

By: Dutton

H.B. No. 3553

A BILL TO BE ENTITLED

AN ACT

relating to lease-option contracts.

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

SECTION 1. Section 5.062(a), Property Code, is amended 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 related to the purchaser within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code. For purposes of this subchapter, and only for the purposes of this subchapter:

(1) a lot measuring one acre or less is presumed to be residential property; and

(2) a lease-option contract, as defined by Section 5.201 [~~an option to purchase real property that includes or is combined or executed concurrently with a residential lease agreement, together with the lease~~], is considered an executory contract for conveyance of real property if the contract is subject to this subchapter under Section 5.202.

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

SUBCHAPTER G. LEASE-OPTION CONTRACTS

Sec. 5.201. DEFINITIONS. In this subchapter:

1 (1) "Default" means:

2 (A) the failure to make a timely payment under a
3 lease-option contract; or

4 (B) a material breach of a term of the
5 lease-option contract.

6 (2) "Lease-option contract" means a contract to
7 purchase residential property that the purchaser or a person
8 related to the purchaser within the second degree by consanguinity
9 or affinity, as determined under Chapter 573, Government Code,
10 occupies under the terms of a written lease accompanied by a written
11 option to purchase the property during the lease term.

12 Sec. 5.202. APPLICABILITY. (a) This subchapter applies
13 only to a lease-option contract that is for a term of three years or
14 less. Subchapter D does not apply to a lease-option contract to
15 which this subchapter applies. If a lease-option contract
16 described by Subsection (c) is for a term longer than three years,
17 Subchapter D applies to the contract and this subchapter does not
18 apply to the contract.

19 (b) Unless otherwise excluded, this subchapter applies to a
20 lease-option contract for real property used or to be used as the
21 purchaser's principal residence or as the principal residence of a
22 person related to the purchaser within the second degree by
23 consanguinity or affinity, as determined under Chapter 573,
24 Government Code.

25 (c) This subchapter and Subchapter D do not apply to the
26 following transactions:

27 (1) contracts drafted by the Broker-Lawyer Committee

1 of the Texas Real Estate Commission and adopted by the commission
2 for use in effecting the purchase or sale of residential housing or
3 lots unless the contract specifically provides that the contract is
4 intended to be a lease-option contract subject to this subchapter;

5 (2) the sale of state land;

6 (3) a sale of land by:

7 (A) the Veterans' Land Board;

8 (B) this state or a political subdivision of this
9 state; or

10 (C) an instrumentality, public corporation, or
11 other entity created to act on behalf of this state or a political
12 subdivision of this state, including an entity created under
13 Chapter 303, 392, or 394, Local Government Code;

14 (4) a lease-option contract that provides for the
15 delivery of a deed from the seller to the purchaser on or before the
16 third anniversary of the date of the final execution of the
17 lease-option contract; or

18 (5) a transaction involving a lease-option contract if
19 the purchaser of the property:

20 (A) is related to the seller of the property
21 within the second degree by consanguinity or affinity, as
22 determined under Chapter 573, Government Code; and

23 (B) has waived the applicability of those
24 sections in a written agreement.

25 Sec. 5.203. CONSTRUCTION WITH OTHER LAW. (a) Except as
26 provided by Subsection (b), the provisions of this subchapter and
27 Chapter 92 apply to the portion of a lease-option contract

1 described by Sections 5.201 and 5.202 that is a residential lease
2 agreement.

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

6 Sec. 5.204. NOTICE. (a) Notice under Section 5.205 must be
7 in writing and must be delivered by registered or certified mail,
8 return receipt requested. The notice must be conspicuous and
9 printed in 14-point boldfaced type or 14-point uppercase
10 typewritten letters, and must include on a separate page the
11 statement:

12 YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR
13 PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY
14 (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

15 NOTICE

16 (b) The notice must also:

17 (1) identify and explain the remedy the seller intends
18 to enforce;

19 (2) if the purchaser has failed to make a timely
20 payment, specify:

21 (A) the delinquent amount, itemized into
22 principal and interest;

23 (B) any additional charges claimed, including
24 late charges or attorney's fees; and

25 (C) the period to which the delinquency and
26 additional charges relate; and

27 (3) if the purchaser has failed to comply with a term

1 of the contract, identify the term violated and the action required
2 to cure the violation.

3 (c) Notice by mail is given when it is mailed to the
4 purchaser's residence or place of business. The affidavit of a
5 person knowledgeable of the facts indicating that notice was given
6 is prima facie evidence of notice in an action involving a
7 subsequent bona fide purchaser for value if the purchaser is not in
8 possession of the real property and if the stated time to avoid the
9 forfeiture has expired. A bona fide subsequent purchaser for value
10 who relies on the affidavit under this subsection shall take title
11 free and clear of the contract.

