

By: Lucio

S.B. No. 1115

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a county to adopt a land bank program.

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

SECTION 1. Subtitle B, Title 12, Local Government Code, is amended by adding Chapter 388 to read as follows:

CHAPTER 388. LAND BANK PROGRAM

Sec. 388.001. DEFINITIONS. In this chapter:

(1) "Affordable" means that the monthly mortgage payment or contract rent does not exceed 30 percent of the applicable median family income for that unit size, in accordance with the income and rent limit rules adopted by the Texas Department of Housing and Community Affairs.

(2) "Community housing development organization" or "organization" means an organization that:

(A) meets the definition of a community housing development organization in 24 C.F.R. Section 92.2; and

(B) is certified by the county as a community housing development organization.

(3) "Land bank" means an entity established or approved by the governing body of a county to exercise the powers of acquiring, holding, developing, and transferring real property under this chapter.

(4) "Land bank plan" or "plan" means a plan adopted by the governing body of a county as provided by Section 388.004.

1 (5) "Land bank program" or "program" means a program
2 adopted under Section 388.002.

3 (6) "Low income household" means a household with an
4 income of not greater than 80 percent of the area median family
5 income, based on gross household income, adjusted for household
6 size, for the county, as determined annually by the United States
7 Department of Housing and Urban Development.

8 (7) "Moderate income household" means a household
9 that:

10 (A) requires assistance in securing sanitary,
11 decent, and safe housing, considering:

12 (i) the amount of the total income
13 available for housing needs of the individuals or families who are
14 members of the household;

15 (ii) the size of the household;

16 (iii) the cost and condition of available
17 housing facilities;

18 (iv) the ability of the individuals or
19 families who are members of the household to compete successfully
20 in the private housing market and to pay the amounts required by
21 that market for sanitary, decent, and safe housing; and

22 (v) standards that are established for the
23 purpose of federal programs and that use income to determine
24 eligibility for the programs; and

25 (B) does not qualify as a low income household.

26 (8) "Qualified participating developer" means a
27 developer who meets the requirements of Section 388.003 and

1 includes a qualified organization under Section 388.009.

2 Sec. 388.002. LAND BANK PROGRAM. (a) The governing body of
3 a county may adopt a land bank program in which the officer charged
4 with selling real property ordered sold pursuant to foreclosure of
5 a tax lien may sell certain eligible real property by private sale
6 for purposes of affordable housing development as provided by this
7 chapter.

8 (b) The governing body of a county that adopts a land bank
9 program shall establish or approve a land bank to exercise the
10 powers of acquiring, holding, developing, and transferring real
11 property under this chapter.

12 Sec. 388.003. QUALIFIED PARTICIPATING DEVELOPER. To
13 qualify to participate in a land bank program, a developer other
14 than the land bank must:

15 (1) have developed three or more housing units within
16 the three-year period preceding the submission of a proposal to the
17 land bank seeking to acquire real property from the land bank;

18 (2) have a development plan approved for the land bank
19 property by the land bank or the county; and

20 (3) meet any other requirements adopted by the county
21 in the land bank plan.

22 Sec. 388.004. LAND BANK PLAN. (a) A county that adopts a
23 land bank program shall operate the program in conformance with a
24 land bank plan.

25 (b) The governing body of a county that adopts a land bank
26 program shall adopt a plan annually. The plan may be amended from
27 time to time.

1 (c) In developing the plan, the county shall consider any
2 other housing plans adopted by the county, including any fair
3 housing plans and policies adopted or agreed to by the county.

4 (d) The plan must include the following:

5 (1) a list of community housing development
6 organizations eligible to participate in the right of first refusal
7 provided by Section 388.009;

8 (2) a list of the parcels of real property that may
9 become eligible for sale to the land bank during the next year;

10 (3) the county's plan for affordable housing
11 development on those parcels of real property; and

12 (4) the sources and amounts of money anticipated to be
13 available from the county for subsidies for development of
14 affordable housing in the county, including any money specifically
15 available for housing developed under the program, as approved by
16 the governing body of the county at the time the plan is adopted.

