

CHAPTER 166**(SB 105)**

AN ACT relating to abandoned and blighted property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

The General Assembly finds and declares that:

- (1) *Abandoned and blighted residential, commercial, and industrial buildings are a nuisance and public safety threat to communities across the Commonwealth, negatively affecting quality of life and surrounding property values. If not rehabilitated, the buildings are likely to remain abandoned and subject to further deterioration, resulting in increased costs to the Commonwealth, local governments, and taxpayers;*
- (2) *Providing a mechanism to transform abandoned and blighted buildings into productive reuse and return to the market is an opportunity for communities throughout the Commonwealth to revitalize, grow, and improve the quality of life of its citizens; and*
- (3) *If the owner of an abandoned and blighted residential, commercial, or industrial building fails to maintain a building in compliance with applicable public safety housing, building, and nuisance code requirements, it is in the public interest for the court, pursuant to Sections 1 to 16 of this Act, to appoint a conservator to bring the building into compliance with applicable code requirements before the building sustains further deterioration preventing future productive economic use.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 16 of this Act, unless the context otherwise requires:

- (1) *"Abandoned and blighted property" means a residential, commercial, or industrial building that has been continuously vacant for at least one (1) year with repeated housing, building, or nuisance code citations and at least three (3) of the following conditions:*
 - (a) *The building has not been brought into compliance with the housing, building, or nuisance code requirements of the local government in which it is located within time constraints placed upon the owner by the appropriate code enforcement agency or agencies;*
 - (b) *The building is unfit for human habitation, occupancy, or use;*
 - (c) *The condition and vacancy of the building materially increases the risk of fire to the building and to adjacent properties;*
 - (d) *The building, by reason of neglect or lack of maintenance, has become a place for the accumulation of substantial trash and debris or a haven for rodents or other vermin that create potential health and safety hazards;*
 - (e) *The building is subject to unauthorized entry leading to potential health and safety hazards, and either the owner has failed to take reasonable and necessary measures to secure the building or the local government has secured the building in order to prevent such hazards after the owner has failed to do so;*
 - (f) *The building is an attractive nuisance to children or for illicit purposes, including drug use and vagrancy; or*
 - (g) *The building, because of its dilapidated appearance or other conditions, substantially negatively affects the economic well-being of residents or businesses in close proximity to the building;*
- (2) *"Actively marketed" means:*
 - (a) *A "for sale" sign has been placed on the property with accurate contact information;*
 - (b) *The owner has engaged the services of a licensed real estate agent, placed weekly or more frequent advertisements in print, or listed the property for sale in electronic media via a Web site specifically designed for such activity; and*

- (c) *The owner has made a good-faith effort to sell the property at a price that reflects the circumstances and market conditions;*
- (3) *"Building" means a residential, commercial, or industrial building or structure and the land appurtenant thereto;*
- (4) *"Competent entity" means a person or entity, including a nonprofit corporation, with experience in the rehabilitation of residential, commercial, or industrial buildings and the ability to provide or obtain the necessary financing for such rehabilitation;*
- (5) *"Conservator" means a competent entity appointed by a court to take possession of and undertake the rehabilitation of an abandoned and blighted building;*
- (6) *"Conservator's fee" for rehabilitation or demolition of an abandoned and blighted building means a fee equal to the greater of:*
- (a) *A reasonable amount not to exceed twenty percent (20%) of the actual costs incurred by a conservator for rehabilitation or demolition of the building as described in the plan for rehabilitation or demolition approved by the court; or*
- (b) *Fifteen percent (15%) of the sale price of the property;*
- (7) *"Costs of rehabilitation" means costs and expenses for construction, stabilization, rehabilitation, maintenance, or demolition, including reasonable nonconstruction costs associated with the project, including but not limited to architectural, engineering, legal fees and costs, permits, financing fees, and a conservator's fee;*
- (8) *"Historic structure" means a property which is listed on the National Register of Historic Places, is a contributing property in a national register historic district, or is designated an historic property by the Kentucky Heritage Council;*
- (9) *"Immediate family" means a parent, spouse, child, brother, or sister;*
- (10) *"Local government" has the same meaning as in KRS 99.705;*
- (11) *"Nonprofit corporation" means a corporation recognized by the United States Internal Revenue Service as being tax exempt under 26 U.S.C. sec. 501(c) that has, as one (1) of its purposes, remediation of blight, economic development, historic preservation, or the promotion or enhancement of affordable housing opportunities;*
- (12) *"Owner":*
- (a) *Means the holder or holders of title to, or of a legal or equitable interest in, a residential, commercial, or industrial building for six (6) months or more; and*
- (b) *Includes an heir, assignee, trustee, beneficiary, and lessee, provided the ownership interest is a matter of public record;*
- (13) *"Party in interest" means a person or entity that has a direct and immediate interest in a residential, commercial, or industrial building, including:*
- (a) *The owner;*
- (b) *Any lienholder with a recorded interest in the property; and*
- (c) *The city and county in which the building is located;*
- (14) *"Rehabilitation" means improvements to a building in order to bring it into compliance with all applicable housing, building, and nuisance code requirements; and*
- (15) *"Vacant" means abandoned, unoccupied, or empty continuously for at least one (1) year, excluding unauthorized or illegal occupancies.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *A petition for the appointment of a conservator to take possession of and undertake the rehabilitation of an abandoned and blighted building shall be filed in the Circuit Court in the county in which the building is located by the city or county in which the building is located. The proceeding on the petition shall constitute an action in rem.*

