



## **Multifamily Housing Preservation and Receivership Act**

### **OVERVIEW OF THE MULTIFAMILY HOUSING PRESERVATION AND RECEIVERSHIP ACT, P.L.2003, C.295**

The following is an overview of the principal provisions of P.L.2003, c.295 as enacted by the New Jersey Legislature and signed by Governor McGreevey on January 15, 2004. **This overview was prepared for your information and is not an official document of the State of New Jersey.**

#### **Sec. 1 Short title**

#### **Sec. 2 Findings**

The findings set forth the need for action with respect to blighted residential property, including the fact that such properties are a public safety threat and a nuisance, affecting not only those who live in them, but also diminishing health, public safety and property values in the neighborhoods in which they are located; further, that such buildings are at risk of abandonment, which results in loss of affordable housing, endangering neighborhood residents, and imposing costs on municipalities in which they are located. The legislature also finds that the use of public funds to maintain multifamily rental housing generally, and to support receivership in particular, is to be encouraged.

#### **Sec. 3 Definitions**

Key definitions include:

- Eligible buildings are defined as any building in which at least half of the net square footage of the building is used for residential purposes. Owner-occupied one to four family dwellings are not subject to the provisions of the act.
- “Parties in interest” that can bring receivership complaints include the municipality, any lienholder, an individual tenant, an entity representing over half of the tenants, or a nonprofit corporation providing community services within the municipality in which a building is located.
- “Public officer” is defined to give the municipality flexibility to appoint the most qualified municipal official as public officer for the purposes of this act.
- A “qualified entity” which may be appointed as a receiver is defined, and is further subject to registration with the Department of Community Affairs.

#### **Sec. 4 Conditions permitting receivership complaint**

A receivership complaint can be brought by any party in interest where a building (a) is in violation of a housing code requirement affecting the health and safety of the tenants, which has remained unabated for 90 days preceding the filing of the petition; or (b) shows a pattern of repeated code violations over a period of one year or more. In both cases, the complaint must show that the owner failed to take adequate and timely action.

#### **Sec. 5 Contents of receivership complaint**

The complaint must state the grounds for the petition, and may recommend a receiver to be appointed by the court. With respect to a building containing both residential and non-residential uses, the non-residential uses are excluded from the receivership unless the complaint provides explicit justification for making those uses subject to the receivership.

### **Sec. 6 Notice requirements**

Notice of filing of the complaint must be provided to the owner, mortgage and lien holders, as determined by a title search. Notice of intent to file must be provided 10 days prior to filing to the public officer and the Housing and Mortgage Finance Agency.

### **Sec. 7 Notice to limited partners**

If the HMFA finds that the building is owned by a limited partnership established pursuant to any program under which the HMFA has regulatory control, including the federal Low Income Tax Credit program, it shall notify the limited partners, which have the same rights and remedies as lienholders in the receivership action.

### **Sec. 8 Timetable for court action**

The complaint is heard by Superior Court as a summary (expedited) proceeding. Any party in interest may present evidence to support or contest the complaint at the hearing.

### **Sec. 9 Defenses**

The owner can defend against the complaint by demonstrating that repairs were made in timely fashion, to an appropriate standard of quality, and that the overall level of maintenance and provision of services is of adequate standard. If the complaint is brought by a tenant who is in default of a material obligation under the law (such as non-payment of rent), the court may dismiss the complaint. If the court finds that the preponderance of the violations cited as the basis for a complaint brought under the provisions of Sec. 4 (b) are of a minor nature, the court may dismiss the complaint.

### **Sec. 10 Action by court**

The court may appoint a receiver, which must be the mortgage or lienholder or a qualified entity, or may accept a plan by the owner to abate the conditions that led to the complaint being filed. If the court accepts the owner's plan, the court may require the owner to post a bond to guarantee action. If the owner fails to abate the conditions within a reasonable period, which can be specified in the court order, the bond is forfeit. If the owner fails to abate the conditions, or if they recur within a specific period set by the court, the court may then appoint a receiver. The owner continues to be responsible for payment of taxes, municipal charges, mortgages or liens, both before and after appointment of the receiver.

