

2001 DRAFTING REQUEST

Bill

Received: 10/05/2000

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: John La Fave (608) 266-0486

By/Representing: Judy Kelly

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Receiverships for public nuisances

Instructions:

See Attached 99 SB162

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>
/?	nelsorp1 10/11/2000	csicilia 11/30/2000		_____			
/1			martykr 12/01/2000	_____	lrb_docadmin 12/01/2000	lrb_docadmin 02/16/2001	

FE Sent For:

<END>

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LEGISLATIVE REFERENCE BUREAU

Legal Section, 5th Floor, 100 N. Hamilton St.
(608) 266-3561

BILL REQUEST FORM

RPN
2

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: <i>10-4-00</i>	Legislator or agency requesting this draft: <i>JOHN LA FAVE</i>
Name/phone number of person submitting request: <i>JUDY KELLY 6-0486</i>	
Persons to contact for questions about this draft (names and phone numbers please): <i>JOHN LA FAVE 6-0486</i>	
Describe the problem, including any helpful examples. How do you want to solve the problem? <i>Redraft ¹⁹⁹⁹⁻²⁰⁰⁰ SB 162 as amended by LRB 04/16/3</i> <i>Copy attached</i>	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO

If yes, anyone who asks? YES NO

Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?

YES NO If yes, please sign your name here:

History of Senate Bill 162

SENATE BILL 162

An Act to renumber and amend 815.39; to amend 254.595 (1), 254.595 (2), 254.595 (3) (a) and 254.595 (4); and to create 815.39 (2) and 823.23 of the statutes; relating to: receiverships for public nuisance. (FE)

1999

05-18. S. Introduced by Senators Plache, Cowles and Burke; cosponsored by Representatives Plale, Ainsworth, J. Lehman, Musser, Turner, Miller, Huber and Colon.

05-18. S. Read first time and referred to committee on Economic Development, Housing and Government Operations 148

07-28. S. Fiscal estimate received.

08-26. S. Fiscal estimate received.

09-02. S. Public hearing held.

2000

04-06. S. Failed to pass pursuant to Senate Joint Resolution 1 583

Text of Senate Bill 162

Search for another history



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SENATE BILL 162

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

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

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

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

SENATE BILL 162

1 254.595 (3) (a) Any receiver appointed under sub. (2) shall collect all rents and
2 profits accruing from the property, pay all costs of management, including all general
3 and special real estate taxes or assessments and interest payments on first
4 mortgages on the property, and make any repairs necessary to abate the nuisance or
5 meet the standards required by the building code or the order or regulation of the
6 local board of health. The receiver may, with the approval of the circuit court, borrow
7 money against and encumber the property as security for the money, in the amounts
8 necessary to abate the nuisance or meet the standards.

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

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

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

21 815.39 (1) ~~Within~~ Except as provided in sub. (2), within one year after an
22 execution sale the real estate sold, or any lot, tract or portion that was separately
23 sold, may be redeemed by the payment to the purchaser, to the purchaser's personal
24 representatives or assigns, or to the then sheriff of the county where such real estate

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1 is situated, for the use of such purchaser, of the sum paid on the sale thereof, together
2 with the interest from the time of the sale.

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

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

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

7 **823.23 Receivership for public nuisances. (1) DEFINITIONS.** In this section:

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

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

15 (c) "Purchase money security interest" means any of the following:

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

18 (2) (c).

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

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

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1 (d) "Rehabilitate" means to make any improvements or corrections necessary
2 to remove a threat to public health, safety or welfare.

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

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

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

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

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

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

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

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

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

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

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

23 (g) If, following the application for appointment of a receiver, one or more of the
24 interested parties elects to abate the nuisance or rehabilitate the residential
25 property, the party or parties shall be required to post security in an amount and

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1 character as the court considers appropriate to ensure timely performance of all work
2 necessary to abate the nuisance or rehabilitate the residential property, as well as
3 such other conditions as the court considers appropriate for timely completion of the
4 abatement or rehabilitation.

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

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

13 1. A housing authority, redevelopment authority, redevelopment corporation
14 or community development authority authorized under ss. 66.40 to 66.4325.

