

## ABANDONED OR UNSAFE BUILDINGS—IOWA STATUTES TRANSLATED

### DEFINITIONS

1. Vacant defined: basically written in the conjunction meaning the building or house has to be BOTH vacant and have 6 months in a row of code violations of either the city (if it's within city limits) or the county (if outside city limits).
2. This defines the term “abatement” to make it clear that the building has to have the conditions actually repaired, not just boarded up.
3. Makes it clear that “building” includes both houses and mixed-use type buildings, where the lower floor (or two) are for business & the upper floors for living.
4. Gives the “city” (if house in a city) or “county” (if not in a city) the authority to bring suit under this statute (as well as all the other people who have a stake in the property) and it adds whoever may be bringing suit asking to be appointed as the receiver for the property.
5. The landowners who live within 500 feet of the “abandoned” property are allowed to file a petition under this statute.
6. Just makes it clear that the owner can also be someone buying the property on contract.
7. Very broad definition. “Adequate safe egress” is so whoever may be living there can get out of the house safely, so houses with boarded up doors qualify as abandoned. This is very helpful when starting a lawsuit under this statute as it can include almost anything that makes the property unsafe, etc.

### THE ACTUAL PAPERWORK

1. These cases have to be brought in a DISTRICT COURT where the property is located. Not a JP court or a city court.

The statute allows for not only the city or the county or the neighbor to file this suit, but INCLUDES a non-profit corporation IN THE SAME COUNTY which in its bylaws or articles of incorporation that it works toward the improvement of housing in that county. So, it can't be some non-profit that say, collects shoes for children.

The owner has to be notified that there is a lawsuit being filed, and has to be given that notice by handing over a copy of the lawsuit in person or by certified mail. If that does NOT work, (or the owner cannot be found), a copy of the service has to be actually POSTED on the building itself (somewhere where someone can easily see it) AND by publication.

That usually means by putting something in the local newspaper. Those two things (the posting on the building and the notice in the paper) have to both be done. And if it is tried this way, I would suggest taking photos of where on the building the notice was posted.

2. The first step of the lawsuit allows whoever is bringing the suit to first ask the court for an injunction, asking that the court require the owner to fix the problem.

The soonest the hearing will be held will be 20 days after the owner is given notice.

3. If at the hearing the court finds that the conditions exist which make the building unsafe or whatever (fire hazard, etc.), the judge MUST issue the order requiring the owner to correct the problem.
4. IF the judge finds that the building does qualify under this statute as being unsafe or whatever other issue exists, AND finds it's a public nuisance AND that the owner has been given plenty of time to fix it but either does not or refuses to fix the problems, then the court has a STEP 2, which then all of the people who have an interest in the building have to be given the judge's findings, and those people with an ownership (or lien) interest, MUST let the court know why the court should NOT appoint someone to perform the work that needs to be done to correct the problem.

Those other people with an interest in the property have to be given notice in the same way the owner was given notice. In person, through certified mail, etc.

5. If there isn't enough proof to show that the property has been abandoned or a danger, then the case gets dismissed & whoever brought the lawsuit has to pay the property owner's attorney's fees.

#### BUT WAIT

1. BEFORE the court appoints someone to do the work, there MUST be a hearing to give the mortgagees and others with interest the chance to show they can fix the property. The court MUST require whoever wants to fix the property POST SOME TYPE OF MONEY (most likely a bond) to show that they have the resources to do the work. Then the judge gives a guideline of what it should cost, and the money spent become a lien on the property—but ONLY IF the person who does the work wants the lien.

If there is a desire for the lien, this section sets forth how to get it filed with the county and gives that lien the same priority as the mortgage.

2. If no one (of the people who have an interest in the property like a lienholder or a mortgage holder) can do the work, or the court finds AT ANY TIME after that court hearing that the person who was taking on the project is not or cannot do the work, or is not doing it fast enough, the court can basically appoint someone to take over. The RECEIVER!!!!

## **APPOINTMENT OF A RECEIVER**

### Section 657A.4

After the hearing, the judge may appoint someone to take over the property. No one can be appointed unless they actually give the judge documentation showing they have the financial means & expertise to take on the project, and they also have to show a construction plan.

The receiver can be someone from any financial institution with an interest on record

Or

A non-profit corporation FROM THAT COUNTY whose primary purpose is to improve the housing in that city or county

Or

Any other person the court deems qualified to take on the project.

If the receiver is a non-profit, it cannot have paid any of its earnings to a private shareholder or individual. This is to keep someone from forming their own “non-profit” and then trying to scoop up some abandoned properties under this law.

The rest of the language for this section just makes it clear that serving on the board of a non-profit does not create a conflict for someone who holds elected office or wants to run for public office or is currently employed by the city or county. This is the same for a member of the non-profit.

