

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE PRINCIPAL CLERK

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HOUSE DRH80071-LMf-34A (02/06)

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

Sponsors: Representatives Brandon, Hardister, Faircloth, and Collins (Primary Sponsors).

Referred to:

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

7 The General Assembly of North Carolina enacts:

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

10 "**§ 153A-370.1. Vacant building receivership.**

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

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

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

33 (c) Notice of Proceeding. – Within 10 days after filing the petition, the county shall
34 give notice of the pendency and nature of the proceeding by regular and certified mail to the
35 last known address of all property owners and all judgment creditors and lien holders with a
36 recorded interest in the property. Within 30 days of the date on which the notice was mailed, a



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

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

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

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

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

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

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

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

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

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

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

42 **"§ 160A-439.1. Vacant building receivership.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (j) Receiver's Tenure. – The tenure of a receiver appointed to rehabilitate, demolish, or
49 sell a vacant building, structure, or dwelling shall extend no longer than two years after the
50 rehabilitation, demolition, or sale of the property. Any time after the rehabilitation, demolition,
51 or sale of the property, any party to the receivership may file a motion to dismiss the receiver

1 upon the payment of the receiver's outstanding costs, fees, and expenses. Upon the expiration
2 of the receiver's tenure, the receiver shall file a final accounting with the court that appointed
3 the receiver.

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

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