

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1363 Session of 2013

INTRODUCED BY TAYLOR, PARKER, DUNBAR, READSHAW, O'BRIEN, D. COSTA, KORTZ, HESS, C. HARRIS, R. MILLER, FREEMAN, GINGRICH, MILLARD, DENLINGER, KOTIK, WATSON, ROSS, COHEN, TOOHL, FARRY, DeLUCA, NEILSON, MURT AND SIMS, MAY 9, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 5, 2013

AN ACT

1 Amending the act of November 26, 2008 (P.L.1672, No.135),
2 entitled "An act providing for court-appointed conservators
3 to bring residential, commercial and industrial buildings
4 into municipal code compliance when owners fail to comply,"
5 further providing for definitions, for initiation of action,
6 for appointment of conservator, for powers and duties of
7 conservator, FOR INCURRING INDEBTEDNESS and for sale of
8 property. <--

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

11 Section 1. The definitions of "building," "costs of
12 rehabilitation," "nonprofit corporation," and "party in
13 interest" in section 3 of the act of November 26, 2008 (P.L.
14 1672, No. 135), known as the Abandoned and Blighted Property
15 Conservatorship Act, are amended and the section is amended by
16 adding definitions to read:

17 Section 3. Definitions.

18 The following words and phrases when used in this act shall
19 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Abandoned property." Any property that meets the
3 requirements of conditions of conservatorship as provided in
4 section 5(d).

5 * * *

6 "Building." A residential, commercial or industrial building
7 or structure and the land appurtenant thereto, including a
8 vacant lot on which a building has been demolished.

9 * * *

10 "Costs of rehabilitation." Costs and expenses for
11 construction, stabilization, rehabilitation, maintenance and
12 operation or demolition, including reasonable nonconstruction
13 costs associated with the project, including, but not limited
14 to, environmental remediation, architectural, engineering and
15 legal fees and costs, permits, financing fees and a developer's
16 fee [consistent with the standards for developers' fees
17 established by the Pennsylvania Housing Finance Agency].

18 * * *

19 "Developer's fee." A fee equal to the greatest of the
20 following:

21 (1) an amount equal to \$2,500, adjusted upward by 2%
22 each year;

23 (2) a 20% markup of the costs and expenses for
24 construction, stabilization, rehabilitation, maintenance and
25 operation or demolition as described in the proposed
26 conservator's plan and any subsequent plan approved by the
27 court; or

28 (3) twenty percent of the sale price of the property.

29 * * *

30 "Nonprofit corporation." A nonprofit corporation that has,

1 as one of its purposes remediation of blight, community
2 development activities, including economic development, historic
3 preservation or the promotion or enhancement of affordable
4 housing opportunities.

5 * * *

6 "Party in interest." A person or entity who has a direct and
7 immediate interest in a residential, commercial or industrial
8 building, including:

9 (1) The owner.

10 (2) A lienholder and other secured creditor of the
11 owner.

12 (3) A resident or business owner within [500] 2,000 feet
13 of the building.

14 (4) A nonprofit corporation, including a redevelopment
15 authority, which:

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

19 (ii) for a building located in a city of the first
20 class, is located in the city and has participated in a
21 project within a [one-mile] five-mile radius of the
22 location of the building.

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

25 * * *

26 Section 2. Section 4 of the act is amended by adding a
27 subsection to read:

28 Section 4. Initiation of action.

29 * * *

30 (e) Adjacent properties.--The petition may include one or

1 more adjacent properties in a single action if:

2 (1) the property that is the primary subject of the
3 action is owned by the same owner as the adjacent property;

4 and

5 (2) the properties are or were used for a single or
6 interrelated function.

7 Section 3. Section 5(a), (d), (e), (f) and (g) of the act
8 are amended to read:

9 Section 5. Appointment of conservator.

10 (a) General rule.--The court shall act upon a petition
11 submitted by holding a hearing within [120] 60 days of receipt
12 of the petition and by rendering a decision no later than 30
13 days after completion of the hearing.

14 * * *

15 (d) Conditions for conservatorship.--If a petition is filed
16 under section 4, the court may appoint a conservator if all of
17 the following apply as of the date of filing:

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

20 (2) ~~【The building has not been actively marketed during <--~~
21 ~~the 60 days prior to the date of the petition[.] or has been <--~~
22 ~~actively marketed for more than six months without a~~
23 ~~competitive, market driven price reduction. If the property~~
24 ~~is actively marketed, the owner of the building shall provide~~
25 ~~the court with a copy of the active real estate listing as~~
26 ~~well as a notarized affidavit containing dates the property~~
27 ~~was shown and details about any offers placed by potential~~
28 ~~buyers. The court shall consider whether the listing is a~~
29 ~~credible attempt to sell the property to a responsible owner~~
30 ~~or an attempt to thwart the proposed conservatorship.】 THE <--~~

1 OWNER FAILS TO PRESENT COMPELLING EVIDENCE THAT HE HAS MADE A
2 GOOD FAITH EFFORT, DURING THE PRECEDING 60-DAY PERIOD, TO
3 SELL THE PROPERTY AT A PRICE WHICH REFLECTS THE CIRCUMSTANCES
4 AND MARKET CONDITIONS.