### **Sec. 11 Limits on certain lienholders' rights**

The bill as a whole provides strong protection for lienholders under its various provisions, based on the principle that the lienholder as a rule does not share with the owner the responsibility for the conditions leading to the receivership. This section authorizes the court to deny those protections to lienholders where it finds that the lienholder's financial, business or familial relationship to the owner is so close that it precludes a separate interest on the part of the lienholder.

### **Sec. 12 Receiver's plan**

The receiver shall submit a plan for the operation and improvement of the building to the court, with copies to parties in interest, within 60 days following the order appointing the receiver. The key elements of the plan are spelled out in the bill. The court may approve or disapprove the plan with or without modifications. The owner is required to provide the receiver with income and expense statements for the building.

### **Sec. 13 Bond; removal of receiver**

The receiver must post bond or other surety, as determined by regulations to be adopted by DCA. As soon as the receiver posts bond or other surety, it is authorized to exercise all of the powers of receivership, except that it shall not undertake major non-emergent repairs until the court has approved

the receiver's plan. The court may remove the receiver on a showing that the receiver is not carrying out its responsibilities under the law.

#### **Sec. 14 Effect of foreclosure actions**

Neither filing of a complaint nor the appointment of a receiver stay the filing or continuation of any action to foreclose a mortgage or lien on the building or sell the property for delinquent taxes or unpaid municipal liens. A change in ownership as a result of foreclosure while a receiver is in possession does not affect the status of the receivership.

#### **Sec. 15 Powers of receiver**

The receiver has all powers ordinarily available to an owner of rental property, including the authority to accept grants, and borrow funds and incur debt under the provisions of Sec. 17 of the act. The receiver must solicit three bids or proposals for any contract in excess of \$2,500. The receiver must disclose any contract with an entity with which the receiver has an identity of interest relationship to the court and the parties in interest.

#### **Sec. 16 Duties of receiver**

The receiver must maintain the building in good order, implement the plan approved by the court, and apply all revenues from the property to the extent necessary to maintain and improve the building. The court may require periodic reports from the receiver. If the municipality is the receiver under the provisions of the Tax Sale Act, C.54:5-53.1, it may not apply any revenues toward tax arrears until all code violations have been corrected and the building has remained free of such conditions for six months.

#### **Sec. 17 Borrowing by receiver**

The receiver may borrow funds to operate or improve the property. Where the borrowing is needed for the purpose of improving the property, and where the senior lienholder has refused either to provide additional financing or to subordinate, the court may authorize the receiver to secure the debt by a lien on the property, which may take priority over other liens and mortgages except municipal liens. A receiver also has recourse against other assets of the owner to collect on a receiver's lien.

#### **Sec. 18 Fees**

The receiver is entitled to reasonable fees. The municipality may provide municipal funds to a receiver to carry out the purpose of the receivership, which is deemed a public purpose.

Where the municipality brings a receivership action, the municipality is entitled to its costs and reasonable attorney's fees, for which it may place a lien against the premises. The owner is not relieved by a receivership action of any criminal or civil liability resulting from any act or omissions of the owner.

#### **Sec. 19 Tax liens**

Upon request of the receiver, the municipality may request the county board of taxation to order the release of municipal liens against a property in receivership, in which event the owner of the property becomes personally liable for payment of the municipal charges secured by the lien.

#### **Sec. 20 Sale of building**

The court may order the sale of the building after one year if the owner has not petitioned for reinstatement, and the court finds that the sale would promote the sustained maintenance of the building as sound, affordable housing.

### **Sec. 21 Terms of sale**

The receiver must recommend proposed terms of sale to the court, which may include (1) sale on the open market; (2) sale at a negotiated price to a nonprofit entity; (3) sale to an entity for the purpose of conversion to condominium or cooperative ownership, with approval of a majority of the tenants, and provided that no tenant may be displaced as a result of the conversion; or (4) in the case of a one to four unit building, sale to a household for the purposes of owner-occupancy.

### **Sec. 22 Approval of sale by the court**

The court must hold a hearing on the proposed sale, at which the owner may petition for reinstatement of its rights. No such petition shall be granted unless the owner complies with the provisions of Sec. 25 of the act. The court may authorize the receiver to sell the property free and clear of liens or other encumbrances, with lienholders to receive the proceeds of sale in order of priority set forth in Sec. 23.

### **Sec. 23 Distribution of proceeds of sale**

The section establishes the priority order for distribution of the proceeds of sale of any building sold under the act.

