

No. 2008-135

AN ACT

HB 2188

Providing for court-appointed conservators to bring residential, commercial and industrial buildings into municipal code compliance when owners fail to comply.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Abandoned and Blighted Property Conservatorship Act.

Section 2. Legislative findings and purpose.

The General Assembly finds and declares that:

(1) Pennsylvania's older communities are important to the Commonwealth's economic health by providing a focal point for businesses and services and to this Commonwealth's quality of life with its rich history and diverse communities. However, many older communities suffer from blighted properties that have been abandoned by their owners.

(2) Many citizens of this Commonwealth are adversely affected by abandoned and blighted residential, commercial and industrial properties, including those citizens who live in proximity to such substandard buildings, as well as those who own property in the vicinity of such buildings.

(3) Substandard, deteriorating and abandoned residential, commercial and industrial structures are a public safety threat and nuisance and their blighting effect diminishes property values in the communities in which these properties are located.

(4) If these buildings are not rehabilitated, they are likely to remain abandoned and further deteriorate, resulting in increased costs to the Commonwealth, municipality and taxpayers to secure and ultimately demolish them.

(5) Providing a mechanism to transform abandoned and blighted buildings into productive reuse is an opportunity for communities to modernize, revitalize and grow, and to improve the quality of life for neighbors who are already there.

(6) If the owner of a residential, commercial or industrial building fails to maintain the property in accordance with applicable municipal codes or standards of public welfare or safety, it is in the best interest of the Commonwealth, the municipality and the community for the court, pursuant to the provisions of this act, to appoint a conservator to make the necessary improvements before the building deteriorates further and

necessitates demolition, resulting in the removal of the building from the housing supply or prohibiting future productive economic use.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Actively marketed.” A “for sale” sign has been placed on the property with accurate contact information and the owner has done at least one of the following:

- (1) engaged the services of a licensee under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act, to place the property in a Multiple Listing Service or otherwise market the property;
- (2) placed weekly or more frequent advertisements in print or electronic media; or
- (3) distributed printed advertisements.

“Building.” A residential, commercial or industrial building or structure and the land appurtenant thereto.

“Code.” A building, housing, property maintenance, fire, health or other public safety ordinance enacted by a municipality.

“Competent entity.” A person or entity, including a governmental unit with experience in the rehabilitation of residential, commercial or industrial buildings and the ability to provide or obtain the necessary financing for such rehabilitation.

“Costs of rehabilitation.” Costs and expenses for construction, stabilization, rehabilitation, maintenance and operation or demolition, including reasonable nonconstruction costs associated with the project, including, but not limited to, environmental remediation, architectural, engineering and legal fees, permits, financing fees and a developer’s fee consistent with the standards for developers’ fees established by the Pennsylvania Housing Finance Agency.

“Court.” The appropriate court of common pleas.

“Historic property.” A property which is listed on the National Register of Historic Places or is a contributing property in a national register historic district or is located in a local government ordinance historic district.

“Immediate family.” A parent, spouse, child, brother or sister.

“Nonprofit corporation.” A nonprofit corporation that has, as one of its purposes, community development activities, including economic development, historic preservation or the promotion or enhancement of affordable housing opportunities.

“Owner.” The holder or holders of title to, or of a legal or equitable interest in, a residential, commercial or industrial building. The term shall include an heir, assignee, trustee, beneficiary and lessee provided the ownership interest is a matter of public record.

“Party in interest.” A person or entity who has a direct and immediate interest in a residential, commercial or industrial building, including:

- (1) The owner.
- (2) A lienholder and other secured creditor of the owner.
- (3) A resident or business owner within 500 feet of the building.
- (4) A nonprofit corporation, including a redevelopment authority,

which:

(i) except as set forth in subparagraph (ii), is located in the municipality where the building is located; and

(ii) for a building located in a city of the first class, is located in the city and has participated in a project within a one-mile radius of the location of the building.

(5) A municipality or school district in which the building is located.¹

“Public nuisance.” A property that, because of physical condition or use, has been declared by the appropriate official a public nuisance in accordance with the local housing, building, health, fire or related code or is determined to be a public nuisance by the court.

