

1-1 By: Dutton, et al. (Senate Sponsor - Lucio) H.B. No. 1823
1-2 (In the Senate - Received from the House May 13, 2005;
1-3 May 16, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1823 By: Lucio

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the rights of a purchaser under an executory contract
1-11 for conveyance of real property.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (c), Section 212.0115, Local
1-14 Government Code, is amended to read as follows:

1-15 (c) On the written request of an owner of land, a purchaser
1-16 of real property under a contract for deed, executory contract, or
1-17 other executory conveyance, an entity that provides utility
1-18 service, or the governing body of the municipality, the municipal
1-19 authority responsible for approving plats shall make the following
1-20 determinations regarding the owner's land or the land in which the
1-21 entity or governing body is interested that is located within the
1-22 jurisdiction of the municipality:

1-23 (1) whether a plat is required under this subchapter
1-24 for the land; and

1-25 (2) if a plat is required, whether it has been prepared
1-26 and whether it has been reviewed and approved by the authority.

1-27 SECTION 2. Section 5.062, Property Code, is amended by
1-28 amending Subsection (a) and adding Subsection (e) to read as
1-29 follows:

1-30 (a) This subchapter applies only to a transaction involving
1-31 an executory contract for conveyance of real property used or to be
1-32 used as the purchaser's residence or as the residence of a person
1-33 related to the purchaser within the second degree by consanguinity
1-34 or affinity, as determined under Chapter 573, Government Code. For
1-35 purposes of this subchapter, and only for the purposes of this
1-36 subchapter:

1-37 (1) [] a lot measuring one acre or less is presumed to
1-38 be residential property; and

1-39 (2) an option to purchase real property that includes
1-40 or is combined or executed concurrently with a residential lease
1-41 agreement, together with the lease, is considered an executory
1-42 contract for conveyance of real property.

1-43 (e) Sections 5.066, 5.067, 5.071, 5.075, 5.081, and 5.082 do
1-44 not apply to an executory contract described by Subsection (a)(2).

1-45 SECTION 3. Subchapter D, Chapter 5, Property Code, is
1-46 amended by adding Section 5.0621 to read as follows:

1-47 Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Except as
1-48 provided by Subsection (b), if a residential lease of real property
1-49 includes an option to purchase the property, the provisions of this
1-50 subchapter and Chapter 92 apply to the lease.

1-51 (b) After a tenant exercises an option to purchase leased
1-52 property under a residential lease described by Subsection (a),
1-53 Chapter 92 no longer applies to the lease.

1-54 SECTION 4. Section 5.073, Property Code, is amended to read
1-55 as follows:

1-56 Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED.

1-57 (a) A seller may not include as a term of the executory contract a
1-58 provision that:

1-59 (1) imposes an additional late-payment fee that
1-60 exceeds the lesser of:

1-61 (A) eight percent of the monthly payment under
1-62 the contract; or

1-63 (B) the actual administrative cost of processing

2-1 the late payment;

2-2 (2) prohibits the purchaser from pledging the

2-3 purchaser's interest in the property as security to obtain a loan to

2-4 place improvements, including utility improvements or fire

2-5 protection improvements, on the property; [~~or~~]

2-6 (3) imposes a prepayment penalty or any similar fee if

2-7 the purchaser elects to pay the entire amount due under the contract

2-8 before the scheduled payment date under the contract;

2-9 (4) forfeits an option fee or other option payment

2-10 paid under the contract for a late payment; or

2-11 (5) increases the purchase price, imposes a fee or

2-12 charge of any type, or otherwise penalizes a purchaser leasing

2-13 property with an option to buy the property for requesting repairs

2-14 or exercising any other right under Chapter 92.

2-15 (b) A provision of the executory contract that purports to

2-16 waive a right or exempt a party from a liability or duty under this

2-17 subchapter is void.

2-18 SECTION 5. Section 5.077, Property Code, is amended by

2-19 amending Subsection (c) and adding Subsection (d) to read as

2-20 follows:

2-21 (c) A seller who conducts less than two transactions in a

2-22 12-month period under this section who fails to comply with

2-23 Subsection (a) is liable to the purchaser for:

2-24 (1) liquidated damages in the amount of \$100 for each

2-25 annual statement the seller fails to provide to the purchaser

2-26 within the time required by Subsection (a); and

2-27 (2) reasonable attorney's fees.

