

By: West

S.B. No. 1449

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a receiver to remedy hazardous properties.

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

SECTION 1. Subchapter A, Chapter 214, Local Government Code, is amended by adding Section 214.0031 to read as follows:

Sec. 214.0031. ADDITIONAL AUTHORITY TO APPOINT RECEIVER FOR HAZARDOUS PROPERTIES. (a) In this section, "eligible nonprofit housing organization" means a nonprofit housing organization that:

(1) has a demonstrated record of community involvement; and

(2) is approved by a home-rule municipality by ordinance to initiate an action under this section.

(b) A home-rule municipality or an eligible nonprofit housing organization may bring an action under this section in district court against an owner of property that is not in substantial compliance with one or more municipal ordinances regarding:

(1) the prevention of substantial risk of injury to any person; or

(2) the prevention of an adverse health impact to any person.

(c) A municipality that grants authority to an eligible nonprofit housing organization to initiate an action under this

1 section has standing to intervene in the proceedings at any time as  
2 a matter of right.

3 (d) The court may appoint a receiver if the court finds  
4 that:

5 (1) the property is in violation of one or more  
6 ordinances of the municipality described by Subsection (b);

7 (2) the condition of the property constitutes a  
8 serious and imminent public health or safety hazard; and

9 (3) the property is not an owner-occupied,  
10 single-family residence.

11 (e) The following are eligible to serve as court-appointed  
12 receivers:

13 (1) an entity with, as determined by the municipality,  
14 sufficient capacity and experience rehabilitating properties other  
15 than an entity in which or from which an eligible nonprofit housing  
16 organization bringing an action under this section has an ownership  
17 interest or rights to income; and

18 (2) an individual with, as determined by the  
19 municipality, sufficient resources and experience rehabilitating  
20 properties.

21 (f) In an action under this section, each record owner and  
22 each lienholder of record of the property shall be served with  
23 notice of the proceedings or, if not available after due diligence,  
24 may be served by alternative means, including publication, as  
25 prescribed by the Texas Rules of Civil Procedure. Actual service or  
26 service by publication on a record owner or lienholder constitutes  
27 notice to each unrecorded owner or lienholder.

1        (g) On a showing of imminent risk of injury to a person  
2 occupying the property or present in the community, the court may  
3 issue a mandatory or prohibitory temporary restraining order or  
4 temporary injunction as necessary to protect the public health or  
5 safety.

6        (h) Unless inconsistent with this section or other law, the  
7 rules of equity govern all matters relating to a court action under  
8 this section.

9        (i) Subject to control of the court, a court-appointed  
10 receiver has all powers necessary and customary to the powers of a  
11 receiver under the laws of equity and may:

12                (1) take possession and control of the property;

13                (2) operate and manage the property;

14                (3) establish and collect rents and income on the  
15 property;

16                (4) lease the property;

17                (5) make any repairs and improvements necessary to  
18 bring the property into compliance with local codes and ordinances  
19 and state laws, including:

20                        (A) performing and entering into contracts for  
21 the performance of work and the furnishing of materials for repairs  
22 and improvements; and

23                        (B) entering into loan and grant agreements for  
24 repairs and improvements to the property;

25                (6) pay expenses, including paying for utilities and  
26 paying taxes and assessments, insurance premiums, and reasonable  
27 compensation to a property management agent;

1           (7) enter into contracts for operating and maintaining  
2 the property;

3           (8) exercise all other authority of an owner of the  
4 property other than the authority to sell the property unless  
5 authorized by the court under Subsection (k); and

6           (9) perform other acts regarding the property as  
7 authorized by the court.

8           (j) A court-appointed receiver may demolish a structure on  
9 the property as authorized by the court and only if the court finds:

10           (1) it is not economically feasible to bring the  
11 structure into compliance with local codes and ordinances and state  
12 laws; and

13           (2) the structure is:

14                   (A) unfit for human habitation or is a hazard to  
15 the public health or safety;

16                   (B) regardless of its structural condition:

17                           (i) unoccupied by its owners or lessees or  
18 other invitees; and

19                           (ii) unsecured from unauthorized entry to  
20 the extent that it could be entered or used by vagrants or other  
21 uninvited persons as a place of harborage or could be entered or  
22 used by children; or

23                   (C) boarded, fenced, or otherwise secured, but:

24                           (i) the structure constitutes a danger to  
25 the public even though secured from entry; or

26                           (ii) the means used to secure the structure  
27 are inadequate to prevent unauthorized entry or use of the

1 structure in the manner described by Paragraph (B)(ii).