15 2. A nonprofit corporation, the primary purpose of which is the improvement
16 of housing conditions within the city (village or town) in which the property is located.

17 (j) If the court is unable to appoint a receiver from one of the entities listed in
18 par. (i), the court may appoint as a receiver any other person that the court
19 determines to be competent.

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

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

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1 1. Take possession and control of the residential property including the right
2 to enter, (modify) and terminate tenancies, manage the property and charge and
3 collect rents derived from the residential property, applying the sum of those rents
4 to the costs incurred due to the abatement or rehabilitation and receivership.

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

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

11 4. Dispose of any or all abandoned personal property found at the residential
12 property.

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

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

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

24 **(4) REVIEW OF EXPENDITURES BY COURT; LIEN FOR UNPAID EXPENSES.** (a) All moneys
25 the receiver expends and all of the costs and obligations that he or she incurs in

SENATE BILL 162

1 performing the abatement or rehabilitation shall be reviewed by the court for
2 reasonableness and necessity. To the extent that the court finds the moncyys, costs
3 or obligations to be reasonable and necessary, it shall issue an order reciting this fact
4 as well as the amount found to be reasonable and necessary.

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

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

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

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

24 2. The holder of the purchase money security interest has not, prior to the
25 appointment of a rcciver under sub. (2) (h), initiated proceedings to foreclose the

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1 purchase money security interest, to abate the conditions resulting in issuance of the
2 notice under sub. (2) (c) or to gain possession of the property.

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

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

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

13 1. That the abatement or rehabilitation has been completed.

14 2. That the costs and obligations incurred due to the abatement or
15 rehabilitation have been paid by an owner, owner's agent or interested party or that
16 a lien has been filed pursuant to sub. (4).

17 3. That the owner, owner's agent or interested party will manage the
18 residential property in conformance with applicable housing codes.

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

21 1. That the abatement or rehabilitation is not feasible.

22 2. That the improvements on the property have been demolished by the city,
23 village or town.

24 (END)



D-Note

2001 BILL

12/5

cjs

SENATE SUBSTITUTE AMENDMENT,
TO 1999 SENATE BILL 162

LPS: Please
proof w/ folio
as indicated

inserts

regen.

1 AN ACT *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
statutes; **relating to:** receiverships for public nuisance.

Inserts:
1. An L
2. An L-A
3. An L-B

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

4 SECTION 1. 254.595 (1) of the statutes is amended to read:
5 254.595 (1) If real property is in violation of those provisions of a municipal
6 building code that concern health or safety or of an order or a regulation of the local
7 board of health, the city, village or town in which the property is located may
8 commence an action to declare the property a nuisance or human health hazard. A
9 tenant or class of tenants of property that is in violation of the municipal building
10 code or of an order or regulation of the local board of health or any other person or
11 class of persons whose health, safety or property interests are or would be adversely

P.W.F.

1 affected by property that is in violation of the municipal building code or of an order
2 or regulation of the local board of health may file a petition with the clerk of the city,
3 village, or town requesting the governing body to commence an action to declare the
4 property a nuisance or human health hazard. If the governing body refuses or fails
5 to commence an action within 20 days after the filing of the petition, a tenant, class
6 of tenants, other person or other class of persons may commence the action directly
7 upon the filing of security for court costs. The court before which the action of the
8 case is commenced shall exercise jurisdiction in rem or quasi in rem over the property
9 and the owner of record of the property, if known, and all other persons of record
10 holding or claiming any interest in the property shall be made parties defendant and
11 service of process may be had upon them as provided by law. Any change of
12 ownership after the commencement of the action shall not affect the jurisdiction of
13 the court over the property. At the time that the action is commenced, the
14 municipality or other parties plaintiff shall file a lis pendens. If the court finds that
15 a nuisance or violation exists, it shall adjudge the property a nuisance or human
16 health hazard and the entry of judgment shall be a lien upon the premises.

