



**Cleveland Municipal Court
Housing Division
Cuyahoga County, Ohio
Raymond L. Pianka, Judge**



Housing Court Initiatives

The Housing Court strives continually to fulfill its objective as a problem-solving court. To that end, the Housing Court has enacted the following initiatives:

Civil

Clean Hands Eviction Docket

Landlords and property owners with outstanding warrants sometimes seek to invoke the Court's jurisdiction, and have the Court execute on an order in the eviction action, while failing to acknowledge the same Court's jurisdiction over the landlord or property owner in pending criminal cases. Court personnel screen eviction actions filed in the Housing Court to determine whether any plaintiffs have outstanding warrants in Housing Court criminal cases. The Court's "clean hands" approach to evictions prevents a property owner with an outstanding warrant in a criminal Housing Court case from invoking the power of the Court in the eviction action until that owner has addressed those criminal warrant issues.

"It is fundamental that he who seeks equity must do equity, and that he must come into Court with clean hands." *Christman v. Christman* (1960), 171 Ohio St. 152, 154, 12 O.O.2d 172, 168 N.E.2d 153. More specifically, "[t]he 'clean hands doctrine' of equity requires that whenever a party takes the initiative to set in motion the judicial machinery to obtain some remedy but has violated good faith by his prior-related conduct, the court will deny the remedy. *Marinero v. Major Indoor Soccer League* (1991), 81 Ohio App.3d 42, 45, 610 N.E.2d 450. Restitution is available as an equitable remedy where property identified as belonging in good conscience to a plaintiff could clearly be traced to property in the defendant's possession. *Santos v. Ohio Bur. of Workers' Comp.* (2004), 101 Ohio St.3d 74, 77, 801 N.E.2d 441, 445. The maxim "he who comes into equity must come with clean hands" requires that a party seeking equitable relief not be guilty of reprehensible conduct. *Barone v. Barone* (11th Dist.), 2005-Ohio-4479. A party will not obtain equitable relief if the injury incurred by such party is "chargeable to his own wrong." *Piatt v. Smith* (1861), 12 Ohio St. 561, 570.

Business Entity Proof of Registration/License

In the course of attempting to serve criminal complaints upon business entity defendants, the Court became aware that many of the companies filing civil complaints in the Housing Court were not registered or licensed to do business in the State of Ohio. To avoid complicity in the actions of these unlicensed and unregistered entities, the Court now requires all business entities, including corporations, limited liability companies, and fictitious entities (including "doing business as" names), to include, at the time of filing, documentary evidence of the entity's good standing or active registration or licensure with the Ohio Secretary of State. Entities that fail to include this documentation may face dismissal of the civil complaint by the Court.

Evidence of Current Ownership

The Supreme Court of Ohio has issued decisions limiting the ability of an individual to represent the interests of another person in court. Two of those decisions regularly impact litigants in the Housing Court. In *Cleveland Bar Assn. v. Picklo*, 2002-Ohio-3995, 96 Ohio St. 3d 195, 772 N.E.2d 1187, the Supreme Court of Ohio held that a non-attorney property manager, who filed eviction complaints on behalf of a property owner, was engaged in the unauthorized practice of law, even when the property manager met the statutory definition of a “landlord.” In *Union Sav. Ass’n v. Home Owners Aid, Inc.*, 23 Ohio St. 2d 60, 64, 262 N.E.2d 558, 561 (1970), the Supreme Court of Ohio held that “to allow a corporation to maintain litigation and appear in court represented by corporate officers or agents only would lay open the gates to the practice of law for entry to those corporate officers or agents who have not been qualified to practice law and who are not amenable to the general discipline of the court.”

Reading those decisions together, the Court concluded that it must require actions in forcible entry and detainer, when filed by a non-attorney, to be brought in the name of the property owner; and, when the property owner is a business entity the complaint must be filed by an attorney, and they must be represented by counsel at hearing. To ensure that the proper parties are named in the forcible entry and detainer (eviction) action, the Court now requires each plaintiff filing a forcible entry and detainer complaint to attach to the complaint proof of current ownership of the subject premises. Proof of current ownership may include, but is not limited to, a print-out of the "General Information" tab for the premises from the County Fiscal Officer’s website.

