

By: Ellis

S.B. No. 356

A BILL TO BE ENTITLED

AN ACT

relating to an urban land bank program in certain municipalities.

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

SECTION 1. Subtitle A, Title 12, Local Government Code, is amended by adding Chapter 379D to read as follows:

CHAPTER 379D. URBAN LAND BANK PROGRAM

IN MUNICIPALITY WITH POPULATION OF 1.9 MILLION OR MORE

Sec. 379D.001. SHORT TITLE. This chapter may be cited as the Urban Land Bank Program Act for a Municipality with a Population of 1.9 Million or More.

Sec. 379D.002. APPLICABILITY. This chapter applies only to a municipality with a population of 1.9 million or more.

Sec. 379D.003. DEFINITIONS. In this chapter:

(1) "Community housing development organization" or "organization" means an organization that:

(A) meets the definition of a community housing development organization in 24 C.F.R. Section 92.2; and

(B) is certified by the municipality as a community housing development organization.

(2) "Land bank" means an entity established or approved by the governing body of a municipality for the purpose of acquiring, holding, and transferring real property under this chapter.

(3) "Low income household" means a household with a

1 gross income of not greater than 80 percent of the area median
2 family income, adjusted for household size, for the metropolitan
3 statistical area in which the municipality is located, as
4 determined annually by the United States Department of Housing and
5 Urban Development.

6 (4) "Qualified participating developer" means a
7 developer who meets the requirements of Section 379D.005 and
8 includes a qualified organization under Section 379D.012.

9 (5) "Urban land bank plan" or "plan" means a plan
10 adopted by the governing body of a municipality as provided by
11 Section 379D.006.

12 (6) "Urban land bank program" or "program" means a
13 program adopted under Section 379D.004.

14 Sec. 379D.004. URBAN LAND BANK PROGRAM. (a) The governing
15 body of a municipality may adopt an urban land bank program in which
16 the officer charged with selling real property ordered sold
17 pursuant to foreclosure of a tax lien may sell certain eligible real
18 property by private sale for purposes of affordable housing
19 development as provided by this chapter.

20 (b) The governing body of a municipality that adopts an
21 urban land bank program shall establish or approve a land bank for
22 the purpose of acquiring, holding, and transferring real property
23 under this chapter.

24 Sec. 379D.005. QUALIFIED PARTICIPATING DEVELOPER. To
25 qualify to participate in an urban land bank program, a developer
26 must:

27 (1) have built three or more housing units within the

1 three-year period preceding the submission of a proposal to the
2 land bank seeking to acquire real property from the land bank;

3 (2) have a development plan approved by the
4 municipality for the land bank property; and

5 (3) meet any other requirements adopted by the
6 municipality in the urban land bank plan.

7 Sec. 379D.006. URBAN LAND BANK PLAN. (a) A municipality
8 that adopts an urban land bank program shall operate the program in
9 conformance with an urban land bank plan.

10 (b) The governing body of a municipality that adopts an
11 urban land bank program shall adopt a plan annually. The plan may
12 be amended from time to time.

13 (c) In developing the plan, the municipality shall consider
14 other housing plans adopted by the municipality, including the
15 comprehensive plan submitted to the United States Department of
16 Housing and Urban Development and all fair housing plans and
17 policies adopted or agreed to by the municipality.

18 (d) The plan must include the following:

19 (1) a list of community housing development
20 organizations eligible to participate in the right of second
21 refusal provided by Section 379D.012;

22 (2) a list of the parcels of real property that may
23 become eligible for sale to the land bank during the upcoming year;

24 (3) the municipality's plan for affordable housing
25 development on those parcels of real property; and

26 (4) the sources and amounts of funding anticipated to
27 be available from the municipality for subsidies for development of

1 affordable housing in the municipality, including any money
2 specifically available for housing developed under the program, as
3 approved by the governing body of the municipality at the time the
4 plan is adopted.

5 Sec. 379D.007. PUBLIC HEARING ON PROPOSED PLAN.

6 (a) Before adopting a plan, a municipality shall hold a public
7 hearing on the proposed plan.

8 (b) The mayor or the mayor's designee shall provide notice
9 of the hearing to all community housing development organizations
10 and to neighborhood associations identified by the municipality as
11 serving the neighborhoods in which properties anticipated to be
12 available for sale to the land bank under this chapter are located.

