STATE OF NEW YORK

7765

2023-2024 Regular Sessions

IN SENATE

November 22, 2023

Introduced by Sen. RYAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT in relation to enacting the "city of Buffalo historic preservation receivership act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short Title. This act shall be known and may be cited as the "city of Buffalo historic preservation receivership act".

§ 2. Legislative findings and purpose. The legislature hereby finds and declares that:

1. the city of Buffalo is home to many buildings of historic significance, and such buildings contribute to the cultural heritage of the state and are a testament to its rich history and diverse population;

2. many such historic buildings are abandoned and/or neglected by their owners of record, or no such owner may be found;

3. such neglected and abandoned buildings are a blight on their communities and on the state as a whole;

4. the state of New York imbued the city of Buffalo housing court with jurisdiction over "proceedings for the appointment of a receiver of rents, issues and profits of buildings in order to remove or remedy a nuisance or to make repairs required to be made under such housing codes," under subdivision (f) of section 202 of article X of chapter 570 of the laws of 1909; and

5. the legislature resolves to provide the city of Buffalo specific procedures for the appointment of a receiver of rents in instances where the property at issue is neglected or abandoned as defined in this act.

§ 3. Definitions. For the purposes of this act, the following terms shall have the following meanings:

1. "abandoned property" means a property meeting the following conditions at the time a petition is filed pursuant to section four of this act:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(a) the building has not been legally occupied for at least 12 months;

(b) the owner fails to present compelling evidence that they have actively marketed the property during the preceding 60-day period and made a good faith effort to sell the property at a price which reflects the circumstances and market conditions;

(c) the property is not subject to a pending foreclosure action by an individual or nongovernmental entity;

(d) the current owner fails to present sufficient evidence that they acquired the property within the preceding six months. Such evidence shall not include instances where the prior owner is a member of the current owner, unless the transfer of title results from the death of the prior owner, or where the current or prior owner is a corporation, partnership, or other entity in which either owner or the immediate family of either owner has an interest in excess of 5 percent; and

(e) the court finds at least three of the following:

(i) the building or physical structure is a public nuisance;

(ii) the building is in need of substantial rehabilitation and no rehabilitation has taken place during the previous 12 months;

(iii) the building is unfit for human habitation, occupancy, or use;

(iv) the condition and vacancy of the building materially increase the risk of fire to the building and to adjacent properties;

(v) the building is subject to unauthorized entry leading to potential health and safety hazards and one of the following applies:

(A) the owner has failed to take reasonable and necessary measures to secure the building; or

(B) the city of Buffalo has secured the building in order to prevent such hazards after the owner failed to do so;

(vi) the property is an attractive nuisance to children, including, but not limited to, the presence of abandoned wells, shafts, basements, excavations and unsafe structures;

(vii) the presence of vermin or the accumulation of debris, uncut vegetation, or physical deterioration or the structure or grounds has created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards;

(viii) the dilapidated appearance or other condition of the building negatively affects the economic well-being of residents and businesses in close proximity to the building, including decreases in property value and loss of business, and the owner has failed to take reasonable and necessary measures to remedy appearance or the condition; or

(ix) the property is an attractive nuisance for illicit purposes;

2. "actively marketed" means a "for sale" sign has been placed on the property with accurate contact information and the owner has done at least one of the following:

(a) engaged the services of a licensee under the real property law, to place the property in a multiple listing service or otherwise market the property;

(b) placed weekly or more frequent advertisements in print or electronic media; or

(c) distributed printed advertisements;

3. "building" means a residential, commercial, or industrial building or structure and the land appurtenant thereto, including a vacant lot on which a building has been demolished;

4. "code" means a building, housing, property maintenance, fire, health or other public safety law or ordinance enacted by the state of New York or the city of Buffalo;

5. "competent entity" means a person or entity including a governmental unit with experience in the rehabilitation of residential, commercial, or industrial buildings and the ability to provide or obtain the necessary financing for such rehabilitation;

6. "costs of rehabilitation" means the costs and expenses for construction, stabilization, rehabilitation, maintenance, and operation or demolition, including reasonable non-construction costs associated with the project, including but not limited to, environmental remediation, architectural, engineering, and legal fees and costs, permits, financing fees, and a receiver's or developer's fee;

7. "court" means the city of Buffalo housing court;

