

SUBJECT: Seller's disclosure regarding contamination on residential real property

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Deshotel, Orr, Bohac, Giddings, Quintanilla, Workman

0 nays

1 present not voting — Solomons

2 absent — Garza, S. Miller

WITNESSES: For — (*Registered, but did not testify*: Harvella Jones, The Texas Homeowner's Advocate Group, The National Homeowner's Advocate Group, The National HAGS Coalition)

Against — (*Registered, but did not testify*: Phil Cates, Gerald Stavely)

DIGEST: HB 3483 would amend the Property Code by requiring a person who sells an interest in residential real property to give the purchaser of the property written notice specifying the nature of any contamination on or under the property, including the contaminant, the source, if known, and the location and extent of the contamination.

The seller would be required to deliver the notice to the purchaser before the date the contract was binding. The notice could be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivered to the purchaser.

This requirement would not apply to a transfer:

- under a court order or foreclosure sale;
- by a trustee in bankruptcy;
- 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;
- by a mortgagee or a beneficiary under a deed of trust who had acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or had acquired the land by a deed in lieu of foreclosure;

- by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- from one co-owner to another co-owner of an undivided interest in the real property;
- to a spouse or a person of blood relation to the seller;
- to or from a governmental entity;
- of only a mineral interest, leasehold interest, or security interest; or
- of real property that was located wholly within a municipality's corporate boundaries.

If a contract was entered into without the notice, the purchaser could terminate the contract for any reason within the earlier of seven days after receiving the notice or the date of the transfer.

The bill would take effect September 1, 2011, and would apply only to a transfer of property on or after that date.

**SUPPORTERS
SAY:**

Rural East Texas is experiencing the benefits and the downsides of economic development through the oil and gas industry. Numerous property owners have purchased property only to discover that they cannot use the property for its intended purpose due to undisclosed contamination.

HB 3483 would provide protection to a property buyer by requiring a seller to notify the buyer of any possible contamination on the property before the sale. If the seller failed to do so, the purchaser could terminate the contract.

**OPPONENTS
SAY:**

HB 3483 would require a person who sold residential property to give the purchaser of the property written notice specifying the nature of any contamination on or under it, including the contaminant, the source, if known, and the location and extent of the contamination. This requirement could add thousands of dollars to the cost of selling property in Texas.

HB 3483 is unnecessary. Under current law, if there is cause, such as being in proximity to a chemical plant, the seller already must take samples to ensure that no contamination has occurred.