

Senate File 93 - Reprinted

SENATE FILE 93

BY LOFGREN

(As Amended and Passed by the Senate March 19, 2019)

A BILL FOR

1 An Act relating to abandoned structures and abatement of public
2 nuisances.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 631.1, Code 2019, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 10. The district court sitting in small
4 claims has concurrent jurisdiction for administrative warrant
5 applications pursuant to section 657A.1A, subsection 2.

6 Sec. 2. Section 655A.6, Code 2019, is amended to read as
7 follows:

8 **655A.6 Rejection of notice.**

9 1. If either the mortgagor, or successor in interest of
10 record including a contract purchaser, within thirty days of
11 service of the notice pursuant to [section 655A.3](#), files with
12 the recorder of the county where the mortgaged property is
13 located, a rejection of the notice reasonably identifying
14 the notice which is rejected together with proofs of service
15 required under [section 655A.4](#) that the rejection has been
16 served on the mortgagee, the notice served upon the mortgagor
17 pursuant to [section 655A.3](#) is of no force or effect.

18 2. Rejection of notice pursuant to subsection 1 shall not be
19 available to a mortgagor, or successor in interest of record
20 including a contract purchaser, of a mortgaged property that a
21 court of competent jurisdiction determined has been abandoned
22 pursuant to section 657A.2, on or after the date as determined
23 in section 657A.2, subsection 5.

24 Sec. 3. Section 657A.1, subsections 1 and 3, Code 2019, are
25 amended to read as follows:

26 1. "Abandoned" or "abandonment" means that a building has
27 remained is vacant, or is occupied only by trespassers, and has
28 been in violation of the housing code or building code of the
29 city in which the property is located or the housing code or
30 building code applicable in the county in which the property
31 is located if outside the limits of a city for a period of six
32 consecutive months.

33 3. "Building" means a building or structure, excluding a
34 mobile home, a modular home, and a manufactured home as defined
35 in section 435.1, unless the mobile home or manufactured

1 home has been converted to real estate pursuant to section
2 435.26, located in a city or outside the limits of a city in
3 a county, which is used or intended to be used for commercial
4 or industrial purposes or which is used or intended to be
5 used for residential purposes and includes a building or
6 structure in which some floors may be used for retail stores,
7 shops, salesrooms, markets, or similar commercial uses, or for
8 offices, banks, civic administration activities, professional
9 services, or similar business or civic uses, and other floors
10 are used, designed, or intended to be used for residential
11 purposes.

12 Sec. 4. Section 657A.1, Code 2019, is amended by adding the
13 following new subsection:

14 NEW SUBSECTION. 8. "*Responsible building official*" or
15 "*official*" means the person appointed by the city or, if the
16 building is outside the limits of a city, the county, to
17 enforce its building codes and regulations in general or to
18 enforce this chapter in particular.

19 Sec. 5. NEW SECTION. **657A.1A Preliminary inspection of**
20 **building.**

21 1. No sooner than one hundred thirty-five days after a
22 property has become vacant, a person, other than a governmental
23 entity, may request that the responsible building official
24 inspect the property and certify that a property is both
25 abandoned and in need of abatement. The responsible building
26 official may also initiate an inspection on the official's own
27 initiative at any time.

28 2. If the responsible building official finds from an
29 exterior view of the property, in addition to any other
30 credible information that the official may have, that there
31 is reasonable cause to believe that the property is abandoned
32 and in need of abatement, the official shall schedule a date
33 and time for an inspection of the property by the official.
34 The person requesting the inspection shall provide written
35 notice of the scheduled inspection by first class mail and

1 certified mail to the owner and all interested persons at
2 least twenty days before the inspection. The notice must
3 state the date, time, and place of the inspection and state
4 that unless the owner appears at the inspection to allow the
5 responsible building official access to the interior of the
6 property, the official, accompanied by the person serving
7 notice and any interested persons appearing for the inspection,
8 may enter the property to determine whether the property is
9 abandoned and in need of abatement and, if so, to estimate
10 the costs of abatement. The official may enter the property
11 for an inspection, along with the person serving notice and
12 any interested persons, if the owner is not present for the
13 inspection. Upon request, the inspection may be rescheduled
14 as needed. The responsible building official must obtain an
15 administrative search warrant pursuant to section 808.14 to
16 enter any building to conduct an inspection pursuant to this
17 section.

18 3. The responsible building official's findings shall
19 be in writing with copies provided to the person requesting
20 the inspection, the owner, and all interested parties. The
21 governmental entity employing the responsible building official
22 may establish and charge a fee to cover the reasonable costs
23 of the inspection, which shall be added to costs in an action
24 under this chapter.

