

By: Lucio

S.B. No. 1056

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 nonprofit organization that is exempt from federal income tax under Section 501(a), Internal

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

4 (A) has been incorporated in this state for at
5 least one year;

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

9 (C) has at least one-fourth of its board of
10 directors residing in the county in which the property is located;
11 and

12 (D) engages primarily in the building, repair,
13 rental, or sale of housing for low-income individuals or families.

14 Sec. 29.002. PETITION FOR FORCED SALE. (a) A person,
15 including a nonprofit organization, that owns an undivided interest
16 in real property to which this chapter applies may file in the
17 district court in a county in which the property is located a
18 petition for a court order to require another owner of an undivided
19 interest in that property to sell the other owner's interest in the
20 property to the person if:

21 (1) the person has paid the other owner's share of ad
22 valorem taxes imposed on the property for any three years in a
23 five-year period or, in the case of a nonprofit organization, has
24 paid the other owner's share of current or delinquent ad valorem
25 taxes imposed on the property for any two years in a three-year
26 period that may precede the date when the nonprofit corporation
27 acquired an interest in the property; and

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

4 (b) The petition must contain:

5 (1) a description of the property;

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

7 (3) if known, the interest held by each known owner of
8 the property;

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

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

14 (c) Any defendant whose identity is unknown or whose
15 identity is known but whose address is unknown to the petitioner may
16 be served by publication in accordance with the Texas Rules of Civil
17 Procedure, or by another method of publication or service
18 authorized by the court, if requested.

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

22 (1) the petitioner has paid the defendant's share of ad
23 valorem taxes imposed on the property that is the subject of the
24 petition for any three years in a five-year period or, in the case
25 of a nonprofit organization, the petitioner has paid the
26 defendant's share of current or delinquent ad valorem taxes imposed
27 on the property that is the subject of the petition for any two

1 years in a three-year period that may precede the date the nonprofit
2 corporation acquired an interest in the property;

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

7 (3) the defendant has not reimbursed the petitioner
8 more than half of the amount of money the petitioner paid on the
9 defendant's behalf for the defendant's share of ad valorem taxes
10 imposed on the property.

11 (b) A hearing on a petition filed under Section 29.002 may
12 not be held earlier than the 60th day after the date a demand for
13 payment is made by the petitioner or, if demand is by publication,
14 not earlier than the 60th day after the date of the last publication
15 of notice.

16 Sec. 29.0035. DEMAND TO UNKNOWN DEFENDANT. If the address
17 or identity of the defendant is unknown, the demand of the
18 petitioner for reimbursement from the defendant required by Section
19 29.003(2) may be met by publication in a newspaper in the county in
20 which the property is located once each week for four consecutive
21 weeks, with the final publication occurring not later than the 30th
22 day before the date on which the petition is filed. The publication
23 must contain the demand for reimbursement and:

24 (1) the street address or a general description of the
25 property involved;

26 (2) the legal description of the property [~~according~~
27 ~~to the survey of the property~~], including the number of the lot and

1 block or any other plat description that may be of record if the
2 property is located in a recorded subdivision [~~municipality~~];

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

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

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

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

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

12 (2) awards title and possession of the defendant's
13 interest in the real property that is the subject of the petition to
14 the petitioner; and

15 (3) [~~that~~] orders the petitioner to pay to the
16 defendant or, if the defendant is a defendant described by Section
17 29.002(c), into the registry of the court, an amount of money, if
18 any, computed by subtracting the outstanding amount of money the
19 defendant owes to the petitioner for payment of the defendant's
20 share of ad valorem taxes, including penalties and interest,
21 imposed on the property and all costs of court from the fair market
22 value of the defendant's interest in the property as determined by
23 [~~an independent appraiser appointed by~~] the court.

24 (b) The court's order may also direct the defendant or any
25 attorney ad litem appointed to represent any defendant whose
26 identity or location is unknown to execute and deliver to the
27 petitioner a deed that conveys to the petitioner the defendant's

1 interest in the property.

2 (c) A deed conveying to the petitioner the defendant's
3 interest in the property is not necessary to transfer title to the
4 petitioner. A transfer of title may be effected by the court's
5 order entered under Subsection (a).

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

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

18 SECTION 2. This Act applies only to a petition for forced
19 sale filed on or after the effective date of this Act. A petition
20 for forced sale filed before the effective date of this Act is
21 governed by the law in effect at the time the petition for forced
22 sale is filed, and the former law is continued in effect for that
23 purpose.

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