5 (3) The [building] PROPERTY is not subject to [an <--
6 existing] A PENDING foreclosure action[.] ~~For the purposes of <--~~
7 ~~this paragraph, foreclosure does not include properties~~
8 ~~subject to civil action by a governmental entity for taxes or~~
9 ~~liens, and any enforcement action may be stayed at the~~
10 ~~discretion of the court.~~ BY AN INDIVIDUAL OR NONGOVERNMENTAL <--
11 ENTITY.

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

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

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

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

27 (iii) The building is unfit for human habitation,
28 occupancy or, ~~if the property is zoned commercial,~~ use. <--

29 (iv) The condition and vacancy of the building
30 materially increase the risk of fire to the building and

1 to adjacent properties.

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

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

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

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

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

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

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

29 (e) Appointment.--

30 (1) If the court determines after a hearing that the

1 property has met the conditions of subsection (d), the court
2 may appoint a conservator and grant such other relief as may
3 be just and appropriate.

4 (2) The court shall give first consideration for
5 appointment as conservator to the MOST senior NONGOVERNMENTAL <--
6 lienholder on the property.

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

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

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

21 (f) Conditional relief.--

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

28 (2) If the conditions set forth in paragraph (1) have
29 been satisfied, the court shall enter an order providing
30 that, in the event that the violations or nuisance or

1 emergency conditions are not abated by the owner by a
2 specific date or that other specified remedial activities
3 have not occurred by a specific date or dates, an order
4 granting the relief requested in the petition shall be
5 entered.

6 (3) The court [may] shall also require the owner to post
7 a bond in the amount of the repair costs estimated in the
8 petition as a condition to retaining possession of the
9 building.

10 ~~(4) After a petition is filed, if the court proceeds~~ <--
11 ~~pursuant to paragraph (1) or subsection (c) (2), or the owner~~
12 ~~contracts to sell the property, the costs of conservatorship~~
13 ~~shall be paid to the petitioner or conservator upon a prima~~
14 ~~facie finding that the conditions for conservatorship are~~
15 ~~satisfied.~~ A CONTRACT FOR SALE ENTERED INTO SUBSEQUENT TO THE <--
16 FILING OF A PETITION FOR CONSERVATORSHIP SHALL BE SUBJECT TO
17 COURT APPROVAL AND TO REIMBURSEMENT OF COSTS INCURRED BY THE
18 PETITIONER IN PREPARING AND FILING THE PETITION IN ACCORDANCE
19 WITH THE REQUIREMENTS OF SECTION 4.

20 (g) Conservator's lien.--The conservator may file a lien
21 against the property in an amount based on the costs incurred
22 during the conservatorship, including, but not limited to, costs
23 of rehabilitation, attorney fees and court costs. The lien
24 amount may be adjusted from time to time.

25 * * *

26 Section 4. Section 6(a)(4) and (14) and ~~(b)(4)~~ (C)(1) AND <--
27 (5) of the act are amended ~~and the section is amended by adding~~ <--
28 ~~a subsection~~ to read:

29 Section 6. Powers and duties of conservator.

30 (a) Full powers and duties.--The conservator shall have all

1 powers and duties necessary or desirable, from time to time, for
2 the efficient operation, management and improvement of the
3 building in order to bring it into compliance with all municipal
4 building and housing code requirements and to fulfill the
5 conservator's responsibilities under this act. Such powers and
6 duties shall include, but not be limited to, the power to:

7 * * *

8 (4) Contract for the repair and maintenance of the
9 building. The contracts shall be appropriately documented and
10 included in the reports and accounting which the conservator
11 is required to submit or file under the provisions of this
12 act. The conservator shall make a reasonable effort to
13 solicit three bids for contracts valued at more than \$25,000,
14 except when the contractor or developer provides or obtains
15 financing for the conservatorship.

16 * * *

17 (14) Exercise all authority that an owner of the
18 building would have to improve, maintain and otherwise manage
19 the building, including the extent to which rehabilitation
20 will satisfy the goals of the conservatorship.

