

By: Dukes

H.B. No. 1675

A BILL TO BE ENTITLED

AN ACT

relating to the forced sale of an owner's interest in certain real property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 29, Property Code, is amended to read as follows:

CHAPTER 29. FORCED SALE OF OWNER'S INTEREST IN CERTAIN REAL PROPERTY AS REIMBURSEMENT FOR PROPERTY TAXES PAID BY CO-OWNER ON OWNER'S BEHALF

Sec. 29.001. APPLICATION OF CHAPTER. This chapter applies only to real property that is not exempt from forced sale under the constitution or laws of this state and is:

(1) received by a person as a result of the death of another person:

(A) by inheritance;

(B) under a will;

(C) by a joint tenancy with a right of survivorship; or

(D) by any other survivorship agreement in which the interest of the decedent passes to a surviving beneficiary other than an agreement between spouses for community property with a right of survivorship; or

(2) owned in part by:

(A) a nonprofit organization that is exempt from

1 federal income tax under Section 501(a), Internal Revenue Code of
2 1986, and its subsequent amendments, by being listed as an exempt
3 organization under Section 501(c)(3), Internal Revenue Code of
4 1986, and its subsequent amendments, that:

5 (i) [~~A~~] has been incorporated in this
6 state for at least one year;

7 (ii) [~~B~~] has a corporate purpose to
8 develop affordable housing that is stated in the nonprofit
9 corporation's original or restated [~~the~~] articles of incorporation
10 or charter;

11 (iii) [~~C~~] has at least one-fourth of its
12 board of directors residing in the county in which the property is
13 located; and

14 (iv) [~~D~~] engages primarily in the
15 building, repair, rental, or sale of housing for low-income
16 individuals or families; or

17 (B) a housing finance corporation organized
18 under Chapter 394, Local Government Code.

19 Sec. 29.002. PETITION FOR FORCED SALE. (a) A person,
20 including a nonprofit organization or housing finance corporation,
21 that owns an undivided interest in real property to which this
22 chapter applies may file in the district court in a county in which
23 the property is located a petition for a court order to require
24 another owner of an undivided interest in that property to sell the
25 other owner's interest in the property to the person if:

26 (1) the person has paid the other owner's share of ad
27 valorem taxes imposed on the property for any three years in a

1 five-year period or, in the case of a nonprofit organization or
2 housing finance corporation, has paid the other owner's share of
3 current or delinquent ad valorem taxes imposed on the property for
4 any two years in a three-year period that may precede the date when
5 the nonprofit corporation or housing finance corporation acquired
6 an interest in the property; and

7 (2) the other owner has not reimbursed the person for
8 more than half of the total amount paid by the person for the taxes
9 on the owner's behalf.

10 (b) The petition must contain:

11 (1) a description of the property;

12 (2) the name of each known owner of the property;

13 (3) if known, the interest held by each known owner of
14 the property;

15 (4) the total amount paid by the petitioner for the
16 defendant's share of ad valorem taxes imposed on the property; and

17 (5) if applicable, the amount paid by the defendant to
18 the petitioner to reimburse the petitioner for paying the
19 defendant's share of ad valorem taxes imposed on the property.

20 (c) Any defendant whose identity is unknown or whose
21 identity is known but whose address is unknown to the petitioner may
22 be served by publication in accordance with the Texas Rules of Civil
23 Procedure, or by another method of publication or service
24 authorized by the court, if requested.

25 Sec. 29.003. HEARING ON PETITION FOR FORCED SALE. (a) At a
26 hearing on a petition filed under Section 29.002, the petitioner
27 must prove by clear and convincing evidence that:

1 (1) the petitioner has paid the defendant's share of ad
2 valorem taxes imposed on the property that is the subject of the
3 petition for any three years in a five-year period or, in the case
4 of a nonprofit organization or housing finance corporation, the
5 petitioner has paid the defendant's share of current or delinquent
6 ad valorem taxes imposed on the property that is the subject of the
7 petition for any two years in a three-year period that may precede
8 the date the nonprofit corporation or housing finance corporation
9 acquired an interest in the property;

10 (2) before the date on which the petition was filed the
11 petitioner made a demand that the defendant reimburse the
12 petitioner for the amount of the defendant's share of ad valorem
13 taxes imposed on the property paid by the petitioner; and

14 (3) the defendant has not reimbursed the petitioner
15 more than half of the amount of money the petitioner paid on the
16 defendant's behalf for the defendant's share of ad valorem taxes
17 imposed on the property.

