.

\* The property owner has the burden to present evidence of recent acquisition and attempts at selling the Property.





## Additional Statutory Conditions

In Addition to the Four Statutory Prerequisites, a Successful Act petitioner Must Establish Three of the Following Nine Elements:

1. Public nuisance
2. Needs substantial rehabilitation and none done in last 12 months
3. Unfit for human habitation, occupancy, or use
4. Increases the risk of fire
5. Attractive nuisance to children
6. Subject to unauthorized entry, and
  - ▶ The owner failed to take reasonable measures to secure the building; or
  - ▶ The Municipality secured the building due to the owner's failure.
7. Health and safety issues due to vermin, debris, uncut vegetation, or physical deterioration of the property
8. The dilapidated appearance decreases property values
9. Illicit activities

# Who can File an Act 135 Petition?

## ORPHANIDES | TONER

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Attorneys for Petitioner

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY,  
CIVIL TRIAL DIVISION

PHILADELPHIA COMMUNITY  
DEVELOPMENT COALITION ET AL.  
Petitioner,  
vs  
TERESA F. NABIELLA  
Respondent

JUNE TERM 2016

NO. 160204133

### NOTICE OF FILING OF A PETITION FOR THE APPOINTMENT OF A CONSERVATOR

A petition has been filed under the ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP ACT, as amended, 68 P.S. §§ 1101 - 1111, for appointment of a Conservator to take possession of and subdivide or demolish the property located at:

325 S. 18<sup>th</sup> Street  
Philadelphia, Pennsylvania 19108  
Assigned CPA No. 163300008

A hearing on the Petition for the Appointment of a Conservator will be scheduled by the Court. As required by General Court Regulation No. 2000-01, the Petitioner shall serve of mail a copy of this Notice, the Petition for the Appointment of a Conservator together with all exhibits, and a copy of the court order scheduling a hearing. A copy of this Notice (without the Petition for the Appointment of a Conservator, exhibits or court order) will also be posted at the property.

YOU ARE RECEIVING THIS NOTICE BECAUSE PUBLIC RECORDS REVEAL THAT YOU MAY BE ONE OF THE FOLLOWING:

**Owner of the Property at Issue.** If you are the record owner or an owner claiming a right to title to the premises and want to be heard in this matter, you must file an answer as required by the Court order referenced above. If you do not file an answer, the court may proceed without you and you may lose your rights to the property. A conservator may be appointed to take possession of the property, incur expenses that will be a lien against the property, and sell the property. You will still be responsible for your obligations to the owner, including expenses incurred by the conservator.

**Lienholder/Secured Creditor.** If you are a lienholder or other secured creditor and want to be heard in this matter, you must file a petition to intervene as required by the Court order referenced above and may seek to be appointed as Conservator. If you do not file an answer, the court may proceed without you and you may lose your rights to the property. A conservator may be appointed to take possession of the property, incur expenses that will be a lien against the property, and sell the property. The conservator lien may have priority over your lien or other rights.

**The City of Philadelphia.** As the political subdivision in which the property is located, the City of Philadelphia may file a petition to intervene as required by the Court order referenced above and may seek to be appointed as the conservator.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office below to find out where you can get legal help. Philadelphia Bar Association Lawyer Referral and Information Service, 1101 Market Street, 11<sup>th</sup> Floor Philadelphia, Pennsylvania 19107, (215) 238-6233 TTY (215) 451-4197.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio, vaya en persona o llame por teléfono a la oficina cuya dirección se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal. Asociación de Abogados de Filadelfia Servicio de Referencia e Información Legal 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107 (215) 238-6233 TTY (215) 451-4197.

**Filing of petition.**--A petition for the appointment of a conservator to take possession and to undertake the rehabilitation of a building may be filed by a **party in interest** in a court in the county in which the building is located.