“Substantial rehabilitation.” Repairs to the building where:

(1) the cost of repairs, replacements and improvements exceeds 15% of the property’s value after completion of all repairs, replacements and improvements; or

(2) more than one major building component is being replaced. Major building components include:

- (i) roof structures;
- (ii) ceilings;
- (iii) wall or floor structures;
- (iv) foundations;
- (v) plumbing systems;
- (vi) heating and air conditioning systems; and
- (vii) electrical systems.

Section 4. Initiation of action.

(a) Filing of petition.—A petition for the appointment of a conservator to take possession and to undertake the rehabilitation of a building may be filed by a party in interest in a court in the county in which the building is located. The proceeding on the petition shall constitute an action in rem.

(b) Contents.—The petition submitted to the court shall include a sworn statement that, to the best of the petitioner’s knowledge, the property meets the conditions for conservatorship set forth in section 5(d) and to the extent available to the petitioner after reasonable efforts to obtain such information:

- (1) A copy of any citation charging the owner with being in violation of municipal code requirements or declaring the building to be a public nuisance.

¹“in located.” in enrolled bill.

(2) A recommendation as to which person or entity should be appointed conservator.

(3) A preliminary plan with initial cost estimates for rehabilitation of the building to bring it into compliance with all municipal codes and duly adopted plans for the area in which the building is located and anticipated funding sources.

(c) Notice of lis pendens.—The petitioner shall file a notice of lis pendens in the office of the recorder of deeds for the county in which the property is located.

(d) Notification of owner, political subdivisions and lienholders.—

(1) Upon filing the petition with the court, the petitioner shall notify the current owner of the property, all political subdivisions in which the property is located and all lienholders of the filing by registered or certified mail to the last known address of each and by posting a copy of the notice on the building.

(2) In the event the registered or certified mail is returned with notation by the postal authorities that the recipient refused to accept the mail, the petitioner may mail a copy to the recipient at the same address by ordinary mail with the return address of the petitioner appearing thereon.

(3) Service by ordinary mail shall be presumed complete if the mail is not returned to the petitioner within 30 days after mailing.

(4) In the event that the registered or certified mail is returned with the notation by the postal authorities that it was unclaimed, the notice shall be personally served.

(5) In the event that the personal service is not able to be made after two such attempts, then the petitioner shall mail the petition to the recipient at the same address by ordinary mail with the return address of the petitioner appearing thereon with service by ordinary mail deemed complete if the mail is not returned to the petitioner within 15 days after the mailing.

(6) The petitioner shall also notify the owner and each lienholder of the hearing date and provide notice that the owner and lienholders may petition to intervene in the action.

Section 5. Appointment of conservator.

(a) General rule.—The court shall act upon a petition submitted by holding a hearing within 120 days of receipt of the petition and rendering a decision no later than 30 days after completion of the hearing.

(b) Intervention.—A party in interest may intervene in the proceeding and be heard with respect to the petition, the requested relief or any other matter which may come before the court in connection with the proceeding.

(c) Hearing.—At the hearing, any party in interest shall be permitted to present evidence to support or contest the petition.

(d) Conditions for conservatorship.—If a petition is filed under section 4, the court may appoint a conservator if all of the following apply:

(1) The building has not been legally occupied for at least the previous 12 months.

(2) The building has not been actively marketed during the 60 days prior to the date of the petition.

(3) The building is not subject to an existing foreclosure action.

(4) The current owner fails to present sufficient evidence that he has acquired the property within the preceding six months. The evidence shall not include instances where the prior owner is a member of the immediate family of the current owner, unless the transfer of title results from the death of the prior owner, or where the current or prior owner is a corporation, partnership or other entity in which either owner or the immediate family of either owner has an interest in excess of 5%.

(5) The court finds at least three of the following:

(i) The building or physical structure is a public nuisance.

(ii) The building is in need of substantial rehabilitation and no rehabilitation has taken place during the previous 12 months.

(iii) The building is unfit for human habitation, occupancy or use.

(iv) The condition and vacancy of the building materially increase the risk of fire to the building and to adjacent properties.

(v) The building is subject to unauthorized entry leading to potential health and safety hazards and one of the following applies:

(A) The owner has failed to take reasonable and necessary measures to secure the building.

