

PACB TESTIMONY BEFORE THE
HOUSE LABOR RELATIONS AND URBAN AFFAIRS COMMITTEES –
MONDAY, JUNE 23, 2008

Written Testimony of Chuck Leyh, President/CEO, Enterprise Bank, Vice Chairman,
Legislative Committee of the Pennsylvania Association of Community Bankers.

Mr. Chairmen and Members of the Committees, thank you for the opportunity to participate in this hearing today on House Bill 2445, the Neighborhood Blight Reclamation and Revitalization Act. We thank you for including PACB in this discussion and commend you for having this conversation on blighted property in the Commonwealth.

We have had informal discussions for almost a year now with the Housing Alliance of Pennsylvania, and have provided testimony to the House Urban Affairs Committee on House Bill 2188, which contains conservatorship for blighted property provisions similar to House Bill 2445 and last week participated in a hearing held by the Senate Urban Affairs Committee on Senate Bill 1291, the companion to the legislation you are reviewing today. We welcome the opportunity to share our viewpoint on this important topic.

Prior to discussing the legislation and sharing some concerns we have with you regarding the legislation, we believe it's important to share with you PACB's history and the essence of community banking. PACB is the oldest financial services association in the nation dating back to 1877, and currently represents over 150 community banks across this Commonwealth. PACB is proud to be the voice of community banking in Pennsylvania. Our member banks serve as the epicenter of community activity, providing key financial services to citizens and funding community-based businesses and programs. Community bankers are dedicated to serving their communities and take great pride in the positive impact we contribute by reinvesting in the community through residential mortgages, small business loans and agricultural and student loans. As you know, Mr. Chairmen and members of the Committees, community banking is about relationships and trust with our customers which in some cases dates back decades. Many of our institutions are celebrating their 75th, 100th, and 125th anniversaries. Prior to any federal or state regulations and mandates, community banks were doing community reinvestment as their principal stock in trade. That continues to be the case today. We have survived wars, depressions, recessions, boom markets and bust markets and continue to be anchors on the Main Streets of Pennsylvania towns and cities.

Our members live by the motto, Pennsylvania FIRST, for we truly are the Financial Institutions Reinvesting in the State. This is not mere rhetoric but the very reason our members exist. Our combined assets of over \$90 billion are almost entirely reinvested in the Commonwealth and its citizens. Collectively we have been serving Pennsylvania's communities for over 23,000 years with the majority of our members in existence for over 100 years.

Because of the unique role we play in our communities and unique relationship we have with our customers, we are sensitive to blighted property and the need to ensure these properties are rehabilitated and made useful again to the community. Blighted properties hurt the communities we serve so we share the goal of this legislation to combat this issue in the Commonwealth. As for-profit entities that take in deposits and then lend those deposits in the form of mortgages for residential and commercial properties, we have grave concerns about the impacts of this legislation on the mortgage contract and lien.

At this point, I'd like to turn the testimony over to Reginald Evans, Esq. of Shumaker Williams, P.C., a former Chief Counsel of the Department of Banking, who will share with the Committee some detailed analysis he conducted including a discussion relevant to our concerns and some possible approaches for the Committees to consider regarding the legislation.

Thank you, Mr. Chairmen.

PACB respectfully offers these suggestions for your consideration and welcomes questions from the Committee and Committee staff.

I. Summary of the Bill.

We understand that House Bill 2445 and Senate Bill 1291 are substantively identical companion bills.

It is our understanding that the purpose of the Subchapters A and D of bill is to allow a "party in interest" to approach the applicable Pennsylvania county court of common pleas to seek appointment of a "conservator" to take possession and rehabilitate an abandoned and blighted building.

The other subchapters of the bill add responsibilities to mortgage lenders; authorize state and local government to deny building permits; establish a state blight data collection system; authorize grants; create rules for the sale of blighted and abandoned properties beyond the scope of the conservatorship rules; and in the miscellaneous section authorize a new housing court and for surcharge money to be used for housing law training programs for judges, among other items addressed more specifically below in our comments.