8. "historic property" means a property which is listed on the national register of historic places or is a contributing property in a national register historic district or is located in a local government ordinance historic district;

9. "immediate family" means a parent, spouse, child, or sibling;

10. "nonprofit corporation" means a nonprofit corporation that has, as one of its purposes, remediation of blight, community development activities, including economic development, historic preservation, or the promotion or enhancement of affordable housing opportunities;

11. "owner" means the holder or holders of a title to, or of a legal or equitable interest in, a residential, commercial, or industrial building. The term shall include an heir, assignee, trustee, beneficiary, and lessee provided that the ownership interest is a matter of public record;

12. "party in interest" means a person or entity who has direct and immediate interest in a residential, commercial, or industrial building, including:

(a) the owner;

(b) a lienholder or other secured creditor of the owner;

(c) a resident or business owner within 2,000 feet of the building;

(d) a nonprofit corporation, including a redevelopment corporation located in the city of Buffalo; or

(e) the city of Buffalo;

13. "public nuisance" means a property that, because of physical condition or use, has been declared by the appropriate official a public nuisance in accordance with the local housing, building, health, fire, or related code or is determined to be a public nuisance by the court;

14. "substantial rehabilitation" means repairs to the building where:

(a) the cost of repairs, replacements, and improvements exceeds 15 percent of the property's value after completion of all repairs, replacements, and improvements; or

(b) more than one major building component is replaced. Major building components include:

(i) roof structures;

(ii) ceilings;

(iii) wall or floor structures;

(iv) plumbing systems;

(v) heating and air conditioning systems; and

(vi) electrical systems; and

15. "receiver or developer's fee" means a fee equal to the greatest of the following:

(a) an amount equal to $2,500, adjusted upward by 2 percent each year;

(b) a 20 percent markup of the costs and expenses for construction, stabilization, rehabilitation, maintenance, and operation or demolition as described in the proposed receiver's plan approved by the court; or

(c) 20 percent of the sale price of the property.

§ 4. Initiation of action. 1. Filing of petition. A petition for the appointment of a receiver to take possession and to undertake rehabilitation of a building may be filed by a party in interest in the city of Buffalo housing court. The proceeding on the petition shall constitute an action in rem.

2. Contents. The petition submitted to the court shall include a sworn statement that, to the best of the petitioner's knowledge, the property is an abandoned building as defined in section three of this act, and to the extent available, after reasonable efforts to obtain such information:

(a) a copy of any citation charging the owner with being in violation of municipal code requirements or declaring the building to be a public nuisance;

(b) a recommendation as to which person or entity should be appointed receiver;

(c) a preliminary plan with initial cost estimates for rehabilitation of the building to bring it into compliance with all municipal codes and duly adopted plans for the area in which the building is located and anticipated funding sources; and

(d) a schedule of mortgages, liens, and other encumbrances on the property.

3. Notice of lis pendens. The petitioner shall file a notice of lis pendens in the office of the recorder of deeds for Erie county.

4. Notification of the owner, political subdivisions, and lienholders. (a) Upon filing the petition with the court, the petitioner shall notify the current owner of the property, all political subdivisions in which the property is located, all city authorities known to have provided services to the property, and all lienholders of the filing by registered or certified mail to the last known address of each and by posting a copy of the notice on the building.

(b) In the event the registered or certified mail is returned with notation by the postal authorities that the recipient refused to accept the mail, the petitioner may mail a copy to the recipient at the same address by ordinary mail with the return address of the petitioner appearing thereon.

(c) Service by ordinary mail shall be presumed complete if the mail is not returned to the petitioner within 30 days after mailing.

(d) In the event that the registered or certified mail is returned with the notation by the postal authorities that it was unclaimed, the notice shall be personally served.

(e) In the event that the personal service is not able to be made after two such attempts, the petitioner shall mail the petition to the recipient at the same address by ordinary mail with the return address of the petitioner appearing thereon with service by ordinary mail deemed completed if the mail is not returned to the petitioner within 15 days after the mailing.

(f) The petitioner shall also notify the owner and each lienholder of the hearing date and provide notice that owner and lienholders may petition to intervene in the action.

5. Adjacent properties. The petition may include one or more adjacent properties in a single action if:

(a) the property that is the primary subject of the action is owned by the same owner as the adjacent property; and

(b) the properties were used for a single or interrelated purpose.