2-28 (d) A seller who conducts two or more transactions in a

2-29 12-month period under this section who fails to comply with

2-30 Subsection (a) is liable to the purchaser for:

2-31 (1) liquidated damages in the amount of \$250 a day for

2-32 each day after January 31 that the seller fails to provide the

2-33 purchaser with the statement, but not to exceed the fair market

2-34 value of the property; and

2-35 (2) reasonable attorney's fees.

2-36 SECTION 6. Subchapter D, Chapter 5, Property Code, is

2-37 amended by adding Sections 5.081 through 5.085 to read as follows:

2-38 Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) A purchaser,

2-39 at any time and without paying penalties or charges of any kind, is

2-40 entitled to convert the purchaser's interest in property under an

2-41 executory contract into recorded, legal title in accordance with

2-42 this section.

2-43 (b) If the purchaser tenders to the seller an amount of

2-44 money equal to the balance of the total amount owed by the purchaser

2-45 to the seller under the executory contract, the seller shall

2-46 transfer to the purchaser recorded, legal title of the property

2-47 covered by the contract.

2-48 (c) Subject to Subsection (d), if the purchaser delivers to

2-49 the seller of property covered by an executory contract a

2-50 promissory note that is equal in amount to the balance of the total

2-51 amount owed by the purchaser to the seller under the contract and

2-52 that contains the same interest rate, due dates, and late fees as

2-53 the contract:

2-54 (1) the seller shall execute a deed containing any

2-55 warranties required by the contract and conveying to the purchaser

2-56 recorded, legal title of the property; and

2-57 (2) the purchaser shall simultaneously execute a deed

2-58 of trust that:

2-59 (A) contains the same terms as the contract

2-60 regarding the purchaser's and seller's duties concerning the

2-61 property;

2-62 (B) secures the purchaser's payment and

2-63 performance under the promissory note and deed of trust; and

2-64 (C) conveys the property to the trustee, in

2-65 trust, and confers on the trustee the power to sell the property if

2-66 the purchaser defaults on the promissory note or the terms of the

2-67 deed of trust.

2-68 (d) On or before the 10th day after the date the seller

2-69 receives a promissory note under Subsection (c) that substantially

3-1 complies with that subsection, the seller shall:
 3-2 (1) deliver to the purchaser a written explanation
 3-3 that legally justifies why the seller refuses to convert the
 3-4 purchaser's interest into recorded, legal title under Subsection
 3-5 (c); or
 3-6 (2) communicate with the purchaser to schedule a
 3-7 mutually agreeable day and time to execute the deed and deed of
 3-8 trust under Subsection (c).
 3-9 (e) A seller who violates this section is liable to the
 3-10 purchaser in the same manner and amount as a seller who violates
 3-11 Section 5.079 is liable to a purchaser. This subsection does not
 3-12 limit or affect any other rights or remedies a purchaser has under
 3-13 other law.
 3-14 (f) On the last date that all of the conveyances described
 3-15 by Subsections (b) and (c) are executed, the executory contract:
 3-16 (1) is considered completed; and
 3-17 (2) has no further effect.
 3-18 (g) The appropriate use of forms published by the Texas Real
 3-19 Estate Commission for transactions described by this section
 3-20 constitutes compliance with this section.
 3-21 Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE. (a) A
 3-22 purchaser under an executory contract, on written request, is
 3-23 entitled to receive the following information from the seller:
 3-24 (1) as of the date of the request or another date
 3-25 specified by the purchaser, the amount owed by the purchaser under
 3-26 the contract; and
 3-27 (2) if applicable, the name and address of the seller's
 3-28 desired trustee for a deed of trust to be executed under Section
 3-29 5.081.
 3-30 (b) On or before the 10th day after the date the seller
 3-31 receives from the purchaser a written request for information
 3-32 described by Subsection (a), the seller shall provide to the
 3-33 purchaser a written statement of the requested information.
 3-34 (c) If the seller does not timely respond to a request made
 3-35 under this section, the purchaser may:
 3-36 (1) determine or pay the amount owed under the
 3-37 contract, including determining the amount necessary for a
 3-38 promissory note under Section 5.081; and
 3-39 (2) if applicable, select a trustee for a deed of trust
 3-40 under Section 5.081.
 3-41 (d) For purposes of Subsection (c)(2), a purchaser must
 3-42 select a trustee that lives or has a place of business in the same
 3-43 county where the property covered by the executory contract is
 3-44 located.
 3-45 Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING.
 3-46 (a) Except as provided by Subsection (c), in addition to other
 3-47 rights or remedies provided by law, the purchaser may cancel and
 3-48 rescind an executory contract at any time if the purchaser learns
 3-49 that the seller has not properly subdivided or platted the property
 3-50 that is covered by the contract in accordance with state and local
 3-51 law. A purchaser canceling and rescinding a contract under this
 3-52 subsection must:
 3-53 (1) deliver a signed, written notice of the
 3-54 cancellation and rescission to the seller in person; or
 3-55 (2) send a signed, written notice of the cancellation
 3-56 and rescission to the seller by telegram or certified or registered
 3-57 mail, return receipt requested.
 3-58 (b) If the purchaser cancels the contract as provided under
 3-59 Subsection (a), the seller, not later than the 10th day after the
 3-60 date the seller receives the notice of cancellation and rescission,
 3-61 shall:
 3-62 (1) deliver in person or send by telegram or certified
 3-63 or registered mail, return receipt requested, to the purchaser a
 3-64 signed, written notice that the seller intends to subdivide or plat
 3-65 the property properly; or
 3-66 (2) return to the purchaser all payments of any kind
 3-67 made to the seller under the contract and reimburse the purchaser
 3-68 for:
 3-69 (A) any payments the purchaser made to a taxing

