

Solutions for Neighborhood Nuisances

Benjamin S. Goldman



HAND ARENDALL
HARRISON SALE

Two Parts to Neighborhood Problems

Brokenness



(Places)

Absence



(People)

What is blight?

“a deteriorated
condition”

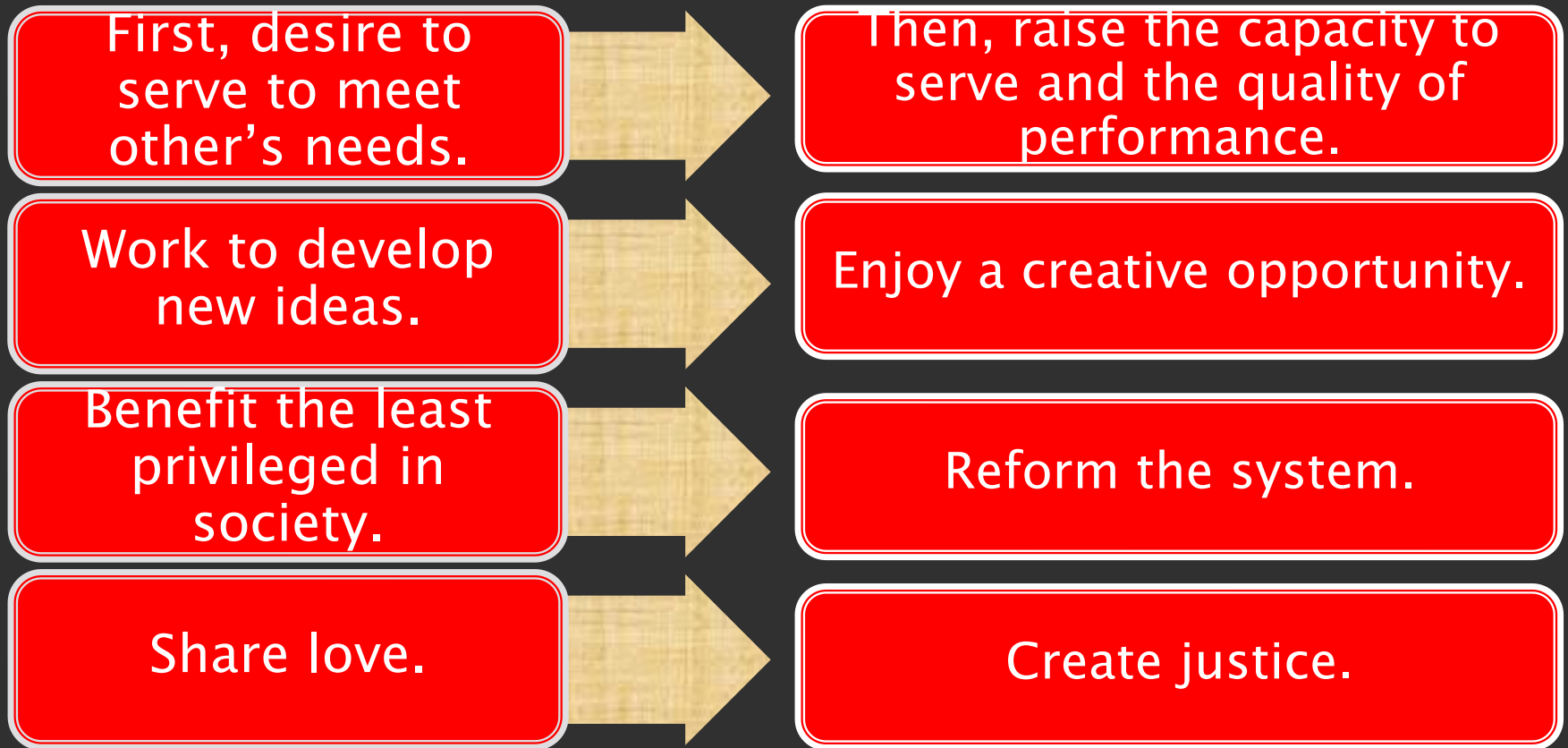
“something that
frustrates
plans or hopes”

MERRIAM-WEBSTER, “blight,” m-w.com (2014).

Why talk about blight?

Servant

Leadership



Credit to Robert K. Greenleaf in *The Servant as Leader*.

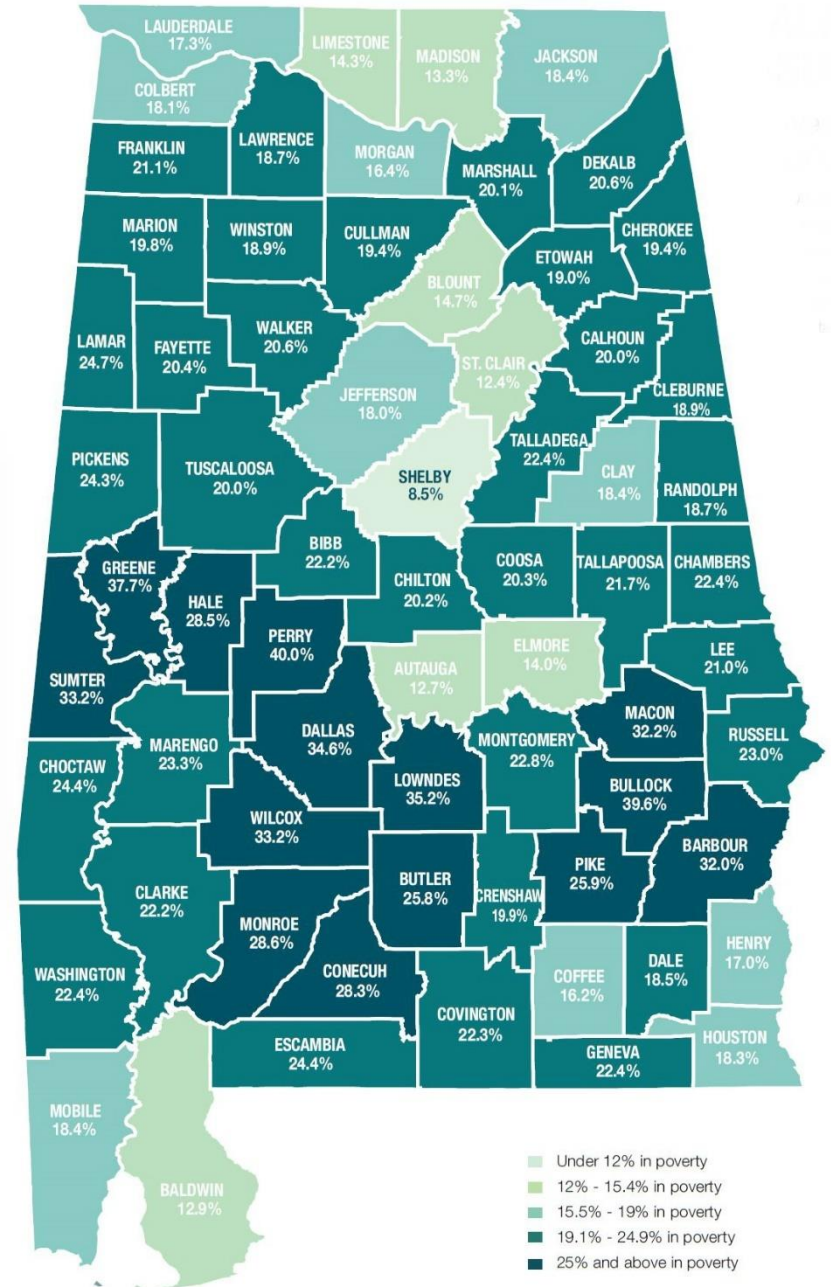
Alabama is 6th poorest state in nation; poverty rate at 40 percent in some counties

