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Bill Analysis
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BILL SUMMARY

- Applies the public nuisance abatement law to *any* building or structure except a building or structure containing three or fewer residential units with one of them being occupied by the owner of the building or structure (existing law applies to any building or structure used or intended to be used for residential purposes with a similar exception).
- Expands the public nuisance abatement law to apply to land, defined as any parcel of land that is not the site of any building or structure, and defines "public nuisance" as it applies to land as land that constitutes a hazard to the public health, welfare, or safety by reason of unsafe or unsanitary conditions.
- Specifically applies all provisions of the public nuisance abatement law to the abatement of a public nuisance as it applies to subsidized housing.
- Applies the following provisions, among others, in the public nuisance abatement law to the abatement of a public nuisance as it applies to land or subsidized housing: (1) the filing by a municipal corporation, neighbor, tenant, or nonprofit corporation with a goal of improving housing conditions of a complaint for an injunction or other order that the judge considers necessary or appropriate to cause the abatement of the public nuisance, or for other relief, including the appointment of a receiver, (2) the service of notice upon the owner of the land or subsidized housing and the hearing on the complaint, (3) the issuance of an injunction or other order the judge considers necessary and appropriate to cause the abatement of the public nuisance, (4) the appointment of a receiver to take possession and control of the land or subsidized housing if the judge determines that the owner of the land or

subsidized housing previously has been afforded a reasonable opportunity to abate the public nuisance and has refused or failed to do so, the qualifications of a receiver, and the specified powers of the appointed receiver, (5) the criteria for the approval by the judge of a submitted financial and construction plan for the rehabilitation of the land or subsidized housing prior to ordering the owner, interested party, or receiver to undertake any work to abate the public nuisance, (6) the establishment of a first lien upon the land or subsidized housing for the expenses of a mortgagee, lienholder, or other interested party selected to perform the work necessary to abate the public nuisance and the conditions required for that lien to be superior to all prior and subsequent liens or encumbrances, (7) the establishment of a first lien upon the land or subsidized housing for the expenses, amounts of notes issued, mortgages granted, fees, and other amounts paid by a receiver and the conditions required for that lien to be superior to all prior and subsequent liens or encumbrances, (8) the request by the receiver or any interested party for the judge to enter an order to sell the land or subsidized housing upon the judge's confirmation that the receiver has abated the public nuisance, the service of notice on the owner and interested parties, the hearing on the request, and the judge's order directing the receiver to offer the land or subsidized housing for sale, (9) an order by the judge, upon abatement of the public nuisance, directing the receiver to sell the land or subsidized housing for payment of unpaid receivership costs, expenses, and fees, (10) the order of priority and the manner of distribution of the proceeds of the sale of the land or subsidized housing as ordered under (8) or (9), above, (11) the incontestability of the title of the purchaser of the land or subsidized housing sold at a sale ordered as described in (8) or (9), above, (12) the termination of the receivership upon the sale of the land or subsidized housing, distribution of the proceeds of the sale and the balance of the funds possessed by the receiver, and approval by the judge of the receiver's final accounting, and (13) the continuing jurisdiction of the judge or the judge's successor in office to review the condition of the land or subsidized housing determined to be a public nuisance.

- Authorizes the judge in a public nuisance abatement action or in a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance or regulation applicable to buildings, lands, or subsidized housing to conduct a summary hearing to

consider and issue any temporary orders necessary to protect the public health, welfare, and safety pending further proceedings.

- Provides that the title in any building, the property on which the building is located, land, or subsidized housing that is sold at a sale ordered by the judge upon the abatement of the public nuisance is free and clear of *all* liens and encumbrances with respect to the building and the property, land, or subsidized housing, except (as in existing law) a federal tax lien notice properly filed prior to the sale and easements and covenants of record running with the property and created prior to the sale.

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CONTENT AND OPERATION

Overview of the bill

The bill expands the law governing the abatement of public nuisances to buildings or structures not used or intended to be used for residential purposes and to vacant land and specifically applies that law to subsidized housing.

Definitions

Existing law

The existing public nuisance abatement law defines the following terms (R.C. 3767.41(A)(1), (2)(a), (3) and (5)):

"Building" means, except as otherwise provided in this provision, any building or structure "that is used or intended to be used for residential purposes." "Building" includes, but is not limited to, a building or structure in which any floor is used for retail stores, shops, salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration activities, professional services, or similar business or civic uses, and in which the other floors are used, or designed and intended to be used, for residential purposes. "Building" does not include any "building or structure that is occupied by its owner and that contains three or fewer residential units."