17 Sec. 388.005. PUBLIC HEARING ON PROPOSED PLAN. (a) Before
18 adopting a plan, a county shall hold a public hearing on the
19 proposed plan.

20 (b) The county clerk or the county clerk's designee shall
21 provide notice of the hearing to all community housing development
22 organizations and to neighborhood associations identified by the
23 county as serving the neighborhoods in which properties anticipated
24 to be available for sale to the land bank under this chapter are
25 located.

26 (c) The county clerk or the county clerk's designee shall
27 make copies of the proposed plan available to the public not later

1 than the 60th day before the date of the public hearing.

2 Sec. 388.006. PRIVATE SALE TO LAND BANK. (a)

3 Notwithstanding any other law and except as provided by Subsection
4 (f), property that is ordered sold pursuant to foreclosure of a tax
5 lien may be sold in a private sale to a land bank by the officer
6 charged with the sale of the property without first offering the
7 property for sale as otherwise provided by Section 34.01, Tax Code,
8 if:

9 (1) the market value of the property as specified in
10 the judgment of foreclosure is less than the total amount due under
11 the judgment, including all taxes, penalties, and interest, plus
12 the value of nontax liens held by a taxing unit and awarded by the
13 judgment, court costs, and the cost of the sale;

14 (2) there are delinquent taxes on the property for a
15 total of at least five years; and

16 (3) the county has executed with the other taxing
17 units that are parties to the tax suit an interlocal agreement that
18 enables those units to agree to participate in the program while
19 retaining the right to withhold consent to the sale of specific
20 properties to the land bank.

21 (b) A sale of property for use in connection with the
22 program is a sale for a public purpose.

23 (c) If the person being sued in a suit for foreclosure of a
24 tax lien does not contest the market value of the property in the
25 suit, the person waives the right to challenge the amount of the
26 market value determined by the court for purposes of the sale of the
27 property under Section 33.50, Tax Code.

1 (d) For any sale of property under this chapter, each person
2 who was a defendant to the judgment, or that person's attorney,
3 shall be given, not later than the 90th day before the date of sale,
4 written notice of the proposed method of sale of the property by the
5 officer charged with the sale of the property. Notice shall be
6 given in the manner prescribed by Rule 21a, Texas Rules of Civil
7 Procedure.

8 (e) After receipt of the notice required by Subsection (d)
9 and before the date of the proposed sale, the owner of the property
10 subject to sale may file with the officer charged with the sale a
11 written request that the property not be sold in the manner provided
12 by this chapter.

13 (f) If the officer charged with the sale receives a written
14 request as provided by Subsection (e), the officer shall sell the
15 property as otherwise provided in Section 34.01, Tax Code.

16 (g) The owner of the property subject to sale may not
17 receive any proceeds of a sale under this chapter. However, the
18 owner does not have any personal liability for a deficiency of the
19 judgment as a result of a sale under this chapter.

20 (h) Notwithstanding any other law, if consent is given by
21 the taxing units that are a party to the judgment, property may be
22 sold to the land bank for less than the market value of the property
23 as specified in the judgment or less than the total of all taxes,
24 penalties, and interest, plus the value of nontax liens held by a
25 taxing unit and awarded by the judgment, court costs, and the cost
26 of the sale.

27 (i) The deed of conveyance of the property sold to a land

1 bank under this section conveys to the land bank the right, title,
2 and interest acquired or held by each taxing unit that was a party
3 to the judgment, subject to the right of redemption.

4 Sec. 388.007. SUBSEQUENT RESALE OR DEVELOPMENT BY LAND
5 BANK. (a) Within the five-year period following the date of
6 acquisition of a property by a land bank, the land bank must:

7 (1) sell the property to a qualified participating
8 developer for the purpose of construction or rehabilitation of
9 affordable housing for sale or rent to low or moderate income
10 households; or

11 (2) develop the property for the purposes described by
12 Subdivision (1).

