

## No. 2014-157

## AN ACT

HB 1363

Amending the act of November 26, 2008 (P.L.1672, No.135), entitled "An act providing for court-appointed conservators to bring residential, commercial and industrial buildings into municipal code compliance when owners fail to comply," further providing for definitions, for initiation of action, for appointment of conservator, for powers and duties of conservator, for incurring indebtedness and for sale of property.

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

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

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:

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

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

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***"Conservator's or developer's fee." A fee equal to the greatest of the following:***

- (1) an amount equal to \$2,500, adjusted upward by 2% each year;***
- (2) a 20% markup of the costs and expenses for construction, stabilization, rehabilitation, maintenance and operation or demolition as described in the proposed conservator's plan and any subsequent plan approved by the court; or***
- (3) twenty percent of the sale price of the property.***

***"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 and costs, permits, financing fees and a conservator's or developer's fee [consistent with the standards for developers' fees established by the Pennsylvania Housing Finance Agency].***

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

\* \* \*

"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] 2,000 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] five-mile radius of the location of the building.
- (5) A municipality or school district in which the building is located.

\* \* \*

Section 2. Section 4(b) and (d)(1) of the act are amended and the section is amended by adding a subsection to read:

Section 4. Initiation of action.

\* \* \*

(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.
- (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.

*(4) A schedule of mortgages, liens and other encumbrances on the property.*

\* \* \*

(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, *all municipal authorities known to have provided service to the property* 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.

\* \* \*

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

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

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

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

Section 5. Appointment of conservator.

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

\* \* \*

(c) Hearing.—At the hearing, any party in interest shall be permitted to present evidence to support or contest the petition, *including, but not limited to, the schedule of encumbrances.*

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

(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.]** *The owner fails to present compelling evidence that he has actively marketed the property during the preceding 60-day period and made a good faith effort to sell the property at a price which reflects the circumstances and market conditions.*

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

(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, *certify the schedule of encumbrances* and grant such other relief as may be just and appropriate. *The certification shall be binding with respect to all mortgages, liens and encumbrances, including municipal liens, arising or attaching to the property prior to the date of the petition.*

(2) The court shall give first consideration for appointment as conservator to the *most* senior *nongovernmental* 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**] *five-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 *conditions*, 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] *shall* 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.

(4) *Upon a finding that:*

(i) *the petition states conditions for conservatorship; or*

(ii) *the owner elects to either:*

(A) *remedy all violations and nuisance or emergency conditions; or*

(B) *sell the property subject to the conservatorship, the owner shall reimburse the petitioner for all costs incurred by the petitioner in preparing and filing the petition in accordance with the requirements of section 4 and the conservator's or developer's fee.*

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

\* \* \*

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

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:

\* \* \*

(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, *except when the contractor or developer provides or obtains financing for the conservatorship.*

\* \* \*

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

\* \* \*

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

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

\* \* \*

(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. *In making its assessment, the court shall give reasonable regard to the conservator's determination of the scope and necessity of work to be done for the rehabilitation or demolition of the building in approving the final plan and in approving the costs of conservatorship and sale of the property.*

\* \* \*

Section 5. Sections 8(b) and 9(b)(2) and (d) of the act are amended to read:

Section 8. Incurring indebtedness.

\* \* \*

(b) Liens.—In order to facilitate the borrowing of funds for the costs of rehabilitation, the court may grant *priority status to* 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] *given to secure payment on a debt incurred for purposes authorized under this chapter, provided that:*

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

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

\* \* \*

Section 9. Sale of property.

\* \* \*

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

\* \* \*

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

\* \* \*

(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.] *Liens of the Commonwealth, liens for unpaid property taxes and properly recorded municipal 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).

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

(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.

\* \* \*

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

APPROVED—The 22nd day of October, A.D. 2014

TOM CORBETT