

Pennsylvania Passes Conservatorship Act for Blighted Property

[On behalf of Dornish Law Offices, PC](#) | Dec 1, 2008 | [All](#), [Real Estate Practice](#)

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At law, a conservator is usually the officer appointed by a court to preserve, maintain or repair the property of a minor, or of one who is incompetent. A guardian of a child who has lost his parents is a conservator. Conservators can also be appointed by the courts to protect and manage the disposition of the property of businesses which can no longer handle their own business. Receivers are conservators of the businesses they control.

On November 26, 2008, Governor Rendell signed into law a brand new type of conservatorship aimed particularly at residential, commercial and industrial buildings in the Commonwealth which do not meet municipal code requirements. The law is called “The Abandoned and Blighted Property Conservatorship Act,” and is Act 135 of 2008, viewable online at www.legis.state.pa.us as House Bill No. 2188, Printer’s Number 4521. The law goes into effect 90 days from its approval.

The Conservatorship act allows any “Party In Interest” to file a petition for appointment of a conservator in a court in the county where the property is located. The Act defines Court as the Court of Common Pleas in the county, but since the petition is considered an in rem action against the property, only the Court of Common Pleas in each county should have jurisdiction to hear the cases, regardless of definition. In rem actions involving title to real estate are generally beyond the authority of Magisterial District Courts, and outside the authority of Arbitrators.

The Act defines Parties in Interest to include Owners, lienholders and other secured creditors of the owner, though I can’t imagine why an owner or lender would want to use the conservatorship process to rehabilitate a building, when other, more flexible and less intrusive mechanisms are available to these parties. Other Parties in Interest under the Act, the ones likely to file a petition, include residents (who could be owners or tenants) who live within 500 feet of the building, or business owners of businesses within 500 feet of the building. The municipality and school district in

which the property is located, and Nonprofit Corporations, including Redevelopment Authorities, which are located in the municipality where the building is located, and whose purposes include community development activities, economic development, historic preservation, promotion or enhancement of affordable housing opportunities, are also Parties in Interest, though in Philadelphia, the nonprofit must also have “participated in a project within a one mile radius of the building” to qualify.

The ramifications of these definitions are broad and somewhat scary as to who has the right to petition the court. Not only nearby property owners and business owners, but individual residential tenants, even someone on a month to month lease, has the right to petition for a conservator. And since it only takes a registered address within the municipality, a filing fee of \$125 and a few hundred dollars in other costs to form a Pennsylvania Corporation Not For Profit, pretty much anyone with a motivation and a few hundred dollars could qualify to petition under the Act.

However, not everyone will want to be a petitioner, because filing a petition isn't as easy as writing a letter. The petition has to include a sworn statement that to the best of the petitioner's knowledge, the property meets the conditions set forth in the act for conservatorship. The Act requires that the property meet ALL of the first four conditions and three of the last nine conditions for the court to appoint a conservator. Since this is a long article already, I won't comment further on how the four plus three of nine structure makes a simple determination more complex.

The first condition is that the property has not been legally occupied for twelve months. While this condition is apparently intended to include abandoned, vacant properties, the choice of the words “legally occupied” means occupancy in accordance with a valid, properly issued occupancy permit, where one is required. Pennsylvania zoning law is clear that a building physically occupied inconsistently with its occupancy permit is illegally occupied, so it is possible that a building with a two unit occupancy permit occupied for more than a year as a three unit building, or a single family home occupied for more than a year by five students when local law allows a maximum of three unrelated occupants, or prevents student tenants unless a home has been registered as student housing, could both meet the condition of not being legally occupied for at least twelve months. Vacant property clearly meets the condition.

The second condition is that the building has not been “Actively Marketed” during the 60 days prior to the date of the petition. The Act defines Actively Marketed to require that a For Sale sign with accurate contact information be placed on the property, and that the owner must have either engaged a licensed real estate agent to list or market the property, or place at least weekly print or electronic ads, or distribute printed advertisements. These provisions should be cut and dry, except in municipalities which prohibit for sale signs. If you own a vacant building which might otherwise be subject to a petition for a conservator being filed against it, you should at least take the precaution of immediately and continuously “Actively Marketing” the property to prevent this condition from being satisfied. The Act does not specify the price at which the property must be listed, and since this is one of the four mandatory conditions for a petition to be granted, a listing at a price for which you would be willing to sell the property should avoid a conservatorship being entered against you.

The third mandatory condition is that the building is not subject to an existing foreclosure action. I guess the legislature figured that if a bank wants to take and resell the property, they will wait for that to happen. This is also a cut and dry condition, and nothing more needs to be commented on it.

The final mandatory condition for conservatorship is that the owner must have owned the property for more than six months, and it is phrased in terms that the owner must submit proof to rebut an assumption he has held the property longer. For those thinking of transferring properties back and forth from spouse to spouse or parent to child or from entity to entity to avoid this condition, forget those notions. The Act doesn’t count those transfers unless they result from death of the owner.

Once you get past the mandatory conditions, the nine other conditions are more discretionary and subject to influence by local authorities. These conditions, only three of which must be met to appoint a conservator, include in abbreviated form:

1. The building is a public nuisance.
2. The building is in need of substantial rehabilitation, and none has taken place in a year.
3. The building is unfit for human habitation, occupancy or use.
4. The condition and vacancy of the building materially increase the risk of fire.

5. The building is subject to unauthorized entry and the owner hasn't secured it OR the municipality has secured it.
6. The building is an attractive nuisance to children.
7. Vermin, debris, uncut weeds or physical deterioration of the building not removed by the owner present safety hazards.
8. The un-remediated dilapidation or other condition of the building hurts property values or nearby businesses.
9. The property is an attractive nuisance for drugs, prostitution, vagrancy or other illicit purposes.

The petition is also supposed to include, to the extent available to the petitioner after reasonable efforts to obtain them, copies of any citations charging the owner with violations of municipal codes or declaring the building a public nuisance, a recommendation for a person or entity to be appointed conservator, and a preliminary plan with initial cost estimates for rehabilitation of the building to bring it into compliance with all municipal codes and plans for the area, with anticipated funding sources. This last requirement for a rehab plan with cost estimates and funding sources, if required by the courts, will truly eliminate all but the most serious petitioners, and may make it difficult to use this procedure at all.

Once a petition is filed, the petitioner is to notice the petition by filing a Lis Pendens in the Recorder of Deeds office to give notice to anyone searching the title that a petition for a conservator is pending in court. The petitioner is also to serve notice of the petition on the owner, lienholders and political subdivisions in which the property is located, by registered or certified mail and posting on the building. If certified mail or registered mail are refused, the notice can be sent by regular mail and will be presumed complete if not returned in 30 days. If registered or certified mail is returned unclaimed, then the notice must be personally served. However, this Act does not specify personal service by the Sheriff, and provides that after two attempts at personal service fail, notice can be sent to the same address by regular mail and deemed served. This service mechanism can deprive the owner of constitutionally protected property rights without due process of law, since a conservator can sell the property under certain provisions of the Act, and it is entirely possible that the owner would not have actual notice of the conservatorship.

The court is to hold a hearing within 120 days of the filing of the petition to consider the appointment of a conservator, and if the conditions are satisfied, appoint the first lienholder, a nonprofit entity or governmental

unit in preference over an individual, as conservator. If the court finds the conditions are met, but the owner promises to cure the violations in a reasonable period, the court can stall the conservatorship, allow the owner to perform the rehabilitation of the property, and may require the owner to post a bond in the amount of estimated repairs to keep possession of his own property. Otherwise, the conservator is appointed and immediately takes possession of the property from the owner, including personal property of the owner used with respect to the building, like appliances, lawnmowers, etc., and any bank operating accounts for the building.

The conservator is allowed to collect money due the owner regarding the building, pursue any lawsuits or similar claims the owner has with respect to the building, contract for repairs or improvements to the building, borrow money for the repairs and improvements which can be a first lien bumping any existing financing to second lien position if the existing lienholder won't finance the improvements. For purposes of this Act, the conservator gets deemed to have an ownership interest and legal control of the property during the conservatorship, but the real owner continues to be liable for civil and criminal liabilities as owner, taxes, mortgage payments and other similar charges even though the owner is not in possession of the building, and the conservator does not have any of those liabilities.

If the conservator has been in possession of the property for more than six months, and the owner has not successfully petitioned to end the conservatorship and take back the building, the conservator can petition to sell the property free and clear of all liens, subject to payment of the proceeds to cover all costs of the conservatorship, government liens, liens like existing mortgages, and even the costs of the original petitioner in requesting the conservatorship. The owner would only get leftover proceeds of the sale, if any.

While the act does not apply while an owner has vacated the property on military service, or to land owned by or held in trust for the Federal Government, the rest of property owners in Pennsylvania are subject to this new law. The advantage of the law to real estate investors can be that we may have a mechanism to force the repair of the blighted property next door to ours by petitioning under the Act for a conservator to be appointed for that property. Further, owners of vacant property who have been reluctant to sell to us for redevelopment may be more inclined to sell, once they face the threat of conservatorship being imposed on their property.

I am forming a Pennsylvania Non-Profit corporation in the municipality where I am engaging in redevelopment activities, and will explore filing one or more petitions under this act to clean up neighborhood properties. I will also explore using that entity as a conservator, to manage getting the work done on those properties.

I am also looking at properties I hold for speculative future development, and advising my clients to do the same. If listing those properties or otherwise putting up for sale signs and marketing them weekly or Craigslist or other electronic media can prevent our properties from being among the first to test the limits of the conservatorship law, it only makes sense to put that marketing effort in place.

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