12 Sec. 5.205. SELLER'S REMEDIES ON DEFAULT. A seller may
13 enforce the remedy of rescission or of forfeiture and acceleration
14 against a purchaser in default under a lease-option contract only
15 if:

16 (1) the seller notifies the purchaser of:

17 (A) the seller's intent to enforce a remedy under
18 this section; and

19 (B) the purchaser's right to cure the default
20 within the 30-day period described by Section 5.206;

21 (2) the purchaser fails to cure the default within the
22 30-day period described by Section 5.206; and

23 (3) Section 5.207 does not apply.

24 Sec. 5.206. RIGHT TO CURE DEFAULT. Notwithstanding an
25 agreement to the contrary, a purchaser in default under a
26 lease-option contract may avoid the enforcement of a remedy
27 described by Section 5.204(b) by complying with the terms of the

1 contract on or before the 30th day after the date notice is given
2 under that section.

3 Sec. 5.207. EQUITY PROTECTION; SALE OF PROPERTY. (a) If a
4 purchaser defaults after the purchaser has paid 40 percent or more
5 of the amount due under the lease-option contract, the seller is
6 granted the power to sell, through a trustee designated by the
7 seller, the purchaser's interest in the property as provided by
8 this section. The seller may not enforce the remedy of rescission
9 or of forfeiture and acceleration.

10 (b) The seller shall notify a purchaser of a default under
11 the contract and allow the purchaser at least 60 days after the date
12 notice is given to cure the default. The notice must be provided as
13 prescribed by Section 5.204 except that the notice must substitute
14 the following statement:

15 YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR
16 PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY
17 (date) A TRUSTEE DESIGNATED BY THE SELLER HAS THE RIGHT TO SELL YOUR
18 PROPERTY AT A PUBLIC AUCTION.

19 NOTICE

20 (c) The trustee or a substitute trustee designated by the
21 seller must post, file, and serve a notice of sale and the county
22 clerk shall record and maintain the notice of sale as prescribed by
23 Section 51.002. A notice of sale is not valid unless it is provided
24 after the period to cure has expired.

25 (d) The trustee or a substitute trustee designated by the
26 seller must conduct the sale as prescribed by Section 51.002. The
27 seller must:

1 (1) convey to a purchaser at a sale conducted under
2 this section good and indefeasible title to the real property; and

3 (2) warrant that the property is free from any
4 encumbrance.

5 (e) The remaining balance of the amount due under the
6 lease-option contract is the debt for purposes of a sale under this
7 section. If the proceeds of the sale exceed the debt amount, the
8 seller shall disburse the excess funds to the purchaser under the
9 lease-option contract. If the proceeds of the sale are
10 insufficient to extinguish the debt amount, the seller's right to
11 recover the resulting deficiency is subject to Sections 51.003,
12 51.004, and 51.005 unless a provision of the lease-option contract
13 releases the purchaser under the contract from liability.

14 (f) The affidavit of a person knowledgeable of the facts
15 that states that the notice was given and the sale was conducted as
16 provided by this section is prima facie evidence of those facts. A
17 purchaser for value who relies on an affidavit under this
18 subsection acquires title to the property free and clear of the
19 lease-option contract.

20 (g) If a purchaser defaults before the purchaser has paid 40
21 percent of the amount due, the seller may enforce the remedy of
22 rescission or of forfeiture and acceleration of the indebtedness if
23 the seller complies with the notice requirements of Section 5.204.

24 Sec. 5.208. PLACEMENT OF LIEN FOR UTILITY SERVICE.
25 Notwithstanding any terms of a contract to the contrary, the
26 placement of a lien for the reasonable value of improvements to
27 residential real estate for purposes of providing utility service

1 to the property shall not constitute a default under the terms of a
2 lease-option contract.

3 Sec. 5.209. FOREIGN LANGUAGE REQUIREMENT. If the
4 negotiations that precede the execution of a lease-option contract
5 are conducted primarily in a language other than English, the
6 seller shall provide a copy in that language of all written
7 documents relating to the transaction, including the contract,
8 disclosure notices, annual accounting statements, and a notice of
9 default required by this subchapter.