- (2) *The petition shall include:*
- (a) *The name and last known address of the owner of the vacant building;*
 - (b) *Copies of citations charging the owner with being in violation of local housing, building, plumbing, electrical, fire, health, or nuisance code requirements, including proof of service pursuant to KRS 65.8825(2);*
 - (c) *A schedule of recorded liens or other encumbrances on the property, including the names and addresses of all lienholders;*
 - (d) *Assessed value of the property for tax purposes;*
 - (e) *A recommendation as to which person or entity should be appointed conservator, including the qualifications of the person or entity;*
 - (f) *A preliminary plan, including the current condition of the building, photographs, initial estimates for costs of rehabilitation of the building to bring it into compliance with all applicable housing, building, electrical, fire, health, and nuisance code requirements charged in the citations, and an estimated timeline for completion;*
 - (g) *Anticipated funding sources for the preliminary plan; and*
 - (h) *A sworn statement by the petitioner that, to the best of his or her knowledge and belief:*
 - 1. *The building meets the conditions for conservatorship set forth in Section 5 of this Act;*
 - 2. *The building has not been legally occupied for at least the previous twelve (12) months;*
 - 3. *The property has not been actively marketed within the previous sixty (60) days;*
 - 4. *The property is not subject to a pending foreclosure action by an individual or nongovernmental entity;*
 - 5. *The property is not subject to an outstanding mortgage held by a bank or other creditor with a recorded security interest in the property, unless waived by the bank or other creditor; and*
 - 6. *The owner has been the holder of title to the property for six (6) months or more.*
- (3) *Upon filing the petition with the court, the petitioner shall file a notice of lis pendens in the office of the clerk of the county in which the property is located.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *Service of process shall be provided in accordance with the Kentucky Rules of Civil Procedure to the following parties in interest:*
- (a) *The owner of the property at his or her last known address;*
 - (b) *The city or county in which the property is located that is not the petitioner; and*
 - (c) *Any lienholder with a recorded interest in the property.*
- (2) *Notice of the pendency and nature of the proceeding shall additionally be provided by certified or registered mail to any property owner located within five hundred (500) feet of the property at his or her last known address, including notice the property owner may petition to intervene in the proceeding.*
- (3) *The petitioner shall notify the parties in interest and any property owner located within five hundred (500) feet of the property of the hearing date.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *The court shall act upon a petition filed by holding a hearing. A party in interest may be heard with respect to the petition, the requested relief, or any other matter which may come before the court in reference to the proceeding. 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.*
- (2) *The court may appoint a competent entity as conservator if it finds all of the following apply as of the date of filing the petition:*

