

By: Villarreal

H.B. No. 3821

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure and use of sales price of real property sales; providing a civil penalty.

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

SECTION 1. Title 3, Property Code, is amended by adding Chapter 12A to read as follows:

CHAPTER 12A. MANDATORY SALES PRICE DISCLOSURE

Sec. 12A.01. MANDATORY SALES PRICE DISCLOSURE. (a) A person shall not file for record or have recorded in the county clerk's office an instrument conveying real property under a contract for sale unless the instrument is attached to a sales price disclosure report as defined by this chapter.

SEC. 12A.02. SALES PRICE DISCLOSURE REPORT. (a) A sales price disclosure report filed under this chapter must disclose the sales price of the property of the attached instrument conveying real property under a contract for sale or the exemption under Section 12A.05 that qualifies the purchaser for nondisclosure of sales information.

(b) To further explain sales price, a filer may also disclose within the sales price disclosure report:

(1) the method used to finance the sales price, such as: cash sale, cash and third-party financing, cash and seller financing, or other;

1 (2) whether the sale involved property other than real
2 property and the type of property, whether tangible or intangible,
3 involved in the sale and, if so, the portion of the sales price
4 allocated between real property, business personal property and
5 intangibles;

6 (3) whether the sale involved property located in more than
7 one county and, if so, the portion of the sales price or other
8 consideration allocated to the portion of the property located in
9 each county;

10 (4) whether the sale was part of a combined sale of real
11 property investments and, if so, the portion of the combined sales
12 price allocated to the property subject to Section 12A.01;

13 (5) whether the sale involved a 1031 tax exchange, under the
14 United States Internal Revenue Code;

15 (6) whether the sale is the sale of an entire business or
16 business unit; and

17 (7) a description of any unusual or extraordinary terms of
18 the sale or transfer that affected the amount of the sales price;

19 (c) A sales price disclosure report must be signed by the
20 purchaser of the real property described in the report.

21 (d) The comptroller shall adopt and make available
22 electronically a form that shall be used to file the information
23 required in the sales price disclosure report.

24 (e) A sales price disclosure report must be prepared by the
25 purchaser of the property described in the report or by another
26 person on behalf of the purchaser.

27 (f) A person who prepares a sales price disclosure report on

1 behalf of a purchaser of the property described in the report is not
2 liable to any person for preparing the report or for any
3 unintentional error or omission in the report.

4 Sec. 12A.03. COUNTY CLERK RESPONSIBILITY. (a) The county
5 clerk shall not under any circumstance reject an instrument
6 presented for recording solely because the instrument fails to
7 comply with this Chapter.

8 (b) The county clerk shall not be held criminally or civilly
9 liable for recording or disclosing a sales price disclosure report
10 or information in a sales price disclosure report.

11 Sec. 12A.04. ACTION TO COMPEL COMPLIANCE. (a) The chief
12 appraiser upon discovery of a recorded instrument conveying real
13 property under a contract for sale lacking an attached sales price
14 disclosure report or a sales price disclosure report containing
15 errors or omissions and recorded after September 1, 2007 and within
16 his jurisdiction shall give written notice to the purchaser: (1)
17 identifying errors or omissions, (2) instructing the purchaser how
18 to file a sales price disclosure report, (3) informing the
19 purchaser of penalties for failure to properly file a sales price
20 disclosure report within 30 days of the mailed notice, and (4)
21 include a sales price disclosure report.

22 (b) Thirty days after the date the chief appraiser gives
23 written notice to the purchaser, the purchaser of any property for
24 which an instrument is recorded in violation of this Chapter shall
25 be liable to the state for a civil penalty for each violation in an
26 amount equal to five percent of the sales price of the property.

27 (c) The attorney general or the county or district attorney

1 for the county in which the property is located may bring suit to
2 recover a penalty under this Chapter.

3 Sec. 12A.05. EXEMPTIONS. (a) A filer may use the sales
4 price disclosure report to claim an exemption from listing the
5 sales price of real property on the sales price disclosure form, and
6 omit the sales price from the sales price disclosure form, if:

7 (1) the sale is made pursuant to a court order;

8 (2) the sale is made to or from a trustee in bankruptcy;

9 (3) the sale is made pursuant to a power of sale under a deed
10 of trust or other encumbrance secured by the property;

11 (4) the sale is made by a deed in lieu of foreclosure;

12 (5) the sale is made by one co-owner to one or more other
13 co-owners;

14 (6) the sale is made to a spouse or to a person or persons in
15 the first degree of lineal consanguinity of one or more of the
16 sellers or grantors;

17 (7) the sale is made to or from a governmental entity;

18 (8) the sale is made pursuant to the power of eminent
19 domain;

20 (9) the sale is made to a utility company and the real
21 property is an easement, license, or right-of-way;

22 (10) it represents a transfer of title pursuant to a merger
23 or combination of corporation, partnerships, limited liability
24 companies or other entities under common control;

25 (11) it represents a transfer among entities under common
26 control (i) as a contribution to, or a dividend or distribution of,
27 capital for no consideration or nominal consideration, or (ii) in

1 sole consideration for canceling or surrendering an interest in a
2 corporation, partnership, limited liability company or other
3 entity;

4 (12) the real property is a severed mineral interest; or

5 (13) the real property is a timeshare interest in real
6 property.

7 Sec. 12A.06. USE OF SALES DATA. (a) The sales data
8 disclosed under this Chapter shall not be used as the sole basis by
9 the chief appraiser to increase the market value of the real
10 property described in the sales price disclosure report.

11 Sec. 12A.07. AUTHORITY TO BRING SUIT. (a) A person may sue
12 an appraisal district or appraisal review board to compel the
13 appraisal district or appraisal review board to comply with the
14 provisions of Section 12A.06 if the failure to comply causes or will
15 cause substantial economic harm to or denial of a statutory or
16 constitutional right of that person. A person bringing an action
17 under this subsection must pay \$500 into the registry of the court.
18 The court shall distribute that amount to the prevailing party on
19 entry of final judgment in the action.

20 (b) If the party bringing an action under this section
21 prevails on the merits, the court shall enter an order compelling
22 the appraisal district or appraisal review board to comply with the
23 applicable law and ordering that the prevailing party recover its
24 costs.

25 (c) This section applies only to Section 12A.06.

26 (d) As a prerequisite to filing a suit under this section, a
27 person shall give certified written notice to the defendant at

1 least 60 days before filing the suit advising in reasonable detail
2 of the person's specific complaint.

3 SECTION 2. This Act takes effect January 1, 2008.