

\*\*\* CURRENT THROUGH THE 2011 REGULAR SESSION \*\*\*

Title 13 Public Planning And Housing  
Chapter 6 Neighborhood Preservation Act

Tenn. Code Ann. § 13-6-101 (2011)

**13-6-101. Short title.**

This chapter shall be known and may be cited as the "Neighborhood Preservation Act."

**13-6-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Abate" or "abatement" in connection with any building means the removal or correction of any conditions that constitute a public nuisance and the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions over its remaining useful life;

(2) "Building" means any building or structure that is not occupied by any owner, tenants or residents;

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(4) "Interested party," for purposes of § 13-6-106(g) only, means any owner, mortgagee, lien holder or person that possesses an interest of record in any property that becomes subject to the jurisdiction of a court pursuant to this chapter;

(5) "Municipal corporation" means any incorporated city, town or county in this state, including any county having a metropolitan form of government, and as further defined by the population restrictions set forth § 13-6-105;

(6) "Nonprofit corporation" means any nonprofit corporation that has been duly organized under the laws of this state, and has as one (1) of its goals community development or redevelopment;

(7) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:

(A) All or part of the legal title to property; or

(B) All or part of the beneficial ownership and a right to the present use and enjoyment of the premises;

**(8)** "Public nuisance" means any vacant building that is a menace to the public health, welfare, or safety; structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard, dangerous to human life, or no longer fit and habitable; a nuisance as defined in § 29-3-101; or is otherwise determined by the court, the local municipal corporation or code enforcement entity to be as such;

**(9) (A)** "Receiver" means either a municipal corporation or a nonprofit corporation that agrees to be appointed by the court for the purpose of preserving or improving the property of another. Any nonprofit corporation so appointed shall first be certified as an eligible receiver by the court, the municipal corporation, or the code enforcement entity where the building is located. The certification of a nonprofit corporation shall be issued upon receipt of the following:

**(i)** An external verification of nonprofit status;

**(ii)** The nonprofit corporation's articles of incorporation or bylaws evidencing community development or redevelopment is a part of the mission;

**(iii)** Evidence of financial capacity to carry out a community development or redevelopment project, including audited financial statements of the organization for the past five (5) years, where applicable;

**(iv)** The organization's formal conflict of interest policy governing both the staff and the board of directors; and

**(v)** Evidence of the administrative capacity to successfully undertake a community development or redevelopment project;

**(B)** A receiver appointed pursuant to this subdivision (9) is not personally liable except for misfeasance, malfeasance, or nonfeasance in the performance of the functions of the office;

**(10)** "Residential property" means a dwelling unit which is owner-occupied and is the owner's principal place of residence; and

**(11)** "Residential rental property" means a building or structure consisting of one (1) or two (2) dwelling units.

### **13-6-103. Maintenance at level of community standards.**

**(a)** The owner of residential rental property or an unoccupied residence shall be required to maintain the exterior of such property and the lot on which the residential rental property or unoccupied residence is located at a level which is no less than the community standards of the residential property in the area.

**(b)** It is prima facie evidence that the residential rental property or unoccupied residence is not maintained at the community standards of the residential property in the area if the owner of such residential rental property or unoccupied residence has been cited for three (3) or more separate violations of local building and construction codes or property standards governing residential property within a one-year period and the owner has not

brought the property into compliance with such building and construction codes or property standards within such period.

**13-6-104. Action for damages for failure to maintain property -- Measure of damages.**

(a) An owner of residential property affected by residential rental property or an unoccupied residence not maintained to community standards of residential property in the area may bring an action for damages against the owner of such residential rental property or unoccupied residence for failure to maintain the property in the manner required by § 13-6-103; provided, however, that a showing by the owner of the residential rental property or unoccupied residence that the failure to maintain the property is due to an act of nature, serious illness, or a legal barrier shall constitute a defense to any cause of action brought under this section.

(b) The measure of damages shall be the difference between the value of the owner's residential property if the residential rental property or unoccupied residence were maintained at the community standards of the residential property in the area and the value of the owner's residential property because the residential rental property or unoccupied residence is not maintained at such community standards.

