

## **ORDINANCE NO. 16-005**

### **AN ORDINANCE adopting the Unsafe Building Law.**

#### **Sec. 1. Adoption of the Unsafe Building Law**

The Town of Sharpsville, Tipton County, Indiana, hereby adopts Indiana Code Chapter 36-7-9 (Enforcement of Building Standards), which establishes the Indiana Unsafe Building Law and explicitly incorporate by reference the definition of "substantial property interest" found in Indiana Code Section 36-7-9-2, and as it may be amended from time to time, meaning any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser.

#### **Sec. 2. Appointment of Department to Administer Ordinance**

The Sharpsville Town Marshal's office shall be the executive department authorized to administer this ordinance.

#### **Sec. 3. Construction**

Any reference to a state statute shall mean the statute as amended from time to time, or any similar statutory provision that may supersede it relating to the same or similar subject matter.

#### **Sec. 4. Penalty for Violation**

Violations of this ordinance shall be addressed as established in Indiana Code Chapter 36-7-9 as it may be amended from time to time.

#### **Sec. 5. Severability**

Should any section, paragraph, sentence, clause, or any other portion of this ordinance be declared by a court of competent jurisdiction to be invalid for any reason, the remaining provisions shall not be affected, if and only if, such remaining provisions can, without the invalid provision or provisions, be given the effect intended by the council in adopting this ordinance. To this end the provisions of this ordinance are severable.

#### **Sec. 6. Effective Date**

This ordinance shall be in full force and effect upon adoption and compliance with Indiana Code Section 36-5-2-10.

SO ORDAINED this 18<sup>th</sup> day of August, 2016,

## **MEMO**

### **The Town of Sharpsville Unsafe Building Law – Demolishing Buildings**

The Town of Sharpsville enacted an ordinance adopting Indiana Code's Unsafe Building statutes codified under 36-7-9.

Under IC 36-7-9-5(a)(7), the Town may issue an **order** requiring action relative to demolition and removal of an unsafe building IF the general condition warrants removal.

#### **See IC 36-7-9-4**

**Evidence is needed.** May see if firefighter or engineer available to make the determination by qualifications. May use Tipton or Kokomo trained experts by interlocal agreements to provide opinion citable in order as evidence.

May obtain **Inspection Warrants** under IC 36-7-9-16.

The **order** under IC 36-7-9-4 must contain:

1. The name of the person to whom the order is issues;
2. The legal description OR the address of the unsafe premises
3. The action to the order requires, to wit: demolish
4. The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given;
5. IF a hearing is required, a statement indicating when the exact time and place of the hearing, and stating, that a person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments;
6. A statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with;
7. A statement indicating the obligation created by section 27 of this chapter relating to notification of subsequent interest holders and the enforcement authority; and
8. The name, address, and telephone number of the enforcement authority.

The **order** must allow for sufficient time, of at least ten (10) days, but not more than sixty (60) days, from the time when to order of the notice was given, to accomplish the required action. (c).

The key question when considering whether to demolish is whether the unsafe property could have an option of repair that would effectively correct the condition that is a **danger to the public**.

Hopinski v. Health & Hosp. 766 NE2d 454 (202). However, Courts may abuse discretion by failing give the property owner and opportunity to repair the property prior to ordering demolishing. Id.

## **IC 36-7-9**

### **Chapter 9. Unsafe Building Law**

#### **IC 36-7-9-1**

##### **Application of chapter**

Sec. 1. This chapter applies to each consolidated city and its county. This chapter also applies to any other municipality or county that adopts an ordinance under section 3 of this chapter.

