

AN ACT

relating to the rights of a purchaser under an executory contract for conveyance of real property.

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

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

(c) On the 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. Section 5.062, Property Code, is amended by amending Subsections (a) and (b) and adding Subsections (e), (f), and (g) to read as follows:

(a) This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence or as the residence of a person

1 related to the purchaser within the second degree by consanguinity  
2 or affinity, as determined under Chapter 573, Government Code. For  
3 purposes of this subchapter, and only for the purposes of this  
4 subchapter:

5 (1) [~~7~~] a lot measuring one acre or less is presumed to  
6 be residential property; and

7 (2) an option to purchase real property that includes  
8 or is combined or executed concurrently with a residential lease  
9 agreement, together with the lease, is considered an executory  
10 contract for conveyance of real property.

11 (b) This subchapter does not apply to the following  
12 transactions under an executory contract:

13 (1) [~~a transaction involving~~] the sale of state land;  
14 or

15 (2) a sale of land by:

16 (A) the Veterans' Land Board;

17 (B) this state or a political subdivision of this  
18 state; or

19 (C) an instrumentality, public corporation, or  
20 other entity created to act on behalf of this state or a political  
21 subdivision of this state, including an entity created under  
22 Chapter 303, 392, or 394, Local Government Code [~~under an executory~~  
23 contract].

24 (e) Sections 5.066, 5.067, 5.071, 5.075, 5.081, and 5.082 do  
25 not apply to an executory contract described by Subsection (a)(2).

26 (f) Notwithstanding any other provision of this subchapter,  
27 only the following sections apply to an executory contract

1 described by Subsection (a)(2) if the term of the contract is three  
2 years or less and the purchaser and seller, or the purchaser's or  
3 seller's assignee, agent, or affiliate, have not been parties to an  
4 executory contract to purchase the property covered by the  
5 executory contract for longer than three years:

6 (1) Sections 5.063-5.065;

7 (2) Section 5.073, except for Section 5.073(a)(2); and

8 (3) Sections 5.083 and 5.085.

9 (g) Except as provided by Subsection (b), if Subsection (f)  
10 conflicts with another provision of this subchapter, Subsection (f)  
11 prevails.

12 SECTION 3. Subchapter D, Chapter 5, Property Code, is  
13 amended by adding Section 5.0621 to read as follows:

14 Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Except as  
15 provided by Subsection (b), the provisions of this subchapter and  
16 Chapter 92 apply to the portion of an executory contract described  
17 by Section 5.062(a)(2) that is a residential lease agreement.

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

21 SECTION 4. Section 5.073, Property Code, is amended to read  
22 as follows:

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

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

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

1 (A) eight percent of the monthly payment under  
2 the contract; or

3 (B) the actual administrative cost of processing  
4 the late payment;

5 (2) prohibits the purchaser from pledging the  
6 purchaser's interest in the property as security to obtain a loan to  
7 place improvements, including utility improvements or fire  
8 protection improvements, on the property; ~~or~~

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

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

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

18 (b) A provision of the executory contract that purports to  
19 waive a right or exempt a party from a liability or duty under this  
20 subchapter is void.

21 SECTION 5. Section 5.077, Property Code, is amended by  
22 amending Subsection (c) and adding Subsection (d) to read as  
23 follows:

24 (c) A seller who conducts less than two transactions in a  
25 12-month period under this section who fails to comply with  
26 Subsection (a) is liable to the purchaser for:

27 (1) liquidated damages in the amount of \$100 for each

1 annual statement the seller fails to provide to the purchaser  
2 within the time required by Subsection (a); and

3 (2) reasonable attorney's fees.

4 (d) A seller who conducts two or more transactions in a  
5 12-month period under this section who fails to comply with  
6 Subsection (a) is liable to the purchaser for:

7 (1) liquidated damages in the amount of \$250 a day for  
8 each day after January 31 that the seller fails to provide the  
9 purchaser with the statement, but not to exceed the fair market  
10 value of the property; and

11 (2) reasonable attorney's fees.

12 SECTION 6. Subchapter D, Chapter 5, Property Code, is  
13 amended by adding Sections 5.081 through 5.085 to read as follows:

14 Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) A purchaser,  
15 at 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 (e) Not later than the 20th day after the date a seller  
10 receives notice of an amount determined by a purchaser under  
11 Subsection (c)(1), the seller may contest that amount by sending a  
12 written objection to the purchaser. An objection under this  
13 subsection must:

14 (1) be sent to the purchaser by regular and certified  
15 mail;

16 (2) include the amount the seller claims is the amount  
17 owed under the contract; and

18 (3) be based on written records kept by the seller or  
19 the seller's agent that were maintained and regularly updated for  
20 the entire term of the executory contract.

