

By: Puente

H.B. No. 2659

A BILL TO BE ENTITLED

AN ACT

relating to executory contracts for conveyance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.065, Property Code, is amended to read as follows:

Sec. 5.065. RIGHT TO CURE DEFAULT. Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property may avoid the enforcement of a remedy described by Section 5.064 by complying with the terms of the contract on or before the 30th ~~[60th]~~ day after the date notice is given under that section.

SECTION 2. Sections 5.066(a) and (g), Property Code, are amended to read as follows:

(a) If a purchaser defaults after the purchaser has paid 40 percent or more of the amount due ~~[or the equivalent of 48 monthly payments]~~ under the executory contract, the seller is granted the power to sell, through a trustee designated by the seller, the purchaser's interest in the property as provided by this section. The seller may not enforce the remedy of rescission or of forfeiture and acceleration.

(g) If a purchaser defaults before the purchaser has paid 40 percent of the amount due ~~[or the equivalent of 48 monthly payments]~~ under the executory contract, the seller may enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness if

1 the seller complies with the notice requirements of Sections 5.063  
2 and 5.064.

3 SECTION 3. Section 5.068, Property Code, is amended to read  
4 as follows:

5 Sec. 5.068. FOREIGN LANGUAGE REQUIREMENT. (a) Except as  
6 provided by Subsection (b), if [~~if~~] the negotiations that precede  
7 the execution of an executory contract are conducted primarily in a  
8 language other than English, the seller shall provide a copy in that  
9 language of all written documents relating to the transaction,  
10 including the contract, disclosure notices, annual accounting  
11 statements, and a notice of default required by this subchapter.

12 (b) Before signing an executory contract, the purchaser and  
13 seller may agree in writing in the language in which the  
14 negotiations that precede the execution of the contract are  
15 conducted that:

16 (1) the seller shall provide all written documents  
17 required by this subchapter in English; and

18 (2) the purchaser shall retain the services of a  
19 translator or interpreter of the purchaser's choosing to assist the  
20 purchaser in preparing, receiving, and understanding all written  
21 documents required by this subchapter.

22 SECTION 4. Section 5.069(a), Property Code, is amended to  
23 read as follows:

24 (a) Before an executory contract is signed by the purchaser,  
25 the seller shall provide the purchaser with:

26 (1) a survey [~~which was~~] completed within the past 10  
27 years that contains a current [~~year, or~~] plat of [~~a current survey~~

1 of] the real property;

2 (2) a legible copy of any document that describes an  
3 encumbrance or other claim, including a restrictive covenant or  
4 easement, that affects title to the real property; and

5 (3) a written notice, which must be attached to the  
6 contract, informing the purchaser of the condition of the property  
7 that must, at a minimum, be executed by the seller and purchaser and  
8 read substantially similar to the following:

9 WARNING

10 IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE  
11 TO LIVE ON THE PROPERTY.

12 SELLER'S DISCLOSURE NOTICE

13 CONCERNING THE PROPERTY AT (street address or legal description and  
14 city)

15 THIS DOCUMENT STATES CERTAIN APPLICABLE FACTS ABOUT THE PROPERTY  
16 YOU ARE CONSIDERING PURCHASING.

17 CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

18 \_\_\_ The property is in a recorded subdivision.

19 \_\_\_ The property has water service that provides potable water.

20 \_\_\_ The property has sewer service.

21 \_\_\_ The property has been approved by the appropriate municipal,  
22 county, or state agency for installation of a septic system.

23 \_\_\_ The property has electric service.

24 \_\_\_ The property is not in a floodplain.

25 \_\_\_ The roads to the boundaries of the property are paved and  
26 maintained by:

27 \_\_\_ the seller;

1 \_\_\_\_\_ the owner of the property on which the road exists;  
2 \_\_\_\_\_ the municipality;  
3 \_\_\_\_\_ the county; or  
4 \_\_\_\_\_ the state.

5 \_\_\_\_\_ No individual or entity other than the seller:

- 6 (1) owns the property;
- 7 (2) has a claim of ownership to the property; or
- 8 (3) has an interest in the property.

9 \_\_\_\_\_ No individual or entity has a lien filed against the property.

