

BILL ANALYSIS

C.S.H.B. 1823
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Contract-for-Deed and Rent-to-Own arrangements are home buying methods that leave the buyer extremely vulnerable to serious abuses, and deny homebuyers many of the same basic benefits and rights that other homeowners have. Texans who have purchased their homes through contract-for-deed do not get the title to their home until the house is completely paid off, often over 10 to 15 years. People invest years of their lives and thousands of dollars in homes that they will never own. The buyer is dependent upon the seller for insurance, information on taxes and fees, and for logging payments correctly and on time. The buyer builds no equity over time in the house, and can lose every penny if they are evicted or for any other reason must move. The seller never has to go through foreclosure to reclaim the house.

Since the buyer does not hold the title, the buyer cannot freely refinance, or borrow on the value of the house. These circumstances leave this particular class of homeowners without the options, for example, of using the equity in their house to help finance their children's education or to make home improvements or to benefit from lower interest rates. If the buyer in a contract-for-deed arrangement passes away, the property reverts to the seller--not to the buyer's family--regardless of the amount of money the buyer has already paid on the home. If property values increase, the contract-for-deed homeowner pays the accompanying higher taxes, yet does not benefit from the added equity. Unlike other homeowners, contract-for-deed homeowners cannot benefit from tax deductions for mortgage payments, nor do they benefit from homestead exemptions.

Contract-for-deed arrangements encourage blight in our communities. Home buyers cannot borrow on the value of the home and, therefore, cannot qualify for a home improvement loan. Since the seller can take away the house at almost any time, many people do not want to make even the most basic improvements. Because there is so much abuse, when the seller starts harassing the buyer, people often just abandon the house.

Under current Texas law, many useful reforms to contracts-for-deed were passed in 2001, requiring owners to provide annual statements of what had been paid, the amount remaining on the principle, the interest rate, and the property valuation. Strong penalties for violating these rules were included, although they are not often imposed. Additionally, contracts-for-deed have disclosure requirements but nothing that regulates the terms which can be imposed. The owners of record must disclose every year the terms of the insurance, the amount remaining on the principal, the interest rate, and the property valuation.

The committee substitute for House Bill No. 1823 would give contract-for-deed or lease-to-own home buyers and homeowners the same rights and benefits that homeowners have in any other type of home buying arrangement. It would allow people in these contracts to obtain a title to the property upon request. The seller would still get the same financial agreement (same interest, etc.) and would have the same rights as any other company that finances a home sale.

The committee substitute for House Bill No. 1823 also strengthens those protections passed in 2001. The substitute would allow buyers to obtain information from the city and county to ensure that the property is properly platted and is abiding by zoning laws. It allows the buyer to cancel the contract if the seller does not abide by local platting or other zoning ordinances. It also requires the seller to pay off all liens before selling through contract-for-deed.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Section 212.0115(c) of the Local Government Code by providing that on written request of an owner of land, a purchaser of real property under a contract-for-deed, executory contract, or other executory conveyance, an entity that provides utility service, or the governing body of the municipality, the municipal authority responsible for approving plats shall make the following determinations regarding the owner's land or the land in which the entity or governing body is interested that is located within the jurisdiction of the municipality: (1) whether a plat is required under this subchapter for the land; and (2) if a plat is required, whether it has been prepared and whether it has been reviewed and approved by the authority.

SECTION 2. Amends Section 5.062(a) and (d) of the Property Code, to provide that a residential lease of real property that includes an option to purchase the property is considered an executory contract for conveyance of real property. Section 5.066 and Sections 5.068-5.085 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property is related to the seller of the property and has waived the applicability of those sections in a written agreement.

SECTION 3. Amends Subchapter D, Chapter 5, Property Code by adding Section 5.0621 which provides (except as provided by Subsection (b)) that if a residential lease of real property includes an option to purchase the property, the provisions of this subchapter and Chapter 92 apply to the lease. (b) After a tenant exercises an option to purchase leased property under a residential lease described by Subsection (a), Chapter 92 no longer applies to the lease.

SECTION 4. Amends Subchapter D, Chapter 5, Property Code by adding Section 5.0721, which provides that an executory contract must contain a legal description of the property covered by the contract, an explanation of the purchaser's right to receive an annual accounting statement from the seller under Section 5.077 and the remedies available to the purchaser if the seller fails to comply. Additionally, it must contain a covenant that the seller will not place any liens or encumbrances on the property covered by the contract that are not disclosed in the contract and a covenant that the property has been lawfully subdivided and platted as required by state, county and municipal authorities.