Updated July 3, 2017 at 11:24 AM; Posted July 3, 2017 at 10:04 AM

POVERTY THRESHOLDS BY FAMILY SIZE⁸



18.5% of Alabamians live in poverty.
One county has less than 12% poverty.
One county has more than 40% poverty.
14 counties have more than 25% poverty.
More than 25% of children live in poverty.



An Ounce of Prevention

»» Property Inspection Policies

Property Inspection Policies

- ▶ All residentially zoned properties where a licensed business occurs (including rental housing units) must have a certificate of occupancy.
- ▶ Inspect for compliance with all technical codes, and charge a reasonable fee to defray expense.
- ▶ Approved by the Attorney General. See Ala. A.G. Op. 2007-009.
- ▶ A self-enforcing policy (almost).

ORDINANCE NO. 1019

AN ORDINANCE TO ESTABLISH A RESIDENTIAL HEALTH AND SAFETY PROPERTY INSPECTION POLICY.

WHEREAS, the City Council of the City of Tarrant, Alabama ("City Council"), considers its residential property to be an asset that is vital to Tarrant's economy and quality of life; and

WHEREAS, the Alabama Uniform Residential Landlord and Tenant Act, Act. No. 2006-316, codified as Sections 35-9A-101 *et seq.*, of the *Code of Alabama* (1975), became effective on January 1, 2007; and

WHEREAS, Section 35-9A-102(b) of the *Code of Alabama* (1975) states that one of the purposes of the Act is "to encourage landlords and tenants to maintain and improve the quality of housing;" and

WHEREAS, Section 11-40-10(b) of the *Code of Alabama* (1975) authorizes a municipality to enforce police or sanitary regulations within the city limits and to prescribe fines and penalties for the violations of the regulations; and

WHEREAS, Section 11-45-8(c) of the *Code of Alabama* (1975) authorizes a municipality to adopt ordinances, rules, and regulations as a code for the construction, erection, alteration, or improvement of buildings, the installation of plumbing or plumbing fixtures, installation of electric wiring or lighting fixtures, installation of gas or gas fixtures, fire prevention, health and sanitation, waterworks and sewers, mechanical, swimming pools, housing, elimination and repair of unsafe buildings, and other like codes; and

Property Inspection Policies

- ▶ Two Supporters of Property Inspection Policies:
 - Fire Fighters
 - Landlords

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A Pound of Cure

»» Remediation Tools

Demolition, Repair, or Moving of Dangerous Buildings



- ▶ All municipalities can move or demolish and add the lien to the *ad valorem* bill or assess.
 - See ALA. CODE §§ 11-40-30 thru 11-40-36 (1975).
- ▶ All municipalities can demolish or repair and assess.
 - See ALA. CODE §§ 11-53B-1 thru 11-53B-16 (1975).

Ordinance Drafting – The Findings

- ▶ Require the ultimate finding
- ▶ Objective standards to determine whether a building is “unsafe”

“Any incorporated municipality of the state may, after notice as provided herein, move or demolish buildings and structures, or parts of buildings and structures, party walls, and foundations when found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause.”

Ala. Code § 11-40-30 (1975).

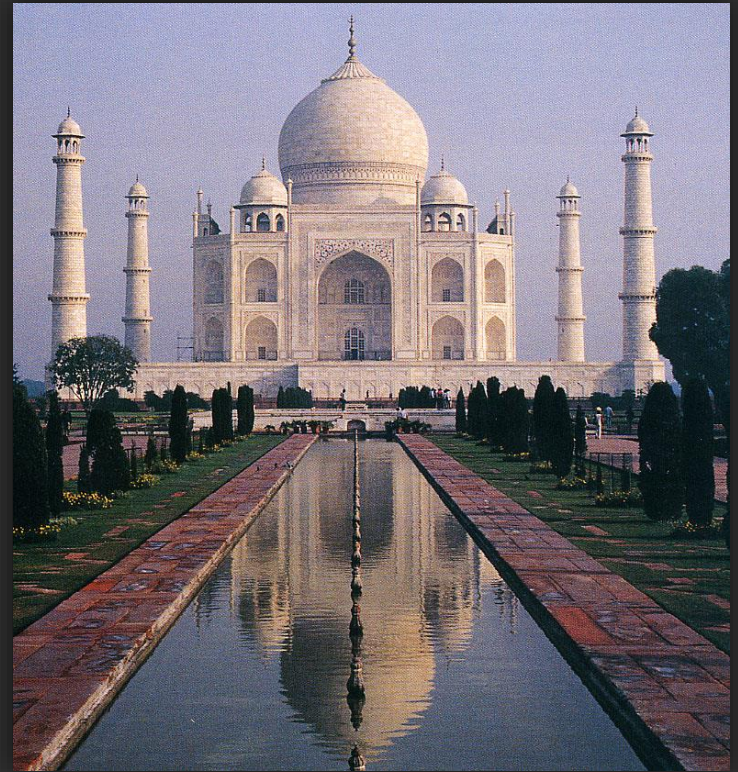
Ellis v. City of Montgomery,

460 F. Supp. 2d 1301 (M.D. AL 2006).

- ▶ The timeline:
 - Noticed in June 2004,
 - Foreclosed upon in September,
 - Noticed again in November,
 - Hearing in December, &
 - Surprise visit in March 2005.