"Public nuisance" means a building that is a menace to the public health, welfare, or safety; that is structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard, is otherwise dangerous to human life, or is otherwise no longer fit and habitable; or that, in relation to its existing use, constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

"Abate" or "abatement" "in connection with any building" means the removal or correction of any conditions that constitute a public nuisance and the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions over its remaining useful life. "Abatement" does not include the closing or boarding up of any building that is found to be a public nuisance

"Neighbor" means any owner of property, including, but not limited to, any person who is purchasing property by land installment contract or under a duly executed purchase contract, that is located within 500 feet of any property that becomes subject to the jurisdiction of a court pursuant to the public nuisance abatement law, and any occupant of a building that is so located.

Operation of the bill

The bill modifies the definitions of "building," "public nuisance," "abate" or "abatement," and "neighbor" and adds new definitions of "land" and "public nuisance" as it applies to land (new or modified language is in italics) (R.C. 3767.41(A)(1), (2), (3)(a) and (b), (4), and (6)):

"Building" means any building or structure (the bill deletes "that is used or intended to be used for residential purpose" and deletes the list of buildings or structures that are included in the definition of "building" under "Existing law," above) *except a building or structure that contains three or fewer residential units, with one of the residential units being occupied by the owner of the building or structure* (instead of "building or structure that is occupied by its owner and that contains three or fewer residential units").

"Land" means any parcel of land that is not the site of a building or other structure.

"Public nuisance" as it applies to a building means a building that is a menace to the public health, welfare, or safety; that is structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard or is otherwise dangerous to human life; that is no longer fit and habitable *if the building is used or designed to be used for residential purposes*; or that, in relation to its existing use, constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

"Public nuisance" as it applies to land means land that constitutes a hazard to the public health, welfare, or safety by reason of unsafe or unsanitary conditions.

"Abate" or "abatement" means the removal or correction of any conditions that constitute a public nuisance and *in connection with any building includes* the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions over its remaining useful life. The closing or boarding up of any building that is found to be a public nuisance, *by itself, does not serve as an abatement of the public nuisance*.

"Neighbor" means any owner of *real* property, including, but not limited to, any person who is purchasing *real* property by land installment contract or under a duly executed purchase contract, that is located within 500 feet of any *real* property that becomes subject to the jurisdiction of a court pursuant to the public nuisance abatement law, and any occupant of a building that is so located.

Civil action for abatement of public nuisance or to enforce local building, housing, air pollution, sanitation, health, fire, zoning, or safety codes

Complaint for injunction or other relief

Existing law provides that in any civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to *buildings*, that is commenced in a court of common pleas, municipal court, housing or environmental division of a municipal court, or county court, or in any civil action for abatement commenced in a court of common pleas, municipal court, housing or environmental division of a municipal court, or county court, by a municipal corporation in which the *building* involved is located, by any neighbor, tenant, or by a nonprofit corporation that is duly organized and has as one of its goals the improvement of housing conditions in the county or municipal corporation in which the *building* involved is located, if a *building* is alleged to be a public nuisance, the municipal corporation, neighbor, tenant, or nonprofit corporation may apply in its complaint for an injunction or other order that the judge considers necessary or appropriate to cause the abatement of the public nuisance, or for the relief under the nuisance abatement law described in the last paragraph in "*Court findings; injunction or other order*," below, including, if necessary, the appointment of a receiver, or for both such an injunction or other order and such relief. The municipal corporation, neighbor, tenant, or nonprofit corporation commencing the action is not liable for the costs, expenses, and fees of any receiver appointed as described below in "*Appointment of receiver*."

The bill applies the above provisions in existing law to a civil action for abatement of a public nuisance involving *land or subsidized housing* (see **COMMENT 1**) or a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to *land or subsidized housing*. (R.C. 3767.41(B)(1)(a).)

Notice and hearing

Under existing law, in a civil action described above, a copy of the complaint and a notice of the date and time of a hearing on the complaint must be served upon the owner of the *building* and all other "interested parties" (see **COMMENT 2**) in accordance with the Rules of Civil Procedure. If certified mail service, personal service, or residence service of the complaint and notice is refused or certified mail service of the complaint and notice is not claimed, and if the municipal corporation, neighbor, tenant, or nonprofit corporation commencing the action makes a written request for ordinary mail service of the complaint and notice, or uses publication service, in accordance with the Rules of Civil Procedure, then a copy of the complaint and notice must be posted in a conspicuous place on the *building*. The bill applies the above requirements

regarding service of a copy of the complaint and the notice of the date and time of the hearing to service upon the owner of the *land or subsidized housing and other interested parties* in the civil action involving *land or subsidized housing*. (R.C. 3767.41(B)(2)(a).)

