

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 19-92—sSB 1070

Planning and Development Committee

Judiciary Committee

AN ACT CONCERNING ABANDONED AND BLIGHTED PROPERTY RECEIVERSHIP

SUMMARY: This act establishes a mechanism to rehabilitate abandoned properties in municipalities with populations of at least 35,000 by providing that if an owner of a residential, commercial, or industrial building fails to maintain it in accordance with applicable municipal codes, the Superior Court may appoint a receiver. Under the act, a “receiver” is a person or entity that takes possession of a building under the act’s provisions to rehabilitate or otherwise dispose of it. In addition to the existing authority municipalities have to address blight, the act’s receiver mechanism provides an additional option (see BACKGROUND).

Lienholders and individuals and entities with development capacity may seek to be appointed as the receiver and, once appointed, are granted the power to rehabilitate the property pursuant to a court-approved plan. Once the property is rehabilitated, the court may approve its sale, free of any encumbrances. The act (1) establishes a process for distributing sale proceeds and (2) requires the receiver to draft a deed after the sale that states that (a) recognizable and marketable title to the property is vested in the purchasers and (b) prior ownership interests are extinguished.

Unless terminated by the court, a receivership continues even if the property owner sells the property or it is foreclosed by a lender. Appointment of a receiver does not terminate the owner’s debt or environmental obligations related to the property.

Under the act, “buildings” are structures and appurtenant land, including vacant lots on which a structure was demolished. Receivership petitions may include adjacent buildings if they share an owner and the properties are used for a single or interrelated purpose.

The act’s provisions do not apply to (1) commercial or residential buildings, structures, or land owned by or held in trust for the U.S. government and regulated under the United States Housing Act of 1937 and related regulations and (2) property owned by a member of the U.S. Armed Forces or any of the reserve components who has vacated the building to (a) perform military service during a war or armed conflict or (b) assist relief efforts during a declared federal or state emergency.

EFFECTIVE DATE: January 1, 2020

PROCEDURE FOR RECEIVER’S APPOINTMENT

Petitioning Party

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Under the act, any party in interest may file a petition to appoint a receiver with the Superior Court for the judicial district in which the subject building is located; such petitions constitute an “action in rem” (i.e., action to determine property rights). A “party in interest” is a person or entity with a direct and immediate interest in a building, including (1) the owner; (2) a lienholder or other secured creditor; (3) a local resident or business owner whose property is located within 1,000 feet of the building in the same municipality; (4) the municipality in which the building is located; or (5) a development organization located in the same municipality that has participated in a project in line with the organization’s purpose within a five-mile radius of the building.

“Owners” are holders of legal title to, or of a legal or equitable interest in, a building. Owners include heirs, assignees, trustees, beneficiaries, or building lessees, if the interest is a matter of public record.

“Development organizations” are nonprofit corporations established in part to remediate blight, engage in community or economic development or historic preservation, or promote or enhance affordable housing opportunities.

Service of Petition

The act requires a true copy of the petition to be served, in the same manner that civil actions are served, on (1) the municipality (unless it is the petitioner), (2) each building owner, and (3) each lienholder of record (i.e., who has a valid, recorded interest in the property).

The petitioner must also file a notice with the municipal clerk that the property is subject to an ongoing legal proceeding (i.e., a “lis pendens”).

Petition’s Contents

The petition must include the petitioner’s sworn statement that, to the best of his or her knowledge, the building meets the requirements for a receiver to be appointed as of the petition’s filing date. It must also include, to the extent available following the petitioner’s reasonable efforts to obtain them, the following:

1. a copy of any citation or order (a) charging the building owner with a municipal code violation or (b) determining the building is a public nuisance, blighted, or unfit for human occupancy or use;
2. a recommended receiver; and
3. a preliminary plan detailing (a) the initial estimated property rehabilitation costs to comply with any applicable municipal code or municipally adopted plan for the neighborhood where the property exists; (b) the anticipated funding sources; and (c) a schedule of mortgages, liens, and other encumbrances on the building.

Petition Hearing and Decision

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The act requires the court to hold a hearing on the petition and then issue a decision. The court may only appoint a receiver for the building if it is deemed “abandoned property” (see “Conditions of Abandoned Properties” below). It may also opt to give the property owner time to remediate the conditions that make it an abandoned property.

If the court appoints a receiver, it may grant any other relief it deems just and appropriate.

