

1999 DRAFTING REQUEST

Bill

Received: **01/15/99**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **John La Fave (608) 266-0486**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies: **JTK**

Topic:

Receivership for public nuisances

Instructions:

See 97-0467

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			hhagen 01/26/99	_____	lrb_docadmin 01/26/99	lrb_docadmin 01/26/99	

FE Sent For:

3/5/99

<END>

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1?	nelsorp1	1/26 jlg	1/25	1/25			

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* WED
1997 BILL

↑
JLg

1 AN ACT ^{repeal} to renumber and amend 815.39; to amend 254.595 (1), 254.595 (2),
2 254.595 (3)-(a) and 254.595 (4); and to create 815.39 (2) and 823.23 of the
3 statutes; relating to: receiverships for public nuisance.

Analysis by the Legislative Reference Bureau

Under current law, if real property is in violation of a municipal building code provision that concerns health or safety, the municipality or an interested party may commence an action to have the property declared a health hazard. Under the law, a receiver may be appointed to manage and control the property if a court finds that the property is a health hazard and that the owner has not abated that hazard. This bill allows the court to declare such property to be a nuisance and allows the court to permit ^{first} ~~in~~ class cities to create a receivership to take control of residential property that is declared a nuisance ^{and} to abate that nuisance.

The bill also allows ~~in~~ class cities or interested parties to ask a court to appoint a receiver to manage and control residential property that is declared a nuisance for other reasons, including because it is dilapidated, used as a place of gambling, for the delivery or manufacture of a drug or as a meeting place for a criminal gang. The bill requires that the owner of the residential property be given notice of the intent to petition a court for the appointment of receiver at least 60 days before filing the petition, to give the owner time to abate the nuisance.

If a court determines that abatement is required and that the owner will not rehabilitate the property, the court shall appoint a receiver. A receiver created by the court under this bill has authority to take control of the property, terminate or modify

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tenancies, charge and collect rents, contract with others to conserve and rehabilitate the property and dispose of personal property found at the residential property. Under the bill, costs of the abatement, including the fee charged by the receiver, are reviewed by the court and the costs not paid may be entered as a judgment against the property. Under the bill, the court shall terminate the receivership when the abatement or rehabilitation is completed or if the receiver shows the court that the abatement is not feasible and that the improvements on the real property have been demolished by the city.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 254.595 (1) ✓ of the statutes is amended to read:

2 ✓ 254.595 (1) If real property is in violation of those provisions of a municipal
3 building code that concern health or safety or of an order or a regulation of the local
4 board of health, the city, village or town in which the property is located may
5 commence an action to declare the property a nuisance or ✓ human health hazard. A
6 tenant or class of tenants of property that is in violation of the municipal building
7 code or of an order or regulation of the local board of health or any other person or
8 class of persons whose health, safety or property interests are or would be adversely
9 affected by property that is in violation of the municipal building code or of an order
10 or regulation of the local board of health may file a petition with the clerk of the city,
11 village, or town requesting the governing body to commence an action to declare the
12 property a nuisance or human health hazard. If the governing body refuses or fails
13 to commence an action within 20 days after the filing of the petition, a tenant, class
14 of tenants, other person or other class of persons may commence the action directly
15 upon the filing of security for court costs. The court before which the action of the
16 case is commenced shall exercise jurisdiction in rem or quasi in rem over the property
17 and the owner of record of the property, if known, and all other persons of record

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1 holding or claiming any interest in the property shall be made parties defendant and
2 service of process may be had upon them as provided by law. Any change of
3 ownership after the commencement of the action shall not affect the jurisdiction of
4 the court over the property. At the time that the action is commenced, the
5 municipality or other parties plaintiff shall file a lis pendens. If the court finds that
6 a nuisance or violation exists, it shall adjudge the property a nuisance or human
7 health hazard and the entry of judgment shall be a lien upon the premises.

8 **SECTION 2.** 254.595 (2) of the statutes is amended to read:

9 254.595 (2) A property owner or any person of record holding or claiming any
10 interest in the property shall have 60 days after entry of judgment to abate the
11 nuisance or eliminate the violation. If, within 60 days after entry of judgment under
12 sub. (1), an owner of the property presents evidence satisfactory to the court, upon
13 hearing, that the nuisance or violation has been eliminated, the court shall set aside
14 the judgment. It may not be a defense to this action that the owner of record of the
15 property is a different person, partnership or corporate entity than the owner of
16 record of the property on the date that the action was commenced or thereafter if a
17 lis pendens has been filed prior to the change of ownership. No hearing under this
18 subsection may be held until notice has been given to the municipality and all the
19 plaintiffs advising them of their right to appear. If the judgment is not so set aside
20 within 60 days after entry of judgment, the court shall appoint a disinterested person
21 to act as receiver of the property for the purpose of abating the nuisance or human
22 health hazard.