Existing law requires the judge to conduct a hearing on the complaint at least 28 days after the owner of the *building* and the other interested parties have been served with a copy of the complaint and the notice of the date and time of the hearing (R.C. 3767.41(B)(2)(b)). The bill applies this requirement to a hearing on a complaint involving *land or subsidized housing* (R.C. 3767.41(B)(2)(c)).

The bill authorizes the judge in a civil action described above involving a building, land, or subsidized housing to conduct a summary hearing to consider and issue any temporary orders that are necessary to protect the public health, welfare, and safety pending further proceedings (R.C. 3767.41(B)(2)(b)).

Court findings; injunction or other order

Under existing law, if the judge finds at the required hearing described above that the *building* involved is a public nuisance, if the judge additionally determines that the owner of the *building* previously has not been afforded a reasonable opportunity to abate the public nuisance or has been afforded such an opportunity and has not refused or failed to abate the public nuisance, and if the complaint of the municipal corporation, neighbor, tenant, or nonprofit corporation commencing the action requested the issuance of an injunction as described in this provision, then the judge may issue an injunction requiring the owner of the *building* to abate the public nuisance or may issue any other order that the judge considers necessary or appropriate to cause the abatement of the public nuisance. If an injunction is issued, the owner of the *building* involved must be given no more than 30 days from the date of the entry of the judge's order to comply with the injunction, unless the judge, for good cause shown, extends the time for compliance.

The bill applies the provisions pertaining to the court's findings and the issuance of an injunction or other order as described in the preceding paragraph to a civil action for abatement of a public nuisance involving *land or subsidized housing*. (R.C. 3767.41(C)(1).)

The bill essentially retains the provision in existing law that if the judge in the public nuisance abatement action that involves a "building" determines that the owner of the building previously has been afforded a reasonable opportunity to abate the public nuisance and has refused or failed to do so, and if the complaint of the municipal corporation, neighbor, tenant, or nonprofit corporation commencing the action requested relief as described in this provision, then the judge must offer

any mortgagee, lienholder, or other interested party associated with the property on which the building is located, in the order of the priority of interest in title, the opportunity to undertake the work and to furnish the materials necessary to abate the public nuisance (R.C. 3767.41(C)(1), 2nd par.).

Appointment of receiver

Under existing law, if the judge determines at the hearing that no interested party is willing or able to undertake the work and to furnish the materials necessary to abate the public nuisance, or if the judge determines at any time after the hearing that any party who is undertaking corrective work pursuant to this provision cannot or will not proceed, or has not proceeded with due diligence, the judge may appoint a receiver to take possession and control of the *building*. The bill provides that if the judge determines at the hearing that *the owner of the building, land, or subsidized housing previously has been afforded a reasonable opportunity to abate the public nuisance and has refused or failed to do so and, if the abatement action involves a building, that no interested party associated with the property on which the building is located is willing or able to undertake the work and to furnish the materials necessary to abate the public nuisance, or if the judge determines at any time after the hearing that any party who is undertaking corrective work pursuant to this provision cannot or will not proceed, or has not proceeded with due diligence, the judge may appoint a receiver to take possession and control of the building, land, or subsidized housing* (new or modified language is in italics). (R.C. 3767.41(C)(2).)

Qualifications of receiver

Existing law provides that the judge cannot appoint any person as a receiver unless the person first has provided the judge with a viable financial and construction plan for the rehabilitation of the *building* involved as described below in "**Financial and reconstruction plan for rehabilitation**" and has demonstrated the capacity and expertise to perform the required work and to furnish the required materials in a satisfactory manner. An appointed receiver may be a financial institution that possesses an interest of record in the *building or the property on which it is located*, a nonprofit corporation that is duly organized and has as one of its goals the improvement of housing conditions in the county or municipal corporation in which the *building* involved is located or any nonprofit corporation no part of the earnings of which inures to the benefit of any private shareholder or individual, including, but not limited to, a nonprofit corporation that commenced the public nuisance abatement action, or any other qualified property manager. To be eligible for appointment as a receiver, no part of the net earnings of a nonprofit corporation may inure to the benefit of any private shareholder or individual. Membership on the board of trustees of a nonprofit corporation appointed as a receiver does not constitute the holding of a public office or employment within

the meaning of R.C. 731.02 (qualifications of members of city legislative authority) and 731.12 (qualifications of members of village legislative authority) or any other section of the Revised Code and does not constitute a direct or indirect interest in a contract or expenditure of money by any municipal corporation. A member of a board of trustees of a nonprofit corporation appointed as a receiver may not be disqualified from holding any public office or employment, and may not forfeit any public office or employment, by reason of membership on the board of trustees, notwithstanding any law to the contrary.

