

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH30212-LMf-73 (03/15)

Short Title: Vacant Building Receivership. (Public)

Sponsors: Representative Faircloth.

Referred to:

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

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Part 5 of Article 19 of Chapter 160A of the General Statutes is
9 amended by adding a new section to read as follows:

10 "**§ 160A-439.1. Vacant building receivership.**

11 (a) Nuisance Per Se. – A building or structure under this Part or a dwelling under Part 6
12 of this Article is a nuisance per se, and a city may petition the superior court for the
13 appointment of a receiver to rehabilitate, demolish, or sell the vacant building, structure, or
14 dwelling if the owner fails to do any of the following:

15 (1) Fails to comply with an order issued pursuant to G.S. 160A-429 from which
16 no appeal has been taken.

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

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

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

31 (c) Notice of Proceeding. – Within 10 days after filing the petition, the city shall give
32 notice of the pendency and nature of the proceeding by regular and certified mail to the last
33 known address of all judgment creditors and lienholders with a recorded interest in the
34 property. Within 30 days of the date on which the notice was mailed, a judgment creditor or
35 lienholder may apply to intervene in the proceeding and to be appointed as receiver. If the city
36 fails to give notice to any judgment creditor or lienholder as required by this subsection, the



1 proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating,
2 demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection
3 (e) of this section, shall not have priority over the lien of that judgment creditor or lienholder.

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

27 (e) Receiver Authority Exclusive. – Upon the appointment of a receiver under
28 subsection (d) of this section, all other parties are divested of any authority to rehabilitate,
29 demolish, or sell the building, structure, or dwelling subject to the receivership. Any party other
30 than the appointed receiver who actively attempts to rehabilitate, demolish, or sell the property
31 may be held in contempt of court and shall be subject to the penalties authorized by law for that
32 offense. Any costs or fees incurred by a receiver appointed under this section shall constitute a
33 lien against the property, and the receiver's lien shall have priority over all other liens and
34 encumbrances, except taxes or other government assessments.

35 (f) Receiver's Authority to Rehabilitate or Demolish. – In addition to all necessary and
36 customary powers, a receiver appointed to rehabilitate or demolish a vacant building, structure,
37 or dwelling shall have the right of possession with authority to do all of the following:

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

46 (g) Receiver's Authority to Sell. – In addition to all necessary and customary powers, a
47 receiver appointed to sell a vacant building, structure, or dwelling shall have the authority to do
48 all of the following: (i) sell the property to the highest bidder at public sale, following the same
49 presale notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45
50 of the General Statutes, and (ii) sell the property privately for fair market value if no party to
51 the receivership objects to the amount and procedure. In the notice of public sale authorized

1 under this subsection, it shall be sufficient to describe the property by a street address and
2 reference to the book and page or other location where the property deed is registered. Prior to
3 any sale under this subsection, the applicants to bid in the public sale or the proposed buyer in
4 the private sale shall demonstrate the ability and experience needed to rehabilitate the property
5 within a reasonable time. After deducting the expenses of the sale, the amount of outstanding
6 taxes and other government assessments, and the amount of the receiver's lien, the receiver
7 shall apply any remaining proceeds of the sale first to the city's costs and expenses, including
8 reasonable attorneys' fees, and then to the liens against the property in order of priority. Any
9 remaining proceeds shall be remitted to the property owner.

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

20 (i) Deed After Sale. – Following the court's ratification of the sale of the property under
21 this section, the receiver shall sign a deed conveying title to the property to the buyer, free and
22 clear of all encumbrances. Upon the sale of the property, the receiver shall at the same time file
23 with the court a final accounting and a motion to dismiss the action.

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

31 (k) Administrative Fee Charged. – The city may charge the owner of the building,
32 structure, or dwelling subject to the receivership an administrative fee that is equal to five
33 percent (5%) of the profits from the sale of the building, structure, or dwelling or one hundred
34 dollars (\$100.00), whichever is less."

35 **SECTION 2.** This act applies only to cities with a population of 30,000 or more as
36 of July 2013, according to the annual estimate of the Office of State Budget and Management,
37 and with a majority of the corporate boundaries in a county with a Tier 1 or Tier 2 annual
38 ranking as designated by the Department of Commerce pursuant to G.S. 143B-437.08.

39 **SECTION 3.** This act becomes effective October 1, 2017, and applies to any
40 nuisance per se described in G.S. 160A-439.1, as enacted by this act, that occurs on or after that
41 date.