

=====
LC01164
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

—————
A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PARTICULAR ACTIONS --
ABATEMENT OF NUISANCES

Introduced By: Representatives E Coderre, Moran, and Tejada

Date Introduced: February 05, 2004

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 10-1-1, 10-1-2, 10-1-3, 10-1-4, 10-1-5, 10-1-6, 10-1-7, 10-1-8, 10-
2 1-9 and 10-1-10 of the General Laws in Chapter 10-1 entitled "Abatement of Nuisances" are
3 hereby amended to read as follows:

4 **10-1-1. Action to abate nuisance -- Contents.** -- Whenever a nuisance is alleged to
5 exist, the attorney general or any citizen of the state may bring an action in the name of the state,
6 upon the relation of the attorney general or of an individual citizen, to abate the nuisance and to
7 perpetually enjoin the person or persons maintaining the nuisance and any or all persons owning
8 any legal or equitable interest in the place from further maintaining or permitting the nuisance
9 either directly or indirectly. ~~The complaint shall be duly sworn to by the complaining party,~~
10 ~~unless brought by the attorney general, and shall set forth the names of the parties, the object of~~
11 ~~the action, a description of the place complained of, and a statement of the facts constituting the~~
12 ~~alleged nuisance.~~

13 **10-1-2. Filing of action -- Application for temporary injunction. -- Definitions.** -- ~~The~~
14 ~~action shall be filed in the superior court of the county in which the nuisance is alleged to exist.~~
15 ~~Upon the filing of the action, application for a temporary injunction may be made to any justice~~
16 ~~of the superior court, and the justice shall order process to issue for a hearing to be held on the~~
17 ~~application within twenty (20) days thereafter. If the court shall not be in session in the county for~~
18 ~~which the action is filed on the date for the hearing, the process shall be made returnable to the~~

~~1 court at Providence and the hearing shall be held at Providence, unless otherwise agreed by the
2 parties or ordered by the court. Notice of the time and place of the hearing of the application for a
3 temporary injunction shall be served upon the defendants named in the complaint at least three
4 (3) days before the hearing. The hearing shall have precedence over all matters upon the docket.~~

(a) As used in this section:

(1) “Building” means, except as otherwise provided in this section, any building or
7 structure that is used or intended to be used for residential purposes. “Building” includes, but is
8 not limited to, a building or structure in which any floor is used for retail stores, shops,
9 salesrooms, markets, or similar commercial uses, or for offices, banks, civic administration
10 activities, professional services, or similar business or civic uses, and in which the other floors are
11 used, or designed and intended to be used, for residential purposes.

(2) “Public nuisance” means, for purposes of this chapter, that which is deemed to be a
13 public nuisance at common law. It shall also mean that which is dangerous to human life or
14 detrimental to health, including, but not limited to, buildings that are a menace to the public
15 health, welfare, or safety; that are structurally unsafe, unsanitary, or not provided with adequate
16 safe egress; that constitute a fire hazard; that are otherwise no longer fit and habitable; or that, in
17 relation to its existing use, constitute a hazard to the public health, welfare, or safety by reason of
18 inadequate maintenance, dilapidation, obsolescence, or abandonment.

(3) “Abate” or “abatement” in connection with any building means the removal or
20 correction of any conditions that constitute a public nuisance and the making of any other
21 improvements that are needed to effect a rehabilitation of the building that is consistent with
22 maintaining safe and habitable conditions over its remaining useful life. “Abatement” does not
23 include the closing or boarding up of any building that is found to be a public nuisance.

(4) “Interested party” means any owner, mortgagee, lien holder, tenant, or person that
25 possesses an interest of record in any property that becomes subject to the jurisdiction of a court
26 pursuant to this section, and any applicant for the appointment of a receiver pursuant to this
27 section.