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

18 254.595 (2) A property owner or any person of record holding or claiming any
19 interest in the property shall have 60 days after entry of judgment to abate the
20 nuisance or eliminate the violation. If, within 60 days after entry of judgment under
21 sub. (1), an owner of the property presents evidence satisfactory to the court, upon
22 hearing, that the nuisance or violation has been eliminated, the court shall set aside
23 the judgment. It may not be a defense to this action that the owner of record of the
24 property is a different person, partnership or corporate entity than the owner of
25 record of the property on the date that the action was commenced or thereafter if a

P. w. J.

1 lis pendens has been filed prior to the change of ownership. No hearing under this
2 subsection may be held until notice has been given to the municipality and all the
3 plaintiffs advising them of their right to appear. If the judgment is not so set aside
4 within 60 days after entry of judgment, the court shall appoint a disinterested person
5 to act as receiver of the property for the purpose of abating the nuisance or human
6 health hazard.

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

8 254.595 (3) (a) Any receiver appointed under sub. (2) shall collect all rents and
9 profits accruing from the property, pay all costs of management, including all general
10 and special real estate taxes or assessments and interest payments on first
11 mortgages on the property, and make any repairs necessary to abate the nuisance or
12 meet the standards required by the building code or the order or regulation of the
13 local board of health. The receiver may, with the approval of the circuit court, borrow
14 money against and encumber the property as security for the money, in the amounts
15 necessary to abate the nuisance or meet the standards.

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

17 254.595 (4) The receiver appointed under this section shall have a lien, for the
18 expenses necessarily incurred to abate the nuisance or in the execution of the order,
19 upon the premises upon or in respect of which the work required by the order has
20 been done or expenses incurred. The municipality that sought the order declaring
21 the property to be a nuisance or human health hazard may also recover its expenses
22 and the expenses of the receiver under subs. (3) (a) and (5), to the extent that the
23 expenses are not reimbursed under s. 632.103 (2) from funds withheld from an
24 insurance settlement, by maintaining an action against the property owner under
25 s. 74.53.

P. w. J.

P. w. J.

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

3 815.39 (1) ~~Within~~ Except as provided in sub. (2), within one year after an
4 execution sale the real estate sold, or any lot, tract or portion that was separately
5 sold, may be redeemed by the payment to the purchaser, to the purchaser's personal
6 representatives or assigns, or to the ~~then~~ sheriff of the county where ~~such~~ ^{the} real estate
7 is situated, for the use of such purchaser, of the sum paid on the sale thereof, together
8 with the interest from the time of the sale.

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

10 815.39 (2) If an execution sale is for a lien filed under s. 823.23 ~~and~~, the period
11 of redemption under sub. (1) is 2 ~~months~~ ~~years~~.

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

13 **823.23 Receivership for public nuisances.** (1) DEFINITIONS. In this section:

14 (a) "Abatement" means the removal or suspension of any condition at a
15 residential property that has been adjudicated to constitute a nuisance.
16 "Abatement" may include the demolition of some or all of the improvements on the
17 residential property if the residential property is unoccupied.

18 (b) "Interested party" means any person that possesses any legal or equitable
19 interest of record in the residential property, including the holder of any lien or
20 encumbrance of record on the residential property.

21 (c) "Purchase money security interest" means any of the following:

22 1. The interest of a vendor under a land contract relating to the residential
23 property if the contract was recorded prior to the issuance of the notice under sub.

24 (2) (a).

(b)

P. W. F.

Insert 4-11

(5)

stet: leave as typed

1 2. The interest of a mortgagee under a purchase money mortgage relating to
2 the residential property if the mortgage was recorded prior to the issuance of the
3 notice under sub. (2) (b).

4 3. The interest of a beneficiary under a purchase money trust deed relating to
5 the residential property if the trust deed was recorded prior to the issuance of the
6 notice under sub. (2) (b).

7 (d) "Rehabilitate" means to make any improvements or corrections necessary
8 to remove a threat to public health, safety, or welfare.

9 (f) "Residential property" means land ^{together with} all the improvements erected on the
10 ~~land that are~~ that is ~~that are~~ located in a 1st or 2nd class city and
11 single-family, duplex, and multifamily structures, and mixed-use structures that
12 have one or more residential units.