13 (c) The mayor or the mayor's designee shall make copies of
14 the proposed plan available to the public not later than the 60th
15 day before the date of the public hearing.

16 Sec. 379D.008. PRIVATE SALE TO LAND BANK. (a)

17 Notwithstanding any other law and except as provided by Subsections
18 (b) and (g), property that is ordered sold pursuant to foreclosure
19 of a tax lien may be sold in a private sale to a land bank by the
20 officer charged with the sale of the property without first
21 offering the property for sale as otherwise provided by Section
22 34.01, Tax Code, if:

23 (1) the market value of the property as specified in
24 the judgment of foreclosure is less than the total amount due under
25 the judgment, including all taxes, penalties, and interest, plus
26 the value of nontax liens held by a taxing unit and awarded by the
27 judgment, court costs, and the cost of the sale;

1 (2) the property is not improved with a habitable
2 building or buildings, as described by the municipality's health
3 and safety code;

4 (3) there are delinquent taxes on the property for
5 each of the preceding six years; and

6 (4) the municipality has executed with the other
7 taxing units that are parties to the tax suit an interlocal
8 agreement that enables those units to agree to participate in the
9 program.

10 (b) A property that is not improved with a habitable
11 building or buildings, as described by the municipality's health
12 and safety code, may not be sold to a land bank under this section if
13 the property is currently occupied by a person who has resided on
14 the property for at least a year.

15 (c) A sale of property for use in connection with the
16 program is a sale for a public purpose.

17 (d) If the person being sued in a suit for foreclosure of a
18 tax lien does not contest the market value of the property in the
19 suit, the person waives the right to challenge the amount of the
20 market value determined by the court for purposes of the sale of the
21 property under Section 33.50, Tax Code.

22 (e) For any sale of property under this chapter, each person
23 who was a defendant to the judgment, or that person's attorney,
24 shall be given, not later than the 30th day before the date of sale,
25 written notice of the proposed method of sale of the property by the
26 officer charged with the sale of the property. Notice shall be
27 given in the manner prescribed by Rule 21a, Texas Rules of Civil

1 Procedure.

2 (f) After receipt of the notice required by Subsection (e)
3 and before the date of the proposed sale, the owner of the property
4 subject to sale may file with the officer charged with the sale a
5 written request that the property not be sold in the manner provided
6 by this chapter.

7 (g) If the officer charged with the sale receives a written
8 request as provided by Subsection (f), the officer shall sell the
9 property as otherwise provided in Section 34.01, Tax Code.

10 (h) The owner of the property subject to sale may not
11 receive any proceeds of a sale under this chapter. However, the
12 owner does not have any personal liability for a deficiency of the
13 judgment as a result of a sale under this chapter.

14 (i) Notwithstanding any other law, if consent is given by
15 the taxing units that are a party to the judgment, property may be
16 sold to the land bank for less than the market value of the property
17 as specified in the judgment or less than the total of all taxes,
18 penalties, and interest, plus the value of nontax liens held by a
19 taxing unit and awarded by the judgment, court costs, and the cost
20 of the sale.

21 (j) The deed of conveyance of the property sold to a land
22 bank under this section conveys to the land bank the right, title,
23 and interest owned by the defendants included in the foreclosure
24 judgment, including the defendants' right to the use and possession
25 of the property, subject only to the defendants' right of
26 redemption, the terms of a recorded restrictive covenant running
27 with the land that was recorded before January 1 of the year in

1 which the tax lien on the property arose, a recorded lien that arose
2 under that restrictive covenant that was not extinguished in the
3 judgment foreclosing the tax lien, and each valid easement of
4 record as of the date of the sale that was recorded before January 1
5 of the year the tax lien arose.

6 Sec. 379D.009. SUBSEQUENT RESALE BY LAND BANK. (a) Each
7 subsequent resale of property acquired by a land bank under this
8 chapter must comply with the conditions of this section.

9 (b) Except as provided by Section 379D.011, the land bank
10 must sell a property to a qualified participating developer within
11 the five-year period following the date of acquisition for the
12 purpose of construction of affordable housing for sale or rent to
13 low income households. If after five years a qualified
14 participating developer has not purchased the property, the
15 property shall be transferred from the land bank to the taxing units
16 who were parties to the judgment for disposition as otherwise
17 allowed under the law.

