

1-1 By: West S.B. No. 1449
1-2 (In the Senate - Filed March 6, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Intergovernmental
1-4 Relations; April 6, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;
1-6 April 6, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1449 By: West

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the appointment of a receiver to remedy hazardous
1-11 properties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter A, Chapter 214, Local Government
1-14 Code, is amended by adding Section 214.0031 to read as follows:

1-15 Sec. 214.0031. ADDITIONAL AUTHORITY TO APPOINT RECEIVER FOR
1-16 HAZARDOUS PROPERTIES. (a) In this section, "eligible nonprofit
1-17 housing organization" means a nonprofit housing organization that:

1-18 (1) has a demonstrated record of community
1-19 involvement; and

1-20 (2) is approved by a home-rule municipality by
1-21 ordinance to initiate an action under this section.

1-22 (b) A home-rule municipality or an eligible nonprofit
1-23 housing organization may bring an action under this section in
1-24 district court against an owner of property that is not in
1-25 substantial compliance with one or more municipal ordinances
1-26 regarding:

1-27 (1) the prevention of substantial risk of injury to
1-28 any person; or

1-29 (2) the prevention of an adverse health impact to any
1-30 person.

1-31 (c) A municipality that grants authority to an eligible
1-32 nonprofit housing organization to initiate an action under this
1-33 section has standing to intervene in the proceedings at any time as
1-34 a matter of right.

1-35 (d) The court may appoint a receiver if the court finds
1-36 that:

1-37 (1) the property is in violation of one or more
1-38 ordinances of the municipality described by Subsection (b);

1-39 (2) the condition of the property constitutes a
1-40 serious and imminent public health or safety hazard; and

1-41 (3) the property is not an owner-occupied,
1-42 single-family residence.

1-43 (e) The following are eligible to serve as court-appointed
1-44 receivers:

1-45 (1) an entity with, as determined by the municipality,
1-46 sufficient capacity and experience rehabilitating properties other
1-47 than an entity in which or from which an eligible nonprofit housing
1-48 organization bringing an action under this section has an ownership
1-49 interest or rights to income; and

1-50 (2) an individual with, as determined by the
1-51 municipality, sufficient resources and experience rehabilitating
1-52 properties.

1-53 (f) In an action under this section, each record owner and
1-54 each lienholder of record of the property shall be served with
1-55 notice of the proceedings or, if not available after due diligence,
1-56 may be served by alternative means, including publication, as
1-57 prescribed by the Texas Rules of Civil Procedure. Actual service or
1-58 service by publication on a record owner or lienholder constitutes
1-59 notice to each unrecorded owner or lienholder.

1-60 (g) On a showing of imminent risk of injury to a person
1-61 occupying the property or present in the community, the court may
1-62 issue a mandatory or prohibitory temporary restraining order or
1-63 temporary injunction as necessary to protect the public health or

2-1 safety.
2-2 (h) Unless inconsistent with this section or other law, the
2-3 rules of equity govern all matters relating to a court action under
2-4 this section.
2-5 (i) Subject to control of the court, a court-appointed
2-6 receiver has all powers necessary and customary to the powers of a
2-7 receiver under the laws of equity and may:
2-8 (1) take possession and control of the property;
2-9 (2) operate and manage the property;
2-10 (3) establish and collect rents and income on the
2-11 property;
2-12 (4) lease the property;
2-13 (5) make any repairs and improvements necessary to
2-14 bring the property into compliance with local codes and ordinances
2-15 and state laws, including:
2-16 (A) performing and entering into contracts for
2-17 the performance of work and the furnishing of materials for repairs
2-18 and improvements; and
2-19 (B) entering into loan and grant agreements for
2-20 repairs and improvements to the property;
2-21 (6) pay expenses, including paying for utilities and
2-22 paying taxes and assessments, insurance premiums, and reasonable
2-23 compensation to a property management agent;
2-24 (7) enter into contracts for operating and maintaining
2-25 the property;
2-26 (8) exercise all other authority of an owner of the
2-27 property other than the authority to sell the property unless
2-28 authorized by the court under Subsection (k); and
2-29 (9) perform other acts regarding the property as
2-30 authorized by the court.
2-31 (j) A court-appointed receiver may demolish a structure on
2-32 the property as authorized by the court and only if the court finds:
2-33 (1) it is not economically feasible to bring the
2-34 structure into compliance with local codes and ordinances and state
2-35 laws; and
2-36 (2) the structure is:
2-37 (A) unfit for human habitation or is a hazard to
2-38 the public health or safety;
2-39 (B) regardless of its structural condition:
2-40 (i) unoccupied by its owners or lessees or
2-41 other invitees; and
2-42 (ii) unsecured from unauthorized entry to
2-43 the extent that it could be entered or used by vagrants or other
2-44 uninvited persons as a place of harborage or could be entered or
2-45 used by children; or
2-46 (C) boarded, fenced, or otherwise secured, but:
2-47 (i) the structure constitutes a danger to
2-48 the public even though secured from entry; or
2-49 (ii) the means used to secure the structure
2-50 are inadequate to prevent unauthorized entry or use of the
2-51 structure in the manner described by Paragraph (B)(ii).
2-52 (k) On demolition of the structure, the court may authorize
2-53 the receiver to sell the property to an individual or organization
2-54 that will bring the property into productive use.
2-55 (l) On completing the repairs or demolishing the structure
2-56 or before petitioning a court for termination of the receivership,
2-57 the receiver shall file with the court a full accounting of all
2-58 costs and expenses incurred in the repairs or demolition, including
2-59 reasonable costs for labor and supervision, all income received
2-60 from the property, and, at the receiver's discretion, a
2-61 receivership fee of 10 percent of those costs and expenses. If the
2-62 property was sold under Subsection (k) and the revenue exceeds the
2-63 total of the costs and expenses incurred by the receiver plus any
2-64 receivership fee, any net income shall be returned to the owner. If
2-65 the property is not sold and the income produced exceeds the total
2-66 of the costs and expenses incurred by the receiver plus any
2-67 receivership fee, the rehabilitated property shall be restored to
2-68 the owner and any net income shall be returned to the owner. If the
2-69 total of the costs and expenses incurred by the receiver plus any

