



# Legal Minute

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## Tainted Title: New Law Helps Nonprofits Clear Title to Abandoned Land

**The Problem:** Nonprofit ABC identifies an abandoned lot in the nonprofit's neighborhood. The nonprofit knows that Ann Johnson used to own the property, but she died many years ago without a will, leaving multiple heirs. The nonprofit can locate one of the heirs, but is unable to locate any of the others. No one is currently paying taxes or residing on the property.

**The Solution:** Last year, the Texas Legislature passed a new law to help nonprofits obtain clear title to abandoned, non-homestead lots when one or more owners of the property cannot be located. The new law amends Chapter 29 of the Texas Property Code.

### Which Nonprofits Are Eligible Under the Law?

In order to participate under this new law, an organization must be a 501(c)(3) nonprofit and:

- (1) be incorporated in Texas for at least one year;
- (2) have a corporate purpose to develop affordable housing stated in the articles of incorporation;
- (3) have at least one-fourth of its board of directors residing in the county in which the property is located; and
- (4) be engaged primarily in the building, repair, rental, or sale of housing for low-income individuals or families.

### What Kind of Property is Eligible?

The property must be non-homestead property. That is, only property that is not being used as someone's home is eligible. The property also must be owned by more than one person.

### How Does the Process Work?

A nonprofit must be able to locate at least one co-owner of the property who is willing to sell his or her interest in the property to the nonprofit. After the nonprofit purchases the co-owner's interest, the nonprofit must follow these steps:

- (1) Pay the other owners' share of taxes for at least two out of the next three years as the taxes come due.
- (2) After payment of the taxes, send a demand for reimbursement of the taxes to the other owners via certified mail.
- (3) For owners whose address or identity is unknown, the nonprofit must publish a demand for reimbursement in a newspaper in the county where the property is located once a week, for four consecutive weeks.
- (4) If none of the owners reimburse the nonprofit within 30 days of the last-published demand for reimbursement, the nonprofit then files a lawsuit to obtain an order of forced sale, requiring the other owners to sell their interest in the land to the nonprofit. This judicial order has the effect of clearing title to the land. However, it does not wipe out any liens on the property, such as tax liens and health and safety liens. The nonprofit is still responsible for paying off and obtaining releases of these liens.

## How Long Does the Process Take?

The total process takes at least 2-1/2 years. A nonprofit must wait at least two years before sending a demand for reimbursement, and then an additional 30 days following the demand. After the lawsuit is filed, the process can take several months or longer, depending on the circumstances. While the process takes a long time, the only other remedy that is generally available to nonprofits is to wait for the taxing entities to foreclose on the property, which can take even longer and provides the nonprofit with no guarantee of being able to obtain the property at the tax sale or thereafter.

## What Are the Costs Involved?

In addition to the cost of purchasing the property from the co-owners willing to sell their interests in the property, the nonprofit is responsible for paying the property taxes for the next two years. The nonprofit will also be responsible for the following costs (which will total roughly \$2,500-\$3,000):

- lawsuit filing and service fee (this will vary depending on the number of heirs);
- publication of the demand in local newspaper;
- an attorney ad litem to represent the interests of the lost and unknown heirs (whose fee will be set by the court); and
- an appraiser (who may be willing to serve at no cost as a community service).

Finally, before transferring complete ownership of the property to the nonprofit, the court will require that the nonprofit pay to the heirs (i) the value of the heir's percentage equity in the property minus (ii) the heirs' share of the taxes on the property. If the taxes have remained unpaid for many years and exceed the fair market value of the property, the heirs will not be due any money. While the nonprofit, prior to filing the lawsuit, must pay two years of future taxes as they come due, back taxes on the property should not be paid by the nonprofit until it has completed the statutory process and received assurance from a title insurance company that it will insure title to the property in the name of the nonprofit.

## What are the Risks Involved in Using this Law?

After a nonprofit sends a demand for reimbursement of taxes, a long-lost heir could resurface and pay the taxes within the 30-day period following the demand. The long-lost heir could then refuse to sell his or her interest in the property, and the nonprofit would be stuck as a co-owner of the property. It is also possible that the nonprofit could inadvertently fail to comply with technical procedures under the new law, resulting in uninsurable title to the property. To limit this risk, a nonprofit should work closely with a title company throughout the above process. The nonprofit's final goal should be to obtain title to the property that a title insurance company will insure, particularly when the nonprofit begins to construct improvements on the property.

## Preventative Maintenance: Make Sure Families Have Wills

A final note: The primary reason that so many lots have title problems and are lost to foreclosure is because many former owners of the lots did not have wills. The key to protecting title to property and preserving homeownership is to make sure families have wills. For more information about wills, see the Real Estate link at [www.texasbar.org/resources/res\\_menu.html](http://www.texasbar.org/resources/res_menu.html).

## Need Further Assistance?

Your nonprofit may be eligible for free legal assistance from Texas C-BAR to clear title to land. For more information, contact Texas C-BAR at (512) 447-7707, ext 370, or [txcbar@lact.org](mailto:txcbar@lact.org). For a copy of the new law discussed above, see <http://www.capitol.state.tx.us/statutes/py/py0002900toc.html>.