

By: Dutton, Farrar, Smith of Harris

H.B. No. 1823

Substitute the following for H.B. No. 1823:

By: Vo

C.S.H.B. No. 1823

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the rights of a purchaser under an executory contract
3 for conveyance of real property.

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

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

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

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

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

19 SECTION 2. Section 5.062, Property Code, is amended by
20 amending Subsections (a) and (d) to read as follows:

21 (a) This subchapter applies only to a transaction involving
22 an executory contract for conveyance of real property used or to be
23 used as the purchaser's residence or as the residence of a person
24 related to the purchaser within the second degree by consanguinity

1 or affinity, as determined under Chapter 573, Government Code. For
2 purposes of this subchapter:

3 (1) [7] a lot measuring one acre or less is presumed to
4 be residential property; and

5 (2) a residential lease of real property that includes
6 an option to purchase the property is considered an executory
7 contract for conveyance of real property.

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

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

14 (2) has waived the applicability of those sections in
15 a written agreement.

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

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

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

25 SECTION 4. Subchapter D, Chapter 5, Property Code, is
26 amended by adding Section 5.0721 to read as follows:

27 Sec. 5.0721. INFORMATION REQUIRED IN CONTRACT. An

1 executory contract must contain the following:

2 (1) a legal description of the property covered by the
3 contract;

4 (2) an explanation of the purchaser's right to receive
5 an annual accounting statement from the seller under Section 5.077
6 and the remedies available to the purchaser if the seller fails to
7 comply with that section;

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

11 (4) a covenant that the property has been lawfully
12 subdivided and platted as required by, as applicable, state,
13 county, and municipal authorities.

14 SECTION 5. Section 5.073, Property Code, is amended to read
15 as follows:

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

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

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

21 (A) eight percent of the monthly payment under
22 the contract; or

23 (B) the actual administrative cost of processing
24 the late payment;

25 (2) prohibits the purchaser from pledging the
26 purchaser's interest in the property as security to obtain a loan to
27 place improvements, including utility improvements or fire

1 protection improvements, on the property; [~~or~~]

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

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

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

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

14 SECTION 6. Subchapter D, Chapter 5, Property Code, is
15 amended by adding Section 5.0731 to read as follows:

16 Sec. 5.0731. TAX EXEMPTIONS AND AMORTIZATION SCHEDULE. At
17 the time an executory contract is executed, the seller shall
18 provide to the purchaser:

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

23 (2) an amortization schedule showing all the payments
24 due under the contract, including a breakdown of the anticipated
25 adjustment of the interest and principal included in each payment
26 due under the contract for the entire term of the contract.

27 SECTION 7. Section 5.077(b), Property Code, is amended to

1 read as follows:

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

3 (1) the amount paid under the contract;

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

5 (3) the number of payments remaining under the
6 contract;

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

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

11 (6) if the property has been damaged and the seller has
12 received insurance proceeds, an accounting of the proceeds applied
13 to the property; ~~and~~

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

17 (8) the amount of interest paid under the contract;

18 and

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

24 SECTION 8. Subchapter D, Chapter 5, Property Code, is
25 amended by adding Sections 5.081-5.085 to read as follows:

26 Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) A purchaser, at
27 any time and without paying penalties or charges of any kind, is

1 entitled to convert the purchaser's interest in property under an
2 executory contract into recorded, legal title in accordance with
3 this section.

4 (b) If the purchaser tenders to the seller an amount of
5 money equal to the balance of the total amount owed by the purchaser
6 to the seller under the executory contract, the seller shall
7 transfer to the purchaser recorded, legal title of the property
8 covered by the contract.

9 (c) Subject to Subsection (d), if the purchaser delivers to
10 the seller of property covered by an executory contract a
11 promissory note that is equal in amount to the balance of the total
12 amount owed by the purchaser to the seller under the contract and
13 that contains the same interest rate, due dates, and late fees as
14 the contract:

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

18 (2) the purchaser shall simultaneously execute a deed
19 of trust that:

20 (A) contains the same terms as the contract
21 regarding the purchaser's and seller's duties concerning the
22 property;

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

25 (C) conveys the property to the trustee, in
26 trust, and confers on the trustee the power to sell the property if
27 the purchaser defaults on the promissory note or the terms of the

1 deed of trust.

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

5 (1) deliver to the purchaser a written explanation
6 that legally justifies why the seller refuses to convert the
7 purchaser's interest into recorded, legal title under Subsection
8 (c); or

9 (2) communicate with the purchaser to schedule a
10 mutually agreeable day and time to execute the deed and deed of
11 trust under Subsection (c).

12 (e) A seller who violates this section is liable to the
13 purchaser in the same manner and amount as a seller who violates
14 Section 5.079 is liable to a purchaser. This subsection does not
15 limit or affect any other rights or remedies a purchaser has under
16 other law.

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

19 (1) is considered completed; and

20 (2) has no further effect.

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

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

27 (1) as of the date of the request or another date

1 specified by the purchaser, the amount owed by the purchaser under
2 the contract; and

3 (2) if applicable, the name and address of the seller's
4 desired trustee for a deed of trust to be executed under Section
5 5.081.

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

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

12 (1) determine or pay the amount owed under the
13 contract, including determining the amount necessary for a
14 promissory note under Section 5.081; and

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

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

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

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

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

27 (3) placed on the property by the seller before

1 executing the contract in exchange for a loan given to the seller
2 and used by the seller only to purchase the property.

3 (c) A violation of this section:

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

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

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

13 (B) reimbursement for:

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

16 (ii) the value of any improvements made to
17 the property by the purchaser.

18 SECTION 9. (a) Section 5.062, Property Code, as amended by
19 this Act, and Section 5.0621, Property Code, as added by this Act,
20 apply to an executory contract for conveyance in effect on the
21 effective date of this Act, regardless of the date on which the
22 purchaser and seller entered into the contract.

23 (b) Sections 5.0721 and 5.0731, Property Code, as added by
24 this Act, and Section 5.073, Property Code, as amended by this Act,
25 apply only to an executory contract for conveyance that is entered
26 into on or after the effective date of this Act. An executory
27 contract that was entered into before the effective date of this Act

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

4 (c) Section 5.077(b), Property Code, as amended by this Act,
5 applies only to an annual accounting statement provided on or after
6 the effective date of this Act. An annual accounting statement
7 provided before the effective date of this Act is governed by the
8 law in effect immediately before the effective date of this Act, and
9 the former law is continued in effect for that purpose.

10 (d) Sections 5.081 and 5.082, Property Code, as added by
11 this Act, apply to a conversion of title initiated or a request for
12 information made on or after the effective date of this Act,
13 regardless of the date on which the purchaser and seller entered
14 into the executory contract that is the subject of the conversion or
15 request.

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

22 (f) Section 5.084, Property Code, as added by this Act,
23 applies to the computation of any amount owed to the seller by the
24 purchaser under the terms of an executory contract on or after the
25 effective date of this Act, regardless of the date on which the
26 purchaser and seller entered into the executory contract.

27 (g) Section 5.085, Property Code, as added by this Act,

1 applies only to an executory contract for conveyance that is
2 entered into on or after the effective date of this Act. An
3 executory contract for conveyance that is entered into before the
4 effective date of this Act is covered by the law in effect at the
5 time the contract was entered into, and that law is continued in
6 effect for that purpose.

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