

SUBJECT: Prohibiting fee for declining right of first refusal in real estate transactions

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 7 ayes — Giddings, Elkins, Bohac, Martinez, Taylor, Vo, Zedler

0 nays

2 absent — Bailey, Solomons

WITNESSES: For — Marios Parpounas, Lakeway World of Tennis Condominium
Homeowner's Association

Against — None

On — Allen Place, Texas Land Title Association

DIGEST: HB 1021, as amended, prohibit a person who had a right of first refusal in real property from charging a fee for declining to exercise that right, such as a fee for providing written evidence of declination.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005. Except as provided by a contract entered into before the effective date, the bill would apply only to such a fee that was solicited on or after the effective date

SUPPORTERS SAY: HB 1021 would prohibit solicitation of fees in exchange for a waiver of a right of first refusal. Condominium owners and owners of time-share property or homeowners who are members of property owners' associations frequently experience exploitation by holders of interest (with the first option) charging fees for written evidence that declines the right of first refusal.

Some real estate transactions contain a provision that in the event property owners wish to sell their property, the developer or the successor in interest will receive immediate written notice of any bona fide offer from a prospective buyer. The holder of interest then would have the right to purchase the property on the same terms and conditions set forth in the

offer if the holder of interest notified the owner within a specified time. If the owner did not provide the holder of interest with the option to buy, the sale could be null and void.

The right of first refusal by a holder of interest can be incorporated into any instrument of conveyance requiring all subsequent grantees to do the same. Title companies will not close on such properties until the holder of interest returns the declination. Some holders of interest with no plans to purchase a property assess a fee for providing written declination, simply as a way to squeeze out a cost. Sellers and buyers eager to complete transactions usually feel forced to pay.

A condominium association, for example, can charge \$250 to waive any right of first refusal for each unit and accumulate sizeable fees that the owners consider obligated to pay in order not to lose a good offer from a prospective buyer. HB 1021 would stop such a routine, abusive process.

**OPPONENTS
SAY:**

Property owners are aware of a holder of interest's ability to charge a fee from a written conveyance. The provision to charge a fee usually comes with a time period after which the fee would be waived. For condominiums, this is customarily 10 to 60 days. A property owner could wait the specified length of time before completing a sale in order to avoid the declination fee by the holder of interest.

**OTHER
OPPONENTS
SAY:**

The purpose of HB 1021 could be served better if the provision were in Property Code, ch. 82, the Uniform Condominium Act, and ch. 207, relating to disclosure of information by property owners' associations. That way, the bill would not have the possible, unintended effect of interfering with the ability to purchase a right of first refusal in a commercial real estate transaction.

NOTES:

A committee amendment would eliminate a provision saying that a title company would accept written evidence that someone solicited a fee for written evidence of declination as proof the person had waived the right of first refusal.