23 **SECTION 3.** 254.595 (3) (a) of the statutes is amended to read:

24 254.595 (3) (a) Any receiver appointed under sub. (2) shall collect all rents and
25 profits accruing from the property, pay all costs of management, including all general

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1 and special real estate taxes or assessments and interest payments on first
 2 mortgages on the property, and make any repairs necessary to abate the nuisance or
 3 meet the standards required by the building code or the order or regulation of the
 4 local board of health. The receiver may, with the approval of the circuit court, borrow
 5 money against and encumber the property as security for the money, in the amounts
 6 necessary to abate the nuisance or ✓ meet the standards.

7 **SECTION 4.** 254.595 (4) of the statutes is amended to read:

8 ✓ 254.595 (4) The receiver appointed under this section shall have a lien, for the
 9 expenses necessarily incurred to abate the nuisance or ✓ in the execution of the order,
 10 upon the premises upon or in respect of which the work required by the order has
 11 been done or expenses incurred. The municipality that sought the order declaring
 12 the property to be a nuisance or ✓ human health hazard may also recover its expenses
 13 and the expenses of the receiver under subs. (3) (a) and (5), to the extent that the
 14 expenses are not reimbursed under s. 632.103 (2) from funds withheld from an
 15 insurance settlement, by maintaining an action against the property owner under
 16 s. 74.53.

17 **SECTION 5.** 815.39 of the statutes is renumbered 815.39 (1) and amended to
 18 read:

19 ✓ 815.39 (1) ~~Within~~ Except as provided in sub. (2), ✓ within one year after an
 20 execution sale the real estate sold, or any lot, tract or portion that was separately
 21 sold, may be redeemed by the payment to the purchaser, to the purchaser's personal
 22 representatives or assigns, or to the then sheriff of the county where such real estate
 23 is situated, for the use of such purchaser, of the sum paid on the sale thereof, together
 24 with the interest from the time of the sale.

25 **SECTION 6.** 815.39 (2) of the statutes is created to read:

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1 ✓ 815.39 (2) If an execution sale is for a lien filed under s. 823.23 (4)✓, the period
2 of redemption under sub. (1)✓ is 2 months.

3 **SECTION 7.** 823.23 of the statutes is created to read:

4 ✓ **823.23 Receivership for public nuisances; ✓ 1st class cities. (1)**

5 **DEFINITIONS.** In this section:

6 (a) “Abatement” means the removal or suspension of any condition at a
7 residential property that creates a nuisance or violates the provisions of any duly
8 enacted building code. “Abatement” may include the demolition of some or all of the
9 improvements on the residential property.

10 (b) “City” means a city of the 1st class.

11 (c) “Interested party” means any person that possesses any legal or equitable
12 interest of record in the residential property, including the holder of any lien or
13 encumbrance of record on the residential property.

14 (d) “Purchase money security interest” means any of the following:

15 1. The interest of a vendor under a land sale contract relating to the residential
16 property if the contract was recorded prior to the issuance of the notice under sub.
17 (2) (c)✓.

18 2. The interest of a mortgagee under a purchase money mortgage relating to
19 the residential property if the mortgage was recorded prior to the issuance of the
20 notice under sub. (2) (c).

21 3. The interest of a beneficiary under a purchase money trust deed relating to
22 the residential property if the trust deed was recorded prior to the issuance of the
23 notice under sub. (2) (c).

24 (e) “Rehabilitate” means to make any improvements or corrections necessary
25 to remove a threat to public health, safety or welfare.

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1 (f) “Residential property” means land and all the improvements erected on the
2 land that are used or intended to be used for residential purposes, including
3 single-family, duplex and multifamily structures, and mixed-use structures that
4 have one or more residential units.

