



Senate Urban Affairs & Housing Committee

Senate John Pippy, Chairman

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Summary House Bill 2188, Printer's Number 4061 Prime Sponsor: Representative Walko

This bill creates the Abandoned and Blighted Property Conservatorship Act

Petition of conservatorship:

Allows a "party in interest" to petition a county court to appoint a conservator to take possession of a "building" and undertake its rehabilitation.

A party in interest is defined as: A person or entity who has a direct and immediate interest in a residential, commercial or industrial building, including:

- (1) The owner.
- (2) A lien holder and other secured creditor of the owner.
- (3) A resident or business owner within 500 feet of the building.
- (4) A nonprofit corporation within the municipality where the building is located, including a redevelopment authority.
- (5) A municipality or school district in which the building is located.

A building is defined as: A residential, commercial or industrial building or structure and the land appurtenant thereto.

A petition of conservatorship must include a statement for the reasons a conservator should be appointed and to the extent possible include: a copy of the notice of violation of local codes; a recommendation on who should be appointed as conservator; and an initial plan with cost estimates to bring the building into code compliance.

Once the petition is filed with the court, the petitioner is required to notify the current property owner and all political subdivision in which the property is located that the petition has been filed as well as the date for the hearing.

Appointment of conservator:

Courts would be required to act upon a petition within 120 days and render a decision within 30 days of the hearing.

Any party in interest may intervene in the proceedings and be heard by the court and may present any evidence to support or contest the petition.

The court may appoint a conservator if all of the following apply:

- the building has not been legally occupied for at least the previous 12 months;
- the building has not been actively marketed for the 60 days prior to the petition;
- the building is not subject to an existing foreclosure action;
- the current owner is unable to show that he took possession of the property in the last six months; and
- the court finds at least three of the following:
 - *the building or structure is a public nuisance (which is defined as: A property that, because of physical condition or use, has been declared 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);
 - *the building is in need of substantial rehabilitation and no rehabilitation has taken place for the previous 12 months;
 - *the building is unfit for human habitation;
 - *the condition and vacancy increase the risk of fire;
 - *the building is subject to unauthorized entry;
 - *the building is attractive to children;
 - *there is a collection of vermin, debris, and uncut vegetation, causing a health and safety risk;
 - *the appearance of the building negatively affects the economic well-being of residences and businesses in close proximity; and/or
 - *the building is attractive to illicit activities.

The court shall give first consideration for appointment as conservator to the senior lien holder. If that lien holder is unable to fulfill or declines the appointment, the court may appoint a non profit corporation or other competent entity.

The court shall also consider any recommendation in the petition or a recommendation by a party in interest and shall give preference to a non profit corporation or governmental entity over an individual.

If the conditions of conservatorship have been met but the court determines the owner can abate the nuisances, the court may allow the owner to proceed with the rehabilitation. A specific deadline for completion of the work may be established and if not met by the owner, the court may grant the original petition. The court may also require the owner to post a bond as a condition to retain ownership of the building.

If a conservator is appointed it shall take possession of the building immediately and over time may file a lien against the property for the work performed.

Powers and duties of a conservator:

The conservator shall have all powers necessary to bring the building into compliance with all municipal building and housing code requirements. This shall include:

- taking possession of the building, land and the owners personal property used with respect to the property including bank and operating accounts for the

- building;
- collecting outstanding accounts receivable;
- contracting for the repair of the building;
- borrowing money and incurring credit;
- paying for the maintenance and restoration of utilities;
- entering into, with court approval, rental agreements;
- consulting with historic groups when appropriate; and
- selling the property.

While in possession of the building, the conservator shall maintain and insure the building and apply all revenue from the building to activities consistent with the act.

The conservator shall develop a final plan to abate the existing conditions and gain approval for the plan from the court. The conservator shall also submit an annual status report to the court and other parties to the action.

Within 90 days of appointment, the conservator shall submit its final abatement plan to the court and all parties to the action and a hearing on the plan will be held no more than 120 days after the conservator is appointed.

The plan shall include a cost estimate, financing strategy and a description of the work and shall comply with all applicable local codes and historic requirements.

Ownership of the property:

The conservator shall be deemed to have ownership interest in the property for the purposes of filing plans, obtaining construction permits and other approvals.

Nothing in this act shall relieve the owner from any civil or criminal liability or any obligations to pay taxes, mortgages, liens, etc whether incurred before or after the appointment of the conservator. No such liability shall be transferred to the conservator.

The conservator shall not be liable for any environmental damage to the building or property which existed prior to the appointment by the court.

Incurring of indebtedness:

The conservator may borrow money or incur indebtedness to cover the costs of rehabilitation.

In order to facilitate the borrowing of funds, the court may grant a lien with priority over all other liens except municipal or government liens. In order to grant this priority lien status the court must find:

- the senior lien holder declined to provide the financing to the conservator; and
- the lien is necessary in order to obtain reasonable financing from another lender.

Should a senior lien holder agree to provide financing, any funds shall be added to the senior lien holders preexisting lien.

The court may approve financing plans and the terms may include deferred repayment and use restrictions. The terms of the financing may remain with the property and be assumed by the original owner or a buyer who takes title of the property.

Sale of the property:

If the property subject to the conservatorship is sold or foreclosed upon, such action shall be subject to the conservatorship.

Upon application of the conservator, the court may order the sale of the property if it finds:

- notice was given to each owner and lien holder of the property;
- the conservator has been in control of the building for more than six months and the owner has not been successful in petitioning for the termination of the conservatorship; and
- the terms and conditions of the sale are acceptable to the court and the prospective buyer has reasonable likelihood to maintain the property.

The court may authorize the conservator to sell the property free and clear of all liens, claims and encumbrances provided that the proceeds are distributed in specific order. In the event the proceeds do not cover all existing liens, claims and encumbrances, any that are unpaid and not assumed by the previous owner or new buyer of the property shall be extinguished.

Proceeds from the sale are to be distributed as follows:

- all courts costs;
- municipal and government liens;
- costs and expenses of sale;
- indebtedness for rehabilitation approved as priority status by the court;
- costs for rehabilitation incurred by the conservator;
- other liens and security interests;
- other unpaid obligations of the conservator;
- costs incurred by the petitioner;
- the owner.

If the owner can not be located, the owner's share will be declared unclaimed property.

Termination of conservatorship:

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

- the conditions of the property that warranted conservatorship have been abated, the obligations and expenses have been fully paid and the purpose of the

- conservatorship has been fulfilled;
- the owner, mortgagee or lien holder has provide adequate assurances that the conditions that warranted the conservatorship will be promptly abated and any outstanding obligations and expenses have been fully paid to the conservator;
- the building has been sold by the conservator and the proceeds properly distributed; or
- the conservator is unable to develop a final plan or receive approval for the final plan.

Applicability:

The act shall not apply to commercial or residential property held in trust by the Federal government and regulated under the United States Housing Act nor shall this act apply to property vacated by individuals to perform military service in a time of war or armed conflict.

This act shall take effect in 90 days.