

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 227

Short Title: Local Gov'ts/Vacant Housing Receivership. (Public)

Sponsors: Representatives Brandon, Hardister, Faircloth, and Collins (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Government, if favorable, Judiciary Subcommittee B, if favorable, Finance.

March 6, 2013

A BILL TO BE ENTITLED

AN ACT AUTHORIZING COUNTIES AND CITIES TO PETITION THE SUPERIOR COURT TO APPOINT A RECEIVER TO REHABILITATE, DEMOLISH, OR SELL A VACANT BUILDING, STRUCTURE, OR DWELLING WHERE THE OWNER HAS FAILED TO COMPLY WITH AN ORDER TO DO SO AND TO CHARGE THE OWNER AN ADMINISTRATIVE FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Part 4 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read as follows:

"§ 153A-370.1. Vacant building receivership.

(a) Petition for Appointment of Receiver. – A county may petition the superior court for the appointment of a receiver to rehabilitate, demolish, or sell a vacant building or structure under this Part, or a dwelling under Part 6 of this Article, if the owner fails to do any of the following:

- (1) Fails to comply with an order issued pursuant to G.S. 153A-369 from which no appeal has been taken or from which the appeal has been dismissed or denied.
- (2) Fails to comply with an order of the board of commissioners issued pursuant to G.S. 153A-369 following an appeal.
- (3) Fails to comply with an order to repair, alter, improve, remove, or demolish a structure issued under G.S. 160A-443.

(b) Petition Requirements. – The petition for the appointment of a receiver shall include all of the following: (i) a copy of the original violation notice or order issued by the county; (ii) a verified pleading which avers that the required rehabilitation or demolition has not been completed and identifies the proposed receiver and states the person's qualifications to serve; and (iii) the names of the respondents, which shall include the owner of the property, as recorded with the register of deeds or listed in the office of the clerk of court or tax collector, and any mortgagee with a recorded interest in the property. If the petition fails to name a respondent as required by this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection (e) of this section, shall not have priority over any ownership claim or lien of that respondent.

(c) Notice of Proceeding. – Within 10 days after filing the petition, the county shall give notice of the pendency and nature of the proceeding by regular and certified mail to the last known address of all property owners and all judgment creditors and lien holders with a



1 recorded interest in the property. Within 30 days of the date on which the notice was mailed, a
2 judgment creditor or lien holder may apply to intervene in the proceeding and to be appointed
3 as receiver. If the county fails to give notice to any judgment creditor or lien holder as required
4 by this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in
5 rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized
6 by subsection (e) of this section, shall not have priority over the lien of that judgment creditor
7 or lien holder.

8 (d) Appointment of Receiver. – The court shall appoint a receiver if the provisions of
9 subsections (b) and (c) of this section have been satisfied. However, the court may, instead of
10 appointing a receiver to rehabilitate or sell a vacant building, structure, or dwelling, permit an
11 owner, mortgagee, beneficiary of a deed of trust, or other person with an interest in the property
12 to rehabilitate or demolish the property if that person (i) demonstrates the ability to complete
13 the rehabilitation or demolition within a reasonable time; (ii) agrees to comply with a specified
14 schedule for rehabilitation or demolition; and (iii) posts a bond in an amount determined by the
15 court as security for the performance of the required work in compliance with the specified
16 schedule. If, at any time, it appears to the county that the owner, mortgagee, beneficiary of a
17 deed of trust, or other person appointed under this subsection is not proceeding with due
18 diligence or in compliance with the court-ordered schedule, the county may apply to the court
19 for immediate revocation of that person's appointment and for the appointment of a receiver. If
20 the court revokes the appointment and appoints a receiver, the court may do either of the
21 following: (i) order that some or all of the bond posted under this subsection be returned to the
22 appointed person because his or her efforts to rehabilitate, demolish, or sell the property prior
23 to the appointment being revoked added value to the property or (ii) order that some or all of
24 the bond posted be applied to the receiver's expenses in rehabilitating, demolishing, or selling
25 the vacant building, structure, or dwelling. If no qualified person with an ownership interest in
26 the vacant building, structure, or dwelling requests appointment to rehabilitate or demolish the
27 property or if an appointee is dismissed, the court shall appoint a receiver for the purpose of
28 rehabilitating and managing the property, demolishing the property, or selling the property to a
29 qualified buyer. To be considered qualified, a person must show (i) the financial ability to
30 complete the purchase or rehabilitation of the property; (ii) the knowledge of, or experience in,
31 the rehabilitation of vacant real property; and (iii) the absence of any material building code
32 violations issued by the county on other real property owned by the person or any member,
33 principal, officer, major stockholder, parent, subsidiary, predecessor, or others affiliated with
34 the person or the person's business.