13 (b) If after five years a qualified participating developer
14 has not purchased the property or the land bank has not developed
15 the property, the property shall be transferred from the land bank
16 to the taxing units who were parties to the judgment for disposition
17 as otherwise allowed under the law.

18 (c) Unless the county increases the amount in its plan, the
19 number of properties acquired by a qualified participating
20 developer under this section on which development has not been
21 completed may not at any given time exceed three times the annual
22 average residential production completed by the qualified
23 participating developer during the preceding three-year period as
24 determined by the county.

25 (d) The deed conveying a property sold by the land bank must
26 include a right of reverter so that if the qualified participating
27 developer does not apply for a construction permit and close on any

1 construction financing within the three-year period following the
2 date of the conveyance of the property from the land bank to the
3 qualified participating developer, the property will revert to the
4 land bank for development by the land bank, subsequent resale to
5 another qualifying participating developer, or conveyance to the
6 taxing units who were parties to the judgment for disposition as
7 otherwise allowed under the law.

8 (e) Each subsequent resale that a land bank makes to a
9 qualified participating developer with respect to a property
10 acquired by the land bank under this chapter must comply with the
11 conditions of this section.

12 Sec. 388.008. RESTRICTIONS ON OCCUPANCY AND USE OF
13 PROPERTY. (a) The land bank shall impose deed restrictions on
14 property developed by the land bank or sold to qualified
15 participating developers requiring the development and subsequent
16 sale or rental of the property to low or moderate income households.

17 (b) For land bank properties developed by the land bank for
18 sale, and for land bank properties sold to a qualifying
19 participating developer for development for sale, the deed
20 restrictions must require that, in any given fiscal year:

21 (1) at least 50 percent of the units must be sold to
22 families with a household income of not more than 80 percent of the
23 area median family income, based on gross household income and
24 adjusted for household size, for the county in which the units are
25 located; and

26 (2) the remaining units must be sold to families with a
27 household income of not more than 120 percent of the area median

1 family income, based on gross household income and adjusted for
2 household size, for the county in which the units are located.

3 (c) If property is developed and used for rental housing,
4 the deed restrictions must be for a period of not less than 20 years
5 and must require that at least 80 percent of the units are occupied
6 by and affordable to households with incomes not greater than 80
7 percent of area median family income, based on gross household
8 income, adjusted for household size, for the county, as determined
9 annually by the United States Department of Housing and Urban
10 Development, and must also require that:

11 (1) at least 40 percent of the rental units are
12 occupied by and affordable to households with incomes not greater
13 than 60 percent of area median family income, based on gross
14 household income, adjusted for household size, for the county, as
15 determined annually by the United States Department of Housing and
16 Urban Development; or

17 (2) at least 20 percent of the units are occupied by
18 and affordable to households with incomes not greater than 50
19 percent of area median family income, based on gross household
20 income, adjusted for household size, for the county, as determined
21 annually by the United States Department of Housing and Urban
22 Development.

23 (d) The deed restrictions under Subsection (c) must require
24 the owner to file an annual occupancy report with the county on a
25 reporting form provided by or acceptable to the county. The deed
26 restrictions must also prohibit any exclusion of an individual or
27 family from admission to the development based solely on the

1 participation of the individual or family in the housing choice
2 voucher program under Section 8, United States Housing Act of 1937
3 (42 U.S.C. Section 1437f), as amended.

4 (e) Except as otherwise provided by this section, if the
5 deed restrictions imposed under this section are for a term of
6 years, the deed restrictions shall renew automatically.

7 (f) The land bank or the governing body of the county may
8 modify or add to the deed restrictions imposed under this section.
9 Any modifications or additions made by the governing body of the
10 county must be adopted by the county as part of its plan and must
11 comply with the restrictions set forth in Subsections (b), (c), and
12 (d).