SECTION 5. Amends Section 5.073, of the Property Code to provide that a seller may not include as a term of the executory contract a provision that forfeits an option fee or other option payment paid under the contract for a late payment; or increases the purchase price, imposes a fee or charge of any type, or otherwise penalizes a purchaser leasing property with an option to buy the property for requesting repairs or exercising any other right under Chapter 92. Additionally, a provision of the executory contract that purports to waive a right or exempt a party from liability or duty under this subchapter is void.

SECTION 6. Amends Subchapter D, Chapter 5, Property Code by adding Section 5.0731 to provide for tax exemptions and amortization schedule. At the time an executory contract is executed, the seller shall provide to the purchaser a copy of each application form for all tax exemptions available, and an amortization schedule showing all payments due under the contract, including a breakdown of the anticipated adjustment of the interest and principal included in each payment due under the contract for the entire term of the contract.

SECTION 7. Amends Section 5.077(b), of the Property Code which provides that the statement must include the amount of interest paid under the contract and a disclosure that reads substantially similar to the following, "the amount of interest, if any, you paid under this contract or a portion of that interest, may be deductible from your income for federal income tax purposes. Consult with your tax advisor for assistance."

SECTION 8. Amends Subchapter D, Chapter 5, of the Property Code by adding Sections 5.081-5.085.

Sec. 5.081 (a) which entitles a purchaser, at any time and without paying penalties or charges of any kind to convert the purchaser's interest in the property under an executory contract into recorded, legal title in accordance with this section. (b) If the purchaser tenders to the seller an amount of money equal to the balance of the total amount owed by the purchaser to the seller under the executory contract, the seller shall transfer to the purchaser recorded, legal title of the property covered by the contract. (c) Subject to Subsection (d), if the purchaser delivers to the seller of the property covered by an executory contract, a promissory note that is equal in amount to the balance of the total amount owed under the contract and that contains the same interest rate, due dates, and late fees as the contract, the seller shall execute a deed containing any warranties required by the contract and conveying to the purchaser recorded, legal title of the property and shall simultaneously execute a deed-of-trust that contains the same terms as the contract regarding the purchaser's and seller's duties concerning the property and that secures the purchaser's payment and performance under the promissory note and deed-of-trust and conveys the property to the trustee, in trust, and confers upon the trustee the power to sell the property if the purchaser defaults on the promissory note or the terms of the deed-of-trust. (d) On or before the 10th day after the date the seller receives the promissory note that substantially complies with that subsection, the seller shall: (1) deliver to the purchaser a written explanation that legally justifies why the seller refuses to convert the purchaser's interest into recorded, legal title under Subsection(c) or (2) communicate with the purchaser to schedule a mutually agreeable day and time to execute the deed and deed-of-trust under Subsection (c). (e) A seller who violates this section is liable to the purchaser in the same manner and amount as a seller who violates Section 5.079 is liable to a purchaser. This subsection does not limit or affect any other rights or remedies a purchaser has under other law. (f) On the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract: (1) is considered completed; and (2) has no further effect. (g) The appropriate use of forms published by the Texas Real Estate Commission for transactions described by this section constitutes compliance with this section.

Sec. 5.082. (a) A purchaser under an executory contract, on written request, is entitled to receive the following information from the seller:

(1) as of the date of the request or another date specified by the purchaser, the amount owed by the purchaser under the contract; and (2) if applicable, the name and address of the seller's desired trustee for a deed-of-trust to be executed under Section 5.081. (b) On or before the 10th day after the date the seller receives from the purchaser a written request for information described by Subsection (a), the seller shall provide to the purchaser a written statement of the requested information. (c) If the seller does not timely respond to a request made under this section, the purchaser may: (1) determine or pay the amount owed under the contract, including determining the amount necessary for a promissory note under Section 5.081; and (2) if applicable, select a trustee for a deed-of-trust under Section 5.081. (d) For purposes of Subsection (c)(2), a purchaser must select a trustee that lives or has a place of business in the same county where the property covered by the executory contract is located.