35 (e) Receiver Authority Exclusive. – Upon the appointment of a receiver under
36 subsection (d) of this section, all other parties are divested of any authority to rehabilitate,
37 demolish, or sell the vacant building, structure, or dwelling subject to the receivership. Any
38 costs or fees incurred by a receiver appointed under this section shall constitute a lien against
39 the property, and the receiver's lien shall have priority over all other liens and encumbrances,
40 except taxes or other government assessments.

41 (f) Receiver's Authority to Rehabilitate or Demolish. – In addition to all necessary
42 powers, if a receiver is appointed to rehabilitate or demolish a vacant building, structure, or
43 dwelling, the receiver shall have the right of possession with authority to do all of the
44 following:

- 45 (1) Contract for necessary labor and supplies for rehabilitation or demolition.
- 46 (2) Borrow money for rehabilitation or demolition from an approved lending
47 institution or through a governmental agency or program, using the
48 receiver's lien against the property as security.
- 49 (3) Manage the property after rehabilitation, with all the powers of a landlord,
50 for a period of up to two years and apply the rent received to current
51 operating expenses and repayment of outstanding rehabilitation expenses.

1 (4) Foreclose on the receiver's lien or accept a deed in lieu of foreclosure.

2 (g) Receiver's Authority to Sell. – In addition to all necessary powers, if a receiver is
3 appointed to sell a vacant building, structure, or dwelling, the receiver shall have the authority
4 to do all of the following: (i) sell the property to the highest bidder at public sale, following the
5 same notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45 of
6 the General Statutes or (ii) sell the property privately for fair market value if no party to the
7 receivership objects to the amount and procedure. In the notice of public sale authorized under
8 this subsection, it shall be sufficient to describe the property by a street address and reference to
9 the book and page or other location where the property deed is registered. Prior to any sale
10 under this subsection, the applicants to bid in the public sale or the proposed buyer in the
11 private sale shall demonstrate the ability and experience needed to rehabilitate the property
12 within a reasonable time. After deducting the expenses of the sale, the amount of outstanding
13 taxes and other government assessments and the amount of the receiver's lien, the receiver shall
14 apply any remaining proceeds of the sale first to the county's costs and expenses, including
15 reasonable attorneys' fees, and then to the liens against the property in order of priority. Any
16 remaining proceeds shall be remitted to the property owner.

17 (h) Receiver Forecloses on Lien. – A receiver may foreclose on the lien authorized by
18 subsection (e) of this section by selling the property subject to the lien at a public sale,
19 following public notice and notice to interested parties in the manner as a mortgage foreclosure
20 under Article 2A of Chapter 45 of the General Statutes. After deducting the expenses of the
21 sale and the amount of any outstanding taxes and other government assessments, the receiver
22 shall apply the proceeds of the sale to the liens against the property, in order of priority. In lieu
23 of foreclosure, and only if the receiver has rehabilitated the property, an owner may pay the
24 receiver's costs, fees, including reasonable attorneys' fees, and expenses or may transfer his or
25 her ownership in the property to either the receiver or an agreed upon third party for an amount
26 agreed to by all parties to the receivership as being the property's fair market value.

27 (i) Deed After Sale. – Following the court's confirmation of the sale of the property
28 under this section, the receiver shall execute a deed conveying title to the property to the buyer,
29 free and clear of all encumbrances. Upon the sale of the property, the receiver shall promptly
30 file with the court a final accounting and a motion to dismiss the action.

31 (j) Receiver's Tenure. – The tenure of a receiver appointed to rehabilitate, demolish, or
32 sell a vacant building, structure, or dwelling shall extend no longer than two years after the
33 rehabilitation, demolition, or sale of the property. Any time after the rehabilitation, demolition,
34 or sale of the property, any party to the receivership may file a motion to dismiss the receiver
35 upon the payment of the receiver's outstanding costs, fees, and expenses. Upon the expiration
36 of the receiver's tenure, the receiver shall file a final accounting with the court that appointed
37 the receiver.

