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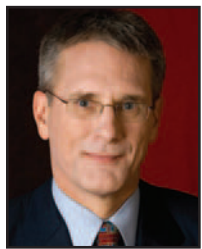
Pennsylvania's Abandoned and Blighted Property Conservatorship Act

On November 26, 2008, Governor Edward G. Rendell signed into

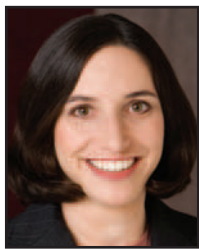
law, House Bill 2188, which became Act 2008-135, known as the Abandoned and Blighted Property Conservatorship Act (the "Act").¹ When the Act became effective ninety days later, the Commonwealth of Pennsylvania became one of the few jurisdictions which expressly authorizes the appointment of a receiver, or 'conservator' in the language of the Act, to take possession and control of vacant property.²

Specifically, the Act provides for a court appointed conservator to take possession and control of "abandoned and blighted" residential, commercial and industrial property and to take action to prevent further deterioration and to improve or rehabilitate the property. The stated findings and purpose of the Act discuss the effects of such properties on communities, particularly older ones, and its citizens, including the diminution of property values, threats to public safety, nuisance, and increased costs to government and taxpayers.³

An action for the appointment of a conservator is commenced through the filing of a petition⁴ in the Court of Common Pleas by a "party in interest," which is defined as any person or entity with a direct and immediate interest in the building.⁵ These include the owner of the building, a lienholder or secured creditor of the owner, a resident or business owner within 500 feet of the building, a redevelopment authority or other nonprofit corporation, or a municipality or school district in which



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the building is located.⁶ A "nonprofit corporation" is defined as a nonprofit corporation which has as one of its purposes community development activities, including economic development, historical preservation, or promotion of affordable housing.⁷ In cities of the first class, i.e., Philadelphia, the nonprofit must be located in the city and must have "participated in a project" within a one-mile radius of the building.⁸

The court may appoint a conservator and "grant such other relief as may be just and appropriate" if: (1) the building has not been occupied legally for the previous year; (2) the building has not been "actively marketed" for sale for 60 days prior to the date of the petition; (3) the building is not in foreclosure; (4) the owner fails to show that it acquired the property within the preceding six months; and (5) if the court finds that at least three of the following exist: (i) the building is a "public nuisance;" (ii) the building needs "substantial rehabilitation" which has not occurred in the previous year; (iii) the building is unfit for human use; (iv) the building's condition increases

1 68 P.S. §§ 1101-1111.

2 See, e.g., MO. REV. STAT. §§ 447.620 et seq.; N.J.S.A. 55:19-78 et seq.; ILL. COMP. STAT. 50/1 et seq.; and BALTIMORE MD. BUILDING, FIRE AND RELATED CODES § 121(2007).

3 Id. at §1102.

4 Id. at §1104(a). The petition must include: (i) a sworn statement that, to the best of the petitioner's knowledge, the property meets the statutory conditions for appointment of a conservator; and, if available, (ii) a copy of a citation charging the owner with the applicable municipal code violation or declaring the building

to be a public nuisance; (iii) a recommendation for which person or entity should be appointed the conservator; and (iv) a preliminary plan and estimates to rehabilitate the building to bring it into compliance with code. Id. at §1104(b). A notice of lis pendens must also be filed. Id. at §1104(c). After filing the petition, the petitioner shall notify the current owner of the property, all political subdivisions within which the property is located, and all lienholders of the action via registered or certified mail and via posting the notice on the building, and shall include notification of the hearing date and notice that the owner and any lienholder may petition to intervene in the action. Id. at §1104(d). The proceeding is deemed an in rem action and the Act proscribes time periods within which the court must act. Id. at §§1104(a), 1105(a) and 1106(c).

5 Id. at §1103.

6 Id.

7 Id.

8 Id.

the risk of fire to adjacent properties; (v) the building may be entered without authority, and either the owner has failed to secure it or the municipality has secured the building; (vi) the property is an attractive nuisance to children; (vii) the presence of vermin, vegetation, debris, or the decomposition of the structure creates a potential health hazards which the owner has failed to remove; (viii) the building negatively affects the residents near the building, causing them to lose business or the property value to decrease; and/or (ix) the property is an attractive nuisance for illicit purposes, including, prostitution, drug use and vagrancy.⁹

With respect to who may be appointed a conservator, the Act mandates that the court give first consideration to the senior lienholder on the property.¹⁰ If the lienholder is found not competent or declines the appointment, the court may appoint a nonprofit or "other competent entity," which is defined as a person or entity with experience in rehabilitation of property and the ability to provide or obtain

financing for such rehabilitation.¹¹ The court shall consider any recommendations of the petitioner or a "party in interest" and shall give preference to the appointment of a nonprofit or governmental unit over an individual.¹² The Act also expressly provides for the removal of a conservator and the termination of the conservatorship.¹³

The statutory powers of the conservator are extensive. The conservator has "all powers and duties necessary or desirable, from time to time, for the efficient operation, management and improvement of the building. . . and to fulfill the conservator's responsibilities under this act" and may "exercise all authority that an owner of the building would have to improve, maintain and otherwise manage the building."¹⁴ These include, but are not limited to, taking possession and control of the property, collecting receivables and pursuing claims with respect to the property, contracting for repair, maintenance and restoration of the property, purchasing materials, goods and supplies, entering into leases and insurance contracts, engaging and paying professionals, and applying for public grants or loans.¹⁵

The conservator may also borrow money and incur debt.¹⁶ Under appropriate circumstances, the court may, in order to facilitate such borrowing, grant a lien or security interest with "priority over all other liens" except municipal and government liens.¹⁷ In addition, the conservator

9 Id. at § 1105(d).

10 Id. at § 1105(e).

11 Id. at §§ 1105(e) and 1103.

12 Id. at § 1105(e)(3).

13 Id. at §§ 1105(i) and 1110.

14 Id. at § 1106(a); see also §§ 1106(a)(14) and 1107(a).

15 Id. at § 1106(a); see also § 1105(h).

16 Id. at §§ 1106(a)(5) and 1108.

17 Id. at § 1108(b).

18 Id. at §§ 1106(a)(13) and 1109(b).

19 Id. at § 1109(c)(1).

may sell the property after application to and order of the court.¹⁸ The court may also authorize the sale of the property free and clear of all liens, claims and encumbrances.¹⁹

Finally, in addition to the notice of lis pendens which is filed with the petition, the conservator may file a lien on the property for the costs incurred by the conservator during the conservatorship.²⁰

In passing the Act, the Pennsylvania legislature clearly intended to provide a powerful tool for preserving both the neighborhoods affected by "abandoned and blighted" properties and the "abandoned and blighted" properties themselves. As an example, the Act now allows interested parties to challenge the destruction though abandonment and lack of maintenance of historical buildings (which is sometimes referred to as 'demolition by neglect'), whether it be intentional or benign. It also permits neighbors through grass roots community action to directly address the problematic vacate building in their neighborhood. Of course, time will tell to what extent the Act as written or interpreted can or will be successfully utilized by governments, local community groups, or nonprofits and whether or not the courts will look at it favorably. However, the Act remains a significant development for preservationist and community activists.

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20 Id. at § 1105(g).