

## **BILL ANALYSIS**

C.S.S.B. No. 629  
By: Lucio  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Contract for Deed and Rent to Own arrangements are home buying methods that leave the buyers 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. The buyer is dependent on 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 must move. The seller never has to go through foreclosure to reclaim 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 left on the principle, the interest rate, and 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 that can be imposed. The owners of record must disclose every year the terms of the insurance, the amount left on the principal, the interest rate, and property valuation.

C.S.S.B.629 would give contract for deed or lease to own homebuyers and home owners the same rights and benefits that homeowners have in any other type of home buying arrangement. It would allow people in these contracts to get a title to their property upon request. The seller would still get the same financial agreement (same interest, etc.). They would have the same rights as any other company that finances a home sale.

### **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 a purchaser of real property under a contract for deed, executory contract, or other executory conveyance, the municipal authority responsible for approving plats shall make certain determinations regarding the owner's land including: (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 5.014 to provide that a person who has a right of first refusal in real property may not charge a fee for declining to exercise that right, such as a fee for providing written evidence of the declination.

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 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

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an option to purchase the property, the provisions of this subchapter and Chapter 92 apply to the lease. 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.

Clarifies that the subchapter does not apply to a lease with an option to purchase, or “lease option” or “rent to own” contract if the term of the contract is three years or less and the purchaser and seller have not been parties to an executory contract to purchase property covered by the contract for longer than three years.

SECTION 4. Amends Subchapter D, Chapter 5, Property Code in part 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.

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.

SECTION 6. Amends Subchapter D, Chapter 5, Property Code by adding Section 5.0731 to provide for tax exemptions and amortization schedule.

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 informing the buyer of potential tax deductions

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

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

(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) the name and address of the seller’s desired trustee for a deed of trust to be executed under Section 5.081.

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.

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, unless the lien is a mortgage lien (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 also creates exceptions to certain liens and encumbrances.

This section also provides that 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**

C.S.S.B.629 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.S.B.629 amends Section 5.062 by removing Section (e), which contained clarifying language that this bill is for purposes of Texas Property Law only. C.S.S.B.629 amends Section 5.062 by removing Section (e)(a)(2) which provided a broader inclusion of lease option agreements as executory contracts.

C.S.S.B.629 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.

C.S.S.B.629 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.

C.S.S.B.629 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 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. It removes a series of requirements of notice to be given to the buyer from the seller with regard to such a lien.

C.S.S.B.629 removes Section 5.077 subsections (c) and (d) that created different levels of penalties for sellers who fail to provide timely annual accounting statements. C.S.S.B.629 also removes provisions from SB629 that apply to lease option contracts such as removing the right of conversion to mortgages for option contract purchasers, clarifying the requirement of foreclosure in order to terminate the contract, and the prospective nature of the bill. C.S.S.B.629 adds Section 5.014 that states that a person who has a right of first refusal in real property may not charge a fee for declining to exercise that right. It also adds Section (3)(e) that exempts lease with option to purchase or "lease option" or "rent to own" contracts of three years or less from the bill.