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**BILL NO. 35-XXXX**

**THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS**

**XXXX, 2023**

**An Act amending Virgin Islands Code Title 28 to add a new chapter enacting the *Virgin Islands Abandoned and Derelict Real Property Conservatorship Act* to provide for third-party Conservatorships to take possession of and undertake the rehabilitation of abandoned and derelict real property.**

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PROPOSED BY:

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The 35<sup>th</sup> Virgin Islands Legislature finds and declares that:

- (1) Older neighborhoods and communities are important to the Territory's economic health by providing a focal point for businesses and services;
- (2) However, certain neighborhoods and communities suffer from blighted properties that have been abandoned by its owners;
- (3) The people of this Territory are adversely affected by abandoned and blighted residential, commercial and industrial properties, including those who live in proximity to such substandard buildings, as well as those who own property in the vicinity of such buildings;
- (4) Substandard, deteriorating and abandoned residential, commercial and industrial structures are a public safety threat and nuisance and their blighting effect diminishes property values in the communities in which these properties are located;
- (5) Abandoned and derelict buildings have the potential to contribute to unlawful criminal acts, trespassing and squatters, and other criminal activity further diminishing the local economy along with other adverse impacts to the surrounding community;
- (6) If these buildings are not rehabilitated, they are likely to remain abandoned and further deteriorate, resulting in increased costs to the Territory and taxpayers to secure and ultimately demolish them.
- (7) Providing a mechanism to transform abandoned and blighted buildings into productive reuse is an opportunity for communities to modernize, revitalize and grow, and to improve the quality of life for neighbors who are already there.
- (8) If the owner of a residential, commercial or industrial building fails to maintain the property in accordance with applicable building, housing and/or zoning codes and/or

standards of public welfare or safety, it is in the best interest of the Territory, and the community at-large for the court, pursuant to the provisions of this act, to appoint a Conservator to make the necessary improvements before the building deteriorates further and necessitates demolition, resulting in the removal of the building from the housing supply or prohibiting future productive economic use.

***BE IT ENACTED BY THE LEGISLATURE OF THE VIRGIN ISLANDS:***

**SECTION 1. Title 28 Virgin Islands Code is amended by adding a new Chapter 24 entitled Actions for Determination of Abandoned and Derelict Real Properties & Real Property Conservatorships:**

**“§XX. Short title.**

This act shall be known and may be cited as the *Virgin Islands Abandoned and Derelict Real Property Conservatorship Act*.

**§XX. Definitions.**

As used in this Section:

- (1) "Abandoned property" means any building that meets the conditions described in subdivision (c) of section XX of this chapter. The term does not include properties:
  - i. undergoing construction, renovation, or rehabilitation that is proceeding with reasonable diligence to completion;
  - ii. being actively marketed, as defined in this Chapter;
  - iii. physically secured and used or held for use by the homeowner as a vacation or seasonal home; or
  - iv. physically secured and the subject of a probate action, action to quiet title, or other litigation in which ownership is contested;
- (2) "Actively marketed" means (A) a sign has been placed on a property advertising sale of such property, (B) the owner of such property has (i) hired a real estate broker or salesperson, licensed pursuant to section Virgin Islands Code, to include the property in the multiple listing service or to otherwise market the property, (ii) placed advertisements weekly, or more frequently, in print or electronic media, or (iii) distributed printed advertisements, and (C) such sign contains accurate contact information for such owner or real estate broker or salesperson;
- (3) "Building" means a residential, commercial or industrial structure and the land appurtenant to such structure;
- (4) "Competent entity" means a person or entity, including a governmental unit, with experience in the rehabilitation of buildings and the ability to provide or obtain the necessary financing for such rehabilitation;
- (5) "Conservator" or "Conservatorship" means any person or entity that takes possession of a building pursuant to the provisions of this chapter for the purpose of rehabilitating such building or otherwise disposing of such building, and any and all activities related thereto as authorized by this Chapter, provided that this term shall not apply to any