Bailiff Communication

The Housing Court’s bailiffs are the eyes and ears of the Court in the field. When supervising court-ordered move outs or serving court papers, the bailiffs often observe conditions that cause concern. The bailiffs may file a communication with the Court regarding the condition of any property before the Court. That communication is reviewed by the Judge, who may order inspection of the property by the City and the correction of defective conditions prior to re-rental.

Orders Prohibiting Re-Rental

Whether prompted by a Bailiff Communication or information received during an eviction or other civil hearing, the Court often orders inspection of residential rental property which is the subject of a civil case. The City inspectors provide the Court with a written report outlining the condition of the property. If serious code violations exist, the Court may issue an order prohibiting the landlord from re-renting the property until the violations are corrected. Failure to comply with this order may lead to a finding of contempt.

Housing Clinic

In civil cases, the court offers assistance to property owners, landlords, and tenants through its Housing Clinic. In the Clinic, the Housing Specialists see landlords and tenants on a walk-in basis, and provide information about their housing rights and responsibilities. Through the Clinic, the Court provides standardized forms for many common motions and case-related filings, and as well as information on rent deposit, eviction procedures, and related mediation. The Housing Specialists assist Cleveland

residents in resolving landlord-tenant disputes involving illegal lockouts, utility shutoffs, and other housing conditions requiring immediate attention. The Housing Specialists are not attorneys and cannot give legal advice. However, they are trained in Ohio landlord-tenant law, and they provide information to help people not represented by counsel to understand court procedures, notices and processes. More than 6000 people seek information or assistance through the clinic each year.

What Every Landlord Should Know/What Every Tenant Should Know

The Housing Court believes strongly in educating landlords, tenants, and property owners regarding their rights and responsibilities. In keeping with this belief, the Court offers a four-hour course to landlords, teaching them “what every landlord should know.” This low-cost course is offered quarterly, taught by the Court’s Magistrates, with assistance from Housing Specialists. The course outlines a landlord’s duties under the city ordinances and state landlord-tenant law. Landlords receive valuable written materials regarding nuisance behavior, mediation, and tenant screening. In addition, during the course, landlords have access to Housing Specialists, court employees with expertise in housing-related subjects, who can offer information about programs and court processes.

The Housing Court recently began offering a complementary program, What Every Tenant Should Know. Designed specifically for people entering or re-entering the rental market as tenants, this program is also presented by Housing Court Magistrates, with assistance from Housing Specialists. Tenants learn about rental agreements, their rights and responsibilities under the state code and local ordinances, and remedies available when landlords fail to make repairs. The class has been offered at the City Mission, shelters, and various re-entry programs. Future presentations are in the works for local colleges, and the Cuyahoga County Department of Children and Family Services.

The Court also is exploring a new course—What Every Homeowner Should Know—which may address local ordinances, including permit requirements, and basic home maintenance and repairs.

Housing Court Foreclosures

The consequences of foreclosure actions are not always negative; in fact, in some instances, foreclosure can lead to beneficial ownership of property. Over the last decade, the Housing Court has heard a small number of foreclosure cases. In recognizing judgments from the Housing Court, the Cuyahoga County Sheriff has agreed to conduct the appraisals and sales of the properties. The Court has carefully drafted Local Rules to ensure that problem properties, and overwhelmed homeowners, are not left behind in the foreclosure process. For instance, one Local Rule provides for an Orientation Session and Work Out Conference for each foreclosure filed in the Housing Court. This gives the property owners a chance to understand the legal process, and an opportunity to resolve the case without going through the entire foreclosure process (e.g., short sales, deeds in lieu, “cash for keys,” etc.).

Property Status Report

In receivership and foreclosure actions, the condition of the property that is the subject of the case is particularly important to the Court. The Housing Court, through its Local Rules, requires the plaintiff in each of these types of cases to complete a Property Status Report. The Report, on a form prescribed by the Court, requires the plaintiff to indicate: the use of the property (residential, commercial or industrial); the number of units; whether the property is occupied; and if there are current code violation cases or other pending civil cases. In addition, the plaintiff must attach to the form a current picture of the property and structure. The Property Status Report enables the Court to address promptly, with the plaintiff, defendants, and other parties, issues such as open doors and windows, debris and junk cars, and exterior structural conditions posing an immediate threat to the health and safety of occupants or neighbors.