38 (k) Administrative Fee Charged. – The county may charge the owner of the vacant
39 building, structure, or dwelling, subject to the receivership, an administrative fee of one
40 hundred dollars (\$100.00)."

41 **SECTION 2.** Part 5 of Article 19 of Chapter 160A of the General Statutes is
42 amended by adding a new section to read as follows:

43 **"§ 160A-439.1. Vacant building receivership.**

44 (a) Petition for Appointment of Receiver. – A city may petition the superior court for
45 the appointment of a receiver to rehabilitate, demolish, or sell a vacant building or structure
46 under this Part, or a dwelling under Part 6 of this Article, if the owner fails to do any of the
47 following:

48 (1) Fails to comply with an order issued pursuant to G.S. 160A-429 from which
49 no appeal has been taken or from which the appeal has been dismissed or
50 denied.

1 (2) Fails to comply with an order of the city council issued pursuant to
2 G.S. 160A-429 following an appeal.

3 (3) Fails to comply with an order to repair, alter, improve, remove, or demolish
4 a structure issued under G.S. 160A-443.

5 (b) Petition Requirements. – The petition for the appointment of a receiver shall include
6 all of the following: (i) a copy of the original violation notice or order issued by the city; (ii) a
7 verified pleading which avers that the required rehabilitation or demolition has not been
8 completed and identifies the proposed receiver and states the person's qualifications to serve;
9 and (iii) the names of the respondents, which shall include the owner of the property, as
10 recorded with the register of deeds or listed in the office of the clerk of court or tax collector,
11 and any mortgagee with a recorded interest in the property. If the petition fails to name a
12 respondent as required by this subsection, the proceeding may continue, but the receiver's lien
13 for expenses incurred in rehabilitating, demolishing, or selling the vacant building, structure, or
14 dwelling, as authorized by subsection (e) of this section, shall not have priority over any
15 ownership claim or lien of that respondent.

16 (c) Notice of Proceeding. – Within 10 days after filing the petition, the city shall give
17 notice of the pendency and nature of the proceeding by regular and certified mail to the last
18 known address of all property owners and all judgment creditors and lien holders with a
19 recorded interest in the property. Within 30 days of the date on which the notice was mailed, a
20 judgment creditor or lien holder may apply to intervene in the proceeding and to be appointed
21 as receiver. If the city fails to give notice to any judgment creditor or lien holder as required by
22 this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in
23 rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized
24 by subsection (e) of this section, shall not have priority over the lien of that judgment creditor
25 or lien holder.

26 (d) Appointment of Receiver. – The court shall appoint a receiver if the provisions of
27 subsections (b) and (c) of this section have been satisfied. However, the court may, instead of
28 appointing a receiver to rehabilitate or sell a vacant building, structure, or dwelling, permit an
29 owner, mortgagee, beneficiary of a deed of trust, or other person with an interest in the property
30 to rehabilitate or demolish the property if that person (i) demonstrates the ability to complete
31 the rehabilitation or demolition within a reasonable time; (ii) agrees to comply with a specified
32 schedule for rehabilitation or demolition; and (iii) posts a bond in an amount determined by the
33 court as security for the performance of the required work in compliance with the specified
34 schedule. If, at any time, it appears to the city that the owner, mortgagee, beneficiary of a deed
35 of trust, or other person appointed under this subsection is not proceeding with due diligence or
36 in compliance with the court-ordered schedule, the city may apply to the court for immediate
37 revocation of that person's appointment and for the appointment of a receiver. If the court
38 revokes the appointment and appoints a receiver, the court may do either of the following: (i)
39 order that some or all of the bond posted under this subsection be returned to the appointed
40 person because his or her efforts to rehabilitate, demolish, or sell the property prior to the
41 appointment being revoked added value to the property or (ii) order that some or all of the bond
42 posted be applied to the receiver's expenses in rehabilitating, demolishing, or selling the vacant
43 building, structure, or dwelling. If no qualified person with an ownership interest in the vacant
44 building, structure, or dwelling requests appointment to rehabilitate or demolish the property or
45 if an appointee is dismissed, the court shall appoint a receiver for the purpose of rehabilitating
46 and managing the property, demolishing the property, or selling the property to a qualified
47 buyer. To be considered qualified, a person must show (i) the financial ability to complete the
48 purchase or rehabilitation of the property; (ii) the knowledge of, or experience in, the
49 rehabilitation of vacant real property; and (iii) the absence of any material building code
50 violations issued by the city on other real property owned by the person or any member,

1 principal, officer, major stockholder, parent, subsidiary, predecessor, or others affiliated with
2 the person or the person's business.