§ 5. Appointment of the receiver. 1. General rule. The court shall act upon a petition submitted by holding a hearing within 60 days of receipt of petition and by rendering a decision no later than 30 days after completion of the hearing.

2. Intervention. A party in interest may intervene in the proceeding and be heard with respect to the petition, the requested relief or any other matter which may come before the court in connection with the proceeding.

3. Hearing. At the hearing, any party in interest shall be permitted to present evidence to support or contest the petition, including, but not limited to, the schedule of encumbrances.

4. Conditions for receivership. If a petition is filed under this section, the court may appoint a receiver if the building at issue is found to be an abandoned building as defined in section three of this act.

5. Appointment. (a) If the court determines after a hearing that the property has met the conditions outlined in the definition of abandoned building in section three of this act, the court may appoint a receiver, certify the schedule of encumbrances, and grant other relief as may be just and appropriate. The certification shall be binding with respect to all mortgages, liens, and encumbrances, including municipal liens, arising or attaching to the property prior to the date of the petition.

(b) The court shall give first consideration for appointment as receiver to the most senior nongovernmental lienholder on the property.

(c) In the event that the senior lienholder is found to be not competent or declines the appointment, the court may appoint a nonprofit corporation or other competent entity. In appointing a receiver, the court shall:

(i) consider any recommendations contained in the petition or otherwise presented by a party in interest; and

(ii) give preference to the appointment of a nonprofit corporation or governmental unit over an individual.

6. Conditional relief. (a) If the court finds after a hearing that the conditions for receivership set forth in section three of this act have been established, but the owner represents that the conditions, violations or nuisance, or emergency condition will be abated in a reasonable period, the court may allow the owner to proceed to remedy the conditions.

(b) If the conditions set forth in paragraph (a) of this subdivision have been satisfied, the court shall enter an order providing that, in the event that the violations or nuisance or emergency conditions are not abated by the owner by a specific date or that other specified remedial activities have not occurred by a specific date or dates, an order granting the relief specified in in the petition shall be entered.

(c) The court shall also require the owner to post a bond in the amount of the repair costs estimated in the petition as a condition of retaining possession of the building.

(d) Upon a finding that:

(i) the petition states conditions for receivership; or

(ii) the owner elects to either:

(A) remedy all violations and nuisance or emergency conditions; or

(B) sell the property subject to the receivership, the owner shall reimburse the petitioner for all costs incurred by the petitioner in preparing and filing the petition in accordance with the requirements of section four of this act and the receiver or developer's fee.

7. Receiver's lien. The receiver may file a lien against the property in an amount equal to the costs incurred during the receivership, including, but not limited to, costs of rehabilitation, attorney fees, and court costs. The lien amount may be adjusted from time to time.

8. Immediate possession. The receiver shall promptly take possession of the building and other property subject to the receivership and shall immediately be authorized to exercise all powers of this act.

9. Removal by the court. A receiver may be removed by the court at any time upon the request of the receiver or upon a showing by a party to the action that the receiver is not carrying out its responsibilities under this act.

§ 6. Powers and duties of the receiver. 1. Full powers and duties. The receiver shall have all powers and duties necessary or desirable for the efficient operation, management, and improvement of the building in order to bring it into compliance with all municipal building and housing code requirements and to fulfill the receiver's responsibilities under this act. Such powers and duties shall include, but not be limited to, the power to:

(a) take possession and control of the building, appurtenant land and any personal property of the owner used with respect to the building, including any bank or operating account for the building;

(b) collect outstanding accounts receivable;

(c) pursue all claims or causes of action of the owner with respect to the building and all other property subject to the receivership;

(d) contract for the repair and maintenance of the building. The contracts shall be appropriately documented and included in the reports and accounting which the receiver is required to submit or file under the provisions of this act. The receiver shall make a reasonable effort to solicit three bids for contracts valued at more than $25,000 except when the receiver or developer provides or obtains financing for the receivership;

(e) borrow money and incur credit in accordance with section eight of this act;

(f) contract and pay for the maintenance and restoration of utilities to the building;

(g) purchase materials, goods, and supplies to accomplish repairs and operate the building;

(h) with the court's approval, enter into new rental contracts and leases for a period not to exceed one year;

(i) affirm, renew, or enter into contracts providing for insurance coverage on the building;

(j) engage and pay legal, accounting, appraisal and other professionals to aid the receiver in the conduct of the receivership;

(k) when the building has been designated a historic property, consult with the preservation board of the city of Buffalo for recommendations on preserving the property's historic character;

(l) apply for and receive public grants or loans;

(m) sell the building in accordance with section nine of this act; and

(n) exercise all authority that an owner of the building would have to improve, maintain, and otherwise manage the building, including the extent to which rehabilitation will satisfy the goals of the receivership.