*As added by Acts 1981, P.L.309, SEC.28. Amended by Acts 1982, P.L.33, SEC.33.*

#### **IC 36-7-9-2**

##### **Definitions**

Sec. 2. As used in this chapter:

"Community organization" means a citizen's group, neighborhood association, neighborhood development corporation, or similar organization that:

- (1) has specific geographic boundaries defined in its bylaws or articles of incorporation and contains at least forty (40) households within those boundaries;
- (2) is a nonprofit corporation that is representative of at least twenty-five (25) households or twenty percent (20%) of the households in the community, whichever is less;
- (3) is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;
- (4) has been incorporated for at least two (2) years; and
- (5) is exempt from taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

"Continuous enforcement order" means an order that:

- (1) is issued for compliance or abatement and that remains in full force and effect on a property without further requirements to seek additional:
  - (A) compliance and abatement authority; or
  - (B) orders for the same or similar violations;
- (2) authorizes specific ongoing compliance and enforcement activities if a property requires reinspection or additional periodic abatement;
- (3) can be enforced, including assessment of fees and costs, without the need for additional notice or hearing; and
- (4) authorizes the enforcement authority to assess and collect ongoing costs for continuous enforcement order activities from any party that is subject to the enforcement authority's order.

"Department" refers to the executive department authorized by ordinance to administer this chapter. In a consolidated city, this department is the department of code enforcement subject to IC 36-3-4-23.

"Enforcement authority" refers to the chief administrative officer of the department, except in a consolidated city. In a consolidated

*SEC.7; P.L.73-2010, SEC.10; P.L.66-2014, SEC.25.*

### **IC 36-7-9-3**

#### **Ordinances adopting this chapter**

Sec. 3. The legislative body of a municipality or county may adopt this chapter by ordinance. The ordinance must specify the executive department of the unit responsible for the administration of this chapter or establish such a department. However, in a municipality in which a commissioner of buildings was appointed to administer IC 18-5-5 (before its repeal on September 1, 1981), the commissioner of buildings is responsible for the administration of this chapter. The ordinance must also incorporate by reference the definition of "substantial property interest" in this chapter.

*As added by Acts 1981, P.L.309, SEC.28. Amended by Acts 1982, P.L.33, SEC.34; P.L.3-1990, SEC.126.*

### **IC 36-7-9-4**

#### **Unsafe buildings and unsafe premises described**

Sec. 4. (a) For purposes of this chapter, a building or structure, or any part of a building or structure, that is:

- (1) in an impaired structural condition that makes it unsafe to a person or property;
- (2) a fire hazard;
- (3) a hazard to the public health;
- (4) a public nuisance;
- (5) dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or
- (6) vacant or blighted and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

(b) For purposes of this chapter:

- (1) an unsafe building; and
- (2) the tract of real property on which the unsafe building is located;

are considered unsafe premises.

(c) For purposes of this chapter, a tract of real property that does not contain a building or structure, not including land used for production agriculture, is considered an unsafe premises if the tract of real property is:

- (1) a fire hazard;
- (2) a hazard to public health;
- (3) a public nuisance; or
- (4) dangerous to a person or property because of a violation of a statute or an ordinance.

*As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.14-1991, SEC.9; P.L.66-2005, SEC.1; P.L.66-2014, SEC.26.*

persons, in accordance with a uniform standard established by ordinance;

- (3) extermination of vermin in and about the unsafe premises;
- (4) removal of trash, debris, fire hazardous material, or a public health hazard in and about the unsafe premises;
- (5) repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance;
- (6) demolition and removal of part of an unsafe building;
- (7) demolition and removal of an unsafe building if:

- (A) the general condition of the building warrants removal;

or

- (B) the building continues to require reinspection and additional abatement action after an initial abatement action was taken pursuant to notice and an order; and

- (8) requiring, for an unsafe building that will be sealed for a period of more than ninety (90) days:

- (A) sealing against intrusion by unauthorized persons and the effects of weather;

- (B) exterior improvements to make the building compatible in appearance with other buildings in the area; and

- (C) continuing maintenance and upkeep of the building and premises;

in accordance with standards established by ordinance.

Notice of the order must be given under section 25 of this chapter. The ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties. The order supersedes any permit relating to building or land use, whether that permit is obtained before or after the order is issued.

(b) The order must contain the following:

- (1) The name of the person to whom the order is issued.