The bill has nine subchapters A to I. Two of the subchapters, namely subchapters A and D, are substantially similar to an old version of predecessor bill HB 2188 of 2008. Subchapter A contains definitions that are used in Subchapter D which states the conditions for establishing a conservatorship over an abandoned and blighted building. The provisions in Subchapters B, C, E, F, G, H, I, did not appear in predecessor bill HB 2188.

II. Comments on the Bill.

Our comments on behalf of PACB address concerns that our PACB members have indicated that they have with the bill, and are divided into two areas: (1) the conservatorship provisions in Subchapters A and D; and (2) the other provisions in Subchapters B, C, E, F, G, H, I.

1. Comments on Conservatorship provisions in Subchapters A titled “Preliminary Provisions” and Subchapter D titled “Conservatorship”.

The conservatorship provisions in the bill at Subchapters A and D provide that a party in interest may petition for appointment of a conservator to take possession of an abandoned and blighted building. There is a conservatorship test containing the conditions that must be in place in order for a conservator to be appointed to rehabilitate a building. The conservator is mandated to file a lien against the property in an amount based on the estimated costs to be incurred during the conservatorship. The Court appoints the conservator. The conservator is authorized to borrow money and incur debt as part of rehabilitating the building. The Court is allowed to grant a lien or security interest with priority over all other liens on the property with exception of municipal or governmental liens. The conservator must seek financing from the senior lienholder first before seeking financing from any other potential lender. A property subject to conservatorship that is sold by the owner or foreclosed upon by a lienholder remains subject to the conservatorship.

As stated above, the conservatorship provisions in the bill are substantially similar to the old version of HB 2188 of 2008, P.N. 3126. Revisions to HB 2188 made after PACB provided comments and recommendations were largely reflected in the new version of House Bill 2188 of 2008, P.N. 3698. Thus, PACB has substantially similar comments regarding the conservatorship provisions in this bill versus the amendments made at PACB’s request as now reflected in House Bill 2188 of 2008, P.N. 3698.

Regarding the conservatorship provisions in Subchapters A and D, PACB is concerned that the banks that take the initial risk to provide financing on properties that subsequently become abandoned and blighted be provided some additional statutory consideration on issues including lien position, environmental liability, foreclosure action in process, and the rights of senior lienholders when they provide rehabilitation financing at the conservator’s request.

More specifically, we recommend adding to Section 6132(d) an additional condition for conservatorship which would be that the building proposed for conservatorship is not subject to an existing foreclosure action.

To Section 6132(e), regarding appointment of a conservator, we recommend adding that the Court should give first consideration for appointment as conservator to the senior lienholder on the property.

To Section 6132(h), we recommend changing the requirement that a conservator “may” file a lien against the property in an amount based on actual costs instead of estimated costs incurred during the conservatorship.

To Section 6134, we recommend adding a subsection (c) stating that a conservator shall not be held liable for any environmental damage to the building or the real property upon which the building is located that existed prior to the appointment by the Court of the conservator. In that way, a lender as conservator or other conservators seeking to rehabilitate the property is not deterred from doing so by taking on environmental liability for which as conservator they would have not responsibility by not having created such a situation.

To Section 6135, we recommend adding a subsection (c) stating that when a senior lienholder provides financing for the rehabilitation of the building, such funds shall be deemed to be added to the senior lienholder’s pre-existing first lien.

There are other provisions that could be added to the Bill that are in the amended HB 2188 to which the PACB would not have objection including that the petitioner for conservatorship shall file a notice of lis pendens in the Office of the Recorder of Deeds for the county in which the property is located, and that the petition for the appointment of a conservator to take possession and rehabilitate a building shall constitute an action in rem against the property.

Finally, regarding the definition of “building”, such term is defined in the Bill as constituting a residential, commercial or industrial structure and the land appurtenant thereto. **PACB recommends that the Bill be clarified to cover a residential building and the lot upon which it is located or commercial or industrial buildings within 500 feet of a residential building. The reason for this recommendation is that not all commercial or industrial buildings should be subject to potential conservatorship if they do not impact residential areas which it is our understanding would be the main focus of the Bill.** Also, potential risk of conservatorship would have to be built into the cost of purchase money financing or other financing of property upgrades and therefore such potential increased loan costs from the risk of conservatorship need not be added to properties that do not impact neighborhoods.

