

1-1 By: Lucio S.B. No. 629
1-2 (In the Senate - Filed February 21, 2005; March 1, 2005,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 April 11, 2005, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 11, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the rights of a purchaser under an executory contract
1-9 for conveyance of real property.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (c), Section 212.0115, Local
1-12 Government Code, is amended to read as follows:

1-13 (c) On the written request of an owner of land, a purchaser
1-14 of real property under a contract for deed, executory contract, or
1-15 other executory conveyance, an entity that provides utility
1-16 service, or the governing body of the municipality, the municipal
1-17 authority responsible for approving plats shall make the following
1-18 determinations regarding the owner's land or the land in which the
1-19 entity or governing body is interested that is located within the
1-20 jurisdiction of the municipality:

1-21 (1) whether a plat is required under this subchapter
1-22 for the land; and

1-23 (2) if a plat is required, whether it has been prepared
1-24 and whether it has been reviewed and approved by the authority.

1-25 SECTION 2. Subsection (a), Section 5.062, Property Code, is
1-26 amended to read as follows:

1-27 (a) This subchapter applies only to a transaction involving
1-28 an executory contract for conveyance of real property used or to be
1-29 used as the purchaser's residence or as the residence of a person
1-30 related to the purchaser within the second degree by consanguinity
1-31 or affinity, as determined under Chapter 573, Government Code. For
1-32 purposes of this subchapter:

1-33 (1) ~~7~~ a lot measuring one acre or less is presumed to
1-34 be residential property; and

1-35 (2) a residential lease of real property that includes
1-36 an option to purchase the property is considered an executory
1-37 contract for conveyance of real property.

1-38 SECTION 3. Subchapter D, Chapter 5, Property Code, is
1-39 amended by adding Section 5.0621 to read as follows:

1-40 Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Except as
1-41 provided by Subsection (b), if a residential lease of real property
1-42 includes an option to purchase the property, the provisions of this
1-43 subchapter and Chapter 92 apply to the lease.

1-44 (b) After a tenant exercises an option to purchase leased
1-45 property under a residential lease described by Subsection (a),
1-46 Chapter 92 no longer applies to the lease.

1-47 SECTION 4. Section 5.073, Property Code, is amended to read
1-48 as follows:

1-49 Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED.

1-50 (a) A seller may not include as a term of the executory contract a
1-51 provision that:

1-52 (1) imposes an additional late-payment fee that
1-53 exceeds the lesser of:

1-54 (A) eight percent of the monthly payment under
1-55 the contract; or

1-56 (B) the actual administrative cost of processing
1-57 the late payment;

1-58 (2) prohibits the purchaser from pledging the
1-59 purchaser's interest in the property as security to obtain a loan to
1-60 place improvements, including utility improvements or fire
1-61 protection improvements, on the property; ~~or~~

1-62 (3) imposes a prepayment penalty or any similar fee if
1-63 the purchaser elects to pay the entire amount due under the contract
1-64 before the scheduled payment date under the contract;

2-1 (4) forfeits an option fee or other option payment
 2-2 paid under the contract for a late payment; or

2-3 (5) increases the purchase price, imposes a fee or
 2-4 charge of any type, or otherwise penalizes a purchaser leasing
 2-5 property with an option to buy the property for requesting repairs
 2-6 or exercising any other right under Chapter 92.

2-7 (b) A provision of the executory contract that purports to
 2-8 waive a right or exempt a party from a liability or duty under this
 2-9 subchapter is void.

2-10 SECTION 5. Subchapter D, Chapter 5, Property Code, is
 2-11 amended by adding Sections 5.081 through 5.085 to read as follows:

2-12 Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) A purchaser,
 2-13 at any time and without paying penalties or charges of any kind, is
 2-14 entitled to convert the purchaser's interest in property under an
 2-15 executory contract into recorded, legal title in accordance with
 2-16 this section.

2-17 (b) If the purchaser tenders to the seller an amount of
 2-18 money equal to the balance of the total amount owed by the purchaser
 2-19 to the seller under the executory contract, the seller shall
 2-20 transfer to the purchaser recorded, legal title of the property
 2-21 covered by the contract.

