

MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

October 9, 2018

By Hand

Central Housing Court
Clerk's Office
225 Main Street
Worcester, MA 01608

RE: Attorney General for the Commonwealth of Massachusetts v. Estate of [REDACTED]

Dear Sir or Madame:

Enclosed for filing and docketing in the above-referenced matter, please find the following documents:

1. Petition to Enforce the State Sanitary Code and for Appointment of a Receiver, with exhibits;
 - a. Affidavit of Monica L. Passeno, with exhibit;
 - b. Affidavit of Darlene Coyle, with exhibits;
 - c. Affidavit of Justin Brigham, with exhibits;
 - d. Affidavit of Caleb Moody, with exhibit;
2. Memorandum in Support of Petition to Enforce the State Sanitary Code and for Appointment of a Receiver;
3. Petitioner's Motion for Alternative Service of Process and Appointment of a Special Process Server, with exhibits.

Please mark up the Petitioner's Motion for Alternative Service of Process for a hearing on **Wednesday, October 17, 2018 at 9:00am**, or a date convenient to the Court soon thereafter. Thank you for your attention to this matter.

Very truly yours,

Tara Ruttle
Assistant Attorney General
[REDACTED]

Enclosures

cc: [REDACTED] Esq. (via email)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
Civil Action No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
the TOWN OF AUBURN,

Petitioners,

v.

ESTATE OF [REDACTED] as owner of
the property at [REDACTED] Street, Auburn
Massachusetts;

Respondent.

**PETITION TO ENFORCE THE STATE SANITARY CODE
AND FOR APPOINTMENT OF A RECEIVER**

This is a petition by Maura Healey, Attorney General for the Commonwealth of Massachusetts and the Town of Auburn (collectively, "Petitioners") seeking enforcement of the State Sanitary Code (the "Code"). The Petitioners assert that the property located at [REDACTED] Street, Auburn, Massachusetts (the "Property") owned by respondent the Estate of [REDACTED] (the "Estate") has numerous long-standing Code violations which pose a serious risk to the health, safety, and well-being of abutters, trespassers, emergency responders, and residents of the community, thereby justifying the Court's exercise of its statutory authority and general equity power to appoint a receiver for the purpose of making those repairs necessary to protect the public health and safety and that are in the best interests of the Property.

JURISDICTION AND PARTIES

1. The jurisdiction of this Court is founded upon the State Sanitary Code, G.L. c. 111, § 127I and the court's equity jurisdiction under G.L. c. 185C, § 3.

2. The petitioner, the Attorney General for the Commonwealth of Massachusetts (the "Commonwealth"), is a public official and the Commonwealth's chief law enforcement officer under the constitution and laws of the Commonwealth of Massachusetts.

3. The petitioner, the Town of Auburn (the "Town" and, with the Commonwealth, "Petitioners"), is a municipal corporation under the constitution and laws of the Commonwealth of Massachusetts.

4. The owner of record of the Property, [REDACTED], is deceased and is, upon information and belief, survived by one child, [REDACTED], Jr. Upon information and belief, the Estate was never probated. [REDACTED] Jr. is a natural person with a last known mailing address of [REDACTED], Auburn, Massachusetts. *See* Exhibit I, Affidavit Monica L. Passeno ("Passeno Aff.") at ¶¶ 3-6.

FACTUAL ALLEGATIONS

5. The Property, in its present condition, is condemned, unfit for human habitation, and endangers or materially impairs the health, safety, and well being of occupants, neighbors, and/or the public. *See* 105 CMR 410.750.

6. The Property is a single-family dwelling which has been boarded and secured by the Town, but is frequently visited by [REDACTED] Jr. *See* Exhibit II, Affidavit of Darlene Coyle ("Coyle Aff.") at ¶¶ 3-4, 10-11, 13-14.

7. The Property's structural elements, including the floors, ceilings, and walls are in disrepair in violation of 105 CMR 410.500. *See* Coyle Aff. at ¶¶ 6(a)-6(b); *see* Exhibit III,

Affidavit of Justin Brigham (“Brigham Aff.”) at ¶¶ 6-7; *see* Exhibit IV, Affidavit of Caleb Moody (“Moody Aff.”) at ¶ 6(e).

8. The interior and exterior of the Property contains an extensive accumulation of trash, rubbish, and debris in violation of 105 CMR 410.602. *See* Coyle Aff. at ¶¶ 6(f), 15(a); *see* Moody Aff. at ¶ 6(d).

9. The Property is overgrown in violation of 105 CMR 550(D) and 105 CMR 410.750(I). *See* Coyle Aff. at ¶ 15(b).

10. The Property’s roof is in disrepair with missing shingles and missing rake and fascia boards in violation of 105 CMR 410.500. *See* Coyle Aff. at ¶ 15(c); *see* Moody Aff. at ¶¶ 6(a)-6(c).

11. The Property’s smoke detectors are disabled in violation of 105 CMR 410.482. *See* Coyle Aff. at ¶ 6(d); *see* Moody Aff. at ¶ 7.

12. The Property’s electrical panel is exposed and covered by a plastic bag. *See* Moody Aff. at ¶ 7.

13. The Property does not have a working furnace in violation of 105 CMR 410.200 and 105 CMR 410.750(B). *See* Coyle Aff. at ¶ 6(c).

14. Some of the Property’s water pipes are broken and the water service was terminated in 2012 in violation of 105 CMR 410.750(A) and 105 CMR 410.350(A). *See* Coyle Aff. at ¶ 6(c); *see* Moody Aff. at ¶¶ 7-9.

15. The Property’s present condition creates a significant risk of harm to the public’s health and safety, including without limitation the Property’s neighbors, trespassers, and any unauthorized occupants who may use this Property for shelter or to engage in any illegal activities, and to emergency personnel who may be called to respond to any call to service at

this Property. As such, it constitutes a public nuisance which, left unabated, justifies civil enforcement at common law, in addition to remedies otherwise provided by statute.

16. On September 22, 2017, the Office of the Attorney General issued certified and first-class letters to [REDACTED], describing the conditions present at the Property and the Commonwealth's intent to file a receivership case should the owner fail to bring the Property back into compliance with the Code. *See Passeno Aff* at ¶¶ 5-6.

17. [REDACTED] Jr. has not responded to this office in regards to the September 22, 2017 letter and has not made any repairs to the Property. *See Passeno Aff.* at ¶¶ 7-9; *see Coyle Aff.* at ¶¶ 17, 19-21.

18. The Respondents' failure to restore the Property to full compliance with the Code poses an immediate danger to the health, safety and well-being of the abutters and general public. The possibility of vandalism, trespass, and other illegal activities pose a significant risk that the Property will be destroyed beyond repair without this Court's intervention and the appointment of a receiver. Unless action is taken immediately, the conditions will continue unabated, and the public will continue to face risks to its safety as this property continues to deteriorate.

RELIEF REQUESTED

WHEREFORE, the Attorney General respectfully requests this court to:

1. Schedule a hearing for the appointment of a receiver for the Property;
2. Appoint a receiver for the Property pursuant to the Court's general equitable powers and G.L. c. 111, § 127I for the purpose of accessing the Property, determining the structural integrity of the Property, and performing the repairs that will be necessary to bring the

Property into conformity with the State Sanitary Code and other applicable codes and ordinances;

3. Grant such additional relief as the Court deems just and proper.

Respectfully submitted,

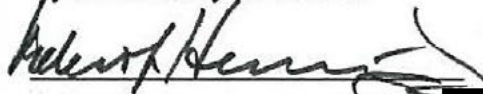
MAURA HEALEY
ATTORNEY GENERAL

By her Attorney,



Tara Ruttle, BBO # [REDACTED]
Assistant Attorney General
Office of the Attorney General
Government Bureau/Trial Division

TOWN OF AUBURN
By its Attorney of Record



Robert J. Hennigan, Jr., BBO # [REDACTED]
Town Counsel

Dated: October 3, 2018

EXHIBIT I

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
Civil Action No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
the TOWN OF AUBURN,

Petitioners,

v.

ESTATE OF [REDACTED] as owner of
the property at [REDACTED], Auburn
Massachusetts;

Respondent.

AFFIDAVIT OF MONICA L. PASSENO

MONICA L. PASSENO for her affidavit under oath states:

1. I am an Assistant Attorney General for the Commonwealth of Massachusetts and have been assigned by the Attorney General to represent the Commonwealth in this matter.

As such, I am fully familiar with the facts that are recited in this affidavit.

2. On or about August 28, 2017, I caused the Attorney General's Abandoned Housing Initiative Title Paralegal to compile a report based on a review of the of the South Worcester County Registry of Deeds. This report identified the most recent owner of record for the property located at [REDACTED] Auburn, Massachusetts (the "Property").

3. That title search revealed that the current owner of record is the Estate of [REDACTED] [REDACTED] is deceased with a death certificate indicating he passed away on October 10, 2000.

4. That title search also revealed that [REDACTED] was survived by one child, [REDACTED] Jr.

5. On September, 22 2017, the Office of the Attorney General ("AG's Office") sent a letter, via first class and certified mail, to [REDACTED] Jr. describing the Property's condition and the Attorney General's intent to seek receivership. See Exhibit A (copy of September 22, 2017 letter).

6. The AG's Office sent these letters to [REDACTED], Auburn, Massachusetts because that was the address found in the AG's Title Paralegal's search.

7. While the certified letter mailed to [REDACTED] Jr. was returned, the first class letter to [REDACTED] was not returned to me by the Post Office, indicating that the owner received it.

8. [REDACTED] Jr. has not responded to these letters.

9. I have not received further communication from anyone with an interest in this Property.

Signed under pains and penalties of perjury this 3rd day of October, 2018.