The bill applies the above qualifications for the appointment of a receiver to a receiver appointed to take possession and control of *land or subsidized housing* for its rehabilitation as described in "**Financial and construction plan for rehabilitation**," below. (R.C. 3767.41(C)(3)(a) and (b).)

Financial and construction plan for rehabilitation

Existing law requires that prior to ordering any work to be undertaken, "or the furnishing of any materials," to abate a public nuisance, the judge must review the submitted financial and construction plan for the rehabilitation of the *building* involved and, if it specifies all of the following, must approve that plan: (1) the estimated cost of the labor, materials, and any other development costs that are required to abate the public nuisance, (2) the estimated income and expenses of the *building and the property on which it is located* after the furnishing of the materials and the completion of the repairs and improvements, (3) the terms, conditions, and availability of any financing that is necessary to perform the work and to furnish the materials, and (4) if repair and rehabilitation of the building are found not to be feasible, the cost of demolition of the building or of the portions of the building that constitute the public nuisance.

The bill provides that prior to ordering *an owner, interested party, or receiver to undertake* any work (the bill deletes "or the furnishing of any materials") to abate a public nuisance, the judge must review the submitted financial and construction plan for the rehabilitation of the building, *land, or subsidized housing* and, if it specifies all of the conditions described in (1) to (4) in the preceding paragraph, must approve that plan (italicized language is added by the bill). (R.C. 3767.41(D).)

Receiver's bond

Existing law provides that before proceeding with the duties of receiver, any receiver appointed by the judge may be required by the judge to post a bond in an amount fixed by the judge, but not exceeding the value of the *building* involved as determined by the judge. The bill expands this provision to provide that the amount of the bond of a receiver in an abatement action involving land or

subsidized housing cannot exceed the value of the *land or subsidized housing* as determined by the judge. (R.C. 3767.41(F).)

Powers of receiver

Existing law

Existing law authorizes the judge to empower the receiver to do any or all of the following (R.C. 3767.41(F)):

(1) Take possession and control of the *building and the property on which it is located*, operate and manage the *building and the property*, establish and collect rents and income, lease and rent the *building and the property*, and evict tenants;

(2) Pay all expenses of operating and conserving the *building and the property*, including, but not limited to, the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian services, taxes and assessments, and insurance premiums, and hire and pay reasonable compensation to a managing agent;

(3) Pay pre-receivership mortgages or installments of them and other liens;

(4) Perform or enter into contracts for the performance of all work and the furnishing of materials necessary to abate, and obtain financing for the abatement of, the public nuisance;

(5) Pursuant to court order, remove and dispose of any personal property abandoned, stored, or otherwise located in or on the *building and the property* that creates a dangerous or unsafe condition or that constitutes a violation of any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation;

(6) Obtain mortgage insurance for any receiver's mortgage "from any agency of the federal government";

(7) Enter into any agreement and do those things necessary to maintain and preserve the *building and the property* and comply with all local building, housing, air pollution, sanitation, health, fire, zoning, or safety codes, ordinances, and regulations;

(8) Give the custody of the *building and the property*, and the opportunity to abate the nuisance and operate the *property*, to its owner or any mortgagee or lienholder of record;

(9) Issue notes and secure them by a mortgage bearing interest, and upon terms and conditions, that the judge approves. When sold or transferred by the receiver in return for valuable consideration in money, material, labor, or services, the notes or certificates are freely transferable. Any mortgages granted by the receiver are superior to any claims of the receiver. Priority among the receiver's mortgages are determined by the order in which they are recorded.

A receiver appointed under the public nuisance abatement law is not personally liable except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of the office of receiver. The judge may assess as court costs, the expenses of operating and conserving the *building and property* as described above in paragraph (2), and may approve receiver's fees to the extent that they are not covered by the income from the property. Subject to that limitation, a receiver is entitled to receive fees in the same manner and to the same extent as receivers appointed in actions to foreclose mortgages. (R.C. 3767.41(G) and (H)(1).)

Operation of the bill

The bill extends all of the powers of a receiver, the immunity of a receiver, the assessment of court costs, and the approval of receiver's fees as described in "**Existing law**," above, to apply with respect to *land or subsidized housing* for which a receiver is appointed. The bill eliminates the restriction with respect to the receiver's power to obtain mortgage insurance for any receiver's mortgage as described in paragraph (6), above, that the mortgage insurance be obtained "from any agency of the federal government." (R.C. 3767.41(F), (G), and (H)(1).)

