RECALLED

June 4, 2014

**S. 375**

Introduced by Senators Hutto, L. Martin, Johnson and Rankin

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Read the first time June 4, 2014.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 38 TO TITLE 6 SO AS TO ENACT THE “DILAPIDATED BUILDINGS ACT”, TO PROVIDE DEFINITIONS, TO PROVIDE THAT A MUNICIPALITY MAY BRING A CAUSE OF ACTION AGAINST THE OWNER OF PROPERTY NOT IN SUBSTANTIAL COMPLIANCE WITH CERTAIN MUNICIPAL ORDINANCES, TO IDENTIFY WHO MAY SERVE AS A COURT‑APPOINTED RECEIVER FOR PROPERTY SUBJECT TO THIS CAUSE OF ACTION, TO DESIGNATE THE POWERS OF A COURT‑APPOINTED RECEIVER, TO ESTABLISH REPORTING REQUIREMENTS OF THE MUNICIPALITY CONCERNING A VIOLATION AGAINST WHICH THE MUNICIPALITY MAY BRING A CAUSE OF ACTION UNDER THIS ACT, AND TO PROVIDE CERTAIN REMEDIES AND PROCEDURES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 6 of the 1976 Code is amended by adding:

“CHAPTER 38

Dilapidated Buildings Act

Section 6‑38‑10. For purposes of this chapter:

(1) A building, structure, condition, or property is ‘dilapidated’ if it is not in substantial compliance with one or more municipal ordinances regarding:

(a) prevention of substantial risk of injury to a person; or

(b) condition of the property constituting an imminent danger to the public health or safety.

(2) ‘Imminent danger’ means a condition that could cause serious or life‑threatening injury or death at any time.

(3) ‘Owner of record’ means a person who is the owner of property according to the most recently approved county tax roll.

(4) ‘Unsafe structures’ means buildings that are found to be dangerous to the life, health, property, or safety of the public or the occupants.

(5) ‘Substantial compliance’ means compliance that satisfies the purpose or objective of the basic or essential requirements of the local ordinance relating to unsafe structures even though the compliance failed to meet some specifics of the ordinance.

(6) ‘Substantial risk’ means a strong possibility, as contrasted with a remote or even a significant possibility, that a particular result may occur or that a particular circumstance may exist. It is risk of such a nature and degree that to disregard it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

Section 6-38-20. (A) The rules of equity govern an action under this chapter unless inconsistent with this chapter or general law.

(B) In applying this legislation, the court shall operate with the presumption that private property should not have a receiver and, therefore, given this presumption:

(1) a receiver shall be viewed as a special, extraordinary equitable remedy to be used sparingly and a receiver shall not be appointed unless there is clear and convincing evidence that the appointment is necessary to address an immediate threat to public health or safety;

(2) all feasible efforts will be made to protect and preserve the property rights of existing property owners and lien holders of record; and

(3) the order appointing a receiver shall recite specifically what evidence permits the court to exercise its extraordinary authority pursuant to this chapter.

(C) In applying this legislation, a court is explicitly authorized to exercise its inherent equitable discretion and, in so doing, take into account reasonable steps that might be taken, such as the following:

(1) avoiding judicial actions immediately after a state or national disaster, such as a hurricane, so as to give owners or lien holders additional time to respond, to make repairs, or to otherwise maintain the status quo in light of such highly unusual exceptional situations;

(2) phasing in necessary repairs that are most appropriate for the situation and direct incremental repairs to portions of a building where necessary to preserve public safety or to ameliorate imminent danger.