3-1 receivership fee exceeds the income produced during the
3-2 receivership, the receiver may maintain control of the property
3-3 until all rehabilitation and maintenance costs plus any
3-4 receivership fee are recovered or until the receivership is
3-5 terminated.

3-6 (m) A receiver shall have a lien on the property for all of
3-7 the receiver's unreimbursed costs and expenses, plus any
3-8 receivership fee.

3-9 (n) Any lienholder of record may, after initiation of an
3-10 action under this section:

3-11 (1) intervene in the action; and

3-12 (2) request appointment as a receiver under this
3-13 section if the lienholder demonstrates to the court an ability and
3-14 willingness to rehabilitate the property.

3-15 (o) A receiver appointed under this section or the home-rule
3-16 municipality or eligible nonprofit housing organization that filed
3-17 the action under which the receiver was appointed may petition the
3-18 court to terminate the receivership and order the sale of the
3-19 property if an owner has been served with notice but has failed to
3-20 repay all of the receiver's outstanding costs and expenses plus any
3-21 receivership fee on or before the 180th day after the date the
3-22 notice was served.

3-23 (p) The court may order the sale of the property if the court
3-24 finds that:

3-25 (1) notice was given to each record owner of the
3-26 property and each lienholder of record;

3-27 (2) the receiver has been in control of the property
3-28 and the owner has failed to repay all the receiver's outstanding
3-29 costs and expenses of rehabilitation plus any receivership fee
3-30 within the period prescribed by Subsection (o); and

3-31 (3) no lienholder of record has intervened in the
3-32 action and tendered the receiver's costs and expenses, plus any
3-33 receivership fee, and assumed control of the property.

3-34 (q) The court may order the property sold:

3-35 (1) to a land bank or other party as the court may
3-36 direct, excluding an eligible nonprofit housing organization that
3-37 initiated the action under this section; or

3-38 (2) at public auction.

3-39 (r) The receiver, if an entity not excluded under Subsection
3-40 (q), may bid on the property at the sale described by Subsection
3-41 (q)(2) and may use a lien granted under Subsection (m) as credit
3-42 toward the purchase.

3-43 (s) The court shall confirm a sale under this section and
3-44 order a distribution of the proceeds of the sale in the following
3-45 order:

3-46 (1) court costs;

3-47 (2) costs and expenses, plus a receivership fee, and
3-48 any lien held by the receiver; and

3-49 (3) other valid liens.

3-50 (t) Any remaining amount shall be paid to the owner. If the
3-51 owner cannot be identified or located, the court shall order the
3-52 remaining amount to be deposited in an interest-bearing account
3-53 with the district clerk's office in the district court in which the
3-54 action is pending. The district clerk shall hold the funds as
3-55 provided by other law.

3-56 (u) After the proceeds are distributed, the court shall
3-57 award fee title to the purchaser. If the proceeds of the sale are
3-58 insufficient to pay all liens, claims, and encumbrances on the
3-59 property, the court shall extinguish all unpaid liens, claims, and
3-60 encumbrances on the property and award title to the purchaser free
3-61 and clear.

3-62 (v) This section does not foreclose any right or remedy that
3-63 may be available under Section 214.003, other state law, or the laws
3-64 of equity.

3-65 SECTION 2. This Act takes effect September 1, 2009.

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