

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,
TOOHIL, FARRY, DeLUCA, NEILSON, MURT AND SIMS, MAY 9, 2013

SENATOR ARGALL, URBAN AFFAIRS AND HOUSING, IN SENATE, AS
AMENDED, JUNE 19, 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~~ 4(B) AND (D) (1) of the act ARE AMENDED <--
27 AND THE SECTION is amended by adding a subsection to read:

28 Section 4. Initiation of action.

29 * * *

30 (B) CONTENTS.--THE PETITION SUBMITTED TO THE COURT SHALL <--

1 INCLUDE A SWORN STATEMENT THAT, TO THE BEST OF THE PETITIONER'S
2 KNOWLEDGE, THE PROPERTY MEETS THE CONDITIONS FOR CONSERVATORSHIP
3 SET FORTH IN SECTION 5(D) AND TO THE EXTENT AVAILABLE TO THE
4 PETITIONER AFTER REASONABLE EFFORTS TO OBTAIN SUCH INFORMATION:

5 (1) A COPY OF ANY CITATION CHARGING THE OWNER WITH BEING
6 IN VIOLATION OF MUNICIPAL CODE REQUIREMENTS OR DECLARING THE
7 BUILDING TO BE A PUBLIC NUISANCE.

8 (2) A RECOMMENDATION AS TO WHICH PERSON OR ENTITY SHOULD
9 BE APPOINTED CONSERVATOR.

10 (3) A PRELIMINARY PLAN WITH INITIAL COST ESTIMATES FOR
11 REHABILITATION OF THE BUILDING TO BRING IT INTO COMPLIANCE
12 WITH ALL MUNICIPAL CODES AND DULY ADOPTED PLANS FOR THE AREA
13 IN WHICH THE BUILDING IS LOCATED AND ANTICIPATED FUNDING
14 SOURCES.

15 (4) A SCHEDULE OF MORTGAGES, LIENS AND OTHER
16 ENCUMBRANCES ON THE PROPERTY.

17 * * *

18 (D) NOTIFICATION OF OWNER, POLITICAL SUBDIVISIONS AND
19 LIENHOLDERS.--

20 (1) UPON FILING THE PETITION WITH THE COURT, THE
21 PETITIONER SHALL NOTIFY THE CURRENT OWNER OF THE PROPERTY,
22 ALL POLITICAL SUBDIVISIONS IN WHICH THE PROPERTY IS LOCATED,
23 ALL MUNICIPAL AUTHORITIES KNOWN TO HAVE PROVIDED SERVICE TO
24 THE PROPERTY AND ALL LIENHOLDERS OF THE FILING BY REGISTERED
25 OR CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF EACH AND BY
26 POSTING A COPY OF THE NOTICE ON THE BUILDING.

27 * * *

28 (e) Adjacent properties.--The petition may include one or
29 more adjacent properties in a single action if:

30 (1) the property that is the primary subject of the

1 action is owned by the same owner as the adjacent property;
2 and
3 (2) the properties are or were used for a single or
4 interrelated function.

5 Section 3. Section 5(a), (C), (d), (e), (f) and (g) of the <--
6 act are amended to read:

7 Section 5. Appointment of conservator.

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

12 * * *

13 (C) HEARING.--AT THE HEARING, ANY PARTY IN INTEREST SHALL BE <--
14 PERMITTED TO PRESENT EVIDENCE TO SUPPORT OR CONTEST THE
15 PETITION, INCLUDING, BUT NOT LIMITED TO, THE SCHEDULE OF
16 ENCUMBRANCES.

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

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

22 (2) [The building has not been actively marketed during
23 the 60 days prior to the date of the petition.] The owner
24 fails to present compelling evidence that he has ACTIVELY <--
25 MARKETED THE PROPERTY DURING THE PRECEDING 60-DAY PERIOD AND
26 made a good faith effort, during the preceding 60 day period, <--
27 to sell the property at a price which reflects the
28 circumstances and market conditions.

29 (3) The [building] property is not subject to [an
30 existing] a pending foreclosure action[.] by an individual or

1 nongovernmental entity.

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

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

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

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

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

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

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

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

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

30 (vi) The property is an attractive nuisance to

1 children, including, but not limited to, the presence of
2 abandoned wells, shafts, basements, excavations and
3 unsafe structures.