- ▶ A story of unfortunate truth.
 - Duly recorded in probate.
 - The Tax Assessor's records never changed.

- ▶ Compensatory damages of \$11,790.00 plus interest.



Take Notice

“It therefore appears that the city, in sending notice to the property owner as reflected in the revenue commissioner’s records, was following state and local law.”

But, . . . the State is not empowered to determine what constitutes adequate notice under the due process clause of the Federal Constitution. . . .

The city’s notice procedure [(i.e., to follow state law)], at the time Ellis’s property was condemned and demolished, fell far short of that standard.”

Ellis v. City of Montgomery, 460 F. Supp. 2d 1301, 1310–11 (M.D. AL 2006).

Lessons from *Ellis v. City of Montgomery*

1. Title report required;
2. Record a *lis pendens* to put future purchasers on notice; and
3. If, pursuant to the ordinance, the building official's findings expire, start all over.



Ordinance Drafting



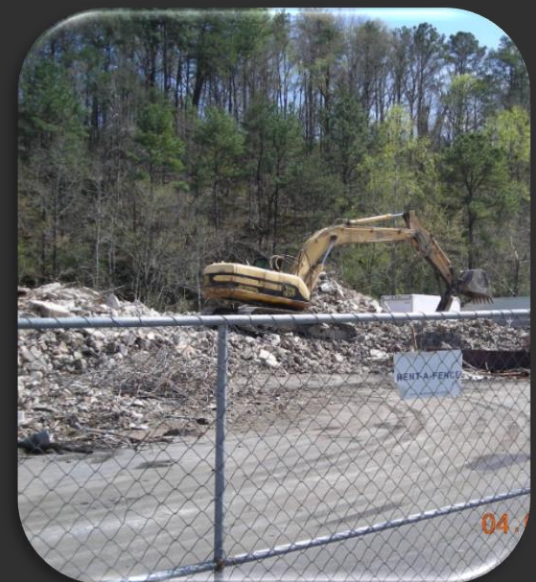
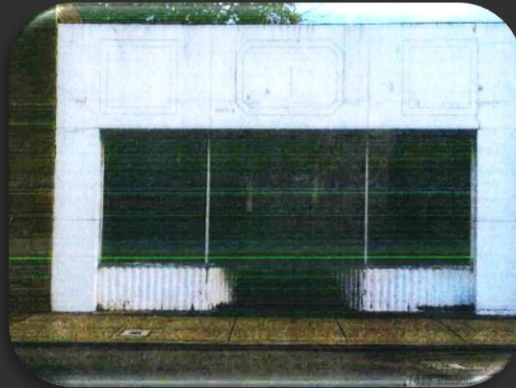
- ▶ “A municipality is directly liable under § 1983 only if the violation of the plaintiff’s rights is attributable to a municipal policy or custom.”

Ellis, 460 F.Supp.2d at 1312.

County Authorization

- ▶ Under Section 34-14A-12 of the *Code of Alabama* (1975), counties are authorized to “adopt building laws and codes by ordinance which shall apply in the unincorporated areas of the county.”
- ▶ The process for remediating dangerous buildings is the same as that utilized by some Alabama cities pursuant to Section 11-53A-20 to 11-53A-26.

Commercial Demolitions



Lessons from the Vestavia Motor Lodge Trial



- ▶ Every man is king of his castle.
- ▶ Use the ordinance as a witness to your process.
- ▶ Invoke “fairness.”

Our Process – Pre-Hearing

1. Building Inspector investigates property:
 - a. Documents dangerous conditions with findings, and
 - b. Documents dangerous conditions with photographs.
2. Title search and search of other records.
3. Notice of Lis Pendens:
 - a. Prepared and filed with Probate Court.
 - b. Mailed via certified mail to interested persons.
 - c. Posted at subject property and various locations around municipality.
4. Legal publication published.

Our Process – Hearing to Remediation

7. Public Hearing on demolition held by City Council.
8. Notice of Intent to Demolish filed with Probate Court.
9. Demolition.
10. Report of Costs made to City Council.
11. Public Hearing on costs held by City Council.
12. Resolution fixing lien filed with Probate Court and Tax Collector.



CITY OF VESTAVIA HILLS

DEPARTMENT OF BUILDING SAFETY

ALBERTO "BUTCH" ZARAGOZA
MAYOR

JAMES R. ST. JOHN
FIRE CHIEF

February 19, 2013

Bailey John D Sr & John D Jr.
12436 Arbor View Dr
Fort Meyers, FL 33908

Re: Condemnation of 4008 Autumn Lane
Legal Description: 28-22-1-5-37-RR-0

Certified Mail No. 7008 1140 0002 1783 1638

Dear Sirs,

In accordance with City Ordinance 2382, I'm sending you this letter as notification of condemnation for the property listed above. This structure has been classified as a dangerous building.

The city will proceed with the condemnation of 4008 Autumn Lane in 20 days if the structure has not been removed. A demolition permit is required from our department in order to remove the structure.

If you have any question please give me a call at (205) 978-0125.

Sincerely,


Keith Blanton CBO, MCP
Building Official

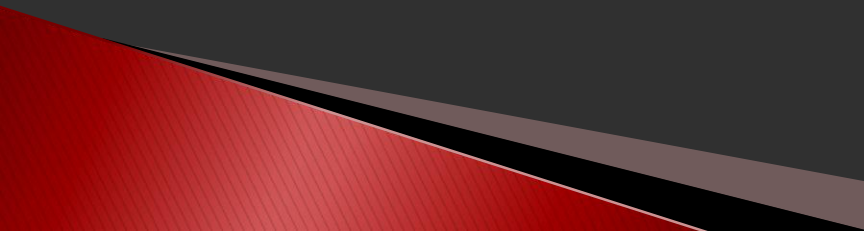
Pen Pals

- Not required by statute.
- Expected by everyone.

