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Drug Houses Seized

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HIGH POINT - In a precedent that should scare property owners across the state, the City of High Point has seized three houses worth a total of \$127,000 from a retired, disabled Linwood, North Carolina, couple who have been charged with no crime, and handed the houses over to the Guilford County Board of Education for sale. The school board will keep any profit from the sales.

The High Point Police Department seized the three houses, at 228, 230 and 232 Hobson St. in downtown High Point, after a Guilford County Superior Court judge on March 25 approved a consent judgment to settle a December 2009 nuisance abatement complaint by the police department against the owners of the properties, Fred and Mary Frazier.

"They took everything we had," Mary Frazier said. "I hope they're happy with it. It's their problem now."

High Point police said the three houses have been the site of numerous criminal acts over the last five years, including assaults, drug sales and numerous instances of possession of drugs with intent to sell. They said police have responded to 319 calls to the houses over the last five years, and that the Fraziers did not cooperate when asked to help solve the problems with the properties. That's 0.4 calls a week, or less than one call every two weeks.

No one is denying that the three houses were a public nuisance, or the Police Department's record of criminal incidents in and around them. By signing the consent judgment, the Fraziers conceded that at least two drug offenses had occurred at each of the two houses, the statutory threshold for seizing property under North Carolina's nuisance abatement statute.

But the Fraziers, who bought the houses in 2003 as an investment, have been charged with no crime. Although the Police Department's nuisance complaint alleges, as required by the nuisance abatement statute, that the Fraziers "established, continued, maintained, used and owned" the houses for the purpose of the illegal sale of controlled substances, police acknowledge that the couple were merely landlords, and weren't themselves running a drug

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"I don't believe they were personally involved in any of the criminal activity that was going on," said High Point police attorney Brian Beasley. "And we certainly don't allege that in the complaint."

Fred Frazier is a 62-year-old former chef who is increasingly disabled by spinocerebellar ataxia, a genetic disorder that causes muscle control to deteriorate. Mary Frazier said she and her husband bought the properties using their life savings. That's all gone now.

"We thought it was an investment that we could handle," she said. "Before 2008, we had a little bit of money, and we borrowed some money with our stocks as collateral. Well, that went down the drain. Since then, all we had left was the properties. My husband's health got bad and we couldn't care for them. It just went downhill from there."

Mary Frazier acknowledged that squatters had used the properties for drug sales, but said her and her husband's health made it hard for them to police the properties. She said they signed the consent judgment merely because they didn't have the money to fight it and were told by the Police Department that they could be charged with drug trafficking as the owners of the houses.

"It's just an impossible situation," she said. "I will say this: I hope that the city gets exactly what they deserve. And that is nothing. If I sound bitter, I think I have a right. We couldn't afford to get a lawyer to fight it right now. We are living off Social Security. There's nothing left."


The Police Department doesn't have to charge the Fraziers with a crime. Under nuisance abatement statutes, police can seize property merely by proving a sufficient relationship between the property and crimes that have been committed on or near them. Welcome to the increasingly scary world of "civil forfeiture," a tactic increasingly used by police departments and district attorneys across the United States to combat illegal drug use, drunk driving, prostitution, money laundering and many other social ills.

As judges, legislators and the public have gotten more accustomed to the government seizing private assets, the threshold for such seizures has dropped. Once, you had to be convicted of a crime to have your property seized. That's "criminal forfeiture," long familiar to the public from gangster movies and tax-fraud cases. Then legislators made it legal to seize property without a criminal conviction or even a criminal charge. That's "civil forfeiture." Then legislators made it possible to seize property based not even on the actions of its owners, but on the action of third parties, such as tenants. That's the theory behind North Carolina's public nuisance statute.

The North Carolina statute provides that property can be seized if there are two or more instances of possession of illegal drugs with intent to sell within five years. The owners of the property don't have to be involved; the court must merely find by clear and convincing evidence that the owners have been notified by police or a district attorney that a nuisance exists on the property and haven't made a good faith effort to stop it.