- (a) *The building has not been legally occupied for at least the previous twelve (12) months;*
- (b) *The owner fails to present sufficient evidence that the property was actively marketed during the preceding sixty (60) day period;*
- (c) *The property is not subject to a pending foreclosure action by an individual or nongovernmental entity;*
- (d) *The property is not subject to an outstanding mortgage held by a bank or other creditor with a recorded security interest in the property, unless waived by the bank or other creditor;*
- (e) *The owner fails to present sufficient evidence the property was acquired by the owner within the preceding six (6) 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; and*
- (f) *The court finds at least three (3) of the conditions meeting the definition of abandoned and blighted property in Section 2 of this Act have been established.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *If the court finds after a hearing that the conditions for conservatorship have been established, the court may:*
 - (a) *Appoint a conservator; and*
 - (b) *Grant such other relief as may be just and appropriate.*
- (2) *In appointing a conservator, the court shall consider any recommendation contained in the petition or otherwise presented by a party in interest.*
- (3) *No member of the governing body of a local government or a public officer of a local government in his or her individual capacity, or a member of the immediate family of a member of the governing body or public officer of a local government, is qualified to be appointed as a conservator in the action.*
- (4) *A conservator appointed by the court may be required to post a bond in an amount determined by the court, but not exceeding the assessed value of the building at the time of the appointment, prior to proceeding as conservator.*
- (5) *A conservator may be removed by the court at any time upon the request of the conservator, or upon a showing by a party in interest that the conservator is not carrying out duties or responsibilities under the appointment. If a conservator is removed for failure to carry out duties or responsibilities under the appointment, the conservator shall not be entitled to reimbursement for costs of rehabilitation.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *If the court finds after a hearing that the conditions for conservatorship have been established, but the owner represents that the conditions will be abated in a reasonable period, the court may allow the owner to proceed to remedy the conditions.*
- (2) *If the owner is allowed to proceed with abatement, the court may 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.*
- (3) *The court shall additionally enter an order providing that, if the 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 appointing a conservator shall be entered.*
- (4) *In the event the owner brings the property into compliance with all applicable housing, building, and nuisance code requirements or sells the property subject to the conservatorship, the owner shall reimburse the petitioner for all reasonable costs incurred by the petitioner in preparing and filing the petition.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *The conservator shall have all powers and duties necessary in order to bring the building into compliance with all applicable housing, building, and nuisance code requirements and to fulfill the conservator's responsibilities under Sections 1 to 16 of this Act. A conservator's powers and duties shall include but not be limited to:*
 - (a) *Taking possession and control of the building and appurtenant land subject to the conservatorship;*

- (b) *Pursuing all claims or causes of action of the owner with respect to the building;*
 - (c) *Contracting for the repair and maintenance of the building. The conservator shall make a reasonable effort to solicit three (3) bids for contracts valued at more than thirty thousand dollars (\$30,000);*
 - (d) *Borrowing money or incurring indebtedness for costs of rehabilitation of the building as set out in Section 9 of this Act;*
 - (e) *Contracting for and paying for the restoration of utilities to the building;*
 - (f) *Applying for and obtaining construction permits;*
 - (g) *Purchasing materials, goods, and supplies to accomplish repairs to the building;*
 - (h) *Renewing or entering into contracts providing for insurance coverage on the building;*
 - (i) *Engaging and paying legal, accounting, appraisal, and other professionals necessary to aid the conservator in the conduct of the conservatorship;*
 - (j) *If the building has been designated an historic structure, consulting with the local government's historical commission or board of historical and architectural review, a local historic preservation organization or, in the absence thereof, the Kentucky Heritage Council for recommendations on preserving the property's historic character;*
 - (k) *Applying for and receiving public grants or loans;*
 - (l) *Selling the building as set out in Section 12 of this Act; and*
 - (m) *Exercising all authority that an owner of the building would have to rehabilitate and maintain the building.*
- (2) *Notwithstanding the appointment of a conservator, nothing in Sections 1 to 16 of this Act shall be construed to relieve the owner of any civil or criminal liability or of any obligation to pay taxes, local government liens and charges, private liens, or other fees or charges, whether incurred before or after the appointment of the conservator, and no such liability shall transfer to the conservator.*
- (3) *If any interest in the property subject to conservatorship is sold or transferred by the owner during the pendency of the conservatorship, the sale or transfer shall be subject to the conservatorship.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

