

House Bill 2207
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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;
 - (B) the periodic installments required to be paid; and
 - (C) the account number;
- (4) indicates whether the lienholder has consented to the transfer of the property to the purchaser;
- (5) specifies the details of any insurance policy relating to the property, including:
 - (A) the name of the insurer and insured;

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SECTION 1. Subchapter A, Chapter 5, Property Code, is amended by adding Section Sections 5.016 and 5.017 and 5.019 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;
 - (B) the periodic installments required to be paid; and
 - (C) the account number;
- (4) indicates whether the lienholder has consented to the transfer of the property to the purchaser;
- (5) specifies the details of any insurance policy relating to the property, including:
 - (A) the name of the insurer and insured;

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(B) the amount for which the property is insured; and
(C) the property that is insured;
(6) states the amount of any property taxes that are due on the property; and
(7) includes a statement at the top of the disclosure in a form substantially similar to the following:
WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE OF THE LIEN IMMEDIATELY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS MATTER WITH AN ATTORNEY.
(b) A violation of this section does not invalidate a conveyance. Except as provided by Subsections (c) and (d), if a contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice in addition to other remedies provided by this section or other law.
(c) This section does not apply to a transfer:
(1) under a court order or foreclosure sale;
(2) by a trustee in bankruptcy;
(3) to a mortgagee by a mortgagor or successor in

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(B) the amount for which the property is insured; and
(C) the property that is insured;
(6) states the amount of any property taxes that are due on the property; and
(7) includes a statement at the top of the disclosure in a form substantially similar to the following:
WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE OF THE LIEN IMMEDIATELY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS MATTER WITH AN ATTORNEY.
(b) A violation of this section does not invalidate a conveyance. Except as provided by Subsections (c) and (d), if a contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice in addition to other remedies provided by this section or other law.
(c) This section does not apply to a transfer:
(1) under a court order or foreclosure sale;
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interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;
(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
(6) from one co-owner to one or more other co-owners;
(7) to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;
(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to one of those decrees;
(9) to or from a governmental entity;
(10) where the purchaser obtains a title insurance policy insuring the transfer of title to the real property; or
(11) to a person who has purchased, conveyed, or entered into contracts to purchase or convey an interest in real property four or more times in the preceding 12 months.
(d) A violation of this section is not actionable if the person required to give notice reasonably believes and takes any necessary action to ensure that each lien for which notice was not provided will be released on or before the 30th day after the date on which title to the property is transferred.

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interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;
(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
(6) from one co-owner to one or more other co-owners;
(7) to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;
(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to one of those decrees;
(9) to or from a governmental entity;
(10) where the purchaser obtains a title insurance policy insuring the transfer of title to the real property; or
(11) to a person who has purchased, conveyed, or entered into contracts to purchase or convey an interest in real property four or more times in the preceding 12 months.
(d) A violation of this section is not actionable if the person required to give notice reasonably believes and takes any necessary action to ensure that each lien for which notice was not provided will be released on or before the 30th day after the date on which title to the property is transferred.

Sec. 5.017. FEE FOR FUTURE CONVEYANCE OF

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RESIDENTIAL REAL PROPERTY AND RELATED LIEN PROHIBITED. (a) In this section, "property owners' association" has the meaning assigned by Section 209.002.

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

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

(1) a property owners' association that manages or regulates the subdivision or the association's managing agent if the subdivision contains more than one platted lot;

(2) an entity organized under Section 501(c)(3), Internal Revenue Code of 1986; or

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(3) a governmental entity.

Sec. 5.019. ANNUAL ACCOUNTING STATEMENTS REQUIRED FOR SELLER-FINANCED SALES OF RESIDENTIAL REAL PROPERTY. (a) 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.

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

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

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

(2) the remaining amount owed to the seller;

(3) the number of payments remaining; and

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

(d) A seller must provide, at no cost to the purchaser, a written statement of the amount of the purchase price still owed by the purchaser not later than the 10th day after the date the purchaser makes a written request for the statement if that request is the only request the purchaser has made for a statement of the amount of the

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purchase price still owed by the purchaser in the month in which the request is made.

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

(1) actual damages;

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

(3) reasonable attorney's fees.

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

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

(2) reasonable attorney's fees.

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

(1) actual damages;

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

(3) reasonable attorney's fees.

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

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

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seller's violation may not controvert a sworn statement from the purchaser regarding a fact required to be reflected in the statement.

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

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

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

(2) by a trustee in bankruptcy;

(3) 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;

(4) 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;

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

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

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

(8) 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; or

(9) to or from any governmental entity.

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

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

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SECTION 2. (a) Except as provided by this section, this Act applies only to a transfer of property that occurs or a contract entered into on or after the effective date of this Act. A transfer that occurs or a contract entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.
(b) Section 5.019, Property Code, as added by this Act, applies to a financing agreement entered into before, on, or after the effective date of this Act

Same as House version.

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