

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Gallego, Solomons, Straus, Giddings

H.B. No. 2207

A BILL TO BE ENTITLED

AN ACT

relating to the conveyance of certain residential real property  
encumbered by a lien.

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

SECTION 1. Subchapter A, Chapter 5, Property Code, is  
amended by adding Section 5.016 to read as follows:

Sec. 5.016. CONVEYANCE OF RESIDENTIAL PROPERTY ENCUMBERED  
BY LIEN. (a) A person may not convey an interest in or enter into a  
contract to convey an interest in residential real property that  
will be encumbered by a recorded lien at the time the interest is  
conveyed unless, on or before the seventh day before the earlier of  
the effective date of the conveyance or the execution of an  
executory contract binding the purchaser to purchase the property,  
an option contract, or other contract, the person provides the  
purchaser and each lienholder a separate written disclosure  
statement in at least 12-point type that:

(1) identifies the property and includes the name,  
address, and phone number of each lienholder;

(2) states the amount of the debt that is secured by  
each lien;

(3) specifies the terms of any contract or law under  
which the debt that is secured by the lien was incurred, including,  
as applicable:

(A) the rate of interest;

1                   (B) the periodic installments required to be  
2 paid; and

3                   (C) the account number;

4                   (4) indicates whether the lienholder has consented to  
5 the transfer of the property to the purchaser;

6                   (5) specifies the details of any insurance policy  
7 relating to the property, including:

8                   (A) the name of the insurer and insured;

9                   (B) the amount for which the property is insured;  
10 and

11                   (C) the property that is insured;

12                   (6) states the amount of any property taxes that are  
13 due on the property; and

14                   (7) includes a statement at the top of the disclosure  
15 in a form substantially similar to the following:

16 WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A  
17 CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT  
18 RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE  
19 LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT  
20 OF THE OUTSTANDING BALANCE OF THE LIEN IMMEDIATELY. YOU MAY WISH TO  
21 CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS  
22 MATTER WITH AN ATTORNEY.

23                   (b) A violation of this section does not invalidate a  
24 conveyance. Except as provided by Subsections (c) and (d), if a  
25 contract is entered into without the seller providing the notice  
26 required by this section, the purchaser may terminate the contract  
27 for any reason on or before the seventh day after the date the

1 purchaser receives the notice in addition to other remedies  
2 provided by this section or other law.

3 (c) This section does not apply to a transfer:

4 (1) under a court order or foreclosure sale;

5 (2) by a trustee in bankruptcy;

6 (3) to a mortgagee by a mortgagor or successor in  
7 interest or to a beneficiary of a deed of trust by a trustor or  
8 successor in interest;

9 (4) by a mortgagee or a beneficiary under a deed of  
10 trust who has acquired the real property at a sale conducted under a  
11 power of sale under a deed of trust or a sale under a court-ordered  
12 foreclosure or has acquired the real property by a deed in lieu of  
13 foreclosure;

14 (5) by a fiduciary in the course of the administration  
15 of a decedent's estate, guardianship, conservatorship, or trust;

16 (6) from one co-owner to one or more other co-owners;

17 (7) to a spouse or to a person or persons in the lineal  
18 line of consanguinity of one or more of the transferors;

19 (8) between spouses resulting from a decree of  
20 dissolution of marriage or a decree of legal separation or from a  
21 property settlement agreement incidental to one of those decrees;

22 (9) to or from a governmental entity;

23 (10) where the purchaser obtains a title insurance  
24 policy insuring the transfer of title to the real property; or

25 (11) to a person who has purchased, conveyed, or  
26 entered into contracts to purchase or convey an interest in real  
27 property four or more times in the preceding 12 months.

1           (d) A violation of this section is not actionable if the  
2 person required to give notice reasonably believes and takes any  
3 necessary action to ensure that each lien for which notice was not  
4 provided will be released on or before the 30th day after the date  
5 on which title to the property is transferred.

6           SECTION 2. The change in law made by this Act applies only  
7 to a transfer of property that occurs or a contract entered into on  
8 or after the effective date of this Act. A transfer of property  
9 that occurs or a contract entered into before the effective date of  
10 this Act is governed by the law in effect immediately before the  
11 effective date of this Act, and that law is continued in effect for  
12 that purpose.

