

FIRST REGULAR SESSION

SENATE BILL NO. 27

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Pre-filed December 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0445S.011

AN ACT

To repeal sections 441.500, 441.510, 441.570, 441.590, 441.600, and 441.641, RSMo, and to enact in lieu thereof six new sections relating to residential property receivership.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 441.500, 441.510, 441.570, 441.590, 441.600, and
2 441.641, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 441.500, 441.510, 441.570, 441.590, 441.600, and 441.641, to
4 read as follows:

441.500. As used in sections 441.500 to 441.643, the following terms
2 mean:

- 3 (1) "Abatement", the removal or correction, including demolition, of any
4 condition at a property that violates the provisions of any duly enacted building
5 or housing code, as well as the making of such other improvements or corrections
6 as are needed to effect the rehabilitation of the property or structure, including
7 the closing or physical securing of the structure;
- 8 (2) "Agent", a person authorized by an owner to act for him;
- 9 (3) "Code enforcement agency", the official, agency, or board that has been
10 delegated the responsibility for enforcing the housing code by the governing body;
- 11 (4) "Community", any county or municipality;
- 12 (5) "County", any county in the state;
- 13 (6) "Dwelling unit", premises or part thereof occupied, used, or held out
14 for use and occupancy as a place of abode for human beings, whether occupied or
15 vacant;
- 16 (7) "Governing body", the board, body or persons in which the powers of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 a community are vested;

18 (8) "Housing code", a local building, fire, health, property maintenance,
19 nuisance or other ordinance which contains standards regulating the condition
20 or maintenance of residential [buildings] **property**;

21 (9) "Local housing corporation", a not-for-profit corporation organized
22 pursuant to the laws of the state of Missouri for the purpose of promoting housing
23 development and conservation within a specified area of a municipality or an
24 unincorporated area;

25 (10) "Municipality", any incorporated city, town, or village;

26 (11) "Neighborhood association", any group of persons organized for the
27 [sole] purpose of improvement of a particular geographic area having specific
28 boundaries within a municipality[, provided that such association is recognized
29 by the municipality as the sole association for such purpose within such
30 geographic area];

31 (12) "Notice of deficiency", a notice or other order issued by the code
32 enforcement agency and requiring the elimination or removal of deficiencies found
33 to exist under the housing code;

34 (13) "Nuisance", a violation of provisions of the **applicable** housing code
35 [applying to the maintenance of the buildings or dwellings] which the code official
36 in the exercise of reasonable discretion believes constitutes a threat to the public
37 health, safety or welfare;

38 (14) "Occupant", any person lawfully occupying a dwelling unit as his or
39 her place of residence, either as a tenant or a lessee, whether or not that person
40 is occupying the dwelling unit as a tenant from month to month or under a
41 written lease, undertaking or other agreement;

42 (15) "Owner", the record owner or owners, and the beneficial owner or
43 owners when other than the record owner, of the freehold of the premises or
44 lesser estate therein, a mortgagee or vendee in possession, assignee of rents,
45 receiver, personal representative, trustee, lessee, agent, or any other person in
46 control of a dwelling unit;

47 (16) "Person", any individual, corporation, association, partnership, or
48 other entity.

441.510. 1. If any building or dwelling **whether occupied or vacant**
2 is found to be in violation of building or housing codes which the county,
3 municipality, local housing corporation or neighborhood association in the
4 exercise of reasonable discretion believes constitutes a threat to the public health,

5 safety or welfare, and alleges the nature of such threat in its petition, the county,
6 municipality, local housing corporation or neighborhood association, in addition
7 to any other remedies available to it, may apply to a court of competent
8 jurisdiction for the appointment of a receiver to perform an abatement.

9 2. At least sixty days prior to the filing of an application for appointment
10 of a receiver pursuant to sections 441.500 to 441.643, the county, municipality,
11 local housing corporation or neighborhood association shall give written notice by
12 regular mail to all interested parties of its intent to file the application and
13 information relative to:

14 (1) The identity of the property;

15 (2) The violations of the building or housing codes giving rise to the
16 application for the receiver;

17 (3) The name, address and telephone number of the person or department
18 where additional information can be obtained concerning violations and their
19 remedy; and

20 (4) The county, municipality, local housing corporation or neighborhood
21 association which may seek the appointment of a receiver pursuant to sections
22 441.500 to 441.643 unless action is taken within sixty days by an interested party
23 **to either remedy the violation or to perform an action described in**
24 **subsection 3 of this section.**

25 3. A county, municipality, local housing corporation or neighborhood
26 association may not apply for the appointment of a receiver pursuant to sections
27 441.500 to 441.643 if an interested party has commenced and is then prosecuting
28 in a timely fashion an action or other judicial or nonjudicial proceeding to
29 foreclose a security interest on the property, or to obtain specific performance of
30 a land sale contract, or to forfeit a purchaser's interest under a land sale contract.