2. Comments on Other Provisions in Subchapters B, C, E, F, G, H, I.

Apart from the conservatorship-related definitions and the conservatorship rules respectively stated in subchapters A and D, PACB has comments per each of the other subchapters as stated below.

(i) Comments on Subchapter B titled “Actions Against Owner of Blighted Property”.

Subchapter B is titled “Actions Against Owner of Blighted Property.” Subchapter B specifically authorizes a municipality, or an aggrieved owner or tenant of real property, to commence legal action before a district justice to prevent an owner from engaging in an act that would violate a housing code. This would be a difficult if not impossible item to enforce and would appear to be covered already in the law by the requirement to obtain local building permits in order to engage in certain structural changes on owner property. Thus, it is recommended that Section 6111, 6112 and 6113 be removed from the bill.

Subchapter B would require a corporate owner to include as an attachment to a deed the names and addresses of each officer of the corporation and a photo identification from the state in which the corporate officer is licensed to drive. The concern of the banks with this provision is that it will tremendously slow down mortgage lending and real estate purchase transactions, is an unnecessary intrusion into the personal privacy of multiple officers who would prefer not to have their photographs viewable by the public in deed records, and becomes untenable due to changes of corporate officers for banking institutions as well as other corporations over time. It is recommended that Section 6115 be removed from the bill.

(ii) Comments on Subchapter C titled “Responsibilities of Mortgage Lenders”.

Subchapter C indicates that thirty (30) days following the foreclosure of a building due to the owner of record’s default on a mortgage loan the mortgage lender in possession of the building shall assume legal responsibility and liability as the owner of record for all exterior municipal housing code requirements that are “serious violations, or are violations which contribute to blight in a neighborhood due to their aesthetic appearance on the structure of the neighborhood. This provision is of serious concern to our mortgage lenders because it appears to shift liability for housing violations from the person who committed the violations, meaning the owner, onto the mortgage lender that forecloses on the building in order to protect the lender’s lien position. Also, the determination of whether housing code violations constitute “serious violations” or contribute to blight in a neighborhood based on their effect on the aesthetic appearance of the building or the neighborhood is a very subjective standard and does not constitute a clear definition or standard. It is unclear what this Section 6122 is intended to accomplish but there is concern that the mortgage lender would become responsible to pay any fines or penalties that were directed to the owner who actually committed the housing code violations. The lenders recognize that in foreclosing on a building that they are taking the building as-is and that includes and understanding that rehabilitation of the property may be necessary in order to market and sell the building without losing mortgage loan money. **We urge that Section 6122 be removed from the bill.**

Section 6123 of Subchapter C states a list of entities that are allowed to grant or insure residential mortgages pursuant to Subchapter C. This list appears to be from the Pennsylvania Mortgage Bankers and Brokers and Consumer Equity Protection Act list of entities that are exempt from the lender license requirement of that statute. Since the Mortgage Bankers and Brokers Act could be amended at some point in the future, it is recommended that Section 6123 be removed from the bill because entities that are subject

to licensure and exempt from licensure are already listed in the Mortgage Bankers and Brokers Act and covered as such.

(iii) Comments on Subchapter E titled “State and Local Government Permit Denials”.

Subchapter E titled “State and Local Government Permit Denials” would allow as state or local government agency, board or commission to deny a building permit, or certification or license, if the applicant owns real property for which delinquent taxes, water, sewer or garbage charges are delinquent or if the applicant is in “serious violation” of state or municipal building, fire or safety code requirements. The concern of the banks with this provision is that it could backfire on the ability of an owner, conservator, or lender seeking foreclosure, to rehabilitate a building in a timely manner. Accordingly, while such tax or services delinquent payments are a real problem, it is our view that they should not be allowed to delay or halt a rehabilitation of an abandoned or blighted property.