Section 6‑38‑30. Before filing an action under this chapter, the municipality must have:

(1) developed and followed its locally adopted procedures to deal with the abatement of unsafe structures by measures up to, but not including, demolition pursuant to authority granted to municipalities in Sections 31‑15‑20 and 5‑7‑80;

(2) given the owner of record proper notice as required and reasonable time under the circumstances for the correction of a condition pursuant to Section 5-25-390 or codes properly adopted by a municipality pursuant to Sections 6-9-50 or 6-9-60;

(3) by resolution of the governing body declared the property or structure unsafe for human occupancy; and

(4) given written notice by certified mail to the owner of record and all lien holders of:

(a) an ordinance violation, and

(b) reasons the municipality believes there is a serious, present, and imminent public health harm or safety hazard, alleged to exist on the property.

(5) The notice required in subsection (4) must be served in accordance to the rules of South Carolina Civil Procedure and by posting of the property in accordance with Section 6-29-760.

Section 6‑38‑40. (A) After at least sixty days have passed since the notice required by Section 6-38-30(4), a municipality may bring an action against an owner of record and name any lien holder of record.

(B) After the action is filed, a potential receiver may request the court to authorize the potential receiver to enter the property in order to assess the condition of the property and to make a preliminary determination of measures necessary to address the problems with the property.

(1) Before granting such authorization, at least seven days notice must be served:

(a) to the physical address of the property, with one copy addressed to the owner and one copy addressed to ‘occupant,’ and

(b) to the best available address in accordance with Section 12-51-40(a), and

(c) to any lien holder of record.

(2) Limitations may be imposed on the authorization in terms of the time and manner of entry and assessment.

Section 6-38-50. (A) Within seven days of filing a receivership action pursuant to this chapter, a municipality bringing the action shall serve notice of the proceedings to each owner of record, lien holder, and holder of recorded property interests in accordance with the South Carolina Rules of Civil Procedure and by posting of the property in accordance with Section 6-29-760. An owner of record, lien holder, or holder of a recorded property interest who is not available after due diligence may be served by alternative means, including publication, as prescribed by the South Carolina Rules of Civil Procedure. Actual service or service by publication on an owner of record or a lien holder of record constitutes notice to each owner of record, lien holder of record, or others with a recorded property interest of the same ownership interest, lien, or property interest. Copies of names and addresses of those given notice must be supplied to the court at the time notice is given.

(B) Within seven days of filing an action, a municipality bringing action pursuant to this chapter shall file a notice of lis pendens to provide constructive notice of the pending action.

Section 6-38-60. An owner of record, lien holder of record, or other person with a recorded property interest in a property that is the subject of an action under this chapter may:

(1) intervene in the action; and

(2) request appointment as a receiver pursuant to this chapter if the lien holder or other person with a recorded property interest demonstrates to the court an ability and willingness to repair the property.

Section 6-38-70. The following may serve as a court‑appointed receiver:

(1) an entity not including a municipality that the court determines has sufficient capacity, resources, and experience repairing properties and abating code violations, or both;

(2) an individual the court determines to have sufficient capacity, resources, and experience repairing properties and abating code violations, or both;

(3) in the case of historic properties, an entity that is not a municipality, a nonprofit organization, or an individual the court determines to have sufficient capacity, experience, and demonstrated record of repairing historical buildings to comply with the guidelines for repairing historic properties established by the United States Secretary of the Interior under 16 U.S.C. Section 470, et seq., or the historic preservation ordinance of the municipality, if applicable;

(4) a licensed and bonded contractor in the State of South Carolina;

(5) a lien holder requesting appointment pursuant to Section 6-38-60; or

(6) an owner of record requesting appointment pursuant to Section 6-38-60.

Section 6-38-80. (A) The court may appoint a receiver for the property for a term:

(1) not to exceed two years; or

(2) for a time determined appropriate by the court based on the nature of the work to be done.

(B) The court must determine by specific facts noted in a written order: (1) the evidence which permits the court to exercise its extraordinary authority pursuant to this chapter, and (2) the time period for receivership. In addition to the facts relevant to this extraordinary exercise of the equitable power of the court, the findings of the court must include the following:

(1) structures on the property are in substantial violation of one or more ordinances of the municipality pursuant to Section 6‑38‑30;

(2) the property is not an owner‑occupied, single‑family residence;

(3) the property does not have one to four family residences where at least one unit is owner occupied; and

(4) the property is not currently in a probate, foreclosure, or bankruptcy proceeding.

