

**Draft
Distressed Property Act**

1. Terms and definitions

a. A “distressed property” is developed real property that is neglected in the case of residential property or vacant or neglected in the case of commercial property.

b. For the purposes of this Act:

1. “commercial property” is a structure containing non-residential space or facilities comprising at least 75% of the rental value;
2. “developed real property” is a parcel of real property containing a building or structure;
3. “notification” means notification, in writing, sent to the last known address of the person to be notified;
4. “residential property” is a structure containing residential space or facilities comprising at least 25% of the rental value;
5. “owner” is the record owner of the property;
6. “tenant” is an individual in use or possession of a commercial or residential property, or part of that property, pursuant to an agreement with the owner of the property

c. A commercial property is vacant if neither the owner nor any tenant occupies or conducts business on that property, or in any separate parts of the property constituting at least 50% or more of the square footage of the property’s floor area, for a period of twelve consecutive months.

d. A property is neglected if:

1. real estate taxes are in arrears on a commercial property for four or more consecutive quarters, or for a residential property for six or more consecutive quarters;
2. after notice and an opportunity to correct, the property continues to violate an applicable statute or code provision;
3. the property has been adjudicated and remains a private or public nuisance;
4. the property is the object of a pattern of consistent, ongoing, code violations over a period of more than one year even if individual code violations are abated; or
5. the property is a partially constructed building and the construction has stopped for a period of one year.

Source: New

COMMENT

This section defines the terms used in the Act and by result sets the parameters of the statute. The term “distressed property” covers both developed commercial and residential property. The term developed is used broadly to indicate only that the real property must contain a structure. But the structure does not have to be completed as specified by subsection (d)(5). The Act covers partially completed buildings to provide a remedy to accelerate the development of incomplete property. Further, “distressed property” is vacant or neglected.

Commercial and residential property are defined by primary use in subsections (b)(1) and (b)(4) respectively; percentage of rental value is used to establish a specific standard to deal with mixed use property. These subsections, taken together with subsection (d)(5), result in the conclusion that the property need not be actually rented but that the property is designed to be rented as defined in subsections (b)(1) and (b)(4).

Subsection (c) provides that commercial property is distressed property if it is vacant. The term “vacant” is defined first in its generally accepted meaning to refer to property that is not occupied or put to use and second to refer to property that is marginally used. Subsection (c) states that commercial property that is used only to the extent of 50% of the square footage of the available floor area is vacant even though partially used or occupied. Examples of marginally used property include commercial property where the ground floor is tenanted but the remainder of the building is empty. That type of commercial property triggers the Act. Residential property that is vacant but not neglected is not a distressed property. The requirement of “neglect” for residential property avoids deeming a residential property a “distressed property” solely due to an absent owner. Hence, if an owner pays taxes and otherwise complies with the law governing the property, the fact that the property is empty does not result in a designation of “distressed property.”

Subsection (d) specifies the bases for finding that a property is neglected.

2. Identification of distressed properties

a. The code enforcement official of a municipality shall identify distressed properties and maintain an inventory of such properties in the municipality. The identification of each property on the inventory shall include the owner’s name, the street address of the property and the basis for finding that it is a distressed property. The code enforcement official shall continuously update the inventory of distressed properties by adding to the municipality’s inventory of distressed properties.

b. A person may report a property to the code enforcement official claiming that it is a distressed property. The code enforcement official shall determine within thirty days of the report whether the property is a distressed property under this Act and, if so, shall add it to the municipality’s inventory of distressed properties.

Source: New

COMMENT

Subsection (a) obligates the code enforcement official of each municipality to identify real property that is “distressed property” within the meaning of this Act. The code enforcement official’s finding must include the owner’s name, street address of the property and the basis for the determination. The finding then is followed by notice to the owner under section 3 and is the starting point for creating the municipality’s inventory of distressed properties. Private persons may report a real property as a “distressed property.” That report requires the code enforcement official to investigate the report and make a determination. Enlisting private persons to inform the municipality of potential properties promotes vigilance in identifying code violations and problem properties.

3. Notice before adding property to inventory

a. Before adding a property to the distressed property inventory, the code enforcement official shall notify the owner of distressed property that the property has been determined to be distressed, and will be added to the municipality's inventory of distressed properties. The notice shall:

1. state the basis for finding that it is a distressed property;
2. indicate the date the property was determined to be a distressed property;
3. set a reasonable deadline for eliminating the complained-of conditions;
and
4. inform the owner that, if the complained-of conditions are not corrected, the property will be listed on the municipality's distressed property inventory, making it subject to sale or receivership.

b. The notice shall also inform the owner that he has a right to object to the property being designated a distressed property within thirty days of the date of the notice.

c. If the owner of the property does not object to the claim that his property is a distressed property and fails to correct the complained-of conditions, the code enforcement official shall place the property on the municipality's inventory of distressed properties.

d. If the owner objects to the claim that his property is a distressed property, or the time within which to correct the conditions, the code enforcement official shall provide a hearing.