Liens for abatement expenditures

Existing law provides that pursuant to the police powers vested in the state, all expenditures of a mortgagee, lienholder, or other interested party that has been selected to undertake the work and to furnish the materials necessary to abate a public nuisance, and any expenditures in connection with the foreclosure of the lien created by this provision, is a first lien upon the *building involved and the property on which it is located* and is superior to all prior and subsequent liens or other encumbrances associated with the *building or the property*, including, but not limited to, those for taxes and assessments, upon the occurrence of both of the following: (1) the prior approval of the expenditures, and the entry of a judgment to that effect, by the judge, and (2) the recordation of a certified copy of the judgment entry and a sufficient description of the *property on which the building is located* with the county recorder in the county in which the property is located within 60 days after the date of the entry of the judgment.

The bill applies the provisions pertaining to the abatement expenditures described in the preceding paragraph as a first lien, the superiority of the lien, and the conditions for the lien's superiority to the abatement expenditures involving *land or subsidized housing*. (R.C. 3767.41(H)(2)(a).)

Liens for receiver's expenditures and fees

Existing law provides that pursuant to the police powers vested in the state, all expenses and other amounts paid by a receiver as described in "**Existing law**" under "**Powers of receiver**," above, the amounts of any notes issued by the receiver and all mortgages granted by the receiver in accordance with its powers, the fees of the receiver approved by the judge, and any amounts expended in connection with the foreclosure of a mortgage granted by the receiver in accordance with its powers or with the foreclosure of the lien created by this provision, are a first lien upon the *building involved and the property on which it is located* and are superior to all prior and subsequent liens or other encumbrances associated with the *building or the property*, including, but not limited to, those for taxes and assessments, upon the occurrence of both of the following: (1) the approval of the expenses, amounts, or fees, and the entry of a judgment to that effect, by the judge, or the approval of the mortgages to secure notes issued by the receiver as described in paragraph (9) under "**Existing law**" in "**Powers of receiver**," above, and the entry of a judgment to that effect, by that judge, and (2) the recordation of a certified copy of the judgment entry and a sufficient description of the *property on which the building is located*, or, in the case of a mortgage, the recordation of the mortgage, a certified copy of the judgment entry, and such a description, with the county recorder of the county in which the property is located within 60 days after the date of the entry of the judgment.

The bill applies the provisions pertaining to the receiver's expenses, fees, and other amounts described in the preceding paragraph as a first lien, the superiority of the lien, and the conditions for the lien's superiority to the receiver's expenses, fees, and other amounts as described in the preceding paragraph to the abatement expenditures involving *land or subsidized housing* subject to the abatement. (R.C. 3767.41(H)(2)(b).)

Priority of the liens

Existing law provides that the priority among the liens described in "**Liens for abatement expenditures**" and "**Liens for receiver's expenditures and fees**," above, is determined as described in "**Hearing and order to sell abated property**," below. The creation pursuant to the public nuisance abatement law of a mortgage lien that is prior to or superior to any mortgage of record at the time the mortgage lien is so created, does not disqualify the mortgage of record as a legal investment under R.C. Chapter 1107. (Banks--Capital and Securities) or R.C. Chapter 1151.

(Savings and Loan Associations--Generally) or any other chapter of the Revised Code. This provision in existing law would apply to liens described in "*Liens for abatement expenditures*" and "*Liens for receiver's expenditures and fees*," above, created with respect to land or subsidized housing that is subject to abatement. (R.C. 3767.41(H)(2)(c).)

Hearing and order to sell abated property

Existing law

Under current law, if a receiver files with the judge a report indicating that the public nuisance has been abated, if the judge confirms that the receiver has abated the public nuisance, and if the receiver or any interested party requests the judge to enter an order directing the receiver to sell the *building and the property on which it is located*, the judge may enter that order after holding a hearing and complying with the provisions described in this paragraph. The receiver or interested party requesting such an order must cause a notice of the date and time of a hearing on the request to be served on the owner of the *building* involved and all other interested parties in accordance with the provisions described in "*Notice and hearing*," above. The judge must conduct the scheduled hearing. At the hearing, if the owner or any interested party objects to the sale of the *building and the property*, the burden of proof is upon the objecting person to establish, by a preponderance of the evidence, that the benefits of not selling the *building and the property* outweigh the benefits of selling them. If the judge determines that there is no objecting person or that there is one or more objecting persons but no objecting person has sustained that burden of proof, the judge may enter an order directing the receiver to offer the *building and the property* for sale upon terms and conditions that the judge must specify. (R.C. 3767.41(I)(1) and (2)(a).) If a sale of a *building and the property on which it is located* is ordered as described above and if the sale occurs in accordance with the terms and conditions specified in the judge's order of sale, the receiver must distribute the proceeds of the sale and the balance of any funds that the receiver may possess, after the payment of the costs of the sale, in the following order of priority and in the described manner (R.C. 3767.41(I)(3)):

(1) First, in satisfaction of any notes issued by the receiver as described in "*Powers of receiver*," above, in their order of priority;