- (2) The legal description or address of the unsafe premises that are the subject of the order.

- (3) The action that the order requires.

- (4) The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given.

- (5) If a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments.

- (6) If a hearing is not required, a statement that an order under subsection (a)(2), (a)(3), (a)(4), or (a)(5) becomes final ten (10) days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises,

5(a)(2), 5(a)(3), 5(a)(4), 5(a)(5), or 7.5 of this chapter. An order issued under section 5(a)(2), 5(a)(3), 5(a)(4), 5(a)(5), or 7.5 of this chapter becomes final ten (10) days after notice is given, unless a hearing is requested before the ten (10) day period ends by a person holding a fee interest, life estate interest, mortgage interest, or equitable interest of a contract purchaser in the unsafe premises. The hearing shall be conducted by the hearing authority.

(b) The hearing shall be held on a business day no earlier than ten (10) days after notice of the order is given. The hearing authority may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five (5) days after notice is given, to continue the hearing to a business day not later than fourteen (14) days after the hearing date shown on the order. Unless the hearing authority takes action to have the continued hearing held on a definite, specified date, notice of the continued hearing must be given to the person to whom the order was issued at least five (5) days before the continued hearing date, in the manner prescribed by section 25 of this chapter. If the order being considered at the continued hearing was served by publication, it is sufficient to give notice of the continued hearing by publication unless the enforcement authority has received information in writing that enables it to make service under section 25 of this chapter by a method other than publication.

(c) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.

(d) At the conclusion of any hearing at which a continuance is not granted, the hearing authority may make findings and take action to:

- (1) affirm the order;
- (2) rescind the order; or
- (3) modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.

(e) In addition to affirming the order, in those cases in which the hearing authority finds that there has been a willful failure to comply with the order, the hearing authority may impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000). The effective date of the civil penalty may be postponed for a reasonable period, after which the hearing authority may order the civil penalty reduced or stricken if the hearing authority is satisfied that all work necessary to fully comply with the order has been done. For purposes of an appeal under section 8 of this chapter or enforcement of an order under section 17 of this chapter, action of the hearing authority is considered final upon the affirmation of the order, even though the

*P.L.247-2015, SEC.42.*

#### **IC 36-7-9-7.5**

##### **Noncompliance with order to repair or rehabilitate unsafe building; civil penalties**

Sec. 7.5. (a) This section applies to an order issued under section 5(a)(5) of this chapter for which a hearing was not requested as provided in section 7 of this chapter.

(b) If the person to whom the order was issued fails or refuses to comply with the order within sixty (60) days or the time specified in the order, the enforcement authority may impose a civil penalty not to exceed two thousand five hundred dollars (\$2,500). The enforcement authority shall give notice of the civil penalty to all persons with a known or recorded substantial property interest in the unsafe premises.

(c) After a civil penalty is imposed under subsection (b), the enforcement authority may impose an additional civil penalty in an amount not to exceed one thousand dollars (\$1,000) every ninety (90) days if the person to whom the order was issued continues to fail or refuse to comply with the order.

(d) If a civil penalty under this section is unpaid for more than fifteen (15) days after payment of the civil penalty is due, the civil penalty may be collected in the same manner as costs under section 13 or 13.5 of this chapter. The amount of the civil penalty that is collected shall be deposited in the unsafe building fund.

*As added by P.L.247-2015, SEC.43.*

#### **IC 36-7-9-8**

##### **Appeals**

Sec. 8. (a) An action taken by the hearing authority under section 7(d), 7(e), or 9(d) of this chapter or a finding by the hearing authority of abandonment under IC 36-7-37 is subject to review by the circuit or superior court of the county in which the unsafe premises are located, on request of:

(1) any person who has a substantial property interest in the unsafe premises; or

(2) any person to whom that order or finding was issued.

(b) A person requesting judicial review under this section must file a verified complaint including the findings of fact and the action taken by the hearing authority. The complaint must be filed within ten (10) days after the date when the action was taken.