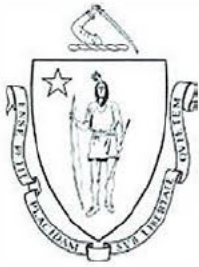

Monica L. Passeno
Assistant Attorney General

EXHIBIT A



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

September 22, 2017

Via First-Class and Certified Mail, RRR

[REDACTED]
[REDACTED]
Auburn, MA 01501

Re: [REDACTED], Auburn, MA 01501
Notice of Intent to Seek Appointment of a Receiver

Dear Mr. [REDACTED]:

This letter concerns the condition of the residential premises located at [REDACTED], **Auburn, Massachusetts**. Public records indicate that your parents were the owners of record for this property. If this is incorrect, please notify us immediately.

In its present condition, this property is unfit for human habitation and poses a severe and continuing threat to the health and safety of trespassers, neighbors and the public in general in violation of 105 CMR 410.750. There are a number of long-standing violations of the State Sanitary Code at this property; for instance, the property contains an extensive accumulation of trash, rubbish, and debris, which can attract and harbor vermin. Additionally, the property is severely overgrown.

In addition to these dangers, the property's structural elements are in significant disrepair which creates a hazard for anyone entering the property, including emergency personnel who would be forced to respond to an incident at the property. Your failure to manage and maintain this property in a lawful manner also creates a continuing nuisance by inviting trespassers to use the property for illegal activities.

Under the State Sanitary Code and other applicable Massachusetts laws and codes, the Office of the Attorney General and the Town of Auburn are permitted to petition the appropriate court for the appointment of a receiver. *Please be advised that, unless you contact this office within fourteen calendar days of receipt of this letter, a petition for appointment of a receiver will be filed with the Court pursuant to M.G.L. c.111, §127I (copy enclosed) and the court's general equity jurisdiction.*

Although we are willing to discuss a reasonable resolution of these violations, conditions require that we commence an action in short order to protect the public's interests should you fail or refuse to comply with your obligations under Massachusetts law as the property owner. If you wish to discuss your intention to resolve these issues to avoid further action, please contact me at the telephone number below or at monica.passeno@state.ma.us.

We look forward to your prompt reply.

Very truly yours,



Monica Passeno
Assistant Attorney General



Enclosure

cc: **Via Email**
Darlene M. Coyle, RS
Health Inspector
Department of Development & Inspectional Services
Town of Auburn



EXHIBIT II

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
Civil Action No.

ATTORNEY GENERAL for the
COMMONWEALTH OF
MASSACHUSETTS and the TOWN OF
AUBURN,

Petitioners,

v.

ESTATE OF [REDACTED] as owner
of the property at [REDACTED], Auburn
Massachusetts;

Respondent.

AFFIDAVIT OF DARLENE M. COYLE

DARLENE M. COYLE, for her affidavit under oath, states:

1. I am currently employed by the Town of Auburn and its Board of Health as the Town's Director of Public Health. I have held this position since 2013. Previously, I was employed by the Town of Auburn as a health inspector, a position I held from 2012-2013. Prior to that, I was employed by the Town of Leicester Board of Health as the Town's Director of Public Health, a position I held from 2006 to 2011. From 2011 to 2012, I served as the City of Worcester's Regional Environmental Health Coordinator, following the Town of Leicester's joining the City of Worcester Department of Public Health's

regional initiative. In that position, I maintained responsibility for public health inspections in the Town of Leicester and other nearby towns.

2. In my position as Director of Public Health for the Town of Auburn, I am an authorized agent of the Town's Board of Health for the purpose of investigating and inspecting any records, condition, equipment, practice or property relating to the Board of Health's duties under the Massachusetts State Sanitary Code, G.L. c. 111, § 127A, and the regulations promulgated thereunder, 105 CMR 400.00-410.00 (hereinafter "the Code").

3. Through my position, I am familiar with the conditions at the property located at [REDACTED] Auburn, Massachusetts (the "Property") as set forth in this affidavit.

4. The Property is a single family home which has been vacant since July of 2016 when the Board of Health deemed the Property unfit for human habitation.

5. On or about July 20, 2016, the Board of Health received a report from the Auburn Fire Department regarding the condition of the Property. The Fire Department informed the Board of Health of the poor structural condition at the Property.

6. In response to the Fire Department's information, the Board of Health inspected the Property with the Auburn Building Department and the Auburn Police Department on July 28, 2016. The deceased owner's son, [REDACTED] Jr. was present at the inspection and allowed the Board of Health access to the interior. The Board of Health noted the following conditions during this inspection:

- a. The Property's ceilings, walls, and floors were in severe disrepair in violation of 105 CMR 410.500.
- b. The Property's floor joists were in disrepair in violation of 105 CMR 410.500.

- c. The Property's water pipes were broken in violation of 105 CMR 410.350(A) and 105 CMR 410.750(K) and (P).
- d. The Property's smoke detectors were not working in violation of 105 CMR 410.482.
- e. The Property's furnace was not working in violation of 105 CMR 410.200 and 105 CMR 410.750(B).
- f. The Property contained an extensive accumulation of trash, rubbish, and debris making further inspection of the Property difficult in violation of 105 CMR 410.451 and 105 CMR 410.750(G).

7. After inspecting the main floor and basement the Board of Health and the Building Department determined that the Property was not safe to continue an inspection.

8. As a result of this inspection, the Board of Health issued an inspection report on July 28, 2016. *See* Exhibit A (copy of the July 28, 2016 inspection report).

9. On July 28, 2016, the Board of Health also issued a letter ordering that the violations be corrected, declaring the Property unfit for human habitation, and condemning the Property. This letter was mailed to [REDACTED] and posted at the Property. *See* Exhibit B (copy of the July 28, 2016 letter).

10. On or about August 16, 2016, the Board of Health received a complaint that Mr. [REDACTED] was entering the Property. As a result of this complaint, the Board of Health sent a letter to Mr. [REDACTED] reminding him of the July 28, 2016 order and condemnation. This letter also ordered Mr. [REDACTED] to board and secure the Property and remove any and all debris that is an environmental or fire hazard from the Property. This letter informed Mr.

█████ that the Board of Health would take steps to make the Property safe if Mr. █████ did not. *See Exhibit C (copy of August 16, 2016 letter).*

11. Mr. █████ did not secure the Property. As a result, the Town boarded and secured the Property.

12. I continued to monitor the Property and found that no repairs were made.

13. On March 9, 2017, the Property was again unsecure with evidence that a lock was tampered with. The Town again secured the Property.

14. The Board of Health continued to monitor the Property for the next year and a half, and observed no work being done to bring the Property back into compliance with the Sanitary Code.

15. On August 24, 2017, I inspected the exterior of the Property with staff from the Attorney General's Office, in order to evaluate the Property for inclusion into the Attorney General's Abandoned Housing Initiative. When we visited the Property on this date, I observed the following violations of the State Sanitary Code:

- a. The Property's exterior contained an extensive accumulation of trash, rubbish, and debris in violation of 105 CMR 410.602 and 105 CMR 410.750(O).
- b. The Property was severely overgrown which can invite and harbor vermin in violation of 105 CMR 410.550(D) and 105 CMR 410.750(I).
- c. The Property's structural elements were further compromised raising additional public health and safety concerns in violation of 105 CMR 410.500.

16. As a result of this inspection, the Board of Health issued an Order to Correct on August 29, 2017. *See Exhibit D (copy of August 29, 2017 Order to Correct).*

17. I have continued to monitor the Property and have observed no work in progress throughout the remainder of 2017.

18. On or about April 20, 2018, I received a signed petition from the neighbors of the Property detailing their concerns of the dangers created due to the condition of the Property, such as the presence of hazardous materials and an influx of vermin. *See Exhibit E (copy of April 20, 2018 Neighborhood Petition).*

19. On May 21, 2018, the Town Manager received a letter from the Respondent requesting permission to access the Property in order to retrieve certain personal belongings. *See Exhibit F (copy of April 10, 2018 letter from Respondent).* Given the severe structural damage to the Property, the Town determined that a significant threat of injury exists to anyone entering the Property and denied the Respondent's request. The Respondent was notified of the Town's decision via certified and first class mail on June 29, 2018. *See Exhibit G (copy of June 29, 2018 letter from town).* This letter was returned due to postal error, and the Town subsequently re-issued the letter on July 19, 2018.

20. On or about July 18, 2018, the town was notified that mail addressed to the Respondent was to be held for delivery until August 6, 2018. As of October 1, 2018, the letter dated June 29, 2018 and mailed on July 19, 2018 via first class mail has not been returned or unclaimed, however the certified mail has been returned as unclaimed.

21. The Respondent has repeatedly failed to address the Code violations that render the Property a hazard to the public health and safety, and the unattended Property has been allowed to continue to deteriorate. More Code violations will undoubtedly result if the

Property is not addressed immediately, and the public health and safety hazard will continue unabated.

22. The Town Continued to monitor the property through 2018 and found no progress toward resolving the severe conditions concerns at the Property. Attached as Exhibit H are miscellaneous photographs, accurately depicting the Property's condition as of my 10-2-18, 2018 my most recent visit.

Signed under pains and penalties of perjury this 9th day of October, 2018

A handwritten signature in cursive script, reading "Darlene M. Coyle". The signature is written in dark ink and is positioned above the printed name and title.