- conservator appointed under Title 15 of this Code, provided further that a Developer or Development organization may serve as a Conservator;
- (6)"Costs of rehabilitation" means each expense for construction, stabilization, restoration, maintenance, operation or demolition of a building, or any action reasonably associated with the rehabilitation of a building, including, but not limited to, environmental remediation and architectural, engineering, legal, financing, permit and Conservator's fees;
- (7)"Court" – means the Virgin Islands Superior Court, in furtherance of Title 4 and Title 5 of this Code;
- (8)"Development organization" means a nonprofit corporation established and incorporated in a State (inclusive of the District of Columbia), territory, and/or possession of the United States for a period no less than five (5) years and duly registered to do business in the Territory of the U.S. Virgin Islands, and which has received recognition of federal tax-exempt status as a nonprofit organization under section 501(c) of the Internal Revenue Code, that has, as one its purposes, to carry out blight remediation, community development, economic development, historic preservation or promotion or enhancement of affordable housing opportunities;
- (9)Developer – a person or company that makes money from buying land, building new houses or by changing existing buildings to sell or rent; may serve in the capacity of general contractor, provided it is duly licensed in the Virgin Islands, and be responsible for overseeing a construction project;
- (10)"Historic property" means a property listed on the National Register of Historic Places, a contributing property in a national register historic district or a property located in an historic and architectural control district established pursuant to 29 V.I.C. § 283;
- (11)"Immediate family" means a parent, spouse, child or sibling;
- (12)"Lienholder of record" means a lienholder having and/or owning a valid interest in the abandoned property, provided that any such interest is a matter of public record;
- (13)"Owner" or "Owner of Record" means the holder or holders of title to, or of legal or equitable interest in, a building, and shall include, provided any such interest is a matter of public record, any heir, assignee, trustee, or beneficiary;
- (14)"Party in interest" means any person or entity with a direct and immediate interest in a building, including (A) an owner of such building, (B) a lienholder or other secured creditor of such an owner, (C) a resident of or business owner, provided such resident's residence or such owner's business is located less than one thousand feet from such building, (D) a not-for-profit development organization or community development corporation, or (E) the Government of the Virgin Islands or one of its instrumentalities;
- (15)"Substantial rehabilitation" means (A) the costs of any repair, replacement or improvement to a building exceed fifteen per cent (15%) of the value of such building after the completion of all such repairs, replacements or improvements, or (B) the replacement of two or more of the following: (i) Roof structures, (ii) ceilings, (iii) wall or floor structures, (iv) foundations, (v) plumbing systems, (vi) air conditioning systems, (vii) electrical systems, (viii) windows, (ix) doors, or (x) shutters (inclusive of hurricane and/or storm shutters).

### **§XX. Filing of Petition; Initiation of Action; Withdrawal**

- (a) A petition for the appointment of a Conservator to take possession and to undertake the rehabilitation of a building for the benefit of the owner of the building may be filed by a party in interest in the Superior Court of the Virgin Islands in the respective district in which the building is located.
- (b) The proceeding on any petition for the appointment of a Conservator under this Chapter shall constitute an action in rem and may proceed consistent with and subject to any proceeding brought or conducted pursuant to the Virgin Islands Uniform Probate and Fiduciary Related Code set forth in Title 15 of this Code, and any rules of practice and procedure issued and/or promulgated thereunder.
- (c) The petition shall include a sworn statement of the petitioner that, to the best of his or her knowledge, the building meets the conditions described in subdivision (b) of Section XX of this chapter on the date the petition is filed.
- (d) The petition shall include, to the extent available to the petitioner after his or her reasonable efforts to obtain such, the following information:
  - (1) A copy of any citation or order charging the owner of the building with being in violation of applicable Virgin Islands law zoning, building and/or housing code requirements as set forth in Title 29, Chapters 3, 5, and 6 of the Virgin Islands Code or otherwise determining that the building to be a public nuisance as defined in Title 14, Chapter 73 of the Virgin Islands Code, or a determination that the building is blighted or unfit for human occupancy or use, pursuant to Chapter 6 of Title 19 of this Code ;
  - (2) A recommendation for appointment as Conservator for the building.
- (e) The petition may include any other property adjacent to the building, provided (i) such other property is owned by the same owner as the building, and (ii) the building and each such property are used for a single or interrelated purpose and/or function.
- (f) A true copy of the petition shall be served on the owner of the building and each lienholder of record in the manner prescribed by Title 5 of the Virgin Islands Code and the Petitioner shall also record a notice of Lis pendens with the Office of the Recorder of Deeds, consistent with and, in the manner provided by, 28 VIC §130, further provided that any owner or lienholder shall be afforded an opportunity to comment on plan submitted by the conservator in support of such petition regardless of whether such owner or lienholder petitions to intervene in the action as set forth in this section.
- (g) The petitioner shall also notify the owner and each lienholder of any scheduled hearing date and provide notice that the owner and lienholders may petition to intervene in the action.
- (h) After a party in interest has moved for a determination that the property is abandoned property, the petition may only be withdrawn by leave of Court, as forth in Section X of this Chapter.