10 Sec. 5.210. SELLER'S DISCLOSURE OF PROPERTY
11 CONDITION. (a) Before a lease-option contract is signed by the
12 purchaser, the seller shall provide the purchaser with:

13 (1) a survey that was completed within the past year or
14 a plat of a current survey of the real property;

15 (2) a legible copy of any document, or a copy as it
16 appears in the official real property records, that describes an
17 encumbrance or other claim, including a restrictive covenant or
18 easement, that affects title to the real property; and

19 (3) a written notice attached to the contract
20 informing the purchaser of the condition of the property that must,
21 at a minimum, be executed by the seller and purchaser and read
22 substantially similar to the following:

23 WARNING

24 IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE
25 TO LIVE ON THE PROPERTY.

26 SELLER'S DISCLOSURE NOTICE

27 CONCERNING THE PROPERTY AT (street address or legal description and

1 city)

2 THIS DOCUMENT STATES CERTAIN APPLICABLE FACTS ABOUT THE PROPERTY
3 YOU ARE CONSIDERING PURCHASING.

4 CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

5 _____ The property is in a recorded subdivision.

6 _____ The property has water service that provides potable water.

7 _____ The property has sewer service.

8 _____ The property has been approved by the appropriate municipal,
9 county, or state agency for installation of a septic system.

10 _____ The property has electric service.

11 _____ The property is not in a floodplain.

12 _____ The roads to the boundaries of the property are paved and
13 maintained by:

14 _____ the seller;

15 _____ the owner of the property on which the road exists;

16 _____ the municipality;

17 _____ the county; or

18 _____ the state.

19 _____ No individual or entity other than the seller:

20 (1) owns the property;

21 (2) has a claim of ownership to the property; or

22 (3) has an interest in the property.

23 _____ No individual or entity has a lien filed against the property.

24 _____ There are no restrictive covenants, easements, or other title
25 exceptions or encumbrances that prohibit construction of a house on
26 the property.

27 NOTICE: SELLER ADVISES PURCHASER TO:

- 1 (1) OBTAIN A TITLE ABSTRACT OR TITLE
2 COMMITMENT COVERING THE PROPERTY AND HAVE
3 THE ABSTRACT OR COMMITMENT REVIEWED BY AN
4 ATTORNEY BEFORE SIGNING A CONTRACT OF THIS
5 TYPE; AND
6 (2) PURCHASE AN OWNER'S POLICY OF TITLE
7 INSURANCE COVERING THE PROPERTY.

8 _____
9 (Date) _____ (Signature of Seller)

10 _____
11 (Date) _____ (Signature of Purchaser)

12 (b) If the property is not located in a recorded
13 subdivision, the seller shall provide the purchaser with a separate
14 disclosure form stating that utilities may not be available to the
15 property until the subdivision is recorded as required by law.

16 (c) If the seller advertises property for sale under a
17 lease-option contract, the advertisement must disclose information
18 regarding the availability of water, sewer, and electric service.

19 (d) The seller's failure to provide information required by
20 this section:

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

25 (2) entitles the purchaser to cancel and rescind the
26 lease-option contract and receive a full refund of all payments
27 made to the seller.

1 (e) Subsection (d) does not limit the purchaser's remedy
2 against the seller for other false, misleading, or deceptive acts
3 or practices actionable in a suit brought under Subchapter E,
4 Chapter 17, Business & Commerce Code.

5 Sec. 5.211. SELLER'S DISCLOSURE OF TAX PAYMENTS AND
6 INSURANCE COVERAGE. (a) Before a lease-option contract is signed
7 by the purchaser, the seller shall provide the purchaser with:

8 (1) a tax certificate from the collector for each
9 taxing unit that collects taxes due on the property as provided by
10 Section 31.08, Tax Code; and

11 (2) a legible copy of any insurance policy, binder, or
12 other evidence of coverage relating to the property that indicates:

13 (A) the name of the insurer and the insured;

14 (B) a description of the property insured; and

15 (C) the amount for which the property is insured.

16 (b) The seller's failure to provide information required by
17 this section:

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

22 (2) entitles the purchaser to cancel and rescind the
23 lease-option contract and receive a full refund of all payments
24 made to the seller.

25 (c) Subsection (b) does not limit the purchaser's remedy
26 against the seller for other false, misleading, or deceptive acts
27 or practices actionable in a suit brought under Subchapter E,

1 Chapter 17, Business & Commerce Code.

2 Sec. 5.212. SELLER'S DISCLOSURE OF FINANCING
3 TERMS. Before a lease-option contract is signed by the purchaser,
4 the seller shall provide to the purchaser a written statement that
5 specifies:

6 (1) the purchase price of the property;

7 (2) the interest rate charged under the contract;

8 (3) the dollar amount, or an estimate of the dollar
9 amount if the interest rate is variable, of the interest charged for
10 the term of the contract;

11 (4) the total amount of principal and interest to be
12 paid under the contract;

13 (5) the late charge, if any, that may be assessed under
14 the contract; and

15 (6) the fact that the seller may not charge a
16 prepayment penalty or any similar fee if the purchaser elects to pay
17 the entire amount due under the contract before the scheduled
18 payment date under the contract.