(5) “Neighbor” means any owner of property, including, but not limited to, any person
29 who is purchasing property by land installment contract or under a duly executed purchase
30 contract, that is located within five hundred (500) feet of any property that becomes subject to the
31 jurisdiction of a court pursuant to this section, and any occupant of a building that is so located.

(6) “Tenant” means a person entitled under a rental agreement to occupy a dwelling unit
33 to the exclusion of others.

10-1-3. Temporary injunction -- Enforcement. -- Filing of action -- Complaint. -- If it

1 ~~shall appear to the court at the hearing that the alleged nuisance exists, a temporary injunction~~
2 ~~shall issue enjoining any and all respondents from further maintaining or permitting the nuisance,~~
3 ~~and from removing any personal property from the place where the nuisance is alleged to exist. It~~
4 ~~shall be within the power of the court to require any and all respondents to furnish a bond in a~~
5 ~~given amount, with or without surety, within such time as the court shall direct, conditioned upon~~
6 ~~the due observance of the temporary injunction. Any violation of the temporary injunction or any~~
7 ~~condition thereof shall be contempt of court to be punished as provided in section 10-1-10.~~

8 (a) The complaint shall be duly sworn to by the complaining party, unless brought by the
9 attorney general, and shall set forth the names of the parties, the object of the action, a description
10 of the place complained of, and a statement of the facts constituting the alleged nuisance. The
11 action shall be filed in the superior court of the county in which the nuisance is alleged to exist.

12 (b) Adverse impact. – The complaint or an affidavit attached thereto shall describe the
13 adverse impact associated with the nuisance upon the surrounding neighborhood. Adverse impact
14 includes, without limitation, the presence of any one or more of the following conditions:

15 (1) Diminished property value;

16 (2) Increased fear of residents to walk through and in public areas, including sidewalks
17 and streets;

18 (3) Increased volume of vehicular and pedestrian traffic to and from the property;

19 (4) An increase in the number of ambulance or police calls to the property that are related
20 to illegal activity;

21 (5) Increased noise, bothersome solicitors or approaches by persons wishing to engage in
22 illegal activity on or near the property;

23 (6) The display of dangerous weapons on or near the property;

24 (7) The discharge of firearms on or near the property;

25 (8) Search warrants served on tenants or occupants of the property that resulted in the
26 seizure of drugs;

27 (9) Investigative purchases of drugs on or near the property by law enforcement officers;

28 (10) Arrests of person on or near the property for violation of criminal laws;

29 (11) Fire Safety Code violations relating to the property;

30 (12) Housing code violations relating to the property;

31 (13) Health code violations relating to the property;

32 (14) Accumulated trash and refuse in common areas on or adjacent to the property;

33 (15) An unsecured entryway on the property.

34 (c) Attempts to notify owner. – The complaint shall contain a description of what

1 attempts, if any, have been made by the plaintiff or any other person or entity to notify the owner
2 of the property of the nuisance or resulting adverse impact.

3 ~~**10-1-4. Application of rules of equity. –Application for temporary injunction. ---**~~

4 ~~Proceedings under this chapter shall follow the usual and accepted rules of equity, except as~~
5 ~~provided in this chapter or otherwise provided by statute or rule of court.~~

6 Upon the filing of the action, application for a temporary injunction may be made to any
7 justice of the superior court, and the justice shall order process to issue for a hearing to be held on
8 the application within twenty (20) days thereafter. If the court shall not be in session in the county
9 for which the action is filed on the date of the hearing, the process shall be made returnable to the
10 court at Providence and the hearing shall be held at Providence, unless otherwise agreed by the
11 parties or ordered by the court. Notice of the time and place of the hearing of the application for a
12 temporary injunction shall be served upon the defendants named in the complaint at least three
13 (3) days before the hearing. The hearing shall have precedence over all matters upon the docket.

