

## 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, SIMS AND HARHAI,  
MAY 9, 2013

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS  
AMENDED, OCTOBER 6, 2014

## 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

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

6 \* \* \*

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

10 \* \* \*

11 "CONSERVATOR'S OR DEVELOPER'S FEE." A FEE EQUAL TO THE <--  
12 GREATEST OF THE FOLLOWING:

13 (1) AN AMOUNT EQUAL TO \$2,500, ADJUSTED UPWARD BY 2%  
14 EACH YEAR;

15 (2) A 20% MARKUP OF THE COSTS AND EXPENSES FOR  
16 CONSTRUCTION, STABILIZATION, REHABILITATION, MAINTENANCE AND  
17 OPERATION OR DEMOLITION AS DESCRIBED IN THE PROPOSED  
18 CONSERVATOR'S PLAN AND ANY SUBSEQUENT PLAN APPROVED BY THE  
19 COURT; OR

20 (3) TWENTY PERCENT OF THE SALE PRICE OF THE PROPERTY.

21 "Costs of rehabilitation." Costs and expenses for  
22 construction, stabilization, rehabilitation, maintenance and  
23 operation or demolition, including reasonable nonconstruction  
24 costs associated with the project, including, but not limited  
25 to, environmental remediation, architectural, engineering and  
26 legal fees and costs, permits, financing fees and a  
27 CONSERVATOR'S OR developer's fee [consistent with the standards <--  
28 for developers' fees established by the Pennsylvania Housing  
29 Finance Agency].

30 \* \* \*

1 ~~"Developer's fee." A fee equal to the greatest of the~~  
2 ~~following:~~

3 ~~(1) an amount equal to \$2,500, adjusted upward by 2%~~  
4 ~~each year;~~

5 ~~(2) a 20% markup of the costs and expenses for~~  
6 ~~construction, stabilization, rehabilitation, maintenance and~~  
7 ~~operation or demolition as described in the proposed~~  
8 ~~conservator's plan and any subsequent plan approved by the~~  
9 ~~court; or~~

10 ~~(3) twenty percent of the sale price of the property.~~

11 \* \* \*

12 "Nonprofit corporation." A nonprofit corporation that has,  
13 as one of its purposes remediation of blight, community  
14 development activities, including economic development, historic  
15 preservation or the promotion or enhancement of affordable  
16 housing opportunities.

17 \* \* \*

18 "Party in interest." A person or entity who has a direct and  
19 immediate interest in a residential, commercial or industrial  
20 building, including:

21 (1) The owner.

22 (2) A lienholder and other secured creditor of the  
23 owner.

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

26 (4) A nonprofit corporation, including a redevelopment  
27 authority, which:

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

1 (ii) for a building located in a city of the first  
2 class, is located in the city and has participated in a  
3 project within a [one-mile] five-mile radius of the  
4 location of the building.

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

7 \* \* \*

8 Section 2. Section ~~4~~ 4(B) AND (D) (1) of the act ARE AMENDED <--  
9 AND THE SECTION is amended by adding a subsection to read:  
10 Section 4. Initiation of action.

11 \* \* \*

12 (B) CONTENTS.--THE PETITION SUBMITTED TO THE COURT SHALL <--  
13 INCLUDE A SWORN STATEMENT THAT, TO THE BEST OF THE PETITIONER'S  
14 KNOWLEDGE, THE PROPERTY MEETS THE CONDITIONS FOR CONSERVATORSHIP  
15 SET FORTH IN SECTION 5(D) AND TO THE EXTENT AVAILABLE TO THE  
16 PETITIONER AFTER REASONABLE EFFORTS TO OBTAIN SUCH INFORMATION:

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

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

22 (3) A PRELIMINARY PLAN WITH INITIAL COST ESTIMATES FOR  
23 REHABILITATION OF THE BUILDING TO BRING IT INTO COMPLIANCE  
24 WITH ALL MUNICIPAL CODES AND DULY ADOPTED PLANS FOR THE AREA  
25 IN WHICH THE BUILDING IS LOCATED AND ANTICIPATED FUNDING  
26 SOURCES.