Referral Program

The Court's staff screens and tenants in eviction actions to determine who may qualify for assistance based upon their age, mental health issues, or status as a veteran. The Court staff, with the assistance of a social work intern, then refers them to appropriate resources, which may assist the tenant in finding new housing. The Court is careful to balance the needs of the landlord and the tenant in these cases. In other cases, the City may seek to compel a property owner to abate the nuisance posed by hoarding conditions at the property. The Court refers many of those defendants to supportive services as well, seeking to bring the property to a safe, sanitary condition, within a reasonable period of time, while minimizing the negative impact on the defendant's mental health.

In 2015, the Court made 132 referrals to variety of agencies, including the U.S. Department of Veteran's Affairs (65), Frontline Services, Inc. (19/mental health), Cuyahoga County Adult Protective Services (6), and Benjamin Institute on Aging (2/hoarding). Additionally, the Court reached out to other social services agencies in 40 cases when litigants identified a case worker with whom they were working. Of the 132 referrals, 124 of the cases were set for a court-supervised move out with the Bailiffs. Of those, 84 move outs were cancelled by the plaintiff. Another 21 had a move out occur, but no defendant was present. Only 2 went forward with the defendant present and still occupying the property.

The Court recently implemented a Community Resource Fact Sheet listing the agencies that accept referrals and other valuable resources, which is being sent to tenants with the eviction summons and complaint. The hope is that by getting this information to the litigants earlier, this will start the referral process sooner to either allow the litigant to retain current housing or work to move to a new place before a move out.

Criminal

Corporation Docket

One of the Court's ongoing challenges is compelling corporate defendants to appear in Court. In general, the City of Cleveland does not name corporate officers as defendants; rather, the City typically names the corporation itself as the defendant. Thus, the Court may not issue an arrest warrant or impose jail time. A city, under some circumstances, could cite both the corporation and a corporate officer; pursuant to R.C § 2901.24, a

corporate officer may be prosecuted if he acts with the required culpability for the offense, and (1) engages in conduct constituting the offense; causes another to engage in such conduct; or tolerates the conduct; or (2) has primary responsibility to discharge a duty imposed by law, and the duty is not discharged. The City of Cleveland has filed charges against both a corporation and the corporate officer in a very limited number of cases.

Several unique issues arise when a corporation or other business entity is named as a defendant rather than an individual. The use of corporations as statutory agents for other corporations often complicates service, as does the failure of out-of-state corporations to register with the Ohio Secretary of State when doing business in Ohio. And even once service has been properly made, it often remains difficult to obtain the defendant corporation's presence. Unlike individuals, who are subject to arrest if they fail to appear when summoned, corporations and other entities cannot be arrested. Nor are the corporate officers subject to arrest unless they are individually charged. Even the corporate status of such an entity is unaffected by the entity's failure to appear in court or pay fines owed.

The Court has established a separate corporation docket for cases where a criminal defendant is a corporation, LLC, or other business entity and fails to appear in Court after having been properly served. Once placed on this special docket, the entity is ordered to appear and service is sent out again to the entity's address of record, and courtesy copies are sent to corporate officers' personal addresses. If the entity again fails to appear, it is ordered to show cause why it should not be held in contempt. If the entity yet again fails to appear at the show-cause hearing, the Court imposes per diem sanctions until the entity appears and enters a plea. As of February 2013, over \$157 million in such sanctions have been levied and ordered converted to civil judgments. This practice has proven successful in encouraging corporate defendants to appear in Court to face the charges against them.

Contact List

One of the difficulties the Court confronts in dealing with vacant and abandoned properties has been the inability to contact an appropriate party at lending institutions in an attempt to work out short sales, deeds in lieu of foreclosure, and other arrangements for transfer of the property to a responsible owner. As a result, the Court has begun to require those institutions, when appearing in Court, to provide the names and direct telephone numbers of contacts to be used by the Court to resolve property maintenance and transfer issues. As the Court determines who the appropriate party at each institution is to best handle these issues, a database is being built to track this information.