Selecting a Receiver

If the court opts to appoint a receiver, it must first consider appointing the most senior nongovernmental lienholder of record. If such lienholder is not competent to serve as receiver or declines to do so, the court may appoint a willing (1) development organization or (2) other person or entity, including a governmental unit, with experience rehabilitating buildings and the ability to obtain or provide the necessary financing.

In selecting a receiver, the court must (1) consider the petitioner’s recommendation and that of any petitioner in interest and (2) prioritize a development organization or governmental unit over an individual.

Petitioner’s Costs

If the court finds (1) a building is “abandoned property” and opts to either appoint a receiver or give the owner time to remediate it, or (2) the owner is selling the building, the owner must reimburse the petitioner for costs incurred to prepare and file the petition as determined by the court.

Certifying Encumbrances

If the court appoints a receiver, it must certify the schedule of each mortgage, lien, or other encumbrance, which is binding if the encumbrance arose or attached before the receivership petition was submitted.

CONDITIONS OF ABANDONED PROPERTIES

A building is “abandoned property,” and thus eligible to be overseen by a receiver, only if:

1. in the 12 months immediately preceding the petition’s filing, it has not been legally occupied;
2. the owner fails to present compelling evidence, as determined by the court, that he or she has either (a) “actively marketed” (see below) the building in the 60 days immediately preceding the petition filing and made a good faith effort to sell it at a price reflecting circumstances and market conditions or (b) recently acquired the property (i.e., within the 12 months immediately preceding the filing (see below)), but this provision does not apply when the building’s ownership is in dispute in another legal

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- proceeding;
3. there is no pending foreclosure action by an individual or nongovernmental entity; and
 4. the court finds that at least three problematic building conditions exist (see below).

Under the act, “actively marketed” means (1) a sign was placed on the property advertising its sale, containing accurate contact information for the owner, broker, or salesperson and (2) the owner has (a) hired a licensed broker or salesperson to list the property in the multiple listing service or otherwise marketed it; (b) placed advertisements, at least weekly, in print or electronic media; or (c) distributed printed advertisements.

The act excludes transfers between close parties as evidence the owner recently acquired the property, specifically, when the (1) prior owner is a parent, spouse, child, or sibling (“immediate family”), unless the change in ownership resulted from the prior owner’s death and (2) owner or prior owner is a business or other entity of which more than a 5% interest is held by a principal, or member of the principal’s immediate family, of such owner or prior owner.

Problematic Building Conditions

Under the act, before an abandoned building can be deemed such, the court must find that at least three of the following conditions exist:

1. the building is a public nuisance, blighted, or unfit for human occupation or use under an applicable municipal code;
2. it requires substantial rehabilitation (see below) and no effort to rehabilitate it has been made in the 12 months immediately preceding the petition filing;
3. its condition and vacant status materially increase the fire risk to it and adjacent property;
4. it is susceptible to unauthorized entry and resulting potential health and safety hazards, and (a) the owner has failed to take reasonable and necessary steps to secure it or (b) it has been secured by the municipality following an owner’s failure to do so;
5. it is an attractive nuisance to children due to abandoned wells, shafts, basements, excavations, and other unsafe structures;
6. it is an attractive nuisance for illicit purposes, such as prostitution, drug use, and vagrancy;
7. it creates potential health and safety hazards due to vermin, debris accumulation, uncut vegetation, or physical deterioration, and the owner has not taken reasonable and necessary steps to remove these hazards; or
8. its appearance or other condition negatively impacts the economic well-being of nearby residents or businesses, which may include decreasing property values or lost business, and the owner has not taken reasonable and necessary steps to remedy its appearance or condition.

Under the act, “substantial rehabilitation” means (1) repair, replacement, or improvement costs that exceed 15% of the building’s value after the work is

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completed or (2) replacing two or more of the following: roof structures, ceilings, wall or floor structures, foundations, plumbing systems, heating and air conditioning systems, or electrical systems.

OWNER'S ABILITY TO REMEDY THE PROPERTY

Even if a court determines that a building is "abandoned property," it may issue an order giving the owner time to remedy the conditions, if the owner represents that the work will be completed in a reasonable amount of time. The court may issue an order stating that the receivership petition is granted if the owner fails to comply with court-set remediation deadlines.

OWNER'S CONTINUING LIABILITY

Abandoned property owners retain liability for (1) environmental damage that existed before the receiver's appointment and (2) taxes; municipal liens or charges; mortgages; and private liens, fees, and charges incurred before and after the appointment. Under the act, liability does not transfer to the receiver.