Section 6‑38‑90. Subject to control of the court and the rights of any prior lien holder of record, a court‑appointed receiver has all powers necessary and customary to the powers of a receiver under the laws of equity and may:

(1) take possession and control of the property;

(2) operate and manage the property;

(3) establish and collect rents and income on the property;

(4) lease the property;

(5) make repairs necessary to bring the property into compliance with local codes, ordinances, and state laws, including:

(a) performing and entering into contracts for the performance of work and the furnishing of materials for repairs; and

(b) entering into loan and grant agreements for repairs to the property;

(6) pay expenses, including paying for utilities and paying current taxes, taxes in arrears and current assessments and assessments in arrears, insurance premiums, and reasonable compensation to a property management agent;

(7) enter into contracts for operating and maintaining the property;

(8) exercise all other authority of an owner of the property other than the authority to sell the property; and

(9) perform other acts regarding the property as authorized by the court.

Section 6‑38‑95. (A) In exercising the powers pursuant to Section 6‑38‑90, and in submitting the reports required by Section 6-38-100, and in completing any work as a receiver, the receiver must plan and execute his duties with honesty, good faith, reasonable diligence, and in the most economically prudent manner possible, utilizing measures to minimize costs and seeking competitive bids for services.

(B) If a receiver’s exercise of powers, submission of reports, and completion of work do not meet the standard described in subsection (A), the receiver is liable for economic damages and, at the discretion of the court, treble damages.

Section 6‑38‑100. (A) Before beginning any work the receiver must submit to the court for its approval a detailed report describing the problems associated with the property and a detailed plan for abating the problems.

(1) This report must be accompanied by a performance bond or performance bond binder as well as a detailed timeline for completion of the work.

(2) The receiver shall provide a copy of the report and estimate to the owner of record, lien holders, and others with a recorded property interest.

(B) The receiver shall submit progress reports every forty‑five days or as the court determines to demonstrate compliance with the time schedules established for commencement and performance of the work.

Section 6-38-110. A receiver shall have a lien on the property for all of the unreimbursed costs and expenses of the receiver, plus a receivership fee, the amounts of which are subject to the discretion of the court pursuant to Sections 6‑38‑140 and 6‑38‑150.

Section 6-38-120. (A) If a loss occurs to the property entrusted to the receiver as a result of the receiver’s negligence, the receiver shall be liable for economic damages.

(B) If the loss occurs as a result of fraudulent execution of trust, the receiver shall be liable for economic damages and, at the discretion of the court, treble damages.

Section 6-38-130. (A) A receiver appointed pursuant to this chapter may demolish a structure only after a hearing.

(B) Prior to the hearing, the receiver must prepare a detailed report which establishes:

(1) it is not economically feasible to bring the structure into compliance with local codes, local ordinances, and state laws; and

(2) the structure:

(a) is unfit for human habitation; or

(b) is a hazard to public health or safety.

(C) At least ninety days before the hearing, notice must be sent, along with the report, to all owners of record, all lien holders, and all others with a recorded property interest. In addition, the property must have been posted in accordance with Section 6-29-760(A) for at least ninety days prior to the hearing.

(D) At the hearing, the court shall determine whether demolition is appropriate. In making this determination, the court shall consider:

(1) whether any owner, lien holder, or other person with a recorded interest has appeared to explain to the court’s satisfaction why the property has been left in its current state, and

(2) the factors listed in subsection (B). In considering these factors, the court also may consider whether the property is unsecured from unauthorized entry to the extent that it can be entered or used by vagrants or other uninvited persons as a place of harborage or can be entered or used by children. If the property is boarded, fenced, or otherwise secured, the court may consider whether:

(a) the structure constitutes a danger to the public even though secured from entry; or

(b) the means used to secure the structure are inadequate to prevent unauthorized entry or use of the structure.

