



Conservatorship for Abandoned Properties Act 135 of 2008

In small cities, large cities, and rural towns throughout the state, 300,000 buildings stand vacant. Too often properties sit vacant because the tools for dealing with them are not appropriate for the job. The tax sale process is too unpredictable; there is no control over what will happen to the property once it is purchased. Conservatorship allows a community to take control of its future by addressing the problem of abandonment.

Conservatorship is the appointment of a third party to take possession and control of a property in order to make repairs and return the property to productive use. The conservator is appointed by the court after a formal process and hearing, including notice to the owner and lien holders. It allows a property to be salvaged when the owner is not able or willing to step forward to make the necessary repairs.

Act 135 establishes a specific procedure for the appointment of a conservator. It sets out the rights of the property owner, how a petition for conservatorship is filed, the conditions under which a conservatorship may be approved, who may be appointed conservator, the responsibilities of the conservator, and the disposition of the property.

In Act 135, the rights of the property owner are balanced against the rights of neighboring owners. The impact of blight on neighboring property owner is recognized, while at the same time the subject property owner is given notice of the proceedings and an opportunity to participate. The owner can present proof to the court showing that a conservator is not necessary. The owner can step in at any time to terminate the conservatorship and, after reimbursing all costs, regain control of the property. The court will consider the owners' history and intentions and decide whether the owner or a conservator should be given responsibility for the property.

The conservatorship process begins with the filing of a petition by a party in interest. Parties in interest include lienholders, residents or business owners within 500 feet of the property, a nonprofit corporation including a redevelopment authority, a municipality, a school district, and the owner. In Philadelphia, nonprofits must be working within a mile radius of the property. Nonprofit corporations must have as one of their purposes community development, economic development, historic preservation, or affordable housing work.

Listing the owner as a party in interest and eligible to file a petition may seem odd. But in cases of joint ownership where one or more of the owners has disappeared, conservatorship can be an effective way to clear the title as well as have the building rehabilitated. In other states, conservatorship is frequently used to clear tangled titles.

After filing the petition, the petitioner notifies the owner, all lienholders, and the local and county governments of the action and of the hearing date and their right to intervene. The court sets a hearing date within 120 days of the filing of the petition.

At the hearing, the court receives evidence on why a conservator should be appointed. Before appointing a conservator, the court must be satisfied that the building meets all of the following criteria:

1. It has not been legally occupied for the prior 12 months.
2. It has not been actively marketed for the previous 60 days.
3. It has not been sold within the previous 6 months. Sales to family members or related corporations do not meet this exemption.
4. It is not subject to an existing foreclosure action.
5. It meets at least three of the listed indicia of blight.

After determining that a conservator should be appointed, the court looks for a competent individual or entity to serve, considering the following in order: the senior lienholder, a nonprofit or governmental entity, or finally an individual (or other entity).

The conservator takes possession of (but not title to) the property and has all the powers of the owner. The conservator is even deemed to have ownership for the purposes of applying for funds, approvals, and permits. The owner, however, retains liability, including the obligation to pay taxes and assessments.

After appointment, the conservator must submit a plan to the court and to all parties, including a cost estimate, a financing plan, and a description of the work to be done. When the work is completed, a final accounting is submitted to the court.

One of the most significant aspects of Act 135 is the right of the conservator to offer a construction lender a priority lien. In order to provide financing to complete the necessary work, a lender must be assured of a secured lien position. Since many properties subject to conservatorship will already have a mortgage, this would be a substantial obstacle. Act 135 offers a compromise approach that first requires the conservator to approach the senior lienholder for financing. If the existing mortgagee provides additional financing, the first mortgage is increased to cover it. If the first mortgagee declines, the conservator can approach a different lender and offer a priority lien.

Once the property has been rehabilitated, and if the owner has not approached the court to regain possession after paying all costs, the conservator may seek the court's permission to sell the property. Act 135 specifies the order for distribution of the proceeds, after which title is transferred free and clear of all liens and claims.

Conservatorship is a powerful tool for local governments and communities to use in their fight against blight. It is a large hammer in the code enforcement toolbelt. And where there is no owner present against which to enforce the codes, it allows for the rehabilitation of the property and transfer of the title in a way that will contribute to the health of the community.