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SENATE BILL NO. 1312

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend the Code of Virginia by adding a section numbered 15.2-907.2, relating to repairing derelict buildings.

Patron—McEachin

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-907.2 as follows:

§ 15.2-907.2. Authority to appoint a receiver to repair buildings declared derelict.

A. Any locality that has adopted an ordinance pursuant to § 15.2-907.1 may petition the circuit court for the appointment of a receiver to repair a residential building that has been declared a derelict building as defined in subdivision 1 of § 15.2-907.1.

B. A petition for the appointment of a receiver shall include:

1. A caption wherein the locality shall be the petitioner, and the named defendants shall be (i) the owner or owners of the property on which the derelict building is situated, (ii) any person who has an interest in the property secured by a deed of trust properly recorded, and (iii) any other person with an interest in the property, including a lienor or person with a claim of title.

2. Short and plain statements of the following:

a. A description of the derelict property sufficient for its identification. A plan or plat of the property shall be attached as an exhibit to the petition together with a copy of the original derelict building notice;

b. The names and addresses, so far as known by petitioner, of all of the defendants, any persons with an interest secured by a deed of trust properly recorded, any lienors with judgments properly recorded, and persons with a claim of title, as their names have been ascertained by a title report obtained by the locality. If the names of other persons or classes of persons to be joined as owners of the property are unknown, such persons may be made defendants under the designation of "Unknown Owners";

c. Compliance by the locality with the provisions of § 15.2-907.1 and the manner of that compliance;

d. Noncompliance by the owner or owners of the property with the provisions of § 15.2-907.1 and the manner of that noncompliance; and

e. The identity and qualifications of the proposed receiver.

3. A prayer for the appointment of the receiver and for such other relief as may be lawful and proper.

C. Simultaneously with the filing of the petition for appointment of a receiver, the locality shall record a memorandum of lis pendens.

D. The costs incurred by a court-appointed receiver, including but not limited to any moneys borrowed pursuant to a note secured by a deed of trust, shall constitute a lien against the property superior to all other liens except those of the locality for delinquent real estate taxes and any penalties, interest, reasonable attorney fees, and costs associated therewith and any other costs and liens chargeable thereon by the locality on parity with liens for delinquent real estate taxes, except that the court may order a different priority for the costs incurred by the receiver for liens evidenced by a recorded deed of trust, on motion of the deed of trust holder.

E. A receiver appointed by the court to repair a derelict building shall have the right of possession of, but not title to, the property, and shall have the authority to:

1. Contract for necessary labor and supplies;

2. Borrow money for repair from an approved lending institution or through a governmental agency or program, using the receiver's lien against the property as security;

3. Manage the property after repair, with all the powers of a landlord for a period of up to two years, and apply any rent received to current operating expenses and to repayment of the costs of repair; and

4. Enforce the receiver's lien or accept a deed in lieu of any enforcement action.

F. A receivership may extend no longer than two years following completion of repair of the property as evidenced by a Certificate of Occupancy unless the court, upon proper motion, orders a different term.

G. A receiver may enforce the receiver's lien by a sale of the property at public auction. Such sale

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shall be upon order of the court entered after notice as required by the Rules of the Supreme Court of Virginia and following publication of notice of the sale once a week for four consecutive weeks in a newspaper of general circulation. Following such public auction, the receiver shall file an accounting with the court and seek confirmation of the sale. Upon confirmation, the receiver shall be authorized to execute a deed conveying title, which shall pass free and clear to the purchaser at public auction. Following such sale, the former owner or owners, or any heirs, assignees, devisees, or successors in interest to the property shall be entitled to the surplus received in excess of the taxes, penalties, interest, reasonable attorney fees, costs, and any recorded liens chargeable against the property. At any time prior to confirmation of the sale provided for herein, the owner shall have the right to redeem the property as provided in subsection H.

H. The owner of any property subject to receivership may redeem it at any time prior to the expiration of the two-year period or prior to confirmation of sale at public auction by paying the receiver's lien in full and any accumulated taxes, penalties, reasonable attorney fees, interest, and costs thereon. Partial payment shall not be sufficient to redeem the property and shall not operate to suspend the receivership.

I. In lieu of the appointment of a receiver, the court may permit repair by an owner or a person with an interest in the property secured by a deed of trust properly recorded upon the following conditions:

1. Demonstration of the ability to complete repair within a reasonable amount of time to be determined by the court;

2. Entry of a court order setting forth a schedule for such repair; and

3. Posting of a bond in an amount determined by the court to be sufficient to secure performance of the repair on the schedule ordered by the court.