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That creates an odd dichotomy in the law: A homeowner can commit the crime of murder without having his home seized, but property owners such as the Fraziers, however negligent, can have their property seized over the tort of public nuisance without committing any crime.

Greensboro has used the nuisance abatement statute against crime-ridden, low-rent motels, massage parlors, strip clubs and dance clubs. High Point is a pioneer in using the statute to seize private homes. High Point made its first seizure in April 2009, taking ownership of a home at 708 Hendrix St. and turning it over to the school board.

"It's more common to see these actions taken against a commercial establishment," Beasley said. "But those properties were such a problem in the neighborhood that this was the only way we could go with it."

Critics of civil forfeiture say it gives government a financial incentive to seize property. Some towns have been accused of replacing their traditional highway speed traps with forfeiture traps, at which cars of motorists are seized without police filing criminal charges. The Chicago Tribune in March 2009 reported that the town of Tenaha, Texas (population 1,046) had seized cars, cash and other properties from 140 motorists, many of them black, by threatening them with money-laundering or other charges.

In congressional testimony in 1997, Roger Pilon, a senior fellow at the Cato Institute think tank in Washington, DC, said, "About the only people who defend forfeiture law today are those in law enforcement who benefit from it, either as a 'tool of their trade' or, more directly, by keeping the goods they seize - a conflict of interest so stark that it takes us to another age."

North Carolina seems to be trying to avoid that conflict of interest with its odd provision that seized properties must be turned over to the school board of the county in which the property is located. It's an odd provision for several reasons - there is no obvious logical link between nuisance properties and education, the General Assembly didn't give a reason for giving the properties to the school board rather than, say, the public library, and school boards are ill equipped to manage and sell non-school properties.

Guilford County school board attorney Jill Wilson said the school board didn't find out about the latest seizures until it discovered, without warning, that it was the proud new owner of three houses in a run-down area of High Point.

"We don't participate in any way in the decisions, or the facts and circumstances," Wilson said. "Nor do I necessarily know about them. All I know is, suddenly we own a house. In the meantime, we have to cut the grass. The reality is we're suddenly a homeowner. That's why we don't tend to hold on to them for very long."

High Point's use of the public nuisance statute to seize houses follows widespread seizures of private automobiles from drivers accused of drunk driving under a state law that took effect in 1998. The initial results of that law were chaotic, as school boards were even worse qualified to sell cars than houses. Wilson said that Guilford County Schools accumulated 600 cars

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in short order, most of which were left to rust in a parking lot intended for school buses. "You rarely got a 2-year-old Mercedes," she said. "You got a lot of 1976 Dodge Darts." The General Assembly has since assigned the towing, storage and sale of seized cars to a private contractor.

The latest High Point house seizures are part of an ongoing effort by the High Point Police Department to crack down on drug sales and other crime in the Washington Street neighborhood, which the city is trying to revitalize.





Beasley acknowledged that seizing property without restitution may seem harsh, but argued that the ongoing severity of the crime problems on Hobson Street justified it.

"I can see how you would think that," he said. "But think about the fact that for five years, you've got 314 calls for service that involve these properties. You've got undercover officers and informants making buys of powder and crack cocaine from these properties. The owner is notified and actually comes up to meet with high-ranking officers in the Police Department and refuses to take any action, however light. I think, at that point, the owner has lost any right to restitution. I think if you own a property, you have responsibilities. I don't have much sympathy in this case."

The Fifth Amendment to the US Constitution prohibits the government from taking property by eminent domain without paying its owners "just compensation." But courts have ruled that provision doesn't apply to property taken through criminal or civil forfeiture.

Guilford County Schools may not see much profit out of the houses. As in the case of seized cars, banks that have a lien on the houses have first dibs on money generated by any sale, and the school system must pay to maintain the properties from the remainder.

"Most of the time, there are so many bank liens on them that they net us nothing," Wilson said. "We might get something out of it, but we don't net millions of dollars."

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