(2) Second, any unreimbursed expenses and other amounts paid by the receiver as described in "*Powers of receiver*," above, and the fees of the receiver approved by the judge;

(3) Third, all expenditures of a mortgagee, lienholder, or other interested party that has been selected to undertake the work and to furnish the materials

necessary to abate a public nuisance, provided that the expenditures were approved as described above in "*Liens for abatement expenditures*" and provided that, if any such interested party subsequently became the receiver, its expenditures must be paid prior to the expenditures of any of the other interested parties so selected;

(4) Fourth, the amount due for delinquent taxes, assessments, charges, penalties, and interest owed to this state or a political subdivision of this state, provided that, if the amount available for distribution pursuant to this provision is insufficient to pay the entire amount of those taxes, assessments, charges, penalties, and interest, the proceeds and remaining funds must be paid to each claimant in proportion to the amount of those taxes, assessments, charges, penalties, and interest that each is due;

(5) The amount of any pre-receivership mortgages, liens, or other encumbrances, in their order of priority.

Following a distribution in accordance with the above provisions, the receiver must request the judge to enter an order terminating the receivership. If the judge determines that the sale of the *building and the property on which it is located* occurred in accordance with the terms and conditions specified in the judge's order of sale and that the receiver distributed the proceeds of the sale and the balance of any funds that the receiver possessed, after the payment of the costs of the sale, in accordance with the above distribution provisions, and if the judge approves any final accounting required of the receiver, the judge may terminate the receivership. (R.C. 3767.41(I)(4).)

Operation of the bill

The bill applies the above provisions pertaining to a hearing upon a request by the receiver or an interested party for an order to sell abated property, an order by the judge to order the sale of abated property upon terms and conditions specified by the judge, the distribution of the proceeds of the sale and the balance of any funds possessed by the receiver, and the termination of the receivership upon completion of the sale, to abated property that is *land or subsidized housing* (R.C. 3767.41(I)(1), (2)(a), (3), and (4)).

Discharge of receiver

The following provisions in existing law would apply to the discharge of a receiver appointed with respect to the abatement of a public nuisance involving land or subsidized housing. A receiver appointed pursuant to the public nuisance abatement law may be discharged at any time in the discretion of the judge. The receiver must be discharged by the judge as described in the 2nd preceding

paragraph, or when all of the following have occurred: (1) the public nuisance has been abated, (2) all costs, expenses, and approved fees of the receivership have been paid, and (3) either all receiver's notes issued and mortgages granted pursuant to the public nuisance abatement law have been paid, or all the holders of the notes and mortgages request that the receiver be discharged. (R.C. 3767.41(J)(1).)

Order to sell abated property upon nonpayment of receivership costs and fees

Under existing law, if a judge determines, and enters of record a declaration, that a public nuisance has been abated by a receiver, and if within three days after the entry of the declaration, all costs, expenses, and approved fees of the receivership have not been paid in full, then, in addition to the circumstances described above in "**Existing law**" under "**Hearing and order to sell abated property**" for the entry of such an order, the judge may enter an order directing the receiver to sell *the building involved and the property on which it is located*. Any such order must be entered, and the sale must occur, only in compliance with the provisions described above in "**Hearing and order to sell abated property**."

The bill extends the above provisions pertaining to an order to sell abated property upon nonpayment of receivership costs, expenses, and approved fees to an order to sell abated *land or subsidized housing* upon nonpayment of receivership costs, expenses, and approved fees. (R.C. 3767.41(J)(2).)

Effect of sale of abated property on liens and encumbrances

Under existing law, the title in any *building, and in the property on which it is located*, that is sold at a sale ordered as described above in "**Existing law**" in "**Hearing and order to sell abated property**" and "**Order to sell abated property upon nonpayment of receivership costs and fees**" is incontestable in the purchaser and is free and clear of all liens for delinquent taxes, assessments, charges, penalties, and interest owed to this state or any political subdivision of this state, that could not be satisfied from the proceeds of the sale and the remaining funds in the receiver's possession pursuant to the distribution described above in "**Existing law**" in "**Hearing and order to sell abated property**." "All other liens and encumbrances" with respect to *the building and the property* "survive the sale," including, but not limited to, a federal tax lien notice properly filed in accordance with R.C. 317.09 (recording and filing with the county recorder of notices of federal liens, certificates discharging the liens, and certificates of release of the liens) prior to the time of the sale, and the easements and covenants of record running with the property that were created prior to the time of the sale.