4-1 authority for the property; and

4-2 (B) the value of any improvements made to the
4-3 property by the purchaser.

4-4 (c) A purchaser may not exercise the purchaser's right to
4-5 cancel and rescind an executory contract under this section if, on
4-6 or before the 90th day after the date the purchaser receives the
4-7 seller's notice under Subsection (b)(1), the seller:

4-8 (1) properly subdivides or plats the property; and

4-9 (2) delivers in person or sends by telegram or
4-10 certified or registered mail, return receipt requested, to the
4-11 purchaser a signed, written notice evidencing that the property has
4-12 been subdivided or platted in accordance with state and local law.

4-13 (d) The seller may not terminate the purchaser's possession
4-14 of the property covered by the contract being canceled and
4-15 rescinded before the seller pays the purchaser any money to which
4-16 the purchaser is entitled under Subsection (b).

4-17 Sec. 5.084. RIGHT TO DEDUCT. If a seller is liable to a
4-18 purchaser under this subchapter, the purchaser, without taking
4-19 judicial action, may deduct the amount owed to the purchaser by the
4-20 seller from any amounts owed to the seller by the purchaser under
4-21 the terms of an executory contract.

4-22 Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE
4-23 SIMPLE TITLE. (a) A potential seller may not execute an executory
4-24 contract with a potential purchaser if the seller does not own the
4-25 property in fee simple free from any liens or other encumbrances.

4-26 (b) Except as provided by this subsection, a seller, or the
4-27 seller's heirs or assigns, must maintain fee simple title free from
4-28 any liens or other encumbrances to property covered by an executory
4-29 contract for the entire duration of the contract. This subsection
4-30 does not apply to a lien or encumbrance placed on the property that
4-31 is:

4-32 (1) placed on the property because of the conduct of
4-33 the purchaser;

4-34 (2) agreed to by the purchaser as a condition of a loan
4-35 obtained to place improvements on the property, including utility
4-36 or fire protection improvements; or

4-37 (3) placed on the property by the seller prior to the
4-38 execution of the contract in exchange for a loan used only to
4-39 purchase the property if:

4-40 (A) the seller, not later than the third day
4-41 before the date the contract is executed, notifies the purchaser in
4-42 a separate written disclosure:

4-43 (i) of the name, address, and phone number
4-44 of the lienholder or, if applicable, servicer of the loan;

4-45 (ii) of the loan number and outstanding
4-46 balance of the loan;

4-47 (iii) of the monthly payments due on the
4-48 loan and the due date of those payments; and

4-49 (iv) in 14-point type that, if the seller
4-50 fails to make timely payments to the lienholder, the lienholder may
4-51 attempt to collect the debt by foreclosing on the lien and selling
4-52 the property at a foreclosure sale;

4-53 (B) the lien:

4-54 (i) is attached only to the property sold to
4-55 the purchaser under the contract; and

4-56 (ii) secures indebtedness that, at no time,
4-57 is or will be greater in amount than the amount of the total
4-58 outstanding balance owed by the purchaser under the executory
4-59 contract;

