



Ohio Revised Code

Section 3752.11 Duties of holder of first mortgage upon abandonment of facility by owner.

Effective: July 1, 1996

Legislation: House Bill 98 - 120th General Assembly

(A) As used in this section:

(1) "Reporting facility" means a reporting facility at which all regulated operations have been temporarily or permanently discontinued.

(2) "Abandoned by the owner" means either of the following that occurs on or after the effective date of this section:

(a) All of the fee owners of a reporting facility have indicated affirmately in writing to the holder of the first mortgage on the real property at the facility that they, and all tenants claiming possession under those owners, have abandoned all rights of possession to the reporting facility;

(b) The first mortgage loan on the real property at the reporting facility is in default, the property is not occupied by any tenants, and the holder of the first mortgage has been unable to contact the mortgagor under the mortgage regarding the default within the earlier of ninety days after the default or sixty days after the first time the first mortgage holder has attempted unsuccessfully to contact the mortgagor following the default if the first mortgage holder is unable to contact the mortgagor within the sixty-day period.

(3) "Default" means the failure of the mortgagor to make any payment to the holder of the first mortgage required by the terms of the mortgage documents that is not cured by the mortgagor within any applicable cure periods, deferred with the consent of the holder of the first mortgage, or waived by the holder of the first mortgage.

(4) "Contact" means actual person to person, telephonic, or similar direct voice conversation between the holder of the first mortgage and the mortgagor or written correspondence from the mortgagor to the holder of the first mortgage by mail, telegram, telefax, or similar means of



communication.

(B) Not later than fifteen days after a reporting facility has been abandoned by the owner, the holder of the first mortgage on real property at the reporting facility shall do both of the following:

(1) Secure against unauthorized entry each building or structure at the facility where regulated operations were conducted and that contains or is contaminated with regulated substances and each outdoor location of operation. The holder shall secure each such building, structure, or outdoor location of operation by boarding windows, doors, and other potential means of entry, by providing security personnel, or by other methods prescribed in rules adopted under section 3752.03 of the Revised Code. Within that period, the holder also shall post about each such building, structure, or outdoor location of operation in publicly visible locations warning signs that prohibit trespassing and state that the building, structure, or outdoor location of operation contains or is contaminated with regulated substances that may endanger public health or safety if released into the environment. The holder shall continue the security measures, and maintain the warning signs, as required at each such building, structure, or outdoor location of operation until title to the facility has been transferred or until the holder files a release of the mortgage with the county recorder of the county in which the facility is located. Promptly after discovering that any of the entry barriers or warning signs installed pursuant to division (B)(1) of this section have been damaged, lost, or removed, the holder shall repair or replace them in order to maintain the security of the building, structure, or outdoor location of operation.

(2) Submit to the director of environmental protection, the local emergency planning committee of the emergency planning district in which the facility is located, and the fire department having jurisdiction where the facility is located a notice of the abandonment of the facility by the owner and of the holder's compliance with division (B)(1) of this section. The holder shall submit the notice on a form prescribed by the director.

(C) Within thirty days before the date when the holder of a mortgage will cease to maintain security and warning signs at a reporting facility pursuant to the filing of a release of the mortgage as provided in division (B)(1) of this section, the holder shall so notify the director, the local emergency planning committee of the emergency planning district in which the facility is located, and the fire department having jurisdiction where the facility is located. The holder shall submit the notice on a



form prescribed by the director.

(D) Actions undertaken by a holder of a mortgage under division (B) of this section, and the undertaking of any other activities relating to protecting and securing the facility, do not cause the holder to be an owner, operator, or mortgagee in possession of the facility or subject the holder to this chapter or any other provision of state law imposing liability or responsibility for the cleanup, removal, or remediation of regulated substances, provided that all activities not specified in that division shall be performed in compliance with the applicable requirements of Chapters 3704., 3714., 3734., 3737., 3750., 3751., 6109., and 6111. of the Revised Code and rules adopted under them.

(E) The holder of a mortgage who proceeds in good faith under divisions (B) and (C) of this section is not liable to the owner of the facility or the mortgagor, as appropriate, for damages suffered by the owner or mortgagor due to actions taken by the holder under those divisions.

(F) Nothing in this section prevents the holder of a first mortgage from applying to the court for the appointment of a receiver. If a receiver is appointed, the receiver shall succeed to the obligations of the holder of the first mortgage under divisions (B) and (C) of this section.

(G) No person shall fail to comply with this section.