Darlene M. Coyle, RS
Health Inspector
Auburn Department of Development and
Inspectional Services

EXHIBIT A

HOUSING INSPECTION REPORT

Date complaint received _____

Date of inspection: _____



BOARD OF HEALTH TOWN OF AUBURN

104 Central Street
Auburn, MA 01501
508-832-7703 Fax: 508-832-7729

1/2

Complainant/Tenant

Name _____ Phone _____

Address _____

Town _____ State _____ Zip _____

Owner/Agent

Name _____ Phone declined

Address _____

Town Auburn State MA Zip 01501

Description of conditions constituting violations

Violations in 105 CMR 410.000

- .100 Kitchen facilities
- .150 Bathroom facilities
- .151 Shared facilities
- .152 Privies/chem. Toilets
- .180 Water supply
- .190 Water Temperature
- .200 Heating facilities
- .201 Heat temperature
- .202 Appliance venting
- .250 Light/elect.-habitable rm.
- .251 Light/elect.-kitchen.
- .252 Light/elect.-bathrooms.
- .253 Light/elect.-non-habitable rms.
- .254 Lights-common areas
- .255 Amperage
- .256 Temporary wiring
- .257 Light obstructions
- .280 Venting - occupied space
- .281 Ventilation shutoff
- .300 Sewerage disposal
- .350 Plumbing connections
- .351 Owner-installed facilities
- .352 Tenant-installed facilities
- .353 Asbestos materials
- .354 Metering of utilities
- .355 Provision of heating fuel
- .400 Minimum square footage
- .401 Ceiling height
- .402 Grade level
- .430 Temporary housing
- .450 Means of Egress
- .451 Egress accessibility
- .452 Egress Condition
- .480 Door/Window locks
- .481 Owner name posted
- .482 Smoke detectors
- .483 Emrg. Lights/exit signs
- .484 Building Identification
- .500 Structural elements
- .501 Weather/light elements
- .502 Lead paint
- .503 Protective rubb/ walk
- .504 Non-absorbent surfaces
- .505 Tenant's responsibility
- .550 Rodent/ insect infestation
- .551 Screens/ windows
- .552 Screens/ doors
- .553 Screen installation
- .600 Storage of garbage
- .601 Collection of garbage
- .602 Sanitary conditions
- .620 Curtailment prohibited

The Town Board of Health Building Department performed a scheduled inspection with the property owner Stanley Borko. Members of the Auburn Police were present upon request due to the safety concern previously identified by Fire Dept. Owner gave permission to enter yet chose not to accompany the inspectors into the property. Upon entry, there was an immediate concern for whether or not we could walk through the structure, due to ceiling rotors, walls in severe disrepair. The Building Commissioner & myself went down to the basement.

☒ Above violations may endanger or materially impair the health, safety, and well being of the occupants or public.

Date of insp _____

Are there children less than six years of age residing in the dwelling unit?

☒ YES ☐ NO

Date of re-insp _____

Tenant was offered a comprehensive inspection:

☐ YES ☒ NO

This inspection report is signed and certified under the pains and penalties of perjury

Inspector <u>[Signature]</u>	(print) <u>S. Cayle</u>	Date: <u>7-28-10</u>
Tenant <u>[Signature]</u>	(print) _____	Date: <u>7/28/10</u>

HOUSING INSPECTION REPORT

Date complaint received: _____

Date of inspection: _____



BOARD OF HEALTH TOWN OF AUBURN

104 Central Street
Auburn, MA 01501
508-832-7703 Fax: 508-832-7729

Complainant/tenant

Name _____ Phone _____

Address _____

Town _____ State _____ Zip _____

Owner/Agent

Name _____

Address _____

Town Auburn State MA Zip 01501

Description of conditions constituting violations

Violations in 105 CMR 410.000	
.100	Kitchen facilities
.150	Bathroom facilities
.151	Shared facilities
.152	Privies/chem. Toilets
.180	Water supply
.190	Water Temperature
.200	Heating facilities
.201	Heat/temperature
.202	Appliance venting
.250	Light/elect.-habitable rm.
.251	Light/elect.-kitchen.
.252	Light/elect.-bathrooms.
.253	Lights-non-habitable rms.
.254	Lights-common areas
.255	Amperage
.256	Temporary wiring
.257	Light obstructions
.280	Venting - occupied space
.281	Ventilation shut off
.300	Sewerage disposal
.350	Plumbing connections
.351	Owner installed facilities
.352	Tenant installed facilities
.353	Asbestos materials
.354	Metering of utilities
.355	Provision of heating fuel
.400	Minimum square footage
.401	Ceiling height
.402	Grade level
.430	Temporary housing
.450	Means of Egress
.451	Egress accessibility
.452	Egress Condition
.480	Door/Window locks
.481	Owner name posted
.482	Smoke detectors
.483	Emergency light exit signs
.484	Building Identification
.500	Structural elements
.501	Weathertight elements
.502	Lead paint
.503	Protective rubb/walks
.504	Non-absorbent surfaces
.505	Tenants responsibility
.550	Rodent/Insect infestation
.551	Screened windows
.552	Screened doors
.553	Screen Installation
.600	Storage of garbage
.601	Collection of garbage
.602	Sanitary conditions
.620	Curtainment prohibited

• There were structural deficiencies observed; floor joists are rotted and broken and not supporting the exterior wall.

• There are broken water pipes.

• There is no working furnace.

• There is no working smoke detector.

Due to these issues a determination was made to not continue with the inspection due to safety concerns.

The Building will be posted as UNSAFE by Building Dept and unfit for human habitation. therefore by the BOH.

The owner has maintained that he does not reside here and therefore property remaining vacant.

Above violations may endanger or materially impair the health, safety, and well being of the occupants or public.

Date of insp _____

Are there children less than six years of age residing in the dwelling unit?

☐ YES ☒ NO

Date of re-insp _____

Tenant was offered a comprehensive inspection:

☒ YES ☐ NO

This inspection report is signed and certified under the pains and penalties of perjury

Inspector <u>[Signature]</u>	(print) <u>D. Coyle</u>	Date: <u>7-28-18</u>
Tenant <u>[Signature]</u>	(print)	Date: <u>7/28/18</u>

EXHIBIT B

Town of Auburn, Massachusetts
Department of Development & Inspectional Services

Julie Jacobson
Town Manager



Darlene M. Coyle, RS
Director of Development & Inspectional Services
Director of Public Health

Board of Health
Raymond E. Gauthier, Chairman
Steven R. Nordborg, Vice-Chairman
Carolyn Griffin, Member

July 28, 2016

Certified Mail 7015 0640 0004 1180 0322
Regular Mail
Posted at Dwelling

[REDACTED]
Auburn, MA 01501

RE: Sanitary Conditions at
[REDACTED], AUBURN, MA 01501

On July 28, 2016, the Board of Health, acting under the authority of Massachusetts General Laws, Chapter 111, Sections 127A and 127B as most recently amended and Chapters I and II of the Sanitary Code has caused an examination to be made of the dwelling located at [REDACTED] Street in the Town of Auburn, MA. According to the records at the Assessor's office you are the owner/agent of the dwelling.

This was a scheduled inspection with you the property owner, and both the Board of Health and Building Departments were present. This inspection was required in response to conditions observed by public safety officials on 7-15-16.

The examination has revealed that there are violations of the Minimum Standards of Fitness for Human Habitation 105 CMR 410.000 of the above mentioned Sanitary Code existing on this property.

In a report of the examination made by the inspector, non-compliance with the Minimum Standards of Fitness for Human Habitation as required by the Code was found, as detailed below:

VIOLATIONS

24 Hour Order**

410.750 (N): Conditions Deemed to Endanger or Impair Health or Safety
410.482: Smoke Detectors and Carbon Monoxide Alarms

104 Central Street
Auburn, MA 01501
Telephone: (508) 832-7703
Fax: (508) 832-4219
Web site: www.auburnguide.com

RE: [REDACTED], AUBURN, MA 01501

1. There are no working smoke or carbon monoxide detectors observed in the dwelling. Immediately, you must install smoke and carbon monoxide detectors in accordance with the Fire Department and provide a Certificate of Compliance to this office.

410.750 (B): Conditions Deemed to Endanger or Impair Health or Safety

410.200: Heating Facilities Required

1. There is no working furnace in the basement.
2. There is a wood stove in the main living area that is not in working order.

410.750 (A): Conditions Deemed to Endanger or Impair Health or Safety

410.180: Potable Water

1. There are observed broken water pipes in the basement, thus not allowing a potable water supply. Additionally, the Auburn Water District has confirmed that the public water supply was terminated in 2012, and the meter was removed.

410.750 (P): Conditions Deemed to Endanger or Impair Health or Safety

410.350 (A) & (B): Plumbing Connections

1. Due to the fact that there is no working plumbing system, the water distribution system is absent for all basic needs of the occupant to kitchen sink, wash basin, tub/shower, and toilet facilities.

410.750 (K): Conditions Deemed to Endanger or Impair Health or Safety

410.500 Owner's Responsibility to Maintain Structural Elements

1. There were structural deficiencies observed within the dwelling. Specifically in the basement, there were rotted or broken floor joists not capable of supporting walls.
2. Additionally, the roof was in severe disrepair, causing roof shingles to peel away; there were shingles observed on the ground. A tarp was observed on the roof.
3. Due the excessive clutter and debris, the structural integrity cannot be determined if there is chronic dampness due to the broken water pipes.
4. There are water damaged walls, exposed beams, bulging ceilings and crumbling or missing sheetrock observed in the dwelling.

410.750 (G): Condition Deemed to Endanger or Impair Health or Safety

410.451 Egress Obstruction

1. The accumulation of clutter and debris effectively blocks pathways to exits and access to the means of egress from this dwelling unit. The front interior hallway is blocked by a debris, chemicals and overall clutter of personal items. There are tripping hazards and

July 28, 2016

Page 3/4

RE: [REDACTED], AUBURN, MA 01501

exposure to fire accelerants and entrapment observed causing a very hazardous situation inside the dwelling.