Sec. 5.083. (a) Except as provided by Subsection (c), in addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract at any time if the purchaser learns that the seller has not properly subdivided or platted the property that is covered by the contract in accordance with state and local law. A purchaser canceling and rescinding a contract under this subsection must: (1) deliver a signed, written notice of the cancellation and rescission to the seller in person; or (2) send a signed, written notice of the cancellation and rescission to the seller by telegram or certified or registered mail, return receipt requested. (b) If the purchaser cancels the contract as provided under Subsection (a), the seller, not later than the 10th day after the date the seller receives the notice of cancellation and rescission, shall: (1) deliver in person or send by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice that the seller intends to subdivide or plat the property properly; or (2) return to the purchaser all payments of any kind made to the seller under the contract and reimburse the purchaser for: (A) any payments the purchaser made to a taxing authority for the property; and (B) the value of any improvements made to the property by the purchaser. (c) A purchaser may not exercise the purchaser's right to cancel and rescind an executory contract under this section if, on or before the 90th day after the date the purchaser

receives the seller's notice under Subsection (b)(1), the seller: (1) properly subdivides or plats the property; and (2) delivers in person or sends by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice evidencing that the property has been subdivided or platted in accordance with state and local law. (d) The seller may not terminate the purchaser's possession of the property covered by the contract being canceled and rescinded before the seller pays the purchaser any money to which the purchaser is entitled under Subsection (b).

Sec. 5.084. If a seller is liable to a purchaser under this subchapter, the purchaser, without taking judicial action, may deduct the amount owed to the purchaser by the seller from any amounts owed to the seller by the purchaser under the terms of an executory contract.

Sec. 5.085. (a) A potential seller may not execute an executory contract with a potential purchaser if the seller does not own the property in fee simple free from any liens or other encumbrances. (b) Except as provided by this subsection, a seller, or the seller's heirs or assigns, must maintain fee simple title free from any liens or other encumbrances to property covered by an executory contract for the entire duration of the contract. This subsection does not apply to a lien or encumbrance placed on the property that is: (1) placed on the property because of the conduct of the purchaser; or (2) agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility or fire protection improvements. (3) placed on the property by the seller before executing the contract in exchange for a loan given to the seller and used by the seller only to purchase the property. (c) A violation of this section: (1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and (2) in addition to other rights or remedies provided by law, entitles the purchaser to cancel and rescind the executory contract and receive from the seller: (A) the return of all payments of any kind made to the seller under the contract; and (B) reimbursement for: (i) any payments the purchaser made to a taxing authority for the property; and (ii) the value of any improvements made to the property by the purchaser.

SECTION 9. Prospective Clauses

SECTION 10. This Act takes effect September 1, 2005.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute for House Bill No. 1823 amends the original bill by adding Section 5.062(d) of the Property Code which provides that Section 5.066 and Sections 5.068-5.085 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property is related to the seller of the property and has waived the applicability of those sections in a written agreement. C.S.H.B. No. 1823 further amends Subchapter D, Chapter 5, Property Code by adding Section 5.0721, which provides that an executory contract must contain a legal description of the property covered by the contract, an explanation of the purchaser's right to receive an annual accounting statement from the seller under Section 5.077 and the remedies available to the purchaser if the seller fails to comply.

Additionally, it must contain a covenant that the seller will not place any liens or encumbrances on the property covered by the contract that are not disclosed in the contract and a covenant that the property has been lawfully subdivided and platted as required by state, county and municipal authorities. It further amends Subchapter D, Chapter 5, Property Code by adding Section 5.0731 to provide for tax exemptions and amortization schedule. At the time an executory contract is executed, the seller shall provide to the purchaser a copy of each application form for all tax exemptions available, and an amortization schedule showing all payments due under the contract, including a breakdown of the anticipated adjustment of the interest and principal included in each payment due under the contract for the entire term of the contract.

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Finally, C.S.H.B. No. 1823 amends Section 5.077(b), of the Property Code which provides that the statement must include the amount of interest paid under the contract and a disclosure that reads substantially similar to the following, “the amount of interest, if any, you paid under this contract or a portion of that interest, may be deductible from your income for federal income tax purposes. Consult with your tax advisor for assistance.” Section 5.085(b)(3) provides that a lien or encumbrance placed on property that is placed on the property by the seller before executing the contract in exchange for a loan given to the seller and used by the seller only to purchase the property, does not require a fee simple title.