

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 912

Short Title: Vacant Housing Receivership. (Local)

Sponsors: Representative Brandon (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Rules, Calendar, and Operations of the House.

May 5, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITIES OF GREENSBORO AND HIGH POINT TO
PETITION THE COURT TO APPOINT A RECEIVER TO REHABILITATE,
DEMOLISH, OR SELL A VACANT BUILDING, STRUCTURE, OR DWELLING
WHERE THE OWNER OF THE PROPERTY HAS FAILED TO COMPLY WITH AN
ORDER TO DO SO AND TO CHARGE THE OWNER OF THE PROPERTY AN
ADMINISTRATIVE FEE.

The General Assembly of North Carolina enacts:

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

"§ 160A-439.1. Vacant building receivership.

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

- (1) Fails to comply with an order issued pursuant to G.S. 160A-429 from which no appeal has been taken.
- (2) Fails to comply with an order of the city council issued pursuant to G.S. 160A-429 following an appeal.
- (3) Fails to comply with an order to repair, alter, or improve, remove, or demolish a structure issued under G.S. 160A-443.

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

(c) Notice of Proceeding. – Within 10 days after filing the petition, the city shall give notice of the pendency and nature of the proceeding by regular and certified mail to the last known address of all judgment creditors and lien holders with a recorded interest in the



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1 property. Within 30 days of the date on which the notice was mailed, a judgment creditor or
2 lien holder may apply to intervene in the proceeding and to be appointed as receiver. If the city
3 fails to give notice to any judgment creditor or lien holder as required by this subsection, the
4 proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating,
5 demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection
6 (e) of this section, shall not have priority over the lien of that judgment creditor 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, or other person with an interest in the property to rehabilitate or demolish it
11 if that person (i) demonstrates the ability to complete the rehabilitation or demolition within a
12 reasonable time; (ii) agrees to comply with a specified schedule for rehabilitation or
13 demolition; and (iii) posts a bond in an amount determined by the court as security for the
14 performance of the required work in compliance with the specified schedule. If, at any time, it
15 appears to the city the owner, a mortgagee, or other person appointed under this subsection is
16 not proceeding with due diligence or in compliance with the court-ordered schedule, the city
17 may apply to the court for immediate revocation of that person's appointment and for the
18 appointment of a receiver. If the court revokes the appointment and appoints a receiver, the
19 bond posted by the owner, mortgagee, or other person shall be applied to the receiver's
20 expenses in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling. If
21 no qualified person with an ownership interest in the building, structure, or dwelling requests
22 appointment to rehabilitate or demolish the property or if an appointee is dismissed, the court
23 shall appoint a receiver for the purpose of rehabilitating and managing the property,
24 demolishing the property, or selling the property to a qualified buyer. To be considered
25 qualified, a person must show (i) financial ability to complete the purchase or rehabilitation of
26 the property; (ii) knowledge of or experience in the rehabilitation of vacant real property; and
27 (iii) the absence of any building code violations issued by the city on other real property owned
28 by the person or any member, principal, officer, major stockholder, parent, subsidiary,
29 predecessor, or others affiliated with the person or the person's business.

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

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

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

49 (g) Receiver's Authority to Sell. – In addition to all necessary and customary powers, a
50 receiver appointed to sell a vacant building, structure, or dwelling shall have the authority to do
51 all of the following:

- 1 (1) Sell the property to the highest bidder at public auction, following the same
2 presale notice provisions that apply to a mortgage foreclosure under Article
3 2A of Chapter 45 of the General Statutes.
4 (2) Sell the property privately for fair market value if no party to the
5 receivership objects to the amount and procedure.

6 In the notice of the public auction authorized under subdivision (1) of this subsection, it
7 shall be sufficient to describe the property by a street address and by reference to the book and
8 page or other location where the property deed is registered. Prior to any sale under this
9 subsection, the applicants to bid in the public sale or the proposed buyer in the private sale shall
10 demonstrate the ability and experience needed to rehabilitate the property within a reasonable
11 time. After deducting the expenses of the sale, the amount of outstanding taxes and other
12 government assessments, and the amount of the receiver's lien, the receiver shall apply any
13 remaining proceeds of the sale first to the city's costs and expenses, including reasonable
14 attorneys' fees, and then to the liens against the property in order of priority. Any remaining
15 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 auction,
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, the receiver shall apply the proceeds of the sale to the liens against the property, in order
21 of priority. In lieu of foreclosure, and only if the receiver has rehabilitated the property, an
22 owner may pay the receiver's costs, fees, including attorneys' fees, and expenses or may
23 transfer his or her ownership in the property to either the receiver or an agreed upon third party
24 for an amount agreed to by all parties to the receivership as being the property's fair market
25 value.

26 (i) Deed After Sale. – Following the court's ratification of the sale of the property under
27 this section, the receiver shall sign a deed conveying title to the property to the buyer, free and
28 clear of all encumbrances. Upon the sale of the property, the receiver shall at the same time file
29 with the court (i) a final accounting and (ii) 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 city may charge the owner of the building,
38 structure, or dwelling an administrative fee that is equal to five percent (5%) of the profits from
39 the sale of the building, structure, or dwelling or one hundred dollars (\$100.00), whichever is
40 less."

41 **SECTION 2.** This act applies to the Cities of Greensboro and High Point only.

42 **SECTION 3.** This act becomes effective October 1, 2011.