18 (c) The number of properties acquired by a qualified
19 participating developer under this section on which development has
20 not been completed may not at any given time exceed three times the
21 annual average residential units produced and completed by the
22 qualified participating developer during the preceding two-year
23 period as determined by the municipality.

24 (d) The deed conveying a property sold by the land bank must
25 include a right of reverter so that if the qualified participating
26 developer does not apply for a construction permit and close on any
27 construction financing within the two-year period following the

1 date of the conveyance of the property from the land bank to the
2 qualified participating developer, the property will revert to the
3 land bank for subsequent resale to another qualified participating
4 developer or conveyance to the taxing units who were parties to the
5 judgment for disposition as otherwise allowed under the law.

6 Sec. 379D.010. RESTRICTIONS ON OCCUPANCY AND USE OF
7 PROPERTY. (a) The land bank shall impose deed restrictions with
8 appropriate terms and conditions on property sold to qualified
9 participating developers and eligible adjacent property owners
10 that require the development and sale or rental of the property to
11 low income households.

12 (b) At least 25 percent of the land bank properties sold
13 during any given fiscal year to be developed for sale shall be deed
14 restricted for sale to households with gross household incomes not
15 greater than 60 percent of the area median family income, adjusted
16 for household size, for the metropolitan statistical area in which
17 the municipality is located, as determined annually by the United
18 States Department of Housing and Urban Development.

19 (c) Housing developed under this chapter may consist of one
20 to four residential units. At least one unit of any structure with
21 two to four units must be owned and occupied as a primary residence
22 by a low income household. The remaining units may be rental units
23 if each tenant household meets the income eligibility requirements
24 of a low income household.

25 Sec. 379D.011. RIGHT OF FIRST REFUSAL IN ELIGIBLE ADJACENT
26 PROPERTY OWNERS. (a) Property acquired by the land bank shall be
27 offered for sale to eligible adjacent property owners under a right

1 of first refusal on terms and conditions developed by the land bank
2 that are consistent with this chapter.

3 (b) To be eligible to exercise a right of first refusal
4 under this section, an owner of property adjacent to property
5 acquired by the land bank must have owned and continuously occupied
6 that property for at least the five preceding years as that person's
7 principal residence.

8 Sec. 379D.012. RIGHT OF SECOND REFUSAL IN QUALIFIED
9 ORGANIZATIONS. (a) In this section, "qualified organization"
10 means a community housing development organization that:

11 (1) contains within its designated geographical
12 boundaries of operation, as set forth in its application for
13 certification filed with and approved by the municipality, a
14 portion of the property that the land bank is offering for sale;

15 (2) has built at least three single-family homes or
16 duplexes or one multifamily residential dwelling of four or more
17 units in compliance with all applicable building codes within the
18 preceding two-year period and within the organization's designated
19 geographical boundaries of operation; and

20 (3) within the preceding two-year period has built or
21 rehabilitated housing units within a two-mile radius of the
22 property that the land bank is offering for sale.

23 (b) If all eligible adjacent property owners fail to
24 exercise the right of first refusal under Section 379D.011, the
25 land bank shall offer a property for sale to qualified
26 organizations that are eligible to acquire additional properties
27 from the land bank under Section 379D.009(c). If a qualified

1 organization is not eligible to acquire additional properties under
2 that subsection at the time the property first becomes available
3 for sale, the land bank is not required to hold the property from
4 sale until the organization becomes eligible to purchase the
5 property by the right of second refusal described by this section.

6 (c) Notice must be provided to the qualified organizations
7 by certified mail, return receipt requested, not later than the
8 60th day before the beginning of the period in which the right of
9 second refusal may be exercised.

10 (d) The municipality shall specify in its plan the period
11 during which the right of second refusal provided by this section
12 may be exercised by a qualified organization. That period must be
13 at least 90 days in duration and begin after the period in which the
14 right of first refusal described by Section 379D.011 may be
15 exercised and at least three months but not more than 26 months from
16 the date of the deed of conveyance of the property to the land bank.