2. There are numerous amounts of clutter in every area observed, which blocks any clear passageway for the occupant.

As a result of this inspection, the Board of Health declared the dwelling Unfit for Human Habitation & Condemned, and ordered the dwelling vacated and secured immediately. You, as the owner have maintained that you do not reside in the dwelling and agreed to keep the property vacant. The property has been posted and written notice is provided to you in this order.

Due to the existence of the outstanding violations and declaration of the property as Unfit for Human Habitation & Condemnation, a hearing has been scheduled on August 8, 2016 at 6:10 PM in the Planning Board Meeting Room, Second Floor, at the Auburn Town Hall, 104 Central Street, Auburn, MA 01501.

The Board will discuss and review the facts of the matter and any affected party will be given an opportunity to be present testimony, witnesses or documentary evidence and to show why the dwelling or portion thereof should or should not be found Unfit for Human Habitation and Condemned, and determine if the declaration should be reversed.

You have the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices and other documentary notices in the possession of the Board of Health; the right to be represented at the hearing; and that any affected party has the right to appear at said hearing.

This is an important legal document. It may affect your rights. You should have it translated.

If you have any questions regarding this matter you can contact me at the Town offices at 104 Central Street, Auburn, MA or by phone at (508) 832-7703.

Sincerely,



Darlene M. Coyle, R.S.
Director of Public Health

July 28, 2016

Page 4/4

RE: [REDACTED], AUBURN, MA 01501

C. Board of Health

Raymond Gauthier, Chairman

Julie A. Jacobson, Town Manager

Caleb Moody, Building Inspector

Stephen Coleman, Fire Chief

Andrew Sluckis, Police Chief

NOTE: Due to the fact that the interior inspection was limited, due to the safety issues identified by the Building official, these violations of the State Sanitary Code are just what were observed by the Board of Health official during this inspection. There are further violations of the code as observed in photographs taken by public safety officials on a previous site visit, that were not included in this report.

EXHIBIT C

Town of Auburn, Massachusetts

Department of Development & Inspectional Services

Julie Jacobson
Town Manager



Darlene M. Coyle, RS
Director of Development & Inspectional Services
Director of Public Health

Board of Health
Raymond E. Gauthier, Chairman
Steven R. Nordborg, Vice-Chairman
Carolyn Griffin, Member

August 16, 2016

Certified Mail 7015 0640 0004 1180 0339
Regular Mail
Posted at Dwelling

[REDACTED]
[REDACTED]
Auburn, MA 01501

RE: Sanitary Conditions at
[REDACTED], AUBURN, MA 01501

On July 28, 2016, the Board of Health, acting under the authority of Massachusetts General Laws, Chapter 111, Sections 127A and 127B as most recently amended and Chapters I and II of the Sanitary Code has caused an examination to be made of the dwelling located at [REDACTED] Street in the Town of Auburn, MA and issued you an order declaring this property Unfit for Human Habitation; this order was in concurrence with an order issued by the Building Department for an Unsafe Structure.

It has come to my attention that you may still be entering this dwelling.

24 Hour Order**

The Board of Health has ordered that the property be immediately boarded and secured against entry; this includes you as the owner. Further, you are ordered to immediately remove any and all debris that is an environmental or fire hazard from the property.

Due to the serious nature of the situation, should you not take immediate action; the town will move forward to ensure that the property is made safe.

In accordance with the State Sanitary Code 105 CMR 410.960, Correction of Violations by the Board of Health; Expenses; the town reserves the right to charge the responsible party with any and all expenses incurred.

104 Central Street
Auburn, MA 01501
Telephone: (508) 832-7703
Fax: (508) 832-4219
Web site: www.auburnguide.com

August 16, 2016

Page 2/2

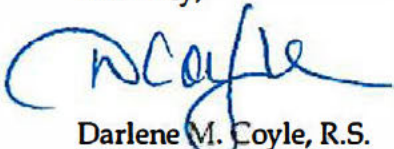
RE: [REDACTED] AUBURN, MA 01501

You have the right to request a hearing within 24 hours of receipt of this order, you have the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices and other documentary notices in the possession of the Board of Health; the right to be represented at the hearing; and that any affected party has the right to appear at said hearing.

This is an important legal document. It may affect your rights. You should have it translated.

If you have any questions regarding this matter you can contact me at the Town offices at 104 Central Street, Auburn, MA or by phone at (508) 832-7703.

Sincerely,



Darlene M. Coyle, R.S.
Director of Public Health

C. Board of Health
Raymond Gauthier, Chairman
Julie A. Jacobson, Town Manager
Caleb Moody, Building Inspector
Stephen Coleman, Fire Chief
Andrew Sluckis, Police Chief

EXHIBIT D

Town of Auburn, Massachusetts
Department of Development & Inspectional Services

Julie A. Jacobson
Town Manager



Darlene M. Coyle, RS
Director of Development & Inspectional Services
Director of Public Health

RECEIVED

AUG 31 2017

OFFICE OF THE ATTORNEY GENERAL
GENERAL INVESTIGATIVE DIVISION

Board of Health

Steven R. Nordborg, Chairman
Carolyn Griffin, Vice-Chairman
Eric Otterson, Member

August 29, 2017

Certified Mail 7012 1010 0000 6926 9446
Regular Mail
Posted at Dwelling

[REDACTED]
Auburn, MA 01501

RE: Sanitary Conditions at
[REDACTED] AUBURN, MA 01501

On August 25, 2017, the Board of Health, acting under the authority of Massachusetts General Laws, Chapter 111, Sections 127A and 127B as most recently amended and Chapters I and II of the Sanitary Code has caused an examination to be made of the dwelling located at [REDACTED] Street in the Town of Auburn, MA. According to the records at the Assessor's office you are the owner/agent of the dwelling.

This inspection was required in response to numerous complaints received by the Board of Health regarding conditions at the property.

As you are aware, the Board of Health had the property boarded & secured last year when you failed to comply with the housing order issued on 8-16-16. Earlier this year, on 3-9-17 the town took action once again to secure the property, when it was observed that the existing lock had been tampered with and access to the lower level was made. While the dwelling remains vacant and uninhabited as observed on 8-25-17, the property itself continues to deteriorate and poses concerns to public health and safety.

14 Day Order

You are hereby ordered to correct the following violations of the Minimum Standards of Fitness for Human Habitation 105 CMR 410.000 of the above mentioned Sanitary Code existing on this property as detailed below:

104 Central Street
Auburn, MA 01501
Telephone: (508) 832-7703
Fax: (508) 832-4219
Web site: www.auburnguide.com

August 29, 2017

Page 2/3

RE: [REDACTED], AUBURN, MA 01501

410.602 Maintenance of Areas Free from Garbage & Rubbish

410.750 (O): Condition Deemed to Endanger or Impair Health or Safety

1. There is an accumulation of trash, clutter and debris including abandoned belongings on the porches and around the yard; piles of pallets; and an unregistered auto vehicle in disrepair in the front yard. If there is any emergency at this property, all of this debris poses a limitation to any possible action needed; a fire hazard; and a safety threat to any first responder. You must remove all trash, clutter, debris, abandoned belongings, pallets and the vehicle from the property within 14 days.

410.550 (D) Extermination of Insects, Rodents and Skunks

410. 750 (I): Condition Deemed to Endanger or Impair Health or Safety

1. There is overgrown vegetation all around the property. You must cut down all overgrown vegetation within 14 days and maintain so that it does not cause harborage areas for rodents.

410.750 (K): Conditions Deemed to Endanger or Impair Health or Safety

410.500 Owner's Responsibility to Maintain Structural Elements

1. The dilapidated condition of the structure continues to deteriorate over time and becomes further compromised. The structure is a concern for safety for any first responder, as well as to public health and safety of the general public. Within 14 days, you must identify to the Board of Health what your intentions are in regards to repairing or razing this unsafe structure.

You have the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices and other documentary notices in the possession of the Board of Health; the right to be represented at a hearing; and that any affected party has the right to appear at said hearing.

This is an important legal document. It may affect your rights. You should have it translated.

If you have any questions regarding this matter you can contact me at the Town offices at 104 Central Street, Auburn, MA or by phone at [REDACTED]

Sincerely,



Darlene M. Coyle, R.S.
Director of Public Health

August 29, 2017

Page 3/3

RE: [REDACTED], AUBURN, MA 01501

C. Board of Health

Steven R. Nordborg, Chairman

Julie A. Jacobson, Town Manager

Caleb Moody, Building Commissioner

Stephen Coleman, Fire Chief

Andrew Sluckis, Police Chief

Monica Passeno, Assistant Attorney General

EXHIBIT E

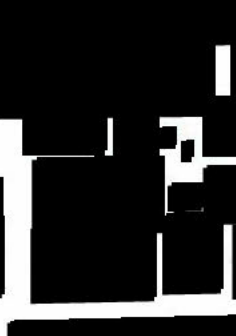


EXHIBIT F

April 10, 2018

RECEIVED
TOWN MANAGER'S OFFICE

MAY 21 2018

AUBURN, MA 01501

Julie Jacobson
Town Manager
Town of Auburn Massachusetts
102 Central Street
Auburn MA 01501

CERTIFIED MAIL: 7017 0190 0000 8358 1473

Dear Ms. Jacobson:

I am requesting an OK to retrieve my personal property belongings which are not abandoned within my family's dilapidated home at [REDACTED] Auburn. Several town employees have impeded this action.

Time is of the essence.

I will assume all responsibility for my security and safety.

The personal belongings are, but are not limited to, work tools, educational diplomas, healthcare/medical equipment, heirloom photographs, seasonal clothing, electronics, and office supplies.

Again, the aforementioned personal property is not abandoned.

I may be contacted via email at stanbocko@gmail.com or postal mail at [REDACTED] Auburn MA 01501.