Source: New

COMMENT

This section requires the code enforcement official to notify the owner of real property that the code enforcement official has determined the property to be a "distressed property." The notice must be written and sent to the owner's last known street address as specified in subsection (b)(3) of Section 1. The term written includes non-paper notification and notice is satisfied if the notice is sent. Notice does not require actual receipt by the owner. The code enforcement official is expected to use the name of the owner and his address as set forth in the property tax records.

Subsection (a) specifies the content of the notice. The notice tells the owner the basis for the determining the property to be a "distressed property," gives the owner an opportunity to correct the conditions complained of and alerts the owner that, if the conditions are unabated, the municipality or any interested person has the authority to ask the court to order a sale of the property. In the case of residential investment property, the municipality or any interested person has the authority to ask the court to appoint a receiver to manage and operate the building. The notice requirement gives an owner a pre-litigation remedy to contest the code enforcement official's initial finding.

Should the owner fail to object to the finding or fail to correct applicable statutory or code violations, subsection (c) requires that the code enforcement official place the property on the municipality's inventory of distressed properties making that property subject to the remedies of this Act.

Subsection (d) specifies that, if the owner contests the finding, the code enforcement official must provide a hearing to the owner under Section 4.

4. Municipal hearing

a. An owner objects to a notice received under Section 3 by notifying the code enforcement official within 14 days of the date the notice was sent.

b. The code enforcement official shall permit the owner of property determined to be distressed property to a hearing at which the owner may submit oral and written evidence and may be represented by an attorney.

c. Within ten calendar days of the hearing date, the code enforcement official shall render a decision on the matter and provide a written copy of that decision to the owner. If the code enforcement official finds that the property is distressed, the decision shall state the reason for upholding the original finding and shall state the reason for rejecting the arguments of the owner.

Source: New

COMMENT

This section outlines the procedure to be followed by the owner and municipality to vindicate the owner's right to be heard and to present evidence in support of his objection. The owner has a right to appeal the decision of the municipality to the Superior Court, Law Division under Rule 4:71 (Appeals from Local Agencies).

5. List of distressed properties; remedy

a. The current inventory of distressed properties shall be available for public review at the office of the municipal clerk or other location as is specified by the municipality, including placement on any Web site published by the municipality.

b. A municipality or any person may file a summary action with the Superior Court seeking an order to sell a distressed property or appoint a receiver to manage and operate distressed and occupied residential investment real property. The initial filing in the summary action must include a complaint, an appraisal of the property and a copy of the municipal determination that the property is distressed. In actions to appoint a receiver, the initial filing may name a receiver subject to the approval of the Court.

c. The owner may file a summary action with the Superior Court seeking an order requiring the removal of a property from the municipality's distressed property inventory. The owner must demonstrate that the property is no longer vacant or neglected, and that the property has not been the subject of prior proceedings under this Act.

Source: New

COMMENT

This section establishes the inventory of distressed properties. Placing a property on the inventory has legal consequences. Any person or the municipality may bring an action under this Act to force the sale of the property or to have the court appoint a receiver to operate residential investment property. Due process requirements to the owner are satisfied as follows. First, under Section 3, the code enforcement official has given prior notice to the owner that the property is a "distressed property." That notice included

an opportunity to correct and a right to object entitling the owner to a municipal hearing. Second, if the property is placed on the inventory, subsection (c) gives the owner a second opportunity to have that property removed by bringing a summary action before the appropriate court.

6. Court Proceeding

a. Except as in subsection (b), the Superior Court shall, after notice and a hearing, enter an order authorizing the sale of the distressed property if the court finds that: (1) the owner and lien holders of record have been served with the complaint; and (2) the property was vacant or neglected at the time the complaint was filed and remains vacant or neglected at the time the Court makes its determination. If sale is ordered, the Superior Court retains jurisdiction to approve the contract of sale.

b. The Superior Court may enter an order appointing a receiver to manage and operate distressed property if the court finds that: (1) the real property is occupied residential investment property, (2) the party submits a plan to remedy defects, (3) the party demonstrates that the rent roll of the building is sufficient to carry its cost, including mortgages, cost of repair and payment of taxes and (4) the owner is unwilling or unable to repair the property.

