

1 AN ACT relating to abandoned and blighted property.

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

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

5 *As used in Sections 1 to 10 of this Act, unless the context otherwise requires:*

6 *(1) "Abandoned and blighted property" means a residential, commercial, or*
7 *industrial building in a predominately developed area that has been vacant for at*
8 *least one (1) year and:*

9 *(a) Which has not been brought into compliance with the housing, building,*
10 *plumbing, electrical, fire, or nuisance code of the local government in*
11 *which it is located within the time constraints placed upon the owner by the*
12 *appropriate code enforcement or agencies;*

13 *(b) Which, because it is dilapidated, unsanitary, unsafe, vermin-infested, or*
14 *lacking in the facilities and equipment required by the housing or nuisance*
15 *code of the local government in which it is located, has been designated by*
16 *the entity responsible for enforcement of the housing or nuisance code as a*
17 *public nuisance unfit for human habitation, occupancy, or use;*

18 *(c) Which, due to the condition and vacancy of the building, materially*
19 *increases the risk of fire to the building and to adjacent properties;*

20 *(d) From which the utilities, plumbing, heating, sewerage, or other facilities*
21 *have been disconnected, destroyed, removed, or rendered ineffective so that*
22 *the property is unfit for its intended use;*

23 *(e) Which by reason of neglect or lack of maintenance has become a place for*
24 *the accumulation of trash and debris, or a haven for rodents or other*
25 *vermin that create potential health and safety hazards, and the owner has*
26 *failed to take reasonable and necessary measures to remove the hazards;*

27 *(f) Which is an attractive nuisance for illicit purposes, including drug use and*

1 vagrancy;

2 (g) Which is subject to unauthorized entry leading to potential health and
3 safety hazards, and either the owner has failed to take reasonable and
4 necessary measures to secure the building, or the local government has
5 secured the building in order to prevent such hazards after the owner has
6 failed to do so; or

7 (h) Which, because of its dilapidated appearance or other conditions of the
8 building substantially negatively affects the economic well-being of
9 residents or businesses in close proximity to the building, including
10 decreases in property value and loss of business, and the owner has failed to
11 take reasonable and necessary measures to remedy the appearance or the
12 conditions;

13 (2) "Building" means a residential, commercial, or industrial building or structure
14 and the land appurtenant thereto, including a vacant lot on which a building has
15 been demolished;

16 (3) "Competent entity" means a person or entity, including a nonprofit corporation,
17 with experience in the rehabilitation of buildings and the ability to provide or
18 obtain the necessary financing for such rehabilitation;

19 (4) "Conservator's or developer's fee" means a fee equal to the greatest of the
20 following:

21 (a) An amount equal to two thousand five hundred dollars (\$2,500) adjusted
22 upward by two percent (2%) each year from the date of the appointment of a
23 conservator;

24 (b) A twenty percent (20%) markup of the costs and expenses for construction,
25 stabilization, rehabilitation, or maintenance and operation as described in
26 the proposed conservator's plan and any subsequent plan approved by the
27 court; or

- 1 (c) Twenty percent (20%) of the sale price of the property;
- 2 (5) "Conservatorship" means a public nuisance proceeding by which a third party
3 may be appointed by a Circuit Court to oversee the abatement of an abandoned
4 and blighted building that meets the criteria specified in Section 4 of this Act;
- 5 (6) "Costs of rehabilitation" means costs and expenses for construction,
6 stabilization, rehabilitation, maintenance, and operation, including reasonable
7 non-construction costs associated with the project, including but not limited to
8 architectural, engineering and legal fees and costs, permits, financing fees, and a
9 conservator's or developer's fee;
- 10 (7) "Local government" means any city, county, urban-county government,
11 consolidated local government, unified local government, or charter county;
- 12 (8) "Nonprofit corporation" means a nonprofit corporation that has, as one (1) of its
13 purposes remediation of blight, community development activities, including
14 economic development, historic preservation, or the promotion or enhancement
15 of affordable housing opportunities;
- 16 (9) "Owner" means the holder or holders of title to, or of a legal or equitable interest
17 in, a building for six (6) months or more, and which term shall include an heir,
18 assignee, trustee, beneficiary, and lessee, provided the ownership interest is a
19 matter of public record;
- 20 (10) "Party in interest" means a person or entity who has a direct and immediate
21 interest in a building, including:
- 22 (a) The owner;
- 23 (b) A lienholder and other secured creditors of the owner;
- 24 (c) The local government in which the building is located;
- 25 (d) A resident or business owner within five hundred (500) feet of the building;
- 26 (11) "Public nuisance" means a property that, because of its physical condition or
27 use, has been declared by an entity responsible for enforcement of a public

1 nuisance in accordance with the local housing, building, health, fire, or related
2 code, or is determined to be a public nuisance by the courts; and

3 (12) "Vacant" means abandoned, unoccupied, or empty for at least one (1) year,
4 excluding unauthorized or illegal occupancies.