## **DETERMINING THE COSTS INVOLVED**

### Section 657A.5

1. Before ordering the work to start, the court MUST put on the record the following:
  - a. The estimated cost of labor, materials, and financing
  - b. The estimated income & expense of the property after work is done
  - c. The need for & terms of financing of the work to be done & the cost of materials
  - d. If the numbers don't add up to being feasible, the cost of demo of all or part of the property
  
2. If ALL of the known interested persons put it in WRITING to the court that they agree that

the property should be demolished, the court MAY (doesn't have to) order demo, but it will NOT be ordered demolished unless the persons asking for it have PAID up front the costs of demolition, the costs of the receivership (if that already happened) and all notes and mortgages.

## **POWERS & DUTIES OF THE RECEIVER**

### Section 657A.6

Before the receiver does anything, he (or she but I'm not going to do the whole he/she thing throughout this whole translation) MUST post a bond (the court decides the amount).

Once the bond is posted, the court may allow the receiver to :

1. Take over the property & run it. Lease it, collect rent, evict tenants, etc. (If there is an ordinance violation in existence – which probably exists if the building is in bad shape– it doesn't keep the receiver from his court-ordered responsibilities.)
2. Pay utilities, etc., and hire a manager if necessary.
3. Pay the pre-existing mortgage and other liens.
4. Sign contracts for work & materials, and get financing for those things
5. The court order for the receiver can include the removal of all personal junk & other stuff which is there.
6. Get mortgage insurance.
7. Receiver is allowed to make agreements to maintain & preserve the property & comply with codes, ordinances, etc.
8. The receiver can actually give the OWNER custody of the property & an opportunity to fix the issues. (Or mortgagee or lienholder of record.)
9. Issue notes and secure notes by mortgages bearing interest. Basically, selling the property to someone on an installment contract (Iowa code sets forth the interest rate.) & that note can be sold on the secondary market just like a regular mortgage.

## **PRIORITY OF RECEIVER'S MORTGAGE**

### Section 657A. 7

1. If the property is sold to someone on a contract, it has to be filed with the county within 60

days and takes first place in line (behind taxes and assessments) & if there is more than one, the order is determined by whichever was filed first. (Say the receiver gives a first & second note on the same property.)

2. Any prior recorded mortgage does not become null & void. Just second in line.

#### ASSESSMENT OF COSTS

- 657A.8 The judge can order the costs for the receiver if the income from the property isn't sufficient.
- 657A.9 Receiver can be relieved of his responsibilities at any time the judge decides, but MUST be after:
1. Property no longer a public nuisance
  2. Costs are paid AND
  3. EITHER every note & mortgage paid off OR whoever holds the notes asks the court in writing that the receiver be discharged.
- 657A.10 Receiver gets paid same way that receivers get paid in foreclosures & he is NOT civilly or criminally liable for things he did that he did in good faith. He has to believe what he did was for the good of the property.

#### CITY CAN BE THE ENTITY WHICH BRINGS THE LAWSUIT

City where property is located may ask for the court to grant title of the abandoned property to the City itself, and can use a single lawsuit if more than one abandoned building is located on the same parcel. The City has to name the owner of record & the other entities who have an interest named as the Respondents. E.g. "The City of Davenport v. John Doe, Bank of America, & Steve Sodeman"

There are some differences as the City has to give notice by certified mail AND posting. Hearing won't take place until at least 60 days after filing in the District Court.

Court SHALL (big deal word in law—Shall is obviously a mandate, where may is an option) consider:

- Delinquent taxes?
- Utilities turned on?
- Is owner living there? (Or anyone allowed to live there by owner.)
- Up to code? Fit for humans to live there?
- Exposed to the point that building is deteriorating?
- Is it boarded up?
- What efforts have been made in the past to rehab the property?

Vermin? Trash? Overgrown land?  
How much work has the city done to maintain the property?  
Past & current compliance with local housing orders?  
Any other evidence brought to the court's attention?

City will get title if the parties with an interest agree that the city may take title OR they did NOT make an effort to comply with demands from housing official within the 60 days after the case was filed.

Once City is given title, any of the interested parties are out of luck. The City takes title free of any the claims of the parties who were named in the suit.

### FINALLY

These cases have to be brought in District Court, but even if a lawsuit is brought against the property, all the other options from Code Enforcement, etc., are still available.

### In Conclusion

If the non-profit wants to move forward with the issue with that property on 6<sup>th</sup> Street, they file a suit in District Court & serve the owner (I can't remember his name) and the court sets a hearing 20 days after he's been given notice. The court gives him some time to correct the issues. If he doesn't, there will be a subsequent hearing when the court allows a qualified person of interest (the non-profit or a neighbor) to post bond to make the repairs necessary.

If you all are collecting money to pay for the repairs, you won't even be asking for a lien on the property.