10 \_\_\_\_\_ There are no restrictive covenants, easements, or other title  
11 exceptions or encumbrances that prohibit construction of a house on  
12 the property.

13 NOTICE: SELLER ADVISES PURCHASER TO:

14 (1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT COVERING THE  
15 PROPERTY AND HAVE THE ABSTRACT OR COMMITMENT REVIEWED BY AN  
16 ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND

17 (2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING  
18 THE PROPERTY.

19 \_\_\_\_\_  
20 (Date) (Signature of Seller)

21 \_\_\_\_\_  
22 (Date) (Signature of Purchaser)

23 SECTION 5. Section 5.076(a), Property Code, is amended to  
24 read as follows:

25 (a) Except as provided by Subsection (b), on or before the  
26 30th day after the date an executory contract is executed, the  
27 seller shall, as prescribed by Title 3, record:

1           (1) the executory contract, including the attached  
2 disclosure statement required by Section 5.069; or

3           (2) a memorandum describing the contents of the  
4 contract and the disclosure statement required by Section 5.069~~[~~  
5 ~~as prescribed by Title 3 on or before the 30th day after the date the~~  
6 ~~contract is executed]~~.

7           SECTION 6. Section 5.077, Property Code, is amended to read  
8 as follows:

9           Sec. 5.077. ANNUAL ACCOUNTING STATEMENT. (a) The seller  
10 shall provide the purchaser with an annual statement in February  
11 [~~January~~] of each year for the term of the executory contract. If  
12 the seller mails the statement to the purchaser, the statement must  
13 be postmarked not later than February 15 [~~January 31~~].

14           (b) The statement must include the following information:

15                 (1) the total amount paid in principal and interest  
16 under the contract during the preceding year;

17                 (2) the remaining principal amount owed under the  
18 contract;

19                 (3) the number of payments remaining under the  
20 contract;

21                 (4) the amounts paid to taxing authorities on the  
22 purchaser's behalf if collected by the seller;

23                 (5) the amounts paid to insure the property on the  
24 purchaser's behalf if collected by the seller;

25                 (6) if the property has been damaged and the seller has  
26 received insurance proceeds, an accounting of the proceeds applied  
27 to the property; and

1 (7) if the seller has changed insurance coverage, a  
2 legible copy of the current policy, binder, or other evidence that  
3 satisfies the requirements of Section 5.070(a)(2).

4 (c) If the seller fails to comply with Subsections (a) and  
5 (b), the purchaser may submit a written notice to the seller  
6 requesting the seller to provide the purchaser with an annual  
7 accounting statement that complies with Subsections (a) and (b).

8 (d) A seller who fails to comply with a purchaser's request  
9 for an annual accounting statement under Subsection (c) on or  
10 before the 30th day after the date the request was received  
11 ~~[Subsection (a)]~~ is liable to the purchaser for:

12 (1) a civil penalty of \$1,000 ~~[liquidated damages in~~  
13 ~~the amount of \$250 a day for each day after January 31 that the~~  
14 ~~seller fails to provide the purchaser with the statement]~~; and

15 (2) reasonable attorney's fees the purchaser incurs  
16 seeking enforcement of this section.

17 SECTION 7. Section 5.079(a), Property Code, is amended to  
18 read as follows:

19 (a) The seller shall transfer recorded, legal title of the  
20 property covered by the executory contract to the purchaser using a  
21 title company authorized to do business in this state or an attorney  
22 licensed by this state who has agreed in writing to hold the deed in  
23 trust for the seller until the purchaser delivers the final payment  
24 due under the contract to the title company or attorney. On receipt  
25 of the final payment due under the contract, the title company or  
26 attorney shall deliver the title to the property covered by the  
27 executory contract to the purchaser ~~[not later than the 30th day~~

1 ~~after the date the seller receives the purchaser's final payment~~  
2 ~~due under the contract].~~

3 SECTION 8. Section 5.074, Property Code, is repealed.

4 SECTION 9. Sections 5.079(b) and (c), Property Code, are  
5 repealed.

6 SECTION 10. This Act takes effect September 1, 2003, and  
7 applies only to an executory contract for conveyance of real  
8 property signed on or after that date. An executory contract for  
9 conveyance of real property signed before the effective date of  
10 this Act is governed by the law in effect immediately before the  
11 effective date of this Act.