

By: Dutton, Farrar, Smith of Harris,
Leibowitz

H.B. No. 1823

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the rights of parties to an executory contract for
3 conveyance of real property and certain other real property
4 transactions.

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

6 SECTION 1. Section 212.0115(c), Local Government Code, is
7 amended to read as follows:

8 (c) On the written request of an owner of land, a purchaser
9 of real property under a contract for deed, executory contract, or
10 other executory conveyance, an entity that provides utility
11 service, or the governing body of the municipality, the municipal
12 authority responsible for approving plats shall make the following
13 determinations regarding the owner's land or the land in which the
14 entity or governing body is interested that is located within the
15 jurisdiction of the municipality:

16 (1) whether a plat is required under this subchapter
17 for the land; and

18 (2) if a plat is required, whether it has been prepared
19 and whether it has been reviewed and approved by the authority.

20 SECTION 2. Subchapter A, Chapter 5, Property Code, is
21 amended by adding Section 5.014 to read as follows:

22 Sec. 5.014. PROHIBITED FEES. A person who has a right of
23 first refusal in real property may not charge a fee for declining to
24 exercise that right, such as a fee for providing written evidence of

1 the declination.

2 SECTION 3. Section 5.062, Property Code, is amended by
3 amending Subsections (a) and (d) and adding Subsection (e) to read
4 as follows:

5 (a) This subchapter applies only to a transaction involving
6 an executory contract for conveyance of real property used or to be
7 used as the purchaser's residence or as the residence of a person
8 related to the purchaser within the second degree by consanguinity
9 or affinity, as determined under Chapter 573, Government Code. For
10 purposes of this subchapter, and only for the purposes of this
11 subchapter:

12 (1) [7] a lot measuring one acre or less is presumed to
13 be residential property; and

14 (2) an option to purchase real property that includes
15 or is combined or executed concurrently with a residential lease
16 agreement, together with the lease, is considered an executory
17 contract for conveyance of real property.

18 (d) Section 5.066 and Sections 5.068-5.085 [~~5.068-5.080~~] do
19 not apply to a transaction involving an executory contract for
20 conveyance if the purchaser of the property:

21 (1) is related to the seller of the property within the
22 second degree by consanguinity or affinity, as determined under
23 Chapter 573, Government Code; and

24 (2) has waived the applicability of those sections in
25 a written agreement.

26 (e) This subchapter does not apply to an executory contract
27 described by Subsection (a)(2) if the term of the contract is three

1 years or less and the purchaser and seller have not been parties to
2 an executory contract to purchase the property covered by the
3 executory contract for longer than three years.

4 SECTION 4. Subchapter D, Chapter 5, Property Code, is
5 amended by adding Section 5.0621 to read as follows:

6 Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Except as
7 provided by Subsection (b), if a residential lease of real property
8 includes an option to purchase the property, the provisions of this
9 subchapter and Chapter 92 apply to the lease.

10 (b) After a tenant exercises an option to purchase leased
11 property under a residential lease described by Subsection (a),
12 Chapter 92 no longer applies to the lease.

13 SECTION 5. Subchapter D, Chapter 5, Property Code, is
14 amended by adding Section 5.0721 to read as follows:

15 Sec. 5.0721. INFORMATION REQUIRED IN CONTRACT. An
16 executory contract must contain the following:

17 (1) a legal description of the property covered by the
18 contract;

19 (2) an explanation of the purchaser's right to receive
20 an annual accounting statement from the seller under Section 5.077
21 and the remedies available to the purchaser if the seller fails to
22 comply with that section;

23 (3) a covenant that the seller will not place any liens
24 or encumbrances on the property covered by the contract that are not
25 disclosed in the contract; and

26 (4) a covenant that the property has been lawfully
27 subdivided and platted as required by, as applicable, state,

1 county, and municipal authorities.

2 SECTION 6. Section 5.073, Property Code, is amended to read
3 as follows:

4 Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED.