(c) As proof of the value of the owner's residential property, the plaintiff shall submit to the court two (2) independent appraisals.

(d) Upon a finding by the court that an owner of residential rental property or unoccupied residence has failed to maintain the property in the manner required by § 13-6-103, the court may award to the person bringing an action under this chapter reasonable attorney's fees and costs.

**13-6-105. Application.**

This chapter shall only apply in any county having a metropolitan form of government which has a population in excess of five hundred thousand (500,000), or in any county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census.

**13-6-106. Civil action to enforce compliance -- Draft order of compliance.**

(a) Any nonprofit corporation as defined in § 13-6-102, or any interested party or neighbor, may bring a civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings against the owner of any building or structure that is not occupied by any owner, tenants or residents for failure to comply with that ordinance or regulation. If the petitioner has not attached a certificate of public nuisance to the complaint, the court, by written notice to the chief housing officer and the chief legal officer of the municipal corporation, may request that the code enforcement entity complete its inspection and issue a certificate of public nuisance or denial including a list of the reasons for the determination within thirty

(30) calendar days. If the code enforcement entity fails to respond within thirty (30) calendar days of written notice, or if the code enforcement entity denies the issuance of certificate of public nuisance, then the court shall schedule a hearing requesting that the code enforcement entity be present, with its findings, and participate in the hearing of the issue of public nuisance. At the conclusion of the hearing of the issue of public nuisance, the court shall determine whether or not the issuance of a certificate of public nuisance is warranted.

**(b)** The complaint shall include a draft order of compliance setting forth the relief requested as described in this section, and may request the appointment of a receiver if the order of compliance is not successful.

**(c)** In the civil action, notice shall comply with Tennessee Rules of Civil Procedure, Rule 4. Additionally, notice shall require that a copy of the complaint be posted in a conspicuous place on the building and that the complaint be published in the local paper.

**(d)** The court shall conduct a hearing in a timely manner at least twenty-eight (28) calendar days but no later than sixty (60) calendar days after all notice provisions of this section have been satisfied, including that the owner of the building has been served with a copy of the complaint and the notice of the date and time of the hearing.

**(e)** The action will be dismissed if the building is not certified as a public nuisance by the municipal corporation or code enforcement entity where the building is located or by the court. If the owner can establish the grounds as set forth in § 13-6-104, it shall constitute a complete defense to any cause of action brought under this section.

**(f)** If the owner cannot establish a complete defense, the court may issue an order of compliance requiring the owner of the building to produce a development plan for the abatement of the public nuisance. The plan shall include, at a minimum, a projected timeline for abatement of the public nuisance, and a statement demonstrating the financial ability of the owner to complete the abatement. The plan shall be duly approved by the court for purposes of compliance with this section. If the owner has commenced work on the building prior to, or during the pendency of the action, the owner shall be required to provide a report of the work that has been completed to date, as well as a development plan for the abatement of the public nuisance. Upon a finding by the court that the issuance of a certificate of public nuisance is warranted, the court may issue an order or an injunction barring transfer of the property at issue without the prior abatement of the public nuisance, and award to the person bringing the action reasonable attorney's fees and costs.

**(g)** If the owner fails to comply with the court's order, the court, at its discretion, may allow an interested party the opportunity to undertake the work to abate the public nuisance under a detailed development plan as described in subsection (i).

**(h)** If the actions pursuant to subsections (f) and (g) fail to abate the public nuisance, the court may appoint a receiver to take possession and control of the building to abate the public nuisance. Prior to a nonprofit corporation being designated a receiver under this

section, the nonprofit corporation shall provide proof of certification by the municipal corporation or code enforcement entity where the building is located. The court shall have the discretion to review the certification and supporting documentation and shall determine whether the receiver has the capacity to undertake a particular project.

