

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 335

An Act to amend and reenact § 15.2-907 of the Code of Virginia, relating to localities; authority to require abatement of criminal blight on real property.

[S 451]

Approved March 19, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-907 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-907. Authority to require removal, repair, etc., of buildings and other structures harboring illegal drug use or other criminal activity.

A. As used in this section:

"Affidavit" means the affidavit sworn to under oath prepared by a locality in accordance with subdivision B 1 a hereof.

"Commercial sex acts" means any specific activities that would constitute a criminal act under Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

"Controlled substance" means illegally obtained controlled substances or marijuana, as defined in § 54.1-3401.

"Corrective action" means the (i) taking ~~which of steps~~ specific actions with respect to the buildings or structures on property that are reasonably expected to be effective to abate drug criminal blight on such real property, ~~such as~~ including the removal, repair, or securing of any building, wall, or other structure, or (ii) changing specific policies, practices, and procedures of the real property owner that are reasonably expected to abate criminal blight on real property. A local law-enforcement official shall prepare an affidavit on behalf of the locality that states specific actions to be taken on the part of the property owner that the locality determines are necessary to abate the identified criminal blight on such real property and that do not impose an undue financial burden on the owner.

"~~Drug~~ Criminal blight" means a condition existing on real property which tends to endanger that endangers the public health or safety of residents of a locality and is caused by (i) the regular presence on the property of persons under the influence of controlled substances ~~or~~; (ii) the regular use of the property for the purpose of illegally possessing, manufacturing, or distributing controlled substances; (iii) the regular use of the property for the purpose of engaging in commercial sex acts; or (iv) repeated acts of the malicious discharge of a firearm within any building or dwelling that would constitute a criminal act under § 18.2-279 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

"Law-enforcement official" means an official designated to enforce criminal laws within a locality, or an agent of such law-enforcement official. The law-enforcement official shall coordinate with the building or fire code official of the locality as otherwise provided under applicable laws and regulations.

"Owner" means the record owner of real property.

"Property" means real property.

B. Any locality may, by ordinance, provide that:

1. The locality may require the owner of real property to undertake corrective action, or the locality may undertake corrective action, with respect to such property in accordance with the procedures described herein:

a. The locality shall execute an affidavit, citing this section, to the effect that (i) ~~drug~~ criminal blight exists on the property and in the manner described therein; (ii) the locality has used diligence without effect to abate the ~~drug~~ criminal blight; and (iii) the ~~drug~~ criminal blight constitutes a present threat to the public's health, safety, or welfare.

b. The locality shall then send a notice to the owner of the property, to be sent by ~~regular~~ (i) certified mail, return receipt requested; (ii) hand delivery; or (iii) overnight delivery by a commercial service or the United States Postal Service, to the last address listed for the owner on the locality's assessment records for the property, together with a copy of such affidavit, advising that ~~(i)~~ (a) the owner has up to 30 days from the date thereof to undertake corrective action to abate the ~~drug~~ criminal blight described in such affidavit and ~~(ii)~~ (b) the locality will, if requested to do so, assist the owner in determining and coordinating the appropriate corrective action to abate the ~~drug~~ criminal blight described in such affidavit. *If the owner notifies the locality in writing within the 30-day period that additional time to complete the corrective action is needed, the locality shall allow such owner an extension for an additional 30-day period to take such corrective action.*

c. If no corrective action is undertaken during such 30-day period, or during the extension if such

extension is granted by the locality, the locality shall send by ~~regular~~ certified mail, return receipt requested, an additional notice to the owner of the property, at the address stated in the preceding subdivision b, stating (i) the date on which the locality may commence corrective action to abate the ~~drug~~ criminal blight on the property or (ii) the date on which the locality may commence legal action in a court of competent jurisdiction to obtain a court order to require that the owner take such corrective action or, if the owner does not take corrective action, a court order to revoke the certificate of occupancy for such property, which date shall be no earlier than 15 days after the date of mailing of the notice. Such additional notice shall also reasonably describe the corrective action contemplated to be taken by the locality. Upon receipt of such notice, the owner shall have a right, upon reasonable notice to the locality, to seek ~~equitable~~ judicial relief, and the locality shall initiate no corrective action while a proper petition for relief is pending before a court of competent jurisdiction.

2. If the locality undertakes corrective action with respect to the property after complying with the provisions of subdivision B 1, the costs and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the locality as taxes are collected.

3. Every charge authorized by this section with which the owner of any such property has been assessed and ~~which~~ that remains unpaid shall constitute a lien against such property with the same priority as liens for unpaid local real estate taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1.

4. A criminal blight proceeding pursuant to this section shall be a civil proceeding in a court of competent jurisdiction in the Commonwealth.

C. If the owner of ~~such~~ real property takes timely corrective action pursuant to ~~such~~ the provisions of a local ordinance, the locality shall deem the ~~drug~~ criminal blight abated, shall close the proceeding without any charge or cost to the owner, and shall promptly provide written notice to the owner that the proceeding has been terminated satisfactorily. The closing of a proceeding shall not bar the locality from initiating a subsequent proceeding if the ~~drug~~ criminal blight recurs.

D. Nothing in this section shall be construed to abridge, diminish, limit, or waive any rights or remedies of an owner of property at law ~~or in equity~~ or any permits or nonconforming rights the owner may have under Chapter 22 (§ 15.2-2200 et seq.) or under a local ordinance. If an owner in good faith takes corrective action, and despite having taken such action, the specific criminal blight identified in the affidavit of the locality persists, such owner shall be deemed in compliance with this section. Further, if a tenant in a rental dwelling unit, or a tenant on a manufactured home lot, is the cause of criminal blight on such property and the owner in good faith initiates legal action and pursues the same by requesting a final order by a court of competent jurisdiction, as otherwise authorized by this Code, against such tenant to remedy such noncompliance or to terminate the tenancy, such owner shall be deemed in compliance with this section.