4-60 (C) the lienholder:

4-61 (i) does not prohibit the property from
4-62 being encumbered by an executory contract; and

4-63 (ii) consents to verify the status of the
4-64 loan on request of the purchaser and to accept payments directly
4-65 from the purchaser if the seller defaults on the loan; and

4-66 (D) the following covenants are placed in the
4-67 executory contract:

4-68 (i) a covenant that obligates the seller to
4-69 make timely payments on the loan and to give monthly statements to

5-1 the purchaser reflecting the amount paid to the lienholder, the
 5-2 date the lienholder receives the payment, and the information
 5-3 described by Paragraph (A);

5-4 (ii) a covenant that obligates the seller,
 5-5 not later than the third day the seller receives or has actual
 5-6 knowledge of a document or an event described by this subparagraph,
 5-7 to notify the purchaser in writing in 14-point type that the seller
 5-8 has been sent a notice of default, notice of acceleration, or notice
 5-9 of foreclosure or has been sued in connection with a lien on the
 5-10 property and to attach a copy of all related documents received to
 5-11 the written notice; and

5-12 (iii) a covenant that warrants that if the
 5-13 seller does not make timely payments on the loan or any other
 5-14 indebtedness secured by the property, the purchaser may, without
 5-15 notice, cure any deficiency with a lienholder directly and deduct
 5-16 from the total outstanding balance owed by the purchaser under the
 5-17 executory contract, without the necessity of judicial action, 150
 5-18 percent of any amount paid to the lienholder.

5-19 (c) A violation of this section:

5-20 (1) is a false, misleading, or deceptive act or
 5-21 practice within the meaning of Section 17.46, Business & Commerce
 5-22 Code, and is actionable in a public or private suit brought under
 5-23 Subchapter E, Chapter 17, Business & Commerce Code; and

5-24 (2) in addition to other rights or remedies provided
 5-25 by law, entitles the purchaser to cancel and rescind the executory
 5-26 contract and receive from the seller:

5-27 (A) the return of all payments of any kind made to
 5-28 the seller under the contract; and

5-29 (B) reimbursement for:

5-30 (i) any payments the purchaser made to a
 5-31 taxing authority for the property; and

5-32 (ii) the value of any improvements made to
 5-33 the property by the purchaser.

5-34 (d) A seller is not liable under this section if:

5-35 (1) a lien is placed on the property by a person other
 5-36 than the seller; and

5-37 (2) not later than the 30th day after the date the
 5-38 seller receives notice of the lien, the seller takes all steps
 5-39 necessary to remove the lien and has the lien removed from the
 5-40 property.

5-41 SECTION 7. (a) Section 5.062, Property Code, as amended by
 5-42 this Act, and Section 5.0621, Property Code, as added by this Act,
 5-43 apply to an executory contract for conveyance entered into on or
 5-44 after January 1, 2006.

5-45 (b) Section 5.073, Property Code, as amended by this Act,
 5-46 applies only to an executory contract for conveyance that was
 5-47 entered into on or after the effective date of this Act. An
 5-48 executory contract that was entered into before the effective date
 5-49 of this Act is governed by the law in effect immediately before the
 5-50 effective date of this Act, and the former law is continued in
 5-51 effect for that purpose.

5-52 (c) Sections 5.081 and 5.082, Property Code, as added by
 5-53 this Act, apply to a conversion of title initiated or a request for
 5-54 information made on or after the effective date of this Act,
 5-55 regardless of the date on which the purchaser and seller entered
 5-56 into the executory contract that is the subject of the conversion or
 5-57 request.

5-58 (d) Section 5.083, Property Code, as added by this Act,
 5-59 applies only to a seller's failure or refusal to subdivide or plat
 5-60 real property on or after the effective date of this Act, regardless
 5-61 of the date on which the purchaser and seller entered into the
 5-62 executory contract covering the property that is improperly
 5-63 subdivided or platted.

5-64 (e) Section 5.084, Property Code, as added by this Act,
 5-65 applies to the computation of any amount owed to the seller by the
 5-66 purchaser under the terms of an executory contract on or after the
 5-67 effective date of this Act, regardless of the date on which the
 5-68 purchaser and seller entered into the executory contract.

5-69 (f) Section 5.085, Property Code, as added by this Act,

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

6-7 SECTION 8. This Act takes effect September 1, 2005.

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