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

29 \* \* \*

30 (D) NOTIFICATION OF OWNER, POLITICAL SUBDIVISIONS AND

1 LIENHOLDERS.--

2 (1) UPON FILING THE PETITION WITH THE COURT, THE  
3 PETITIONER SHALL NOTIFY THE CURRENT OWNER OF THE PROPERTY,  
4 ALL POLITICAL SUBDIVISIONS IN WHICH THE PROPERTY IS LOCATED,  
5 ALL MUNICIPAL AUTHORITIES KNOWN TO HAVE PROVIDED SERVICE TO  
6 THE PROPERTY AND ALL LIENHOLDERS OF THE FILING BY REGISTERED  
7 OR CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF EACH AND BY  
8 POSTING A COPY OF THE NOTICE ON THE BUILDING.

9 \* \* \*

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

12 (1) the property that is the primary subject of the  
13 action is owned by the same owner as the adjacent property;  
14 and

15 (2) the properties are or were used for a single or  
16 interrelated function.

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

19 Section 5. Appointment of conservator.

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

24 \* \* \*

25 (C) HEARING.--AT THE HEARING, ANY PARTY IN INTEREST SHALL BE <--  
26 PERMITTED TO PRESENT EVIDENCE TO SUPPORT OR CONTEST THE  
27 PETITION, INCLUDING, BUT NOT LIMITED TO, THE SCHEDULE OF  
28 ENCUMBRANCES.

29 (d) Conditions for conservatorship.--If a petition is filed  
30 under section 4, the court may appoint a conservator if all of

1 the following apply as of the date of filing:

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

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

11 (3) The [building] property is not subject to [an  
12 existing] a pending foreclosure action[.] by an individual or  
13 nongovernmental entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (e) Appointment.--

2 (1) If the court determines after a hearing that the  
3 property has met the conditions of subsection (d), the court  
4 may appoint a conservator, CERTIFY THE SCHEDULE OF <--  
5 ENCUMBRANCES and grant such other relief as may be just and  
6 appropriate. THE CERTIFICATION SHALL BE BINDING WITH RESPECT <--  
7 TO ALL MORTGAGES, LIENS AND ENCUMBRANCES, INCLUDING MUNICIPAL  
8 LIENS, ARISING OR ATTACHING TO THE PROPERTY PRIOR TO THE DATE  
9 OF THE PETITION.

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

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

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

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

27 (f) Conditional relief.--

28 (1) If the court finds after a hearing that the  
29 conditions for conservatorship set forth in subsection (d)  
30 have been established, but the owner represents that the



1 conditions, violations or nuisance or emergency condition  
2 will be abated in a reasonable period, the court may allow  
3 the owner to proceed to remedy the conditions.

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

12 (3) The court [may] shall also require the owner to post  
13 a bond in the amount of the repair costs estimated in the  
14 petition as a condition to retaining possession of the  
15 building.

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

21 (1) THE PETITION STATES CONDITIONS FOR CONSERVATORSHIP;

22 OR

23 (2) THE OWNER ELECTS TO EITHER:

24 (I) REMEDY ALL VIOLATIONS AND NUISANCE OR EMERGENCY  
25 CONDITIONS; OR

26 (II) SELL THE PROPERTY SUBJECT TO THE  
27 CONSERVATORSHIP,

28 THE OWNER SHALL REIMBURSE THE PETITIONER FOR ALL COSTS  
29 INCURRED BY THE PETITIONER IN PREPARING AND FILING THE  
30 PETITION IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 4 AND <--

1       THE CONSERVATOR'S OR DEVELOPER'S FEE.

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

7       \* \* \*

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

10 Section 6. Powers and duties of conservator.

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

18       \* \* \*

19       (4) Contract for the repair and maintenance of the  
20 building. The contracts shall be appropriately documented and  
21 included in the reports and accounting which the conservator  
22 is required to submit or file under the provisions of this  
23 act. The conservator shall make a reasonable effort to  
24 solicit three bids for contracts valued at more than \$25,000,  
25 except when the contractor or developer provides or obtains  
26 financing for the conservatorship.

27       \* \* \*

28       (14) Exercise all authority that an owner of the  
29 building would have to improve, maintain and otherwise manage  
30 the building, including the extent to which rehabilitation

1 will satisfy the goals of the conservatorship.

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. Sections 8(b) ~~and (c)~~ and 9(b)(2) and (d) of the <--  
20 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 or other governmental liens.] Liens of  
29 the Commonwealth, liens for unpaid property taxes and  
30 properly recorded municipal liens.

1 (3) Costs and expenses of sale.

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

5 (4.1) Costs incurred by the petitioner in preparing and  
6 filing the petition in accordance with the requirements of  
7 section 4.

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

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

14 (7) Any unpaid obligations of the conservator.

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

17 (9) The owner.

18 \* \* \*

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