

PUBLIC CHAPTER NO. 452**HOUSE BILL NO. 1995****By Representatives Miller, Sontany, Briley, Mike Turner, Hardaway****Substituted for: Senate Bill No. 2007****By Senators Kyle, Marrero, Norris**

AN ACT to amend Tennessee Code Annotated, Title 13, Chapter 6 and Title 29, Chapter 1, Part 1, relative to structures unfit for occupation or use.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-6-102, is amended by adding the following language as new, appropriately designated subdivisions:

() "Building" means any building or structure that is not occupied by any owner, tenants or residents;

() "Public nuisance" means any vacant building that is a menace to the public health, welfare, or safety; structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard, dangerous to human life, or no longer fit and habitable; a nuisance as defined in § 29-3-101(a)(2); or is otherwise determined by the local municipal corporation or code enforcement entity to be as such;

() "Abate" or "abatement" in connection with any building means the removal or correction of any conditions that constitute a public nuisance and the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions over its remaining useful life;

() "Interested party" means any owner, mortgagee, lien holder or person that possesses an interest of record in any property that becomes subject to the jurisdiction of a court pursuant to this section;

() "Municipal corporation" means any incorporated city or town in this state, or county, including any county having a metropolitan form of government, and as further defined by the population restrictions set forth § 13-6-105;

() "Nonprofit corporation" means any nonprofit corporation that has been duly organized under the laws of this state, and has as one of its goals community development or redevelopment;

() "Receiver" either means a municipal corporation that agrees to be appointed by the court for the purpose of preserving or improving

the property of another or a nonprofit corporation which has been certified as such by the municipal corporation or code enforcement entity where the building is located. Said certification of a nonprofit corporation shall be issued upon receipt of the following:

- (1) An external verification of nonprofit status;
- (2) The nonprofit corporation's articles of incorporation or bylaws evidencing community development or redevelopment is a part of the mission;
- (3) Evidence of financial capacity to carry out a community development or redevelopment project, including audited financial statements of the organization for the past five (5) years, where applicable;
- (4) The organization's formal conflict of interest policy governing both the staff and the board of directors;
- (5) Evidence of the administrative capacity to successfully undertake a community development or redevelopment project.

A Receiver appointed pursuant to the subdivision is not personally liable except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of his office;

SECTION 2. Tennessee Code Annotated, Title 13, Chapter 6, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) Any nonprofit corporation as defined in § 13-6-102, or any interested party or neighbor may bring a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings against the owner of any building or structure that is not occupied by any owner, tenants or residents for failure to comply with such ordinance or regulation. If the petitioner has not attached a certificate of public nuisance to the complaint, the court, by written notice to the chief housing officer and the chief legal officer of the municipal corporation, may request that the code enforcement entity complete its inspection and issue a certificate of public nuisance or denial including a list of the reasons for such determination within thirty (30) calendar days. If the code enforcement entity fails to respond within thirty (30) calendar days of written notice then the court shall schedule a hearing requesting that such code enforcement entity be present, with its findings and participate in the hearing of the issue of public nuisance.

(b) The complaint shall include a draft order of compliance setting forth the relief requested as described herein and may request the appointment of a receiver if the order of compliance is not successful.

(c) In said civil action notice shall comply with all provisions of Rule 4 of the Tennessee Rules of Civil Procedure. Additionally, notice shall require that a copy of the complaint be posted in a conspicuous place on the building and that such complaint be published in the local paper.

(d) The court shall conduct a hearing in a timely manner at least twenty eight (28) calendar days but no later than sixty (60) calendar days after all notice provisions of this section have been satisfied, including that the owner of the building has been served with a copy of the complaint and the notice of the date and time of the hearing.

(e) The action will be dismissed if the building is not certified as a public nuisance by the municipal corporation or code enforcement entity where the building is located. If the owner can establish the grounds as set forth in § 13-6-104 it shall constitute a complete defense to any cause of action brought under this section.

(f) If the owner cannot establish a complete defense, the court may issue an order of compliance requiring the owner of the building to produce a development plan for the abatement of the public nuisance. Said plan shall include, at a minimum, a projected timeline for abatement of the public nuisance, and a statement demonstrating the financial ability of the owner to complete the abatement. Said plan shall be duly approved by the court for purposes of compliance with this section. If the owner has commenced work on the building prior to, or during the pendency of the action, the owner shall be required to provide a report of the work that has been completed to date, as well as a development plan for the abatement of the public nuisance.

(g) If the owner fails to comply with the court's order, the court at its discretion may allow an interested party the opportunity to undertake the work to abate the public nuisance under a detailed development plan as described in (i).

(h) If the above actions fail to abate the public nuisance, the court may appoint a receiver to take possession and control of the building to abate the public nuisance. Prior to a nonprofit corporation being designated a receiver under this section, the nonprofit corporation shall provide proof of certification by the municipal corporation or code enforcement entity where the building is located. The court will have discretion to review the certification and supporting documentation and will determine whether the receiver has the capacity to undertake a particular project.

(i) Prior to ordering any action to be taken to abate the public nuisance, the court shall cause a more detailed development plan to be submitted for review, that shall include, but may not be limited to, the following:

- (1) A detailed budget for abating the public nuisance;

(2) If repair and rehabilitation of the building are found not to be feasible, the cost of demolition of the building or of the portions of the building that constitute the public nuisance; and

(3) The terms, conditions and availability of any financing that is necessary to abate the public nuisance or a show of sufficient assets.

Any party submitting a detailed development plan under this section shall be required to post a bond in an amount no less than the assessed value of the property.

(j) If the court deems the detailed development plan to be sufficient and appropriate, the court may empower the receiver to complete any or all of the following:

(1) Take possession and control of the building and the property on which it is located;

(2) Pay all expenses of operating and conserving the building and the property including obtaining mortgage insurance;

(3) Pay pre-receivership mortgages or installments of them and other liens; and

(4) Implement the detailed development plan, provided that if the development plan requires demolition that the court specifically order such demolition properly and in compliance with applicable laws.

(k) The interested party or receiver shall file a report with the court every sixty (60) calendar days and upon completion of the detailed development plan shall file a final report with the court indicating the public nuisance has been abated. If the court finds the final report as sufficient and complete the court may assess court costs and expenses and also may approve the payment of receiver's fees at the discretion of the judge but not to exceed the greater of ten percent (10%) of the total costs of the abatement or twenty-five thousand dollars (\$25,000) to the receiver. These costs as approved by the court shall be considered a first lien on the property, which, with the exception of those for federal, state, and local taxes and assessments, shall be superior to all prior and subsequent liens or other encumbrances associated with the building or the property. The interested party or receiver shall be responsible for recording a certified copy of the judgment with the county recorder in the county in which the property is located within sixty (60) calendar days after the date of the entry of the judgment. Once the lien is perfected and the owner has satisfied the lien then the court shall order the receivership terminated.

(l) If the lien is not satisfied within a one hundred eighty (180) calendar day period or longer, with approval of the court, the municipal corporation, the boundaries of which the building is located may sell the property pursuant to applicable local ordinances.

(m) The receivership is terminated at the time of sale. The proceeds of the sale shall first satisfy all federal, state, and local taxes and assessments or tax settlements. If the remaining sale proceeds are sufficient to satisfy the receiver's lien then the receivership lien shall be terminated. If the receiver's lien is not satisfied by the sale proceeds the receiver's lien shall remain in effect until the lien is satisfied.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: June 4, 2007



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 18th day of June 2007



PHIL BREDESEN, GOVERNOR