### **§XX. Virgin Islands Superior Court, Jurisdiction, Hearings, Related Probate Proceedings**

- (a) The Virgin Islands Superior Court shall preside and have original jurisdiction over all matters pertaining to petitions filed by a party in interest for the appointment of a Conservator filed pursuant to this Section and shall carry out its jurisdiction pursuant to Title 4, Chapter 5 of the Virgin Islands Code, and may adopt and amend rules for the practice and procedure concerning all matters pertaining to real property conservatorships as necessary to implement this chapter effectively.
- (b) The Virgin Islands Superior Court shall hold a hearing on the petition in the respective district in which the building is located and issue a decision (within 10 calendar days) after completion of the hearing.
- (c) The owner or owners are entitled to representation in this proceeding. Should the Court determine that the owner is unable to afford representation, the Court may in its discretion appoint counsel for the owner or owners.
- (d) The Court may appoint a Conservator for the building if the court finds that, on the date the petition was filed, each of the following conditions have been met:
  - (1) The building has not been legally occupied for at least five (5) years immediately preceding the date of such filing;
  - (2) The Court determines that the owner has not presented any compelling evidence, that:
    - a. the building has been actively marketed during the sixty days immediately preceding the date of such filing; and
    - b. there have been good faith efforts to sell the building at a price reflective of the circumstances of the building and market conditions;
  - (3) The building is not subject to a pending foreclosure action by an individual or nongovernmental entity;
  - (4) The owner did not acquire the building during the twelve months immediately preceding the date of the filing of the petition.
  - (5) The Court finds reasonable and approves the initial plan submitted to the Court, or otherwise approves the plan together with any additional conditions or considerations.
  - (6) The Court finds at least three (3) of the following:
    - i. The building is a public nuisance, abandoned, blighted or unfit for human occupancy;
    - ii. The building requires substantial rehabilitation, and no effort to rehabilitate the building has been made during the five years immediately preceding the date of such filing;
    - iii. The condition and any vacancy of the building materially increases the risk of fire to the building and any adjacent property;
    - iv. The building is susceptible to unauthorized entry and resulting potential health and safety hazards, and
      - a. the owner has failed to take reasonable and necessary measures to secure the building, or
      - b. the Government has secured the building as a result of the failure by the owner;

- v. The building is an attractive nuisance to children as a result of the presence of abandoned wells, shafts, basements, excavations and other unsafe structures;
  - vi. The building is an attractive nuisance for illicit purposes, including, but not limited to, prostitution, drug use and vagrancy;
  - vii. The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the building creates potential health and safety hazards, and the owner has failed to take reasonable and necessary measures to remove such hazards; or
  - viii. The appearance or other condition of the building negatively impacts the economic well-being of residents or businesses in close proximity to the building, which impact may include decrease in property values or loss of business, and the owner has failed to take reasonable and necessary measures to remedy the appearance or other condition.
- (e)
- (1) Except as provided in herein, if the Court determines that the building is an abandoned property and appoints a Conservator hereunder, the Court shall certify the schedule of each mortgage, lien or other encumbrance on such abandoned property and may grant other relief as the Court deems just and appropriate. Such certification shall be binding with respect to each mortgage, lien or other encumbrance, including any tax lien, arising or attaching to the abandoned property prior to the date of such petition.
  - (2) The Court shall give the most senior nongovernmental lienholder of record on the abandoned property first consideration to either serve as, or make a recommendation for the appointment of a, Conservator.
  - (3) If such senior nongovernmental lienholder is found not competent or declines the appointment, the Court may appoint a development organization or other competent entity as Conservator, if such organization or entity agrees to serve as Conservator. In appointing a Conservator pursuant to this subparagraph, the Court shall (i) consider any recommendation contained in the petition or otherwise presented by the petitioner or other party in interest, and (ii) give preference to a development organization or governmental agency over an individual.
- (f) If the Court determines that the building is an abandoned property and the owner represents that the conditions described in this subsection will be remedied in a reasonable period, the Court may permit the owner to remedy the conditions by issuing an order that if the conditions are not remedied by the date set forth in the order, or if other specified remedial efforts have not occurred by the date or dates set forth in the order, the relief requested in the petition shall be granted.
- (g) Upon appointment of the Conservator by the Court, the Conservator:
- (1) shall promptly take possession of the abandoned property and exercise the powers described in this Section; and
  - (2) shall not cause the filing and recording of a lien against the abandoned property:

- (3) shall secure the assistance of a Developer or Development Organization, as deemed appropriate and necessary, consistent with the initial plan as approved by the Court;
- (h) The Court may remove the Conservator at any time upon request of such Conservator or showing by the petitioner or any party in interest to such action that such Conservator is not carrying out the duties described in Section XX of this Chapter, but in no event shall a conservatorship exceed thirty (30) years.

### **§§X. Powers and Duties of the Conservator**

- (a) Any Conservator appointed pursuant to this section shall, in exercising those powers deemed necessary and appropriate, and at all times pertinent,
- a. act in good faith in the full performance of the Conservatorship;
  - b. exercise reasonable care, diligence, prudence and judgment to act in the best interests of the subject abandoned property for the benefit of and to preserve and maintain the interests of any owner or any party-in-interest;
  - c. serve as a fiduciary to the subject abandoned property and transact all business and matters related thereto on an arms-length basis, free from self-dealing and free from conflicts of interests, provided that no contract or transaction between the Conservator, shall be voidable solely because the Conservator is employed by or otherwise affiliated with a party in interest if the terms any such contract or transaction are no less favorable to said party in interest than those of a similar transaction with an independent third party;
  - d. To the extent feasible and prudent, encourage and/or solicit any owner or party-in-interest to participate in decisions concerning the subject abandoned property;
  - e. be subject to monitoring and oversight during the term of the conservatorship as determined by the Virgin Islands Superior Court.
- (b) A Conservator appointed pursuant to this section shall have all powers necessary and appropriate, as approved and/or modified by, and subject to the jurisdiction of, the Virgin Islands Superior Court, for the efficient operation, management and improvement of the abandoned property in order to bring the same into compliance with applicable housing, building and/or zoning code requirements and fulfill all duties described in this subsection. Subject to approval of the Court, the powers and duties shall include, but not be limited to:
- (1) Taking possession and control of the abandoned property.
  - (2) Establishing and managing an estate trust on behalf of the owners of the property;
  - (3) Collecting accounts receivable;
  - (4) Pursuing all claims or causes of action on behalf of the owner with respect to the property described in subparagraph (1) of this subdivision;
  - (5) Contracting for the repair and maintenance of the abandoned property, provided the Conservator shall make a reasonable effort to solicit three bids for any contract valued at more than twenty-five thousand dollars unless the contractor or developer provides or obtains financing for the Conservatorship, and each of which contract shall be appropriately documented and included in the reports

and accounting required to be submitted or filed by the Conservator pursuant to this section;

