
Coates' Canons Blog: Receivership: A New Tool for Addressing Vacant Problem Properties in North Carolina

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Municipalities across North Carolina have long employed code enforcement tools to address problem properties and abandoned structures. A prior blog post describes the code enforcement options for repair and maintenance of *commercial* buildings. A book on *housing* codes describes the code enforcement options for residential structures. A bulletin describes local government authority to carry out inspections of structures. To see how all of North Carolina's code enforcement tools can come together in a strategic approach, read the report produced by the Center for Community Progress for the City of High Point. Now municipalities have an additional code enforcement tool at their disposal to address problem properties. Effective October 1, 2018,[1] Session Law 2018-65 (originally codified at G.S. 160A-439.1 until being moved to G.S. 160D-1130) establishes receivership powers and authorizes North Carolina municipalities to request for a superior court to appoint a receiver to manage a vacant structure that has not complied with a code enforcement order. These vacant problem properties, whether residential or commercial, are deemed a "nuisance per se"—in other words, a nuisance in any context. This blog post provides an overview of the new receivership authority.

Receivership of problem properties: An old idea that is new to North Carolina

Receivership "places control of a seriously deteriorated building in the hands of a court-appointed receiver, who rehabilitates and manages the building until the cost of repair is recovered... to achieve quick repair of economically sound buildings that lack an owner, mortgagee, or purchaser willing to undertake the expense of compliance." Richard Carlton et al., *Enforcement of Municipal Housing Codes*, 78 Harv. L. Rev. 801, 828 (1965); see also James J. Kelly, Jr., *Refreshing the Heart of the City: Vacant Building Receivership As a Tool for Neighborhood Revitalization and Community Empowerment*.

North Carolina courts already appoint receivers in the context of bankruptcy, corporate dissolution, and other specific situations in which property must be managed by a court to preserve its value. See Article 38 of G.S. Chapter 1 and a white paper written for superior court judges by my faculty colleague Ann Anderson to explain receivership in those contexts. However, receivership for the purpose of addressing vacant problem properties is new to North Carolina, and the new statute makes no explicit reference to the preexisting receivership statutes, so their relevance to the new law is unclear. Practitioners should anticipate that judges will seek to utilize preexisting receivership law to fill in any gaps or omissions in the new receivership authority pertaining to vacant properties.

Which vacant properties could be subject to receivership?

The property cannot be currently occupied. A court may assign a receiver only to a "vacant" building, structure, or dwelling. The statute contains no clarifying definition for "vacant," so it must be assumed that the structure must be *currently* vacant. There is no requirement for property to be vacant for some minimum period of time.

The property owner must be in noncompliance with a code enforcement order. Any of the five enumerated occurrences below are deemed a "nuisance per se" and each triggers a municipality's authority to petition for assignment of a receiver:

- Owner fails to appeal from an *inspector's order* pursuant to G.S. 160A-429 to remedy unsafe building conditions.
- Following appeal of an *inspector's order* pursuant to G.S. 160A-429, the owner fails to comply with an order of the *governing body* to remedy unsafe building conditions pursuant to G.S. 160A-430.
- The governing body adopts an ordinance pursuant to G.S. 160A-439 related to repair, improvement, or closing of *nonresidential* buildings.

- Owner fails to comply with a minimum housing code order to repair, alter or improve, vacate and close, or remove and demolish a *dwelling* that is unfit for human habitation pursuant to G.S. 160A-443.
- An owner or partial owner of a vacant building, structure, or dwelling submits a request for the governing body to petition the court for appointment of a receiver. Although this paragraph contains no explicit requirement for the property to be in noncompliance with a code enforcement order, the petition will nonetheless need to describe some required rehabilitation or demolition, as noted in the next section.

Process for Appointment of Receiver

A municipality (not a county) must petition the superior court for appointment of a receiver. Provided a vacant structure meets one of the enumerated conditions above, the “governing body” of a municipality “or its delegated commission” is authorized to petition a court for appointment of a receiver for the property. The term “delegated commission” is not defined, but presumably a governing board may delegate its petitioning authority to a duly-formed “redevelopment commission” as defined in G.S. 160A-503(5). A public officer may petition for a receiver on behalf of the governing body, only when the public officer is acting pursuant to an ordinance enacted by the governing board under G.S. 160A-439.

Contents of the petition. A petition for appointment of a receiver for vacant property must include all of the following:

- A copy of the original violation notice or order issued by the municipality; or, in the case of an owner or partial owner who submits a request for the municipality to petition for assignment of a receiver, a verified pleading (such as a sworn statement) that at least one owner consents to the petition;
- A verified pleading asserting that the required rehabilitation or demolition has not been completed; and
- The names of respondents to the petition, including the property owner, any mortgagee with a recorded interest in the property, and all other parties with interests of record. For more detail on case law related to interests “of record,” see my blog post on the topic.

Municipality gives notice to respondents. Within 10 days after filing a petition, the municipality must give notice of the pending proceedings by regular and certified mail to all respondents. This gives each respondent an opportunity to intervene in the proceedings and request for the court to appoint them as receiver (as opposed to an independent third party receiver). If the municipality fails to name a required respondent in its petition, or fails to deliver notice to a respondent, then the appointed receiver’s lien on the property for expenses will not have priority over any lien of that respondent. The receiver’s lien is discussed later in the post.

Court appoints receiver. The court may appoint a qualified receiver that can demonstrate (i) knowledge and experience in rehabilitation, (ii) the ability to obtain necessary insurance, and (iii) that no *building code* violations have been issued by the municipality on other property owned by it or by affiliated persons. As an alternative, a court may appoint an owner, mortgagee, or other party in interest, provided that person (i) posts an adequate bond, (ii) demonstrates the ability to complete the required rehabilitation or demolition within a reasonable time, and (iii) commits to a specified schedule. The statute contains provisions for revoking a receiver’s appointment for failure to perform.