2-22 (c) Subject to Subsection (d), if the purchaser delivers to
 2-23 the seller of property covered by an executory contract a
 2-24 promissory note that is equal in amount to the balance of the total
 2-25 amount owed by the purchaser to the seller under the contract and
 2-26 that contains the same interest rate, due dates, and late fees as
 2-27 the contract:

2-28 (1) the seller shall execute a deed containing any
 2-29 warranties required by the contract and conveying to the purchaser
 2-30 recorded, legal title of the property; and

2-31 (2) the purchaser shall simultaneously execute a deed
 2-32 of trust that:

2-33 (A) contains the same terms as the contract
 2-34 regarding the purchaser's and seller's duties concerning the
 2-35 property;

2-36 (B) secures the purchaser's payment and
 2-37 performance under the promissory note and deed of trust; and

2-38 (C) conveys the property to the trustee, in
 2-39 trust, and confers on the trustee the power to sell the property if
 2-40 the purchaser defaults on the promissory note or the terms of the
 2-41 deed of trust.

2-42 (d) On or before the 10th day after the date the seller
 2-43 receives a promissory note under Subsection (c) that substantially
 2-44 complies with that subsection, the seller shall:

2-45 (1) deliver to the purchaser a written explanation
 2-46 that legally justifies why the seller refuses to convert the
 2-47 purchaser's interest into recorded, legal title under Subsection
 2-48 (c); or

2-49 (2) communicate with the purchaser to schedule a
 2-50 mutually agreeable day and time to execute the deed and deed of
 2-51 trust under Subsection (c).

2-52 (e) A seller who violates this section is liable to the
 2-53 purchaser in the same manner and amount as a seller who violates
 2-54 Section 5.079 is liable to a purchaser. This subsection does not
 2-55 limit or affect any other rights or remedies a purchaser has under
 2-56 other law.

2-57 (f) On the last date that all of the conveyances described
 2-58 by Subsections (b) and (c) are executed, the executory contract:

2-59 (1) is considered completed; and

2-60 (2) has no further effect.

2-61 (g) The appropriate use of forms published by the Texas Real
 2-62 Estate Commission for transactions described by this section
 2-63 constitutes compliance with this section.

2-64 Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE. (a) A
 2-65 purchaser under an executory contract, on written request, is
 2-66 entitled to receive the following information from the seller:

2-67 (1) as of the date of the request or another date
 2-68 specified by the purchaser, the amount owed by the purchaser under
 2-69 the contract; and

3-1 (2) if applicable, the name and address of the seller's
3-2 desired trustee for a deed of trust to be executed under Section
3-3 5.081.

3-4 (b) On or before the 10th day after the date the seller
3-5 receives from the purchaser a written request for information
3-6 described by Subsection (a), the seller shall provide to the
3-7 purchaser a written statement of the requested information.

3-8 (c) If the seller does not timely respond to a request made
3-9 under this section, the purchaser may:

3-10 (1) determine or pay the amount owed under the
3-11 contract, including determining the amount necessary for a
3-12 promissory note under Section 5.081; and

3-13 (2) if applicable, select a trustee for a deed of trust
3-14 under Section 5.081.

3-15 (d) For purposes of Subsection (c)(2), a purchaser must
3-16 select a trustee that lives or has a place of business in the same
3-17 county where the property covered by the executory contract is
3-18 located.

3-19 Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING.

3-20 (a) Except as provided by Subsection (c), in addition to other
3-21 rights or remedies provided by law, the purchaser may cancel and
3-22 rescind an executory contract at any time if the purchaser learns
3-23 that the seller has not properly subdivided or platted the property
3-24 that is covered by the contract in accordance with state and local
3-25 law. A purchaser canceling and rescinding a contract under this
3-26 subsection must:

3-27 (1) deliver a signed, written notice of the
3-28 cancellation and rescission to the seller in person; or

3-29 (2) send a signed, written notice of the cancellation
3-30 and rescission to the seller by telegram or certified or registered
3-31 mail, return receipt requested.

3-32 (b) If the purchaser cancels the contract as provided under
3-33 Subsection (a), the seller, not later than the 10th day after the
3-34 date the seller receives the notice of cancellation and rescission,
3-35 shall:

3-36 (1) deliver in person or send by telegram or certified
3-37 or registered mail, return receipt requested, to the purchaser a
3-38 signed, written notice that the seller intends to subdivide or plat
3-39 the property properly; or

3-40 (2) return to the purchaser all payments of any kind
3-41 made to the seller under the contract and reimburse the purchaser
3-42 for:

3-43 (A) any payments the purchaser made to a taxing
3-44 authority for the property; and

3-45 (B) the value of any improvements made to the
3-46 property by the purchaser.