2. Affirmative duty. While in possession of the building, the receiver shall:

(a) maintain, safeguard and insure the building;

(b) apply all revenue generated from the building consistent with the provisions of this act;

(c) develop a final plan for abatement of the conditions which caused the petition to be granted or, if no such feasible final plan can be developed, to develop alternatives, including the closing, sealing, or demolition of all or part of the building;

(d) when the building has been designated as a historic property, rehabilitate architectural features that define the property's historic character;

(e) when demolition of a property in a historic district is necessary, design any replacement construction on the site to comply with applicable standards under current law;

(f) implement the final plan referred to in paragraph (c) of this subdivision upon approval by the court;

(g) submit a status report to the court and parties to the action annually or more frequently as the court may deem appropriate. The status report shall include:

(i) a copy of any contract entered into by the receiver regarding the improvement of the building;

(ii) an account of the disposition of all revenue generated from the building;

(iii) an account of all expenses and improvements;

(iv) the status of developing and implementing the final plan pursuant to this subdivision; and

(v) a description of any proposed actions to be taken in the next six months to improve the building.

3. Hearing on receiver's final plan for abatement. (a) At the time the court appoints a receiver, the receiver may present and the court may approve the final plan for abatement. If no plan is presented at that hearing, a hearing date on the receiver's final plan for abatement shall be set within 120 days of the appointment.

(b) 30 days prior to the date of the hearing, the receiver shall submit the plan to the court, and to all parties to the action.

(c) The plan shall include a cost estimate, a financing plan, and either a description of the work to be done for the rehabilitation of the building, or if rehabilitation is not feasible, a proposal for the closing, sealing, or demolition of the building.

(d) The plan shall conform with all existing municipal codes, duly adopted plans for the area, and historic preservation requirements.

(e) At the time of the hearing, all parties shall be allowed to comment on the plan, and the court shall take all comments into consideration when assessing the feasibility of the plan and the proposed financing. In making its assessment, the court shall give reasonable regard to the receiver's determination of the scope and necessity of work to be done for the rehabilitation or demolition of the building in approving the final plan and in approving the costs of receivership and sale of the property.

(f) Within 15 days of the hearing, the court shall issue a decision approving the plan or requiring that the plan be amended.

(g) If the court decision requires that the plan be amended, a hearing date shall be set within 60 days from the date of the decision.

4. Accounting. Upon the implementation of the final plan approved by the court, the receiver shall file with the court a full accounting of all income and expenditures during the period of time it took to approve the final plan.

§ 7. Ownership of property. 1. Ownership interest of the receiver. A receiver appointed under section five of this act shall be deemed to have an ownership interest in and legal control of the property for the purposes of filing plans with public agencies and boards, seeking and obtaining construction permits and other approvals and submitting applications for financing or other assistance to public or private entities.

2. Liability of owner. Notwithstanding the appointment of a receiver under section five of this act, nothing in this act shall be construed to relieve the owner of any civil or criminal liability or of any obligation to pay taxes, municipal liens and charges, mortgages, private liens or other fees or charges, whether incurred before or after the appointment of the receiver and no such liability shall be transferred to the receiver.

3. Limitation of the receiver's environmental liability. (a) Notwithstanding any law to the contrary, the receiver shall not be held liable for any environmental damage to the building or the real property upon which the building is located that existed prior to the appointment by the court of the receiver.

(b) Paragraph (a) of this subdivision shall not apply to the owner or any other person or entity regarding the building and its real property that is subject to an appointed receiver under this act.

§ 8. Incurring indebtedness. 1. Borrowing. From time to time, a receiver may borrow money or incur indebtedness in order to cover the costs of rehabilitation or otherwise fulfill the receiver's obligations under this act.

2. Liens. In order to facilitate the borrowing of funds for the costs of rehabilitation, the court may grant priority status to a lien given to secure payment on a debt incurred for purposes authorized under this act, provided that:

(a) the receiver sought to obtain the necessary financing from the senior, nongovernmental lienholder, but the lienholder declined to provide financing for reasonable improvements or other costs of rehabilitation on reasonable terms; and

(b) lien priority is necessary in order to induce another lender to provide financing on reasonable terms.