Respectfully, [REDACTED]

RECEIVED

MAY 22 2018

TOWN OF AUBURN
DDIS

cc: file

EXHIBIT G

Town of Auburn, Massachusetts
Department of Development & Inspectional Services



Julie A. Jacobson
Town Manager

Darlene M. Coyle, RS
Director of Development & Inspectional Services
Director of Public Health

Board of Health
Steven R. Nordborg, Chairman
Carolyn Griffin, Vice-Chairman

June 29, 2018

Certified Mail 7015 0640 0004 1180 0445
Regular Mail

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED], AUBURN, MA 01501

Dear Mr. Borko:

In response to your letter dated April 10, 2018 (which was received by the Town Manager's Office on May 21, 2018) please be advised that the Town is currently working with the Massachusetts Attorney General's Office to prepare a Petition to the Worcester Housing Court for the appointment of a Receiver for the property at [REDACTED], Massachusetts.

The property, as you know, is in significant despair, and in the opinion of the Building Commissioner of the Town of Auburn, poses a significant threat of injury to anyone who enters such structure. In a circumstance such as this, the Town of Auburn cannot authorize your entry onto the property.

Accordingly, the Town will work to appoint a Receiver, who will be responsible for making decisions with regards to the property, and then reporting back to the Court.

June 29, 2018

page 2/2

RE: [REDACTED], AUBURN, MA 01501

If the appointment of a Receiver is approved by the Court, the Receiver may determine that the premises are structurally safe enough for you to access the property to remove your personal belongings, or they will make a determination of what work needs to be done to make the property safe.

I will keep you informed as to the progress of the Petition in the Worcester Housing Court, in the meantime, please feel free to contact my office if you have any questions. I can be reached at the Town at [REDACTED]

Sincerely,



Darlene M. Coyle, R.S.

Director of Development & Inspectional Services

Director of Public Health

C. Board of Health

Steve Nordborg, Chairman

Julie A. Jacobson, Town Manager

Caleb Moody, Building Commissioner

Stephen Coleman, Fire Chief

Andrew Sluckis, Police Chief

104 Central Street

Auburn, MA 01501

Telephone: (508) 832-7703

Fax: (508) 832-7729

Web site: www.auburnguide.com

EXHIBIT H











EXHIBIT III

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
Civil Action No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
the TOWN OF AUBURN,

Petitioners,

v.

ESTATE OF [REDACTED] as owner of
the property at [REDACTED], Auburn
Massachusetts;

Respondent.

AFFIDAVIT OF JUSTIN BRIGHAM

JUSTIN BRIGHAM for his affidavit under oath states:

1. I am currently employed as a captain for the Auburn Fire and Rescue Department ("Fire Department"). I have held this position since March of 2017. I have served with the Fire Department for over ten (10) years.
2. In this position, I am an authorized agent of the Fire Department for the purpose of enforcing any ordinances, rules, and regulations under the Massachusetts State Fire Code, and the regulations promulgated thereunder, 527 CMR 1.00-50.00 (hereinafter "the Code").
3. Through my position as captain with the Fire Department, I am familiar with the conditions at the property located at [REDACTED], Auburn, Massachusetts (the "Property") as set forth in this affidavit.

4. On or about July 15, 2016, the Fire Department received a call for a well-being check at the Property.

5. At this check, no one answered the door and the Fire Department gained access through an open basement door. The Fire Department searched the home and found that no one was inside. The Fire Department spoke to a neighbor who informed us that the resident had been hospitalized for about a week.

6. During the search of the Property, Fire Fighter Rick Nicholson fell through a section of the kitchen floor.

7. As a result of the poor structural conditions observed in the Property, the Fire Department took pictures of the Property and notified the Board of Health the condition of the Property. *See Exhibit A* (copy of pictures taken by the Fire Department on July 15, 2016)

8. As a result of this well-being check, the Fire Department issued a report on July 15, 2016. *See Exhibit B* (copy of July 15, 2016 report).

Signed under pains and penalties of perjury this 28 day of September, 2018.

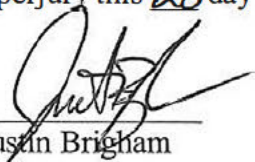

Justin Brigham
Captain
Auburn Fire and Rescue Department

EXHIBIT A







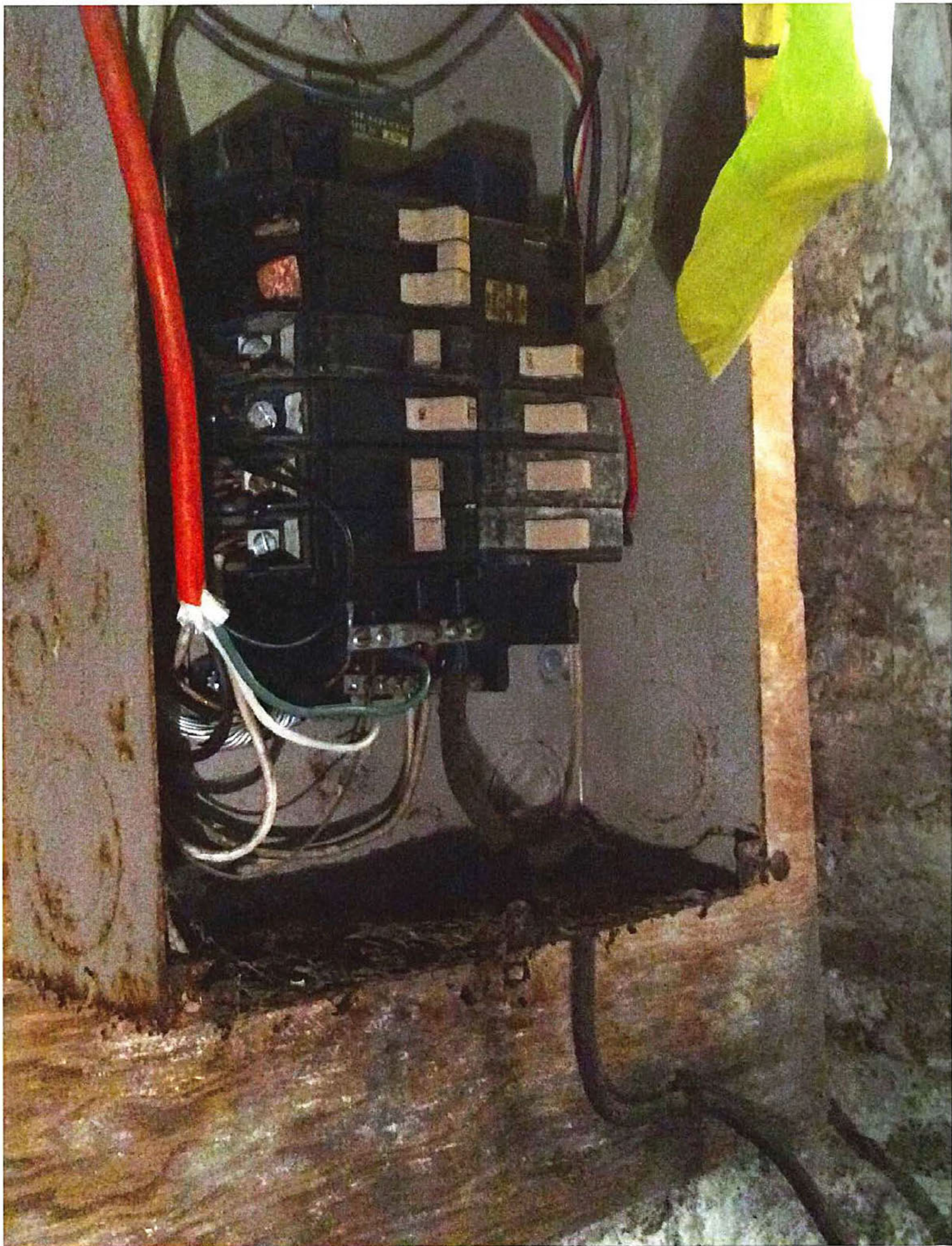






EXHIBIT B

A	<u>27017</u>	<u>MA</u>	<u>07/15/2016</u>	<u>HQ</u>	<u>1601880</u>	<u>000</u>	<input type="checkbox"/> Delete <input type="checkbox"/> Change <input type="checkbox"/> No Activity	<div style="border: 1px solid black; padding: 5px; text-align: center;"> NFIRS-1 Basic </div>
	FDID	State	Incident Date	Station	Incident Number	Exposure		

C Incident Type 622 No Incident found on arrival at disp		E1 Dates & Times Mon. Day Year Time Alarm 07/16/16 13:56 Arrival <input checked="" type="checkbox"/> Arrival 07/16/16 14:00 Control <input type="checkbox"/> Control 00/00/00 00:00 Last Unit <input checked="" type="checkbox"/> Last Unit 07/15/16 14:42 Clear <input checked="" type="checkbox"/> Clear				E2 Shifts / Alarms 1 0 01 Shift Alarms Dist.		
D Aid Given or Received 1 <input type="checkbox"/> Received 2 <input type="checkbox"/> Automatic Rec'd 3 <input type="checkbox"/> Given 4 <input type="checkbox"/> Automatic Given 5 <input type="checkbox"/> Other Aid Given N <input checked="" type="checkbox"/> None		Their FDID Their State 0000000 Their Incident				E3 Special Studies ID# Value		
MA Only <input type="checkbox"/> Critical Incident <input type="checkbox"/> Team Mobilized <input type="checkbox"/> Circumstances								