RECEIVER'S POWERS AND DUTIES

Following appointment, a receiver must promptly take possession of the building. The act deems the receiver to have powers and authority equivalent to ownership and legal control of the property for purposes of (1) filing plans with public agencies and boards, (2) seeking or obtaining construction permits or other approvals, and (3) submitting financing or other assistance applications to public or private entities.

Generally, the receiver must (1) maintain, safeguard, and insure the property; (2) apply any revenue the property generates as required by the act; and (3) develop and implement a court-approved final plan.

Developing an Abatement or Alternative Plan

The receiver must develop a court-approved plan for abating the conditions that qualify the property as abandoned. If the receiver cannot feasibly develop this a plan, the receiver must develop a plan for alternatives, such as closing, sealing, or demolishing all or part of the property. If the property is in a historic district and must be demolished, the plan must provide a design plan for any replacement construction to comply with the law.

The receiver may present the plan for court approval at the time of appointment or on a subsequent date. In either case, a hearing on the plan must be set within 120 days after the receiver's appointment; the plan must be provided to the court and each party to the action at least 30 days before the hearing. During the hearing each party to the action may comment on the plan.

The court must issue a decision approving the plan or requiring it to be amended, in which case an additional hearing date must be set. When reviewing

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the plan's feasibility and proposed financing, the court must consider all comments provided at the hearing and the receiver's assessment of the scope and necessity of rehabilitation or demolition work.

When considering the property's sale or receiver's costs, the court must give reasonable regard to the receiver's assessment of the scope and necessity of rehabilitation or demolition work.

Plan's Contents. The plan must include the following:

1. a cost estimate and financing plan;
2. a description of the proposed rehabilitation or, if rehabilitation is not feasible, a proposal for closing, sealing, or demolishing the property; and
3. if it was previously designated a "historic property" (see below), provisions for rehabilitating architectural features that define its historic character.

Under the act, "historic properties" are those that are (1) listed on the National Register of Historic Places, (2) contributing properties in a National Register historic district, or (3) located in a local historic district.

Plans must conform to applicable municipal codes, municipally adopted plans for the neighborhood where the property exists, and historic preservation requirements. Under the act, "municipal codes" are any local ordinances about buildings, housing, blight, property maintenance, fire, health, or other public safety concerns.

Borrowing Power

The receiver may borrow funds to cover costs of rehabilitation or fulfil any of the receivership's duties. The court may approve financing to cover the costs of rehabilitation, including deferred repayment terms and use restrictions. The terms may remain with the rehabilitated property even after the receivership terminates and be assumed by (1) the property owner, if possession is regained, or (2) the rehabilitated property's purchaser.

Under the act, "costs of rehabilitation" are building construction, stabilization, restoration, maintenance, operation, or demolition expenses. Such costs also include any action reasonably associated with rehabilitation, including environmental remediation and architectural, engineering, legal, financing, permit, and receiver's and developer's fees.

To make borrowing money to cover rehabilitation costs easier, the court may grant priority status to a lien securing such debt, if (1) the receiver sought financing from the most senior, nongovernmental lienholder, and the lienholder opted not to provide the financing on reasonable terms, and (2) granting the lien priority is necessary to induce another lender to provide financing on reasonable terms.

If the receiver obtains a loan from the most senior, nongovernmental lienholder, the amount of such loan is added to the lienholder's preexisting priority lien.

Other Powers and Duties

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Under the act, the receiver has all powers necessary and appropriate as approved by the court for the efficient operation, management, and improvement of the abandoned property in order to bring it into compliance with municipal codes and fulfill the receiver's duties, which, subject to the court's approval, include:

1. taking possession and control of the abandoned property and any personal property the owner used with respect to it, as well as pursuing claims and causes of action against the owner related to such property;
2. collecting outstanding accounts receivable;
3. contracting for the abandoned property to be repaired and maintained (if a contract is valued at more than \$25,000 an attempt to get three bids generally must be made);
4. borrowing money and incurring credit in accordance with the act;
5. contracting and paying for maintaining and restoring utilities;
6. purchasing materials, goods, and supplies to repair and operate the property;
7. entering into a rental contract or lease for up to 12 months, if the court approves;
8. affirming, renewing, or entering into insurance contracts;
9. hiring and paying legal, accounting, appraisal, or other professionals as necessary;
10. if deemed a historic property prior to the receiver's appointment, consulting the local historical and historic properties entities for recommendations on preserving the property's historic character;
11. applying for and receiving public grants and loans;
12. selling the building in accordance with the act's provisions; and
13. exercising any right a property owner would have to improve, maintain, or otherwise manage the property to the extent necessary to carry out the receivership's powers and duties.