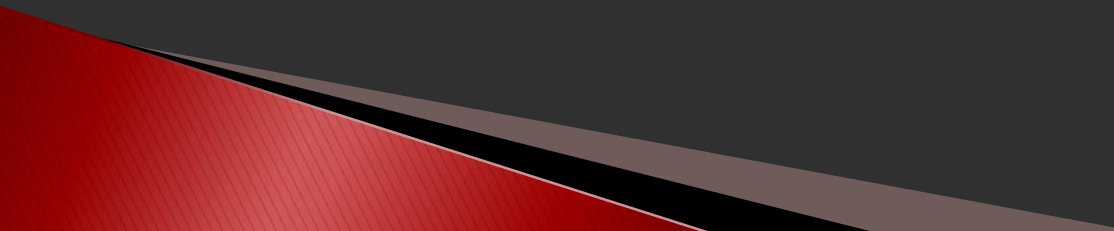
Possible Outcomes



Voluntary Compliance

- ▶ Save money.
 - ▶ No appeals.
 - ▶ Owner remains “king of his castle.”
 - ▶ Make a firm commitment to solve the problem with a demolition postponement agreement.
- 

Demolition by the City

- ▶ Save time.
 - ▶ The buck stops here.
 - ▶ If you won't invest in your neighborhoods and downtown, who will?
 - ▶ Shovel ready results.
- 

Show Me the Money

»» A Return on Your Investment

- ▶ We follow the process for both statutory schemes, this allows us to:
 - Add the lien to the ad valorem bill,
 - And/or collect assessments.

- ▶ If property owner fails to pay assessments when due, the city can sell the property to the highest bidder for cash.

- ▶ “[A] municipality may assess reasonable attorney’s fees and clerical costs as part of the cost of demolition of an unsafe structure.”

ALA. ATTY. GEN. OP. 2012-032.

Costs

- ▶ Flat fee.
- ▶ Includes 15 forms.
- ▶ Customized for your municipality.
- ▶ All forms needed to establish your program.
- ▶ Initiation of complaint through assessment of costs.
- ▶ Complexity of the title report.
- ▶ Challenges and/or proposals from property owners.
- ▶ Asbestos.
- ▶ Community of contractors.

Demolition Program
Set-up

Factors in Residential
Demolitions

When to File Suit

Posturing A Claim for Public Nuisance –Statutory

- ▶ “All cities and towns of this state shall have the power to prevent injury or annoyances from anything dangerous or offensive or unwholesome and to cause all nuisances to be abated and assess the cost of abating the same against the person creating or maintaining the same.”
- ▶ “Municipalities may maintain a civil action to enjoin and abate any public nuisance, injurious to the health, morals, comfort, or welfare of the community or any portion thereof.”

See also ALA. CODE § 6-5-122 (175).

ALA. CODE § 11-47-117
(1975)

ALA. CODE § 11-47-118
(1975)

Litigation

- ▶ Statutory limitation on remedy *in rem*
- ▶ Suits allow *in personam* recovery
- ▶ Insurance proceeds
- ▶ Estate
- ▶ Deep pockets
- ▶ Police jurisdiction
- ▶ Questionable authority and/or circumstances (doesn't neatly fit in definition of dangerous building)
- ▶ When there is a need to blame the judge

Why File Suit

Who to Sue

Strategy for Remedies

1. An order for the defendant to complete the abatement
2. If defendant abates, City seeks an award of court costs and fees.
3. Alternatively, an order authorizing the City to abate the nuisance at the expense of the Defendants.
4. If City abates, City asks for a bifurcated judgment with the 1st for authority to abate made final pursuant to ALA. R. CIV. P. 54(b). Then, the 2nd is for damages, including the costs of abatement, court costs, and fees.

Attorney Fees

- ▶ Justified by special equity.
- ▶ The efforts of the City's attorneys render a public service or result in a benefit to the general public in addition to serving the interests of the City.

See Ex parte Horn, 718 So. 2d 694, 702 (Ala. 1998); *City of Ozark v. Trawick*, 604 So.2d 360 (Ala. 1992); *Brown v. State*, 565 So.2d 585 (Ala. 1990); *Bell v. Birmingham News Co.*, 576 So.2d 669 (Ala. Civ. App. 1991).

A black and white photograph of various tools including a hammer, pliers, a tape measure, and a utility knife, with the text "OTHER REMEDIATION TOOLS" overlaid in red. The tools are scattered on a wooden surface. The hammer is in the foreground, with its head pointing towards the left. The pliers are on the right side, with their jaws open. The tape measure is in the middle, showing markings for inches and centimeters. The utility knife is in the upper right corner. The text "OTHER REMEDIATION TOOLS" is written in a bold, red, sans-serif font across the center of the image, with a slight reflection effect below the letters.

OTHER REMEDIATION TOOLS

“Naughty Nuisances”

- ▶ “Lewdness, Assignation and Prostitution” (a.k.a. “Red-Light Nuisance Abatement”), ALA. CODE § 6-5-140, et seq. (1975).
- ▶ “Drug-Related Nuisance,” ALA. CODE § 6-5-155(1975), et seq.
- ▶ “Obscene Nuisance,” ALA. CODE § 6-5-160, ET SEQ. (1975) .
- ▶ “Suppression of Gambling Places,” ALA. CODE § 13A-12-51 (1975) .
- ▶ “Liquor Nuisance,” ALA. CODE § 28-4-220, et seq. (1975) .

Source: “Happy Endings—How to Solve Your Nuisance Problems” by Julie P. Barnard, Kelly D. C. Butler, and Benjamin S. Goldman (Sept. 2014).

Business License Revocation



- ▶ The Model Business License Ordinance was circulated by the Alabama League of Municipalities for implementing the Business License Reform Act of 2006 (Act 2006–586).
- ▶ Most cities adopted.

Grounds for Revocation

- ▶ “for the violation by the licensee, his agent, servant, or employee of any provision of this ordinance or of any ordinance of the municipality, or any statute of the State of Alabama relating to the business for which such license is issued;”
- ▶ “if the licensee, his agent, servant, or employee under color of such license violates or aids or abets in violating or knowingly permits or suffers to be violated any penal ordinance of the municipality or any criminal law of the State of Alabama;”
- ▶ “if, in connection with the issuance or renewal of any license, the licensee or his agent filed or caused to be filed any application, affidavit, statement, certificate, book, or any other data containing any false, deceptive or other misleading information or omission of material fact.”
- ▶ “if the licensee, his agent, servant, or employee operates the business for which such license is issued in such a manner as to be detrimental to the public health, safety or welfare or so as to constitute a nuisance, or has done so within the twelve months preceding the issuance of notice for the revocation hearing”

