

1-1 By: Farabee, Campbell (Senate Sponsor - West) H.B. No. 371
1-2 (In the Senate - Received from the House April 28, 2005;
1-3 April 29, 2005, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2005, reported favorably by the following
1-5 vote: Yeas 4, Nays 0; May 21, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to liquidated damages for violating certain requirements
1-9 relating to executory contracts for the conveyance of certain real
1-10 property.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. The heading to Section 5.077, Property Code, is
1-13 amended to read as follows:

1-14 Sec. 5.077. ANNUAL ACCOUNTING STATEMENT; DAMAGES;
1-15 CONTRACTUAL NOTICE REQUIRED.

1-16 SECTION 2. Section 5.077, Property Code, is amended by
1-17 amending Subsection (c) and adding Subsections (d) and (e) to read
1-18 as follows:

1-19 (c) A seller who fails to comply with Subsection (a) is
1-20 liable to the purchaser for:

1-21 (1) liquidated damages in the amount of \$250 [~~a day~~]
1-22 for each annual statement [~~day after January 31 that~~] the seller
1-23 fails to provide to the purchaser within the time required by
1-24 Subsection (a) [with the statement]; and

1-25 (2) reasonable attorney's fees.

1-26 (d) After January 31 of a year in which a statement is
1-27 required under Subsection (a), the purchaser may request in writing
1-28 that the seller provide the statement required under that
1-29 subsection. A request for a statement or accounting with respect to
1-30 the executory contract or any similar request is presumed to be a
1-31 request for a statement required by Subsection (a). If the seller
1-32 does not provide the statement to the purchaser on or before the
1-33 14th day after the date the seller receives the request, in addition
1-34 to the liability imposed by Subsection (c), the seller is liable to
1-35 the purchaser for liquidated damages in the amount of the lesser of:

1-36 (1) \$250 a day for each day after the 14th day after
1-37 the date the seller receives the request that the seller does not
1-38 provide the statement; or

1-39 (2) the purchase price of the property.

1-40 (e) The executory contract must include a provision that:

1-41 (1) states that:

1-42 (A) the seller is required to provide an annual
1-43 statement under this section on or before January 31 of each year
1-44 for the term of the contract; and

1-45 (B) the buyer has the right to request that the
1-46 seller provide the statement if the buyer does not receive the
1-47 statement on or before January 31 of the year it is due; and

1-48 (2) lists the items that must be included in the
1-49 statement under Subsection (b).

1-50 SECTION 3. (a) Section 5.077(c), Property Code, as amended
1-51 by this Act, applies to the act of a seller who has only one contract
1-52 for deed outstanding and before, on, or after the effective date of
1-53 this Act fails to timely provide an annual statement as required by
1-54 Section 5.077(a), Property Code. This subsection does not apply to
1-55 the liability of a seller for an act for which the seller has paid
1-56 liquidated damages, or has been ordered by a court to pay liquidated
1-57 damages, under Section 5.077(c), Property Code, before the
1-58 effective date of this Act.

1-59 (b) Section 5.077(e), Property Code, as added by this Act,
1-60 applies only to an executory contract entered into on or after the
1-61 effective date of this Act. An executory contract entered into
1-62 before the effective date of this Act is governed by the law in
1-63 effect immediately before that date, and that law is continued in
1-64 effect for that purpose.

2-1 SECTION 4. This Act takes effect September 1, 2005.

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