The receiver may file a lien on the abandoned property for costs incurred during the receivership, including rehabilitation costs, attorney's fees, and court costs.

Status Reporting

The act requires receivers, annually or more frequently if the court requires it, to submit a status report to the court and each party to the action. The report must include:

1. a copy of any contract the receiver enters into regarding the property's rehabilitation;
2. an account of the disposition of any property-generated revenue;
3. an account of expenses, repairs, and improvements;
4. the plan's status (i.e., its development and implementation); and
5. a description of any proposed rehabilitation actions to be taken within the next six months.

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Accounting

When the plan is implemented, the receiver must file with the court a full accounting of income and expenditures during the period from the plan's approval to complete implementation. The receiver must include information on each repair or rehabilitation contract.

TERMINATION OF RECEIVERSHIP OR REMOVAL OF RECEIVER

Unless the court approves the receivership's termination, a property remains subject to the receiver's control even if (1) the property owner sells the property, (2) a lienholder forecloses the property, or (3) an interest in the property is transferred.

Upon the request of a receiver or a party in interest, the court may terminate the receivership if it finds any of the following:

1. the receivership's purposes were fulfilled;
2. the owner, a mortgagee, or lienholder has requested its termination and provides adequate assurance that the receivership's purposes will be fulfilled;
3. the receiver sold the property and distributed the proceeds as required by the act; or
4. even after a diligent effort, the receiver was unable to (a) develop a court-approved final plan, (b) implement such plan, or (c) fulfill the receivership's purposes.

The court may also remove a receiver at any time upon the receiver's, petitioner's, or party in action's request and upon a showing that the receiver's duties are not being carried out.

RECEIVER-INITIATED PROPERTY SALE

Upon the receiver's application, the court may authorize the receiver to sell the property free and clear of any lien, claim, or encumbrance if:

1. proceeds of the sale are distributed as required under the act and the court approves of such distribution;
2. each record owner and lienholder of record has been given notice and an opportunity to provide comment to the court;
3. the receiver has controlled the property for at least three months, and the owner has not successfully petitioned to terminate the receivership;
4. the purchaser is reasonably likely to maintain the property; and
5. the court accepts the sale's terms and conditions.

The act specifies how the proceeds must be distributed. If the proceeds are insufficient to pay each lien, claim, and encumbrance, they are extinguished unless the original owner or purchaser assumed them.

Distribution of Proceeds

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Sale proceeds must be distributed in the following order:

1. court costs;
2. unless they were sold or transferred, state liens, unpaid property tax liens, and properly recorded municipal liens;
3. sale costs and expenses;
4. principal and interest on debt that a court granted priority over existing liens and security interests;
5. petitioner's costs related to preparing and filing the receivership petition;
6. costs of rehabilitation and fees and expenses the receiver incurred to sell or safeguard the property as reflected in the lien the receiver placed on the property (see above);
7. sold or transferred state liens, unpaid property tax liens, and properly recorded municipal liens;
8. other valid liens and security interests, in their priority order;
9. the receiver's unpaid obligations; and
10. the owner of the abandoned property.

If the owner cannot be located at the time of distribution of sale proceeds, the owner's portion of the proceeds are presumed unclaimed and forfeited to the municipality in which the sold property is located. The municipality must use the funds to recoup costs for securing and remediating blight and enforcing blight ordinances.

Completion of Transfer

After the sale concludes and proceeds are distributed, the act requires the receiver to draft a deed stating that recognizable and marketable title to the property is vested in the property's purchaser and that any prior ownership interest in the abandoned property is extinguished. Under the act, once the court approves of the deed and the deed is filed in the municipal land records, the property's transfer and ownership is deemed fully effectuated.

BACKGROUND

Under existing law, municipalities have authority to address housing, commercial, and industrial blight. They can, among other things, (1) enact regulations to fine blight offenders, (2) adopt special assessments on blighted housing, and (3) establish an urban homesteading agency to condemn abandoned and blighted properties and transfer them to qualified homesteaders (CGS §§ 7-148(c)(7)(H)(xv), 7-148ff, and 8-169(o)).