14 ~~**10-1-5. Evidence of reputation --- Conviction of offenses against decency. --**~~

15 ~~**Temporary injunction – Enforcement. --** In any hearing in proceedings under this chapter,~~
16 ~~evidence of the general reputation of the place, or the conviction, whether by trial or plea,~~
17 ~~including a plea of nolo, of any person of the violation of statutes against prostitution, lewdness,~~
18 ~~or assignation committed in any such place shall be admissible for the purposes of proving the~~
19 ~~existence of the nuisance.~~

20 If it shall appear to the court at the hearing that the alleged nuisance exists, the court shall
21 enter an order preliminarily enjoining the nuisance and granting such other relief as the court may
22 deem to be appropriate, including declaratory relief, mandatory orders, or any other relief deemed
23 necessary to accomplish the purposes of the injunction or order and enforce the same, and the
24 court may retain jurisdiction of the case for the purpose of enforcing its orders.

25 ~~**10-1-6. Substitution of attorney general for original plaintiff --- Costs against**~~

26 ~~**plaintiff. – Existence of a public nuisance and order of abatement. --** No action filed under~~
27 ~~section 10-1-1 shall be dismissed without the consent of the attorney general, and if the attorney~~
28 ~~general is of the opinion that the action ought not to be dismissed, he or she may be substituted~~
29 ~~for the original plaintiff and prosecute the case to a final decree. If the action is brought by a~~
30 ~~person other than the attorney general and the court finds that there is no reasonable ground~~
31 ~~therefor, costs shall be awarded against the plaintiff.~~

32 (a) If the existence of a nuisance shall finally be admitted or established in any
33 proceeding under this chapter, a decree permanently enjoining the maintenance thereof shall be
34 entered, and, in addition thereto, an order of abatement shall be entered. The order may grant

1 actual damages, declaratory relief, mandatory orders or any other relief deemed necessary to
2 accomplish the purposes of the injunction or order and enforce the same, and the court may retain
3 jurisdiction of the case for the purpose of enforcing its orders.

4 (b) Additional remedies. – If the existence of a nuisance is found, the court shall have the
5 power additionally to fashion any one or more of the following remedies:

6 (1) Assess costs of the action against the defendant.

7 (2) Assess a civil penalty against the defendant of not less than five hundred dollars
8 (\$500) nor more than ten thousand dollars (\$10,000) when a governmental agency is a plaintiff in
9 the action.

10 (3) Order the owner to clean up the property and make repairs upon the property.

11 (4) Suspend or revoke any business, professional, operational or liquor license.

12 (5) Order the owner to make additional reasonable expenditures upon the property
13 including, but not limited to, installing secure locks on doors, increasing lighting in common
14 areas and using videotaped surveillance of the property and adjacent alleyways, sidewalks and
15 parking lot.

16 (6) Order all rental income from the property to be placed in an escrow account with the
17 court for up to ninety (90) days or until the nuisance is abated.

18 (7) Order all rental income for the property transferred to a trustee, to be appointed by the
19 court, who shall be empowered to use the rental income to make reasonable expenditures upon
20 the property in order to abate the nuisance.

21 (8) Order the suspension of any state, city or local governmental subsidies payable to the
22 owners of the property, such as tenant assistance payments to landlords, until the nuisance is
23 abated.

24 (9) Allow the plaintiff to seal the property with the cost of sealing payable by the
25 defendant.

26 (10) Order the defendant to pay the plaintiff the cost of the suit, including reasonable
27 attorney fees.

28 (11) Order the parties to show cause why a receiver should not be appointed to perform
29 any work and to furnish any material that reasonably may be required to abate the public
30 nuisance.

31 (c) Factors to consider. – In making an order under subsection (b), the court shall
32 consider, among others, the following factors:

33 (1) The number of people residing at the property.

34 (2) The proximity of the property to other residential structures.

1 (3) The number of times the property has been cited for housing code or health code
2 violations.

3 (4) The number of times the property has been cited for Fire Safety Code violations.