### **Sec. 24 Petition by owner for termination of receivership**

The owner may petition at any time for termination of the receivership and reinstatement of its rights, unless the court has established a minimum period for the receivership to remain in effect, which may not be more than one year. The court shall hold a hearing on any such petition after receiving a report from the receiver with its recommendations for action on the owner's petition.

### **Sec. 25 Conditions of reinstatement of owner's rights**

The court may grant a petition for reinstatement, but must find that (a) the owner demonstrates that it will carry out the remaining features of the receiver's plan within the time frame initially approved by the court; (b) the owner has paid or deposits with the court all funds required to meet the obligations of the receivership; (c) the owner agrees to assume all legal obligations, including repayment of debt, incurred by the receiver; (d) the owner has paid all municipal liens, as well as costs incurred by the municipality in connection with the receivership; (e) the owner posts a bond in an amount determined to be reasonable by the court but not in excess of 50% of the fair market value of the property, which shall be forfeit in the event of future code violations; and (f) the reinstatement is in the public interest. The court may waive the bond requirement for good cause, and may set additional requirements as conditions of reinstatement to protect the interests of the tenants and/or the neighborhood. If the owner has voluntarily conveyed the property to another owner during the receivership, the new owner is subject to the same requirements. If a new owner has taken title as a result of foreclosure or grant of a deed in lieu of foreclosure, the new owner is not subject to the provisions of this section, but may seek to terminate the receivership as provided in Sec. 27.

### **Sec. 26 Monitor; reinstatement of receivership**

The court may require the receiver to remain in place after reinstatement of the owner's rights as a monitor of the condition and management of the building, and may require the owner to pay the receiver a fee in that capacity. If the owner fails to comply with the conditions of reinstatement, the court may reinstate the receivership on petition by any party in interest, and forfeit the owner's bond.

### **Sec. 27 Termination of receivership**

The court may terminate the receivership on request of a party in interest if it finds that any of the following conditions apply: (a) the conditions have been corrected and the purposes of the receivership fulfilled; (b) a mortgagee or lienholder has petitioned for termination, and provide assurances that it will carry out the purposes of the receivership; (c) a new entity has taken title to the building as a result of foreclosure or grant of a deed in lieu of foreclosure, and provides assurances that it will carry out the

purposes of the receivership; (d) the building has been sold and the proceeds distributed as provided in the act; (e) the receiver has been unable to carry out the plan, or otherwise cannot carry out the purposes of the receivership. In all cases, the court has discretion to impose such conditions on the entity taking control of the building to protect the interests of the tenants and the neighborhood in which the building is located.

### **Sec. 28 Creation of Preservation Loan Revolving Fund**

The Department of Community Affairs is instructed to set aside up to \$4 million per year to establish a fund from which grants and loans can be made to receivers acting under the provisions of this bill. \$1 million from the first \$4 million set aside for this purpose is to be used to make grants to nonprofit entities to build their capacity to act as receivers as well as carry out other property management activities that will further the preservation of affordable housing.

### **Sec. 29 Removal of concurrent jurisdiction of housing court**

Concurrent jurisdiction of municipal housing court to appoint receivers is removed.

### **Sec. 30 Amendments to Balanced Housing Program**

The Balanced Housing Program statute is amended to provide the Program with clear authority to make grants and loans to receivers, as well as to provide that the Department of Community Affairs shall not require income certification of tenants or deed restrictions regarding low and moderate income occupancy as a condition of providing BHP funds for moderate rehabilitation of multifamily rental buildings where the project (1) contains 30 or fewer units, and (2) is located in a Census tract in which the median household income is 60% or less of the area median income.

### **Sec. 31 Registration of entities qualified to be receivers**

The Department of Community Affairs is directed to adopt rules and regulations to register qualified entities and to adopt rules and regulations establishing minimum levels of insurance coverage for buildings in receivership, and governing surety bonds for receivers.

### **Sec. 32 Repeal of statutes**

C.2A:42-79 through 84 and C.40:48-2.12h through 2.12l are repealed.

### **Sec. 33 Effective date**

Except for Sec. 31 regarding the adoption of rules and regulations by the Department of Community Affairs, which is effective immediately, the act becomes effective 180 days after enactment, in July 2004.