5 (2) RECEIVERSHIP FOR BUILDINGS THAT CONSTITUTE A THREAT TO PUBLIC HEALTH,
6 SAFETY OR WELFARE; PROCEDURE. (a) If a residential property is alleged to be a nuisance
7 under this chapter or s. 254.595[✓] or if the condition of a residential property is in
8 violation of a state or local building code and a city, in the exercise of reasonable
9 discretion, believes that the residential property is a threat to the public health,
10 safety or welfare, the city may apply to the circuit court for the appointment of a
11 receiver to abate or rehabilitate the residential property.

12 (b) A person who brought an action under s. 254.595 (1)[✓] that resulted in a
13 residential property being declared a nuisance may apply to the circuit court for the
14 appointment of a receiver to abate or rehabilitate the residential property upon the
15 filing of security for court costs.

16 (c) At least 60[✓] days before filing an application for the appointment of a receiver
17 under par. (a) or (b),[✓] the city or person shall give written notice by[✓] 1st class mail to
18 all owners, owner’s agents and interested parties at their last-known address of the
19 intent to file the application and by publication as a class 1 notice under ch. 985. The
20 notice shall include all of the following information:

21 1. The address and other information that identifies the residential property.

22 2. The conditions of the residential property that constitute a nuisance or
23 health, safety or welfare violations of the state or local building code and that
24 resulted in the decision to apply for a receiver.

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1 3. The name, address and telephone number of the person or department where
2 additional information can be obtained concerning the nuisance or the building code
3 violations and the action necessary to abate the nuisance or remedy those violations.

4 4. That the appointment of a receiver may be requested unless action is taken
5 to abate the nuisance or correct the building code violations within 60 days after
6 receipt of this notice.

7 (d) If a notice sent under par. (c) is recorded with the register of deeds in the
8 county in which the residential property is located, the notice is considered to have
9 been served, as of the date the notice is recorded, on any person claiming an interest
10 in the residential property as a result of a conveyance from the owner of record unless
11 the conveyance was recorded before the recording of the notice.

12 (e) A person or city may not apply for the appointment of a receiver under this
13 subsection if an interested party has commenced and is prosecuting in a timely
14 fashion an action or other judicial or administrative proceeding to foreclose a security
15 interest on the residential property, or to obtain specific performance of or forfeit the
16 purchaser's interest in a land sale contract.

17 (f) Notice of the application for the appointment of a receiver pursuant to this
18 section shall be served on all owners, owners' agents and interested parties. At the
19 time that the application is filed with the court, the applicant shall file a *lis pendens*.

20 (g) If, following the application for appointment of a receiver, one or more of the
21 interested parties elects to abate the nuisance or rehabilitate the residential
22 property, the party or parties shall be required to post security in an amount and
23 character as the court considers appropriate to ensure timely performance of all work
24 necessary to abate the nuisance or rehabilitate the residential property, as well as

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1 such other conditions as the court considers appropriate for timely completion of the
2 abatement or rehabilitation.

3 (h) In the event that no interested party elects to act under par. (g)✓ or fails to
4 timely perform work undertaken under par. (g), the court shall make a
5 determination as to whether the residential property is a threat to public health,
6 safety or welfare. The court shall determine if abatement or rehabilitation is
7 required, the extent of the abatement or rehabilitation necessary and the scope of
8 work necessary to eliminate the conditions and shall appoint a receiver to complete
9 the abatement or rehabilitation.

10 (i) The court shall appoint a receiver who is one of the following:

11 1. A housing authority, redevelopment authority, redevelopment corporation
12 or community development authority authorized under ss. ✓ 66.40 to 66.4325.

13 2. A nonprofit corporation, the primary purpose of which is the improvement
14 of housing conditions within the city in which the property is located.

15 (j) If the court is unable to appoint a receiver ~~from~~ ✓
16 par. (i), the court may appoint as a receiver any other person that the court
17 determines to be competent.

18 (k) A receiver appointed by the court pursuant to this section shall not be
19 required to give security or bond as a condition of the appointment.

20 (3) AUTHORITY OF RECEIVER; FINANCING AGREEMENTS; FEE. (a) A receiver
21 appointed under sub. (2) (i) or (j) ✓ shall have the authority to do all of the following
22 unless specifically limited by the court:

23 1. Take possession and control of the residential property including the right
24 to enter, modify and terminate tenancies, manage the property and charge and

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1 collect rents derived from the residential property, applying the sum of those rents
2 to the costs incurred due to the abatement or rehabilitation and receivership.

3 2. Negotiate contracts and pay all expenses associated with operation and
4 conservation of the residential property including all utility, fuel, custodial, repair
5 or insurance expenses.