2 (k) On demolition of the structure, the court may authorize  
3 the receiver to sell the property to an individual or organization  
4 that will bring the property into productive use.

5 (l) On completing the repairs or demolishing the structure  
6 or before petitioning a court for termination of the receivership,  
7 the receiver shall file with the court a full accounting of all  
8 costs and expenses incurred in the repairs or demolition, including  
9 reasonable costs for labor and supervision, all income received  
10 from the property, and, at the receiver's discretion, a  
11 receivership fee of 10 percent of those costs and expenses. If the  
12 property was sold under Subsection (k) and the revenue exceeds the  
13 total of the costs and expenses incurred by the receiver plus any  
14 receivership fee, any net income shall be returned to the owner. If  
15 the property is not sold and the income produced exceeds the total  
16 of the costs and expenses incurred by the receiver plus any  
17 receivership fee, the rehabilitated property shall be restored to  
18 the owner and any net income shall be returned to the owner. If the  
19 total of the costs and expenses incurred by the receiver plus any  
20 receivership fee exceeds the income produced during the  
21 receivership, the receiver may maintain control of the property  
22 until all rehabilitation and maintenance costs plus any  
23 receivership fee are recovered or until the receivership is  
24 terminated.

25 (m) A receiver shall have a lien on the property for all of  
26 the receiver's unreimbursed costs and expenses, plus any  
27 receivership fee.

1       (n) Any lienholder of record may, after initiation of an  
2 action under this section:

3           (1) intervene in the action; and

4           (2) request appointment as a receiver under this  
5 section if the lienholder demonstrates to the court an ability and  
6 willingness to rehabilitate the property.

7       (o) A receiver appointed under this section or the home-rule  
8 municipality or eligible nonprofit housing organization that filed  
9 the action under which the receiver was appointed may petition the  
10 court to terminate the receivership and order the sale of the  
11 property if an owner has been served with notice but has failed to  
12 repay all of the receiver's outstanding costs and expenses plus any  
13 receivership fee on or before the 180th day after the date the  
14 notice was served.

15       (p) The court may order the sale of the property if the court  
16 finds that:

17           (1) notice was given to each record owner of the  
18 property and each lienholder of record;

19           (2) the receiver has been in control of the property  
20 and the owner has failed to repay all the receiver's outstanding  
21 costs and expenses of rehabilitation plus any receivership fee  
22 within the period prescribed by Subsection (o); and

23           (3) no lienholder of record has intervened in the  
24 action and tendered the receiver's costs and expenses, plus any  
25 receivership fee, and assumed control of the property.

26       (q) The court may order the property sold:

27           (1) to a land bank or other party as the court may

1 direct, excluding an eligible nonprofit housing organization that  
2 initiated the action under this section; or

3 (2) at public auction.

4 (r) The receiver, if an entity not excluded under Subsection  
5 (q), may bid on the property at the sale described by Subsection  
6 (q)(2) and may use a lien granted under Subsection (m) as credit  
7 toward the purchase.

8 (s) The court shall confirm a sale under this section and  
9 order a distribution of the proceeds of the sale in the following  
10 order:

11 (1) court costs;

12 (2) costs and expenses, plus a receivership fee, and  
13 any lien held by the receiver; and

14 (3) other valid liens.

15 (t) Any remaining amount shall be paid to the owner. If the  
16 owner cannot be identified or located, the court shall order the  
17 remaining amount to be deposited in an interest-bearing account  
18 with the district clerk's office in the district court in which the  
19 action is pending. The district clerk shall hold the funds as  
20 provided by other law.

21 (u) After the proceeds are distributed, the court shall  
22 award fee title to the purchaser. If the proceeds of the sale are  
23 insufficient to pay all liens, claims, and encumbrances on the  
24 property, the court shall extinguish all unpaid liens, claims, and  
25 encumbrances on the property and award title to the purchaser free  
26 and clear.

27 (v) This section does not foreclose any right or remedy that

1 may be available under Section 214.003, other state law, or the laws  
2 of equity.

3 SECTION 2. This Act takes effect September 1, 2009.