17 (e) During the period specified for the right of second
18 refusal under Subsection (d), the land bank may not sell the
19 property to a qualified participating developer other than a
20 qualified organization. If all qualified organizations notify the
21 land bank that they are declining to exercise their right of second
22 refusal during the specified period, or if an offer to purchase the
23 property is not received from a qualified organization during that
24 period, the land bank may sell the property to any other qualified
25 participating developer at the same price that the land bank
26 offered the property to the qualified organizations.

27 (f) In its plan, the municipality shall establish the amount

1 of additional time, if any, that a property may be held in the land
2 bank once an offer has been received and accepted from a qualified
3 organization or other qualified participating developer.

4 (g) If more than one qualified organization expresses an
5 interest in exercising its right of second refusal, the
6 organization that has designated the most geographically compact
7 area encompassing a portion of the property shall be given
8 priority.

9 (h) In its plan, the municipality may provide for other
10 rights of second refusal for any other nonprofit corporation
11 exempted from federal income tax under Section 501(c)(3), Internal
12 Revenue Code of 1986, provided that the preeminent right of second
13 refusal is provided to qualified organizations as provided by this
14 section.

15 (i) The land bank is not required to provide a right of
16 second refusal to qualified organizations under this section if the
17 land bank is selling property that reverted to the land bank under
18 Section 379D.009(d).

19 Sec. 379D.013. OPEN RECORDS AND MEETINGS. The land bank
20 shall comply with the requirements of Chapters 551 and 552,
21 Government Code.

22 Sec. 379D.014. RECORDS; AUDIT; REPORT. (a) The land bank
23 shall keep accurate minutes of its meetings and shall keep accurate
24 records and books of account that conform with generally accepted
25 principles of accounting and that clearly reflect the income and
26 expenses of the land bank and all transactions in relation to its
27 property.

1 (b) The land bank shall file with the municipality not later
2 than the 90th day after the close of the fiscal year annual audited
3 financial statements prepared by a certified public accountant.
4 The financial transactions of the land bank are subject to audit by
5 the municipality.

6 (c) For purposes of evaluating the effectiveness of the
7 program, the land bank shall submit an annual performance report to
8 the municipality not later than November 1 of each year in which the
9 land bank acquires or sells property under this chapter. The
10 performance report must include:

11 (1) a complete and detailed written accounting of all
12 money and properties received and disbursed by the land bank during
13 the preceding fiscal year;

14 (2) for each property acquired by the land bank during
15 the preceding fiscal year:

16 (A) the street address of the property;

17 (B) the legal description of the property;

18 (C) the date the land bank took title to the
19 property;

20 (D) the name and address of the property owner of
21 record at the time of the foreclosure;

22 (E) the amount of taxes and other costs owed at
23 the time of the foreclosure; and

24 (F) the assessed value of the property on the tax
25 roll at the time of the foreclosure;

26 (3) for each property sold by the land bank during the
27 preceding fiscal year to a qualified participating developer:

- 1 (A) the street address of the property;
2 (B) the legal description of the property;
3 (C) the name and mailing address of the
4 developer;
5 (D) the purchase price paid by the developer;
6 (E) the maximum incomes allowed for the
7 households by the terms of the sale; and
8 (F) the source and amount of any public subsidy
9 provided by the municipality to facilitate the sale or rental of the
10 property to a household within the targeted income levels;
11 (4) for each property sold by a qualified
12 participating developer during the preceding fiscal year, the
13 buyer's household income and a description of all use and sale
14 restrictions; and
15 (5) for each property developed for rental housing
16 with an active deed restriction, a copy of the most recent annual
17 report filed by the owner with the land bank.
18 (d) The land bank shall maintain in its records for
19 inspection a copy of the sale settlement statement for each
20 property sold by a qualified participating developer and a copy of
21 the first page of the mortgage note with the interest rate and
22 indicating the volume and page number of the instrument as filed
23 with the county clerk.
24 (e) The land bank shall provide copies of the performance
25 report to the taxing units who were parties to the judgment of
26 foreclosure and shall provide notice of the availability of the
27 performance report for review to the organizations and neighborhood

1 associations identified by the municipality as serving the
2 neighborhoods in which properties sold to the land bank under this
3 chapter are located.

4 (f) The land bank and the municipality shall maintain copies
5 of the performance report available for public review.

6 SECTION 2. This Act takes effect September 1, 2005.