The bill provides that the title in any building in the property on which the building is located, *land, or subsidized housing* that is sold at a sale ordered as

described above in "*Hearing and order to sell abated property*" and "*Order to sell abated property upon nonpayment of receivership costs and fees*" is incontestable in the purchaser and is free and clear of all liens for delinquent taxes, assessments, charges, penalties, and interest owed to this state or any political subdivision of this state, that could not be satisfied from the proceeds of the sale and the remaining funds in the receiver's possession pursuant to the distribution described above in "*Hearing and order to sell abated property*" and of all other liens and encumbrances with respect to the building and the property, *land, or subsidized housing* (the bill deletes the provision generally that "[a]ll other liens and encumbrances . . . survive the sale"), *except* a federal tax lien notice *that was* properly filed in accordance with R.C. 317.09 prior to the time of the sale and the easements and covenants of record running with the property that were created prior to the time of the sale (new or modified language is in italics). (R.C. 3767.41(K).)

Powers of the court

The following provisions in existing law apply to a civil action filed in court to abate a public nuisance involving land or subsidized housing. Nothing in the public nuisance abatement law is construed as a limitation upon the powers granted to a court of common pleas, a municipal court or a housing or environmental division of a municipal court under R.C. Chapter 1901., or a county court under R.C. Chapter 1907. The monetary and other limitations specified in R.C. Chapters 1901. and 1907. upon the jurisdiction of municipal and county courts, and of housing or environmental divisions of municipal courts, in civil actions do not operate as limitations upon any of the following: (1) expenditures of a mortgagee, lienholder, or other interested party that has been selected to undertake the work and to furnish the materials necessary to abate a public nuisance, (2) any notes issued by a receiver, any mortgage granted by a receiver, or expenditures in connection with the foreclosure of a mortgage granted by a receiver, as described above in "***Powers of receiver,***" (3) the enforcement of an order of a judge entered pursuant to the public nuisance abatement law, or (4) the actions that may be taken by a receiver or a mortgagee, lienholder, or other interested party that has been selected to undertake the work and to furnish the materials necessary to abate a public nuisance. (R.C. 3767.41(L)(1) and (2).)

Continuing jurisdiction of court

Under existing law, a judge in a civil action for abatement of a public nuisance, or the judge's successor in office, has continuing jurisdiction to review the condition of any *building* that was determined to be a public nuisance pursuant to the public nuisance abatement law. The bill further provides that a judge in a civil action for abatement of a public nuisance, or the judge's successor in office, has continuing jurisdiction to review the condition of any *land or subsidized*

housing that was determined to be a public nuisance pursuant to the public nuisance abatement law, as modified by the bill. (R.C. 3767.41(L)(3).)

COMMENT

1. The existing public nuisance abatement law, which applies to buildings or structures used or intended to be used for residential purposes but not to buildings or structures occupied by the owner and that contain three or fewer residential units, would implicitly apply to subsidized housing if it is covered by the definition of "building." Existing law also defines "subsidized housing" (see the following paragraph) for purposes of certain provisions (see the 3rd following paragraph and subsequent paragraphs) that specifically apply only to the abatement of a public nuisance applicable to subsidized housing. The bill explicitly applies *all* of the provisions of the public nuisance abatement law to subsidized housing.

The public nuisance abatement law, not changed by the bill other than the division numbers, defines "subsidized housing" as a property consisting of more than four dwelling units that, in whole or in part, receives "project-based assistance" (i.e., the assistance is attached to the property and provides rental assistance only on behalf of tenants who reside in that property) pursuant to a contract under any of the following federal housing programs: (a) the new construction or substantial rehabilitation program under section 8(b)(2) of the "United States Housing Act of 1937," 42 U.S.C. 1437f(b)(2) as that program was in effect immediately before October 1, 1983, (b) the moderate rehabilitation program under section 8(e)(2) of the "United States Housing Act of 1937," 42 U.S.C. 1437f(e)(2), (c) the loan management assistance program under section 8 of the "United States Housing Act of 1937," 42 U.S.C. 1437f, (d) the rent supplement program under section 101 of the "Housing and Urban Development Act of 1965," 12 U.S.C. 1701s, (e) section 8 of the "United States Housing Act of 1937," 42 U.S.C. 1437f, following conversion from assistance under section 101 of the "Housing and Urban Development Act of 1965," 12 U.S.C. 1701s, (f) the program of supportive housing for the elderly under section 202 of the "Housing Act of 1959," 12 U.S.C. 1701q, (g) the program of supportive housing for persons with disabilities under section 811 of the "National Affordable Housing Act of 1990," 42 U.S.C. 8013, or (h) the rental assistance program under section 521 of the "United States Housing Act of 1949," Pub. L. No. 90-448, 82 Stat. 551, as amended by Pub. L. No. 93-383, 88 Stat. 696, 42 U.S.C. 1490a. (R.C. 3767.41(A)(8) and (9) in the bill.)