Model Grounds

Recommended Addition



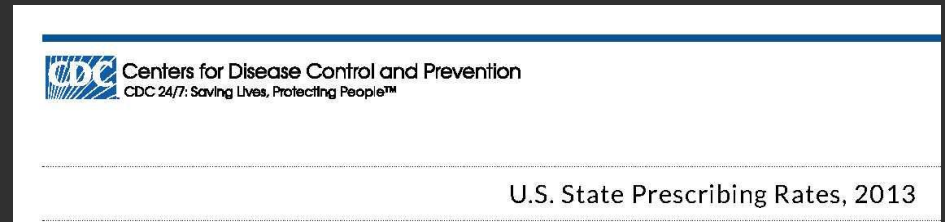
Opoids



National Institute on Drug Abuse

Alabama Opioid Stats

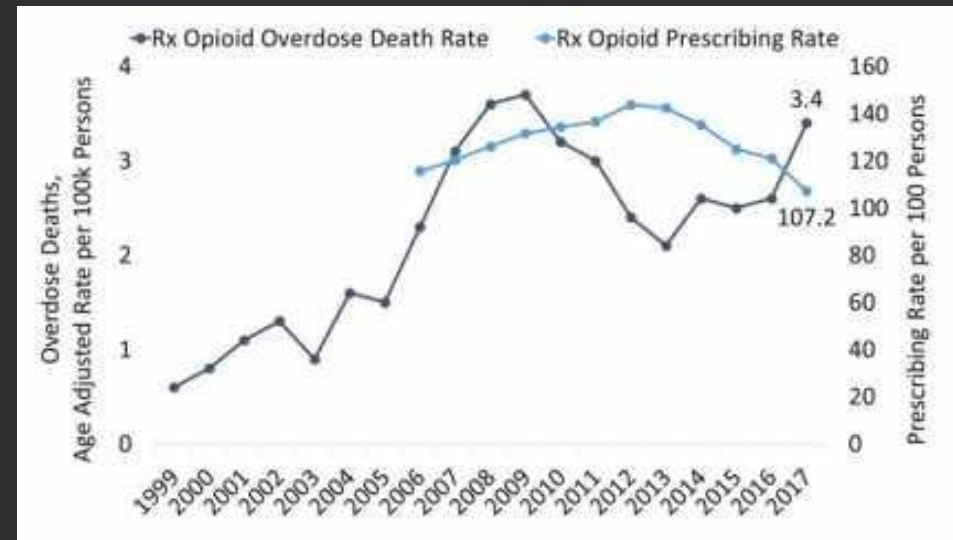
- ▶ In 2017, Alabama providers wrote 107.2 opioid prescriptions for every 100 persons.
- ▶ This was the highest prescribing rate in the country and was almost twofold greater than the average U.S. rate of 58.7 prescriptions.
- ▶ Still, this represents a 25 percent decline in Alabama opioid prescriptions, since 2013.



National Institute on Drug Abuse

Alabama Opioid Stats

- ▶ The rate of overdose deaths involving opioid prescriptions has not followed the declining trend of prescriptions per person and rose from 2.1 to 3.4 deaths per 100K persons from 2013–2017.
- ▶ There were 167 deaths involving prescription opioids in 2017.



Blue Cross and Blue Shield Alabama Opioid Stats

- ▶ 26 percent of Blue Cross and Blue Shield of Alabama's commercially insured members filled at least one opioid prescription in 2015, compared to 21 percent nationally.
- ▶ 6.5 percent of members were on a long-duration opioid regimen in 2015, compared to 3.8 percent nationally.
- ▶ 16.4 per 1,000 members were diagnosed with opioid use disorder in Alabama in 2016, double that of 8.3 nationally.
- ▶ 29 percent of our members with opioid use disorder received medication-assisted therapy in 2016, compared to 37 percent nationally.

June 29, 2017

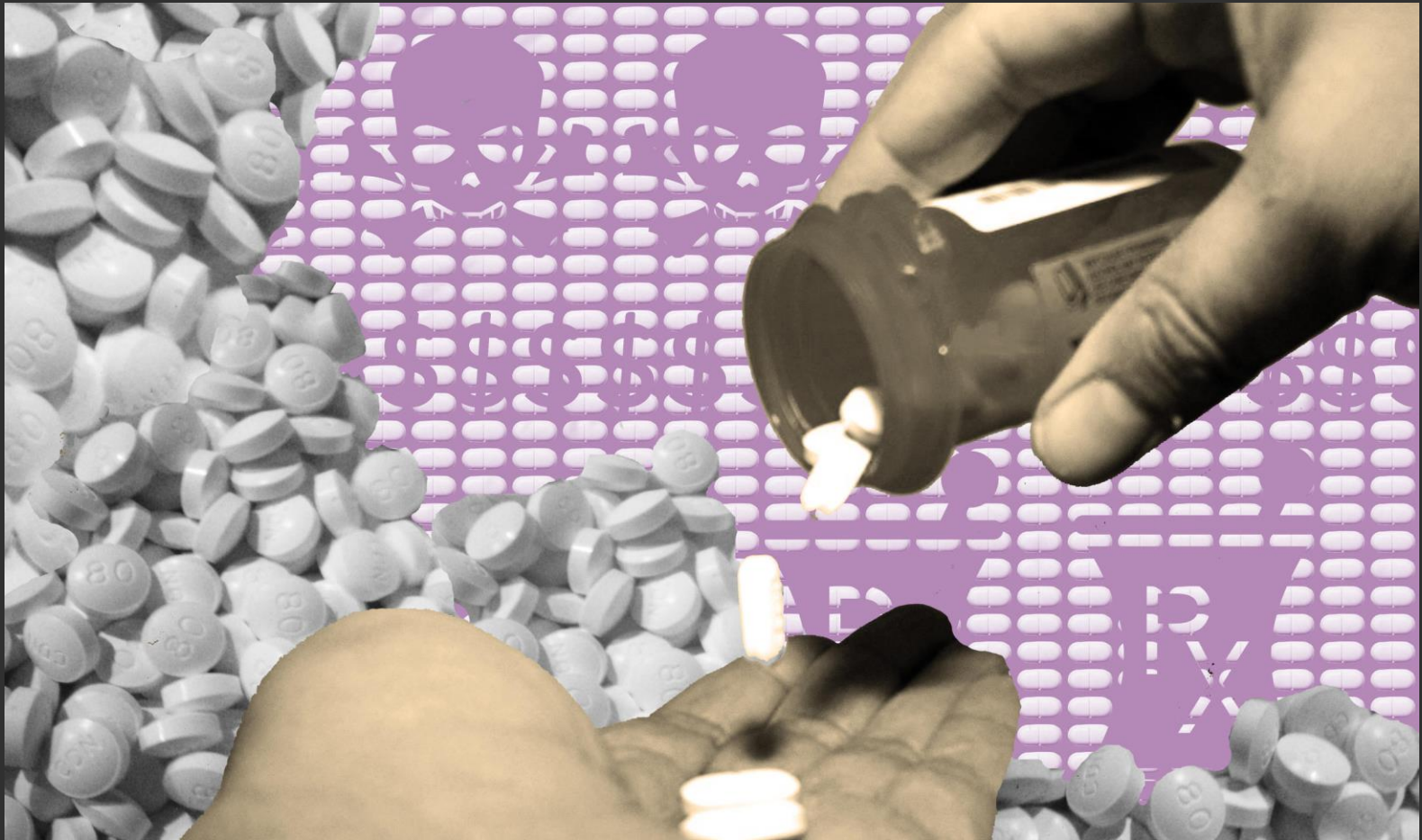
<https://www.bcbs.com/news/press-releases/opioid-epidemic-grows-alabama-ranks-first-nationally-having-more-opioid>