21 ~~(a.1) Reasonable regard from court. The court shall~~ <--
22 ~~give reasonable regard to the conservator in its~~
23 ~~determination as to the scope of rehabilitation necessary to~~
24 ~~recoup the costs of conservatorship, rehabilitation and~~
25 ~~proposed purchase by a developer.~~

26 ~~(b) Affirmative duty. While in possession of the building,~~
27 ~~the conservator shall:~~

28 * * *

29 ~~(4) Implement the final plan referred to in paragraph~~
30 ~~(3) upon approval by the court. The court may approve the~~

1 ~~final plan at the hearing described in section 5(c).~~

2 (C) HEARING ON CONSERVATOR'S FINAL PLAN FOR ABATEMENT.-- <--

3 (1) AT THE TIME THE COURT APPOINTS A CONSERVATOR, THE
4 CONSERVATOR MAY PRESENT AND THE COURT MAY APPROVE THE FINAL
5 PLAN FOR ABATEMENT. IF NO PLAN IS PRESENTED AT THAT HEARING,
6 A HEARING DATE ON THE CONSERVATOR'S FINAL PLAN FOR ABATEMENT
7 SHALL BE SET WITHIN 120 DAYS OF THE APPOINTMENT.

8 * * *

9 (5) AT THE TIME OF THE HEARING, ALL PARTIES SHALL BE
10 ALLOWED TO COMMENT ON THE PLAN, AND THE COURT SHALL TAKE ALL
11 COMMENTS INTO CONSIDERATION WHEN ASSESSING THE FEASIBILITY OF
12 THE PLAN AND THE PROPOSED FINANCING. IN MAKING ITS
13 ASSESSMENT, THE COURT SHALL GIVE REASONABLE REGARD TO THE
14 CONSERVATOR'S DETERMINATION OF THE SCOPE AND NECESSITY OF
15 WORK TO BE DONE FOR THE REHABILITATION OR DEMOLITION OF THE
16 BUILDING IN APPROVING THE FINAL PLAN AND IN APPROVING THE
17 COSTS OF CONSERVATORSHIP AND SALE OF THE PROPERTY.

18 * * *

19 Section 5. ~~Section~~ SECTIONS 8(B) AND (C) AND 9(b)(2) and (d) <--
20 of the act are amended to read:

21 SECTION 8. INCURRING INDEBTEDNESS. <--

22 * * *

23 (B) LIENS.--IN ORDER TO FACILITATE THE BORROWING OF FUNDS
24 FOR THE COSTS OF REHABILITATION, THE COURT MAY GRANT PRIORITY
25 STATUS TO A LIEN [OR SECURITY INTEREST WITH PRIORITY OVER ALL
26 OTHER LIENS WITH THE EXCEPTION OF MUNICIPAL OR OTHER
27 GOVERNMENTAL LIENS, PROVIDED, HOWEVER, THAT PRIOR TO GRANTING A
28 PRIORITY LIEN, THE COURT HAS FOUND THAT] GIVEN TO SECURE PAYMENT
29 ON A DEBT INCURRED FOR PURPOSES AUTHORIZED UNDER THIS CHAPTER
30 PROVIDED THAT:

1 (1) [THE] THE CONSERVATOR SOUGHT TO OBTAIN THE NECESSARY
2 FINANCING FROM THE SENIOR, NONGOVERNMENTAL LIENHOLDER, BUT
3 THE LIENHOLDER DECLINED TO PROVIDE FINANCING FOR REASONABLE
4 IMPROVEMENTS OR OTHER COSTS OF REHABILITATION ON REASONABLE
5 TERMS[.]; AND

6 (2) [LIEN] LIEN PRIORITY IS NECESSARY IN ORDER TO INDUCE
7 ANOTHER LENDER TO PROVIDE FINANCING ON REASONABLE TERMS.

8 [(C) LIEN STATUS OF REHABILITATION EXPENSES.--SHOULD THE
9 SENIOR LIENHOLDER AGREE TO PROVIDE FINANCING FOR THE COSTS OF
10 REHABILITATION, ANY FUNDS LENT TO COVER THE COSTS SHALL BE
11 DEEMED TO BE ADDED TO THE SENIOR LIENHOLDER'S PREEXISTING FIRST
12 LIEN.]

13 * * *

14 Section 9. Sale of property.

15 * * *

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

19 * * *

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

24 * * *

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

27 (1) All court costs.

28 (2) ~~[Municipal] The principal on all State and municipal <--~~
29 ~~or other governmental liens then existing and recorded in the~~
30 ~~judgment and lien index prior to filing of the petition for~~

1 ~~conservatorship.~~ [MUNICIPAL OR OTHER GOVERNMENTAL LIENS.] <--
2 LIENS OF THE COMMONWEALTH, LIENS FOR UNPAID PROPERTY TAXES
3 AND PROPERLY RECORDED MUNICIPAL LIENS.

4 (3) Costs and expenses of sale.

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

8 ~~(4.1) Costs incurred by the petitioner in requesting the~~ <--
9 ~~court to place the property in conservatorship.~~ PREPARING AND <--
10 FILING THE PETITION IN ACCORDANCE WITH THE REQUIREMENTS OF
11 SECTION 4.

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

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

18 (7) Any unpaid obligations of the conservator.

19 [(8) Costs incurred by the petitioner in requesting the <--
20 court to place the property in conservatorship.] <--

21 (9) The owner.

22 * * *

23 Section 6. This act shall take effect in 60 days.