A conservator may borrow money or incur indebtedness in order to cover the costs of rehabilitation or to otherwise fulfill the conservator's obligations under Sections 1 to 16 of this Act. In order to facilitate the borrowing of funds for the costs of rehabilitation, the court shall grant priority status to a lien given to secure payment on a debt incurred for purposes authorized under Sections 1 to 16 of this Act.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *While in possession of the building, the conservator shall:*
- (a) *Maintain, safeguard, and insure the property;*
 - (b) *Develop a final plan for abatement of the conditions which caused the petition to be granted or, if no feasible final plan can be developed, develop alternatives, including the closing, sealing, or demolition of all or part of the building in accordance with Section 11 of this Act;*
 - (c) *Submit the final plan to the court and all parties in interest; and*
 - (d) *Execute the final plan.*
- (2) *The final plan shall include a cost estimate, a financing plan, sources of financing, and a description of the work to be done for the rehabilitation of the building in order to bring it into compliance with all applicable housing, building, and nuisance code requirements, any duly adopted plan for the area in which the building is located, and any historic preservation requirements, along with an estimated timeline for completion.*
- (3) *Any party in interest shall be allowed to comment on or request a hearing on the final plan within thirty (30) days of receipt of the final plan by certified or registered mail.*

- (4) *While in possession of the building, the conservator shall additionally submit a status report to the court and all parties in interest every six (6) months from the date of appointment, or more frequently as the court may deem appropriate. The status report shall include:*
- (a) *A copy of any contracts entered into by the conservator regarding improvement of the building and any related bids;*
 - (b) *An account of all expenses and improvements;*
 - (c) *The status of developing and implementing the final plan; and*
 - (d) *A description of proposed actions to be taken in the next six (6) months to improve the building.*
- (5) *Upon implementation of the final plan, the conservator shall submit to the court and all parties in interest a full accounting of all actions taken to rehabilitate the property, all income and expenditures received or incurred during implementation of the final plan, and an estimate of the conservator's fee.*
- (6) *The conservator may then petition the court for authorization to terminate the conservatorship through either a public or private sale.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *If no feasible final plan can be developed for rehabilitation of the building in order to bring it into compliance with all applicable housing, building, and nuisance code requirements at a reasonable cost in relation to the present value of the building without consideration of the value of the land on which the building is located, the conservator may submit a plan for demolition and removal of the building and all debris from the property to the court and all parties in interest.*
- (2) *The present value of the building in relation to the estimate for costs of rehabilitation of the building in order to bring it into compliance with all applicable housing, building, and nuisance code requirements may be established by evidence of three (3) affidavits prepared by real estate appraisers, qualified building contractors, or qualified building inspectors.*
- (3) *A plan for demolition shall require a reasonable effort to be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of demolition and removal of the building and all debris from the property. Proper records shall be kept showing application of sales proceeds. Any sale of salvaged materials may be made without the necessity of public advertisement.*
- (4) *Any party in interest shall be allowed to comment on or request a hearing on a plan for demolition within thirty (30) days of receipt of the plan for demolition by certified or registered mail.*
- (5) *Upon demolition and removal of the building and all debris from the property, the conservator shall submit to the court and all parties in interest a full accounting of all actions taken, all income and expenditures received or incurred, and an estimate of the conservator's fee.*
- (6) *The conservator may then petition the court for authorization to terminate the conservatorship through either a public or private sale.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon application of the conservator, the court may order the sale of the property free and clear of all existing liens, claims, and encumbrances subject to the approval and supervision of the court by private sale pursuant to a written contract of sale between the conservator and prospective purchaser, by public auction, or by any other method that the court determines is fair to the owner of the property and all parties in interest, is reasonable under the circumstances, and will maximize the return from the property to the conservatorship estate.*
- (2) *Before entering an order authorizing the sale of the property by the conservator, the court may require that the conservator provide evidence of the value of the property by affidavit of three (3) real estate appraisers or by any other evidence that the court determines is appropriate.*
- (3) *If the conservator has received a specific offer for sale that the conservator desires to accept, the conservator shall provide to the court the identity of the buyer and the proposed terms of the sale. If the conservator has not received a specific offer for sale that the conservator desires to accept, the conservator shall provide to the court the proposed procedures for conduct of the sale.*