25 4. Evidence that financial obligations in respect to a
26 building, including but not limited to payments of a mortgage,
27 bills, or property taxes, are currently met does not rebut a
28 finding of abandonment if the property is substantially in need
29 of abatement in an action filed under section 657A.2.

30 Sec. 6. Section 657A.2, Code 2019, is amended by striking
31 the section and inserting in lieu thereof the following:

32 **657A.2 Petition.**

33 1. No sooner than the latter of thirty days after provision
34 of the responsible building official's findings under section
35 657A.1A and six months after a building has become abandoned,

1 a petition for abatement under this chapter may be filed in
2 the district court of the county in which the property is
3 located by the city in which the property is located, by the
4 county if the property is located outside the limits of a city,
5 by a neighboring landowner, or by a duly organized nonprofit
6 corporation which has as one of its goals the improvement of
7 housing conditions in the county or city in which the property
8 in question is located. The petition shall not demand a
9 personal judgment against any party, but shall concern only
10 the interests in the property. A petition for abatement filed
11 under this chapter shall include the legal description of
12 the real property upon which the public nuisance is located
13 unless the public nuisance is not situated on or confined to
14 a parcel of real property, or is portable or capable of being
15 removed from the real property. Service shall be made on all
16 interested persons by personal service or, if personal service
17 cannot be made, by certified mail and first class mail to the
18 last known address of record of the interested person and by
19 posting the notice in a conspicuous place on the building,
20 or by publication. The last known address of record for the
21 property owner shall be the address of record with the county
22 treasurer of the county where the property is located. Service
23 may also be made as provided in section 654.4A.

24 2. If entering judgment, the court shall determine any
25 issues at law, including issues relating to title, raised by
26 the plaintiff or by a party in interest who has filed a motion
27 or answer.

28 3. In any evidentiary hearing or motion in a proceeding
29 under this chapter, the written findings of the responsible
30 building official relating to the condition of the building and
31 other matters within the scope of this chapter, if provided
32 at least ten days before the hearing to all persons not in
33 default, shall be accepted as evidence without prejudice to the
34 right of any party to require the personal testimony of the
35 responsible building official at the hearing.

1 4. If the court finds at a hearing pursuant to this section
2 that the building is abandoned or is a public nuisance, the
3 court may issue an injunction requiring the owner to correct
4 any conditions that make such building a public nuisance, or
5 issue another order that the court deems appropriate to address
6 the public nuisance.

7 5. If the court finds at a hearing pursuant to this
8 section that the building is abandoned, unless the court
9 order establishes otherwise, the property shall be deemed
10 continuously abandoned from the date the action is indexed
11 pursuant to section 617.10, subsection 1.

12 6. A property shall not be claimed as homestead pursuant to
13 chapter 561 on or after the date determined in subsection 5.

14 7. In a proceeding under this section, if the court
15 determines the building is not abandoned, the court shall
16 dismiss the petition and may require the petitioner to pay an
17 interested party's reasonable attorney fees. An owner of the
18 property who failed to appear for an inspection pursuant to
19 section 657A.1A shall not be awarded attorney fees under this
20 section.

21 8. If a party to the action holds an interest in the
22 property as a nominee, a fiduciary, or another representative
23 capacity for a third party, or an underlying loan on the
24 property is guaranteed by a third party, the party to the
25 action may apply to the court for a stay of action, as it
26 affects the party's interest, for a reasonable time to allow
27 the party to obtain the appropriate authority, information, or
28 instructions from or on behalf of the beneficiary or guarantor
29 as related to the property interest or underlying loan.

30 Sec. 7. Section 657A.3, Code 2019, is amended to read as
31 follows:

32 **657A.3 Interested persons — opportunity to abate public**
33 **nuisance.**

34 1. Before appointing a receiver to perform work or to
35 furnish material to abate a public nuisance under [this chapter](#),

1 the court shall ~~conduct a hearing at which the court shall~~
 2 ~~offer mortgagees of record, lienholders of record, or other~~
 3 ~~known interested persons in the order of priority of interest~~
 4 ~~in title, the opportunity to undertake the work and to furnish~~
 5 ~~the materials necessary to abate the public nuisance. The~~
 6 establish a date before which interested persons may file with
 7 the court shall require the person selected to demonstrate
 8 the written proof of intent and ability to promptly undertake
 9 promptly the work required and to post security for the
 10 performance of the work. If no such written proof is filed
 11 by that date, the court may appoint a receiver pursuant to
 12 subsection 3.

