

2001 Senate Bill 88

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## 2001 WISCONSIN ACT 86

AN ACT *to renumber and amend* 815.39; *to amend* 254.595 (1), 254.595 (2), 254.595 (4) and 815.44 (1); and *to create* 815.39 (2) and 823.23 of the statutes; **relating to:** receiverships for public nuisance.

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

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

254.595 (1) If real property is in violation of those provisions of a municipal building code that concern health or safety ~~or, the city, village, or town in which the property is located~~ may commence an action to declare the property a nuisance. If real property is in violation of an order or a regulation of the local board of health, the city, village, or town in which the property is located may commence an action to declare the property a human health hazard. A tenant or class of tenants of property that is in violation of the municipal building code or of an order or regulation of the local board of health or any other person or class of persons whose health, safety or property interests are or would be adversely affected by property that is in violation of the municipal building code or of an order or regulation of the local board of health may file a petition with the clerk of the city, village, or town requesting the governing body to commence an action to declare the property a nuisance or human health hazard. If the governing body refuses or fails to commence an action within 20 days after the filing of the petition, a tenant, class of tenants, other person or other class of persons may commence the action directly

upon the filing of security for court costs. The court before which the action of the case is commenced shall exercise jurisdiction in rem or quasi in rem over the property and the owner of record of the property, if known, and all other persons of record holding or claiming any interest in the property shall be made parties defendant and service of process may be had upon them as provided by law. Any change of ownership after the commencement of the action shall not affect the jurisdiction of the court over the property. At the time that the action is commenced, the municipality or other parties plaintiff shall file a lis pendens. If the court finds that a violation exists, it shall adjudge the property a nuisance or human health hazard and the entry of judgment shall be a lien upon the premises.

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

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

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\* Section 991.11, WISCONSIN STATUTES 1999-00 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

**SECTION 3.** 254.595 (4) of the statutes is amended to read:

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

**SECTION 4.** 815.39 of the statutes is renumbered 815.39 (1) and amended to read:

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

**SECTION 5.** 815.39 (2) of the statutes is created to read:

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

**SECTION 6.** 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.

**SECTION 7.** 823.23 of the statutes is created to read:  
**823.23 Receivership for public nuisances. (1) DEFINITIONS.** In this section:

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

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

(c) "Nuisance" includes a nuisance under s. 254.595.

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

1. The interest of a vendor under a land contract relating to the residential property if the contract was recorded prior to the issuance of the notice under sub. (2) (b).

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

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

(e) "Residential property" means land, together with all the improvements erected on the land, that is located in a 1st or 2nd class city and used or intended to be used for residential purposes, including single-family, duplex, and multifamily structures, and mixed-use structures that have one or more residential units.

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

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

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

2. The conditions of the residential property that constitute a nuisance and that resulted in the decision to apply for a receiver.

3. The name, address, and telephone number of the person or department where additional information can be obtained concerning the nuisance and the action necessary to abate the nuisance.

4. That the appointment of a receiver may be requested unless action is taken to abate the nuisance within 60 days after receipt of the notice.

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

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

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

(f) If, following the application for appointment of a receiver, one or more of the interested parties elects to abate the nuisance, the party or parties shall be required to post security in such an amount and character as the court considers appropriate to ensure timely performance of all work necessary to abate the nuisance, as well as satisfy such other conditions as the court considers appropriate for timely completion of the abatement.

(g) In the event that all interested parties elect not to act under par. (f) or to timely perform work undertaken under par. (f), the court shall make a determination as to whether the residential property is a nuisance. The court shall determine the extent of the abatement necessary and shall appoint a receiver to complete the abatement.

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

1. A housing authority, redevelopment company, redevelopment corporation, redevelopment authority, or community development authority under ss. 66.1201, 66.1301, 66.1331, 66.1333, or 66.1335.

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

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

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

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

1. Take possession and control of the residential property including the right to enter into and terminate tenancies, manage and maintain the property under chs. 704 and 799 and rules related to residential rental practices promulgated under s. 100.20 (2), and charge and collect rents derived from the residential property, applying the sum of those rents to the costs incurred due to the abatement and receivership.

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

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

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

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

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

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

**(4) LIMITS ON LANDLORD AUTHORITY.** (a) In this subsection, "anticipated action" means a statement or statements by a person authorized by ordinance to bring an action under this section that leads a landlord to conclude that an action under this section may be commenced.

(b) A landlord or receiver, or any agent of a landlord or receiver, of a residential rental unit that is the subject of any action, or anticipated action, to abate an alleged nuisance under this section may not with respect to the tenant of the rental unit, increase rent, decrease services, bring a court proceeding for possession of the unit, refuse to renew the rental agreement, or threaten or attempt to do any of the foregoing if the tenant, in a court proceeding commenced by the tenant, landlord, or receiver, establishes by a preponderance of the credible evidence that the foregoing conduct would not have occurred but for the bringing of an action for the abatement of a nuisance under this section with respect to the rental unit or the anticipation of such an action being brought. To prevail, the tenant must also establish by a preponderance of the evidence that one of the following applies:

1. No nuisance was found with respect to the rental unit.

2. The tenant was found not to cause a nuisance with respect to the rental unit.

3. If a nuisance exists under this section, the conduct specified in this paragraph is not necessary to abate the nuisance.

(d) Any action or inaction by a landlord, receiver, or agent described in par. (b) is subject to chs. 704 and 799,

and any court proceeding regarding such an action or inaction shall be heard by the following court:

1. If the court proceeding is brought by a receiver, by the court that appointed the receiver.

2. If the court proceeding is brought by the tenant or landlord, in small claims court as an eviction action.

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

(5) REVIEW OF EXPENDITURES BY COURT; LIEN FOR UNPAID EXPENSES. (a) All moneys the receiver expends and all of the costs and obligations that he or she incurs in performing the abatement, including the receiver's administrative fee, shall be reviewed by the court for reasonableness and necessity. To the extent that the court finds the moneys, costs, or obligations to be reasonable and necessary, it shall issue an order reciting this fact as well as the amount found to be reasonable and necessary.

(b) If all of the costs and obligations that the court found to be reasonable and necessary under par. (a) have not been paid, the court shall issue a judgment for the unpaid amount and file that judgment with the office of the clerk of court within 60 days after the receiver files a statement of those unpaid costs and obligations with the court and that judgment shall constitute a lien on the residential property from the date of the filing of the judgment.

(6) EFFECT ON PURCHASE MONEY SECURITY INTEREST OF LIEN FOR UNPAID ABATEMENT EXPENSES. (a) The issuance of the notice under sub. (2) (b) shall constitute a default for waste under any purchase money security interest relating to the residential property subject to the notice, and if any violations of the building code listed in the notice are not corrected within 30 days after the mailing of the notice, the vendor, mortgagee, or beneficiary under any purchase money security interest may commence proceedings to exercise the remedies set forth in the purchase money security interest.

(b) A lien created under sub. (5) (b) shall be prior and superior to any purchase money security interest in the

residential property if all of the following apply to that purchase money security interest:

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

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

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

(7) TERMINATION OF RECEIVERSHIP. (a) The receivership into which the court placed the residential property under sub. (2) (h) or (i) shall terminate only by an order of the court.

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

1. That the abatement has been completed.

2. That the costs and obligations incurred due to the abatement, including the receiver's administrative fee, have been paid by an owner, owner's agent, or interested party or that a lien has been filed pursuant to sub. (5).

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

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

1. That the abatement is not feasible.

2. That the improvements on the property have been demolished by the 1st or 2nd class city.