

By: Gutierrez

H.B. No. 3718

A BILL TO BE ENTITLED

AN ACT

Relating to the sale of real property.

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

SECTION 1. Chapter 34 of the Finance Code, is amended by adding Subchapter E to read as follows:

34.401. DEFINITIONS. (a) The definitions provided by Section 31.002 apply to this chapter.

(b) For the purposes of this Chapter, a short sale or discounted sale or proposed short sale or proposed discounted sale is defined as a sale or proposed sale of real property wherein the net proceeds of the sale are less than the amount the borrower owes to the bank(s) or lending institution(s) which have a secured lien against said real property.

34.402. No bank or lending institution operating within the State of Texas may, in the process of considering a discounted or short sale, disallow a cost incurred by the borrower which is charged by an attorney licensed by the Supreme Court of Texas and regulated by the State Bar of Texas, for services rendered to the borrower, assisting with the negotiation of the terms of the discounted or short sale approval if:

a) the amount of offer submitted for approval by the borrower, or their realtor or agent, to the lending institution or bank is at least 90% of the total outstanding balance of principal, interest and penalties owed on the note

1 which is secured by a deed of trust on the property,  
2 calculated pursuant to the exact terms of the note and  
3 respective deed of trust; and

4 b) The amount of said legal fees incurred by the  
5 borrower to be paid at the time of closing of the proposed  
6 short sale does not exceed the lesser of \$2,500.00 or 1% of  
7 the total purchase price of the purchase contract for sale  
8 submitted to the banking or lending institution for approval  
9 as a discounted or short sale.

10 34.403. In any situation where a debtor is more than 60 days  
11 delinquent on a mortgage which is secured by a deed of trust owed to  
12 a lender or bank doing business in the State of Texas, and upon the  
13 borrower receiving a notice of acceleration from the bank or lender  
14 in relation to enforcement of a note, and/or the notice of proposed  
15 foreclosure on the property through the deed of trust used as  
16 collateral or security on the note securing the debt owed by the  
17 borrower to the bank or lending institution, the borrower shall  
18 have the absolute right to, within 10 days from receiving the said  
19 notice, request the "broker price opinion" or informal or formal  
20 appraisal, which the bank or lending institution has prepared or  
21 has had prepared on its behalf, in relation to the acceleration of  
22 the note and/or the proposed foreclosure and sale of the property  
23 for enforcement of the note and deed of trust on the property. Upon  
24 receipt of the request by the borrower, sent by certified mail,  
25 return receipt requested, the bank or lending institution shall  
26 have, from the date of receiving said request, a maximum of 10 days

1 to send, by certified mail, return receipt requested, to the  
2 borrower, a full and complete copy of the broker price opinion  
3 and/or formal or informal appraisal being relied upon by the bank  
4 for the purpose of establishing the appropriate market value of the  
5 house for consideration and approval or disapproval of the short  
6 sale offers and/or the foreclosure proceeding. Upon receipt of the  
7 broker price opinion and/or formal or informal appraisal from the  
8 bank or lending institution, the borrower may not disclose the  
9 information contained in the broker price opinion or formal or  
10 informal appraisal to any third parties other than the borrower's  
11 licensed real estate broker or agent, who has been employed by the  
12 borrower to assist in obtaining offers and negotiating the  
13 discounted or short sale, and/or an attorney licensed by the  
14 Supreme Court of Texas and regulated by the State Bar of Texas, who  
15 has been employed to assist in negotiations with the bank and  
16 providing legal advice and consultation to avoid deficiencies and  
17 acquire offers which will be the highest and best offers for  
18 avoiding a deficiency in the amount owed to the bank or lending  
19 institution by the borrower as a result of any potential discounted  
20 or short sale or foreclosure proceeding. The allowable disclosure  
21 by the borrower under this subsection includes disclosure to any  
22 employees, agents, escrow officers, paraprofessionals, or other  
23 contracted individuals by the broker, agent, or licensed attorney,  
24 provided however that the confidentiality required of the borrower,  
25 shall extend to said third parties as a condition of disclosure of  
26 the confidential information received by the borrower from the bank  
27 or lending institution in response to their request.

1       34.404. Upon approval and closing of a discounted or short  
2 sale transaction, or finalization of the foreclosure proceeding and  
3 transfer of title thereunder, the borrower, as well as any  
4 recipient of information from the borrower shall no longer be  
5 subject to the confidentiality requirement of this subsection with  
6 regard to the broker price opinion or formal or informal appraisal  
7 received hereunder.

8       34.405. Upon receipt of an offer for a discounted or short  
9 sale which is submitted by a borrower or a licensed real estate  
10 broker or agent, or licensed attorney acting on behalf of the  
11 borrower, a bank or lending institution doing business in the State  
12 of Texas holding the note which has been the subject of notice of  
13 acceleration and/or notice of pending foreclosure, shall have only  
14 10 days to respond to said offer, and said response must be in  
15 writing and shall include an approval of the discounted or short  
16 sale, or if denied, specific and exact reasons why the discounted or  
17 short sale is not being approved. Upon receipt of a denial of a  
18 proposed discounted or short sale, a borrower shall have 15 days to  
19 accumulate additional information or cure any defects in an offer,  
20 or accumulate additional offers at higher prices or better terms,  
21 and submit said offers to the bank or lending institution. Upon  
22 receipt of subsequent offers from a borrower, broker, agent or  
23 attorney representing the borrower, the bank or lending institution  
24 shall provide its response on approval or disapproval, as required  
25 above, to the borrower within 10 days from receipt of the  
26 supplemental offer.

27       34.406. In the event a bank or lending institution refusing

1 to approve a discounted or short sale offer from a borrower or  
2 borrower's representative under this section, and a foreclosure  
3 occurs, the bank or lending institution shall be liable for any  
4 deficiency by the borrower in the event the amount received at  
5 foreclosure of the property is equal to or less than 5% more than  
6 the highest and best discounted or short sale offer that was denied  
7 by the bank or lending institution prior to the foreclosure  
8 proceeding. In the event of such liability by the bank or lending  
9 institution, the bank or lending institution shall be required to  
10 write off any said deficiencies and pay a penalty of \$2,000.00 to  
11 the borrower upon receipt and acceptance of the foreclosure offer  
12 and transfer of the property subject thereto.

13         SECTION 2. This Act takes effect immediately if it receives  
14 a vote of two-thirds of all the members elected to each house, as  
15 provided by Section 39, Article III, Texas Constitution. If this  
16 Act does not receive the vote necessary for immediate effect, this  
17 Act takes effect September 1, 2011.