3 (e) Receiver Authority Exclusive. – Upon the appointment of a receiver under
4 subsection (d) of this section, all other parties are divested of any authority to rehabilitate,
5 demolish, or sell the vacant building, structure, or dwelling subject to the receivership. Any
6 costs or fees incurred by a receiver appointed under this section shall constitute a lien against
7 the property, and the receiver's lien shall have priority over all other liens and encumbrances,
8 except taxes or other government assessments.

9 (f) Receiver's Authority to Rehabilitate or Demolish. – In addition to all necessary
10 powers, if a receiver is appointed to rehabilitate or demolish a vacant building, structure, or
11 dwelling, the receiver shall have the right of possession with authority to do all of the
12 following:

13 (1) Contract for necessary labor and supplies for rehabilitation or demolition.

14 (2) Borrow money for rehabilitation or demolition from an approved lending
15 institution or through a governmental agency or program, using the
16 receiver's lien against the property as security.

17 (3) Manage the property after rehabilitation, with all the powers of a landlord,
18 for a period of up to two years and apply the rent received to current
19 operating expenses and repayment of outstanding rehabilitation expenses.

20 (4) Foreclose on the receiver's lien or accept a deed in lieu of foreclosure.

21 (g) Receiver's Authority to Sell. – In addition to all necessary powers, if a receiver is
22 appointed to sell a vacant building, structure, or dwelling, the receiver shall have the authority
23 to do all of the following: (i) sell the property to the highest bidder at public sale, following the
24 same notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45 of
25 the General Statutes or (ii) sell the property privately for fair market value if no party to the
26 receivership objects to the amount and procedure. In the notice of public sale authorized under
27 this subsection, it shall be sufficient to describe the property by a street address and reference to
28 the book and page or other location where the property deed is registered. Prior to any sale
29 under this subsection, the applicants to bid in the public sale or the proposed buyer in the
30 private sale shall demonstrate the ability and experience needed to rehabilitate the property
31 within a reasonable time. After deducting the expenses of the sale, the amount of outstanding
32 taxes and other government assessments, and the amount of the receiver's lien, the receiver
33 shall apply any remaining proceeds of the sale first to the city's costs and expenses, including
34 reasonable attorneys' fees, and then to the liens against the property in order of priority. Any
35 remaining proceeds shall be remitted to the property owner.

36 (h) Receiver Forecloses on Lien. – A receiver may foreclose on the lien authorized by
37 subsection (e) of this section by selling the property subject to the lien at a public sale,
38 following public notice and notice to interested parties in the manner as a mortgage foreclosure
39 under Article 2A of Chapter 45 of the General Statutes. After deducting the expenses of the
40 sale and the amount of any outstanding taxes and other government assessments, the receiver
41 shall apply the proceeds of the sale to the liens against the property, in order of priority. In lieu
42 of foreclosure, and only if the receiver has rehabilitated the property, an owner may pay the
43 receiver's costs, fees, including reasonable attorneys' fees, and expenses or may transfer his or
44 her ownership in the property to either the receiver or an agreed upon third party for an amount
45 agreed to by all parties to the receivership as being the property's fair market value.

46 (i) Deed After Sale. – Following the court's confirmation of the sale of the property
47 under this section, the receiver shall execute a deed conveying title to the property to the buyer,
48 free and clear of all encumbrances. Upon the sale of the property, the receiver shall promptly
49 file with the court a final accounting and a motion to dismiss the action.

50 (j) Receiver's Tenure. – The tenure of a receiver appointed to rehabilitate, demolish, or
51 sell a vacant building, structure, or dwelling shall extend no longer than two years after the

1 rehabilitation, demolition, or sale of the property. Any time after the rehabilitation, demolition,
2 or sale of the property, any party to the receivership may file a motion to dismiss the receiver
3 upon the payment of the receiver's outstanding costs, fees, and expenses. Upon the expiration
4 of the receiver's tenure, the receiver shall file a final accounting with the court that appointed
5 the receiver.

6 (k) Administrative Fee Charged. – The city may charge the owner of the vacant
7 building, structure, or dwelling subject to the receivership an administrative fee of one hundred
8 dollars (\$100.00)."

9 **SECTION 3.** This act becomes effective October 1, 2013, and applies to any
10 petition filed on or after that date.