13 (2) RECEIVERSHIP FOR BUILDINGS THAT CONSTITUTE A NUISANCE; PROCEDURE. (a) If
14 a residential property is alleged to be a nuisance under this chapter or s. 254.595, the
15 1st or 2nd class city in which the property is located may apply to the circuit court
16 for the appointment of a receiver to abate or rehabilitate the residential property.

17 **(b)** At least 60 days before filing an application for the appointment of a receiver
18 under par. (a), the 1st or 2nd class city shall give written notice by 1st class mail to
19 all owners, owner's agents, and interested parties at their last-known address of the
20 intent to file the application and by publication as a class 1 notice under ch. 985. The
21 notice shall include all of the following information:

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

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

1 3. The name, address and telephone number of the person or department where
 2 additional information can be obtained concerning the nuisance ~~of 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. ~~the~~

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

17 ~~(e)~~ Notice of the application for the appointment of a receiver ~~under~~ 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 ~~(f)~~ 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~~ ^{such} 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

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

3 ^{all} (g) In the event that ~~no~~ interested party ~~elects~~ ^{parties elect not} to act under par. (g) or ~~fails to~~
4 ^{to} timely perform ~~the~~ 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 ^(h) The court shall appoint a receiver who is one of the following:
11 1. A housing authority, redevelopment ~~authority~~ ^{company}, redevelopment corporation,
12 or community development authority ~~authorized~~ ^{under ss. 66.1301, 66.1331, 66.1333}
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 ⁽ⁱ⁾ If the court is unable to appoint a receiver from one of the entities listed in
16 par. (h), the court may appoint as a receiver any other person that the court
17 determines to be competent.

18 ^(j) 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) ^{(h) or} (i) 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 into and terminate tenancies, manage and maintain the property ~~pursuant~~
25 ^{under} chs. 704 and 799 and rules related to residential rental practices promulgated

1 under s. 100.20 (2) and charge and collect rents derived from the residential property,
2 applying the sum of those rents to the costs incurred due to the abatement or
3 rehabilitation and receivership.

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

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

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

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

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

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

23 ⁽⁴⁾ ~~(3)~~ LIMITS ON LANDLORD AUTHORITY. (a) In this subsection, "anticipated action"
24 means a statement or statements by a person authorized by ordinance to bring an

a court proceeding

1 action under this section that leads a landlord to conclude that an action under this
2 section may be commenced.

3 (b) A landlord or receiver, or any agent of a landlord or receiver, of a residential
4 rental unit that is the subject of any action, or anticipated action, to abate an alleged
5 nuisance under this section may not with respect to the tenant of the rental unit,
6 increase rent, decrease services, bring ~~an action~~ for possession of the unit, refuse to
7 renew the rental agreement, or threaten or attempt to do any of the foregoing if the
8 g. in ~~an action~~ commenced by the tenant or landlord,
9 tenant establishes by a preponderance of the credible evidence that the foregoing
10 conduct would not have occurred but for the bringing of an action for the abatement
11 of a nuisance under this section with respect to the rental unit or the anticipation of
12 such an action being brought, and that one of the following applies:

To prevail, the tenant must also establish by a preponderance of the evidence

- 12 1. No nuisance was found with respect to the rental unit.
- 13 2. The tenant was found not to cause a nuisance with respect to the rental unit.
- 14 3. If a nuisance exists under this section, the conduct specified in this
15 paragraph is not necessary to abate the nuisance.

any court proceeding regarding such an action or inaction

~~court proceeding~~

16 (d) Any action or inaction by a landlord, receiver, or agent described in par. (b)
17 ~~is~~ are subject to chs. 704 and 799 and shall be heard by the following court:

the court proceeding is

- 18 1. If brought by a receiver, by the court that appointed the receiver.
- 19 2. If brought by the tenant or landlord, in small claims court as an eviction action.

20 (e) In any action taken brought under par. (b), the notice given to the tenant must
21 state the basis for the action and the right of the tenant to contest the action.

