

## **BILL ANALYSIS**

C.S.S.B. 1484  
By: Lucio  
Financial Institutions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Many Texans with bad credit, or those who do not have money for a down payment, will not qualify for a loan through a bank or a mortgage lender. If they wish to buy a home, their only chance may be a seller-financed mortgage. Usually the seller will draw up a note that has the total amount the buyer owes and an interest rate. However, the buyer may not know that the payments are being applied to interest and that there will be a balloon payment of the principal at the end of the mortgage. If there is a dispute about whether the mortgage payments are being applied correctly, the buyer may not know about the dispute until a foreclosure notice is received. Additionally, the seller may not know that the buyer has purchased insurance or intends to purchase insurance and the seller may apply payments toward insurance.

C.S.S.B. 1484 requires sellers of real property who finance the sale, rather than using a third-party lender or bank, to provide amortization schedule and annual accounting statements to the buyer so the buyer knows on a timely and regular basis how payments are being applied, and the amount of principal still owed.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1484 amends Subchapter A, Chapter 5, Property Code, by adding Section 5.019. This section applies only to a seller of residential real property who finances the sale of residential real property owned by the seller by delivering title to the property to the purchaser in exchange for an agreement by the purchaser to pay the purchase price to the seller by periodic installments.

C.S.S.B. 1484 requires a seller who enters into a transaction described by Subsection (a), within 10 days the seller provides the title, to provide the purchaser an amortization schedule that shows through the date on which the purchase price is expected to be fully paid. The amortization schedule will include the date on which each periodic installment is due, the initial principal amount to be repaid, the amount of each periodic installment allocated to interest, the amount of each periodic installment allocated to the reduction of the principal amount, and the balance of the principal amount after each installment. C.S.S.B. 1484 requires the seller to provide the purchaser within 30 days of the purchaser's written request, with an additional copy of the current amortization schedule at no cost to the purchaser. The seller is not required to provide more than one copy of the amortization schedule to the purchaser in any 12-month period.

C.S.S.B. 1484 requires the seller must provide the purchaser, at no cost to the purchaser within 30 days of written request, with an annual accounting statement until the property is fully paid for by the purchaser. The annual accounting statement required by Subsection (b)(3) must be an accounting for the calendar year preceding the date on which the seller receives the purchaser's request and must include: the total amount paid by the purchaser, specifically the amount paid by the purchaser that was allocated to interest, the reduction of the principal amount, and any other charges paid by the purchaser. The annual statement must include the remaining principal amount owed to the seller, any amount added to the principal, the number of payments remaining, the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller, and the amounts paid to insurers on the purchaser's behalf if collected by the seller.

C.S.S.B. 1484 80(R)

C.S.S.B. 1484 provides that if a seller who fails to comply with this section, the purchaser may seek injunctive relief to compel the seller to comply with this section and the seller is liable to the purchaser for a civil penalty in the amount of \$100 for each annual statement and each amortization schedule the seller fails to provide to the purchaser within the time required by Subsection (b), and reasonable attorney's fees. A court may allow the purchaser to deduct an amount owed to the purchaser by the seller under Subsection (d). An agreement that purports to waive a right or exempt a party from a liability or duty under this section is void and unenforceable.

C.S.S.B. 1484 provides that this section does not apply to a transfer pursuant to a court order or foreclosure sale; by a trustee in bankruptcy; to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest; by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust or a sale pursuant to a court-ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure. C.S.S.B. 1484 does not apply to a transfer: by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust; from one co-owner to one or more other co-owners; made to a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors; between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree; by a seller who does not conduct two or more transfers that are subject to this section in a 12-month period; and, to or from any governmental entity.

C.S.S.B. 1484 provides that this Act applies to a financing agreement entered into before, on, or after the effective date of this Act.

#### **EFFECTIVE DATE**

September 1, 2007.

#### **COMPARISON TO THE ORIGINAL**

C.S.S.B. 1484 amends the original by replacing original language with the following: C.S.S.B. 1484 amends Subchapter A, Chapter 5, Property Code, by adding Section 5.019. This section applies only to a seller of residential real property who finances the sale of residential real property owned by the seller by delivering title to the property to the purchaser in exchange for an agreement by the purchaser to pay the purchase price to the seller by periodic installments. C.S.S.B. 1484 requires a seller who enters into a transaction described by Subsection (a), within 10 days the seller provides the title, to provide the purchaser an amortization schedule that shows through the date on which the purchase price is expected to be fully paid. The amortization schedule will include the date on which each periodic installment is due, the initial principal amount to be repaid, the amount of each periodic installment allocated to interest, the amount of each periodic installment allocated to the reduction of the principal amount, and the balance of the principal amount after each installment. C.S.S.B. 1484 requires the seller to provide the purchaser within 30 days of the purchaser's written request, with an additional copy of the current amortization schedule at no cost to the purchaser. The seller is not required to provide more than one copy of the amortization schedule to the purchaser in any 12-month period. C.S.S.B. 1484 requires the seller must provide the purchaser, at no cost to the purchaser within 30 days of written request, with an annual accounting statement until the property is fully paid for by the purchaser. The annual accounting statement required by Subsection (b)(3) must be an accounting for the calendar year preceding the date on which the seller receives the purchaser's request and must include: the total amount paid by the purchaser, specifically the amount paid by the purchaser that was allocated to interest, the reduction of the principal amount, and any other charges paid by the purchaser. The annual statement must include the remaining principal amount owed to the seller, any amount added to the principal, the number of payments remaining, the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller, and the amounts paid to insurers on the purchaser's behalf if collected by the seller.

C.S.S.B. 1484 further amends the original to provide that if a seller who fails to comply with this section, the purchaser may seek injunctive relief to compel the seller to comply with this section and the seller is liable to the purchaser for a civil penalty in the amount of \$100 for each

C.S.S.B. 1484 80(R)

annual statement and each amortization schedule the seller fails to provide to the purchaser within the time required by Subsection (b), and reasonable attorney's fees. A court may allow the purchaser to deduct an amount owed to the purchaser by the seller under Subsection (d). An agreement that purports to waive a right or exempt a party from a liability or duty under this section is void and unenforceable.

C.S.S.B. 1484 amends the original to provide that this section does not apply to a transfer pursuant to a court order or foreclosure sale; by a trustee in bankruptcy; to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest; by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust or a sale pursuant to a court-ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure. C.S.S.B. 1484 does not apply to a transfer: by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust; from one co-owner to one or more other co-owners; made to a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors; between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree; by a seller who does not conduct two or more transfers that are subject to this section in a 12-month period; and, to or from any governmental entity.