- (6) Securing funds and incurring debt in accordance with subsection (f) of Section XX;
  - (7) Contracting and paying for the maintenance and restoration of utilities to the abandoned property;
  - (8) Purchasing materials, goods and supplies to repair and operate the abandoned property;
  - (9) Entering into a rental contract or lease for a period of time not to exceed twelve months, provided the court shall approve any such contract or lease;
  - (10) Affirming, renewing or entering into contracts providing for insurance coverage on the abandoned property;
  - (11) Engaging and paying legal, accounting, appraisal and other professionals to assist such Conservator in such Conservatorship.
  - (12) If such building was designated a historic property prior to determination by the court as an abandoned property, consulting with the Historic Preservation Commission, for any recommendation on preserving the historic character of such abandoned property;
  - (13) Applying for and receiving public grants and private loans at the Conservator's discretion, provided that such public grants and private loans are not to be secured by any lien on the building;
  - (14) Applying for and seeking reimbursement for fees, costs and expenses incurred, as approved by the Court, solely and exclusively from the **Abandoned and Derelict Properties Conservatorship Fund, established under Title 33, Chapter 111 of this Code.**
  - (15) Selling the building with the express consent of any owner of record in accordance with subsection (X) of this section; and
  - (16) Exercising any right a property owner would have to improve, maintain and otherwise manage such property, including to the extent necessary to carry out the purposes of this section.
- (c) While in possession and control of the abandoned property, such Conservator shall:
- (1) Maintain, safeguard and insure such property as is reasonably practicable;
  - (2) Apply all revenue generated from such property consistent with the provisions of this section;
  - (3) Quarterly, or more frequently if the court deems appropriate, submit a status report to the court and each party to the action as well as any owner of record, which report shall include (i) a copy of any contract entered into by the Conservator regarding the rehabilitation of the abandoned property, (ii) an account of the disposition of all revenue generated from such property, (iii) an account of all expenses, repairs and improvements, (iv) the status of developing and implementing the Conservator's plan described in subparagraph (3) of this subdivision, and (v) a description of any proposed action to be taken in the three



(3) months following the date of submission of the status report to rehabilitate such property.

(d.) Conservator's Plan

- (1) At the time the court appoints a Conservator pursuant to subdivision (b) of Section X of this section, the Conservator may present for the court's approval a Conservator's plan, which shall detail:
    - i. Cost estimates, inclusive of developer and/or general contractor fees and labor costs, to rehabilitate the building and bring the building into compliance and meet the applicable building and zoning code requirements as set forth in XXXX;
      1. If rehabilitation is not feasible, a proposal for the mothballing, sealing or demolition of such property in conformity with the applicable building, housing and/or, zoning codes, and historic preservation requirements.
    - ii. Anticipated funding sources to rehabilitate the building;
    - iii. A schedule of each mortgage, lien or other encumbrance on the building; and
    - iv. The proposed term of the conservatorship.
  - (2) If no such plan is presented at the time of appointment, a hearing date on such plan shall be set not later than ninety (90) calendar days after the appointment and the Conservator shall submit such plan to the court and each party to the action not later than thirty days prior to the hearing on such plan.
  - (3) At the time of the hearing on the Conservator's plan, each party to the action and any owner of record may comment on such plan and the court shall consider all comments when assessing the feasibility of such plan and proposed financing. In making its determination for approving such plan, the costs of such Conservatorship, the court shall give reasonable regard to the Conservator's assessment of the scope and necessity of work to be done for rehabilitation or demolition, as applicable, of the property.
  - (4) The Court shall issue a decision approving such Conservator's plan or requiring that such plan be amended, in which case another hearing date shall be set.
- (d) Upon implementation of such Conservator's plan approved by the Court, the Conservator shall file with the court a full accounting of all income and expenditures during the time from approval of the plan to such implementation.
- (e) In furthering the purposes and plans of the conservatorship, as approved by the court, the Government of the Virgin Islands may waive any and all permitting, zoning, application, administrative, fees and/or costs, if any agency and/or instrumentality finds in its discretion that the purposes of the Conservatorship would be better fulfilled by having such fees be waived.
- (f) The Tax Assessor, upon application by the Conservator, may waive or defer, any and all outstanding real property taxes accrued at the time the Conservator is appointed pursuant to this Chapter and any and all real property taxes that become owed and due

during the pendency of the Conservatorship, provided that the Office of the Tax Assessor finds in its discretion that the purpose of the Conservatorship would be better fulfilled by having such taxes waived and/or deferred, provided that should the property be sold by the owner in accordance with this Chapter, such taxes shall become owed and due at the time of closing on said sale.

### **§§XX. Ownership of Property**

- (a) The Conservator appointed pursuant to subdivision (b) of Section XX of this section shall be deemed to have powers and authority equivalent to ownership and legal control of the abandoned property for the purposes of filing plans with any public agency or board, seeking or obtaining construction permits or other approvals and submitting applications for financing or other assistance to public or private entities.
- (b) Notwithstanding the provisions of subdivision (a) of this subsection, nothing in this section shall be construed to relieve the owner of a building that has been determined to be an abandoned property pursuant to subdivision (b) of Section XX of this section of any civil or criminal liability or of any obligation to pay any tax, mortgage, private lien or other fee or charge incurred before the appointment of the Conservator, and no such liability shall transfer to the Conservator
- (c) Notwithstanding any provision of the general statutes, the Conservator shall not be liable for any environmental damage to a building that has been determined to be an abandoned property pursuant to subdivision (b) of Section 4 of this section, so long as any such environmental damage existed prior to such determination and the appointment of such Conservator. The owner of the building shall be held liable for the environmental damage.