Source: New

COMMENT

This section sets the findings the court must make prior to entering an order compelling the sale of the property or appointing a receiver of the property if it is occupied residential investment 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 plaintiff, that, at the time the complaint was filed, the property was a vacant or neglected property and remains a distressed property. If the court makes these findings, then it may enter an order compelling the sale of the property or appointing a receiver. An action for receivership applies only to residential investment property. The party bringing that action has the burden to prove that the rent roll of the building is sufficient to pay expenses and to rehabilitate the building. The party may name a receiver to manage the building as provided under subsection (b) of Section 5.

7. Sale

a. The municipality shall sell the property in the recognized market for the sale of real estate. The sale shall approximate a sale between private parties in the real estate market.

b. 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, and an estimate of the rehabilitation cost.

c. When the parties enter into the contract of sale, the purchaser shall pay a down payment not exceeding 10% of the purchase price specified in the court order. 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 contract of sale of the property shall be subject to approval by the court that has retained jurisdiction over the matter. The court shall not withhold its approval of the contract of sale when the contract is made in good faith and is commercially reasonable.

d. 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. Except where federal or other law provides to the contrary, the buyer shall receive the property free of all liens on the property.

e. If the property remains on the recognized market for a period of eight months without going to contract, the municipality shall request that the court order a public sale of the property by the sheriff.

Source: New

COMMENT

This section governs the mechanism of the court-ordered sale. The term “recognized market” means the market created by real estate brokers and agents through which most property now is sold. The objective is to approximate an ordinary sale of real estate in the recognized market. Subsection (c) requires court approval of the contract of sale if the contract of sale is made in good faith and its terms are commercially reasonable. The term “commercially reasonable” is imported from Revised Article 9-610 of the Uniform Commercial Code.

Importantly, subsection (c) specifies that the order of the court must contain only terms that are commercially reasonable. This provision is meant to prohibit the setting of terms such as the minimum down payment requirement of 20% of the bid required to participate in a sheriff’s auction and the short time period in which to pay the full purchase price of the property acquired at auction. E.g., N.J.S.A. 2A:17 et seq. These terms generally limit the market of potential buyers to professional investors. The court therefore is expected to impose financing requirements that open the bidding to the largest number of potential buyers.

Under subsection (d), the proceeds are distributed according to the order of priority established by other law. The owner gets any surplus. The sale washes the title of all liens except where the law provides otherwise such as federal tax liens and the buyer receives clear title to the property. Subsection (e) contains a default rule to cover cases where the sale on the recognized market has not resulted in the submission of any offers after the property has been listed on that market for a period of eight months. The municipality then is required to request that the court order a public sale by the sheriff.

8. Receivership

a. A receiver shall have the authority to preserve, repair and operate the real property until the real property is returned to the owner or sold under Section 7. The authority includes the ability to obtain loans and grants to carry out the objectives of receivership and to place liens upon the property.

b. After appointment, a receiver shall submit periodic progress reports to the court according to court-set reporting requirements.

Source: New

COMMENT

This section identifies the powers of the receiver. The receiver is given broad and general power to carry out his task of correcting defects or rehabilitating the residential investment property.

9. Tax certificates

A municipality may forego the sale of tax certificates on distressed properties, selectively by individual properties, or for all distressed properties on the municipality's inventory of distressed properties.

Source: New

COMMENT

This section gives municipalities the option of not selling tax certificates on distressed properties. These sales may be made to professional investors having no interest in or incentive to rehabilitate the property. The result is property encumbered with high interest rate tax certificates. Tax certificate sales exacerbate the problem of distressed properties by increasing their financial risk and by discouraging any person from buying and fixing the problem property.

10. How owner retakes property after appointment of receiver

Prior to the sale of the property, an owner may petition the court to obtain the return of his property subject to an order of the court appointing a receiver if the owner:

(1) demonstrates that the owner has the financing and willingness required to rehabilitate and maintain the building;

(2) submits a plan to inspect and repair future defects, which plan includes regular inspections;

(3) pays off any costs incurred by the receiver to correct defects or rehabilitate the real property that were not taken from the rent roll; and

(4) pays, in the discretion of the Court, other costs and fees associated with the property that were incurred by the receiver or any person who filed a summary action seeking the sale of the property or the appointment of the receiver.

Source: New

COMMENT

This section specifies the conditions of return required of an owner of distressed property that is residential investment property subject to receivership.