4 (5) The number of times the owner has been notified of drug-related problems at the
5 property.

6 (6) The extent and duration of the nuisance at the time of the order.

7 (7) Prior efforts or lack of effort by the defendant to abate the nuisance.

8 (8) The availability of alternative housing for tenants of the building,

9 (9) The extent of concern about the nuisance that has been expressed by nearby residents
10 or visitors to the area.

11 (10) The owner's involvement in the nuisance.

12 **10-1-7. Decree and order of abatement -- Sale of property. Appointment of receiver.**

13 ~~-- If the existence of a nuisance shall finally be admitted or established in any proceeding under~~
14 ~~this chapter, a decree permanently enjoining the maintenance thereof shall be entered, and, in~~
15 ~~addition thereto, an order of abatement shall be entered, directing the sheriff of the county, or his~~
16 ~~or her deputies, to enter the place where the nuisance exists and to sell and remove, in the manner~~
17 ~~provided for the sale of goods and chattels under execution, all personal property used in~~
18 ~~maintaining the nuisance, unless the owner of the personal property shall prove to the satisfaction~~
19 ~~of the court that he or she had no knowledge and by the exercise of reasonable diligence could not~~
20 ~~have learned of the maintenance of the nuisance before the filing of the complaint, and the court~~
21 ~~may further direct that the place where the nuisance exists shall be kept closed for all purposes for~~
22 ~~a period of one year unless otherwise ordered. The proceeds of any sale under this section shall be~~
23 ~~applied first to the payment of all costs incurred in connection with the proceedings brought~~
24 ~~under this chapter in connection with the nuisance, and secondly to the payment of a reasonable~~
25 ~~counsel fee for the plaintiff, and any balance remaining shall be paid to the owner of the property~~
26 ~~so sold.~~

27 (a) Before appointing a receiver to perform any work to abate a public nuisance under
28 this chapter, the court shall conduct a hearing at which any mortgagee of record or lien holder of
29 record, or other interested party in the order of his or her priority of interest in title shall be
30 offered the opportunity to undertake the work and to furnish the materials as are necessary to
31 abate the public nuisance. The court shall require the party selected to demonstrate the ability
32 promptly to undertake the work required, to provide the judge with a viable financial and
33 construction plan for the rehabilitation of the building, and to post security for the performance of
34 the work. All amounts expended by the party toward abating the public nuisance shall be a lien on

1 the property if the expenditures were approved in advance by the court and if the party desires
2 such a lien. The lien shall bear the interest, and shall be payable upon the terms approved by the
3 court. The lien shall have the same priority as the mortgage of a receiver, as set forth in section
4 10-1-9, if a certified copy of the court order that approved the expenses, the interest, and the
5 terms of payment of the lien, and a description of the property in question are filed for record,
6 within thirty (30) days of the date of issuance of the order, in the office of the recorder of deeds of
7 the municipality in which the property is located. If the court determines at the hearing that no
8 party can undertake the work and furnish the materials required to abate the public nuisance, or if
9 the court determines at any time after the hearing that any party who is undertaking corrective
10 work pursuant to this chapter cannot or will not proceed, or has not proceeded with due diligence,
11 the judge may appoint a receiver to take possession and control of the property. The receiver shall
12 be appointed in the manner provided in subsection (b).

13 (b) No person shall be appointed a receiver unless he or she first has provided the court
14 with a viable financial and construction plan for the rehabilitation of the property in question and
15 has demonstrated the capacity and expertise to perform the required work in a satisfactory
16 manner. Prior to the appointment of a receiver, the court may grant access to the property in
17 question, to any person who applied to be appointed the receiver of the property, for the limited
18 purpose of developing a viable financial and construction plan for the rehabilitation of the
19 property which shall include the items set forth in section 10-1-8. The appointed receiver may be
20 a financial institution that possesses an interest of record in the property, a nonprofit corporation
21 that is duly organized and has as one of its goals the improvement of housing conditions for low
22 and moderate income persons in the municipality in which the property in question is located, or
23 any other qualified property manager who certifies that any rehabilitation of the property in
24 question will not result in the long-term displacement of low and moderate income persons.