(c) An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the hearing authority.

*As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.169-2006, SEC.61; P.L.247-2015, SEC.44.*

#### **IC 36-7-9-9**

required by an order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter to be performed by a contractor if:

- (1) the order has been served, in the manner prescribed by section 25 of this chapter, on each person having a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises that are the subject of the order;
- (2) the order has not been complied with;
- (3) a hearing was not requested under section 5(b)(6) of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and
- (4) the order is not being reviewed under section 8 of this chapter.

(b) The enforcement authority may cause the action required by an order, other than an order under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter, to be performed if:

- (1) service of an order under section 5(a)(1) of this chapter, in the manner prescribed by section 25 of this chapter, has been made on each person having a known or recorded substantial property interest or present possessory interest in the unsafe premises that are the subject of the order;
- (2) service of an order under section 5(a)(6), 5(a)(7), or 5(a)(8) of this chapter, in the manner prescribed by section 25 of this chapter, has been made on each person having a known or recorded substantial property interest in the unsafe premises that are the subject of the order;
- (3) the order has been affirmed or modified at the hearing in such a manner that all persons having a known or recorded substantial property interest, and persons holding a present possessory interest, as required, in the unsafe premises that are the subject of the order are currently subject to an order requiring the accomplishment of substantially identical action;
- (4) the order, as affirmed or modified at the hearing, has not been complied with; and
- (5) the order is not being reviewed under section 8 of this chapter.

(c) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement by publication and indicate that the enforcement authority intends to perform the work, unless the authority has received information in writing that enables it to make service under section 25 of this chapter by a method other than publication.

*As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.9; P.L.177-2003, SEC.6; P.L.169-2006, SEC.62.*

#### **IC 36-7-9-11**

##### **Liability for costs for performance of work required by orders**

Sec. 11. (a) The work required by an order of the enforcement

(c) All persons who have a known or recorded substantial property interest in the unsafe premises and are subject to an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter must be notified about the public bid in the manner prescribed by section 25 of this chapter, by means of a written statement including:

- (1) the name of the person to whom the order was issued;
- (2) a legal description or address of the unsafe premises that are the subject of the order;
- (3) a statement that a contract is to be let at public bid to a licensed contractor to accomplish work to comply with the order;
- (4) a description of work to be accomplished;
- (5) a statement that both the bid price of the licensed contractor who accomplishes the work and an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter of the unsafe premises may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises;
- (6) the time of the bid opening;
- (7) the place of the bid opening; and
- (8) the name, address, and telephone number of the enforcement authority.

(d) If the notice of the statement that public bids are to be let is served by publication, the publication must include the information required by subsection (c), except that it need only include a general description of the work to be accomplished. The publication must also state that a copy of the statement of public bid may be obtained from the enforcement authority.

(e) Notice of the statement that public bids are to be let must be given, at least ten (10) days before the date of the public bid, to all persons who have a known or recorded substantial property interest in the property and are subject to an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter.

(f) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication, unless the enforcement authority has received information in writing that enables the unit to make service under section 25 of this chapter by a method other than publication.

*As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.11; P.L.255-1996, SEC.26; P.L.169-2006, SEC.63.*

#### **IC 36-7-9-12**

#### **Liability for cost of emergency action taken or performance of work required by orders**

Sec. 12. (a) When action required by an order is performed by the

unsafe premises owned by a governmental entity) for more than fifteen (15) days after the completion of the work, the enforcement authority does not act under section 13.5 of this chapter, and the enforcement authority determines that there is a reasonable probability of obtaining recovery, the enforcement authority shall prepare a record stating:

- (1) the name and last known address of each person who held a known or recorded fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time the order requiring the work to be performed was recorded to the time that the work was completed;
- (2) the legal description or address of the unsafe premises that were the subject of work;
- (3) the nature of the work that was accomplished;
- (4) the amount of the unpaid bid price of the work that was accomplished; and
- (5) the amount of the unpaid average processing expense.