### **§XX. Incurring Indebtedness, Limitations on liens.**

- (a) The Conservator may borrow money or incur indebtedness to cover the costs of rehabilitation or otherwise fulfill any duty described in subsection XX of this section, provided that the Conservator is expressly prohibited from placing any liens on or otherwise offering the abandoned property as collateral to secure such indebtedness.
- (b) For the purpose of facilitating the borrowing of funds for the costs of rehabilitation, the Conservator shall first seek to obtain the necessary financing from the most senior nongovernmental lienholder, and if such lienholder declines to provide financing on reasonable terms for any reasonable improvement or other costs of rehabilitation, shall seek to induce another lender to provide financing on reasonable terms.
- (c) If the most senior nongovernmental lienholder agrees to provide financing for the costs of rehabilitation, any moneys lent to cover such costs shall be deemed added to such lienholder's pre-existing first lien.
- (d) The court may approve financing for the costs of rehabilitation, the terms of which may include deferred repayment and use restrictions. Such terms shall only remain with the rehabilitated property after the termination of the Conservatorship and be assumed by (A) the owner of the building that was determined to be an abandoned property pursuant to subdivision (b) of Section XX of this section expressly consents to such financing

- terms at the time such owner regains possession of the rehabilitated property, or (B) a purchaser of the rehabilitated property pursuant to Section XX of this section.
- (e) If an abandoned property is sold by the owner or foreclosed upon by any lienholder, or if any interest in such property is transferred, the sale, foreclosure or transfer shall be subject to the Conservatorship.
- (f) At the request of or upon the express approval and consent by any owner of record and upon application by the Conservator, the Court may order the sale of the abandoned property if the court finds that (A) notice and an opportunity to provide comment to the court was given to each owner of record of such property and each lienholder of record, (C) the terms and conditions of the sale are acceptable to the Court and the purchaser of such property is reasonably likely to maintain such property.
- (g) The Court may authorize the Conservator to sell the abandoned property free and clear of any lien, claim and encumbrance, provided the proceeds of the sale are distributed at settlement pursuant to subdivision (d) of this subsection and such distribution is approved by the Court. If the proceeds are insufficient to pay each lien, claim and encumbrance, the proceeds shall be distributed according to the priorities set forth in said subdivision and each unpaid lien, claim and encumbrance that has not been assumed pursuant to subsection (d) of this section shall be extinguished.
- (h) The proceeds of any such sale by the owner as approved by a court of competent jurisdiction in a foreclosure proceeding as further set forth in this Code shall be distributed as follows, in order of priority:
- (1) Court costs;
  - (2) Except as provided in subparagraph (7) of this subdivision, liens for unpaid property taxes and properly recorded government liens, except as to any such lien that has been sold or transferred;
  - (3) Costs and expenses of sale;
  - (4) Valid liens and security interests in accordance with the priority of any properly and lawfully recorded liens and secured interests;
  - (5) Any outstanding costs of rehabilitation together with any outstanding fees or expenses incurred by the Conservator, not otherwise paid from the Abandoned and Derelict Properties Conservatorship Fund, in connection with the sale or the safeguarding of the abandoned property, as expressly approved by the Court;
  - (6) The owner of the building that was determined to be an abandoned property pursuant to subdivision (b) of Section 4 of this section.
  - (7) Unpaid obligations of the Conservator not otherwise paid from the Abandoned and Derelict Properties Conservatorship Fund.
- (i) At the conclusion of any sale and distribution of proceeds, the Conservator shall draft a deed stating that recognizable and marketable title to such property is vested in the purchaser of such property and that any prior ownership interest in such abandoned property has been extinguished. Upon approval of such deed by the Court and filing with the Recorder of Deeds, transfer of ownership of such property shall be deemed fully effectuated.