(B) The municipality has secured the building in order to prevent such hazards after the owner has failed to do so.

(vi) The property is an attractive nuisance to children, including, but not limited to, the presence of abandoned wells, shafts, basements, excavations and unsafe structures.

(vii) The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds has created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards.

(viii) The dilapidated appearance or other condition of the building negatively affects the economic well-being of residents and businesses in close proximity to the building, including decreases in property value and loss of business, and the owner has failed to take reasonable and necessary measures to remedy appearance or the condition.

(ix) The property is an attractive nuisance for illicit purposes, including prostitution, drug use and vagrancy.

(e) Appointment.—

(1) If the court determines after a hearing that the property has met the conditions of subsection (d), the court may appoint a conservator and grant such other relief as may be just and appropriate.

(2) The court shall give first consideration for appointment as conservator to the senior lienholder on the property.

(3) In the event the senior lienholder is found to be not competent or declines the appointment, the court may appoint a nonprofit corporation or other competent entity. If the property is located in a city of the first class, the nonprofit corporation or entity must be located in the city and must have participated in a project within a one-mile radius of the location of the property. In appointing a conservator, the court shall:

(i) consider any recommendations contained in the petition or otherwise presented by a party in interest; and

(ii) give preference to the appointment of a nonprofit corporation or governmental unit over an individual.

(f) Conditional relief.—

(1) If the court finds after a hearing that the conditions for conservatorship set forth in subsection (d) have been established, but the owner represents that the violations or nuisance or emergency condition will be abated in a reasonable period, the court may allow the owner to proceed to remedy the conditions.

(2) If the conditions set forth in paragraph (1) have been satisfied, the court shall enter an order providing that, in the event that the violations or nuisance or emergency conditions are not abated by the owner by a specific date or that other specified remedial activities have not occurred by a specific date or dates, an order granting the relief requested in the petition shall be entered.

(3) The court may also require the owner to post a bond in the amount of the repair costs estimated in the petition as a condition to retaining possession of the building.

(g) Conservator's lien.—The conservator may file a lien against the property in an amount based on the costs incurred during the conservatorship. The lien amount may be adjusted from time to time.

(h) Immediate possession.—The conservator shall promptly take possession of the building and other property subject to the conservatorship and shall immediately be authorized to exercise all powers of this act.

(i) Removal by court.—A conservator may be removed by the court at any time upon the request of the conservator or upon a showing by a party to the action that the conservator is not carrying out its responsibilities under this act.

Section 6. Powers and duties of conservator.

(a) Full powers and duties.—The conservator shall have all powers and duties necessary or desirable, from time to time, for the efficient operation, management and improvement of the building in order to bring it into compliance with all municipal building and housing code requirements and to fulfill the conservator's responsibilities under this act. Such powers and duties shall include, but not be limited to, the power to:

(1) Take possession and control of the building, appurtenant land and any personal property of the owner used with respect to the building, including any bank or operating account for the building.

- (2) Collect outstanding accounts receivable.
 - (3) Pursue all claims or causes of action of the owner with respect to the building and all other property subject to the conservator.
 - (4) Contract for the repair and maintenance of the building. The contracts shall be appropriately documented and included in the reports and accounting which the conservator is required to submit or file under the provisions of this act. The conservator shall make a reasonable effort to solicit three bids for contracts valued at more than \$25,000.
 - (5) Borrow money and incur credit in accordance with section 8.
 - (6) Contract and pay for the maintenance and restoration of utilities to the building.
 - (7) Purchase materials, goods and supplies to accomplish repairs and operate the building.
 - (8) With the court's approval, enter into new rental contracts and leases for a period not to exceed one year.
 - (9) Affirm, renew or enter into contracts providing for insurance coverage on the building.
 - (10) Engage and pay legal, accounting, appraisal and other professionals to aid the conservator in the conduct of the conservatorship.
 - (11) When the building has been designated a historic property, consult with the municipality's historical commission or board of historical and architectural review, a local historic preservation organization or, in the absence thereof, the Pennsylvania Historical and Museum Commission for recommendations on preserving the property's historic character.
 - (12) Apply for and receive public grants or loans.
 - (13) Sell the building in accordance with section 9.
 - (14) Exercise all authority that an owner of the building would have to improve, maintain and otherwise manage the building.
- (b) Affirmative duty.—While in possession of the building, the conservator shall:
- (1) Maintain, safeguard and insure the building.
 - (2) Apply all revenue generated from the building consistent with the provisions of this act.
 - (3) (i) Develop a final plan for abatement of the conditions which caused the petition to be granted or, if no such feasible final plan can be developed, to develop alternatives, including the closing, sealing or demolition of all or part of the building.
 - (ii) When the building has been designated a historic property, rehabilitate architectural features that define the property's historic character.
 - (iii) When demolition of a property in a historic district is necessary, design any replacement construction on the site to comply with applicable standards under current law.

