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# NUISANCES Health Hazard: Enable Counties and Municipalities to Require Owners to Repair or Demolish Buildings Used for Illegal Drug Activities

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#### **NUISANCES**

Health Hazard: Enable Counties and Municipalities to Require Owners to Repair or Demolish Buildings Used for Illegal Drug Activities

CODE SECTIONS:

O.C.G.A. §§ 41-2-7 to -11 (amended)

BILL NUMBER:

HB 810

ACT NUMBER:

597

SUMMARY:

The Act amends the statutory definition of an unfit building to include vacant, dilapidated structures that are used in connection with the commission of drug crimes; a county or municipality may require the repair, closing, or demolition of buildings found to be unfit. The Act also provides investigative standards for determining when a building is unfit and

for notice requirements.

EFFECTIVE DATE:

July 1, 1989

#### History

In 1951, the Georgia Supreme Court held that Georgia's nuisance laws regarding unfit buildings were a valid exercise of the state's police power. Those laws were designed to protect the public from the safety and sanitary hazards associated with buildings which are unfit for human habitation or commercial use.

More recently, Savannah officials' concern over the number of vacant structures in Savannah being used for drug-related activities prompted the introduction of HB 810.3 HB 810 was introduced to give a county or municipality the power to demolish unfit buildings used for illegal drug activities and to provide an effective way to hold the owners of such buildings or structures accountable.4 In a demonstration of statewide concern, the General Assembly passed HB 810 without opposition or amendment.5

<sup>1.</sup> See Telford v. Gainesville, 208 Ga. 56, 65 S.E.2d 246 (1951).

<sup>2.</sup> Id. at 65-66, 65 S.E.2d at 252.

<sup>3.</sup> Telephone interview with Representative Diane Harvey Johnson, House District No. 123 (Mar. 28, 1989) [hereinafter Johnson Interview].

<sup>4.</sup> Telephone interview with David Gellatly, Chief, Savannah Police Department (Mar. 28, 1989) [hereinafter Gellatly Interview].

<sup>5.</sup> Johnson Interview, supra note 3.

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HB 810

The Act enlarges the scope of Georgia's nuisance law by adding "vacant, dilapidated dwellings, buildings, or structures in which drug crimes are being committed" to the definition of "unfit buildings." The Act defines "drug crime" as any act that violates the Georgia Controlled Substances Act. Structures found to fall within the statutory definition of unfit buildings are nuisances per se.

The Act also amends section 41-2-9, which delineates procedures to notify building owners that a structure may be determined unfit and injurious to the public health, safety, and welfare. When complaints by a public officer or by five residents of a municipality or unincorporated area of a county indicate that a structure is vacant, dilapidated, and used in connection with drug crimes, a public officer must conduct a preliminary investigation. If the investigation reveals a basis for the charges, the public officer will serve a complaint and provide notice of a hearing to interested parties, including the owner of the property in question.

After the hearing, the appointed public officer has the power to determine whether the building is unfit.<sup>12</sup> If the building is found to be unfit, and therefore a public nuisance, the owner may choose to repair the building if the repair can be made at a reasonable cost relative to the value of the building.<sup>13</sup> If the building cannot be repaired at a reasonable cost, the owner may be required to remove or demolish the building.<sup>14</sup> A county or municipality cannot require the removal or destruction of any building whose repair costs are less than one-half the value of the repaired structure.<sup>15</sup>

The primary purpose behind the introduction of HB 810 was to provide a county or municipality with the authority to require that buildings be rehabilitated for occupancy and to demolish vacant buildings found to be used for drug-related activities. The sponsors intended that the prospect of demolition would give owners an interest in eliminating drug-related activities on their property. The sponsors intended that the prospect of demolition would give owners an interest in the sponsors in the sponsors intended that the prospect of demolition would give owners an interest in the sponsors in the spons

<sup>6.</sup> O.C.G.A. § 41-2-7(a) (1989).

<sup>7.</sup> O.C.G.A. § 41-2-8(2) (1989).

<sup>8.</sup> Atlanta v. Aycock, 205 Ga. 441, 444, 53 S.E.2d 744, 747 (1949).

<sup>9. 1982</sup> Ga. Laws 2107 (formerly found at O.C.G.A. § 41-2-9 (1982)).

<sup>10.</sup> O.C.G.A. § 41-2-9(b)(2) (1989).

<sup>11.</sup> Id.

<sup>12.</sup> O.C.G.A. § 41-2-9(b)(3) (1989).

<sup>13.</sup> O.C.G.A. § 41-2-9(b)(3)(A) (1989).

<sup>14.</sup> O.C.G.A. § 41-2-9(b)(3)(B) (1989).

<sup>15.</sup> O.C.G.A. § 41-2-9(b)(3) (1989).

<sup>16.</sup> Telephone interview with Don Mendonsa, Savannah City Manager (Apr. 4, 1989); Johnson Interview, supra note 3.

<sup>17.</sup> Gellatly Interview, supra note 4.

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The Act also enlarges the grounds for determining when a building is unfit for human habitation or commercial use.<sup>18</sup> In addition to other grounds, a public officer may determine that a building is unfit if it is "vacant, dilapidated and being used in connection with drug crimes by personal observation or through a law enforcer's report and evidence of the commission of drug crimes."<sup>19</sup>

Finally, the Act allows municipalities and counties to authorize a public officer to investigate buildings that may be unfit which are located in unincorporated areas.<sup>20</sup> Prior to HB 810, the nuisance law did not expressly provide for investigation by public officers.<sup>21</sup> The Act now provides for investigations of vacant buildings suspected of being used in connection with drug crimes.<sup>22</sup>

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<sup>18.</sup> O.C.G.A. § 41-2-10(b) (1989).

<sup>19.</sup> Id.

<sup>20.</sup> O.C.G.A. § 41-2-11(1) (1989).

<sup>21. 1982</sup> Ga. Laws 2107 (formerly found at O.C.G.A. § 41-2-11(1) (1982)).

<sup>22.</sup> O.C.G.A. § 41-2-11(1) (1989).