The record must be in a form approved by the state board of accounts.

(b) The enforcement authority, or its head, shall swear to the accuracy of the record before the clerk of the circuit court and deposit the record in the clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent in the manner prescribed by section 25 of this chapter to all of the following:

- (1) The persons named in the record.
- (2) Any mortgagee that has a known or recorded substantial property interest.

(c) If, within thirty (30) days after the notice required by subsection (b), a person named in the record or a mortgagee files with the clerk of the circuit court a written petition objecting to the claim for payment and requesting a hearing, the clerk shall enter the cause on the docket of the circuit or superior court as a civil action, and a hearing shall be held on the question in the manner prescribed by IC 4-21.5. However, issues that could have been determined under section 8 of this chapter may not be entertained at the hearing. At the conclusion of the hearing, the court shall either sustain the petition or enter a judgment against the persons named in the record for the amounts recorded or for modified amounts.

(d) If no petition is filed under subsection (c), the clerk of the circuit court shall enter the cause on the docket of the court and the court shall enter a judgment for the amounts stated in the record.

(e) A judgment under subsection (c) or (d), to the extent that it is not satisfied under IC 27-2-15, is a debt and a lien on all the real and personal property of the person named, or a joint and several debt and lien on the real and personal property of the persons named in the record prepared under subsection (a). The lien on real property is perfected against all creditors and purchasers when the judgment

chapter may be certified to the auditor and collected under this section. However, a judgment lien need not be obtained under section 13 of this chapter before a debt is certified under this section. *As added by P.L.31-1994, SEC.13. Amended by P.L.169-2006, SEC.65; P.L.247-2015, SEC.47.*

#### **IC 36-7-9-14**

##### **Unsafe building fund; deposits and expenditures**

Sec. 14. (a) The enforcement authority shall establish in its operating budget a fund designated as the unsafe building fund. Any balance remaining at the end of a fiscal year shall be carried over in the fund for the following year and does not revert to the general fund.

(b) Money for the unsafe building fund may be received from any source, including appropriations by local, state, or federal governments, and donations. The following money shall be deposited in the fund:

- (1) Money received as payment for or settlement of obligations or judgments established under sections 9 through 13 and 17 through 22 of this chapter.
- (2) Money received from bonds posted under section 7 of this chapter.
- (3) Money received in satisfaction of receivers' notes or certificates that were issued under section 20 of this chapter and were purchased with money from the unsafe building fund.
- (4) Money received for payment or settlement of civil penalties or fines imposed under section 7 of this chapter.
- (5) Money received from the collection of special assessments under section 13.5 of this chapter.

(c) Money in the unsafe building fund may be used for the expenses incurred in carrying out the purposes of this chapter, including:

- (1) the cost of obtaining reliable information about the identity and location of each person who owns a substantial property interest in unsafe premises;
- (2) the cost of an examination of an unsafe building by a registered architect or registered engineer not employed by the department;
- (3) the cost of surveys necessary to determine the location and dimensions of real property on which an unsafe building is located;
- (4) the cost of giving notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let in the manner prescribed by section 25 of this chapter;
- (5) the bid price of work by a contractor under section 10 or sections 17 through 22 of this chapter;
- (6) the cost of emergency action under section 9 of this chapter;

(3) indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and

(4) is attached to the affidavit required to be made in order to obtain the warrant.

(c) A warrant issued under this section is valid for only forty-eight (48) hours after its issuance, must be personally served upon the owner or possessor of the building, and must be returned within seventy-two (72) hours.

*As added by Acts 1981, P.L.309, SEC.28.*

#### **IC 36-7-9-17**

#### **Civil actions regarding unsafe premises; treble damages under second or subsequent judgment**

Sec. 17. (a) The department, acting through its enforcement authority, a person designated by the enforcement authority, or a community organization may bring a civil action regarding unsafe premises in the circuit, superior, or municipal court of the county. The department is not liable for the costs of such an action. The court may grant one (1) or more of the kinds of relief authorized by sections 18 through 22 of this chapter.

