

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) A home-rule municipality, or a nonprofit housing organization approved by a home-rule municipality by ordinance to initiate an action under this section, 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 property; or

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

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

(c) The court may appoint a receiver if the court finds that:

(1) the property is in violation of one or more

1 ordinances of the municipality described by Subsection (a);

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

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

6 (d) The following are eligible to serve as court-appointed
7 receivers:

8 (1) a nonprofit housing organization with, as
9 determined by the municipality, sufficient resources and
10 experience rehabilitating properties; and

11 (2) an individual with, as determined by the
12 municipality, sufficient resources and experience rehabilitating
13 properties.

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

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

26 (g) Unless inconsistent with this section or other law, the
27 rules of equity govern all matters relating to a court action under

1 this section.

2 (h) Subject to control of the court, a court-appointed
3 receiver has all powers necessary and customary to the powers of a
4 receiver under the laws of equity and may:

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

6 (2) operate and manage the property;

7 (3) establish and collect rents and income on the
8 property;

9 (4) lease the property;

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

13 (A) performing and entering into contracts for
14 the performance of work and the furnishing of materials for repairs
15 and improvements; and

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

18 (6) pay expenses, including paying for utilities and
19 paying taxes and assessments, insurance premiums, and reasonable
20 compensation to a property management agent;

21 (7) enter into contracts for operating and maintaining
22 the property;

23 (8) exercise all other authority of an owner of the
24 property other than the authority to sell the property unless
25 authorized by the court under Subsection (j); and

26 (9) perform other acts regarding the property as
27 authorized by the court.

1 (i) A court-appointed receiver may demolish a structure on
2 the property as authorized by the court and only if the court finds:

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

6 (2) the structure is:

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

9 (B) regardless of its structural condition:

10 (i) unoccupied by its owners or lessees or
11 other invitees; and

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

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

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

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

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

25 (k) On completing the repairs or demolishing the structure
26 or before petitioning a court for termination of the receivership,
27 the receiver shall file with the court a full accounting of all

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

18 (1) A receiver shall have a lien on the property superior to
19 all other liens on the property, excluding a tax lien, for all of
20 the receiver's unreimbursed costs and expenses, plus any
21 receivership fee.

22 (m) Any record lienholder may, after initiation of an action
23 under this section:

24 (1) intervene in the action; and

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

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

9 (o) The court may order the sale of the property if the court
10 finds that:

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

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

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

20 (p) The court may order the property sold:

21 (1) to a land bank or other party as the court may
22 direct; or

23 (2) at public auction.

24 (q) The receiver, if a nonprofit housing organization, may
25 bid on the property at the sale described by Subsection (p)(2) and
26 may use a lien granted under Subsection (l) as credit toward the
27 purchase.

1 (r) The court shall confirm a sale under this section and
2 order a distribution of the proceeds of the sale in the following
3 order:

4 (1) court costs;

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

7 (3) other valid liens.

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

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

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

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