9 (5)

22 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, including the receiver's administrative fee,
25 reasonableness and necessity. To the extent that the court finds the moneys, costs

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 ^{all of} the costs and obligations ^{that the court determined to be reasonable and necessary} incurred due to the abatement or rehabilitation ^{under}
4 have not been paid, the court shall issue a judgment for the unpaid amount and file ^{par. (a)}
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 ~~(a)~~ EFFECT ON PURCHASE MONEY SECURITY INTEREST OF LIEN FOR UNPAID ABATEMENT

10 EXPENSES. (a) The issuance of the notice under sub. (2) ^{(b) ✓} shall constitute a default
11 for waste under ^{any} the purchase money security interest, and if ^{relating to the residential} the violations of the ^{property}
12 building code listed in the notice are not corrected within 30 days after the mailing ^{subject to}
13 of the notice, the vendor, mortgagee, or beneficiary under ^{any} the purchase money ^{the notice}
14 security interest may commence proceedings ^s to exercise the remedies set forth in the
15 purchase money security interest.

16 (b) A lien created under sub. ^{(5) ✓} (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) ^{(b) ✓}

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

its the letter "g"

into which the court placed the residential property

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. (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 ⁽⁷⁾ ^(h) ⁽⁵⁾ TERMINATION OF RECEIVERSHIP. (a) The receivership ~~appointed~~
 7 (2)(i) ~~was~~ 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 *including the receiver's administrative fees,* rehabilitation have been paid by an owner, owner's agent, or interested party or that
 14 a lien has been filed pursuant to sub. ⁽⁵⁾.
- 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 1st or
 21 2nd class city.

22 (END)

1999 SENATE BILL 162

Insert
An L.

May 18, 1999 - Introduced by Senators PLACHE, COWLES and BURKE, cosponsored by Representatives PLALE, AINSWORTH, J. LEHMAN, MUSSER, TURNER, MILLER, HUBER and COLON. Referred to Committee on Economic Development, Housing and Government Operations.

1 AN ACT 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, other than an owner-occupied one-family or two-family dwelling, 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
→ cities, villages, and towns to create a receivership to take control of residential property that is declared a nuisance and abate that nuisance.

The bill also allows cities, villages, towns and interested parties to ask a court to appoint a receiver to manage and control residential property, including a single-family dwelling, 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

1st or
2nd class



SENATE BILL 162

possession, and manage and maintain,

* court under this bill has authority to take ~~control~~ of the property, terminate or ~~modify~~ 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, village, or town.

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

Inserts
A
L
B

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

Insert A.C.A.

The bill also prohibits a landlord or receiver of residential property that is subject to an action to abate a nuisance from committing certain acts, including increasing the rent, decreasing services, or refusing to renew a rental agreement, if that act would not have occurred if the abatement action was not begun.

This limit on the landlord's or receiver's authority only applies under the bill and the tenant shows that no nuisance exists with respect to ~~that~~ rental unit, the nuisance was not caused by the tenant, or the action of the landlord or receiver is not necessary to abate the nuisance.

the tenant's

Insert A/L-B

9 Under current law, within one year after the execution sale of real estate, the real estate sold may be redeemed by the payment to the purchaser of the sum paid at the execution sale. For the real estate) This bill ^{reduces} ~~extends~~ ^{the} ~~that~~ time period of redemption - to ^{two months} ~~two years~~ for real estate that was sold based on a lien created as the result of the ^{unpaid} costs incurred by a receiver in rehabilitating ~~the~~ property that was a nuisance or abating that nuisance.

