

By: Lucio

S.B. No. 2293

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the provision of accounting statements by a seller who
3 finances the sale of residential real property owned by the seller;
4 providing a civil penalty.

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

6 SECTION 1. Subchapter A, Chapter 5, Property Code, is
7 amended by adding Section 5.019 to read as follows:

8 Sec. 5.019. ANNUAL ACCOUNTING STATEMENT 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 the property by delivering title to the
12 property to the purchaser in exchange for the purchaser's agreement
13 to pay the purchase price to the seller in periodic installments.

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

20 (c) The statement required by Subsection (b) must state:

21 (1) the total amount that the purchaser has paid
22 toward the purchase price of the property;

23 (2) the balance owed to the seller as of the preceding
24 December 31;

1 (3) the number of payments remaining; and

2 (4) the amount that the seller has paid to any taxing
3 authority as of the preceding December 31 for the preceding tax year
4 on the purchaser's behalf, if collected by the seller.

5 (d) Not more than once each month and at no cost to the
6 purchaser, a seller shall provide to the purchaser, not later than
7 the 10th day after the date the purchaser makes a written request
8 for the statement, a written statement of the balance of the
9 purchase price owed by the purchaser in the month in which the
10 request is made.

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

13 (1) actual damages;

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

17 (3) reasonable attorney's fees.

18 (f) A seller who makes not more than one sale subject to this
19 section in a 12-month period and who fails to comply with Subsection
20 (b) is liable to the purchaser for:

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

24 (2) reasonable attorney's fees.

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

27 (1) actual damages;

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

4 (3) reasonable attorney's fees.

5 (h) A purchaser may deduct from the balance of the purchase
6 price an amount owed to the purchaser by the seller under Subsection
7 (e), (f), or (g).

8 (i) A seller who fails to comply with Subsection (b) after
9 receiving a written notice from the purchaser of the seller's
10 violation may not controvert a sworn statement from the purchaser
11 regarding a fact required to be reflected in the statement by
12 Subsection (c).

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

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

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

18 (2) by a trustee in bankruptcy;

19 (3) to a mortgagee by a mortgagor or successor in
20 interest or to a beneficiary of a deed of trust by a trustor or
21 successor in interest;

22 (4) by a mortgagee or a beneficiary under a deed of
23 trust who has acquired the real property at a sale conducted under a
24 power of sale under a deed of trust or a sale under a court-ordered
25 foreclosure or has acquired the real property by a deed in lieu of
26 foreclosure;

27 (5) by a fiduciary in the course of the administration

1 of a decedent's estate, guardianship, conservatorship, or trust;

2 (6) from one co-owner to another co-owner;

3 (7) to a spouse or to a person or persons in the lineal
4 line of consanguinity of a transferor;

5 (8) between spouses resulting from a decree of
6 dissolution of marriage, a decree of legal separation, or a
7 property settlement agreement incidental to a decree of dissolution
8 or separation; or

9 (9) to or from any governmental entity.

10 SECTION 2. The change in law made by this Act applies to a
11 financing agreement entered into before, on, or after the effective
12 date of this Act.

13 SECTION 3. This Act takes effect September 1, 2009.