Blue Cross and Blue Shield National Opioid Stats

- ▶ Opioid use disorder diagnoses among BCBS commercially insured members spiked 493 percent from 2010 through 2016.
- ▶ Among those 45 and older, women have a higher rate of opioid use disorder than do men. Among people younger than 45, men have higher rates of opioid use disorder than women. Women fill more opioid prescriptions than males across all age groups.

June 29, 2017

<https://www.bcbs.com/news/press-releases/opioid-epidemic-grows-alabama-ranks-first-nationally-having-more-opioid>



The New York Times, Jan. 30, 2019

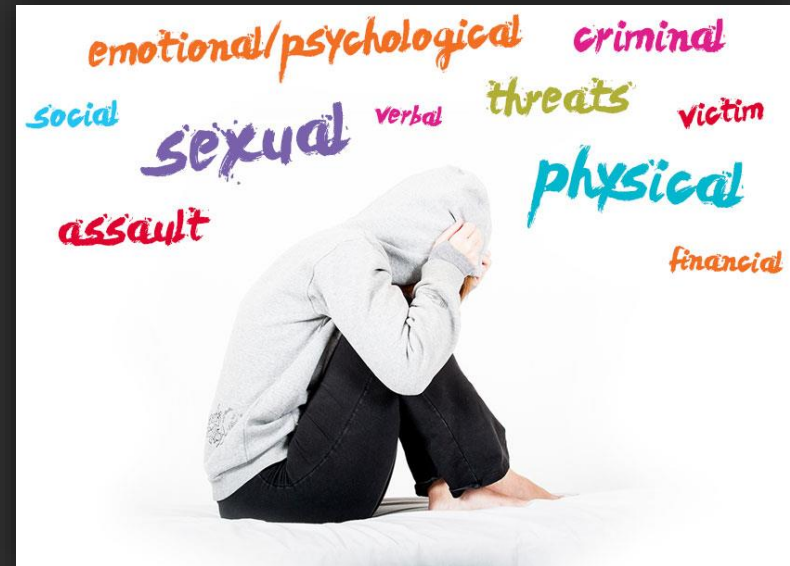
“[A] passage from a congressional report gives a sense of the granular information in the data: during 10 months in 2007, one distributor, McKesson, shipped three million prescription opioids to a single pharmacy in a West Virginia town with 400 residents.”



Group Homes

Potential problems for group homes

- ▶ Residents given drugs so that they go back into detox;
- ▶ Sexual abuse;
- ▶ Physical and verbal abuse;
- ▶ Forced to work in labor pools;
- ▶ Insurance fraud; and
- ▶ “Patient brokering.”



Separating the Sheep from the Goats

- ▶ Only provide living quarters and/or food services
- ▶ Mental health services
- ▶ Substance abuse services
- ▶ Assistance with Activities of Daily Living (ADLs)

No State Regulation

State Regulation

Certification of Community Programs

- ▶ “No person, partnership, corporation or association of persons shall operate a facility or institution for the care or treatment of any kind of mental or emotional illness or services to the mentally retarded or substance abuse services without first being certified for the physical facility by the Department of Mental Health and Mental Retardation or being licensed by the State Board of Health.”

Ala. Admin. Code 580-3-23-.04

- ▶ \$1500 non-refundable application fee made payable to Alabama Department of Mental Health for all new provider applications.
- ▶ Back ground check required.
- ▶ Conducts inspection of property to be certified.
- ▶ Link to certified providers: <http://www.mh.alabama.gov>

Exemptions ☹️

- ▶ General or psychiatric hospitals licensed as such by the Alabama Board of Health, unless the hospital requests to be a designated Mental Health Facility as certified by DMH/MR.
- ▶ Federal or state agencies.
- ▶ Public or private educational institutions.
- ▶ Voluntary self-help groups.
- ▶ A provider certified as an ICF/MR by the State Department of Public Health.

Exemptions ☹️

- ▶ Qualified member of professions in their own private practice (such as licensed physicians, psychologists, psychiatrists, social workers, or Christian Science practitioners).
- ▶ Groups, organizations or persons that provide only incidental or shelter-type services, but do not hold themselves out as providing treatment or services to persons who have mental illness, mental retardation, or substance abuse services needs.

Exemptions ☹️

- ▶ Religious groups that operate non-treatment services solely for members of their church/organization, and do not hold themselves out as providing treatment services to persons who have mental illness, mental retardation, or substance abuse services needs.
- ▶ Private homes or services that do not hold themselves out as providing services to persons with mental illness, mental retardation, or substance abuse.
- ▶ Family member services, i.e. services provided by family members of the family related by blood or by marriage for which no remuneration is received.
- ▶ An entity that is funded and monitored under the Individuals with Disabilities Education Act (IDEA), Part C, Early Intervention Program.

Exemptions ☹️

- ▶ A “private residence” that meets both of the following criteria:
 - The home/apartment was chosen by the individual who owns it or resides there (it was not chosen by DMH/MR staff, or a certified or contracted entity); and
 - There are no monies flowing through DMH/MR that go towards the rent/lease/purchase of the residence.

Discrimination unlawful

Fair Housing Act (FHA), 42 U.S.C. § 3604

Under the FHA, “it shall be unlawful ...

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap ...

(3) For purposes of this subsection, discrimination includes-- ...

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling

Substance Use Disorder

- ▶ Persons in recovery from substance use disorder are protected under the Fair Housing Amendments Act (FHA) and Americans with Disabilities Act (ADA).
- ▶ Therefore, they may locate in all residential zoning districts in accordance with federal law.