18 (b) A hearing on a petition filed under Section 29.002 may
19 not be held earlier than the 60th day after the date a demand for
20 payment is made by the petitioner or, if demand is by publication,
21 not earlier than the 60th day after the date of the last publication
22 of notice.

23 Sec. 29.0035. DEMAND TO UNKNOWN DEFENDANT. If the address
24 or identity of the defendant is unknown, the demand of the
25 petitioner for reimbursement from the defendant required by Section
26 29.003(2) may be met by publication in a newspaper in the county in
27 which the property is located once each week for four consecutive

1 weeks, with the final publication occurring not later than the 30th
2 day before the date on which the petition is filed. The publication
3 must contain the demand for reimbursement and:

4 (1) the street address or a general description of the
5 property involved;

6 (2) the legal description of the property [~~according~~
7 ~~to the survey of the property~~], including the number of the lot and
8 block or any other plat description that may be of record if the
9 property is located in a recorded subdivision [~~municipality~~];

10 (3) the county in which the property is located;

11 (4) the interest of the defendant, if known; and

12 (5) the name and address of the petitioner.

13 Sec. 29.004. COURT-ORDERED SALE. (a) On completion of the
14 hearing on a petition filed under Section 29.002, if the court is
15 satisfied that the petitioner has made the requisite proof under
16 Section 29.003, the court shall enter an order that:

17 (1) divests the defendant's interest in the real
18 property that is the subject of the petition;

19 (2) awards title and possession of the defendant's
20 interest in the real property that is the subject of the petition to
21 the petitioner; and

22 (3) [~~that~~] orders the petitioner to pay to the
23 defendant or, if the defendant is a defendant described by Section
24 29.002(c), into the registry of the court, an amount of money, if
25 any, computed by subtracting the outstanding amount of money the
26 defendant owes to the petitioner for payment of the defendant's
27 share of ad valorem taxes, including penalties and interest,

1 imposed on the property and all costs of court from the fair market
2 value of the defendant's interest in the property as determined by
3 ~~[an independent appraiser appointed by]~~ the court.

4 (b) The court's order may also direct the defendant or any
5 attorney ad litem appointed to represent any defendant whose
6 identity or location is unknown to execute and deliver to the
7 petitioner a deed that conveys to the petitioner the defendant's
8 interest in the property.

9 (c) A deed conveying to the petitioner the defendant's
10 interest in the property is not necessary to transfer title to the
11 petitioner. A transfer of title may be affected by the court's
12 order entered under Subsection (a).

13 (d) In determining the fair market value of the defendant's
14 interest in the property, the court may rely on the most recent
15 appraised value of the property reflected in the rolls of the
16 appraisal district in which the property is located and may appoint
17 an independent appraiser to assist the court. The court shall
18 consider any liens or other outstanding liabilities against the
19 property, including any ad valorem taxes, penalties, or interest
20 that remain unpaid as of the date of the hearing, in determining the
21 fair market value of the defendant's interest in the property.

22 (e) All costs of court, including any expense incurred in
23 appointing an attorney ad litem or appraiser, shall be taxed
24 against the defendant.

25 Sec. 29.005. USE OF REAL PROPERTY ACQUIRED THROUGH FORCED
26 SALE. A nonprofit organization or a housing finance corporation
27 that acquires real property through a forced sale under this

1 chapter may not use the real property for any other purpose than to
2 develop affordable housing.

3 SECTION 2. This Act applies only to a petition for forced
4 sale filed on or after the effective date of this Act. A petition
5 for forced sale filed before the effective date of this Act is
6 governed by the law in effect at the time the petition for forced
7 sale is filed, and the former law is continued in effect for that
8 purpose.

9 SECTION 3. This Act takes effect September 1, 2005.