6 3. Pay all accrued property taxes, penalties, assessments and other charges
7 imposed on the residential property by a unit of government including any charges
8 accruing during the pendency of the receivership.

9 4. Dispose of any or all abandoned personal property found at the residential
10 property.

11 5. Enter into contracts and pay for the performance of any work necessary to
12 complete the abatement or rehabilitation.

13 (b) In addition to the powers under par. (a),[✓] the receiver may, under such terms
14 and conditions as a court shall allow, enter into financing agreements with public or
15 private lenders and encumber the property so as to have moneys available to abate
16 the nuisance or rehabilitate the property. The receiver may give a holder of a
17 purchase money security interest who received notice under sub. (2)[✓] the first
18 opportunity to lend the money under this paragraph.[✓]

19 (c) A receiver may charge an administration fee at an hourly rate approved by
20 the court or at a rate of 20% of the total cost of the abatement or rehabilitation,
21 whichever the court considers more appropriate.

22 (4) REVIEW OF EXPENDITURES BY COURT; LIEN FOR UNPAID EXPENSES. (a) All moneys
23 the receiver expends and all of the costs and obligations that he or she incurs in
24 performing the abatement or rehabilitation shall be reviewed by the court for
25 reasonableness and necessity. To the extent that the court finds the moneys, costs

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1 or obligations to be reasonable and necessary, it shall issue an order reciting this fact
2 as well as the amount found to be reasonable and necessary.

3 (b) If the costs and obligations incurred due to the abatement or rehabilitation
4 have not been paid, the court shall issue a judgment for the unpaid amount and file
5 that judgment with the office of the clerk of court within 60 days after the receiver
6 files a statement of those unpaid costs and obligations with the court and that
7 judgment shall constitute a lien on the residential property from the date of the filing
8 of the judgment.

9 (5) EFFECT ON PURCHASE MONEY SECURITY INTEREST OF LIEN FOR UNPAID ABATEMENT
10 EXPENSES. (a) The issuance of the notice under sub. (2) (c) shall constitute a default
11 for waste under the purchase money security interest, and if the violations of the
12 building code listed in the notice are not corrected within 30 days after the mailing
13 of the notice, the vendor, mortgagee or beneficiary under the purchase money
14 security interest may commence proceeding to exercise the remedies set forth in the
15 purchase money security interest.

16 (b) A lien created under sub. (4) (b) shall be prior and superior to any purchase
17 money security interest in the residential property if all of the following apply to that
18 purchase money security interest:

19 1. The city gave the holder of the purchase money security interest and any
20 vendee, mortgagor or grantor under such purchase money security interest the
21 notice under sub. (2) (c).

22 2. The holder of the purchase money security interest has not, prior to the
23 appointment of a receiver under sub. (2) (h), initiated proceedings to foreclose the
24 purchase money security interest, to abate the conditions resulting in issuance of the
25 notice under sub. (2) (c) or to gain possession of the property.

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1 (c) Except for property tax liens, assessment liens and purchase money security
2 interests not included in par. (b), a lien created under sub. (4) (b) shall be prior and
3 superior to all other liens, mortgages and encumbrances against the residential
4 property upon which it is imposed without regard to the date the other liens,
5 mortgages or encumbrances were attached to the residential property.

6 (6) TERMINATION OF RECEIVERSHIP. (a) The receivership appointed under sub.
7 (2) (i) or (j) shall terminate only by an order of the court.

8 (b) The court shall terminate the receivership if the residential property's
9 owner or owner's agent or an interested party or the receiver show the court all of the
10 following:

- 11 1. That the abatement or rehabilitation has been completed.
- 12 2. That the costs and obligations incurred due to the abatement or
13 rehabilitation have been paid by an owner, owner's agent or interested party or that
14 a lien has been filed pursuant to sub. (4).
- 15 3. That the owner, owner's agent or interested party will manage the
16 residential property in conformance with applicable housing codes.

17 (c) The court shall terminate the receivership if the receiver shows the court
18 one of the following:

- 19 1. That the abatement or rehabilitation is not feasible.
- 20 2. That the improvements on the property have been demolished by the city.

21 (END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/26/99

To: Representative La Fave

Relating to LRB drafting number: LRB-1804

Topic

Receivership for public nuisances

Subject(s)

Courts - miscellaneous

1. **JACKET** the draft for introduction _____
in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511