

MEMORANDUM

TO: NEW JERSEY LAW REVISION COMMISSION
FROM: STAFF
DATED: JUNE 11, 2001
RE: ABANDONED BUILDING REHABILITATION ACT

The following is the first draft of a statute to address the problem of under-maintained and vacant properties. The proposal incorporates the Commission's decision to center the statute on the idea of compulsory public sale if the owner fails to remedy the conditions leading to the distressed condition of the property. The triggers are set low to prevent the development of problem properties and would apply automatically to many existing vacant or substandard buildings. The drastic remedy of public sale is a special inducement for the owner to put the property in order. The proposal cuts down on red tape as much as possible to give parties incentives to use the statute and force the transfer of property from an owner holding a substandard property to a buyer interested in developing the property.

The Distressed Property Transfer Act

1. Terms

A "distressed property" is real property that is vacant or neglected.

A property is vacant if neither the owner nor any tenant resides on the property or conducts business on the property for a period of three months.

A property is neglected if: (1) real estate taxes are in arrears for three or more quarters, (2) after notice and opportunity to correct, the property violates an applicable code, (3) the property is a private or public nuisance, (4) the property is the object of a pattern of code violations even if they are abated, or (5) the value of the property, because of the owner's failure to maintain it, is lower than the value of comparable surrounding property.

COMMENT

This section defines the type of property subject to the Act. The general term "real property" covers residential and commercial real property. The section then creates two subsets of real property: (1) vacant and (2) neglected. The Act applies to vacant property even if the owner pays taxes and corrects code violations. This trigger prevents an investor from engaging in land speculation. The criteria for neglected property are designed to stem the deterioration of real property. Consequently, the Act permits a public or private party to trigger the Act at an early stage in the dilapidation process.

2. List of Distressed Properties

A municipality shall identify properties alleged to be distressed. The identification of the property shall include the owner's name and street address. The municipality shall make a list of distressed properties available for public review at its offices, public libraries within its jurisdiction and, if the means exist, the Internet. The municipality shall continuously update and maintain the inventory of distressed properties.

A person may report a distressed property to the municipality. The municipality shall investigate the status of the property within thirty days of the report and shall add the property to the list the distressed properties.

COMMENT

This section requires each municipality to establish an inventory of distressed properties. Inspectors and private persons may conduct a "windshield" survey of real property to identify candidates for inclusion in the distressed property inventory. The standard work of municipal inspectors also may be incorporated into this effort. Enlisting private persons to inform the municipality of potential properties promotes vigilance in identifying code violations and problem properties.

3. Notice

When property is placed on the list of distressed properties, a municipality shall give the owner of distressed property a notice stating why the property is designated a distressed property, setting a reasonable, but fixed, timetable for eliminating the complained of conditions, and informing the owner that the municipality may seek a court order to sell the distressed property if the owner does not correct the complained of conditions.

COMMENT

This section requires the municipality to notify the owner that its property is listed in the distressed property inventory. The notice tells the owner the reasons for its listing, gives the owner an opportunity to correct the conditions complained of and alerts the owner that, if the conditions are unabated, the municipality has the authority to ask the court to order a public sale of the property. The notice requirement gives an owner a pre-litigation remedy of putting the property in order.

4. Remedy

a. If the owner does not eliminate the complained of conditions set forth in the notice within the specified time period, the municipality may file a complaint with the Superior Court seeking an order to sell the distressed property.

b. Any person may file a complaint with the Superior Court seeking an order finding that a property is distressed and compelling a public sale of property.

COMMENT

Subsection (a) gives a municipality the authority to maintain an action compelling the sale of the distressed property. This section does not require the municipality to force a sale but gives it that option. The judicial process satisfies the constitutional requirements of notice and hearing.

Subsection (b) authorizes any person to file a complaint against an owner of distressed property to compel a public sale of the property. No prior finding by the municipality that the property is a distressed property is required to initiate the complaint. The private person bears the burden of proving that the property is distressed as the Act defines that term. The judicial standards are identical to those established for the public remedy.

5. Court Proceeding

The Superior Court shall enter an order authorizing the municipality to sell the distressed property if the court finds that: (1) the owner and lien holders of record have been served with the complaint, (2) the property was vacant or neglected at the time the complaint was filed unless the owner, at the time of filing its answer, has corrected the complained of conditions and has the cash or financing sufficient to rehabilitate the property. After entry of the order, the municipality shall put the property up for sale.

COMMENT

This section sets the findings the court must make prior to entering an order compelling the sale of the property. First, the court must find that the plaintiff has served the owner and all parties of record with the complaint as required by New Brunswick Savings Bank v. Markouski, 123 N.J. 402 (1991). Second, the court must find, based on proofs established by the municipality, that, at the time the complaint was filed, the property was a vacant or neglected property. If the court makes these findings, then it must enter an order compelling the sale of the property unless the owner (1) has corrected the complained of conditions and (2) demonstrates that it has the cash or loan commitments to rehabilitate the building.

6. Public Sale

The property may be sold in any recognized market for the public sale of real estate and the sale shall approximate an ordinary transaction in the real estate market.

Any person, other than the original owner of the property, is qualified to submit an offer to purchase the property. The offer shall contain the purchase price, a rehabilitation plan, an estimate of the rehabilitation cost and how the property is to managed subsequent to repair. The municipality shall not require potential purchasers to provide any down payment of the purchase price with the offer.

The municipality shall sell the property to the person submitting the highest purchase price. When the parties enter into the contract of sale, the purchaser shall pay a reasonable down payment of the purchase price. In the event the purchase is financed, the purchaser, within a reasonable time period after the contract of sale is executed, shall provide a loan commitment adequate to finance the balance of the purchase price and the cost of rehabilitation.

The proceeds of the sale shall be distributed to the lien holders in order of their priority; any surplus shall be distributed to the owner.

COMMENT

This section governs the mechanism of the public sale. The municipality does not have to sell through a sheriff's auction. Rather, the municipality may use any recognized market for the sale of real estate such as conducting an open house and requesting written offers to be submitted by a specific date. The municipality may enter into a contract of sale with any multiple listing real estate agency. The objective is to approximate an ordinary sale of real estate in the public market.

A potential purchaser need not produce payment of any percentage of his highest offer to qualify to make an offer. The offer is made, the municipality selects the highest offer, the contract of sale is executed, and the purchaser pays the reasonable down payment and, if financed, obtains the loan commitment within the time specified in the contract. The proceeds of the sale are distributed first to lien holders in the order of their priority with any leftover paid to the owner.

7. Tax Certificates

A municipality has the option to forego the sale of tax certificates based on unpaid real estate taxes for any quarter.

COMMENT

This section eliminates the problems produced by selling tax certificates on distressed properties to professional investors who do not have any interest in or incentive to rehabilitate the property.