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

7 (1) A petition for the appointment of a conservator to take possession and to
8 undertake the rehabilitation of an abandoned and blighted property shall be filed
9 in the Circuit Court in the county in which the property is located by the
10 governing body of a local government, or by a competent entity designated by the
11 local government.

12 (2) The petition submitted to the court shall include:

13 (a) The name and last known address of the owner of the vacant building;

14 (b) Copies of citations charging the owner with being in violation of the
15 applicable local code enforcement requirements or declaring the building to
16 be a public nuisance;

17 (c) A copy of the demand letter sent to the owner by the petitioner at least thirty
18 (30) days prior to filing the petition advising the owner of its intent to file a
19 petition for appointment of a conservator;

20 (d) A schedule of recorded mortgages, liens, and other encumbrances on the
21 property, including the names and addresses of all lienholders;

22 (e) A recommendation as to which person or entity should be appointed
23 conservator;

24 (f) A preliminary plan with initial cost estimates for the rehabilitation of the
25 building to bring it into compliance with all applicable local code
26 enforcement requirements;

27 (g) Anticipated funding sources for the preliminary plan; and

1 (h) A sworn statement by the petitioner that, to the best of his or her knowledge
2 and belief:

3 1. The property meets the conditions for conservatorship set out in
4 Section 4 of this Act;

5 2. The property has not been legally occupied for at least the previous
6 twelve (12) months;

7 3. The property is not subject to a pending foreclosure action by an
8 individual or nongovernmental entity;

9 4. The owner has been the holder of title to the property for six (6)
10 months or more; and

11 5. The required rehabilitation of the property has not been completed by
12 the owner.

13 (3) Upon filing the petition with the court, the petitioner shall file a notice of lis
14 pendens in the office of the clerk of the county in which the property is located.

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

17 (1) Notice of the pendency and nature of the proceeding shall be provided in
18 accordance with the Kentucky Rules of Civil Procedure to the following parties in
19 interest:

20 (a) The owner of the property at the owner's last known address;

21 (b) The local government in which the property is located, if the local
22 government is not the petitioner;

23 (c) Any mortgagee with a recorded interest in the property;

24 (d) Any other lienholder with a recorded interest in the property; and

25 (e) Any resident or business owner located within five hundred (500) feet of the
26 property.

27 (2) The petitioner shall notify the parties in interest of the hearing date and provide

1 notice that the owner and lienholders may petition to intervene in the action.

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

4 (1) The Circuit Court shall act upon a petition filed by holding a hearing. A party in
5 interest may intervene in the proceeding and be heard with respect to the petition,
6 the requested relief, or any other matter which may come before the court in
7 reference to the proceeding. Any party in interest shall be permitted to present
8 evidence to support or contest the petition.

9 (2) The court may appoint a conservator if all of the following apply as of the date of
10 filing the petition:

11 (a) The building has not been legally occupied for at least the previous twelve
12 (12) months;

13 (b) The property is not subject to a pending foreclosure action by an individual
14 or nongovernmental entity;

15 (c) The current owner fails to present sufficient evidence that the property was
16 acquired by the current owner within the preceding six (6) months. The
17 evidence shall not include instances where the prior owner is a member of
18 the immediate family of the current owner, unless the transfer of title
19 results from the death of the prior owner; and

20 (d) The court finds at least three (3) of the conditions meeting the definition of
21 abandoned and blighted property as set out in Section 1 of this Act have
22 been established.

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

25 (1) If the Circuit Court determines after a hearing that the conditions for
26 conservatorship have been established, the court may appoint a conservator,
27 certify the schedule of encumbrances, and grant such other relief as may be just

- 1 and appropriate. The certification shall be binding with respect to all mortgages,
2 liens, and encumbrances arising or attaching to the property prior to the date of
3 the petition.
- 4 (2) The court shall give first consideration for appointment as conservator to the
5 most senior nongovernmental lienholder on the property, if any.
- 6 (3) If a senior nongovernmental lienholder is found not to be a competent entity or
7 declines the appointment, or no such lienholder exists, the court may appoint a
8 nonprofit corporation or other competent entity. In appointing a conservator, the
9 court shall consider any recommendations contained in the petition or otherwise
10 presented by a party in interest.
- 11 (4) To be considered qualified, a conservator shall demonstrate to the court:
- 12 (a) The financial ability to complete rehabilitation of the property; and
13 (b) Knowledge of, or experience in, the rehabilitation of vacant real property;
- 14 (5) No member of the governing body or public officer of a petitioning local
15 government is qualified to be appointed as a conservator in the action.
- 16 (6) A conservator appointed by the court, other than a senior lienholder, may be
17 required to post a bond in an amount determined by the court, but not exceeding
18 the value of the building at the time of the appointment, prior to proceeding as
19 conservator.
- 20 (7) The conservator may file a lien against the property in an amount based upon the
21 costs incurred during the conservatorship, including but not limited to costs of
22 rehabilitation, attorneys' fees, and court costs.
- 23 (8) A conservator may be removed by the court at any time upon the request of the
24 conservator, or upon a showing by a party to the action that the conservator is not
25 carrying out the required responsibilities or duties.