Reasonable Accommodations

- ▶ Unlawful discrimination under FHA includes refusing to allow “reasonable accommodations.”
- ▶ A “reasonable accommodation” is an exception or adjustment from a rule which is necessary to provide a disabled person equal opportunity to use and enjoy a dwelling.
- ▶ A housing rule that poses a hardship on only the disabled does not allow for equal opportunity, and thus it likely must be applied differently to the disabled.

Un-reasonable Accommodations

- ▶ An accommodation is not reasonable if it, either:
 - Imposes undue financial and administrative burdens on the government; or
 - Requires a fundamental alteration in the zoning scheme.

FHA Do Not's

- ▶ Refusing “reasonable accommodations” when accommodations may be necessary to allow equal opportunity to the disabled
 - Example: Denying a request to modify setback to allow sidewalk or ramp access to physically handicapped individuals
- ▶ Facially-neutral housing restrictions that, when applied, exclude protected class from certain neighborhoods without sufficient justification
 - Example: Lot size requirement that increases the cost of housing to the exclusion of members of protected class if requirement has no legally sufficient justification

ALA. CODE § 11-52-75.1 (1975),
ALA. ACT No. 86-430, p. 797.

(a) It is the express intent of the Legislature to abolish and prohibit any zoning law, ordinance, or regulation which prevents or prohibits mentally retarded or mentally ill persons from living in a natural residential environment zoned “multi-family.” Zoning ordinances shall not exclude a group home from a “multi-family” residential area solely because the persons residing in the group home are not blood related, and no such group home shall be located within 1,000 feet of another group home as measured between lot lines. The group home shall be required to meet all other zoning and licensing requirements of local and state governmental agencies.

- ▶ Define “family” in a way that limits the number of unrelated persons living in the same dwelling.
- ▶ Definition must be neutrally applied to all similarly situated residents
- ▶ Must allow for a reasonable accommodation to except sober homes/recovery residences from the regulation.



Group Home Strategies—
Defining “Family”

- ▶ Municipalities may impose a maximum rate of turnover for a dwelling.
- ▶ Must be applied neutrally across similarly situated residents
- ▶ Reasonable accommodations must be made available.



Group Home Strategies—
Limiting Turnover

- ▶ Licensing requirements on operators.
- ▶ Regulations based on disability stereotypes are prohibited.
 - Cannot require residents of group homes to receive medical treatment or supervision as a condition for operation if the residents of the group home do not actually need the services imposed.

Group Home Strategies—
Health & Safety Operator Requirements

- ▶ Create a minimum allowable distance between group homes.
- ▶ Should conduct a detailed study to prove overconcentration/ saturation.
- ▶ However, some courts have struck down spacing requirements, finding they deny equal opportunity to persons with disabilities to choose where they live.
- ▶ In a multi-family zone, no group home shall be located within 1,000 feet of another group home as measured between lot lines. ALA. CODE § 11-52-75.1 (1975).



Group Home Strategies— Spacing Requirements

- ▶ These are measures to move group housing into neighborhoods that have no group housing.
- ▶ Examples of integration initiatives are affirmative marketing offering zoning variances to prospective operators to incentivize opening group homes in areas with few or no group housing options.
- ▶ When utilized properly, these initiatives can reduce overconcentration of group housing.



Group Home Strategies—
Integration Initiatives

- ▶ People with disabilities may be required periodically to recertify that they are “disabled,” and thus their continuing need for reasonable accommodations under FHA (or ADA).
- ▶ Should be exercised on a case-by-case basis
- ▶ Should not be applied in cases of permanent disability.
- ▶ Municipalities are not forbidden by FHA from reevaluating whether accommodations made in the past remain “reasonable accommodations.”



Group Home Strategies—
Requiring annual recertification

Implement standards for recovery residences to submit an application with a policies and procedures manual

- ▶ Job descriptions for all staff positions.
- ▶ Drug-testing procedures and requirements.
- ▶ A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.
- ▶ Policies to support a resident's recovery efforts.
- ▶ A good neighbor policy to address neighborhood complaints and concerns.
- ▶ Rules for residents.
- ▶ Copies of all forms provided to residents.
- ▶ Intake procedures.
- ▶ Sexual predator and sexual offender registry compliance policy.

Implement standards for recovery residences to submit an application with a policies and procedures manual

- ▶ Relapse policy.
- ▶ Fee schedule.
- ▶ Refund policy.
- ▶ Eviction procedures and policy.
- ▶ Code of ethics.
- ▶ Proof of insurance.
- ▶ Proof of background screening.
- ▶ Proof of satisfactory fire, safety and health inspections.

“Oxford House is a concept in recovery from drug and alcohol addiction. In its simplest form, an Oxford House describes a democratically run, self-supporting and drug free home.”

http://www.oxfordhouse.org/userfiles/file/purpose_and_structure.php



Oxford
HOUSE

What is an Oxford House?

Oxford House Zoning

<http://www.oxfordhouse.org/userfiles/file/legal.php>

“Oxford Houses are considered single family residences for purposes of zoning. This has always been true in practice and since March 12, 1989, the effective date of the 1988 Amendments to the Federal Fair Housing Act, it has been a matter of law. Those amendments make it unlawful for any jurisdiction to discriminate against congregate living for the disabled. Recovering alcoholics and drug addicts are within the scope of the term "disabled". Therefore, Oxford Houses are not subject to zoning laws regulating the number of unrelated individuals who may live in a single family dwelling.”

Review of Best Practices

1. The intent of all land use ordinances should be to promote the health, safety, and welfare of the City.
2. Regulation should benefit residents.
3. Language that identifies, or singles out, particular types of dwellings or facilities should be avoided in the rulemaking process. Language that targets specific housing is more likely to be deemed discriminatory.
4. Land use restrictions cannot be applied as to favor or disfavor any class of residents and must be applied neutrally and evenly.
5. Give good faith consideration to requests for reasonable accommodations.
6. Keep accurate and updated records of the City's demographics.



Manufactured Homes

Manufactured Homes – A Brief History

- ▶ The HUD Code preempted state and local building codes governing the construction of manufactured housing units.
- ▶ The HUD Code does not address local standards governing the placement of individual units onsite.

Manufactured Homes - Key Bodies of Regulation

- ▶ Permitting requirements
- ▶ Fire codes
- ▶ Zoning codes
- ▶ Subdivision regulations
- ▶ Architectural design standards

“Clean Break” Zoning

- ▶ Make a “clean break” from the past to enforce the zoning ordinance of the future.
- ▶ *City of Foley v. McLeod*, 709 So.2d 471 (Ala. 1998).