25 ~~**10-1-8. Dissolution of order to keep closed. — Court determination required. -- (a)**~~
26 ~~The owner or lessor of any place ordered closed pursuant to section 10-1-7 may, at any time, have~~
27 ~~the order to keep the place closed dissolved upon the payment of all costs incurred and upon the~~
28 ~~filing of a bond in such sum and with such surety as shall be fixed and approved by the court,~~
29 ~~conditioned upon the immediate abatement of the nuisance and against any further maintenance~~
30 ~~thereof, provided the owner or lessor shall prove to the satisfaction of the court that he or she had~~
31 ~~no knowledge and by the exercise of reasonable diligence could not have learned of the existence~~
32 ~~of the nuisance before the commencement of the action.~~

33 ~~(b) The dissolution of the order to keep the place closed shall not release the place from~~
34 ~~any judgment, lien, penalty, or liability, to which it may be subject by law. If any person shall~~

~~break and enter or use a place ordered closed pursuant to section 10-1-7, he or she shall be punished for contempt as provided in section 10-1-10.~~

Prior to ordering any work or the furnishing of any materials to abate a public nuisance under this chapter, the court shall review the submitted financial and construction plan and shall make all of the following findings:

(1) The estimated cost of the labor, materials, and any other development costs required to abate the public nuisance;

(2) The estimated income and expenses of the property after the furnishing of the materials and the completion of the repairs and improvements;

(3) The need for conditions and availability of any financing that is necessary for the performance of the work and the furnishing of the materials;

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

10-1-9. Proceedings after conviction in criminal proceedings. — Receiver's bond —

Power and duties. -- ~~In case the existence of a nuisance, as defined in sections 11-30-1 and 11-30-2, is established in criminal proceedings, the attorney general may proceed under this chapter to enforce the provisions and penalties of this chapter, and the finding of the defendant guilty in such criminal proceedings, unless reversed or set aside, shall be conclusive evidence as against the defendant as to the existence of a nuisance in proceedings under this chapter.~~

Before proceeding with his or her duties, any receiver appointed by the court shall post a bond in an amount designated by the court, but not exceeding the value of the building involved at the time of the appointment of the receiver as determined by the judge. The court may empower the receiver to do any or all of the following:

(1) Take possession and control of the property, operate and manage the property, establish and collect rents and income, lease and rent the property, and evict tenants;

(2) Pay all expenses of operating and conserving the property, including, but not limited to, the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian services, taxes and assessments, and insurance premiums, and hire and pay reasonable compensation to a managing agent;

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

(4) Perform or enter into contracts for the performance of all work and the furnishing of materials necessary to abate, and obtain financing for the abatement of, the public nuisance;

(5) Pursuant to court order, remove and dispose of any personal property abandoned, stored, or otherwise located on the property that creates a dangerous or unsafe condition or that

1 constitutes a violation of housing regulations or ordinances;

2 (6) Obtain mortgage insurance for the receiver's mortgage from any agency of the federal
3 government or private mortgage insurance company;

4 (7) Enter into any agreement and do those things necessary to maintain and preserve the
5 property and comply with all housing and building regulations and ordinances;

6 (8) Give the custody of the property and the opportunity to abate the nuisance and operate
7 the property to the owner, or any mortgagee or any lien holder of record;

8 (9) Issue notes and secure them by a mortgage bearing interest upon terms and conditions
9 as the court may approve. When sold or transferred by the receiver in return for valuable
10 consideration in money, material, labor, or services, the notes or certificates shall be freely
11 transferable. If within sixty (60) days of the issuance of a secured note, the mortgage is filed for
12 record in the office of the municipal recorder of the municipality in which the property is located,
13 it shall be a first lien upon the property and shall be superior to any claims of the receiver and to
14 all prior or subsequent liens and encumbrances except taxes and assessments. Priority among the
15 receiver's mortgages shall be determined by the order in which they are recorded.