(4) Implement the final plan referred to in paragraph (3) upon approval by the court.

(5) Submit a status report to the court and parties to the action annually or more frequently as the court may deem appropriate. The status report shall include:

(i) A copy of any contract entered into by the conservator regarding the improvement of the building.

(ii) An account of the disposition of all revenue generated from the building.

(iii) An account of all expenses and improvements.

(iv) The status of developing and implementing the final plan pursuant to this subsection.

(v) A description of any proposed actions to be taken in the next six months to improve the building.

(c) Hearing on conservator's final plan for abatement.—

(1) At the time the court appoints a conservator, a hearing date on the conservator's final plan for abatement shall be set within 120 days of the appointment.

(2) Thirty days prior to the date of the hearing, the conservator shall submit the plan to the court and to all parties to the action.

(3) The plan shall include a cost estimate, a financing plan and either a description of the work to be done for the rehabilitation of the building or, if rehabilitation is not feasible, a proposal for the closing, sealing or demolition of the building.

(4) The plan shall conform with all existing municipal codes, duly adopted plans for the area and historic preservation requirements.

(5) At the time of the hearing, all parties shall be allowed to comment on the plan, and the court shall take all comments into consideration when assessing the feasibility of the plan and the proposed financing.

(6) Within 15 days of the hearing, the court shall issue a decision approving the plan or requiring that the plan be amended.

(7) If the court decision requires that the plan be amended, a hearing date shall be set within 60 days from the date of the decision.

(d) Accounting.—Upon the implementation of the final plan approved by the court, the conservator shall file with the court a full accounting of all income and expenditures during the period of time it took to implement the final plan.

Section 7. Ownership of property.

(a) Ownership interest of conservator.—A conservator appointed under section 5 shall be deemed to have an ownership interest in and legal control of the property for the purposes of filing plans with public agencies and boards, seeking and obtaining construction permits and other approvals and submitting applications for financing or other assistance to public or private entities.

(b) **Liability of owner.**—Notwithstanding the appointment of a conservator under section 5, nothing in this act shall be construed to relieve the owner of any civil or criminal liability or of any obligation to pay taxes, municipal liens and charges, mortgages, private liens or other fees or charges, whether incurred before or after the appointment of the conservator and no such liability shall transfer to the conservator.

(c) **Limitation of conservator's environmental liability.**—

(1) Notwithstanding any law to the contrary, the conservator shall not be held liable for any environmental damage to the building or the real property upon which the building is located that existed prior to the appointment by the court of the conservator.

(2) Paragraph (1) does not apply to the owner or any other person or entity regarding the building and its real property that is subject to an appointed conservator under this act.

Section 8. Incurring indebtedness.

(a) **Borrowing.**—From time to time, a conservator may borrow money or incur indebtedness in order to cover the costs of rehabilitation or to otherwise fulfill the conservator's obligations under this act.

(b) **Liens.**—In order to facilitate the borrowing of funds for the costs of rehabilitation, the court may grant a lien or security interest with priority over all other liens with the exception of municipal or other governmental liens, provided, however, that prior to granting a priority lien, the court has found that:

(1) The conservator sought to obtain the necessary financing from the senior lienholder, but the lienholder declined to provide financing for reasonable improvements or other costs of rehabilitation on reasonable terms.

(2) Lien priority is necessary in order to induce another lender to provide financing on reasonable terms.

(c) **Lien status of rehabilitation expenses.**—Should the senior lienholder agree to provide financing for the costs of rehabilitation, any funds lent to cover the costs shall be deemed to be added to the senior lienholder's preexisting first lien.