13 2. All amounts expended by the person toward abating the
 14 public nuisance are a lien on the property if the expenditures
 15 were are approved in advance by the a judge and if the person
 16 desires the lien. ~~The~~ Unless an interested person has a
 17 contract with the owner providing for a different interest
 18 rate, the lien shall bear interest at the rate provided for
 19 judgments pursuant to [section 535.3](#), and shall be payable upon
 20 terms approved by the judge. If a certified copy of the a
 21 court order that approved approving the expenses and the terms
 22 of payment for the lien, and a description of the property
 23 in question, are filed for of record within thirty days of
 24 the date of issuance of the order in the office of the county
 25 recorder of the county in which the property is located, the
 26 lien has the same priority as the mortgage of a receiver as
 27 provided in [section 657A.7](#).

28 ~~2-~~ 3. If the court determines by the date established
 29 in subsection 1 or at the a hearing ~~conducted pursuant~~
 30 ~~to [subsection 1](#),~~ on the sufficiency of a timely filed
 31 rehabilitation plan that no interested person can undertake the
 32 work and furnish the materials required to abate the public
 33 nuisance, or if the court determines at any time after the
 34 hearing that an interested person who is undertaking corrective
 35 work pursuant to [this section](#) cannot or will not proceed, or

1 has not proceeded with due diligence, the court may appoint a
2 receiver to take possession and control of the property. The
3 receiver shall be appointed in the manner provided in section
4 657A.4.

5 4. If the building is a historic building or is located in
6 a designated historic district, the court shall give preference
7 to an economically feasible rehabilitation plan that preserves
8 the historical nature of the building.

9 5. Unless a receiver's mortgage provides for periodic
10 payments, a notice, in lieu of the notice pursuant to section
11 654.2D, shall also be served by ordinary or electronic mail
12 informing all interested persons of the date certain for the
13 maturity of the mortgage note, or the event triggering maturity
14 of the mortgage note, and that on maturity the receiver's
15 mortgage loan will be payable in full and the mortgagee may
16 then commence foreclosure without further notice. A notice
17 pursuant to section 654.4B shall also be served by ordinary or
18 electronic mail on the owner of record of the property. The
19 mortgagee shall not commence foreclosure of the mortgage until
20 sixty calendar days have passed since the date of service of a
21 notice under this subsection.

22 Sec. 8. Section 657A.4, Code 2019, is amended to read as
23 follows:

24 **657A.4 Appointment of receiver.**

25 ~~After conducting~~ If after expiration of a date established
26 pursuant to section 657A.3, subsection 1, or a hearing
27 pursuant to section 657A.3, the court may appoint a receiver
28 to take possession and control of the property in question.
29 A person shall not be appointed as a receiver unless the
30 person has first provided the court with a viable financial
31 and construction plan for the rehabilitation of the property
32 in question and has demonstrated the capacity and expertise
33 to perform the required work in a satisfactory manner. The
34 appointed receiver may be a financial institution that
35 possesses an interest of record in the property, a nonprofit

1 corporation that is duly organized and exists for the primary
2 purpose of improving housing conditions in the county or city
3 in which the property in question is located, or any person
4 deemed qualified by the court. No part of the net earnings of a
5 nonprofit corporation serving as a receiver under **this section**
6 shall benefit a private shareholder or individual. Membership
7 on the board of trustees of a nonprofit corporation does not
8 constitute the holding of a public office or employment and is
9 not an interest, either direct or indirect, in a contract or
10 expenditure of money by a city or county. No member of a board
11 of trustees of a nonprofit corporation appointed as receiver
12 is disqualified from holding public office or employment, nor
13 is a member required to forfeit public office or employment by
14 reason of the membership on the board of trustees.

15 Sec. 9. Section 657A.6, subsection 9, Code 2019, is amended
16 to read as follows:

17 9. Issue notes and secure the notes by mortgages bearing
18 interest at the rate provided for judgments pursuant to
19 section 535.3, and any terms and conditions as approved by
20 the court. The court may provide for a higher interest rate
21 if the receiver has established to the satisfaction of the
22 court that the receiver has sought financing from individuals
23 and institutions willing to lend money for rehabilitation
24 of property and that the terms proposed by the receiver are
25 reasonable. When transferred by the receiver in return for
26 valuable consideration ~~in~~ including money, material, labor,
27 or services, the notes issued by the receiver are freely
28 transferable. If the receiver has notice that the mortgagee
29 of the receiver's mortgage is contemplating a transfer of the
30 mortgage, the receiver shall disclose such to the court in the
31 application for approval of the mortgage.