(j) Liens. In order to facilitate the securing of funds for the costs of rehabilitation, the Court may only permit the Conservator to file a lien against the building to secure payment on such debt incurred for purposes authorized under this Chapter, provided that:

- i. Any owner of record has expressly provided consent and has been provided an opportunity for notice and comment;
- ii. the Conservator sought to obtain the necessary financing from the senior nongovernmental lienholder, but such lienholder declined to provide financing for reasonable improvements or other costs of rehabilitation on reasonable terms, provided that, should any senior lienholder agree to provide financing for the costs of rehabilitation, any funds lent to cover the costs shall be deemed to be added to the senior lienholder's preexisting first lien; and
- iii. the Court finds that placement of a lien against the building are equitable and fair to any owner of record and/or lienholder based on the totality of the circumstances underlying the request for such lien placement.

(k) Approval of financing. The Court may approve financing for the costs of rehabilitation, the terms of which may include deferred repayment and use restrictions. As approved by the Court, the terms of the financing may only remain with the property after the conservatorship has ended and be assumed by any of the following:

- i. The owner, if the owner regains possession of the property under section X; or .
- ii. The buyer who takes title under section X.

### **§XX. Termination and/or Voluntary Withdrawal of Conservatorship**

A. Upon motion by the Conservator or any party in interest, the Court may order the termination of a Conservatorship of an abandoned property if the court finds:

- i. The purposes of the Conservatorship have been fulfilled, such as the remediation or abatement of the conditions described in subdivision (b) of Section 4 of this section and the payment of or provision for each obligation, expense and improvement of the Conservatorship, including any fees or expenses incurred by the Conservator;
- ii. The owner, a mortgagee or a lienholder has requested the Conservatorship be terminated and has provided adequate assurance to the Court that the purposes of the Conservatorship will be fulfilled, such as the remediation or abatement of the conditions described in subdivision (b) of Section 4 of this section and the payment of or provision for each obligation, expense and improvement of such Conservatorship, including any fee or expense incurred by such Conservator;
- iii. The abandoned property has been sold by the owner and the proceeds of the sale have been distributed in accordance with subdivision (d) of Section 8 of this section; or
- iv. The Conservator has been unable, after diligent effort, to: (A) develop a Conservator's plan pursuant to subparagraph (3) of subdivision (b) of Section 4 of

this section for approval by the Court, (B) implement any court-approved plan, or (C) fulfill the purposes of the Conservatorship for any reason;

- v. The Court finds, either *sua sponte* or upon petition by an owner or any party-in-interest, that the Conservator has engaged in misconduct that is deemed a breach of the conservator's fiduciary duty or engaged in tortious conduct during the administration of the conservatorship, provided that the court may hold the conservator personally liable for such conduct in an amount deemed appropriate to include:
  - i. Any loss or depreciation in value of the estate resulting from the breach of duty, with interest;
  - ii. Any profit(s) or benefits received by the conservator through the breach of duty, with interest;
  - iii. Any profit that would have accrued to the subject property if the loss of profit is the result of the breach of duty; and
  - iv. Any reasonable costs incurred by any owner or party-in-interest, inclusive of compensatory and monetary damages, attorney's fees, and court costs.
- vi. Notwithstanding a finding by the court of the conservator's misconduct, as set forth in subsection (v), the court may, in its discretion, excuse the conservator in whole or in part from being held personally liable, if it would be equitable to do in light of the circumstances of the conservatorship.

B. A Conservator may voluntarily withdraw from continuing the Conservatorship for any reason during the pendency of the Conservatorship upon leave of court, provided that the court shall not permit the voluntary withdrawal of the conservatorship by the conservator if the court finds that there is ongoing efforts at rehabilitation, remediation and/or abatement of the conditions initially found by the court, at the time the request is made, unless the court finds that the owner can reasonably assume such ongoing efforts if the Conservatorship is removed.

### **§XX. Applicability**

The provisions of this section shall not apply:

(1) to any commercial or residential building, structure or land owned by or held in trust for the United States government, the Virgin Islands Government and regulated under the United States Housing Act of 1937, as amended from time to time, and regulations promulgated under such act, and

(2) if the owner of a building that would be determined by a court to be an abandoned property pursuant to this section has vacated such building to perform military service in time of war or armed conflict or to assist relief efforts during a declared federal or state emergency as a member of the United States armed forces or any reserve component of such armed forces.