13 Sec. 388.009. RIGHT OF FIRST REFUSAL. (a) In this section,
14 "qualified organization" means a community housing development
15 organization that:

16 (1) contains within its designated geographical
17 boundaries of operation, as set forth in its application for
18 certification filed with and approved by the county, a portion of
19 the property that the land bank is offering for sale;

20 (2) has built at least three single-family homes or
21 duplexes or one multifamily residential dwelling of four or more
22 units in compliance with all applicable building codes within the
23 preceding two-year period and within the organization's designated
24 geographical boundaries of operation; and

25 (3) within the preceding three-year period has
26 developed or rehabilitated housing units within a two-mile radius
27 of the property that the land bank is offering for sale.

1 (b) The land bank shall first offer a property for sale to
2 qualified organizations.

3 (c) Notice must be provided to the qualified organizations
4 by certified mail, return receipt requested, not later than the
5 60th day before the beginning of the period in which a right of
6 first refusal may be exercised.

7 (d) The county shall specify in its plan the period during
8 which the right of first refusal provided by this section may be
9 exercised by a qualified organization. That period must be at
10 least nine months but not more than 26 months from the date of the
11 deed of conveyance of the property to the land bank.

12 (e) If the land bank conveys the property to a qualified
13 organization before the expiration of the period specified by the
14 county under Subsection (d), the interlocal agreement executed
15 under Section 388.006(a)(3) must provide tax abatement for the
16 property until the expiration of that period.

17 (f) During the specified period, the land bank may not sell
18 the property to a qualified participating developer other than a
19 qualified organization. If all qualified organizations notify the
20 land bank that they are declining to exercise their right of first
21 refusal during the specified period, or if an offer to purchase the
22 property is not received from a qualified organization during that
23 period, the land bank may sell the property to any other qualified
24 participating developer at the same price that the land bank
25 offered the property to the qualified organizations.

26 (g) In its plan, the county shall establish the amount of
27 additional time, if any, that a property may be held in the land

1 bank once an offer has been received and accepted from a qualified
2 organization or other qualified participating developer.

3 (h) If more than one qualified organization expresses an
4 interest in exercising its right of first refusal, the organization
5 that has designated the most geographically compact area
6 encompassing a portion of the property shall be given priority.

7 (i) In its plan, the county may provide for other rights of
8 first refusal for any other nonprofit corporation exempted from
9 federal income tax under Section 501(c)(3), Internal Revenue Code
10 of 1986, as amended, provided that the preeminent right of first
11 refusal is provided to qualified organizations as provided by this
12 section.

13 (j) The land bank is not required to provide a right of first
14 refusal to qualified organizations under this section if the land
15 bank is selling property that reverted to the land bank under
16 Section 388.007(d).

17 Sec. 388.010. OPEN RECORDS AND MEETINGS. The land bank
18 shall comply with the requirements of Chapters 551 and 552,
19 Government Code.

20 Sec. 388.011. RECORDS; AUDIT; REPORT. (a) The land bank
21 shall keep accurate minutes of its meetings and shall keep accurate
22 records and books of account that conform with generally accepted
23 principles of accounting and that clearly reflect the income and
24 expenses of the land bank and all transactions in relation to its
25 property.

26 (b) The land bank shall file with the county not later than
27 the 90th day after the close of the fiscal year annual audited

1 financial statements prepared by a certified public accountant.
2 The financial transactions of the land bank are subject to audit by
3 the county.

