

- SUBJECT:** Amending acknowledgement of seller's disclosure notice
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 6 ayes — Deshotel, Elkins, Christian, Gattis, Giddings, S. Miller
0 nays
5 absent — England, Keffer, Orr, Quintanilla, S. Turner
- WITNESSES:** For — Edward Clark; Lori Levy, Texas Association of Realtors;
(*Registered, but did not testify*: Helen Clark; Daniel Gonzalez, Texas Association of Realtors; Nancy Hentschel)
Against — None
- BACKGROUND:** Health and Safety Code, ch. 766 governs fire safety in residential dwellings. Ch. 766.0021 states that a buyer under a written contract for the sale of a one-family or two-family home may require the seller to install smoke detectors for hearing-impaired persons if the buyer or a family member is hearing impaired. If the seller is required to install smoke detectors for hearing-impaired persons, the seller and the buyer may negotiate who would bear the cost.

Property Code, sec. 5.008 sets forth the requirements for a seller's disclosure of property condition notice.
- DIGEST:** CSHB 3502 would amend the seller's disclosure of property condition notice by deleting the portion that states the purchaser acknowledges that the property complies with smoke detector requirements, or, if the property does not comply with smoke detector requirements, the buyer waives the buyer's rights to have smoke detectors installed that would be in compliance with statutes governing fire safety in residential dwellings.

The change in law made by the provisions of the bill would apply only to a notice executed on or after the effective date of the bill. The bill would take effect January 1, 2010.

SUPPORTERS
SAY:

CSHB 3502 would preserve the original intent of the seller's disclosure notice, which is to provide notice of the condition of the property. Since its inception, the seller's disclosure notice has contained a place for buyers to sign and has always been merely an acknowledgement of receipt by the buyer. The signature provision is useful for sellers to provide evidence that they have complied with the statutory requirement to give notice.

During the 80th Legislature, a requirement was enacted to ensure that hearing-impaired buyers could request smoke detectors to be installed prior to the closing of the sale. The additional language added to the acknowledgement states that either the property complies with the smoke detector requirements or that the buyer waives the buyer's rights granted under the law.

The notice is simply to declare the condition of the property and not an appropriate document for a buyer to waive any rights. Many realtors are being put in a precarious position of being asked to explain what rights their clients have under the law, which is prohibited under the Real Estate License Act.

Buyers are not signing the notice because the language is confusing and they are not sure why they have to waive any rights. A buyer who is not hearing impaired does not have the same right to have a seller install smoke detectors. However, this is something that buyers and sellers typically negotiate over, and by signing the notice, many buyers think they are no longer able to negotiate for smoke detectors to be installed, which is not correct.

Removing the acknowledgement of compliance or waiver in the acknowledgement of receipt would provide better protection for consumers in that they would not be put in a position to waive any rights granted to them under the law. The presence of smoke detectors still would be required to be disclosed by sellers in the notice.

OPPONENTS
SAY:

No apparent opposition.