5 (a) A seller may not include as a term of the executory contract a
6 provision that:

7 (1) imposes an additional late-payment fee that
8 exceeds the lesser of:

9 (A) eight percent of the monthly payment under
10 the contract; or

11 (B) the actual administrative cost of processing
12 the late payment;

13 (2) prohibits the purchaser from pledging the
14 purchaser's interest in the property as security to obtain a loan to
15 place improvements, including utility improvements or fire
16 protection improvements, on the property; ~~or~~

17 (3) imposes a prepayment penalty or any similar fee if
18 the purchaser elects to pay the entire amount due under the contract
19 before the scheduled payment date under the contract;

20 (4) forfeits an option fee or other option payment
21 paid under the contract for a late payment; or

22 (5) increases the purchase price, imposes a fee or
23 charge of any type, or otherwise penalizes a purchaser leasing
24 property with an option to buy the property for requesting repairs
25 or exercising any other right under Chapter 92.

26 (b) A provision of the executory contract that purports to
27 waive a right or exempt a party from a liability or duty under this

1 subchapter is void.

2 SECTION 7. Subchapter D, Chapter 5, Property Code, is
3 amended by adding Section 5.0731 to read as follows:

4 Sec. 5.0731. TAX EXEMPTIONS AND AMORTIZATION SCHEDULE. At
5 the time an executory contract is executed, the seller shall
6 provide to the purchaser:

7 (1) a copy of each application form for any tax
8 exemption available from ad valorem taxation for residential
9 property and a description of those exemptions that is published or
10 provided by the comptroller; and

11 (2) an amortization schedule showing all the payments
12 due under the contract, including a breakdown of the anticipated
13 adjustment of the interest and principal included in each payment
14 due under the contract for the entire term of the contract.

15 SECTION 8. Section 5.077(b), Property Code, is amended to
16 read as follows:

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

18 (1) the amount paid under the contract;

19 (2) the remaining amount owed under the contract;

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

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

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

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

1 to the property; [~~and~~]

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

5 (8) the amount of interest paid under the contract;
6 and

7 (9) a disclosure that reads substantially similar to
8 the following: "The amount of interest, if any, you paid under this
9 contract or a portion of that interest may be deductible from your
10 income for federal income tax purposes. Consult with your tax
11 advisor for assistance."

12 SECTION 9. Subchapter D, Chapter 5, Property Code, is
13 amended by adding Sections 5.081-5.085 to read as follows:

14 Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) A purchaser, at
15 any time and without paying penalties or charges of any kind, is
16 entitled to convert the purchaser's interest in property under an
17 executory contract into recorded, legal title in accordance with
18 this section.

19 (b) If the purchaser tenders to the seller an amount of
20 money equal to the balance of the total amount owed by the purchaser
21 to the seller under the executory contract, the seller shall
22 transfer to the purchaser recorded, legal title of the property
23 covered by the contract.

24 (c) Subject to Subsection (d), if the purchaser delivers to
25 the seller of property covered by an executory contract a
26 promissory note that is equal in amount to the balance of the total
27 amount owed by the purchaser to the seller under the contract and

1 that contains the same interest rate, due dates, and late fees as
2 the contract:

3 (1) the seller shall execute a deed containing any
4 warranties required by the contract and conveying to the purchaser
5 recorded, legal title of the property; and

6 (2) the purchaser shall simultaneously execute a deed
7 of trust that:

8 (A) contains the same terms as the contract
9 regarding the purchaser's and seller's duties concerning the
10 property;

11 (B) secures the purchaser's payment and
12 performance under the promissory note and deed of trust; and

13 (C) conveys the property to the trustee, in
14 trust, and confers on the trustee the power to sell the property if
15 the purchaser defaults on the promissory note or the terms of the
16 deed of trust.

17 (d) On or before the 10th day after the date the seller
18 receives a promissory note under Subsection (c) that substantially
19 complies with that subsection, the seller shall:

20 (1) deliver to the purchaser a written explanation
21 that legally justifies why the seller refuses to convert the
22 purchaser's interest into recorded, legal title under Subsection
23 (c); or

24 (2) communicate with the purchaser to schedule a
25 mutually agreeable day and time to execute the deed and deed of
26 trust under Subsection (c).

27 (e) A seller who violates this section is liable to the

1 purchaser in the same manner and amount as a seller who violates
2 Section 5.079 is liable to a purchaser. This subsection does not
3 limit or affect any other rights or remedies a purchaser has under
4 other law.

5 (f) On the last date that all of the conveyances described
6 by Subsections (b) and (c) are executed, the executory contract:

7 (1) is considered completed; and

8 (2) has no further effect.

9 (g) The appropriate use of forms published by the Texas Real
10 Estate Commission for transactions described by this section
11 constitutes compliance with this section.

12 Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE. (a) A
13 purchaser under an executory contract, on written request, is
14 entitled to receive the following information from the seller:

15 (1) as of the date of the request or another date
16 specified by the purchaser, the amount owed by the purchaser under
17 the contract; and

18 (2) if applicable, the name and address of the seller's
19 desired trustee for a deed of trust to be executed under Section
20 5.081.

21 (b) On or before the 10th day after the date the seller
22 receives from the purchaser a written request for information
23 described by Subsection (a), the seller shall provide to the
24 purchaser a written statement of the requested information.

25 (c) If the seller does not timely respond to a request made
26 under this section, the purchaser may:

27 (1) determine or pay the amount owed under the

1 contract, including determining the amount necessary for a
2 promissory note under Section 5.081; and

3 (2) if applicable, select a trustee for a deed of trust
4 under Section 5.081.

5 (d) For purposes of Subsection (c)(2), a purchaser must
6 select a trustee that lives or has a place of business in the same
7 county where the property covered by the executory contract is
8 located.

9 Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING.

10 (a) Except as provided by Subsection (c), in addition to other
11 rights or remedies provided by law, the purchaser may cancel and
12 rescind an executory contract at any time if the purchaser learns
13 that the seller has not properly subdivided or platted the property
14 that is covered by the contract in accordance with state and local
15 law. A purchaser canceling and rescinding a contract under this
16 subsection must:

17 (1) deliver a signed, written notice of the
18 cancellation and rescission to the seller in person; or

19 (2) send a signed, written notice of the cancellation
20 and rescission to the seller by telegram or certified or registered
21 mail, return receipt requested.

22 (b) If the purchaser cancels the contract as provided under
23 Subsection (a), the seller, not later than the 10th day after the
24 date the seller receives the notice of cancellation and rescission,
25 shall:

26 (1) deliver in person or send by telegram or certified
27 or registered mail, return receipt requested, to the purchaser a

1 signed, written notice that the seller intends to subdivide or plat
2 the property properly; or

3 (2) return to the purchaser all payments of any kind
4 made to the seller under the contract and reimburse the purchaser
5 for:

6 (A) any payments the purchaser made to a taxing
7 authority for the property; and

8 (B) the value of any improvements made to the
9 property by the purchaser.

10 (c) A purchaser may not exercise the purchaser's right to
11 cancel and rescind an executory contract under this section if, on
12 or before the 90th day after the date the purchaser receives the
13 seller's notice under Subsection (b)(1), the seller:

14 (1) properly subdivides or plats the property; and

15 (2) delivers in person or sends by telegram or
16 certified or registered mail, return receipt requested, to the
17 purchaser a signed, written notice evidencing that the property has
18 been subdivided or platted in accordance with state and local law.

19 (d) The seller may not terminate the purchaser's possession
20 of the property covered by the contract being canceled and
21 rescinded before the seller pays the purchaser any money to which
22 the purchaser is entitled under Subsection (b).

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

1 Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE
2 SIMPLE TITLE. (a) A potential seller may not execute an executory
3 contract with a potential purchaser if the seller does not own the
4 property in fee simple free from any liens or other encumbrances.

5 (b) A seller, or the seller's heirs or assigns, must
6 maintain fee simple title free from any liens or other encumbrances
7 to property covered by an executory contract for the entire
8 duration of the contract. This subsection does not apply to a lien
9 or encumbrance placed on the property that is:

10 (1) placed on the property because of the conduct of
11 the purchaser;

12 (2) agreed to by the purchaser as a condition of a loan
13 obtained to place improvements on the property, including utility
14 or fire protection improvements; or

15 (3) placed on the property by the seller before
16 executing the contract in exchange for a loan given to the seller
17 and used by the seller only to purchase the property.

18 (c) A violation of this section:

19 (1) is a false, misleading, or deceptive act or
20 practice within the meaning of Section 17.46, Business & Commerce
21 Code, and is actionable in a public or private suit brought under
22 Subchapter E, Chapter 17, Business & Commerce Code; and

23 (2) in addition to other rights or remedies provided
24 by law, entitles the purchaser to cancel and rescind the executory
25 contract and receive from the seller:

26 (A) the return of all payments of any kind made to
27 the seller under the contract; and

1 (B) reimbursement for:

2 (i) any payments the purchaser made to a
3 taxing authority for the property; and

4 (ii) the value of any improvements made to
5 the property by the purchaser.

6 SECTION 10. Except as provided by a contract entered into
7 before the effective date of this Act, Section 5.014, Property
8 Code, as added by this Act, applies only to a fee that is solicited
9 on or after the effective date of this Act for declining the
10 exercise of a right of first refusal.

11 SECTION 11. (a) Section 5.062, Property Code, as amended by
12 this Act, and Section 5.0621, Property Code, as added by this Act,
13 apply to an executory contract for conveyance in effect on the
14 effective date of this Act, regardless of the date on which the
15 purchaser and seller entered into the contract.

16 (b) Sections 5.0721 and 5.0731, Property Code, as added by
17 this Act, and Section 5.073, Property Code, as amended by this Act,
18 apply only to an executory contract for conveyance that is entered
19 into on or after the effective date of this Act. An executory
20 contract that was entered into before the effective date of this Act
21 is governed by the law in effect immediately before the effective
22 date of this Act, and the former law is continued in effect for that
23 purpose.

24 (c) Section 5.077(b), Property Code, as amended by this Act,
25 applies only to an annual accounting statement provided on or after
26 the effective date of this Act. An annual accounting statement
27 provided before the effective date of this Act is governed by the

1 law in effect immediately before the effective date of this Act, and
2 the former law is continued in effect for that purpose.

3 (d) Sections 5.081 and 5.082, Property Code, as added by
4 this Act, apply to a conversion of title initiated or a request for
5 information made on or after the effective date of this Act,
6 regardless of the date on which the purchaser and seller entered
7 into the executory contract that is the subject of the conversion or
8 request.

9 (e) Section 5.083, Property Code, as added by this Act,
10 applies only to a seller's failure or refusal to subdivide or plat
11 real property on or after the effective date of this Act, regardless
12 of the date on which the purchaser and seller entered into the
13 executory contract covering the property that is improperly
14 subdivided or platted.

15 (f) Section 5.084, Property Code, as added by this Act,
16 applies to the computation of any amount owed to the seller by the
17 purchaser under the terms of an executory contract on or after the
18 effective date of this Act, regardless of the date on which the
19 purchaser and seller entered into the executory contract.

20 (g) Section 5.085, Property Code, as added by this Act,
21 applies only to an executory contract for conveyance that is
22 entered into on or after the effective date of this Act. An
23 executory contract for conveyance that is entered into before the
24 effective date of this Act is covered by the law in effect at the
25 time the contract was entered into, and that law is continued in
26 effect for that purpose.

27 SECTION 12. This Act takes effect September 1, 2005.