31 4. Notice of the application for the appointment of a receiver shall be
32 served on all interested parties.

33 5. If, following the application for appointment of a receiver, one or more
34 of the interested parties elects to correct the conditions at the property giving rise
35 to the application for the appointment of a receiver, the party or parties shall be
36 required to post security in an amount and character as the court deems
37 appropriate to ensure timely performance of all work necessary to make
38 corrections, as well as such other conditions as the court deems appropriate to
39 effect the timely completion of the corrections by the interested party or parties.

40 6. In the event that no interested party elects to act pursuant to

41 subsection 5 of this section or fails to timely perform work undertaken pursuant
42 to subsection 5 of this section, the court shall make a determination that the
43 property is in an unsafe or insanitary condition and appoint a receiver to
44 complete the abatement.

45 7. A receiver appointed by the court pursuant to sections 441.500 to
46 441.643 shall not be required to give security or bond of any sort prior to
47 appointment.

441.570. 1. The court may, after hearing and finding the dwelling unit
2 or building is **decadent and** constitutes a nuisance:

3 (1) Appoint a receiver and direct that present and future rents due from
4 one or more occupants be paid by the occupant or occupants with such receiver
5 as such rents fall due; or

6 (2) Allow the owner a reasonable time to correct the deficiencies.

7 2. Any rents paid pursuant to the provisions of this section shall be
8 applied to the costs incurred due to the abatement and receivership. **For**
9 **purposes of assessing the property prior to appointment of the receiver,**
10 **plaintiffs, plaintiffs' representatives, or other interested parties may be**
11 **permitted entry into the property by the court at such time and on such**
12 **terms as the court may deem appropriate.** Upon the completion of the work
13 required to abate the nuisance, any remaining surplus after authorized
14 disbursements and payments of cost shall be forwarded to the owner, together
15 with a complete accounting of the rents paid and the costs incurred.

441.590. 1. The court may, in any order entered pursuant to section
2 441.570:

3 (1) Authorize the receiver to draw upon the rents deposited [in court] to
4 pay for the cost of necessary repairs [upon presentment to the court of the
5 original copy of any invoice for work performed or materials purchased];

6 (2) Appoint the code enforcement agency, the mortgagee or other lienor
7 of record, a local housing corporation established to promote housing development
8 and conservation in the area in which such property that is the subject of
9 receivership is located or, if no local housing corporation exists for such area,
10 then the local neighborhood association, a licensed attorney or real estate broker,
11 or any other qualified person, as a receiver provided, however, that all lienholders
12 of record shall be given the right of first refusal to serve as receiver in the order
13 in which their lien appears of record. In the event of the refusal of all lienholders
14 of record to serve as receiver or in the absence of any lienholders of record, the

15 local housing corporation that is established to promote housing development and
16 conservation in the area in which such property that is the subject of receivership
17 is located, if any, shall be given the right of first refusal to serve as receiver for
18 any residential property consisting of four units or less; provided that, if no local
19 housing corporation exists for such area, then the local neighborhood association
20 shall be given such right of first refusal[; or

21 (3) Where the building is vacant, appoint the code enforcement agency,
22 the mortgagee or other lienor of record, a local housing corporation established
23 to promote development and conservation in the area in which such property that
24 is the subject of receivership is located or, if no local housing corporation exists
25 for such area, then the local neighborhood association, a licensed attorney or real
26 estate broker, or any other qualified person, as a receiver to remove all of the
27 housing code violations which constitute a nuisance as found by the court, except
28 that all lienholders of record shall be given the right of first refusal to serve as
29 receiver in the order in which their liens appear of record. In the event of the
30 refusal of all lienholders of record to serve as receiver or in the absence of any
31 lienholders of record, the local housing corporation that is established to promote
32 development and conservation in the area in which such property that is the
33 subject of receivership is located, if any, shall be given the right of first refusal
34 to serve as receiver for any residential property consisting of four units or less;
35 provided that, if no local housing corporation exists for such area, then the local
36 neighborhood association shall be given such right of first refusal].