Completed Modules	H1 Casualties	H3 Hazmat Release	I Mixed Use Property
<input type="checkbox"/> Fire-2	<input checked="" type="checkbox"/> None	N <input checked="" type="checkbox"/> None	NN <input checked="" type="checkbox"/> Not Mixed
<input type="checkbox"/> Structure-3	Deaths Inj.	1 <input type="checkbox"/> Natural Gas	10 <input type="checkbox"/> Assembly Use
<input type="checkbox"/> Civ. Casualty-4	Fire Service <u>0</u> <u>0</u>	2 <input type="checkbox"/> Propane Gas	20 <input type="checkbox"/> Education Use
<input type="checkbox"/> Fire Casualty-5	Civilian <u>0</u> <u>0</u>	3 <input type="checkbox"/> Gasoline	33 <input type="checkbox"/> Medical Use
<input type="checkbox"/> EMS-6		4 <input type="checkbox"/> Kerosene	40 <input type="checkbox"/> Residential Use
<input type="checkbox"/> Hazmat-7		5 <input type="checkbox"/> Diesel Fuel/Fuel Oil	51 <input type="checkbox"/> Row of Stores
<input type="checkbox"/> Wildland-8	H2 Detector	6 <input type="checkbox"/> Household Solvents	53 <input type="checkbox"/> Enclosed Mall
<input type="checkbox"/> Apparatus-9	Alerted Occupants	7 <input type="checkbox"/> Motor Oil	58 <input type="checkbox"/> Business & Resid.
<input type="checkbox"/> Personnel-10	1 <input type="checkbox"/> Yes	8 <input type="checkbox"/> Paint	69 <input type="checkbox"/> Office Use
<input type="checkbox"/> Arson-11	2 <input type="checkbox"/> No	0 <input type="checkbox"/> Other	80 <input type="checkbox"/> Industrial Use
	U <input type="checkbox"/> Unknown		63 <input type="checkbox"/> Military Use
			65 <input type="checkbox"/> Farm Use
			00 <input type="checkbox"/> Other Mixed Use

1st Company to Arrive	Non EMS	J Property Use	419
AMB 1	Non EMS 7361		1 or 2 family dwelling

K1 Person / Entity Involved

		Business name (if applicable)			Phone	
Check if same address as incident	Prefix	First Name	MI	Last Name	Suffix	
	Number	Prefix	Street or Highway		Street Type	Suffix
	Post Office Box	Apt./Suite/Room		City		
	State	Zip				

K2 Owner

		Business name (if applicable)			Phone	
Check if same address as incident	Prefix	First Name	MI	Last Name	Suffix	
	Number	Prefix	Street or Highway		Street Type	Suffix
	Post Office Box	Apt./Suite/Room		City		
	State	Zip				
		Insurance Co.		Total Insurance		

L Remarks

Called to address for a wellbeing check on male who has not been seen for approximately a week. On arrival no answer at the door, gained access to the residence through open basement door. Searched the home and found no persons inside. Neighbor stated the person living inside the residence has been hospitalized for approximately a week. Companies cleared.

While searching the home for resident FF. Nicholson Foot and Leg fell through a section of the kitchen floor. With the poor structural integrity noted to the floor and numerous other areas of the structure in poor structural condition, several photos of the building taken and Board of Health notified of findings.

M Authorization

033	X	Lieutenant		07/15/2016
Officer in charge ID	JUSTIN BRIGHAM	Position or Rank	Assignment	Date
033	X	Lieutenant		07/15/2016
Member Making Report	JUSTIN BRIGHAM	Position or Rank	Assignment	Date

EXHIBIT IV

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
Civil Action No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
the TOWN OF AUBURN,

Petitioners,

v.

ESTATE OF [REDACTED] as owner of
the property at [REDACTED] Auburn
Massachusetts;

Respondent.

AFFIDAVIT OF CALEB MOODY

CALEB MOODY for his affidavit under oath states:

1. I am currently employed as the Building Commissioner for the Town of Auburn. I have held this position since 2015. Prior to serving as a Building Commissioner, I served as a Local Inspector for the Town of Auburn Building Department from 2014 - 2015.
2. In this position, I am an authorized agent of the Town of Auburn's Building Department for the purpose of investigating and inspecting any ordinances, rules, and regulations under the Massachusetts State Building Code, and the regulations promulgated thereunder, 780 CMR 100.00 – 124.00 (hereinafter "the Code").

3. Through my position as Building Commissioner for the Town of Auburn, I am familiar with the conditions at the property located at [REDACTED], Auburn, Massachusetts (the "Property") as set forth in this affidavit.

4. The Property is a single family dwelling which has been vacant since the Building Department determined the structure was unsafe for human habitation after an inspection in July of 2016.

5. On or about July 15, 2016, the Board of Health received a report from the Auburn Fire Department regarding the condition of the Property. The Fire Department informed the Board of Health of the poor structural condition at the Property.

6. In response to the Fire Department's information, Building Department accompanied the Board of Health on an inspection of the Property on July 28, 2016. The deceased owner's son, [REDACTED] Jr. was present at the inspection and allowed the Building Department access to the interior. The Building Department noted the following conditions during this inspection:

- a. The Property's exterior structure appeared to be in extreme disrepair.
- b. The Property's roof was extremely worn with shingles missing.
- c. The Property's rake and fascia board were missing exposing the interior of the structure.
- d. The Property's interior contained items stacked throughout.
- e. The Property's floor joists were rotted, broken and no longer supported by the foundation wall, after seeing the condition of the joists, I concluded the inspection due to safety concerns.

7. Upon reviewing the pictures taken by the Auburn Fire and Rescue Department, I found that the wallboard and plaster appeared to be missing from many places, the water meter was removed, the electrical panel was exposed and covered with a plastic bag, and the smoke detectors were non-functional.

8. Records from the Town of Auburn Water Department indicate that the water and heat at the Property were terminated in 2012.

9. Records from the Town indicate that the Property is not connected to the municipal sewer system.

10. As a result of this inspection, the Building Department issued an inspection report on July 28, 2016. *See Exhibit A* (copy of the July 28, 2016 inspection report).

11. This report found that the Property was unsafe for human habitation and should not be entered until the floor was repaired and approved by the Building Commissioner.

Signed under pains and penalties of perjury this 26 day of September, 2018.



Caleb Moody
Building Commissioner
Town of Auburn Building Department

EXHIBIT A

Town of Auburn, Massachusetts

Department of Development & Inspectional Services

Julie Jacobson
Town Manager



Darlene M. Coyle, RS
Director of Development & Inspectional Services
Director of Public Health

Building Department
Caleb Moody
Building Commissioner
Zoning Enforcement Officer

July 28, 2016

Posted on site, sent regular mail
and certified mail # 7015 0640 0004 1180 1459

██████████
██████████
Auburn MA 01501

Re: ██████████ Auburn, MA 01501

On July 28, 2016 in response to a notification by the Auburn Fire Department and witnessed by members of Auburn Police Department, I accompanied by the Auburn Board of Health and with the home owner's consent, performed an inspection at the property known as 10 Stone Street Auburn MA. During the site visit entry was granted by Mr. ██████████ however he declined to accompany the inspectors inside the structure.

CONDITIONS OBSERVED: A two story colonial style home built sometime prior to 1950. The exterior of the structure appears to be in an extreme state of disrepair. The roof is extremely worn and shingles are missing in many areas. There are rake and fascia boards missing exposing the interior of the structure. The photos (taken by AFD) of the interior show wallboard and or plaster missing in many places, smoke detectors that have been disabled and a water meter that has been removed. Records indicate that there has been no running water or heat in the building dating back to 2012. There is no record of the property ever being connected to the municipal sewer system. Photos also show the electrical panel exposed and covered by a plastic bag. The Auburn Fire Department report indicates that a member of emergency response team stepped through a section of the floor.

Upon entering the building on 7/28/16 and witnessing excessive items stacked throughout the structure. I immediately made my way to the basement to inspect the first floor structure. Upon inspection I witnessed many floor joists that were rotted, broken, and no longer supported by the foundation wall. Many of these joists were resting on copper water and or heat pipes. The inspection was immediately terminated due safety concerns regarding the condition of the floor structure.

The conditions described above indicate that this structure is unsafe for human habitation and should not be entered until such time that a repair to the floor is approved by the building commissioner. This structure does not meet the minimum building code requirement for a habitable space and all items must be corrected by licensed individuals prior to any future occupancy.

104 Central Street
Auburn, MA 01501
Telephone: (508) 832 7719
Fax: (508) 832 4219
Web site: www.auburnguide.com

APPLICABLE CODES:

2009 International Residential Building Code section R115.1 General.

Unsafe or dangerous structures are governed by M.G.L C. 143 S. 6, 7, 8, 9, and 10

2009 International Residential Building Code section R306.1 Toilet Facilities.

Every dwelling unit shall be provided with a water closet, lavatory, and a bathtub or shower.

2009 International Residential Building Code section R306.2 Kitchen.

Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink.

2009 International Residential Building Code section R306.3 Sewage disposal.

All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

2009 International Residential Building Code section R306.4 Water supply to fixtures.

All plumbing fixtures shall be connected to an approved water supply. Kitchen sinks, lavatories, bathtubs, showers, bidets, laundry tubs and washing machine outlets shall be provided with hot and cold water.

2009 International Residential Building Code section R314.1

Smoke detection and notification.

All smoke alarms shall be listed in accordance with UL 217 and installed in accordance with the provisions of this code and the household fire warning equipment provisions of NFPA 72

2009 International Residential Building Code section R903.1 Weather Protection General.

Roof decks shall be covered with approved roof coverings secured to the building or structure in accordance with the provisions of this chapter. Roof assemblies shall be designed and installed in accordance with this code and the approved manufacturer's installation instructions such that the roof assembly shall serve to protect the building or structure.