City of Foley v. McLeod,
709 So. 2d 471 (Ala. 1998)

“Although we hold that the City is estopped in this case, we note that the City will not be forever barred from enforcing the zoning ordinance against the McLeods or against mobile home parks generally. While the City had long remained silent in the face of the perpetuation of Green Acres as a nonconforming use, the City's action in the present case indicates a departure from that acquiescence. Consequently, even though the McLeods may retain and use the six mobile homes that are the immediate subject of this case, the City is not estopped from taking prospective action to prevent future replacements, repairs, or similar activities that violate the zoning ordinance.”



Moratorium

Enforcement

»» Environmental Dockets

What is an Environmental Docket?

- Types of cases:
 - Failure to Subscribe to Garbage Service
 - Criminal Littering
 - Placement of Litter in Receptacles that Does Not Prevent Scattering
 - Violation of Owner or Resident's Duty as to Litter
 - Garbage/Trash Container Violation
 - Nuisance
 - Junked and Inoperable Vehicles
 - Abandoning a Vehicle
 - Noise Violations
 - Vicious Animals



Environmental Dockets Strategies



- Utilize summons and complaint as authorized by ALA. R. CRIM. P. 3.1 and served by a law enforcement officer by certified mail per ALA. R. CRIM. P. 3.4.
- “Request for Entry of Order to Withhold Adjudication, Plea of Guilty *In Absentia*, and Waiver of Rights.”
- The hard way and the easy way.
- If garbage subscriptions are a problem, have a representative of the franchisee available on site.
- Call care of premise cases at the start, and require a return and clean-up by the end of the docket.

Invest in Land Banking

Land Bank Powers

To issue deeds in its own name,



To engage in various real property transactions, including to acquire tax delinquent properties from the State,



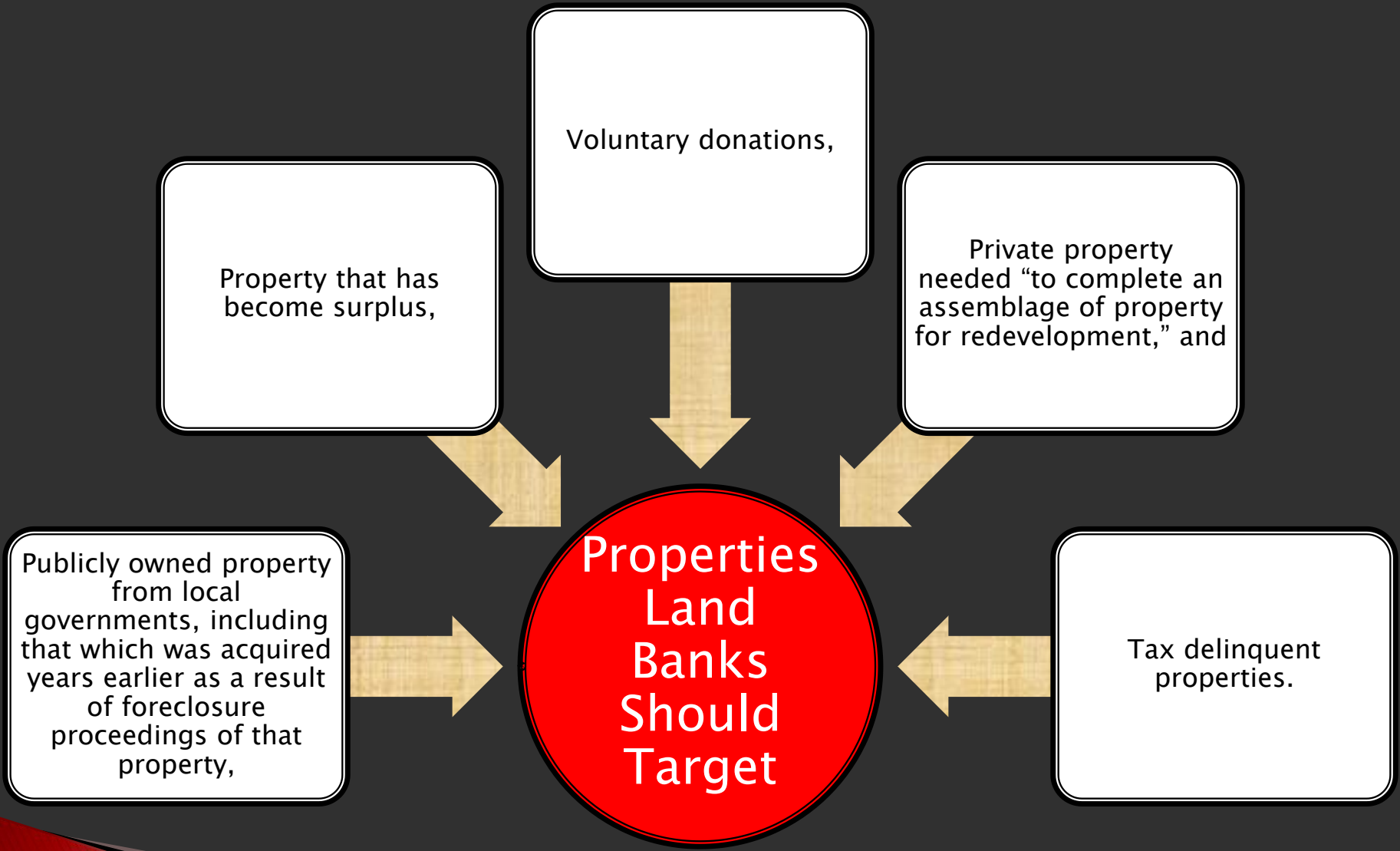
To institute quiet title actions,



To “repeal and rescind all delinquent state, county, and city taxes, including school district taxes, at the time it sells or otherwise disposes of” tax delinquent property,



To do such other things that would be necessary to allow the land bank to fulfill its purpose.



Property that has become surplus,

Voluntary donations,

Private property needed "to complete an assemblage of property for redevelopment," and

Publicly owned property from local governments, including that which was acquired years earlier as a result of foreclosure proceedings of that property,

Properties Land Banks Should Target

Tax delinquent properties.

Who Can Receive Land Banked Land?



What's the catch?



“If the number of tax delinquent properties in a municipality exceeds 1,000, then the governing body of a municipality may adopt a resolution declaring that it is wise, expedient, and necessary that a local [land bank] authority be formed by the municipality” ALA. CODE § 24-9-10.

Questions?



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