Insert 4-10

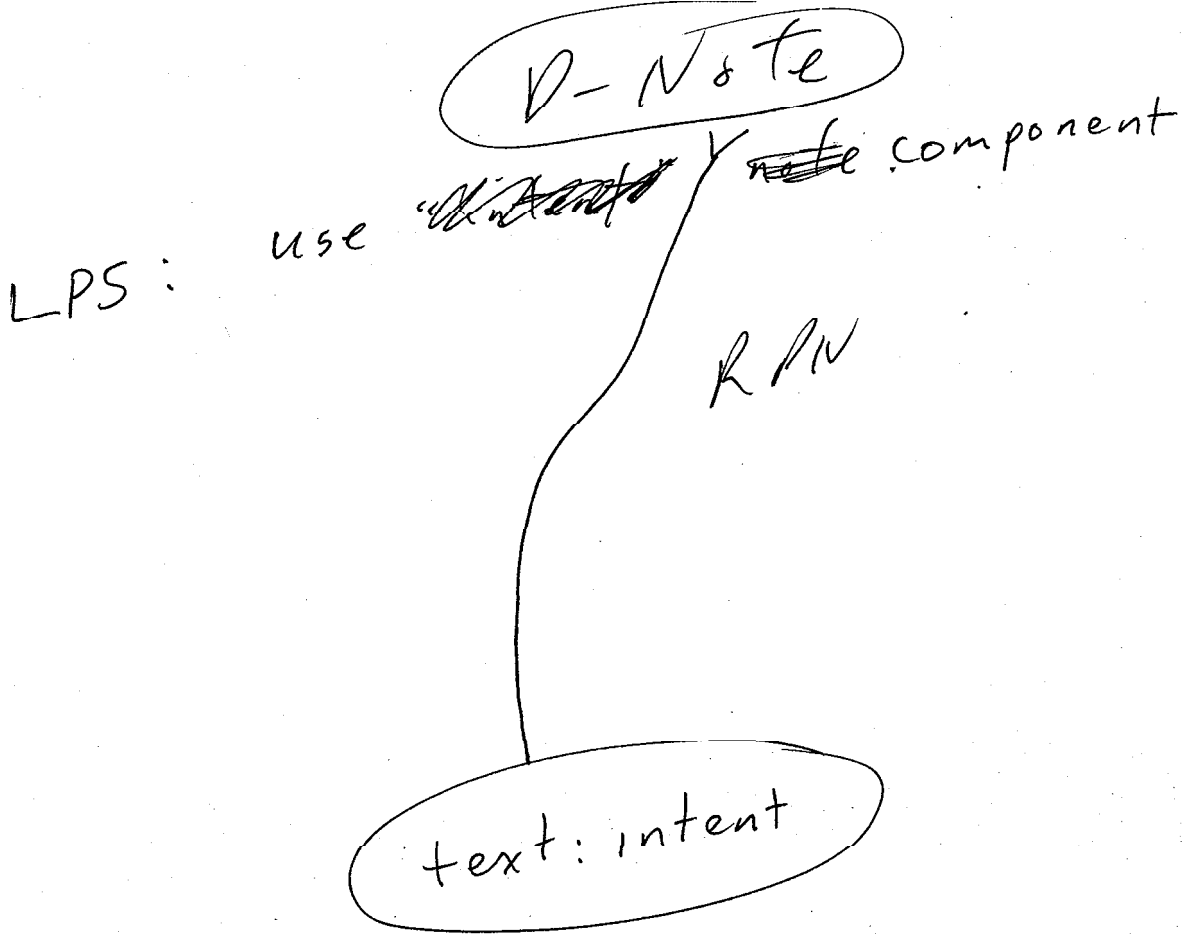
Section #. 815.44 (1) of the statutes is amended to read:

815.44 (1) WHO MAY ACQUIRE. In case the premises sold on execution or any part of them are not redeemed within the year prescribed by ss. 815.39⁽¹⁾ and 815.40 then the interest of the purchaser may be acquired within 3 months after the expiration of the redemption period by the persons and on the terms prescribed in this section.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761, 781 (1975); Stats. 1975 s. 815.44; 1997 a. 254.

END INSERT

RPN: gjs



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0682/1dn
RPN:cjs:km

November 30, 2000

Please review this draft carefully to ensure that it is consistent with your intent.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

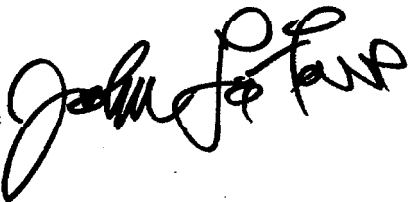
100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

December 1, 2000

MEMORANDUM

To: Representative La Fave 

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-0682 Receiverships for public nuisances

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.