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

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

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

19 (e) Appointment.--

20 (1) If the court determines after a hearing that the
21 property has met the conditions of subsection (d), the court
22 may appoint a conservator, CERTIFY THE SCHEDULE OF <--
23 ENCUMBRANCES and grant such other relief as may be just and
24 appropriate. THE CERTIFICATION SHALL BE BINDING WITH RESPECT <--
25 TO ALL MORTGAGES, LIENS AND ENCUMBRANCES, INCLUDING MUNICIPAL
26 LIENS, ARISING OR ATTACHING TO THE PROPERTY PRIOR TO THE DATE
27 OF THE PETITION.

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

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

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

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

15 (f) Conditional relief.--

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

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

30 (3) The court [may] shall also require the owner to post

1 a bond in the amount of the repair costs estimated in the
2 petition as a condition to retaining possession of the
3 building.

4 ~~(4) A contract for sale entered into subsequent to the~~ <--
5 ~~filing of a petition for conservatorship shall be subject to~~
6 ~~court approval and to reimbursement of costs incurred by the~~
7 ~~petitioner in preparing and filing the petition in accordance~~
8 ~~with the requirements of section 4.~~ UPON A FINDING THAT: <--

9 (1) THE PETITION STATES CONDITIONS FOR CONSERVATORSHIP;
10 OR

11 (2) THE OWNER ELECTS TO EITHER:

12 (I) REMEDY ALL VIOLATIONS AND NUISANCE OR EMERGENCY
13 CONDITIONS; OR

14 (II) SELL THE PROPERTY SUBJECT TO THE
15 CONSERVATORSHIP,

16 THE OWNER SHALL REIMBURSE THE PETITIONER FOR ALL COSTS
17 INCURRED BY THE PETITIONER IN PREPARING AND FILING THE
18 PETITION IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 4.

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

24 * * *

25 Section 4. Section 6(a)(4) and (14) and (c)(1) and (5) of
26 the act are amended to read:

27 Section 6. Powers and duties of conservator.

28 (a) Full powers and duties.--The conservator shall have all
29 powers and duties necessary or desirable, from time to time, for
30 the efficient operation, management and improvement of the

1 building in order to bring it into compliance with all municipal
2 building and housing code requirements and to fulfill the
3 conservator's responsibilities under this act. Such powers and
4 duties shall include, but not be limited to, the power to:

5 * * *

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

14 * * *

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

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

20 (1) At the time the court appoints a conservator, the
21 conservator may present and the court may approve the final
22 plan for abatement. If no plan is presented at that hearing,
23 a hearing date on the conservator's final plan for abatement
24 shall be set within 120 days of the appointment.

25 * * *

26 (5) At the time of the hearing, all parties shall be
27 allowed to comment on the plan, and the court shall take all
28 comments into consideration when assessing the feasibility of
29 the plan and the proposed financing. In making its
30 assessment, the court shall give reasonable regard to the

1 conservator's determination of the scope and necessity of
2 work to be done for the rehabilitation or demolition of the
3 building in approving the final plan and in approving the
4 costs of conservatorship and sale of the property.

5 * * *

6 Section 5. Sections 8(b) ~~and (c)~~ and 9(b) (2) and (d) of the <--
7 act are amended to read:

8 Section 8. Incurring indebtedness.

9 * * *

10 (b) Liens.--In order to facilitate the borrowing of funds
11 for the costs of rehabilitation, the court may grant priority
12 status to a lien [or security interest with priority over all
13 other liens with the exception of municipal or other
14 governmental liens, provided, however, that prior to granting a
15 priority lien, the court has found that] given to secure payment
16 on a debt incurred for purposes authorized under this chapter
17 provided that:

18 (1) [The] the conservator sought to obtain the necessary
19 financing from the senior, nongovernmental lienholder, but
20 the lienholder declined to provide financing for reasonable
21 improvements or other costs of rehabilitation on reasonable
22 terms[.]; and

23 (2) [Lien] lien priority is necessary in order to induce
24 another lender to provide financing on reasonable terms.

25 ~~[(c) Lien status of rehabilitation expenses. Should the <--~~
26 ~~senior lienholder agree to provide financing for the costs of~~
27 ~~rehabilitation, any funds lent to cover the costs shall be~~
28 ~~deemed to be added to the senior lienholder's preexisting first~~
29 ~~lien.]~~

30 * * *

1 Section 9. Sale of property.

2 * * *

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

6 * * *

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

11 * * *

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

14 (1) All court costs.

15 (2) [Municipal or other governmental liens.] Liens of
16 the Commonwealth, liens for unpaid property taxes and
17 properly recorded municipal liens.

18 (3) Costs and expenses of sale.

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

22 (4.1) Costs incurred by the petitioner in preparing and
23 filing the petition in accordance with the requirements of
24 section 4.

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

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

1 (7) Any unpaid obligations of the conservator.

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

4 (9) The owner.

5 * * *

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