R.C. 3767.41(A)(2)(b), not changed by the bill other than division numbers, defines "public nuisance" as it applies to subsidized housing as subsidized housing

that fails to meet the following standards as specified in the federal rules governing each standard:

(i) Each building on the site is structurally sound, secure, habitable, and in good repair, as defined in 24 C.F.R. 5.703(b);

(ii) Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system is free of health and safety hazards, functionally adequate, operable, and in good repair, as defined in 24 C.F.R. 5.703(c);

(iii) Each dwelling unit within the building is structurally sound, habitable, and in good repair, and all areas and aspects of the dwelling unit are free of health and safety hazards, functionally adequate, operable, and in good repair, as defined in 24 C.F.R. 5.703(d)(1);

(iv) Where applicable, the dwelling unit has hot and cold running water, including an adequate source of potable water, as defined in 24 C.F.R. 5.703(d)(2);

(v) If the dwelling unit includes its own sanitary facility, it is in proper operating condition, usable in privacy, and adequate for personal hygiene, and the disposal of human waste, as defined in 24 C.F.R. 5.703(d)(3);

(vi) The common areas are structurally sound, secure, and functionally adequate for the purposes intended. The basement, garage, carport, restrooms, closets, utility, mechanical, community rooms, daycare, halls, corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas are free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, smoke detectors, stairs, walls, and windows, to the extent applicable, are free of health and safety hazards, operable, and in good repair, as defined in 24 C.F.R. 5.703(e);

(vii) All areas and components of the housing are free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint, as defined in 24 C.F.R. 5.703(f).

The existing public nuisance abatement law has certain provisions described below that are applicable only to the abatement of subsidized housing alleged to be a public nuisance. Prior to commencing a civil action for abatement when the property alleged to be a public nuisance is subsidized housing, the municipal corporation, neighbor, tenant, or nonprofit corporation commencing the action must provide the landlord of that property with written notice that specifies one or more defective conditions that constitute a public nuisance as that term applies to subsidized housing and states that if the landlord fails to remedy the condition within 60 days of the service of the notice, a claim may be brought on the basis that the property constitutes a public nuisance in subsidized housing. Any party authorized to bring an action against the landlord must make reasonable attempts to serve the notice in the manner prescribed in the Rules of Civil Procedure to the landlord or the landlord's agent for the property at the property's management office, or at the place where the tenants normally pay or send rent. If the landlord is not the owner of record, the party bringing the action must make a reasonable attempt to serve the owner. If the owner does not receive service, the person bringing the action must certify the attempts to serve the owner. (R.C. 3767.41(B)(1)(b).)

In considering whether subsidized housing is a public nuisance, the judge must construe the standards described in the 2nd preceding paragraph in a manner consistent with Department of Housing and Urban Development and judicial interpretations of those standards. The judge must deem that the property is not a public nuisance if during the 12 months prior to the service of the notice described in the preceding paragraph, the Department of Housing and Urban Development's Real Estate Assessment Center issued a score of 75 or higher out of a possible 100 points pursuant to its regulations governing the physical condition of multifamily properties pursuant to 24 C.F.R. part 200, subpart P, and since the most recent inspection, there has been no significant change in the property's conditions that would create a serious threat to the health, safety, or welfare of the property's tenants. (R.C. 3767.41(B)(2)(c).)

In any sale of subsidized housing that is ordered pursuant to the public nuisance abatement law, the judge must specify that the subsidized housing not be conveyed unless that conveyance complies with applicable federal law and

applicable program contracts for that housing. Any such conveyance must be subject to the condition that the purchaser enter into a contract with the Department of Housing and Urban Development or the Rural Housing Service of the Federal Department of Agriculture under which the property continues to be subsidized housing and the owner continues to operate that property as subsidized housing unless the Secretary of Housing and Urban Development or the Administrator of the Rural Housing Service terminates that property's contract prior to or upon the conveyance of the property. (R.C. 3767.41(I)(2)(b).)

2. Existing R.C. 3767.41(A)(4), not changed by the bill other than the division number, defines "interested party" as any owner, mortgagee, lienholder, tenant, or person that possesses an interest of record in any property that becomes subject to the jurisdiction of a court pursuant to the public nuisance abatement law, and any applicant for the appointment of a receiver pursuant to that law.

3. Existing R.C. 3767.41(A)(5), not changed by the bill other than the division number, defines "neighbor" as any owner of property, including, but not limited to, any person who is purchasing property by land installment contract or under a duly executed purchase contract, that is located within 500 feet of any property that becomes subject to the jurisdiction of a court pursuant to the public nuisance abatement law, and any occupant of a building that is so located.

HISTORY

ACTION	DATE
Introduced	04-09-08

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