(iv) Comments on Subchapter F titled “State Blight Data Collection System”.

Subchapter F is titled “State Blight Data Collection System”. This subchapter would establish a property maintenance code violations registry to be administered by the Department of Community and Economic Development (DCED). Municipalities would be required to file a property maintenance code violation report with the DCED for placement into the registry regarding any owner of real property who is subject to a property maintenance code violation that has gone ninety (90) days without being abated by the owner. The registry information would be available to the public pursuant to the Right-To-Know Law. Property owners in violation of a municipal property maintenance code would be subject to a “surcharge” of \$100.00 per violation. The surcharge would be collected by the municipality and remitted to DCED on a quarterly basis to finance the state wide registry of municipal code violations.

The banks are concerned that in foreclosing on abandoned or blighted properties that the surcharge or fine of \$100.00 per municipal code violation could be imposed on lenders who were not responsible in any way for the municipal code violation on the building. Also, it is not clear what advantage the public gains by the establishment of a state wide registry which appears to add bureaucracy but not necessarily stop blight that is a local issue. Also, in fairness to the owners of real property, including lenders that have to foreclose on real property from time to time, the municipal citing of a code violation does not necessarily mean that there actually is a code violation. Thus, a surcharge could be imposed based on alleged violations of municipal codes without the owners receiving due process over the alleged violation. **Based on the foregoing, it is recommended that if the proposed state blight data collection system is established that the surcharge provision at Section 6157 be removed from the bill.**

(v) Comments on Subchapter G titled “Grants”.

Subchapter G titled “Grants” would authorize DCED to issue grants to eligible municipalities for the purpose of reducing blighted property conditions pursuant to a “Municipal Code Enforcement Grant Program”. We have no comments on the proposed Subchapter G at this time.

(vi) Comments on Subchapter H titled “Sale of Blighted and Abandoned Properties”.

Subchapter H titled “Sale of Blighted and Abandoned Properties” appears intended to provide that in a tax sale situation, a purchaser of an abandoned property would be required to enter into a redevelopment agreement with the municipality obligating the purchaser to redevelop abandoned property in accordance with municipal codes, with the work to be completed within 12 months, and requiring the purchaser to post a bond.

While this provision appears to cover a tax sale as opposed to a foreclosure sale, it is possible that a lender would purchase a property at tax sale in lieu of filing or completing a foreclosure action. The Bill already establishes a conservatorship process in the event that a party in interest seeks to establish a conservatorship of a property that is abandoned and blighted. We are concerned that Section 6167 of the bill will greatly delay and inhibit the purchase of abandoned properties from negligent owners by imposing the cost of posting a bond and all the negotiation necessary to enter into a redevelopment agreement with the municipality. In addition, a lender purchasing an abandoned property might not want to redevelop that property. Instead, such a lender might prefer to market it to a potentially responsible owner that would have its own decisions to make regarding how best to rehabilitate the property, which could include tearing it down and building a new property. Accordingly, this Subchapter seems to be well intended but imposes costs and infringes on the ability of potential purchasers, including lenders, to get into a property, more fully evaluate the situation upon becoming the owner, and then deciding how to rehabilitate the property. Accordingly, it is recommended that Section 6167 be removed from the Bill.

(vii) Comments on Subchapter I titled “Miscellaneous Provisions”.

Subchapter I titled “Miscellaneous Provisions” appears to prohibit the act of refusing to issue or renew an insurance policy on real property on the basis of the condition of surrounding properties that may be unoccupied. In that regard, Subchapter I makes such an act an unfair method of competition and unfair insurance practice enforceable pursuant to the Pennsylvania Unfair Insurance Practice Act.

Subchapter I also would use building code violation surcharge money from Section 6157 to fund training programs for judges regarding laws applicable to blighted and abandoned property. Subchapter I would authorize county commissioners to request and the president judge of a county to establish a housing court to decide real property matters.

We continue to recommend that surcharge Section 6157 from Subchapter F be eliminated from the bill. Otherwise, we have no comments on Subchapter I at this time.

Thank you for this opportunity. We welcome any questions the Committees may have.