

STATE of TEXAS
HOUSE of REPRESENTATIVES



Harold V. Dutton, Jr.
District 142

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September 30, 2005

FILE # ML-44445-05

I.D. # 44445

EXECUTIVE ADMINISTRATION
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The Honorable Greg Abbott
Attorney General, State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

OCT 05 2005

ACTION BY Nancy Fuller
COPY TO Barny McBe
S. Schiff

Dear General Abbott:

RQ-0402-GA

I am respectfully requesting your opinion in interpreting the provisions of the Texas Property Code, specifically on the applicability of the newly amended Section 5.077(c) which was a result of House Bill 1823.

Under the former Tex. Prop. Code 5.077, enacted in 2001, any seller who entered into an executory contract for the sale of real property ("Contract for Deed") was required to provide an annual accounting statement to include the amount paid under the contract, the remaining amount owed under the contract and the number of payments remaining under the contract, among other items. The annual accounting statement was required to be provided by January 31 of each year after 2001. In the event that a seller failed to comply with former Section 5.077, the seller was liable to the purchaser for liquidated damages of \$250 per day for each day after January 31 of each year.

House Bill 1823 revised the liquidated damages provision contained in former Section 5.077, to provide that, if a person conducts less than two transactions in a 12 month period, then the liquidated damages provision for the failure to provide an annual accounting statement is \$100 for each annual statement that the seller failed to provide plus reasonable attorney's fees.

Former Section 5.077 applied to any Contract for Deed then in existence, not just contracts for deed entered into after September 1, 2001. Moreover, under former Section 5.077, the seller was not liable for any liquidated damages that accrued prior to September 1, 2001, and the seller would only be liable for any violations of Section 5.077 from September 1, 2001 forward (effectively, January 31, 2002 forward). Therefore, former Section 5.077 did not apply retroactively. Assuming that a seller entered into a contract for deed prior to September 1, 2001 and that the seller failed to provide an annual accounting statement between September 1, 2001 and September 1, 2005, the seller could, under former Section 5.077, arguably be liable for approximately \$327,000 in liquidated damages, as opposed to approximately \$300 under the new law.

The potential issues presented are:

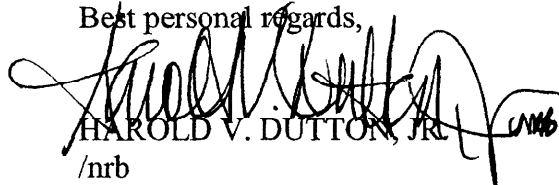
AUSTIN OFFICE: State Capitol Room 1W.10

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- (1) Whether a seller who satisfies the requirements of House Bill 1823, Section 5.077(c) is liable for liquidated damages that have accrued under former Section 5.077 between January 31, 2002 and August 31, 2005, i.e., does House Bill 1823, Section 5.077(c) apply retroactively.
- (2) Whether the liquidated damages provision contained in former Section 5.077 apply to lawsuits filed after September 1, 2005 for violations that occurred between September 1, 2001 and August 31, 2005. Or, stated differently, does House Bill 1823, Section 5.077(c) apply to all lawsuits filed after September 1, 2005.

In advance, thank you for your assistance and attention to these important issues.

Best personal regards,



HAROLD V. DUTTON, JR.

/nrh