Placards

Where vacant and abandoned premises are the subject of a pending Housing Court case, the Court requires one of its Bailiffs to post a placard at indicating that there is no trespassing allowed. The placard includes contact information for the owner, bank or lending institution if the property is in foreclosure, and the Housing Specialist assigned to the case. These placards not only put neighborhood residents on notice that the property is the subject of an action in the Housing Court, but also give the residents the

ability to contact individuals or entities in control of the property to voice their concerns.

Comprehensive Remedies

Through late night infomercials and other media attention, the real estate market attracts 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, whenever possible, the Court endeavors to include in plea agreements, sentences and probation agreements solutions that address all problem properties owned by the defendant in the City of Cleveland.

The Court encourages these individuals 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.

Payment of Outstanding Fees/Liens

The City of Cleveland is currently owed more than \$10 million in board-up, demolition, and grass-cutting costs. The Court, in the context of a criminal case, requires defendants to pay any fees owed to the City for grass cutting or board-ups, as a condition of acceptance of any plea agreement in order to relieve the burden placed on the City’s taxpayers.

Court Community Control Program

Housing Court has recently taken a more active role in the supervision of community control orders that it issues. Community control sanctions are sometimes imposed on defendants who have been convicted of building, housing, health, zoning, or fire codes. The Court uses community control as way to keep one or all of defendants’ properties code compliant. Community control is also an opportunity for a defendant to “give back” to a community in lieu of or in addition to other punishments. The Court oversees community control sanctions by requiring the defendant to attend regular meetings with the Housing Court Specialist/Community Control Officer.

Selective Intervention Program

The Court’s goal in code violation cases is first and foremost to see the property brought into compliance. The Selective Intervention Program (“SIP”) is geared towards facilitating this outcome for first-time offender owner-occupants. If the defendant pleads guilty, a Housing Specialist reviews the case and meets with the defendant to evaluate eligibility. Once a magistrate determines that the defendant is eligible for SIP, the defendant is assigned to a Housing Specialist. The defendant enters into a contract with the Court, agreeing to cooperate with the Specialist, who assists the defendant in locating resources to make repairs and in developing a plan for compliance. If the defendant makes repairs according to the contract, the City will dismiss the criminal case and the defendant will not have a criminal record. But if the defendant fails to comply with terms of the contract, or fails to cooperate with the Specialist, the case is returned to the criminal docket where the defendant is sentenced.

Subpoenas

Subpoenas are issued in criminal code violation cases to obtain information from, or the attendance of, a non-party lien holder witness that is helpful to the administration of the case. Most often, the subpoenas are issued in cases where the defendant wishes to donate the subject property to the Cuyahoga County Land Bank; the property usually has one or more liens attached that prevent the Land Bank from accepting the donation. In the course of issuing the subpoena, and securing the lien holder's attendance, the Court seeks to determine whether the lien holder will release the lien, to facilitate donation of the property to the Land Bank.

Land Bank Donation Assistance

The Court has assigned to one staff member the role of coordinating donations to the Cuyahoga County Land Reutilization Corporation—also known as the County Land Bank. Many defendants on the criminal docket wish to divest themselves of property they own. However, with the current real estate market, it is often not possible to be able to sell the property for an amount that is equal to or greater than the amount of liens (mortgage, tax, etc.) on the property. Additionally, many properties are in such a state of disrepair that the price of bringing up the property to code would far exceed the fair market value of the rehabbed property. These properties are therefore prime candidates for donation to the Land Bank. However, when the properties are riddled with liens and other title issues, the Land Bank will not accept them. The staff members ensure that the title is in a condition to donate by working directly with the lienholders, and subpoena them if necessary, as well as with the Land Bank.

Neighborhood Advocates

City code enforcement, particularly building and housing code enforcement, cannot be accomplished through the efforts of City inspectors alone. Many Cleveland neighborhoods are fortunate to have active Community Development Corporations (CDCs) and passionate neighborhood residents who participate actively in the code enforcement process. Whether reporting code violations to City inspectors, helping property owners find resources to make repairs, or reporting progress on repair efforts to the Court, these neighborhood advocates work tirelessly for the benefit of their neighborhoods. To support them in the work they do, the Housing Court hosts quarterly Neighborhood Advocate meetings, at which Court staff present information on relevant aspects of law and court procedure. Recent topics have included testifying in court, the role of police officers in building and housing code enforcement, and Court Community Control (probation).

