

BOROUGH NEWS



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 3447. 2 / 80



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Toxic for Britney; Promising for Boroughs: How Conservatorships Fight Blight

Pennsylvania's 2008 Abandoned and Blighted Property Conservatorship Act, 68 P.S. §§ 1101 et seq. (the "Conservatorship Act"), is an anti-blight tool for restoring neglected properties to productive use and consequently increasing real estate values in a community.

As solicitor to various municipalities, I am often asked questions about how the Conservatorship Act works.

A Common Pleas judge can appoint a conservator to take charge of a blighted property to bring it into compliance with local codes. This can occur upon a petition by a "party in interest" ("Petitioner"). A "party in interest" is a person or corporation that has a direct and immediate interest in the blighted building and could be:

- The property owner;
- Lien holder;
- Resident or business owner within 2,000 ft. of the building;
- A nonprofit corporation; or
- A municipality or school district in which the building is located.

There are five basic requirements that must all be met for a blighted property to qualify for a conservatorship. These are:

1. the property was not legally occupied for the last 12 months;
2. the property was not for sale during the prior 60 days;
3. a mortgagee/bank is not foreclosing on the property;
4. the current owner has owned the property for at least 6 months, and

5. the property is blighted, a public nuisance, subject to code violations, etc.

A person or entity, including a municipality, that has experience rehabilitating residential, commercial, or industrial buildings and can provide or obtain the necessary financing for such rehabilitation, can become a conservator of a blighted structure. A court will give priority to a senior mortgagee on the property, if any. Next, it will consider a non-profit corporation. Lastly, a court will consider a for-profit entity.

A petition for conservatorship should include the information and documentation necessary to satisfy the five basic requirements listed above for a conservatorship. This may include a title report,

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a schedule of mortgages, liens and other encumbrances on the property, copies of municipal code citations, photos of the blighted property, a preliminary plan that has the initial cost estimate for rehabbing the structure, building plans for the structure, and anticipated funding sources.

The Petitioner must notify the property owner, all taxing authorities, and all lienholders of the filing of a petition for conservatorship. The Commonwealth Court has decided that one petition is required for each property.¹ However, if two blighted properties are next to each other and are owned by the same person, a court may allow a Petitioner to file one petition for both.

A judge may schedule a hearing within 60 days of its receipt of a conservatorship petition. The Commonwealth Court has held that a judge

has discretion to schedule a hearing beyond 60 days.² However, the Conservatorship Act requires a judge to act upon an applicant's petition and appoint a conservator no later than 30 days from the hearing date.

If the owner of the blighted property challenges a conservatorship petition and offers a plan to abate the blighted conditions on the property, the court may give the owner a reasonable amount of time to remedy such conditions. However, if the court gives the owner time, it will also require the owner to post a bond for the repair costs estimated in Petitioner's preliminary plan.

If the property in Petitioner's petition is sold (or fixed) after a petition for conservatorship is filed, the owner must pay the Petitioner for its costs to file the petition plus a conservator's fee. For example, in *Greene St. Friends Sch. v. Bateman*,

the trial court granted the Petitioner a \$2,500 conservatorship fee and \$25,000 in attorney's fees and costs despite the owner remediated the property.³

A hearing on a conservator's final plan to remediate the property ("Final Plan"), must occur within 120 days of the appointment of a conservator. The conservator has 90 days from its appointment to access the property and prepare a Final Plan to submit to the court.

A Final Plan should have more details than the preliminary plan, and must include a cost estimate, 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 demolition of the property. If the Final Plan is approved by the court, the conservator is required to file a full accounting of all income and expenses until the Final Plan is completed.

A conservator can request that a judge authorize a conservator lien ("Conservator Lien") (adjustable from time-to-time) for the estimated cost to implement a Final Plan. This lien may include attorney fees and court costs. The cost incurred by the conservator, when secured by a lien, will supersede any existing non-governmental liens.

A court has discretion to terminate a conservatorship upon a showing that the conservator has failed its duties under the Conservatorship Act.⁴ For





example, the court may terminate a conservatorship if it finds that the failure to file status reports results in such an abandonment of the conservator's duties and constitute grounds for termination.

With court approval, a conservator may lease the property subject to the conservatorship for up to 12 months.

There are likely several ways to finance a conservatorship. However, one method is to borrow money from a bank and use the blighted property as security for the loan. To facilitate this type of loan, a conservator could ask the court to grant priority status to the loan that will be used to finance the execution of a Final Plan.

Although a court-appointed conservator does not own the blighted property, the conservator may petition the court to sell the property to itself if the conservator has been

in control of the building for more than three months, and the owner has not successfully petitioned to terminate the conservatorship. The terms and conditions of the sale also must be acceptable to the court, and the buyer must be reasonably likely to maintain the property.

If the proceeds of a conservator's sale of a building are insufficient to pay all existing liens, claims, and encumbrances, the proceeds are paid in accordance with the following distribution schedule:

1. court costs;
2. liens of the Commonwealth, liens for unpaid property taxes and municipal liens;
3. costs and expenses of sale;
4. principal and interest on borrowing or incurrence of indebtedness granted priority over existing liens and security interest under section 8(g) and costs to prepare and file the petition;

5. costs of rehabilitation and fees and expenses incurred in connection with the authorized Conservatorship Lien;
6. liens and other security interest in priority order;
7. unpaid obligations of the conservator;
8. the owner.

Upon petition by the conservator, all unpaid liens (including a bank mortgage), claims, and encumbrances may be extinguished.

For more information, visit tuckerlaw.com or contact Daniel Conlon at dconlon@tuckerlaw.com or by phone at (412) 594-3951. **B**

¹ *In re Conservatorship Proceeding in Rem by Germantown Conservancy, Inc.*, 995 A.2d 451, 464 (Pa. Commw. Ct. 2010).

² *Walsh v. Isabella*, 258 A.3d 1163 (Pa. Cmwlth. Ct. 2021)

³ *Greene St. Friends Sch. v. Bateman*, 264 A.3d 825 (Pa. Commw. Ct. 2021).

⁴ 68 P.S. § 1110(4) (West 2009); see also *Walsh v. Isabella*, 258 A.3d 1163 (Pa. Commw. Ct. 2021).



ABOUT THE AUTHOR

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