4 (c) For purposes of evaluating the effectiveness of the
5 program, the land bank shall submit an annual performance report to
6 the county not later than November 1 of each year in which the land
7 bank acquires, develops, or sells property under this chapter. The
8 performance report must include:

9 (1) a complete and detailed written accounting of all
10 money and properties received and disbursed by the land bank during
11 the preceding fiscal year;

12 (2) for each property acquired by the land bank during
13 the preceding fiscal year:

14 (A) the street address of the property;

15 (B) the legal description of the property;

16 (C) the date the land bank took title to the
17 property;

18 (D) the name and mailing address of the property
19 owner of record at the time of the foreclosure;

20 (E) the amount of taxes and other costs owed at
21 the time of the foreclosure; and

22 (F) the assessed value of the property on the tax
23 roll at the time of the foreclosure;

24 (3) for each property sold by the land bank during the
25 preceding fiscal year to a qualified participating developer:

26 (A) the street address of the property;

27 (B) the legal description of the property;

1 (C) the name and mailing address of the
2 purchaser;

3 (D) the price paid by the purchaser;

4 (E) the maximum incomes allowed for the
5 households by the terms of the sale; and

6 (F) the source and amount of any public subsidy
7 provided by the county to facilitate the sale or rental of the
8 property to a household within the targeted income levels;

9 (4) for each property sold by the land bank or a
10 qualified participating developer during the preceding fiscal
11 year, the buyer's household income and a description of all use and
12 sale restrictions; and

13 (5) for each property developed for rental housing
14 with an active deed restriction, a copy of the most recent annual
15 report for the property.

16 (d) The land bank shall maintain in its records for
17 inspection a copy of the sale settlement statement for each
18 property sold by the land bank or a qualified participating
19 developer and a copy of the first page of the mortgage note with the
20 interest rate and indicating the volume and page number of the
21 instrument as filed with the county clerk.

22 (e) The land bank shall provide copies of the performance
23 report to the taxing units who were parties to the judgment of
24 foreclosure and shall provide notice of the availability of the
25 performance report for review to the organizations and neighborhood
26 associations identified by the county as serving the neighborhoods
27 in which properties sold to the land bank under this chapter are

1 located.

2 (f) The land bank and the county shall maintain copies of
3 the performance report available for public review.

4 SECTION 2. Sections 11.18(d) and (o), Tax Code, are amended
5 to read as follows:

6 (d) A charitable organization must be organized exclusively
7 to perform religious, charitable, scientific, literary, or
8 educational purposes and, except as permitted by Subsections (h)
9 and (l), engage exclusively in performing one or more of the
10 following charitable functions:

11 (1) providing medical care without regard to the
12 beneficiaries' ability to pay, which in the case of a nonprofit
13 hospital or hospital system means providing charity care and
14 community benefits in accordance with Section 11.1801;

15 (2) providing support or relief to orphans,
16 delinquent, dependent, or handicapped children in need of
17 residential care, abused or battered spouses or children in need of
18 temporary shelter, the impoverished, or victims of natural disaster
19 without regard to the beneficiaries' ability to pay;

20 (3) providing support without regard to the
21 beneficiaries' ability to pay to:

22 (A) elderly persons, including the provision of:

23 (i) recreational or social activities; and

24 (ii) facilities designed to address the
25 special needs of elderly persons; or

26 (B) the handicapped, including training and
27 employment:

- 1 (i) in the production of commodities; or
2 (ii) in the provision of services under 41
3 U.S.C. Sections 8501-8506;
- 4 (4) preserving a historical landmark or site;
- 5 (5) promoting or operating a museum, zoo, library,
6 theater of the dramatic or performing arts, or symphony orchestra
7 or choir;
- 8 (6) promoting or providing humane treatment of
9 animals;
- 10 (7) acquiring, storing, transporting, selling, or
11 distributing water for public use;
- 12 (8) answering fire alarms and extinguishing fires with
13 no compensation or only nominal compensation to the members of the
14 organization;
- 15 (9) promoting the athletic development of boys or
16 girls under the age of 18 years;
- 17 (10) preserving or conserving wildlife;
- 18 (11) promoting educational development through loans
19 or scholarships to students;
- 20 (12) providing halfway house services pursuant to a
21 certification as a halfway house by the parole division of the Texas
22 Department of Criminal Justice;
- 23 (13) providing permanent housing and related social,
24 health care, and educational facilities for persons who are 62
25 years of age or older without regard to the residents' ability to
26 pay;
- 27 (14) promoting or operating an art gallery, museum, or