Activities performed by receiver

Receiver records notice of receivership. Following appointment, a receiver records a notice of receivership in the county in which the property is located. From that point forward, only the receiver can collect rents or other income from the property, and the receiver shall have sole authority to rehabilitate, demolish, or sell the property. Anyone other than the receiver who attempts to perform the activities that are under the exclusive purview of the receiver may be held in contempt of court.

Receiver’s authority to rehabilitate. A receiver “appointed to rehabilitate or demolish” has the right of possession of the property and may exercise all “necessary and customary powers.” These “necessary and customary powers” could be interpreted as a reference to existing receivership law and the powers of a receiver contained in Article 38 of G.S. Chapter 1 and related case law. In addition, the statute enumerates additional powers of the receiver:

- Contract for necessary labor and supplies for rehabilitation or demolition.
- Borrow money for rehabilitation or demolition from an approved lending institution or through a governmental agency or program, using the receiver’s lien against the property as security.

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- Manage the property prior to rehabilitation or demolition and pay operational expenses of the property, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the property.
 - Collect all rents and income from the property, which shall be used to pay for current operating expenses and repayment of outstanding rehabilitation or demolition expenses.
 - Manage the property after rehabilitation, with all the powers of a landlord, for a period of up to two years and apply the rent received to current operating expenses and repayment of outstanding rehabilitation or demolition expenses. (The two year period begins after the property is rehabilitated.)
 - Foreclose on the receiver's lien or accept a deed in lieu of foreclosure.

Receiver's authority to sell. A receiver "appointed to sell" shall have the following powers in addition to "all necessary and customary powers":

- Sell the property to the highest bidder at public sale, following the same presale notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes. Those presale notice provisions include G.S. 45-21.16A (contents of notice of sale); G.S. 45-21.17 (posting and publishing notice of sale of real property); G.S. 45-21.17A (requests for copies of notice of sale by junior lienholders and third parties); G.S. 45-21.21 (notice for a postponed sale); and G.S. 45-21.22 (restarting a sale after a bankruptcy stay is lifted). The property may be described in the notice by street address and a reference to the book and page of the property deed in the register of deeds.
- Sell the property privately for fair market value if "no party to the receivership objects" to the amount and procedure. Presumably, all respondents named in the petition are a "party" to the receivership.
- Potential buyers under either sale described above must demonstrate "the ability and experience needed to rehabilitate the property within a reasonable time."

Recovery of receiver's costs. During the period that a receiver manages the rehabilitation or demolition of a property, any receiver fees set by the court and any costs incurred by the receiver shall constitute a lien against the property. The receiver's lien shall have priority over all other liens and encumbrances, except taxes or other government assessments. The receiver has the exclusive right to collect all rents and income from the property and to rehabilitate, demolish, or sell the structure in receivership. Following rehabilitation, the receiver possesses all powers of a landlord and may manage the property for up to two years following rehabilitation, with rents received being applied to current operating expenses and repayment of outstanding rehabilitation or demolition expenses. Upon sale of property by a receiver, the proceeds shall be applied in order to the following:

- Expenses of the sale
- Outstanding taxes and other government assessments
- Receiver's lien
- The "city's costs and expenses, including reasonable attorneys' fees"
- Liens against the property in order of priority
- Any remaining proceeds shall be remitted to the property owner.

Foreclosure on receiver's lien. The statute enables a receiver to foreclose on the receiver's lien by selling the property subject to the lien at a public sale. Proceeds from the foreclosure sale are applied in order as follows:

- Expenses of the sale
- Outstanding taxes and other government assessments
- Receiver's lien
- Liens against the property in order of priority
- Any remaining proceeds shall be remitted to the property owner.

The city's costs and expenses do not appear on the list and therefore might not be paid in the event of foreclosure. Notice of sale must be given in accordance with the requirements for notice of a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes, which was described earlier. Alternatives to foreclosure are available to the owner of a rehabilitated property, such as paying all receiver's costs or transferring the owner's interest in the property to the receiver or a third party.

Receiver conveys property free and clear of encumbrances. Following ratification by the court of the sale of the property,



the receiver signs a deed conveying title free and clear of all encumbrances, *other than restrictions that run with the land*. Affordable housing may have covenants that run with the land; it appears that such affordability covenants survive this foreclosure process. (Practitioners should note, however, that some affordability restrictions expire upon foreclosure.)

City's administrative fee. A nominal fee may be charged by the municipality to the owner of the property in receivership. The fee is the lesser of five percent of the profits of the structure or one hundred dollars.

[1] H 573 became law on June 25, 2018, but its effective date is October 1, 2018.

Links

- ced.sog.unc.edu/maintenance-of-vacant-or-neglected-commercial-buildings-options-for-nc-local-governments/
- www.sog.unc.edu/publications/books/housing-codes-repair-and-maintenance-using-general-police-power-and-minimum-housing-statutes-prevent
- www.sog.unc.edu/publications/bulletins/residential-rental-property-inspections-permits-and-registration-changes-2017
- www.communityprogress.net/filebin/161102_HighPoint_TASP_Report_FINAL.pdf
- www.ncleg.net/Sessions/2017/Bills/House/PDF/H573v5.pdf
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_160D/GS_160D-1130.html
- papers.ssrn.com/sol3/papers.cfm?abstract_id=1273735
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_1/Article_38.html
- www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/R05%20Receiverships%28ForSCJconf%29.pdf
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-429.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-430.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-439.html
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- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_45/GS_45-21.16A.html
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- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_45/GS_45-21.22.html