**(i) (1)** Prior to ordering any action be taken to abate the public nuisance, the court shall cause a more detailed development plan to be submitted for review, which shall include, but may not be limited to:

**(A)** A detailed budget for abating the public nuisance;

**(B)** If repair and rehabilitation of the building are found not to be feasible, the cost of demolition of the building or of the portions of the building that constitute the public nuisance; and

**(C)** The terms, conditions and availability of any financing that is necessary to abate the public nuisance or a show of sufficient assets.

**(2)** Any party submitting a detailed development plan under this section may be required by the court to post a reasonable bond in an amount fixed by the court.

**(j)** If the court deems the detailed development plan to be sufficient and appropriate, the court may empower the receiver to complete any or all of the following:

**(1)** Taking possession and control of the building and the property on which it is located;

**(2)** Paying all expenses of operating and conserving the building and the property, including obtaining mortgage insurance;

**(3)** Paying pre-receivership mortgages or installments of them and other liens; and

**(4)** Implementing the detailed development plan; provided, that, if the development plan requires demolition, the court specifically order that the demolition be done properly and in compliance with applicable laws.

**(k)** The interested party or receiver shall file a report with the court every sixty (60) calendar days and, upon completion of the detailed development plan, shall file a final report with the court indicating that the public nuisance has been abated. If the court finds the final report is sufficient and complete, the court may assess court costs and expenses and also may approve the payment of receiver's fees at the discretion of the judge but not to exceed the greater of ten percent (10%) of the total costs of the abatement or twenty-five thousand dollars (\$25,000) to the receiver. These costs as approved by the court shall be considered a first lien on the property, which, with the exception of those for federal, state, and local taxes and assessments, shall be superior to all prior and subsequent liens or other encumbrances associated with the building or the property. The interested party or receiver shall be responsible for recording a certified copy of the judgment with the county

recorder in the county in which the property is located within sixty (60) calendar days after the date of the entry of the judgment. Once the lien is perfected and the owner has satisfied the lien, then the court shall order the receivership terminated.

**(l)** If the lien is not satisfied within a one-hundred-eighty-calendar-day period or longer, with approval of the court after a hearing on the matter, the court may enter an order directing the receiver to offer the building and property for sale upon terms and conditions that the court shall specify.

**(m)** The receivership is terminated at the time of sale. The proceeds of the sale shall first satisfy all federal, state, and local taxes and assessments or tax settlements. If the remaining sale proceeds are sufficient to satisfy the receiver's lien, then the receivership lien shall be terminated. If the receiver's lien is not satisfied by the sale proceeds, the receiver's lien shall remain in effect until the lien is satisfied.

**(n) (1)** Nothing in this section shall be construed as a limitation upon the powers granted to a court having jurisdiction over a civil action described in subsection (a).

**(2)** The monetary and other limitations specified in § 16-15-501(d)(1) upon any court with jurisdiction over a civil action described in subsection (a) do not operate as limitations upon any of the following:

**(A)** Expenditures of a mortgagee, lienholder, other interested party, or receiver that has been selected pursuant to subsection (g) or (h) to undertake the work and to furnish the materials necessary to abate a public nuisance;

**(B)** Any notes issued by a receiver pursuant to subsection (j);

**(C)** Any mortgage granted by a receiver in accordance with subsection (j);

**(D)** Expenditures in connection with the foreclosure of a mortgage granted by a receiver in accordance with subsection (j);

**(E)** The enforcement of an order of a judge entered pursuant to this chapter; or

**(F)** The actions that may be taken pursuant to this chapter by a receiver or a mortgagee, lienholder, or other interested party that has been selected pursuant to subsection (g) or (h) to undertake the work and to furnish the materials necessary to abate a public nuisance.

**(3)** A judge in a civil action described in subsection (a), or the judge's successor in office, has continuing jurisdiction to review the condition of any building that was determined to be a public nuisance pursuant to this chapter.

**13-6-107. Jurisdiction.**

Jurisdiction for civil actions filed pursuant to this chapter is conferred upon the chancery, circuit, and any court designated as an environmental court pursuant to Acts 1991, chapter 426.