

By: West

S.B. No. 1449

Substitute the following for S.B. No. 1449:

By: Elkins

C.S.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:

(1) "Eligible nonprofit housing organization" means a nonprofit housing organization that is certified by a home-rule municipality to bring an action under this section.

(2) "Multifamily residential property" means any residential dwelling complex consisting of four or more units.

(b) A home-rule municipality may annually certify one or more nonprofit housing organizations to bring an action under this section after making the following findings:

(1) the nonprofit housing organization has a record of community involvement; and

(2) the certification will further the home-rule municipality's goal to rehabilitate hazardous properties.

(c) 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

1 regarding:

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

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

6 (d) A municipality that grants authority to an eligible
7 nonprofit housing organization to initiate an action under this
8 section has standing to intervene in the proceedings at any time as
9 a matter of right.

10 (e) The court may appoint a receiver if the court finds
11 that:

12 (1) the property is in violation of one or more
13 ordinances of the municipality described by Subsection (c);

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

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

18 (f) The following are eligible to serve as court-appointed
19 receivers:

20 (1) an entity with, as determined by the court,
21 sufficient capacity and experience rehabilitating properties; and

22 (2) an individual with, as determined by the court,
23 sufficient resources and experience rehabilitating properties.

24 (g) Notwithstanding Subsection (f), an entity is ineligible
25 to serve as a receiver for a multifamily residential property if the
26 nonprofit housing organization that brought the action under this
27 section has an ownership interest or a right to income in the

1 entity.

2 (h) The home-rule municipality or eligible nonprofit
3 housing organization must send by certified mail notice of any
4 ordinance violation alleged to exist on the property on or before
5 the 30th day before the date an action is filed under this section
6 to:

7 (1) the physical address of the property; and

8 (2) the address as indicated on the most recently
9 approved municipal tax roll for the property owner or the property
10 owner's agent.

11 (i) In an action under this section, each record owner and
12 each lienholder of record of the property shall be served with
13 notice of the proceedings or, if not available after due diligence,
14 may be served by alternative means, including publication, as
15 prescribed by the Texas Rules of Civil Procedure. Actual service or
16 service by publication on a record owner or lienholder constitutes
17 notice to each unrecorded owner or lienholder.

18 (j) On a showing of imminent risk of injury to a person
19 occupying the property or present in the community, the court may
20 issue a mandatory or prohibitory temporary restraining order or
21 temporary injunction as necessary to protect the public health or
22 safety.

23 (k) Unless inconsistent with this section or other law, the
24 rules of equity govern all matters relating to a court action under
25 this section.

26 (l) Subject to control of the court, a court-appointed
27 receiver has all powers necessary and customary to the powers of a

1 receiver under the laws of equity and may:

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

3 (2) operate and manage the property;

4 (3) establish and collect rents and income on the
5 property;

6 (4) lease the property;

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

10 (A) performing and entering into contracts for
11 the performance of work and the furnishing of materials for repairs
12 and improvements; and

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

15 (6) pay expenses, including paying for utilities and
16 paying taxes and assessments, insurance premiums, and reasonable
17 compensation to a property management agent;

18 (7) enter into contracts for operating and maintaining
19 the property;

20 (8) exercise all other authority of an owner of the
21 property other than the authority to sell the property unless
22 authorized by the court under Subsection (n); and

23 (9) perform other acts regarding the property as
24 authorized by the court.

25 (m) A court-appointed receiver may demolish a single-family
26 structure on the property under this section on authorization by
27 the court and only if the court finds:

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

4 (2) the structure is:

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

7 (B) regardless of its structural condition:

8 (i) unoccupied by its owners or lessees or
9 other invitees; and

10 (ii) unsecured from unauthorized entry to
11 the extent that it could be entered or used by vagrants or other
12 uninvited persons as a place of harborage or could be entered or
13 used by children; or

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

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

17 (ii) the means used to secure the structure
18 are inadequate to prevent unauthorized entry or use of the
19 structure in the manner described by Paragraph (B)(ii).

20 (n) On demolition of the structure, the court may authorize
21 the receiver to sell the property to an individual or organization
22 that will bring the property into productive use.

23 (o) On completing the repairs or demolishing the structure
24 or before petitioning a court for termination of the receivership,
25 the receiver shall file with the court a full accounting of all
26 costs and expenses incurred in the repairs or demolition, including
27 reasonable costs for labor and supervision, all income received

1 from the property, and, at the receiver's discretion, a
2 receivership fee of 10 percent of those costs and expenses. If the
3 property was sold under Subsection (n) and the revenue exceeds the
4 total of the costs and expenses incurred by the receiver plus any
5 receivership fee, any net income shall be returned to the owner. If
6 the property is not sold and the income produced exceeds the total
7 of the costs and expenses incurred by the receiver plus any
8 receivership fee, the rehabilitated property shall be restored to
9 the owner and any net income shall be returned to the owner. If the
10 total of the costs and expenses incurred by the receiver plus any
11 receivership fee exceeds the income produced during the
12 receivership, the receiver may maintain control of the property
13 until all rehabilitation and maintenance costs plus any
14 receivership fee are recovered or until the receivership is
15 terminated.

16 (p) A receiver shall have a lien on the property for all of
17 the receiver's unreimbursed costs and expenses, plus any
18 receivership fee.

19 (q) Any lienholder of record may, after initiation of an
20 action under this section:

21 (1) intervene in the action; and

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

25 (r) A receiver appointed under this section or the home-rule
26 municipality or eligible nonprofit housing organization that filed
27 the action under which the receiver was appointed may petition the

1 court to terminate the receivership and order the sale of the
2 property if an owner has been served with notice but has failed to
3 repay all of the receiver's outstanding costs and expenses plus any
4 receivership fee on or before the 180th day after the date the
5 notice was served.

6 (s) The court may order the sale of the property if the court
7 finds that:

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

10 (2) the receiver has been in control of the property
11 and the owner has failed to repay all the receiver's outstanding
12 costs and expenses of rehabilitation plus any receivership fee
13 within the period prescribed by Subsection (r); and

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

17 (t) The court may order the property sold:

18 (1) to a land bank or other party as the court may
19 direct, excluding, for multifamily residential properties, an
20 eligible nonprofit housing organization that initiated the action
21 under this section; or

22 (2) at public auction.

23 (u) The receiver, if an entity not excluded under Subsection
24 (t), may bid on the property at the sale described by Subsection
25 (t)(2) and may use a lien granted under Subsection (p) as credit
26 toward the purchase.

27 (v) The court shall confirm a sale under this section and

1 order a distribution of the proceeds of the sale in the following
2 order:

3 (1) court costs;

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

6 (3) other valid liens.

7 (w) Any remaining amount shall be paid to the owner. If the
8 owner cannot be identified or located, the court shall order the
9 remaining amount to be deposited in an interest-bearing account
10 with the district clerk's office in the district court in which the
11 action is pending. The district clerk shall hold the funds as
12 provided by other law.

13 (x) After the proceeds are distributed, the court shall
14 award fee title to the purchaser. If the proceeds of the sale are
15 insufficient to pay all liens, claims, and encumbrances on the
16 property, the court shall extinguish all unpaid liens, claims, and
17 encumbrances on the property and award title to the purchaser free
18 and clear.

19 (y) This section does not foreclose any right or remedy that
20 may be available under Section 214.003, other state law, or the laws
21 of equity.

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