Other

Health-Related Education

Two health-related courses currently are presented by the Housing Court to interested landlords, tenants and property owners. "Get the Lead Out," offered in conjunction with the City's Health Department and Environmental Health Watch, features information about the hazards of lead poisoning, proper remediation of lead in residential property, and the legal issues raised by the presence of lead. "Yikes, Bed Bugs!" offers up-to-date

information about the re-emergence of bed bugs in the United States, as well the economic and health impact of bed bugs, bed bug biology, and practices to prevent or limit infestation. “Yikes, Bed Bugs” features presentations by staff of the Housing Court, the Cuyahoga County Board of Health, and the City of Cleveland Division of Environmental Health.

Mediation/Alternative Dispute Resolution

The Housing Court employs two full-time, experienced dispute resolution specialists. Landlords and tenants may avail themselves of mediation to resolve eviction actions, disputes over repairs, and disagreements about utilities and other occupancy issues. The ADR Specialist also works with homeowners and contractors to resolve disputes regarding the quality of work performed. The mediators also make themselves available to assist in resolving issues that arise between landlords and organized tenant groups.

Court Community Service

One of the Housing Court’s most recent initiatives involves Court Community Service (“CCS”). Frequently, as part of the sanctions imposed as a result of a conviction in a criminal case in the Cleveland Municipal Court system, offenders are ordered to complete a specified number of hours of community service, to be supervised by CCS staff. Recently, the Housing Court has ordered CCS to supply workers to clean up vacant lots, clean out properties, perform yard work, secure vacant structures, and make minor repairs at properties that are the subject of pending cases in the Court.

Social Service Referrals

In keeping with the Court’s problem-solving mission, the Housing Court’s Bailiffs’ Department works with social service agencies, particularly the City of Cleveland Department of Aging. While the referral to the Department of Aging does not affect the judgment in the case, the City is able to provide individuals over the age of 60, or over the age of 50 coupled with a disability, services to help them transition to new housing.

The Housing Court also has had a staff Social Worker who has been assigned to the Court as part of his Masters Degree program. The Social Worker has been able to assist individuals with various issues such as hoarding (including animal hoarding), other mental illnesses, and problems particular to the elderly and veterans.

Bankruptcy Education

Some defendants expect that the filing of a foreclosure against them, or their action in filing bankruptcy will relieve them of their obligations to maintain the property. However, a property owner is not relieved of his liability for code violations after a foreclosure is filed against him; similarly, a bankruptcy petition does not alleviate his responsibilities. In fact, a mortgage company is not responsible for violations at the property unless or until it receives title after the confirmation of sale (*Hausman v. Dayton*, 73 Ohio St.3d 671, 653 N.E.2d 1190, 1995 -Ohio- 277), or it otherwise exercises possession or control over the property. The Housing Court has sent a letter to the local bankruptcy bar and has held a training session for the local foreclosure bar to address these concerns.

Property-Owner-in-Foreclosure Letters

There were over 7,500 foreclosures filed in 2007 with properties situated in the City of Cleveland. Too frequently, homeowners who face foreclosure do not know what their rights and responsibilities of homeownership entail during the pendency of the foreclosure process. As a result, the Court began sending letters in July 2007 to the primary defendant of each foreclosure filed in the City of Cleveland and Village of Bratenahl. The letter outlines the owner's rights and responsibilities, and the potential criminal penalties one faces if the property is not maintained. The Court has also created a database of information contained on the letters that are returned to the Court, e.g., whether the property is vacant. A list of those properties that are indicated as "vacant" by the United States Postal Service is regularly forwarded to the Court of Common Pleas to assist in their vacant property docket.

Educational Materials

In addition to the numerous community meetings that the Housing Court hosts or participates in each, the Court has created more than fifty fliers, pamphlets, and videos available to the public, covering topics from hiring a contractor, nuisance abatement, trash collections, lead abatement, porch repair, and mediation. The Court makes these materials available at its Housing Clinic, as well as through its website. These materials enable the Court to expand its educational goal beyond the four walls of the courtroom or meeting place.

www.clevelandhousingcourt.org