HOUSE RESEARCH ORGANIZATION bill analysis | 4/25/2005 | HB 371 Farabee (CSHB 371 by Nixon)

SUBJECT: Damages for violating requirements in executory contracts

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 7 ayes — Nixon, Rose, King, Madden, Raymond, Strama, Woolley

0 nays

2 absent — Martinez Fischer, Talton

WITNESSES: For — Jay Dyer, Texas Association of Builders; Billy T. Elder

Against — Virginia Goldman, Toni McElroy, Martha Rubio, ACORN; Antelma Nava, Houston ACORN;

On — John Henneberger, Texas Low Income Housing Information Service, Border Low Income Housing Coalition

BACKGROUND: Ch. 5, subch. D of the Property Code lays out the requirements for executory contracts for conveyance, also called contracts for deed. Sec. 5.077(a) requires the seller to provide to the buyer an annual statement in January of each year, every year, for the term of the executory contract. Under sec. 5.077(b), the statement must include the following information:

- the amount paid under the contract;
- the remaining amount owed under the contract;
- the number of payments remaining under the contract;
- the amounts paid to taxing authorities on the buyer's behalf, if collected by the seller;
- the amounts paid to insure the property on the buyer's behalf if collected by the seller;
- if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and
- if the seller has changed insurance coverage, a copy of the current policy.

Sec. 5.077(c) states that a seller who does not provide the required annual accounting on time is liable to the buyer for damages of $250 each day after January 31 that the seller fails to provide the purchaser with the statement and for attorneys fees.

DIGEST:

CSHB 371 would amend sec. 5.077(c) to make the seller, if the seller did not provide on time the required annual accounting statement for an executory contract , liable to the buyer for attorneys fees; for $250 for each annual statement; and for $20, rather than $250, each day after January 31 that the seller did not provide the accounting to the buyer, or for the purchase price of the property, whichever was less.

The bill would prohibit a seller who failed to provide the accounting on time to the buyer from claiming that the buyer failed to pay the seller any amount that was due:

- before the most recent date a statement was due; and
- the last date any previous accounting was provided to the buyer, or the date the contract was entered into, whichever was later

The bill also would add subsec. (e), requiring that the seller include in the executory contract a statement that the seller was required to provide an annual statement on or before January 31 of each year for the term of the contract and that the buyer could request the statement from the seller if the buyer did not receive the statement by January 31. The seller would also have to state in the executory contract the items to be included in the annual statement under 5.077(b). The bill also would make the seller liable to the buyer for $250 if the seller failed to include these provisions in the contract.

The bill would take effect September 1, 2005, and would apply only to an executory contract entered into, or to the act of a seller who failed to timely provide an annual statement, on or after that date.

SUPPORTERS SAY:

CSHB 371 is a fair compromise between the interests of sellers and buyers in executory contracts. The bill would reduce the current fee of $250 per day required if the seller were late in getting the annual accounting to the buyer. This fee now is so high that the seller sometimes owes the buyer more for not providing the accounting on time than what the property itself is worth. However, to assure a strong incentive for the seller to provide the annual statement on time, the bill would not allow a seller to claim that the buyer owed him money that was due before the most recent date a statement was due and after the latest date a previous statement was provided. The buyer would receive additional protection under the bill because the seller would have to notify the buyer in the contract that the seller was obligated to provide statements each year on time. The direct monetary penalties for not providing the statement on time and for not including the required provisions in the contract are reasonable, so sellers would be protected from exorbitant fees after the fact.

OPPONENTS SAY:

The bill could decrease the daily penalty assessed when the seller provides the annual statement late by so much that the seller would not have an incentive to provide it on time or at all.

Prohibiting the seller from claiming that the buyer owed him certain money if the seller provided the annual accounting late would be a disproportionately harsh penalty.

NOTES:

HB 371 as introduced would have decreased the daily fee assessed against the seller for providing the annual statement late from $250 per day to $10 per day. It also would have allowed the seller to credit the amount of late fees owed by the seller to the seller for providing the statement late toward the remaining amount owed by the buyer under the contract.