

By: Lucio

S.B. No. 1095

A BILL TO BE ENTITLED

AN ACT

1
2 relating to circumstances under which an executory contract for
3 conveyance is prohibited and to the rights of certain purchasers
4 under executory contracts for conveyance.

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

6 SECTION 1. Section 5.062(a), Property Code, is amended to
7 read as follows:

8 (a) This subchapter applies only to a transaction involving
9 an executory contract for conveyance of more than one acre of real
10 property used or to be used as the purchaser's residence or as the
11 residence of a person related to the purchaser within the second
12 degree by consanguinity or affinity, as determined under Chapter
13 573, Government Code. [~~For purposes of this subchapter, a lot~~
14 ~~measuring one acre or less is presumed to be residential property.~~]

15 SECTION 2. Chapter 5, Property Code, is amended by adding
16 Subchapter E to read as follows:

17 SUBCHAPTER E. EXECUTORY CONTRACT FOR CONVEYANCE

18 PROHIBITED FOR CERTAIN TRANSACTIONS

19 Sec. 5.101. APPLICABILITY OF SUBCHAPTER. This subchapter
20 applies only to the sale or purchase of one acre or less of real
21 property that is intended to be used as the purchaser's residence or
22 as the residence of a person related to the purchaser within the
23 second degree by consanguinity or affinity, as determined under
24 Chapter 573, Government Code.

1 Sec. 5.102. PROHIBITED USE OF EXECUTORY CONTRACT FOR
2 CONVEYANCE; LIQUIDATED DAMAGES. (a) Notwithstanding any other law
3 and except as provided by this subchapter, a person may not sell or
4 purchase real property described by Section 5.101 under an
5 executory contract for conveyance.

6 (b) A person that sells real property in violation of this
7 section is liable to a purchaser under an executory contract for
8 conveyance for:

- 9 (1) liquidated damages in the amount of \$2,000; and
10 (2) reasonable attorney's fees.

11 Sec. 5.103. NOTICE OF RIGHT TO CONVERT CONTRACT. (a) Not
12 later than the first day after the date a seller and a purchaser
13 enter into an executory contract that is prohibited by Section
14 5.102, the seller shall notify the purchaser in writing of the
15 purchaser's right to convert the purchaser's interest in property
16 under the executory contract in accordance with Section 5.104.

17 (b) A notice sent under Subsection (a) must:

18 (1) be:

- 19 (A) in 14-point, or larger, font;
20 (B) in the same language as the language of the
21 negotiations that preceded the execution of the executory contract;
22 (C) hand delivered or sent by first class mail;
23 and
24 (D) sent by certified mail, return receipt
25 requested, in addition to any mailing made under Paragraph (C); and

26 (2) contain:

- 27 (A) an explanation that certain executory

1 contracts for conveyance, including the one executed by the
2 purchaser and the seller, are prohibited in certain circumstances;

3 (B) a disclosure that a person that sells real
4 property under an executory contract for conveyance in violation of
5 this subchapter is liable to the purchaser under the executory
6 contract for liquidated damages in the amount of \$2,000; and

7 (C) a summary of the entire process through which
8 the purchaser may convert the purchaser's interest in property
9 under the executory contract in accordance with Section 5.104.

10 (c) A seller who violates this section is liable to the
11 purchaser for liquidated damages of:

12 (1) \$10 a day for each day that the seller has not
13 provided the notice required by this section; and

14 (2) reasonable attorney's fees.

15 Sec. 5.104. RIGHT TO CONVERT CONTRACT. (a) In addition to
16 collecting liquidated damages under Section 5.102(b), a purchaser
17 under an executory contract prohibited by this subchapter is
18 entitled to convert the purchaser's interest in property under the
19 executory contract in accordance with this section.

20 (b) If the purchaser delivers to the seller of property
21 covered by an executory contract a promissory note that is equal in
22 amount to the balance of the total amount owed by the purchaser to
23 the seller under the contract and that contains the same interest
24 rate, due dates, and late fees as the contract:

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

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

3 (A) contains the same terms as the contract
4 regarding the purchaser's and seller's duties concerning the
5 property;

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

8 (C) conveys the property to the trustee, in
9 trust, and confers on the trustee the power to sell the property if
10 the purchaser defaults on the promissory note or the terms of the
11 deed of trust.

12 (c) On or before the 30th day after the date the seller
13 receives a promissory note under Subsection (b) that substantially
14 complies with that subsection, the seller shall deliver to the
15 purchaser a written report providing complete and accurate
16 information concerning the chain of title to the property covered
17 by the executory contract and any claims or liens that may exist
18 against the property and:

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

23 (2) communicate with the purchaser to schedule a
24 mutually agreeable day and time to execute the deed and deed of
25 trust under Subsection (b).

26 (d) A seller who violates this section is liable to the
27 purchaser in the same manner and for the same amount as a seller who

1 violates Section 5.079 is liable to a purchaser. This subsection
2 does not limit or affect any other rights or remedies a purchaser
3 has under other law.

4 (e) On the last date that all of the conveyances described
5 by Subsection (b) are executed, the executory contract:

6 (1) is considered completed; and

7 (2) has no further effect.

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

11 SECTION 3. The changes in law made by this Act apply only to
12 an executory contract for conveyance that is entered into on or
13 after the effective date of this Act. An executory contract for
14 conveyance that is entered into before the effective date of this
15 Act is governed by the law in effect immediately before the
16 effective date of this Act, and that law is continued in effect for
17 that purpose.

18 SECTION 4. This Act takes effect September 1, 2005.