68 P.S. § 1104 (emphasis added)

ATTORNEYS AT LAW OTLLP.COM

(267) 236-7500 | info@otlp.com

# Qualified Petitioners & “Parties in Interest”

(68 P.S. § 1103)

**“Party in interest.”** A person or entity who has a direct and immediate interest in a residential, commercial or industrial building, including:

- (1) The owner.
- (2) A lienholder and other secured creditor of the owner.
- (3) A resident or business owner within 2,000 feet of the building.
- (4) A nonprofit corporation, including a redevelopment authority, which:
  - (i) except as set forth in subparagraph (ii), is located in the municipality where the building is located; and
  - (ii) for a building located in a city of the first class, is located in the city and has participated in a project within a five-mile radius of the location of the building.
- (5) A municipality or school district in which the building is located.

# Standing Rules for Non-Profits

**“Nonprofit corporation.”** A nonprofit corporation that has, as one of its purposes, remediation of blight, community development activities, including economic development, historic preservation or the promotion or enhancement of affordable housing opportunities.

## ***Everywhere but Philadelphia:***

- Must be “located in the municipality where the building is located”

## ***Within the Republic of Philadelphia:***

- Must be (i) located in the city and (ii) have “participated in a project within a five-mile radius of the location of the building.”

# ACT 135

## RESPONDENTS

**“Owner”** is defined as:

The holder or holders of title to, or of a legal or equitable interest in, a residential, commercial or industrial building. The term shall include an heir, assignee, trustee, beneficiary and lessee provided the ownership interest is a matter of public record.

68 P.S. § 1103

### Some Common Examples

- ▶ Dead People
- ▶ Estates
- ▶ Heirs
- ▶ Family Squatters
- ▶ Speculators
- ▶ Hoarders
- ▶ Municipalities
- ▶ Municipal Authorities
- ▶ Defunct Churches/Fraternities/Non-Profits



# ACT 135

## “RESPONDENTS”

### Who Does Not Qualify:

- ▶ Person Lacking only Economic Means
- ▶ Person Who Live in Poorly Maintained (or even dangerous) Property
- ▶ “Legal” Occupants
- ▶ New Owners (i.e., less than 6 months)
- ▶ Recently Deceased (i.e., less than 6 months)
- ▶ Housing Authorities

# Every Owner's Right to Seek “Conditional Relief”

68 P.S. § 1105(f)

## (f) Conditional relief.--

(1) If the court finds after a hearing that the conditions for conservatorship set forth in subsection (d) have been established, but the owner represents that the conditions, violations or nuisance or emergency condition will be abated in a reasonable period, the court may allow the owner to proceed to remedy the conditions.

(2) If the conditions set forth in paragraph (1) have been satisfied, the court shall enter an order providing that, in the event that the violations or nuisance or emergency conditions are not abated by the owner by a specific date or that other specified remedial activities have not occurred by a specific date or dates, an order granting the relief requested in the petition shall be entered.

(3) The court shall also require the owner to post a bond in the amount of the repair costs estimated in the petition as a condition to retaining possession of the building.

68 P.S. § 1105

# Every Owner's Right to Terminate a Conservatorship

(68 P.S. § 1110)

Upon request of a party in interest or the conservator, the court may order the termination of the conservatorship if it determines:

- (1) the conditions that were the grounds for the petition and all other code violations have been abated or corrected, the obligations, expenses and improvements of the conservatorship, including all fees and expenses of the conservator, have been fully paid or provided for and the purposes of the conservatorship have been fulfilled;
- (2) the owner, mortgagee or lienholder has requested the conservatorship be terminated and has provided adequate assurances to the court that the conditions that constituted grounds for the petition will be promptly abated, all obligations, expenses and improvements of the conservatorship, including all fees and expenses of the conservator, have been fully paid or provided for and the purposes of the conservatorship have been fulfilled;
- (3) the building has been sold by the conservator and the proceeds distributed in accordance with section 9(d);<sup>1</sup> or
- (4) the conservator has been unable, after diligent effort, to present a plan that could be approved under section 6(b)(3)<sup>2</sup> or to implement a previously approved plan or, for any reason, the purposes of the conservatorship cannot be fulfilled.