3-47 (c) A purchaser may not exercise the purchaser's right to
3-48 cancel and rescind an executory contract under this section if, on
3-49 or before the 90th day after the date the purchaser receives the
3-50 seller's notice under Subsection (b)(1), the seller:

3-51 (1) properly subdivides or plats the property; and
3-52 (2) delivers in person or sends by telegram or
3-53 certified or registered mail, return receipt requested, to the
3-54 purchaser a signed, written notice evidencing that the property has
3-55 been subdivided or platted in accordance with state and local law.

3-56 (d) The seller may not terminate the purchaser's possession
3-57 of the property covered by the contract being canceled and
3-58 rescinded before the seller pays the purchaser any money to which
3-59 the purchaser is entitled under Subsection (b).

3-60 Sec. 5.084. RIGHT TO DEDUCT. If a seller is liable to a
3-61 purchaser under this subchapter, the purchaser, without taking
3-62 judicial action, may deduct the amount owed to the purchaser by the
3-63 seller from any amounts owed to the seller by the purchaser under
3-64 the terms of an executory contract.

3-65 Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE
3-66 SIMPLE TITLE. (a) A potential seller may not execute an executory
3-67 contract with a potential purchaser if the seller does not own the
3-68 property in fee simple free from any liens or other encumbrances.

3-69 (b) Except as provided by this subsection, a seller, or the

4-1 seller's heirs or assigns, must maintain fee simple title free from
 4-2 any liens or other encumbrances to property covered by an executory
 4-3 contract for the entire duration of the contract. This subsection
 4-4 does not apply to a lien or encumbrance placed on the property that
 4-5 is:

4-6 (1) placed on the property because of the conduct of
 4-7 the purchaser; or

4-8 (2) agreed to by the purchaser as a condition of a loan
 4-9 obtained to place improvements on the property, including utility
 4-10 or fire protection improvements.

4-11 (c) A violation of this section:

4-12 (1) is a false, misleading, or deceptive act or
 4-13 practice within the meaning of Section 17.46, Business & Commerce
 4-14 Code, and is actionable in a public or private suit brought under
 4-15 Subchapter E, Chapter 17, Business & Commerce Code; and

4-16 (2) in addition to other rights or remedies provided
 4-17 by law, entitles the purchaser to cancel and rescind the executory
 4-18 contract and receive from the seller:

4-19 (A) the return of all payments of any kind made to
 4-20 the seller under the contract; and

4-21 (B) reimbursement for:

4-22 (i) any payments the purchaser made to a
 4-23 taxing authority for the property; and

4-24 (ii) the value of any improvements made to
 4-25 the property by the purchaser.

4-26 SECTION 6. (a) Section 5.062, Property Code, as amended by
 4-27 this Act, and Section 5.0621, Property Code, as added by this Act,
 4-28 apply to an executory contract for conveyance in effect on the
 4-29 effective date of this Act, regardless of the date on which the
 4-30 purchaser and seller entered into the contract.

4-31 (b) Section 5.073, Property Code, as amended by this Act,
 4-32 applies only to an executory contract for conveyance that was
 4-33 entered into on or after the effective date of this Act. An
 4-34 executory contract that was entered into before the effective date
 4-35 of this Act is governed by the law in effect immediately before the
 4-36 effective date of this Act, and the former law is continued in
 4-37 effect for that purpose.

4-38 (c) Sections 5.081 and 5.082, Property Code, as added by
 4-39 this Act, apply to a conversion of title initiated or a request for
 4-40 information made on or after the effective date of this Act,
 4-41 regardless of the date on which the purchaser and seller entered
 4-42 into the executory contract that is the subject of the conversion or
 4-43 request.

4-44 (d) Section 5.083, Property Code, as added by this Act,
 4-45 applies only to a seller's failure or refusal to subdivide or plat
 4-46 real property on or after the effective date of this Act, regardless
 4-47 of the date on which the purchaser and seller entered into the
 4-48 executory contract covering the property that is improperly
 4-49 subdivided or platted.

4-50 (e) Section 5.084, Property Code, as added by this Act,
 4-51 applies to the computation of any amount owed to the seller by the
 4-52 purchaser under the terms of an executory contract on or after the
 4-53 effective date of this Act, regardless of the date on which the
 4-54 purchaser and seller entered into the executory contract.

4-55 (f) Section 5.085, Property Code, as added by this Act,
 4-56 applies only to an executory contract for conveyance that is
 4-57 entered into on or after the effective date of this Act. An
 4-58 executory contract for conveyance that is entered into before the
 4-59 effective date of this Act is covered by the law in effect at the
 4-60 time the contract was entered into, and that law is continued in
 4-61 effect for that purpose.

4-62 SECTION 7. This Act takes effect September 1, 2005.

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