37 2. The court may allow a receiver reasonable and necessary expenses,
38 payable from the [rent moneys] **revenues derived from the operation,**
39 **encumbrance, or sale of the premises, which shall include reasonable**
40 **remuneration for the receiver's time.**

41 3. [No receiver appointed shall serve without bond. The amount and form
42 of such bond shall be approved by the court and the cost of such bond shall be
43 paid from the moneys so deposited.

44 4.] The receiver may, on order of the court, take possession of the property,
45 collect all rents and profits accruing from the property, and pay all costs of
46 management, including, **but not limited to,** all insurance premiums and all
47 general and special real estate taxes or assessments.

48 [5.] 4. The receiver shall with all reasonable speed remove all of the
49 housing code violations which constitute a nuisance as found by the court, and
50 may make other improvements to effect a rehabilitation of the property in such

51 fashion as is consistent with maintaining safe and habitable conditions over the
52 remaining useful life of the property. The receiver shall have the power to let
53 contracts therefor, in accordance with the provisions of local laws, ordinances,
54 rules and regulations applicable to contracts.

55 [6.] 5. The receiver may with the approval of the circuit court borrow
56 money against, and encumber, the property as security therefor in such amounts
57 as may be necessary to carry out his or her responsibilities pursuant to sections
58 441.500 to 441.643. The circuit court may authorize the receiver to issue
59 receiver's certificates as security against such borrowings, which certificates shall
60 be authorized investments for banks [and], savings and loan associations, **and**
61 **other lenders**, and shall constitute a first lien upon the property and its income
62 and shall be superior to any claims of the receiver and to all prior or subsequent
63 liens and encumbrances except taxes and assessments, and shall be enforceable
64 as provided in subsection 8 of this section.

65 [7.] 6. In addition to issuance of receiver certificates, the receiver may
66 pledge the rentals from the property and borrow or encumber the property on the
67 strength of the rental income.

68 [8.] 7. Any receiver appointed pursuant to the provisions of sections
69 441.500 to 441.643 shall have a lien, for the expenses necessarily incurred in the
70 execution of an order, upon the rents receivable from the premises on or in
71 respect of which the work required by such order has been done or expenses
72 incurred, and this lien shall have priority over all other liens and encumbrances
73 of record upon the rents receivable from the premises, except taxes, assessments,
74 receiver's certificates, and mortgages recorded prior to October 13, 1969.

75 **8. The receiver shall file with the court quarterly reports,**
76 **including a statement of all expenditures made and all income and**
77 **receipts received from the property.**

78 9. [For the purposes of this section, "local housing corporation" shall mean
79 only those local housing corporations established prior to August 28, 2001.] A
80 **receiver appointed by the court, in addition to all necessary and**
81 **customary powers, has the right of possession of the premises with**
82 **authority, subject to court approval and for the purpose of abating the**
83 **violations, to sell the premises to a qualified buyer in one of the**
84 **following manners approved by the court:**

85 (1) **Sell the premises to the high bidder at public auction,**
86 **following the same presale notice by publication provisions that apply**

87 to a foreclosure under section 443.320; such sale shall not become final
88 until the court shall conduct an evidentiary hearing and shall approve
89 the sale only upon a court finding that sufficient evidence is admitted
90 into the record that the proposed buyer is capable of and has a feasible
91 plan for abating the nuisance at the premises; or

92 (2) Sell the property privately to a buyer proposed by the
93 receiver, upon terms including price proposed by the receiver and
94 approved by the court. Such proposal shall be in the form of a motion
95 to the court filed by the receiver. Before ordering such a sale, the
96 court shall conduct an evidentiary hearing and shall approve the sale
97 only upon a court finding that sufficient evidence is admitted into the
98 record that the proposed buyer is capable of abating the nuisance at
99 the premises and that the sale price is not less than the fair market
100 value of the premises, and that good cause exists for all other terms of
101 the proposal. Not less than twenty days prior to the hearing the
102 receiver in the action shall file with the court a certification that the
103 receiver has mailed to all defendants and all persons who then hold an
104 interest of public record at their last known address a copy of the
105 receiver's motion and proposal and written notice of the purpose, date,
106 time, and place of such hearing.