# Notable Court Decisions / Legal Challenges

Since its enactment in 2008, Act 135 has been reviewed, analyzed and upheld by the appellate courts of this Commonwealth.

- Francisville Neighborhood Development Corp. v. Estate of Moore, 174 A.3d 1193 (Pa.Cmwlth.2017) (holding that petitioners were entitled to recovery of their court costs, attorney fees and a Conservator's fee where an owner opted to sell his blighted property after being served with an Act 135 petition);
- G & G Investors, LLC v. Phillips Simmons Real Estate Holdings, LLC, 183 A.3d 472 (Pa.Super.2018) (holding that Act 135 hearings constitute trials);
- Scioli Turco, Inc. v. Prioleau, 207 A.3d 346 (Pa. Super.2019) (holding that non-profit petitioner failed to establish that owner's occupation of property was illegal, as necessary for Act to apply);
- City of Bethlehem v. Kanofsky, 175 A.3d 467 (Pa.Cmwlth.2017) (holding that evidence supported determination that the property was in need of a conservator under the Act);

# ACT 135 – COMMON SCENARIOS

## Estate Owned Property

- Owner passed away with or without a will and family fails to probate the estate.
- Property falls into disrepair due to lack of maintenance.
- Property becomes subject to illicit activity and access by squatters.
- Real estate taxes and utility bills accrue against the property.

## Investor Owned Investment Property

- Investor allows the property to fall into disrepair; demolition by neglect.
- Ignores municipality's health and safety violations.
- Fails to pay real estate taxes and utility bills.



# ACT 135 CASE STUDY

## 2318 St. Albans Street

### Historic Property

In 2016, a neighboring property owner experienced in renovating historic properties filed a Petition because

- ▶ property was an eye-sore on the beautiful historic garden block of St. Albans St.
- ▶ property lacked many doors and windows
- ▶ defective cornice board hanging by a thread
- ▶ missing downspouts
- ▶ rear in a state of partial collapse
- ▶ missing floors inside the building

Rather than go to trial, Owner elected to sell the property to the petitioner at fair market value.

The Property has since been fully rehabilitated to high historic standards.





**2318 St. Albans Street – After  
Photos**



# ACT 135 CASE STUDY

## Queen Village Property

Historic building from early 1800's

- ▶ An abandoned corner row home in the Queen Village neighborhood abutting a park.
  - ▶ Owner died decades ago and estate was never raised to transfer title.
  - ▶ Heirs are living throughout the east coast of the U.S.
- ▶ L&I inspected the property and deemed it unsafe and a blighting influence on the neighborhood.
- ▶ Neighbors formed an LLC to file an Act 135 Petition because:
  - ▶ The roof was severely deteriorated and admitting water.
  - ▶ The sidewall abutting the park was in a state of partial collapse.
  - ▶ Interior floors and ceilings had collapsed in parts.
- ▶ Conservator is currently completing a full renovation of the Property.



# The Problem of Locating Heirs & Identifying Parties....

## Piecing Together Facts

**VITAL RECORDS**  
DEPT. OF HEALTH  
CITY OF NEW YORK

**CERTIFICATE OF DEATH**  
Certificate No. 156-92-012722

**1. NAME OF DECEASED**  
(Type or Print) (First Name) (Middle Name) (Last Name)  
Kathryn J. McHale

**2. PLACE OF DEATH**  
(a) City, Town, or Village (b) County (c) State  
NEW YORK CITY MANHATTAN NEW YORK

**3a. Date and Hour (Month) (Day) (Year)**  
March 3 1992 6:05 AM

**4. SEX**  
F

**5. APPROXIMATE AGE**  
75 Years

**6. I HEREBY CERTIFY THAT: (Check One)**  
☐ I attended the deceased. ☒ A staff physician of this institution attended the deceased.  
From February 17 1992 to March 3 1992 attended the deceased.  
on March 3 1992. I further certify that no unusual injury or poisoning did NOT play any part in causing death, and that death did not occur in any unusual manner and was due entirely to NATURAL CAUSES.  
Witness my hand this 3rd day of March 1992. Signature Harold Choo  
Name of Physician Harold Choo Address 153 W 11th St NYC  
(Type or Print)