(b) A civil action may not be initiated under this section before the final date of an order or an extension of an order under section 5(c) of this chapter requiring:

(1) the completion; or

(2) a substantial beginning toward accomplishing the completion;

of the required remedial action.

(c) A community organization may not initiate a civil action under this section if:

(1) the enforcement authority or a person designated by the enforcement authority has filed a civil action under this section regarding the unsafe premises; or

(2) the enforcement authority has issued a final order that the required remedial action has been satisfactorily completed.

(d) A community organization may not initiate a civil action under this section if the real property that is the subject of the civil action is located outside the specific geographic boundaries of the area defined in the bylaws or articles of incorporation of the community organization.

(e) At least sixty (60) days before commencing a civil action under this section, a community organization must issue a notice by certified mail, return receipt requested, that:

(1) specifies:

(A) the nature of the alleged nuisance;

(B) the date the nuisance was first discovered;

(C) the location on the property where the nuisance is allegedly occurring;

(D) the intent of the community organization to bring a civil

amount of work must be accomplished to comply with the order, the court may require that the bond specify interim completion standards and provide that the bond is forfeited if any of these interim completion standards are not substantially met.

(b) An amount collected under subsection (a) on a forfeited bond shall be deposited in the unsafe building fund.

*As added by P.L.169-2006, SEC.67.*

#### **IC 36-7-9-19**

##### **Civil forfeitures**

Sec. 19. (a) A court acting under section 17 of this chapter may impose a civil penalty not to exceed five thousand dollars (\$5,000) against any person if the conditions of section 18 of this chapter are met. The penalty imposed may not be substantially less than the cost of complying with the order, unless that cost exceeds two thousand five hundred dollars (\$2,500). The effective date of the penalty may be postponed for a period not to exceed thirty (30) days, after which the court may order the penalty reduced or stricken if it is satisfied that all work necessary to fully comply with the order has been done.

(b) On request of the enforcement authority the court shall enter a judgment in the amount of the penalty. If there is more than one (1) party defendant, the penalty is separately applicable to each defendant. The amount of a penalty that is collected shall be deposited in the unsafe building fund.

*As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.169-2006, SEC.68.*

#### **IC 36-7-9-20**

##### **Appointment of receiver; conditions; rehabilitation of property by owner, mortgagee, or person with substantial interest**

Sec. 20. (a) A court acting under section 17 of this chapter may appoint a receiver for the unsafe premises, subject to the following conditions:

(1) The purpose of the receivership must be to take possession of the unsafe premises for a period sufficient to accomplish and pay for repairs and improvements.

(2) The receiver may be a nonprofit corporation the primary purpose of which is the improvement of housing conditions in the county where the unsafe premises are located, or may be any other capable person residing in the county.

(3) Notwithstanding any prior assignments of the rents and other income of the unsafe premises, the receiver must collect and use that income to repair or remove the defects as required by the order, and may, upon approval by the court, make repairs and improvements in addition to those specified in the order or required by applicable statutes, ordinances, codes, or regulations.

(4) The receiver may make any contracts and do all things

(b) The issuance of an order concerning unsafe premises is not a prerequisite to the appointment of a receiver nor does such an order prevent the appointment of a receiver.

(c) If the enforcement authority or the enforcement authority's designee requests the appointment of a receiver, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(d) A court, when granting powers and duties to a receiver, shall consider:

- (1) the occupancy of the unsafe premises;
- (2) the overall condition of the property;
- (3) the hazard to public health, safety, and welfare;
- (4) the number of persons having a substantial property interest in the unsafe premises; and
- (5) other factors the court considers relevant.

(e) Instead of appointing a receiver to sell or rehabilitate an unsafe premises, the court may permit an owner, a mortgagee, or a person with substantial interest in the unsafe premises to rehabilitate the premises if the owner, mortgagee, or person with substantial interest:

- (1) demonstrates ability to complete the rehabilitation within a reasonable time, but not to exceed sixty (60) days;
- (2) agrees to comply within a specified schedule for rehabilitation; and
- (3) posts a bond as security for performance of the required work in compliance with the specified schedule in subdivision (2).