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

ADOPTED

MAY 23 2007

*Lotay Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Lucio*

1 Amend H.B. No. 2207 (Senate Committee Printing) as follows:

2 (1) In SECTION 1 of the bill, in the recital (page 1, line  
3 12), strike "Section 5.016" and substitute "Sections 5.016 and  
4 5.019".

5 (2) In SECTION 1 of the bill, immediately following added  
6 Section 5.016, Property Code (page 2, between lines 25 and 26),  
7 insert the following:

8 Sec. 5.019. ANNUAL ACCOUNTING STATEMENTS REQUIRED FOR  
9 SELLER-FINANCED SALES OF RESIDENTIAL REAL PROPERTY. (a) This  
10 section applies only to a seller of residential real property who  
11 finances the sale of residential real property owned by the seller  
12 by delivering title to the property to the purchaser in exchange for  
13 an agreement by the purchaser to pay the purchase price to the  
14 seller by periodic installments.

15 (b) A seller who enters into a transaction described by  
16 Subsection (a) shall provide the purchaser with an annual  
17 accounting statement in January of each year until the property is  
18 fully paid for by the purchaser. If the seller mails the statement  
19 to the purchaser, the statement must be postmarked not later than  
20 January 31.

21 (c) The statement required by Subsection (b) must include  
22 the following information:

23 (1) the total amount paid by the purchaser toward the  
24 price of the residential real property;

25 (2) the remaining amount owed to the seller;

26 (3) the number of payments remaining; and

27 (4) the amounts paid to taxing authorities on the  
28 purchaser's behalf if collected by the seller.

29 (d) A seller must provide, at no cost to the purchaser, a

1 written statement of the amount of the purchase price still owed by  
2 the purchaser not later than the 10th day after the date the  
3 purchaser makes a written request for the statement if that request  
4 is the only request the purchaser has made for a statement of the  
5 amount of the purchase price still owed by the purchaser in the  
6 month in which the request is made.

7 (e) Except as provided by Subsection (f), a seller who fails  
8 to comply with Subsection (b) is liable to the purchaser for:

9 (1) actual damages;

10 (2) additional damages in the amount of \$500 for each  
11 annual statement the seller fails to provide to the purchaser  
12 within the time required by Subsection (b); and

13 (3) reasonable attorney's fees.

14 (f) A seller who does not conduct two or more transfers in a  
15 12-month period that are subject to this section and who fails to  
16 comply with Subsection (b) is liable to the purchaser for:

17 (1) a civil penalty in the amount of \$100 for each  
18 annual statement the seller fails to provide to the purchaser  
19 within the time required by Subsection (b); and

20 (2) reasonable attorney's fees.

21 (g) A seller who fails to comply with Subsection (d) is  
22 liable to the purchaser for:

23 (1) actual damages;

24 (2) additional damages in the amount of \$100 for each  
25 statement the seller fails to provide to the purchaser within the  
26 time required by Subsection (d); and

27 (3) reasonable attorney's fees.

28 (h) A purchaser may deduct an amount owed to the purchaser  
29 by the seller under Subsection (e), (f), or (g).

30 (i) A seller who fails to comply with Subsection (b) after  
31 receiving a written notice from the purchaser of the seller's

1 violation may not controvert a sworn statement from the purchaser  
2 regarding a fact required to be reflected in the statement.

3 (j) An agreement that purports to waive a right or exempt a  
4 party from a liability or duty under this section is void and  
5 unenforceable.

6 (k) This section does not apply to a transfer:

7 (1) pursuant to a court order or foreclosure sale;

8 (2) by a trustee in bankruptcy;

9 (3) to a mortgagee by a mortgagor or successor in  
10 interest or to a beneficiary of a deed of trust by a trustor or  
11 successor in interest;

12 (4) by a mortgagee or a beneficiary under a deed of  
13 trust who has acquired the real property at a sale conducted  
14 pursuant to a power of sale under a deed of trust or a sale pursuant  
15 to a court-ordered foreclosure or has acquired the real property by  
16 a deed in lieu of foreclosure;

17 (5) by a fiduciary in the course of the administration  
18 of a decedent's estate, guardianship, conservatorship, or trust;

19 (6) from one co-owner to one or more other co-owners;

20 (7) made to a spouse or to a person or persons in the  
21 lineal line of consanguinity of one or more of the transferors;

22 (8) between spouses resulting from a decree of  
23 dissolution of marriage or a decree of legal separation or from a  
24 property settlement agreement incidental to such a decree; or

25 (9) to or from any governmental entity.