**PERSONAL PARTICULARS (To be filled in by Funeral Director)**

**7. Usual Residence** (a) City, Town, or Village (b) County (c) State (d) Apt. No. (e) Inside City Limits of New York City  
New York New York New York 439 E 9 St 10009 6

**8. Buried in U.S. Armed Forces** (a) Yes (b) No (c) Name of Cemetery (d) Address  
NO NO St. Raymond's Cemetery Brooklyn, New York

**9. Date of Birth (Month) (Day) (Year)** (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)  
July 27 1916 75 382 01 1736

**10. Name of Surviving Spouse (If wife, give maiden name)**  
None

**11. Date of Death (Month) (Day) (Year)** (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)  
March 3 1992

**12. Social Security No.**  
382 01 1736

**13. Usual Occupation (Kind of work done during most of working lifetime, do not enter retired)**  
Housewife

**14. Education (Check only one)** (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)  
High School Graduate

**15. Other names by which decedent was known**  
None

**16. Name of Father of Decedent**  
KATHRYN J. McHALE

**17. Maiden Name of Mother of Decedent**  
ANNE M. McHALE

**18. Name of Informant** (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)  
Patricia Flynn

**19. Relationship to Decedent**  
Daughter

**20. Address** (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)  
326 E 20 St., NYC, 10009

**21. Name of Cemetery or Crematory** (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)  
St. Raymond's Cemetery

**22. Location (City, Town, State and Country)**  
Brooklyn, New York

**23. Date of Burial or Cremation**  
March 5 1992

**24. Name of Funeral Director** (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)  
The Gannon Funeral Home Inc.

**25. Address** (a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z)  
157 E 28 St., NYC, 10016

**BUREAU OF VITAL RECORDS** **DEPARTMENT OF HEALTH** **THE CITY OF NEW YORK**  
CHANGES APPROVED BY COMM'R OF HEALTH MAR 26 1992 E. STRANIER Supv City Magistrate

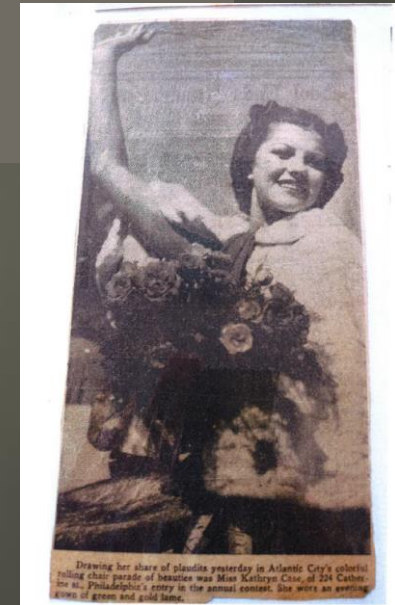
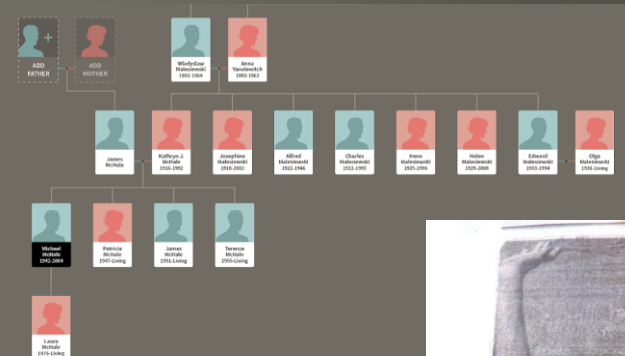
This is to certify that the foregoing is a true copy of a record on file in the Department of Health. The Department of Health does not certify to the truth of the statements made thereon, as no inquiry as to the facts has been provided by law.