2009 International Residential Building Code section E3404.5 Protection of equipment.

Equipment not identified for outdoor use and equipment identified only for indoor use, such as "dry locations," "indoor use only" "damp locations" or enclosure type 1, 2, 5, 12, 12k and/or 13, shall be protected against permanent damage from weather during building construction

2009 International Property Maintenance Code section 102.2 Maintenance.

Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued from any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.

With the authority granted by the Massachusetts General Law chapter 143 §6 & 7 I am hereby revoking the occupancy permit and **ORDERING** you, the owner of record for this property, to correct the above cited violations immediately. Any continued occupancy of the building will constitute a direct violation of this notice and may be subject to prosecution.

If any work to comply with this order requires a building permit as determined by the Massachusetts State Building Code you must apply for and obtain such permit from the Town of Auburn Department of Development and Inspectional Services, division of the Building Department

If you or any party is aggrieved by this order you may request a hearing to appeal. All requests for hearings must be submitted as outlined in with MGL c. 143 §100.

You or your agents have the right to inspect and request copies of any records pertaining to this matter.

If you have any questions regarding this matter you can contact me at the town offices at 104 Central Street or by phone at [REDACTED]

Your prompt attention to this issue is appreciated.

Sincerely,



Caleb Moody
Building Commissioner/
Zoning Enforcement officer

C. Board of Health
Julie A. Jacobson, Town Manager
Darlene M. Coyle, Director of DDIS
Stephen Coleman, Fire Chief
Andrew Sluckis, Police Chief

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
Civil Action No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
the TOWN OF AUBURN,

Petitioners,

v.

ESTATE OF [REDACTED] as owner of
the property at [REDACTED] Auburn
Massachusetts;

Respondent.

**PETITIONERS' MEMORANDUM IN SUPPORT OF PETITION TO ENFORCE
THE STATE SANITARY CODE AND FOR APPOINTMENT OF A RECEIVER**

I. INTRODUCTION

The petition filed herewith by Maura Healey, Attorney General for the Commonwealth of Massachusetts and the Town of Auburn (collectively, "Petitioners") seeks the enforcement of the State Sanitary Code (the "Code") and the appointment of a receiver for the property located at [REDACTED] Auburn, Massachusetts (the "Property"). The Petitioners assert that the Property has numerous long standing Code violations which pose a serious risk to the health, safety and well-being of abutters, trespassers, emergency responders and residents of the community. For the reasons stated below, this Court should exercise its statutory authority and general equity

power to appoint a receiver for the purpose of bringing the Property back into full compliance with the Code.

II. RELEVANT FACTUAL BACKGROUND

The Property is a single-family residential dwelling. Petition to Enforce the State Sanitary Code and for Appointment of a Receiver (“Petition”), ¶ 6. In its present condition, the Property is condemned, unfit for human habitation, and has the potential to endanger or materially impair the health, safety, and well-being of the general public. *Id.* ¶ 5. As such, the Property constitutes a public nuisance which justifies civil enforcement at common law, in addition to remedies otherwise provided by statute. *Id.* ¶ 15.

The Property has been vacant since it was found unfit for human habitation and condemned by the Auburn Board of Health in July of 2016. *Id.* ¶ 5. The Property contains an extensive accumulation of trash, rubbish, and debris. *Id.* ¶ 8. Additionally, many of the Property’s structural elements are in severe disrepair, including its walls, floors, joists, and ceilings. *Id.* ¶ 7. The owner of record is the Estate of [REDACTED] *Id.* ¶ 4. [REDACTED] is survived by a son, [REDACTED] Jr.. *Id.* The respondent has not taken any responsibility for the Property or made any of the repairs required to restore the Property to compliance with the Code, leaving the Property in a state which continues to pose a hazard to the public health and safety. *Id.* ¶¶ 16-18.

III. ARGUMENT

Massachusetts law requires that residential property owners ensure that their properties comply with the minimum standards of fitness for human habitation, as defined by regulations promulgated under the State Sanitary Code (the “Code”). G.L. c.111, § 127A; 105 CMR §§ 400.000 and 410.000, *et seq.* The Code and its regulations are designed to protect not only the

health and safety of the property's occupants, but also the health and safety of the general public. *See City of Boston v. Rochalska*, 72 Mass. App. Ct. 236, 245 (2008) (holding that the provisions in the Code demonstrate a "legislative intent to protect the health and safety of both the occupants of a building and members of the general public"). The fact that a property owner may find the necessary repairs to be costly is not a defense to the obligations imposed by Massachusetts law, which require full compliance with health and safety standards. *See City of Worcester v. Sigel*, 37 Mass.App.Ct. 764, 767 (1994).

In cases where a property's owner fails or refuses to comply with his or her obligations under the Code, the Court has authority under G.L. c. 111, §127I, and under its equity jurisdiction, G.L. c. 185C, § 3, to fashion a remedy that is not only in the best interest of the property, but also addresses the public health and safety hazards presented by the property. *See Judge Rotenberg Educational Center v. DMR*, 424 Mass. 430, 463 (1997) (holding that the Court "has broad and flexible powers to fashion remedies" in equity). More specifically, the Court may appoint a third party receiver to make repairs to the property, when a petitioner shows that "violations of the [Code] will not be promptly remedied unless a receiver is appointed..." G.L. c. 111, § 127I. The Massachusetts Appeals Court has held that G.L. c. 111, § 127I allows the Court to appoint a receiver to remedy persistent Code violations, even if the property in question is vacant. *See Rochalska*, 72 Mass. App. Ct. at 246 ("We conclude that G. L. c. 111, § 127I, is applicable both to vacant and occupied buildings.")

Here, the Petitioners seek the appointment of a receiver, because that remedy is in the best interest of the Property and the public. The conditions described in the Petition and its supporting affidavits have existed at the Property for over one year, and all of the parties in interest to the Property have failed to bring it into compliance with the Code.

The violations are severe, persistent, and will not be remedied unless a receiver is appointed to “promptly repair the property and maintain it in a safe and healthful condition.” *See* G.L. c. 111, § 127I. Merely boarding, securing, and cleaning the property does not comply with the requirements of the Code, nor does it address the continuing risks to public health and safety posed by an abandoned and derelict property. The statute which provides for the adoption of the Code is clear that

said [Code] may provide for the demolition, removal, repair or cleaning by local boards of health ... of any structure which so fails to comply with the standards of fitness for human habitation or other regulations in said [Code], *as to endanger or materially impair the health or well-being of the public.* [emphasis supplied]

G.L. c. 111, § 127A.

Unless a receiver is appointed, the Property will inevitably sit idle in its current state of disrepair, and remain a threat to public health and safety.

IV. CONCLUSION

Based upon the foregoing, the Court should invoke its general equitable powers under G.L. c. 111, § 127I and G.L. c. 185C, § 3 as it is in the best interests of the property and the public’s health and safety to appoint a receiver for the Property to bring it back into full compliance with the Code. Otherwise, it will continue to deteriorate, serve as a magnet for crime, vandalism and pose an immediate danger to the health, safety and well-being of the abutters and general public.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL

By her Attorney,

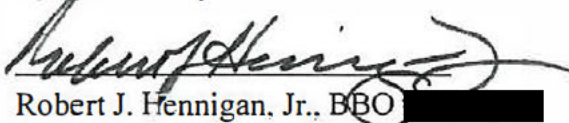


Tara Ruttle, BBO # [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

TOWN OF AUBURN

By its Attorney of Record



Robert J. Hennigan, Jr., BBO [REDACTED]

Town Counsel

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dated: October 3, 2018.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
Civil Action No.

ATTORNEY GENERAL for the
COMMONWEALTH OF MASSACHUSETTS and
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v.

ESTATE OF [REDACTED] as owner of
the property at [REDACTED], Auburn
Massachusetts;

Respondent.

**PETITIONERS' MOTION FOR ALTERNATIVE SERVICE OF PROCESS
AND FOR APPOINTMENT OF SPECIAL PROCESS SERVER
PURSUANT TO MASS. R. CIV. P. 4(C)**

Now comes Maura Healey, Attorney General for the Commonwealth of Massachusetts (the "Commonwealth") and hereby requests that this Court allow the Commonwealth to proceed with alternative service of process and to appoint a special process server pursuant to Mass. R. Civ. P. 4(C). As grounds for this motion, the Commonwealth states the following:

1. The Commonwealth is seeking enforcement of the State Sanitary Code Provisions on the property located at [REDACTED], Massachusetts (the "Property").
2. The Property is vacant and has numerous long-standing code violations which pose a serious risk to the health, safety, and well-being of abutters and residents of the community in

which it is located, as set forth in detail in the Petition to Enforce the State Sanitary Code and for Appointment of a Receiver and its accompanying affidavits.

3. The owner of record is the Estate of [REDACTED] (the "Estate"). The Estate has one identified heir, [REDACTED] Jr..

4. [REDACTED] Jr.'s last known address is [REDACTED] Auburn, Massachusetts, 01501.

For efficiency, the Commonwealth now asks this Court to allow it to render service of process upon the Estate by the following methods:

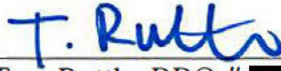
- a. Publishing notice in the form in the Proposed Order which is attached hereto as Exhibit 1;
- b. Posting notice at the Property of its Petition to Enforce the State Sanitary Code and for Appointment of a Receiver; and
- c. Serving copies of the Summons, Petition, and all paper of this action upon [REDACTED] Jr. at his last known address;

Additionally, the Commonwealth respectfully moves this Court, pursuant to Mass. R. Civ. P. 4(c), to appoint Kevin McCarthy, Director of Civil Investigations, Office of the Attorney General, One Ashburton Place, Boston, MA, 02108, or his designee, to serve the summons, complaint, and all other papers of this action upon [REDACTED] Jr..