Section 6-38-140. A receiver who completes repairs to a structure or demolishes a structure, upon or before petitioning a court for termination of the receivership, shall file with the court a full accounting of:

(1) all costs and expenses incurred in the repairs or demolition, including reasonable costs for labor and supervision;

(2) all income received from the property; and

(3) at the discretion of the court, a receivership fee not to exceed ten percent of the costs and the expenses in subsection (1).

Section 6-38-150. (A) Subject to subsection (E), a receiver appointed under this chapter must be terminated in accordance with Section 6-38-80. In addition, a receiver may petition the court to terminate the receivership and order the sale of the property, as provided in subsection (B) if:

(1) the work has been successfully completed; and

(2) at least ninety days before filing for termination, the owners of record, lien holders, and others holding recorded property interests have been served notice as provided in Section 6-38-60 of a summary accounting of costs and expenses paid by the receiver and of a receivership fee, which shall not exceed ten percent of reasonable costs and expenses.

(B) The court may order the sale of the property at public auction if the court finds that:

(1) notice as required by subsection (A) was given to each owner of record, lien holder, and holder of a recorded property interest;

(2) the receiver’s costs and fees are reasonable based on:

(a) nature, extent, and difficulty of the services rendered;

(b) time and labor devoted to the case;

(c) professional standing of the receiver;

(d) contingency of compensation;

(e) fee customarily charged in the locality for similar services; and

(f) beneficial results obtained;

(3) the receiver has been in control of the property and the owner has failed to repay all the receiver’s outstanding costs and expenses of rehabilitation plus a reasonable receivership fee; and

(4) no lien holder of record or other holder of a recorded property interest has intervened in the action and tendered the costs and expenses of the receiver, plus a receivership fee (which shall not exceed ten percent of reasonable costs and expenses), and assumed control of the property.

(C) Where demolition of the structure is involved, the court may authorize the sale of the property to an individual or organization that will bring the property into productive use so long as the requirements of subsections (A) and (B) are satisfied.

(D) If the revenue from the sale exceeds the total of the costs and expenses listed in Section 6-38-160(A), any net overage belongs to the owner pursuant to Section 6-38-160(B).

(E) If the total of the costs and expenses incurred by the receiver plus a receivership fee, not to exceed ten percent of reasonable costs and expenses, exceeds the combined value of the likely possible revenue from a sale and the income produced during the receivership, the court may permit the receiver to maintain control of the property until the following are recovered: all rehabilitation and maintenance costs plus a fee, which shall not exceed ten percent of reasonable costs and expenses.

Section 6-38-160. (A) The court shall confirm a sale under this chapter and order a distribution of the proceeds of the sale in the following order:

(1) court costs;

(2) costs and expenses, plus a reasonable receivership fee, and any lien held by the receiver; and

(3) other valid liens.

(B) Any remaining overage belongs to the owner of record. These sums are payable ninety days after execution of the deed unless a judicial action is instituted during that time by another claimant. If neither claimed nor assigned within five years of date of public auction sale, the overage shall escheat to the general fund of the governing body to be set aside for the purpose. Before the escheat date unclaimed overages must be kept in a separate account and must be invested so as not to be idle; the governing body of political subdivision is entitled to the earnings for keeping the overage. On escheat date the overage must be transferred to the general funds of the governing body.

Section 6-38-170. (A) The court shall award fee title to the purchaser after the proceeds are distributed. If proceeds from the sale are insufficient to pay all liens, claims, and encumbrances on the property, the court shall extinguish all unpaid liens, claims, and encumbrances on the property and award title to the purchaser free and clear.

(B) This chapter does not foreclose any right or remedy that may be available under other state law or the laws of equity.”

SECTION 2. This act takes effect upon approval by the Governor.

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