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

- 1 (1) If the Circuit Court finds after a hearing that the conditions for conservatorship
 2 have been established, but the owner represents that the conditions will be abated
 3 in a reasonable period, the court may allow the owner to proceed to remedy the
 4 conditions.
- 5 (2) If the owner is allowed to proceed, the court shall require the owner to post a
 6 bond in the amount of the repair costs estimated in the petition as a condition to
 7 retaining possession of the building.
- 8 (3) The court shall additionally enter an order providing that, if the conditions are
 9 not abated by the owner by a specific date or that the other specified remedial
 10 activities have not occurred by a specific date or dates, an order appointing a
 11 conservator shall be entered.
- 12 (4) If the owner brings the property into compliance with all applicable local code
 13 enforcement requirements or sells the property subject to the conservatorship, the
 14 owner shall reimburse the petitioner for all costs incurred by the petitioner in
 15 preparing and filing the petition.

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

- 18 (1) The conservator shall have all powers and duties necessary or desirable, from
 19 time to time, for the efficient operation, management, and improvement of the
 20 building in order to bring it into compliance with all applicable local code
 21 enforcement requirements and to fulfill the conservator's responsibilities under
 22 Sections 1 to 10 of this Act. The powers and duties shall include but not be
 23 limited to:
- 24 (a) Taking possession and control of the building and appurtenant land subject
 25 to the conservatorship;
- 26 (b) Pursuing all claims or causes of action of the owner with respect to the
 27 building;

- 1 (c) Contracting for the repair and maintenance of the building. The contracts
2 shall be appropriately documented and included in reports and accounting
3 which the conservator is required to file with the Circuit Court as set out in
4 this section;
- 5 (d) Applying for and obtaining construction permits;
- 6 (e) Contracting for and paying for the restoration of utilities to the building;
- 7 (f) Purchasing materials, goods, and supplies to accomplish repairs to the
8 building;
- 9 (g) Renewing or entering into contracts providing for insurance coverage on
10 the building;
- 11 (h) Engaging and paying legal, accounting, appraisal, and other professionals
12 to aid the conservator in the conduct of the conservatorship;
- 13 (i) Consulting with the local government's historical commission or board of
14 historical and architectural review, a local historic preservation
15 organization, or, in the absence thereof, the Kentucky Heritage Council, for
16 recommendations on preserving the property's historic character if the
17 building has been designated an historic structure;
- 18 (j) Applying for and receiving public grants or loans;
- 19 (k) Selling the building in accordance with Section 8 of this Act;
- 20 (l) Exercising all authority that an owner of the building would have to
21 improve, maintain, and otherwise manage the building, including the extent
22 to which the rehabilitation satisfies the goals of the conservatorship.
- 23 (2) A conservator may borrow money or incur indebtedness in order to cover the
24 costs of rehabilitation or to otherwise fulfill the conservator's obligations under
25 Sections 1 to 10 of this Act. If necessary to facilitate the borrowing of funds for
26 the costs of rehabilitation, the conservator may issue notes and secure them by a
27 mortgage filed for record in the office of the clerk of the county in which the

1 property is located. The mortgage shall be a first lien upon the property, superior
2 to any claims of the conservator and to all prior or subsequent liens and
3 encumbrances except taxes and assessments. If a senior lienholder agrees to
4 provide financing for the costs of the rehabilitation, any funds loaned to cover the
5 costs shall be deemed to be added to the senior lienholder's pre-existing first lien.

6 (3) Notwithstanding the appointment of a conservator, nothing in Sections 1 to 10 of
7 this Act shall be construed to relieve the owner of any civil or criminal liability or
8 of any obligation to pay taxes, local government liens and charges, mortgages,
9 private liens, or other fees or charges, whether incurred before or after the
10 appointment of the conservator, and no such liability shall transfer to the
11 conservator.

12 (4) While in possession of the building, the conservator shall:

13 (a) Maintain, safeguard, and insure the property;

14 (b) Develop a final plan for abatement of the conditions which caused the
15 petition to be granted; and

16 (c) Submit the final plan to the court and parties to the action.