26 (3) Strike SECTION 2 of the bill (page 2, lines 26-32) and  
27 substitute the following:

28 SECTION 2. (a) Except as provided by this section, this Act  
29 applies only to a transfer of property that occurs or a contract  
30 entered into on or after the effective date of this Act. A transfer  
31 that occurs or a contract entered into before the effective date of

1 this Act is governed by the law in effect immediately before the  
2 effective date of this Act, and that law is continued in effect for  
3 that purpose.

4 (b) Section 5.019, Property Code, as added by this Act,  
5 applies to a financing agreement entered into before, on, or after  
6 the effective date of this Act.



ADOPTED

MAY 23 2007

*Leta Spaul*  
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY:

*Paul Watson*  
(Watson)

1 Amend H.B. No. 2207 (senate committee printing) as follows:

2 (1) In SECTION 1 of the bill, in the recital (page 1, line  
3 12), strike "Section 5.016" and substitute "Sections 5.016 and  
4 5.017".

5 (2) In SECTION 1 of the bill, after added Section 5.016,  
6 Property Code (page 2, between lines 25 and 26), insert the  
7 following:

8 Sec. 5.017. FEE FOR FUTURE CONVEYANCE OF RESIDENTIAL REAL  
9 PROPERTY AND RELATED LIEN PROHIBITED. (a) In this section,  
10 "property owners' association" has the meaning assigned by Section  
11 209.002.

12 (b) A deed restriction or other covenant running with the  
13 land applicable to the conveyance of residential real property that  
14 requires a transferee of residential real property or the  
15 transferee's heirs, successors, or assigns to pay a declarant or  
16 other person imposing the deed restriction or covenant on the  
17 property or a third party designated by a transferor of the property  
18 a fee in connection with a future transfer of the property is  
19 prohibited. A deed restriction or other covenant running with the  
20 land that violates this section or a lien purporting to encumber the  
21 land to secure a right under a deed restriction or other covenant  
22 running with the land that violates this section is void and  
23 unenforceable. For purposes of this section, a conveyance of real  
24 property includes a conveyance or other transfer of an interest or  
25 estate in residential real property.

26 (c) This section does not apply to a deed restriction or  
27 other covenant running with the land that requires a fee associated  
28 with the conveyance of property in a subdivision that is payable to:

29 (1) a property owners' association that manages or

1 regulates the subdivision or the association's managing agent if  
2 the subdivision contains more than one platted lot;  
3 (2) an entity organized under Section 501(c)(3),  
4 Internal Revenue Code of 1986; or  
5 (3) a governmental entity.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 16, 2007**

**TO:** Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2207** by Gallego (Relating to the conveyance of certain residential real property encumbered by a lien.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill amends the Property Code relating to the conveyance of certain residential real property encumbered by a lien. Based on the analysis of the Office of the Attorney General, the Real Estate Commission and the Department of Savings and Mortgage Lending, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

This bill would take effect January 1, 2008.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 329 Real Estate Commission, 450 Department of Savings and Mortgage Lending

**LBB Staff:** JOB, MN, JRO, MW, NV

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 30, 2007**

**TO:** Honorable Helen Giddings, Chair, House Committee on Business & Industry

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2207** by Gallego (Relating to the conveyance of certain residential real property encumbered by a lien. ), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill amends the Property Code relating to the conveyance of certain residential real property encumbered by a lien. Based on the analysis of the Office of the Attorney General, the Real Estate Commission and the Department of Savings and Mortgage Lending, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

This bill would take effect January 1, 2008.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 329 Real Estate Commission, 450 Department of Savings and Mortgage Lending

**LBB Staff:** JOB, JRO, MW, NV

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 26, 2007**

**TO:** Honorable Helen Giddings, Chair, House Committee on Business & Industry

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2207** by Gallego (Relating to the conveyance of certain residential real property encumbered by a lien.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

This bill amends the Property Code relating to the conveyance of certain residential real property encumbered by a lien. Based on the analysis of the Office of the Attorney General, the Real Estate Commission and the Department of Savings and Mortgage Lending, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

This bill would take effect September 1, 2008.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 329 Real Estate Commission, 450 Department of Savings and Mortgage Lending

**LBB Staff:** JOB, JRO, MW, NV