Earlene Price  
EARLENE PRICE  
CITY REGISTRAR

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**VITAL RECORDS** **DEPARTMENT OF HEALTH** **THE CITY OF NEW YORK**  
DATE ISSUED **MAR 26 1992** DOCUMENT NO. **C 274636**

## Understanding Family Tree







# Queen Village Property





## ACT 135 CASE STUDY

### Bella Vista Properties

Two long abandoned properties in the Bella Vista neighborhood.

- ▶ Owner died decades ago, and estate was never raised to transfer title.
- ▶ One heir was acting as the custodian of the property.
- ▶ A neighbor filed two petitions against two abutting properties under common ownership.
- ▶ One property was abandoned with a collapsing roof.
- ▶ The other was abandoned and unsecured against entry but appeared stable. Upon Court ordered inspection, the interior joists had all collapsed, and the property was, in fact, imminently dangerous.
- ▶ Parties entered into a court approved settlement with the administrator of the estate selling the property to a local developer to remediate the blighting condition.

# ACT 135 CASE STUDY

## Bella Vista Properties



Collapsed Floors



Debris/Environmental  
Concerns



Collapsed Ceiling





**FRANK GASPARRO**  
1919-2003

Owner of the corner site of the  
James J. Walker and John F. Kennedy  
Public Housing Project, Gasparro  
is credited with the development of  
the project in the 1950s. Gasparro  
was the owner of a large apartment  
building on the site in 1942. He was  
forced to sell the building to the  
Federal Housing Administration  
in 1942. The site was then  
developed into the James J. Walker  
Public Housing Project.



# ACT 135 CASE STUDY

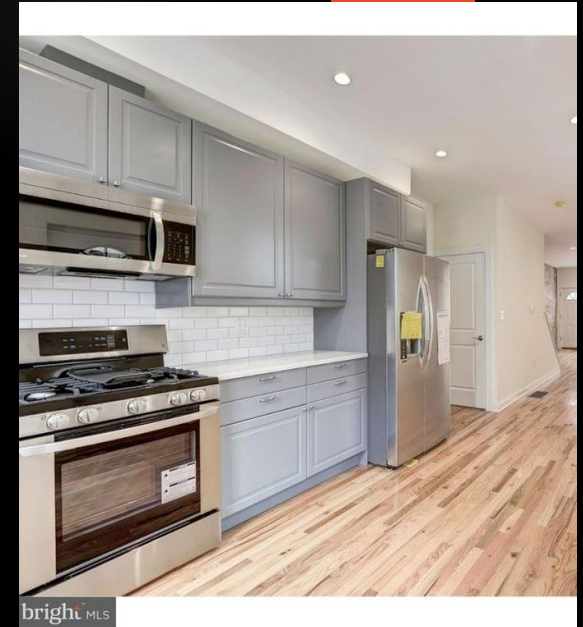
## Point Breeze Property

An abandoned property in the Point Breeze neighborhood.

- ▶ Owner died in the 1980s, and estate was never raised to transfer title.
  - ▶ Various family members used the property over the years.
  - ▶ Repairs were not made because heirs did not have title or own the property.
- ▶ Abutting property owner filed a petition because:
  - ▶ Property was unsecured against entry / trespassers.
  - ▶ Rear was collapsing.
  - ▶ Vermin.
- ▶ A conservator was appointed and successfully removed the dangerous and blighting conditions.
- ▶ Property was sold as a shell to a developer who completed a full renovation.







## Point Breeze Property – After Photos





# Questions & Answers

# Court Provided Information for Respondents