17 (5) The final plan shall include a cost estimate, a financing plan, and a description
18 of the work to be done for the rehabilitation of the building in conformity with all
19 applicable local code enforcement requirements, any duly adopted plan for the
20 area in which the building is located, and any historic preservation requirements.
21 Any party to the action shall be allowed to comment on or request a hearing on
22 the final plan.

23 (6) While in possession of the building, the conservator shall additionally submit a
24 status report to the court and parties to the action every six (6) months from the
25 date of appointment, or more frequently as the court may deem appropriate. The
26 status report shall include:

27 (a) A copy of any contracts entered into by the conservator regarding the

- 1 improvement of the building;
2 (b) An account of the disposition of any revenue generated from the building;
3 (c) An account of all expenses and improvements;
4 (d) The status of developing and implementing the final plan; and
5 (e) A description of proposed actions to be taken in the next six (6) months to
6 improve the building.

7 (7) Upon implementation of the final plan, the conservator shall file with the court a
8 full accounting of all income and expenditures received or incurred during the
9 implementation of the final plan.

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

12 (1) Upon application of the conservator, the Circuit Court may order the sale of the
13 property if the court finds that:

14 (a) Notice and an opportunity to provide comment to the court was given to
15 each owner of record of the property and to each lienholder;

16 (b) The conservator has been in control of the building for more than three (3)
17 months and the owner has not successfully petitioned to terminate the
18 conservatorship as set out in Section 9 of this Act; and

19 (c) The terms and conditions of the sale are acceptable to the court, and the
20 buyer has a reasonable likelihood of maintaining the property.

21 (2) The court may authorize the conservator to sell the property free and clear of all
22 liens, claims, and encumbrances, provided that the proceeds of the sale are
23 distributed as set out in subsection (4) of this section at the time of settlement.

24 (3) If the proceeds of the sale are insufficient to pay all existing liens, claims, and
25 encumbrances, the proceeds shall be distributed according to the priorities set out
26 in subsection (4) of this section, and all unpaid liens, claims, or encumbrances
27 which have not been assumed under subsection (4) of this section shall be

1 extinguished.

2 (4) The proceeds of the sale shall be applied in accordance with the following
3 priorities to:

4 (a) All court costs;

5 (b) Liens of the Commonwealth, liens for unpaid property taxes, and properly
6 recorded local government liens;

7 (c) Costs and expenses of sale;

8 (d) Principal and interest on any borrowing or incurrence of indebtedness
9 granted priority over existing liens and security interest under Section 7 of
10 this Act;

11 (e) Costs incurred by the petitioner in preparing and filing the petition;

12 (f) Costs of rehabilitation and any fees and expenses incurred by the
13 conservator in connection with the sale or the safeguarding of the building
14 for which the lien authorized under Section 5 of this Act was filed;

15 (g) Valid liens and security interests in accordance with their priority; and

16 (h) The owner. If the owner cannot be located, any proceeds from the sale
17 which belong to the owner shall be presumed to be abandoned and
18 unclaimed and shall be subject to the custody and control of the
19 Commonwealth.

20 (5) Following the court's certification of the sale of the property, the conservator
21 shall sign a deed conveying title to the property to the buyer free and clear of all
22 encumbrances.

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

25 Upon request of a party in interest or the conservator, the Circuit Court may order the
26 termination of the conservatorship if it determines:

27 (1) (a) The conditions that were the grounds for the petition have been abated or

- 1 corrected; and
- 2 **(b) The obligations, expenses, and improvements of the conservatorship,**
- 3 **including all fees and expenses of the conservator, have been fully paid or**
- 4 **provided for, and the purposes of the conservatorship have been fulfilled;**
- 5 **(2) (a) The owner, mortgagee, or lienholder has requested the conservatorship to**
- 6 **be terminated and has provided adequate assurances to the court that the**
- 7 **conditions that constituted the grounds for the petition shall be promptly**
- 8 **abated; and**
- 9 **(b) All obligations, expenses, and improvements of the conservatorship,**
- 10 **including all fees and expenses of the conservator, have been fully paid or**
- 11 **provided for and the purposes of the conservatorship have been fulfilled;**
- 12 **(3) The conservator is not carrying out the required responsibilities or duties under**
- 13 **subsection (8) of Section 5 of this Act; or**
- 14 **(4) The building has been sold by the conservator, and the proceeds have been**
- 15 **distributed as set out in Section 8 of this Act.**

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

18 **Sections 1 to 10 of this Act shall be known and may be cited as the Abandoned and**
 19 **Blighted Property Conservatorship Act.**