

By: Puente

H.B. No. 666

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

SECTION 2. Section 5.068, Property Code, is amended to read as follows:

Sec. 5.068. FOREIGN LANGUAGE REQUIREMENT. (a) Except as provided by Subsection (b), if [~~if~~] the negotiations that precede the execution of an executory contract are conducted primarily in a language other than English, the seller shall provide a copy in that

1 language of all written documents relating to the transaction,
2 including the contract, disclosure notices, annual accounting
3 statements, and a notice of default required by this subchapter.

4 (b) Before signing an executory contract, the purchaser and
5 seller may agree in writing in the language in which the
6 negotiations that precede the execution of the contract are
7 conducted that:

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

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

14 SECTION 3. Section 5.069(a), Property Code, is amended to
15 read as follows:

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

18 (1) a survey~~[, which was]~~ completed within the past 10
19 years that contains a current [year, or] plat of [a current survey
20 of] the real property;

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

24 (3) a written notice, which must be attached to the
25 contract, informing the purchaser of the condition of the property
26 that must, at a minimum, be executed by the seller and purchaser and
27 read substantially similar to the following:

WARNING

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

SELLER'S DISCLOSURE NOTICE

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

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

CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

The property is in a recorded subdivision.

The property has water service that provides potable water.

The property has sewer service.

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

The property has electric service.

The property is not in a floodplain.

The roads to the boundaries of the property are paved and maintained by:

the seller;

the owner of the property on which the road exists;

the municipality;

the county; or

the state.

No individual or entity other than the seller:

(1) owns the property;

(2) has a claim of ownership to the property; or

(3) has an interest in the property.

1 _____ No individual or entity has a lien filed against the property.

2 _____ There are no restrictive covenants, easements, or other title
3 exceptions or encumbrances that prohibit construction of a house on
4 the property.

5 NOTICE: SELLER ADVISES PURCHASER TO:

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

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

11 _____
12 (Date) (Signature of Seller)

13 _____
14 (Date) (Signature of Purchaser)

15 SECTION 4. Section 5.076(a), Property Code, is amended to
16 read as follows:

17 (a) Except as provided by Subsection (b), on or before the
18 30th day after the date an executory contract is executed, the
19 seller shall, as prescribed by Title 3, record:

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

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

26 SECTION 5. Section 5.077, Property Code, is amended to read
27 as follows:

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

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

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

9 (2) the remaining principal amount owed under the
10 contract;

11 (3) the number of payments remaining under the
12 contract;

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

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

17 (6) if the property has been damaged and the seller has
18 received insurance proceeds, an accounting of the proceeds applied
19 to the property; and

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

23 (c) If the seller fails to comply with Subsections (a) and
24 (b), the purchaser may submit a written notice to the seller
25 requesting the seller to provide the purchaser with an annual
26 accounting statement that complies with Subsections (a) and (b).

27 (d) A seller who fails to comply with a purchaser's request

1 for an annual accounting statement under Subsection (c) on or
2 before the 30th day after the date the request was received
3 ~~[Subsection (a)]~~ is liable to the purchaser for:

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

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

9 SECTION 6. Section 5.079(a), Property Code, is amended to
10 read as follows:

11 (a) The seller shall transfer recorded, legal title of the
12 property covered by the executory contract to the purchaser using a
13 title company authorized to do business in this state or an attorney
14 licensed by this state who has agreed in writing to hold the deed in
15 trust for the seller until the purchaser delivers the final payment
16 due under the contract to the title company or attorney. On receipt
17 of the final payment due under the contract, the title company or
18 attorney shall deliver the title to the property covered by the
19 executory contract to the purchaser ~~[not later than the 30th day~~
20 ~~after the date the seller receives the purchaser's final payment~~
21 ~~due under the contract]~~.

22 SECTION 7. Section 5.074, Property Code, is repealed.

23 SECTION 8. Sections 5.079(b) and (c), Property Code, are
24 repealed.

25 SECTION 9. This Act applies only to an executory contract
26 for conveyance of real property signed on or after the effective
27 date of this Act. An executory contract for conveyance of real

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1 property signed before the effective date of this Act is governed by
2 the law in effect immediately before the effective date of this Act.

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