

By: Farabee

H.B. No. 371

Substitute the following for H.B. No. 371:

By: Nixon

C.S.H.B. No. 371

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to liquidated damages for violating certain requirements  
3 relating to executory contracts for the conveyance of certain real  
4 property.

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

6 SECTION 1. The heading to Section 5.077, Property Code, is  
7 amended to read as follows:

8 Sec. 5.077. ANNUAL ACCOUNTING STATEMENT; DAMAGES;  
9 CONTRACTUAL NOTICE REQUIRED.

10 SECTION 2. Section 5.077, Property Code, is amended by  
11 amending Subsection (c) and adding Subsections (d), (e), and (f) to  
12 read as follows:

13 (c) A seller who fails to comply with Subsection (a) is  
14 liable to the purchaser for:

15 (1) liquidated damages in the amount of:

16 (A) \$250 [~~a day~~] for each annual statement [~~day~~  
17 ~~after January 31 that~~] the seller fails to provide to the purchaser  
18 within the time required by Subsection (a) [with the statement];

19 and

20 (B) the lesser of:

21 (i) \$20 a day for each day after January 31  
22 that the seller does not provide the statement; or

23 (ii) the purchase price of the property;

24 and

1 (2) reasonable attorney's fees.

2 (d) In addition to other remedies provided to a purchaser, a  
3 seller who fails to timely comply with Subsection (a) is barred from  
4 claiming the purchaser failed to tender any sum due to the seller or  
5 other person under the contract:

6 (1) before the most recent date a statement was due  
7 under Subsection (a); and

8 (2) after the later of:

9 (A) the latest date any previous statement was  
10 provided to the purchaser under Subsection (a); or

11 (B) the date the contract was entered into.

12 (e) The executory contract must include a provision that:

13 (1) states that:

14 (A) the seller is required to provide an annual  
15 statement under this section on or before January 31 of each year  
16 for the term of the contract; and

17 (B) the buyer has the right to request that the  
18 seller provide the statement if the buyer does not receive the  
19 statement on or before January 31 of the year it is due; and

20 (2) lists the items that must be included in the  
21 statement under Subsection (b).

22 (f) A seller who fails to include the contract provision  
23 required by Subsection (e) is liable to the purchaser for  
24 liquidated damages in the amount of \$250.

25 SECTION 3. (a) Section 5.077(d), Property Code, as added by  
26 this Act, applies only to the act of a seller who fails to timely  
27 provide an annual statement as required by Section 5.077(a),

1 Property Code, on or after the effective date of this Act. The act  
2 of a seller who fails to timely provide an annual statement as  
3 required by Section 5.077(a), Property Code, before the effective  
4 date of this Act is covered by the law in effect when the act was  
5 committed, and the former law is continued in effect for that  
6 purpose.

7 (b) Sections 5.077(e) and (f), Property Code, as added by  
8 this Act, apply only to an executory contract entered into on or  
9 after the effective date of this Act. An executory contract entered  
10 into before the effective date of this Act is governed by the law in  
11 effect immediately before that date, and that law is continued in  
12 effect for that purpose.

13 SECTION 4. This Act takes effect September 1, 2005.