107 Proceeds from any sale of the premises by the receiver shall be
108 disbursed by the receiver: first, in satisfaction of any notes and
109 receiver certificates issued by the receiver in their order of priority;
110 second, to pay for the reasonable costs of the receivership and sale;
111 third, the amount due for delinquent taxes, assessments, charges,
112 penalties, and interest owed to the state of Missouri or any political
113 subdivision thereof, provided that, if the amount available for
114 distribution is insufficient to pay the entire amount of those taxes,
115 assessments, charges, penalties, and interest, the proceeds and
116 remaining funds shall be paid to each taxing jurisdiction pro rata;
117 fourth, to any holders of pre-receivership recorded liens upon filing by
118 any such holder with the court not less than ten days prior to the
119 evidentiary hearing described in either subdivision (1) or (2) of this
120 subsection evidence satisfactory to the court of the existence and
121 amount of any debt then due and secured by such lien and the priority
122 thereof; and fifth, all remainder to the freehold owner of the premises.
123 A plan of disbursement shall be approved by the court prior to

124 **disbursement. Within twenty days following disbursement the receiver**
125 **shall file with the court evidence of such disbursement.**

126 **10. The title in any premises that is sold at a sale ordered under**
127 **this section shall be conveyed by quit claim judicial deed, court**
128 **administrator's deed or sheriff's deed, and shall be incontestable in the**
129 **purchaser. Such conveyance shall operate to extinguish all existing**
130 **ownership interest in, liens on, and other interest in the property,**
131 **including tax and assessment liens that could not be satisfied from the**
132 **proceeds of the sale and the remaining funds in the receiver's**
133 **possession pursuant to the distribution under subsection 9 of this**
134 **section, but excepting a federal tax lien notice properly filed prior to**
135 **the time of the conveyance, and the easements and covenants of record**
136 **running with the property that were created prior to the time of the**
137 **conveyance.**

138 **11. Upon motion of the receiver, the court may stay the sale of**
139 **any tax parcel to be sold under execution of a tax foreclosure judgment**
140 **which is the subject of an action filed pursuant to sections 441.500 to**
141 **441.643.**

142 **12. A receiver appointed pursuant to sections 441.500 to 441.643**
143 **is not personally liable except for misfeasance or malfeasance in the**
144 **performance of the functions of the office of receiver.**

441.600. The receiver shall be discharged upon rendering a full and
2 complete accounting to the court when the conditions giving rise to the
3 receivership have been removed and the cost thereof, and all other costs
4 authorized by sections 441.500 to 441.640, have been paid or reimbursed and any
5 surplus money has been paid over to the owner or the mortgagee or any lienor as
6 the court may direct. However, at any time, the receiver may be discharged upon
7 filing his account as receiver without affecting the right of the code enforcement
8 agency to its lien. **The receiver shall be discharged upon motion of the**
9 **receiver certifying that nuisance abatement or sale of the premises is**
10 **not economically feasible.** Upon the removal of the condition giving rise to
11 the receivership, the owner, the mortgagee or lienor may apply for the discharge
12 of the receiver upon payment to the receiver of all moneys expended by the
13 receiver for removal of such condition and all other costs authorized by sections
14 441.500 to 441.640 which have not been paid or reimbursed.

441.641. If the court appoints a receiver to abate a nuisance pursuant to

2 sections 441.500 to 441.643, and the holder of title to the property or any other
3 party in interest does not take action **pursuant to sections 441.510 or 441.600**
4 to regain possession of the property within [two years] **one year** of the
5 appointment of the receiver, the court may, for good cause shown **declare the**
6 **premises abandoned, and whether or not fully abated**, issue a **quit claim**
7 **judicial deed, court administrator's deed, or sheriff's deed** transferring title
8 to the property to the receiver, or to any not-for-profit corporation organized
9 pursuant to law. **A conveyance by quit claim judicial deed, court**
10 **administrator's deed, or sheriff's deed following declaration of**
11 **abandonment shall operate to extinguish all existing ownership interest**
12 **in, liens on, and other interest in the property, including tax and**
13 **assessment liens, but excepting a federal tax lien notice properly filed**
14 **prior to the time of the conveyance, and the easements and covenants**
15 **of record running with the property that were created prior to the time**
16 **of conveyance.**

✓

Bill

Copy