### **§XX. Effective Date, Promulgation of rules and regulations**

Within 180 days from the date of enactment, the Economic Development Authority (EDA) shall establish a Redevelopment Committee within the EDA pursuant to 29 VIC §1115(b) to promulgate rules and regulations, subject to the approval of the Governor, for the purpose of

implementing and enforcing any or all of the provisions of this chapter. Such rules and regulations, when approved by the Governor, shall have the full force and effect of law. The rules and regulations shall address:

1. Establishment of the estate trust, and requirements for reporting;
2. Guidance for reasonableness of a developer's proposed amortization schedule and rate of return;
3. Etc...

This Act shall take effect upon the approval of the rules and regulations.

## **SECTION 2.**

A. TITLE 4 VIRGIN ISLANDS CODE, CHAPTER 8, SECTION 121 is amended by deleting the first full sentence in its entirety and inserting:

The Magistrate Division consists of no fewer than three magistrate judges per judicial district and other officers and employees as the Presiding Judge of the Superior Court subject to the authority of the Supreme Court considers necessary for the proper administration and performance of the duties and functions of the division, provided that one magistrate judge per judicial district shall be appointed for the exclusive purpose of hearing all housing, probate, landlord and tenant actions, real property conservatorships, and other such related matters consistent with the jurisdiction and power authorized in this Chapter.

B. TITLE 4 VIRGIN ISLANDS CODE, CHAPTER 8, SECTION 123, SUBSECTION (A), IS AMENDED AS FOLLOWS:

(a) Insert a new paragraph (5) to read as follows:

“hear all matters pertaining to petitions for the appointment of a Conservator filed pursuant to and consistent with the provisions set forth in Title X, Chapter X of the Virgin Islands Code and all related matters thereto concerning real property conservatorships;”,

and

(b) Renumber the subsequent paragraphs in sequential order.

C. Within 90 days from the date of enactment, the Judicial Branch shall submit a proposed budget for the requirements mandated herein.

## **SECTION 3.**

Title 33, Sections 2301 and 2404, Virgin Islands Code is amended to require that for non-commercial properties surrounding or adjacent to rehabilitated abandoned property, which were owned prior to such rehabilitation, remediation and improvements, computation of its property value and tax assessment shall be made at the rate of similar property which is not

surrounding or adjacent to such rehabilitated abandoned property. Thereafter, those non-commercial properties surrounding or adjacent to such rehabilitated abandoned property were owned prior to such remediation and rehabilitation may be transferred by devise, inheritance or gift, and still be assessed at the rate of similar properties which are not surrounding or adjacent to such previously established abandoned property, as if the grantor/predecessor was the owner of record. However, should non-commercial property be sold, the property value shall be computed using standards established and used for the respective geographical area.

**SECTION 4. TITLE 33, CHAPTER 111 IS AMENDED BY ADDING A NEW SECTION §3100HH TO READ AS FOLLOWS:**

“§ 3100hh. Abandoned and Derelict Properties Conservatorship Fund

(a) There hereby is created and established in the Treasury of the Virgin Islands a special fund to be designated the “Abandoned and Derelict Properties Conservatorship Fund”.

(b) The Commissioner of Finance is directed to maintain and provide for the administration of the Abandoned and Derelict Properties Conservatorship Fund as a separate and distinct fund in the Treasury, and no funds therein shall be available for expenditure except as provided in this section.

(c) The Abandoned and Derelict Properties Conservatorship Fund shall be constituted by at least one percent (1%) of real property taxes and by all funds received from private and public grants, gifts, bequeaths, or other amounts donated, transferred, or appropriated from whatever source in an amount equal to no less than a balance of five (5) million dollars at all times, unless otherwise directed by the Commissioner of Finance.

(d) All monies pertaining to the Abandoned and Derelict Properties Conservatorship Fund shall be disbursed by the Commissioner of Finance, exclusively for the purposes of supporting Conservators and Conservatorships as appointed pursuant to and consistent with the *Virgin Islands Abandoned and Derelict Real Property Conservatorship Act* as administered by the Virgin Islands Superior Court in administering, preserving, protecting, maintaining, managing, and supervising such matters consistent therein.”