

By: Dutton

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(a), Property Code, is amended to  
20 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 SECTION 3. Subchapter D, Chapter 5, Property Code, is  
9 amended by adding Section 5.0621 to read as follows:

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

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

17 SECTION 4. Section 5.073, Property Code, is amended to read  
18 as follows:

19 Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED.  
20 (a) A seller may not include as a term of the executory contract a  
21 provision that:

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

24 (A) eight percent of the monthly payment under  
25 the contract; or

26 (B) the actual administrative cost of processing  
27 the late payment;

1           (2) prohibits the purchaser from pledging the  
2 purchaser's interest in the property as security to obtain a loan to  
3 place improvements, including utility improvements or fire  
4 protection improvements, on the property; ~~[or]~~

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

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

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

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

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

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

24           (b) If the purchaser tenders to the seller an amount of  
25 money equal to the balance of the total amount owed by the purchaser  
26 to the seller under the executory contract, the seller shall  
27 transfer to the purchaser recorded, legal title of the property

1 covered by the contract.

2 (c) Subject to Subsection (d), if the purchaser delivers to  
3 the seller of property covered by an executory contract a  
4 promissory note that is equal in amount to the balance of the total  
5 amount owed by the purchaser to the seller under the contract and  
6 that contains the same interest rate, due dates, and late fees as  
7 the contract:

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

11 (2) the purchaser shall simultaneously execute a deed  
12 of trust that:

13 (A) contains the same terms as the contract  
14 regarding the purchaser's and seller's duties concerning the  
15 property;

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

18 (C) conveys the property to the trustee, in  
19 trust, and confers on the trustee the power to sell the property if  
20 the purchaser defaults on the promissory note or the terms of the  
21 deed of trust.

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

25 (1) deliver to the purchaser a written explanation  
26 that legally justifies why the seller refuses to convert the  
27 purchaser's interest into recorded, legal title under Subsection

1 (c); or

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

5 (e) A seller who violates this section is liable to the  
6 purchaser in the same manner and amount as a seller who violates  
7 Section 5.079 is liable to a purchaser. This subsection does not  
8 limit or affect any other rights or remedies a purchaser has under  
9 other law.

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

12 (1) is considered completed; and

13 (2) has no further effect.

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

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

20 (1) as of the date of the request or another date  
21 specified by the purchaser, the amount owed by the purchaser under  
22 the contract; and

23 (2) if applicable, the name and address of the seller's  
24 desired trustee for a deed of trust to be executed under Section  
25 5.081.

26 (b) On or before the 10th day after the date the seller  
27 receives from the purchaser a written request for information

1 described by Subsection (a), the seller shall provide to the  
2 purchaser a written statement of the requested information.

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

5 (1) determine or pay the amount owed under the  
6 contract, including determining the amount necessary for a  
7 promissory note under Section 5.081; and

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

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

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

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

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

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

27 (b) If the purchaser cancels the contract as provided under

1 Subsection (a), the seller, not later than the 10th day after the  
2 date the seller receives the notice of cancellation and rescission,  
3 shall:

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

8 (2) return to the purchaser all payments of any kind  
9 made to the seller under the contract and reimburse the purchaser  
10 for:

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

13 (B) the value of any improvements made to the  
14 property by the purchaser.

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

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

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

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

1       Sec. 5.084. RIGHT TO DEDUCT. If a seller is liable to a  
2 purchaser under this subchapter, the purchaser, without taking  
3 judicial action, may deduct the amount owed to the purchaser by the  
4 seller from any amounts owed to the seller by the purchaser under  
5 the terms of an executory contract.

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

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

16               (1) placed on the property because of the conduct of  
17 the purchaser; or

18               (2) agreed to by the purchaser as a condition of a loan  
19 obtained to place improvements on the property, including utility  
20 or fire protection improvements.

21       (c) A violation of this section:

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

26               (2) in addition to other rights or remedies provided  
27 by law, entitles the purchaser to cancel and rescind the executory



1 contract and receive from the seller:

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

4 (B) reimbursement for:

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

7 (ii) the value of any improvements made to  
8 the property by the purchaser.

9 SECTION 6. (a) Section 5.062, Property Code, as amended by  
10 this Act, and Section 5.0621, Property Code, as added by this Act,  
11 apply to an executory contract for conveyance in effect on the  
12 effective date of this Act, regardless of the date on which the  
13 purchaser and seller entered into the contract.

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

21 (c) Sections 5.081 and 5.082, Property Code, as added by  
22 this Act, apply to a conversion of title initiated or a request for  
23 information made on or after the effective date of this Act,  
24 regardless of the date on which the purchaser and seller entered  
25 into the executory contract that is the subject of the conversion or  
26 request.

27 (d) Section 5.083, Property Code, as added by this Act,

1 applies only to a seller's failure or refusal to subdivide or plat  
2 real property on or after the effective date of this Act, regardless  
3 of the date on which the purchaser and seller entered into the  
4 executory contract covering the property that is improperly  
5 subdivided or platted.

6 (e) Section 5.084, Property Code, as added by this Act,  
7 applies to the computation of any amount owed to the seller by the  
8 purchaser under the terms of an executory contract on or after the  
9 effective date of this Act, regardless of the date on which the  
10 purchaser and seller entered into the executory contract.

11 (f) Section 5.085, Property Code, as added by this Act,  
12 applies only to an executory contract for conveyance that is  
13 entered into on or after the effective date of this Act. An  
14 executory contract for conveyance that is entered into before the  
15 effective date of this Act is covered by the law in effect at the  
16 time the contract was entered into, and that law is continued in  
17 effect for that purpose.

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