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

22 (a) Except as provided by Subsection (c), in addition to other  
23 rights or remedies provided by law, the purchaser may cancel and  
24 rescind an executory contract at any time if the purchaser learns  
25 that the seller has not properly subdivided or platted the property  
26 that is covered by the contract in accordance with state and local  
27 law. A purchaser canceling and rescinding a contract under this

1 subsection must:

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

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

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

11 (1) deliver in person or send by telegram or certified  
12 or registered mail, return receipt requested, to the purchaser a  
13 signed, written notice that the seller intends to subdivide or plat  
14 the property properly; or

15 (2) return to the purchaser all payments of any kind  
16 made to the seller under the contract and reimburse the purchaser  
17 for:

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

20 (B) the value of any improvements made to the  
21 property by the purchaser.

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

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

27 (2) delivers in person or sends by telegram or

1 certified or registered mail, return receipt requested, to the  
2 purchaser a signed, written notice evidencing that the property has  
3 been subdivided or platted in accordance with state and local law.

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

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

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

17 (b) Except as provided by this subsection, a seller, or the  
18 seller's heirs or assigns, must maintain fee simple title free from  
19 any liens or other encumbrances to property covered by an executory  
20 contract for the entire duration of the contract. This subsection  
21 does not apply to a lien or encumbrance placed on the property that  
22 is:

23 (1) placed on the property because of the conduct of  
24 the purchaser;

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

1           (3) placed on the property by the seller prior to the  
2 execution of the contract in exchange for a loan used only to  
3 purchase the property if:

4           (A) the seller, not later than the third day  
5 before the date the contract is executed, notifies the purchaser in  
6 a separate written disclosure:

7                   (i) of the name, address, and phone number  
8 of the lienholder or, if applicable, servicer of the loan;

9                   (ii) of the loan number and outstanding  
10 balance of the loan;

11                   (iii) of the monthly payments due on the  
12 loan and the due date of those payments; and

13                   (iv) in 14-point type that, if the seller  
14 fails to make timely payments to the lienholder, the lienholder may  
15 attempt to collect the debt by foreclosing on the lien and selling  
16 the property at a foreclosure sale;

17           (B) the lien:

18                   (i) is attached only to the property sold to  
19 the purchaser under the contract; and

20                   (ii) secures indebtedness that, at no time,  
21 is or will be greater in amount than the amount of the total  
22 outstanding balance owed by the purchaser under the executory  
23 contract;

24           (C) the lienholder:

25                   (i) does not prohibit the property from  
26 being encumbered by an executory contract; and

27                   (ii) consents to verify the status of the

1 loan on request of the purchaser and to accept payments directly  
2 from the purchaser if the seller defaults on the loan; and

3 (D) the following covenants are placed in the  
4 executory contract:

5 (i) a covenant that obligates the seller to  
6 make timely payments on the loan and to give monthly statements to  
7 the purchaser reflecting the amount paid to the lienholder, the  
8 date the lienholder receives the payment, and the information  
9 described by Paragraph (A);

10 (ii) a covenant that obligates the seller,  
11 not later than the third day the seller receives or has actual  
12 knowledge of a document or an event described by this subparagraph,  
13 to notify the purchaser in writing in 14-point type that the seller  
14 has been sent a notice of default, notice of acceleration, or notice  
15 of foreclosure or has been sued in connection with a lien on the  
16 property and to attach a copy of all related documents received to  
17 the written notice; and

18 (iii) a covenant that warrants that if the  
19 seller does not make timely payments on the loan or any other  
20 indebtedness secured by the property, the purchaser may, without  
21 notice, cure any deficiency with a lienholder directly and deduct  
22 from the total outstanding balance owed by the purchaser under the  
23 executory contract, without the necessity of judicial action, 150  
24 percent of any amount paid to the lienholder.

25 (c) A violation of this section:

26 (1) is a false, misleading, or deceptive act or  
27 practice within the meaning of Section 17.46, Business & Commerce

1 Code, and is actionable in a public or private suit brought under  
2 Subchapter E, Chapter 17, Business & Commerce Code; and

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

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

8 (B) reimbursement for:

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

11 (ii) the value of any improvements made to  
12 the property by the purchaser.

13 (d) A seller is not liable under this section if:

14 (1) a lien is placed on the property by a person other  
15 than the seller; and

16 (2) not later than the 30th day after the date the  
17 seller receives notice of the lien, the seller takes all steps  
18 necessary to remove the lien and has the lien removed from the  
19 property.

20 SECTION 7. (a) Section 5.062, Property Code, as amended by  
21 this Act, and Section 5.0621, Property Code, as added by this Act,  
22 apply to an executory contract for conveyance entered into on or  
23 after January 1, 2006.

24 (b) Section 5.073, Property Code, as amended by this Act,  
25 applies only to an executory contract for conveyance that was  
26 entered into on or after the effective date of this Act. An  
27 executory contract that was entered into before the effective date

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

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

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

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

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

1 SECTION 8. This Act takes effect September 1, 2005.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1823 was passed by the House on May 12, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1823 on May 26, 2005, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 1823 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 30, Nays 1.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor