FIRST REGULAR SESSION

HOUSE BILL NO. 1011

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CURLS, BLAND, LOWE (Co-sponsors), JOHNSON (61), GREEN (15), FARNEN AND HILGEMANN.

Read 1st time March 15, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2289L.01I

AN ACT

To repeal sections 441.500, 441.510, 441.520, 441.550 and 441.590, RSMo 2000, and to enact in lieu thereof five new sections relating to nuisance property.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 441.500, 441.510, 441.520, 441.550 and 441.590, RSMo 2000, are repealed and five new sections enacted in lieu thereof, to be known as sections 441.500, 441.510, 441.520, 441.550 and 441.590, to read as follows:

441.500. As used in sections 441.500 to 441.643, the following terms mean:

(1) "Abatement", the removal or correction, including demolition, of any condition at a property that violates the provisions of any duly enacted building or housing code, as well as the making of such other improvements or corrections as are needed to effect the rehabilitation of the property or structure, including the closing or physical securing of the structure;

(2) "Agent", a person authorized by an owner to act for him;

(3) "Code enforcement agency", the official, agency, or board that has been delegated the responsibility for enforcing the housing code by the governing body;

(4) "Community", any county or municipality;

(5) "County", any county in the state;

(6) "Dwelling unit", premises or part thereof occupied, used, or held out for use and occupancy as a place of abode for human beings, whether occupied or vacant;

(7) "Governing body", the board, body or persons in which the powers of a community are vested;

(8) "Housing code", a local building, fire, health, property maintenance, nuisance or

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

other ordinance which contains standards regulating the condition or maintenance of residential buildings;

(9) "Local housing corporation", a not-for-profit corporation organized pursuant to the laws of the state of Missouri for the purpose of promoting housing development and conservation within a specified area of a municipality or an unincorporated area;

(10) "Municipality", any incorporated city, town, or village;

(11) **"Neighborhood association", any group of persons organized for the purpose of improvement of a particular geographic area within a municipality;**

(12) "Notice of deficiency", a notice or other order issued by the code enforcement agency and requiring the elimination or removal of deficiencies found to exist under the housing code;

[(12)**] (13)** "Nuisance", a violation of provisions of the housing code applying to the maintenance of the buildings or dwellings which the code official in the exercise of reasonable discretion believes constitutes a threat to the public health, safety or welfare;

[(13)**] (14)** "Occupant", any person occupying a dwelling unit as his or her place of residence, whether or not that person is occupying the dwelling unit as a tenant from month to month or under a written lease, undertaking or other agreement;

[(14)**] (15)** "Owner", the record owner or owners, and the beneficial owner or owners when other than the record owner, of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, personal representative, trustee, lessee, agent, or any other person in control of a dwelling unit;

[(15)**] (16)** "Person", any individual, corporation, association, partnership, or other entity.

441.510. 1. If any building or dwelling is found to be in violation of building or housing codes which the county **[**or**]**, municipality**, local housing corporation or neighborhood association** in the exercise of reasonable discretion believes constitutes a threat to the public health, safety or welfare, the county **[**or**]**, municipality, **local housing corporation or neighborhood association,** in addition to any other remedies available to it, may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement.

2. At least sixty days prior to the filing of an application for appointment of a receiver pursuant to sections 441.500 to 441.643, the county **[**or**]**, municipality**, local housing corporation or neighborhood association** shall give written notice by regular mail to all interested parties of its intent to file the application and information relative to:

(1) The identity of the property;

(2) The violations of the building or housing codes giving rise to the application for the receiver;

(3) The name, address and telephone number of the person or department where

additional information can be obtained concerning violations and their remedy; and

(4) The county [or]**,** municipality**, local housing corporation or neighborhood association** which may seek the appointment of a receiver pursuant to sections 441.500 to 441.643 unless action is taken within sixty days by an interested party.

3. A county [or]**,** municipality**, local housing corporation or neighborhood association** may not apply for the appointment of a receiver pursuant to sections 441.500 to 441.643 if an interested party has commenced and is then prosecuting in a timely fashion an action or other judicial or nonjudicial proceeding to foreclose a security interest on the property, or to obtain specific performance of a land sale contract, or to forfeit a purchaser's interest under a land sale contract.

4. Notice of the application for the appointment of a receiver shall be served on all interested parties.

5. If, following the application for appointment of a receiver, one or more of the interested parties elects to correct the conditions at the property giving rise to the [county's or municipality's] application for the appointment of a receiver, the party or parties shall be required to post security in an amount and character as the court deems appropriate to ensure timely performance of all work necessary to make corrections, as well as such other conditions as the court deems appropriate to effect the timely completion of the corrections by the interested party or parties.

6. In the event that no interested party elects to act pursuant to subsection 5 of this section or fails to timely perform work undertaken pursuant to subsection 5 of this section, the court shall make a determination that the property is in an unsafe or insanitary condition and appoint a receiver to complete the abatement.

7. A receiver appointed by the court pursuant to sections 441.500 to 441.643 shall not be required to give security or bond of any sort prior to appointment.

441.520. 1. The action to appoint a receiver authorized by section 441.510 shall be commenced by the filing of a verified petition by the county [or]**,** municipality**, local housing corporation or neighborhood association**.

2. There shall be named as defendants:

(1) The last owner of record of the dwelling as of the date of the filing of the petition; and

(2) The last holder of record of any mortgage, deed of trust, or other lien of record against the building as of the date of the filing of the petition.

3. Any owner of the dwelling who is not a party defendant may be permitted by the court to join as a party defendant.

4. (1) Any owner, whether or not a citizen or resident of this state, who in person or

through agent, owns, uses, or is possessed of any real estate situated in this state thereby subjects himself or itself to the jurisdiction of the courts of this state as to any cause of action arising pursuant to the provisions of sections 441.500 to 441.643. Personal service of process shall be made in accordance with the rules of civil procedure; provided that, if such service cannot with due diligence be made, service of process may be made by personally serving process upon the defendant outside this state, or by service in accordance with the rules of civil procedure as in all cases affecting a res within the jurisdiction of the court.

(2) If a landlord of residential property is not a resident of this state or is a corporation, **[**he must**]** **the landlord shall** designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to transact business in this state. The designation shall be in writing and include the address and the name of the registered agent and shall be filed in the office of the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon him **or her** is not effective unless the petitioner forthwith mails a copy of the process and pleading by certified mail to the defendant or respondent at the address stated on the assessor's records for the subject property. An affidavit of compliance with this section shall be filed with the clerk of the court.

5. Any action brought pursuant to the provisions of sections 441.500 to 441.643 shall be expedited by the court and may be given precedence over other suits.

441.550. In any application for receivership brought pursuant to sections 441.500 to 441.643, the county **[**or**]**, municipality**, local housing corporation or neighborhood association** shall file for record, with the recorder of deeds of the county in which any such real estate is situated, a written notice of the pendency of the suit pursuant to the requirements of section 527.260, RSMo. From the time of filing such notice the pendency of suit shall be constructive notice to persons thereafter acquiring an interest in the building.

441.590. 1. The court may, in any order entered pursuant to section 441.570:

(1) Authorize the receiver to draw upon the rents deposited in court to pay for the cost of necessary repairs upon presentment to the court of the original copy of any invoice for work performed or materials purchased;

(2) Appoint the code enforcement agency, the mortgagee or other lienor of record, a local housing corporation established to promote housing development and conservation in the area in which such property that is the subject of receivership is located **or, if no local housing corporation exists for such area, the local neighborhood association**, a licensed attorney or real estate broker, or any other qualified person, as a receiver provided, however, that all lienholders of record shall be given the right of first refusal to serve as receiver in the order in which their lien appears of record. In the event of the refusal of all lienholders of record to serve

as receiver or in the absence of any lienholders of record, the local housing corporation that is established to promote housing development and conservation in the area in which such property that is the subject of receivership is located, if any, shall be given the right of first refusal to serve as receiver for any residential property consisting of four units or less**; provided that, if no local housing corporation exists for such area, then the local neighborhood association shall be given the right of first refusal**; or

(3) Where the building is vacant, appoint the code enforcement agency, the mortgagee or other lienor of record, a local housing corporation established to promote development and conservation in the area in which such property that is the subject of receivership is located **or, if no local housing corporation exists for such area, then the local neighborhood association**, a licensed attorney or real estate broker, or any other qualified person, as a receiver to remove all of the housing code violations which constitute a nuisance as found by the court, except that all lienholders of record shall be given the right of first refusal to serve as receiver in the order in which their liens appear of record. In the event of the refusal of all lienholders of record to serve as receiver or in the absence of any lienholders of record, the local housing corporation that is established to promote development and conservation in the area in which such property that is the subject of receivership is located, if any, shall be given the right of first refusal to serve as receiver for any residential property consisting of four units or less**; provided that, if no local housing corporation exists for such area, then the local neighborhood association shall be given the right of first refusal**.

2. The court may allow a receiver reasonable and necessary expenses, payable from the rent moneys.

3. No receiver appointed shall serve without bond. The amount and form of such bond shall be approved by the court and the cost of such bond shall be paid from the moneys so deposited.

4. The receiver may, on order of the court, take possession of the property, collect all rents and profits accruing from the property, and pay all costs of management, including all insurance premiums and all general and special real estate taxes or assessments.

5. The receiver shall with all reasonable speed remove all of the housing code violations which constitute a nuisance as found by the court, and may make other improvements to effect a rehabilitation of the property in such fashion as is consistent with maintaining safe and habitable conditions over the remaining useful life of the property. The receiver shall have the power to let contracts therefor, in accordance with the provisions of local laws, ordinances, rules and regulations applicable to contracts.

6. The receiver may with the approval of the circuit court borrow money against, and encumber, the property as security therefor in such amounts as may be necessary to carry out his

or her responsibilities pursuant to sections 441.500 to 441.643. The circuit court may authorize the receiver to issue receiver's certificates as security against such borrowings, which certificates shall be authorized investments for banks and savings and loan associations, and shall constitute a first lien upon the property and its income and shall be superior to any claims of the receiver and to all prior or subsequent liens and encumbrances except taxes and assessments, and shall be enforceable as provided in subsection 8 of this section.

7. In addition to issuance of receiver certificates, the receiver may pledge the rentals from the property and borrow or encumber the property on the strength of the rental income.

8. Any receiver appointed pursuant to the provisions of sections 441.500 to 441.643 shall have a lien, for the expenses necessarily incurred in the execution of an order, upon the rents receivable from the premises on or in respect of which the work required by such order has been done or expenses incurred, and this lien shall have priority over all other liens and encumbrances of record upon the rents receivable from the premises, except taxes, assessments, receiver's certificates, and mortgages recorded prior to October 13, 1969.

9. For the purposes of this section, "local housing corporation" shall mean only those local housing corporations established prior to April 28, 1999.