(d) **Approval of financing.**—The court may approve financing for the costs of rehabilitation, the terms of which may include deferred repayment and use restrictions. The terms of the financing may remain with the property after the conservatorship has ended and be assumed by any of the following:

(1) The owner, if the owner regains possession of the property under section 10(2).

(2) The buyer who takes title under section 9.

Section 9. Sale of property.

(a) **Sale by owner or lienholder.**—If a property subject to conservatorship is sold by the owner or foreclosed upon by a lienholder or if any interest therein is transferred, such sale, foreclosure or transfer shall be subject to the conservatorship.

(b) Sale by conservator.—Upon application of the conservator, the court may order the sale of the property if the court finds that:

(1) Notice and an opportunity to provide comment to the court was given to each record owner of the property and each lienholder.

(2) The conservator has been in control of the building for more than six months and the owner has not successfully petitioned to terminate the conservatorship under section 10.

(3) The terms and conditions of the sale are acceptable to the court, and the buyer has a reasonable likelihood of maintaining the property.

(c) Sale free and clear.—

(1) The court may authorize the conservator to sell the building free and clear of all liens, claims and encumbrances, provided that the proceeds of the sale are distributed pursuant to subsection (d) at settlement.

(2) In the event that the proceeds of the sale are insufficient to pay all existing liens, claims and encumbrances, the proceeds shall be distributed according to the priorities set forth in subsection (d) and all unpaid liens, claims or encumbrances which have not been assumed under section 8(d) shall be extinguished.

(d) Distribution.—The proceeds of the sale shall be applied in accordance with the following priorities to:

(1) All court costs.

(2) Municipal or other governmental liens.

(3) Costs and expenses of sale.

(4) Principal and interest on any borrowing or incurrence of indebtedness granted priority over existing liens and security interest under section 8(b).

(5) Costs of rehabilitation and any fees and expenses incurred by the conservator in connection with the sale or the safeguarding of the property for which the lien authorized under section (5)(g) was filed.

(6) Valid liens and security interests in accordance with their priority.

(7) Any unpaid obligations of the conservator.

(8) Costs incurred by the petitioner in requesting the court to place the property in conservatorship.

(9) The owner.

(e) Owner's proceeds as unclaimed property.—In the event the owner cannot be located, any proceeds from the sale which belong to the owner shall be presumed to be abandoned and unclaimed and shall be subject to the custody and control of the Commonwealth pursuant to Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Section 10. Termination of conservatorship.

Upon request of a party in interest or the conservator, the court may order the termination of the conservatorship if it determines:

(1) the conditions that were the grounds for the petition and all other code violations have been abated or corrected, the obligations, expenses

and improvements of the conservatorship, including all fees and expenses of the conservator, have been fully paid or provided for and the purposes of the conservatorship have been fulfilled;

(2) the owner, mortgagee or lienholder has requested the conservatorship be terminated and has provided adequate assurances to the court that the conditions that constituted grounds for the petition will be promptly abated, all obligations, expenses and improvements of the conservatorship, including all fees and expenses of the conservator, have been fully paid or provided for and the purposes of the conservatorship have been fulfilled;

(3) the building has been sold by the conservator and the proceeds distributed in accordance with section 9(d); or

(4) the conservator has been unable, after diligent effort, to present a plan that could be approved under section 6(b)(3) or to implement a previously approved plan or, for any reason, the purposes of the conservatorship cannot be fulfilled.

Section 11. Applicability.

(a) General inapplicability.—This act shall not apply to commercial and residential buildings, structures or land owned by or held in trust for the Federal Government and regulated under the United States Housing Act of 1937 (50 Stat. 888, 42 U.S.C. § 1437 et seq.) and regulations promulgated under that act.

(b) Inapplicability to service members.—This act shall not apply if the property owner has vacated the property in order to perform military service in time of war, armed conflict or in order to assist with relief efforts during a declared Federal or State emergency as a member of the United States Armed Forces or its reserve component.

Section 20. Effective date.

This act shall take effect in 90 days.

APPROVED—The 26th day of November, A.D. 2008.

EDWARD G. RENDELL