*As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.31-1994, SEC.16; P.L.177-2003, SEC.8.*

#### **IC 36-7-9-20.5**

**Property determined unsafe and abandoned; receiver; sale proceeds; fee simple estate subject to easements, liens, and encumbrances**

Sec. 20.5. (a) This section applies only to property determined to be:

- (1) an unsafe premises under this chapter; and
- (2) abandoned under IC 36-7-37.

(b) The circuit court of the county in which the unit is located shall appoint the hearing authority.

(c) A city, town, or county having an enforcement authority may adopt or amend an ordinance to set requirements for the receiver that are more stringent than is provided in this section.

(d) Upon the request of the enforcement authority or the enforcement authority's designee, a circuit court acting under section 17 of this chapter may appoint a receiver to take possession of, rehabilitate, and transfer the property. The receiver may be any competent person who has been approved by the enforcement authority.

the sale.

(k) After the transfer of title to the purchaser, the receiver shall serve a notice on all persons who, before the transfer, had a known or recorded substantial property interest in the property. The notice must contain the following information:

- (1) The fact of the transfer and the purchase price paid.
- (2) The order in which the proceeds of the sale are to be applied as described in subsection (l).
- (3) Instructions for submitting a claim.
- (4) The date by which a claim must be submitted, which may not be less than ninety (90) days after the date the notice is served.
- (5) If the receiver takes reasonable steps but is unable to locate a person entitled to notice under this subsection, the receiver may serve the notice by publication. Any proceeds from the sale remaining after all claims have been paid shall be deposited in the unsafe building fund or a fund designated by the local ordinance.

(l) The proceeds of the sale shall be applied in the following order:

- (1) Current year taxes of not to exceed two thousand five hundred dollars (\$2,500).
- (2) The receiver's expenses, including administrative expenses, and costs of sale.
- (3) Any additional current year taxes in addition to the limit set in subdivision (1), delinquent taxes, and penalties, unpaid fees and fines issued by the enforcement authority, and special assessment accrued on the property.
- (4) Any liens on the property in their order of priority.
- (5) Any remaining money shall be paid to the divested owner.

(m) The issuing authority of the special assessments may choose to waive the special assessments and not collect them.

(n) A deed executed under this section vests in the grantee an estate in fee simple absolute, free and clear of all liens and encumbrances created or suffered before or after the sale except those liens granted priority under federal law and the lien of the state or a political subdivision for taxes and special assessments that accrue after the sale. However, subject to subsection (o), the estate is subject to the following:

- (1) All easements, covenants, declarations, and other deed restrictions shown by public records.
- (2) Laws, ordinances, and regulations concerning governmental police powers, including zoning, building, land use, improvements on the land, land division, and environmental protection.
- (3) Liens and encumbrances created or suffered by the grantee.

(o) A deed executed under this section:

- (1) does not operate to extinguish an easement recorded before

- (1) permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law;
- (2) permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law after the defendants have had a reasonable time, as established by the court, to make the unsafe premises safe and have failed to complete the necessary action; or
- (3) grant a mandatory injunction relative to the unsafe premises that would require a defendant who has an interest in the premises that allows the defendant to take corrective action to immediately make the premises safe.

In granting relief under subdivision (2) or (3) the court shall set a date certain for the completion of the necessary action and shall hold a hearing within ten (10) days after that date to determine whether the necessary action has been completed.

(b) The issuance of an order concerning the unsafe premises is not a prerequisite to permission by the court to cause action to be performed on the unsafe premises. If an order has been issued concerning the unsafe premises, it does not prevent the permission by the court to cause action to be performed on the unsafe premises.