- (4) *Any sale of the property shall be made subject to the approval and supervision of the court only after all of the following occur:*
- (a) *The court finds the conditions that were the grounds for the petition have been abated or corrected by the conservator and the owner has not successfully petitioned to terminate the conservatorship as set out in Section 14 of this Act;*
 - (b) *Notice of the proposed sale and an opportunity for a hearing at which all parties in interest may be heard is given in accordance with the Kentucky Rules of Civil Procedure, provided that if no party objects to the proposed sale or requests a hearing within thirty (30) days, the court may proceed without a hearing; and*
 - (c) *The court issues an order of sale that sets forth the required procedures for or terms of the sale.*
- (5) *If the proposed sale is by public auction or any other method other than a private sale approved by the court, the conservator shall conduct and promote the sale in a manner anticipated to raise the highest and best sale price.*
- (6) *If the proposed sale is pursuant to a specific offer the conservator desires to accept, the court may finally approve the sale and no separate confirmation order is required. If the proposed sale is by public auction or any method other than a private sale approved by the court, the conservator shall seek an order approving the sale process and confirming the sale within ten (10) days of the date of the sale.*
- (7) *Notwithstanding any provision to KRS Chapter 134 to the contrary, any holder of a local government lien may by written agreement waive or release all or a portion of its lien priority upon sale of a property subject to the lien in accordance with Sections 1 to 16 of this Act.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

- (1) *If the proceeds of the sale are insufficient to pay all existing liens, claims, and encumbrances, the proceeds shall be distributed according to the priorities set out in subsection (2) of this section and all unpaid liens, claims, or encumbrances which have not been assumed under subsection (2) of this section shall be extinguished.*
- (2) *The proceeds of the sale shall be applied in accordance with the following priorities to:*
- (a) *Costs and expenses of sale;*
 - (b) *State and local government tax liens, unless priority is waived by a local government in accordance with Section 12 of this Act;*
 - (c) *Principal and interest on any borrowing or incurrence of indebtedness granted priority over existing liens and security interests under Section 9 of this Act;*
 - (d) *Costs of rehabilitation;*
 - (e) *Properly recorded local government code enforcement liens existing pursuant to KRS 65.8835;*
 - (f) *Other valid liens and security interests in accordance with their priority;*
 - (g) *The owner; and*
 - (h) *If the owner cannot be located, any proceeds from the sale which belong to the owner shall be presumed to be abandoned and unclaimed and shall be subject to the custody and control of the Commonwealth.*
- (3) *Following confirmation of the sale by the court, the conservator shall execute and deliver a deed within ten (10) days conveying title to the property to the purchaser free and clear of all existing liens, claims, and encumbrances in accordance with this section and KRS Chapter 132.*
- (4) *As soon as reasonably possible following delivery of the deed to the purchaser, the conservator shall submit to the court and all parties in interest a report of sale in which the conservator certifies all of the following:*
- (a) *That the sale was conducted in accordance with the order authorizing the sale;*
 - (b) *The date of the sale;*
 - (c) *The name of the purchaser;*

- (d) *The purchase price;*
- (e) *The amount of the net proceeds of the sale;*
- (f) *A copy of the closing statement, if a closing statement was prepared; and*
- (g) *Any other information that the court may require.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

Upon request by a party in interest or the conservator, the court may order the termination of the conservatorship if it determines:

- (1) *The obligations, expenses, and improvements of the conservatorship, including all costs of the conservator, have been fully paid or provided for and the purposes of the conservatorship have been fulfilled;*
- (2) *The owner or a lienholder has requested the conservatorship be terminated and has provided adequate assurances to the court that the conditions that constituted grounds for the petition will be promptly abated;*
- (3) *The conservator is not carrying out required duties or responsibilities as set out in Section 8 of this Act; or*
- (4) *The building has been sold by the conservator and the proceeds have been distributed as set out in Section 13 of this Act.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 16 of this Act shall not apply if the property owner has vacated the property in order to perform military service in time of war, armed conflict, or in order to assist with relief efforts during a declared federal or state emergency as a member of the United States Armed Forces or its Reserve component.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 99 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 16 of this Act may be cited as the Abandoned and Blighted Property Conservatorship Act.

➔Section 17. This Act takes effect January 1, 2022.

Veto overridden March 29, 2021.