16 **10-1-10. Proceedings and punishment for contempt. – Evidence of reputation –**
17 **Conviction of offenses against decency. --** ~~In case any person fails to comply with any order of~~
18 ~~the court or is otherwise in contempt of court under the provisions of this chapter, the court may~~
19 ~~try and punish the offender. Contempt proceedings shall be commenced by filing with the clerk of~~
20 ~~the court a complaint under oath, setting forth the facts, and the court shall thereupon cite the~~
21 ~~offender to appear and answer to the complaint. Any person found guilty of contempt of court~~
22 ~~under the provisions of this chapter shall be punished by a fine of not less than fifty dollars~~
23 ~~(\$50.00) nor more than one hundred dollars (\$100) and by imprisonment in the adult correctional~~
24 ~~institutions for not less than three (3) months nor more than six (6) months.~~

25 In any hearing in proceedings under this chapter, evidence of the general reputation of the
26 place, or the conviction, whether by trial or plea, including a plea of nolo, of any person of the
27 violation of statutes prohibiting the sale, distribution or use of controlled substances or
28 prohibiting prostitution, lewdness, or assignation committed in any such place shall be admissible
29 for the purpose of proving the existence of the nuisance.

30 SECTION 2. Chapter 10-1 of the General Laws entitled "Abatement of Nuisances" is
31 hereby amended by adding thereto the following sections:

32 **10-1-11. Application of rules of equity. –** Proceedings under this chapter shall follow
33 the usual and accepted rules of equity, except as provided in this chapter or otherwise provided by
34 statute or rule of court.

1 **10-1-12. Proceedings and punishment for contempt.** – (a) In case any person fails to
2 comply with any order of the court or is otherwise in contempt of court under the provisions of
3 this chapter, the court may try and punish the offender. Contempt proceedings shall be
4 commenced by filing with the clerk of the court a complaint under oath, setting forth the facts,
5 and the court shall thereupon cite the offender to appear and answer to the complaint. Any person
6 found guilty of contempt of court under the provisions of this chapter shall be punished by a fine
7 of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) and by
8 imprisonment in the adult correctional institutions for not less than three (3) months nor more
9 than six (6) months.

10 (b) Additional orders. – In addition, upon finding that a defendant has willfully violated a
11 court order issued under this subchapter, the court shall be also empowered to issue any
12 additional orders necessary to abate the nuisance

13 **10-1-13. Substitution of attorney general for original plaintiff -- Costs against**
14 **plaintiff.** – No action filed under section 10-1-1 shall be dismissed without the consent of the
15 attorney general, and if the attorney general is of the opinion that the action ought not to be
16 dismissed, he or she may be substituted for the original plaintiff and prosecute the case to a final
17 decree. If a person other than the attorney general brings the action and the court finds that there
18 is no reasonable ground therefore, costs shall be awarded against the plaintiff.

19 **10-1-14. Proceedings after conviction in criminal proceedings.** – In case the existence
20 of a nuisance, as defined in sections 11-30-1 and 11-30-2, is established in criminal proceedings,
21 the attorney general may proceed under this chapter to enforce the provisions and penalties of this
22 chapter, and the finding of the defendant guilty in such criminal proceedings, unless reversed or
23 set aside, shall be conclusive evidence as against the defendant as to the existence of a nuisance in
24 proceedings under this chapter.

25 SECTION 3. This act shall take effect upon passage.

=====
LC01164
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE -- PARTICULAR ACTIONS --
ABATEMENT OF NUISANCES

- 1 This act would add and amend certain sections relative to the abatement of nuisances.
- 2 This act would take effect upon passage.

=====
LC01164
=====