3. Lien status of rehabilitation expenses. Should the senior lienholder agree to provide financing for the costs of rehabilitation, any funds lent to cover the costs shall be deemed to be added to the senior lienholder's preexisting first lien.

4. Approval of financing. The court may approve financing for the costs of rehabilitation, the terms of which may include deferred repayment and use restrictions. The terms of the financing may remain with the property after the receivership has ended and be assumed by any of the following:

(a) the owner, if the owner regains possession of the property under section ten of this act; or

(b) the buyer who takes title under section nine of this act.

§ 9. Sale of property. 1. Sale by owner or lienholder. If a property subject to receivership is sold by the owner or foreclosed upon by a lienholder or if any interest therein is transferred, such sale, foreclosure, or transfer shall be subject to the receivership.

2. Sale by receiver. Upon application of the receiver, the court may order the sale of the property if the court finds that:

(a) notice and an opportunity to provide comment to the court was given to each record owner of the property and each lienholder;

(b) the receiver has been in control of the building for more than three months and the owner has not successfully petitioned to terminate the receivership under section ten of this act; and

(c) the terms and conditions of the sale are acceptable to the court and the buyer has a reasonable likelihood of maintaining the property.

3. Sale free and clear. (a) The court may authorize the receiver to sell the building free and clear of all liens, claims, and encumbrances, provided that the proceeds of the sale are distributed pursuant to subdivision four of this section at settlement.

(b) In the event that the proceeds of the sale are insufficient to pay all existing liens, claims, and encumbrances, the proceeds shall be distributed according to the priorities set forth in subdivision four of this section and all unpaid liens, claims, or encumbrances which have not been assumed under subdivision four of section eight of this act shall be extinguished.

4. Distribution. The proceeds of the sale shall be applied in accordance with the following priorities to:

(a) all court costs;

(b) liens of the state, liens for unpaid property taxes and properly recorded municipal liens;

(c) costs and expenses of sale;

(d) principal and interest on any borrowing or incurrence of indebtedness granted priority over existing liens and security interests under subdivision two of section eight of this act;

(e) costs incurred by the petitioner in preparing and filing the petition in accordance with the requirements of section four of this act;

(f) costs of rehabilitation and any fees and expenses incurred by the receiver in connection with the sale or the safeguarding of the property for which the lien authorized under subdivision seven of section five of this act was filed;

(g) valid liens and security interests in accordance with their priority;

(h) any unpaid obligations of the receiver; and

(i) the owner.

5. Owner's proceeds as unclaimed property. In the event the owner cannot be located, any proceeds from the sale which belong to the owner shall be presumed to be abandoned and unclaimed and shall be subject to the custody and control of the New York state comptroller's office of unclaimed funds pursuant to the abandoned property law.

§ 10. Termination of the receivership. Upon request of a party in interest or the receiver, the court may order the termination of the receivership if it determines:

1. The conditions that were the grounds for the petition and all other code violations have been abated or corrected, and the obligations, expenses, and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been fulfilled;

2. The owner, mortgagee, or lienholder has requested that the receivership be terminated and has provided adequate assurances to the court that the conditions that constituted grounds for the petition will be promptly abated, all obligations, expenses, and improvements of the receivership including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been fulfilled;

3. The building has been sold by the receiver and the proceeds distributed in accordance with subdivision four of section nine of this act; or

4. The receiver has been unable, after diligent effort, to present a plan that could be approved under paragraph (c) of subdivision two of section six of this act or to implement a previously approved plan, or for any reason, the purpose of the receivership cannot be fulfilled.

§ 11. Applicability. 1. General inapplicability. This act shall not apply to commercial and residential buildings, structures, or land owned by or held in trust for the federal government and regulated under the United States Housing Act of 1937 (42 U.S.C. § 1437 et. seq.) and regulations promulgated under such act.

2. Inapplicability to service members. This act shall not apply if the property owner has vacated the property in order to perform military service in time of war, armed conflict, or in order to assist with relief efforts during a declared federal or state emergency as a member of the United States armed forces or its reserve component.

§ 12. This act shall take effect on the ninetieth day after it shall have become a law.