WHEREFORE, the Commonwealth requests this court allow alternative service of process for the respondent, Estate of [REDACTED] in the form attached as Exhibit I to this motion, and for the appointment of a special process server in order to serve [REDACTED] Jr..

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL
By her Attorney



Tara Ruttle, BBO # [REDACTED]
Assistant Attorney General
Office of the Attorney General

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dated: October 3, 2018.

EXHIBIT I

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
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Respondent.

ORDER FOR ALTERNATIVE SERVICE OF PROCESS

Upon the Petitioner's Motion for Alternative Service of Process, it is hereby ordered that service be made upon the Respondent, the Estate of [REDACTED] ("Estate"), via the following methods:

1. Posting the following notice on the front door of the property located at [REDACTED] Street, Auburn, Massachusetts:

To: the Estate of [REDACTED] an action has been commenced against you in the Worcester Housing Court, Docket No. 18-CV-_____ by the Attorney General for the Commonwealth of Massachusetts, affecting the property at [REDACTED], Auburn, Massachusetts. The Attorney General is seeking the Court to appoint a receiver for such property to repair the property in order to make it fit for human habitation pursuant to G.L. c. 111, § 127I. If appointed and the receiver makes the property habitable, the receiver will request that the Court authorize the receiver to sell such property free and clear of any property interests claimed or held by others and free and clear of all encumbrances of record.

You are hereby summoned and required to serve upon the Attorney General's Office, 10 Mechanic St., Suite 301, Worcester, MA 01608, an answer to the Petition to Enforce the State Sanitary Code and for Appointment of a Receiver within ten (10) days from the date of this notice. You are encouraged to contact the Court or the Attorney General's Office at [REDACTED]

Please note that this matter is scheduled for a hearing on the Petition to Enforce the State Sanitary Code and for Appointment of a Receiver on November 28, 2018 at 9:00 AM in the Central Housing Court, 225 Main St., Worcester, MA 01608;

2. Publishing the notice described in Paragraph 1, above, in 3 issue(s) of the Worcester Telegram and Gazette, a newspaper of daily circulation serving the Town of Auburn; and
3. Serving a copy of the Summons, Petition, and all supporting documents upon [REDACTED] Jr. at his last known address of [REDACTED] Auburn, Massachusetts, 01501.

So entered on this ____ day of October, 2018.

Hon.
Justice, Worcester Housing Court

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss:

HOUSING COURT DEPARTMENT
CENTRAL DIVISION
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ESTATE OF [REDACTED] as owner of
the property at [REDACTED] Auburn
Massachusetts;

Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR ALTERNATIVE SERVICE OF PROCESS**

This is an action by Maura Healey, Attorney General for the Commonwealth of Massachusetts ("Commonwealth"), petitioning the Court for an order to enforce the State Sanitary Code and for appointment of a receiver for an abandoned residential property located at [REDACTED] Auburn, Massachusetts (the "Property"). The Commonwealth is authorized by the State Sanitary Code, G.L. c.111, § 127I, to seek this relief from the Housing Court. The Commonwealth's petition also invokes the Housing Court's general equity jurisdiction, G.L. c. 185C, § 3. The Commonwealth's petition is based upon long-standing violations of the sanitary code at the Property. These serious and continuing violations pose a risk to the health and safety

of the neighbors and other community members unless they are abated by the owner or by a receiver appointed by the Court.

Background

The record owner of the Property is the Estate of [REDACTED] ("Estate"). *See* Affidavit of Monica L. Passeno ("Passeno Aff.") at ¶¶ 3. Upon information and belief, [REDACTED] is survived by one child, [REDACTED] Jr.. *See* Passeno Aff. at ¶ 4. In an effort to locate individuals who might be able to undertake the repairs needed to bring the Property into compliance with the Code, the Commonwealth has contacted [REDACTED] Jr.. *See* Passeno Aff. at ¶¶ 6-9. Despite numerous notices and communication from the town to [REDACTED] Jr., none of the necessary repairs to the Property have been undertaken. *See* Affidavit of Darlene M. Coyle ("Coyle Aff.") at ¶¶ 9-14, 16-17, 20-21.

In light of these circumstances and the legal argument expressed below, the Commonwealth respectfully moves this Court to allow it to provide the Estate with notice of the Petition through publication and posting of a notice at the Property in order to provide notice to any potential unknown heirs of the Estate. The Commonwealth also respectfully moves this Court to appoint a special process server in order to provide the Estate with notice of the Petition by serving the Summons, Petition, and all papers of this action upon [REDACTED] Jr., the known heir of the Estate.

LEGAL ARGUMENT

When a party takes action against a decedent's estate, Massachusetts General Law, 190B § 1-403 (3) requires that notice be given to "every interested person or to one who can bind an interested person," and may be "given both to a person and to another who may bind such person." M.G.L.A. 190B § 1 201, § 1 201(24). The statute defines "interested person[s]" to

include heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claims against a trust estate or the estate of a decedent, ward, or protected person. The Uniform Probate Code Comment includes a clarification that the general rules of civil procedure are applicable to determine the mode of giving notice or serving process. M.G.L.A. 190B § 1-403 (3). This notice requirement ensures that a person's property right cannot be adversely affected before they receive notice and an opportunity to respond. *See Shaanxi Jinshan TCI Electronics Corp. v. FleetBoston Financial Corp.*, 61 Mass. App. Ct. 41 (2004). With that in mind, the purpose of notice in the context of probate law is to inform interested parties with sufficient particularity of the proposed action to allow them to reasonably prepare their arguments. *See Town of Milton v. Massachusetts Bay Transp. Auth.*, 356 Mass. 467, 471 (1969), *citing* *Rousseau v. Building Inspector of Framingham*, 349 Mass. 31, 37 (1965).

To satisfy the constitutional requirements of due process, the Commonwealth must provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In *Mullane*, the Supreme Court discusses the limits of due process and the alternatives to actual notice with respect to trusts created by state law. Further, the court explains that some flexibility may be required regarding notice depending on the circumstances: "reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected or... that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes." *Mullane*, 339 U.S. at 315.

In the instant case, [REDACTED] is a deceased individual with one known heir, as well as potentially unknown heirs. Thus, the due process analysis for the present case involves the rights of two distinct groups: the known heir of Mr. [REDACTED], Jr., and any unknown heirs of [REDACTED]. To satisfy the due process rights of any potentially unknown heirs, the law permits that service be made and due process satisfied by publication in an effort to identify unknown heirs of an individual. See Matter of Jones, 379 Mass. 826, 836-38. In Matter of Jones, the Court dealt with the issue of providing notice to the unascertained heirs of a woman who had become a ward of the state when that woman's conservator petitioned the court for the approval of an estate plan that potentially jeopardized the financial interests of those unknown heirs. Id. The court stated that "due process does not 'demand the impossible...as a practical matter it is impossible to mail [a citation] to a person whose identity cannot with reasonable diligence be ascertained.'" Id. at 836, *quoting* Young v. Tudor, 323 Mass. 508, 514 (1948). The conservator believed the woman had no heirs based on his thirty year friendship with the woman and her deceased husband. Id. The court allowed notice to be provided to these hypothetical heirs by publication since the conservator had personal knowledge that no heirs existed and lacked any information which, "if pursued, might have led to the discovery of kindred." Id. The issues raised in Matter of Jones touch squarely on the notice issues raised by the naming of the Estate in the instant case.

While the Petitioner has a duty to provide notice of the present action to all parties with an interest or potential interest in the Property, the determination of the identity of those parties should be informed by the context of the case. See Matter of Jones, 379 Mass. 826, 836 38. In this case, the Property's owner is deceased, and the known heir to the Estate is clearly defined. However, because the Estate was never probated, notice of the formal or informal probate of the

Estate has never been published, leaving any potential unknown heirs of the Estate without notice of their legal interest in the Property. To reach any potential unknown heirs of the Estate, the most effective and reasonable means of notice would be through publication, as was the case in Matter of Jones.

Mass.R.Civ.P. 4(d)(1) provides the rules for personal service of the original summons and complaint. Included in this rule is a provision for occasions for which defendants cannot be located:

“...If the person authorized to serve process makes return that after diligent search he can find neither the defendant, nor defendant’s last and usual abode, nor any agent upon whom service may be made..., the court may on application of the plaintiff issue an order of notice in the manner and form prescribed by law.”

Mass.R.Civ.P. 4(d)(1). The law permits that service be made and due process satisfied by publication where either the defendant or defendant’s whereabouts is unknown. In such cases, “[i]t is well established that where it is impossible to ensure interested parties receive actual notice--as when the identities or addresses of those parties are unknown-- ‘even a probably futile means of notification (such as notice by publication) is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights.’” Town of Andover v. State Financial Services, Inc., 48 Mass. App. Ct. 536; 540 (2000), *citing Mullane* at 317.

Here, all of the individuals who have an interest in the Property cannot be located, as they are not currently known. Thus, the Court should exercise the discretion granted by the cited rule and provide for an alternative mode of service.

CONCLUSION

Based upon the foregoing, the Court should exercise its discretion and permit the Commonwealth to render service upon the Estate by posting notice at the Property of its Petition to Enforce the State Sanitary Code and for Appointment of a Receiver; by publication in a local

newspaper serving the Town of Auburn; and by serving the Summons, Petition, and all papers of this action upon [REDACTED] Jr., the heir to the Estate.

Respectfully submitted,

MAURA HEALEY
ATTORNEY GENERAL
By her Attorney

T. Ruttle

Tara Ruttle BBO # [REDACTED]
Assistant Attorney General
Office of the Attorney General
Government Bureau/Trial Division
[REDACTED]

Dated: October 3, 2018.