(c) If the enforcement authority requests authority to cause action on the unsafe premises to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(d) The cost of accomplishing the work may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

*As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.14.*

#### **IC 36-7-9-23**

##### **Change of venue and judge**

Sec. 23. A change of venue may not be allowed in an action filed under section 8, 13, or 17 of this chapter, but a change of judge shall be allowed in the same manner as is provided for other civil matters.

*As added by Acts 1981, P.L.309, SEC.28.*

#### **IC 36-7-9-24**

##### **Priority of actions**

Sec. 24. An action filed under section 8 or 17 of this chapter takes precedence over other pending litigation, and shall be tried and determined by the court at as early a date as possible.

*As added by Acts 1981, P.L.309, SEC.28.*

#### **IC 36-7-9-25**

the day when the order or statement is delivered to the person or left at the person's dwelling or usual place of abode.

(2) If the order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.

(3) Notice by publication is considered given on the date of the second day that publication was made.

(e) A person with a property interest in an unsafe premises who does not:

(1) record an instrument reflecting the interest in the recorder's office of the county where the unsafe premises is located; or

(2) if an instrument reflecting the interest is not recorded, provide to the department (or, in the case of a consolidated city, the enforcement authority) in writing the person's name and address and the location of the unsafe premises;

is considered to consent to reasonable action taken under this chapter for which notice would be required and relinquish a claim to notice under this chapter.

(f) The department (or, in the case of a consolidated city, the enforcement authority) may, for the sake of administrative convenience, publish notice under subsection (b) at the same time notice is attempted under subsection (a). If published notice is given as described in subsection (b), the hearing authority shall subsequently make a determination about whether a reasonable effort has been made to obtain service by the means described in subsection (a).

*As added by Acts 1981, P.L.309, SEC.28. Amended by Acts 1981, P.L.45, SEC.27; P.L.59-1986, SEC.15; P.L.169-2006, SEC.69; P.L.194-2007, SEC.12.*

#### **IC 36-7-9-26**

##### **Recording of orders, statements of rescission, statements of public bids, and records of actions taken by hearing authority**

Sec. 26. (a) The enforcement authority shall record in the office of the county recorder orders issued under section 5(a)(6), 5(a)(7), 6(a), or 7.5 of this chapter. If the enforcement authority records an order issued under section 5(a)(6), 5(a)(7), 6(a), or 7.5 of this chapter, statements of rescission issued under section 6(b) of this chapter, statements that public bids are to be let under section 11 of this chapter, and records of action in which the order is affirmed, modified, or rescinded taken by the hearing authority under section 7 of this chapter shall be recorded. The recorder shall charge the fee required under IC 36-2-7-10 for recording these items.

(b) A person who takes an interest in unsafe premises that are the subject of a recorded order takes that interest, whether or not a hearing has been held, subject to the terms of the order and other documents recorded under subsection (a) and in such a manner that

(2) knowingly interferes with or delays the carrying out of an order made under this chapter;  
(3) knowingly obstructs, damages, or interferes with persons engaged or property used in performing any work or duty under this chapter; or  
(4) fails to comply with section 27 of this chapter;  
commits a Class C infraction. Each day that the violation continues constitutes a separate offense.  
*As added by Acts 1981, P.L.309, SEC.28.*

**IC 36-7-9-29**

**Order of action related to unsafe premise; written information required**

Sec. 29. (a) This section applies to a person if:  
(1) an order is issued to the person under this chapter requiring action related to an unsafe premises:  
(A) owned by the person and leased to another person; or  
(B) being purchased by the person under a contract and leased to another person;  
(2) a hearing on the order was not requested under section 5(b)(6) of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and  
(3) either:  
(A) the order is not being reviewed under section 8 of this chapter; or  
(B) after review by the circuit or superior court, the court entered a judgment against the person.

(b) A person described in subsection (a) must provide to the department (or, in the case of a consolidated city, the enforcement authority) in writing the person's name, street address (excluding a post office box address), and phone number.

*As added by P.L.194-2007, SEC.13.*

TITLES 17-21

(Reserved)