1 collection, in a permanent location or on tour, that is open to the
2 public;

3 (15) providing for the organized solicitation and
4 collection for distributions through gifts, grants, and agreements
5 to nonprofit charitable, education, religious, and youth
6 organizations that provide direct human, health, and welfare
7 services;

8 (16) performing biomedical or scientific research or
9 biomedical or scientific education for the benefit of the public;

10 (17) operating a television station that produces or
11 broadcasts educational, cultural, or other public interest
12 programming and that receives grants from the Corporation for
13 Public Broadcasting under 47 U.S.C. Section 396, as amended;

14 (18) providing housing for low-income and
15 moderate-income families, for unmarried individuals 62 years of age
16 or older, for handicapped individuals, and for families displaced
17 by urban renewal, through the use of trust assets that are
18 irrevocably and, pursuant to a contract entered into before
19 December 31, 1972, contractually dedicated on the sale or
20 disposition of the housing to a charitable organization that
21 performs charitable functions described by Subdivision (9);

22 (19) providing housing and related services to persons
23 who are 62 years of age or older in a retirement community, if the
24 retirement community provides independent living services,
25 assisted living services, and nursing services to its residents on
26 a single campus:

27 (A) without regard to the residents' ability to

1 pay; or

2 (B) in which at least four percent of the
3 retirement community's combined net resident revenue is provided in
4 charitable care to its residents;

5 (20) providing housing on a cooperative basis to
6 students of an institution of higher education if:

7 (A) the organization is exempt from federal
8 income taxation under Section 501(a), Internal Revenue Code of
9 1986, as amended, by being listed as an exempt entity under Section
10 501(c)(3) of that code;

11 (B) membership in the organization is open to all
12 students enrolled in the institution and is not limited to those
13 chosen by current members of the organization;

14 (C) the organization is governed by its members;
15 and

16 (D) the members of the organization share the
17 responsibility for managing the housing;

18 (21) acquiring, holding, and transferring unimproved
19 real property under an urban land bank demonstration program
20 established under Chapter 379C, Local Government Code, as or on
21 behalf of a land bank;

22 (22) acquiring, holding, and transferring unimproved
23 real property under an urban land bank program established under
24 Chapter 379E, Local Government Code, as or on behalf of a land bank;

25 (22-a) acquiring, holding, developing, and
26 transferring real property under a land bank program established
27 under Chapter 388, Local Government Code, as or on behalf of a land

1 bank;

2 (23) providing housing and related services to
3 individuals who:

4 (A) are unaccompanied and homeless and have a
5 disabling condition; and

6 (B) have been continuously homeless for a year or
7 more or have had at least four episodes of homelessness in the
8 preceding three years;

9 (24) operating a radio station that broadcasts
10 educational, cultural, or other public interest programming,
11 including classical music, and that in the preceding five years has
12 received or been selected to receive one or more grants from the
13 Corporation for Public Broadcasting under 47 U.S.C. Section 396, as
14 amended; or

15 (25) providing, without regard to the beneficiaries'
16 ability to pay, tax return preparation services and assistance with
17 other financial matters.

18 (o) For purposes of Subsection (a)(2), real property
19 acquired, held, and transferred by an organization that performs
20 the function described by Subsection (d)(21), ~~[or] (22)~~, or (22-a)
21 is considered to be used exclusively by the qualified charitable
22 organization to perform that function.

23 SECTION 3. Section 11.18, Tax Code, as amended by this Act,
24 applies only to an ad valorem tax year that begins on or after the
25 effective date of this Act.

26 SECTION 4. This Act takes effect September 1, 2019.