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S.B. No. 629

A BILL TO BE ENTITLED

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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. Subsection (c), Section 212.0115, 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 Subsection (a) and adding Subsection (e) 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 (e) Sections 5.066, 5.067, 5.071, 5.075, 5.081, and 5.082 do
12 not apply to an executory contract described by Subsection (a)(2).

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

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

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

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

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

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

27 (1) imposes an additional late-payment fee that

1 exceeds the lesser of:

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

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

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

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

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

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

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

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

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

1 (1) liquidated damages in the amount of \$100 for each
2 annual statement the seller fails to provide to the purchaser
3 within the time required by Subsection (a); and

4 (2) reasonable attorney's fees.

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

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

12 (2) reasonable attorney's fees.

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

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

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

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

1 amount owed by the purchaser to the seller under the contract and
2 that contains the same interest rate, due dates, and late fees as
3 the contract:

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

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

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

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

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

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

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

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

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

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

8 (1) is considered completed; and

9 (2) has no further effect.

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

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

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

19 (2) if applicable, the name and address of the seller's
20 desired trustee for a deed of trust to be executed under Section
21 5.081.

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

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

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

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

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

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

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

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

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

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

27 (1) deliver in person or send by telegram or certified

1 or registered mail, return receipt requested, to the purchaser a
2 signed, written notice that the seller intends to subdivide or plat
3 the property properly; or

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

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

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

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

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

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

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

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

1 the terms of an executory contract.

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

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

12 (1) placed on the property because of the conduct of
13 the purchaser;

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

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

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

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

25 (ii) of the loan number and outstanding
26 balance of the loan;

27 (iii) of the monthly payments due on the

1 loan and the due date of those payments; and

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

6 (B) the lien:

7 (i) is attached only to the property sold to
8 the purchaser under the contract; and

9 (ii) secures indebtedness that, at no time,
10 is or will be greater in amount than the amount of the total
11 outstanding balance owed by the purchaser under the executory
12 contract;

13 (C) the lienholder:

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

16 (ii) consents to verify the status of the
17 loan on request of the purchaser and to accept payments directly
18 from the purchaser if the seller defaults on the loan; and

19 (D) the following covenants are placed in the
20 executory contract:

21 (i) a covenant that obligates the seller to
22 make timely payments on the loan and to give monthly statements to
23 the purchaser reflecting the amount paid to the lienholder, the
24 date the lienholder receives the payment, and the information
25 described by Paragraph (A);

26 (ii) a covenant that obligates the seller,
27 not later than the third day the seller receives or has actual

1 knowledge of a document or an event described by this subparagraph,
2 to notify the purchaser in writing in 14-point type that the seller
3 has been sent a notice of default, notice of acceleration, or notice
4 of foreclosure or has been sued in connection with a lien on the
5 property and to attach a copy of all related documents received to
6 the written notice; and

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

14 (c) A violation of this section:

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

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

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

24 (B) reimbursement for:

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

27 (ii) the value of any improvements made to

1 the property by the purchaser.

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

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

5 (2) not later than the 30th day after the date the
6 seller receives notice of the lien, the seller takes all steps
7 necessary to remove the lien and has the lien removed from the
8 property.

9 SECTION 7. (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 entered into on or
12 after January 1, 2006.

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

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

26 (d) Section 5.083, Property Code, as added by this Act,
27 applies only to a seller's failure or refusal to subdivide or plat

1 real property on or after the effective date of this Act, regardless
2 of the date on which the purchaser and seller entered into the
3 executory contract covering the property that is improperly
4 subdivided or platted.

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

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

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