32 Sec. 10. NEW SECTION. **657A.6A Receiver — prohibited acts.**

33 Notwithstanding section 657A.10, it shall be unlawful, and a
34 receiver may be held liable for actual damages as determined
35 by a court, for entering a residential property that is not

1 abandoned for the purpose of forcing, intimidating, harassing,
2 or coercing a lawful occupant of the property to vacate in
3 order to render the property vacant and abandoned, and it shall
4 be unlawful to otherwise force, intimidate, harass, or coerce
5 a lawful occupant of a residential property to vacate so the
6 property may be deemed vacant and abandoned. A receiver who
7 peacefully enters a property for the purpose of rendering the
8 property vacant and abandoned shall be immune from liability
9 if the receiver makes a good-faith effort to comply with this
10 chapter and all terms of any applicable mortgage, lease, or
11 other agreement related to the occupancy of the building.

12 Sec. 11. Section 657A.7, subsection 1, Code 2019, is amended
13 to read as follows:

14 1. If the receiver's mortgage is filed ~~for~~ of record in
15 the office of the county recorder of the county in which the
16 property is located within sixty days of the issuance of a
17 secured note, the receiver's mortgage is a first lien upon the
18 property and is superior to claims of the receiver and to all
19 prior or subsequent liens and encumbrances except taxes and
20 assessments, including taxes and assessments advanced by any
21 mortgagee in the twelve-month period immediately preceding the
22 date a petition is filed pursuant to section 657A.2. Priority
23 among the receiver's mortgages is determined by the order in
24 which the mortgages are recorded.

25 Sec. 12. Section 657A.7, Code 2019, is amended by adding the
26 following new subsection:

27 NEW SUBSECTION. 3. If a mortgagee of the receiver's
28 mortgage begins foreclosure procedures pursuant to chapter 655A
29 and an interested party desires to pay off the mortgage loan,
30 the interested party shall also pay the mortgagee's reasonable
31 costs and attorney fees.

32 Sec. 13. Section 657A.8, Code 2019, is amended to read as
33 follows:

34 **657A.8 Assessment of costs.**

35 The court may assess the costs and expenses set out in

1 section 657A.6, subsection 2, and may approve receiver's fees
2 to the extent that the fees are not covered by the income
3 from the property. The receiver shall pay the costs and
4 reasonable attorney fees of a plaintiff who requested an
5 inspection pursuant to section 657A.1A unless an interested
6 party not in default who appeared for the inspection objects
7 to the fees and costs in whole or in part. The court shall
8 determine the merits of such objection. If the court finds
9 that a neighboring landowner has pursued an action pursuant to
10 this chapter in bad faith, the court may assess attorney fees
11 against the neighboring landowner and may bar such neighboring
12 landowner from filing future actions under this chapter. If a
13 foreclosure of the receiver's mortgage pursuant to chapter 655A
14 is contemplated, the court may retain jurisdiction to determine
15 the amount of attorney fees payable under section 657A.7,
16 subsection 3.

17 Sec. 14. Section 657A.10A, subsection 1, paragraph a, Code
18 2019, is amended to read as follows:

19 a. In lieu of the procedures in sections ~~657A.2~~ 657A.1A
20 through 657A.10 and 657A.10B, a city in which an abandoned a
21 building that has been abandoned for at least six consecutive
22 months is located may petition the court to enter judgment
23 awarding title to the abandoned property to the city. A
24 petition filed under this section shall include the legal
25 description of the abandoned property. If more than one
26 abandoned building is located on a parcel of real estate, the
27 city may combine the actions into one petition. The owner of
28 the building and grounds, mortgagees of record, lienholders
29 of record, or other known persons who hold an interest in the
30 property shall be named as respondents on the petition.

31 Sec. 15. NEW SECTION. 657A.10B Applicability.

32 The provisions of sections 657A.1A through 657A.10 shall
33 only apply to cities and counties that have, by ordinance,
34 provided that the provisions shall apply.

35 Sec. 16. NEW SECTION. 657A.10C Petition for injunction.

1 As an alternative to the remedies under this chapter, a
2 city, or a county if a property that is alleged to be a public
3 nuisance is located outside the limits of a city, may petition
4 the court for an injunction that requires the owner of the
5 property to correct or eliminate the condition or violation
6 causing the public nuisance. Service of the original notice
7 shall be made as provided in section 657A.2, subsection 1.

8 Sec. 17. CODE EDITOR DIRECTIVE.

9 1. The Code editor is directed to renumber section 657A.10B,
10 as enacted in this Act, as section 657A.10A, and to renumber
11 section 657A.10A as section 657A.10B.

12 2. The Code editor shall correct internal references in the
13 Code and in any enacted legislation as necessary due to the
14 enactment of this section.