19 Sec. 5.213. ORAL AGREEMENTS PROHIBITED. (a) A
20 lease-option contract is not enforceable unless the contract is in
21 writing and signed by the party to be bound or by that party's
22 authorized representative.

23 (b) The rights and obligations of the parties to a contract
24 are determined solely from the written contract, and any prior oral
25 agreements between the parties are superseded by and merged into
26 the contract.

27 (c) A lease-option contract may not be varied by any oral

1 agreements or discussions that occur before or contemporaneously
2 with the execution of the contract.

3 (d) The seller shall include in a separate document or in a
4 provision of the contract a statement printed in 14-point boldfaced
5 type or 14-point uppercase typewritten letters that reads
6 substantially similar to the following:

7 THIS LEASE-OPTION CONTRACT REPRESENTS THE FINAL
8 AGREEMENT BETWEEN THE SELLER AND PURCHASER AND MAY NOT
9 BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS,
10 OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE
11 ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

12 _____
13 (Date) (Signature of Seller)

14 _____
15 (Date) (Signature of Purchaser)

16 (e) The seller's failure to provide the notice required by
17 this section:

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

22 (2) entitles the purchaser to cancel and rescind the
23 lease-option contract and receive a full refund of all payments
24 made to the seller.

25 (f) Subsection (e) does not limit the purchaser's remedy
26 against the seller for other false, misleading, or deceptive acts
27 or practices actionable in a suit brought under Subchapter E,

1 Chapter 17, Business & Commerce Code.

2 Sec. 5.214. CONTRACT TERMS, CERTAIN WAIVERS

3 PROHIBITED. (a) A seller may not include as a term of the
4 lease-option contract a provision that:

5 (1) imposes an additional late-payment fee that
6 exceeds eight percent of the monthly payment under the contract;

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

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

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

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

21 Sec. 5.215. PURCHASER'S RIGHT TO CANCEL CONTRACT WITHOUT

22 CAUSE. (a) In addition to other rights or remedies provided by
23 law, the purchaser may cancel and rescind a lease-option contract
24 for any reason by sending by telegram or certified or registered
25 mail, return receipt requested, or by delivering in person a
26 signed, written notice of cancellation to the seller not later than
27 the 14th day after the date of the contract.

1 (b) If the purchaser cancels the contract as provided by
2 Subsection (a), the seller shall, not later than the 10th day after
3 the date the seller receives the purchaser's notice of
4 cancellation:

5 (1) return to the purchaser the executed contract and
6 any property exchanged or payments made by the purchaser under the
7 contract; and

8 (2) cancel any security interest arising out of the
9 contract.

10 (c) The seller shall include in immediate proximity to the
11 space reserved in the lease-option contract for the purchaser's
12 signature a statement printed in 14-point boldfaced type or
13 14-point uppercase typewritten letters that reads substantially
14 similar to the following:

15 YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE
16 NEXT TWO WEEKS. THE DEADLINE FOR CANCELING THE CONTRACT IS (date).

17 THE ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.

18 (d) The seller shall provide a notice of cancellation form
19 to the purchaser at the time the purchaser signs the lease-option
20 contract that is printed in 14-point boldfaced type or 14-point
21 uppercase typewritten letters and that reads substantially similar
22 to the following:

23 (date of contract)

24 NOTICE OF CANCELLATION

25 YOU MAY CANCEL THE LEASE-OPTION CONTRACT FOR ANY REASON
26 WITHOUT ANY PENALTY OR OBLIGATION BY (date).

27 (1) YOU MUST SEND BY TELEGRAM OR CERTIFIED OR

1 REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR DELIVER IN PERSON A
2 SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER
3 WRITTEN NOTICE TO (Name of Seller) AT (Seller's Address) BY (date).

4 (2) THE SELLER SHALL, NOT LATER THAN THE 10TH DAY AFTER
5 THE DATE THE SELLER RECEIVES YOUR CANCELLATION NOTICE:

6 (A) RETURN THE EXECUTED CONTRACT AND ANY PROPERTY
7 EXCHANGED OR PAYMENTS MADE BY YOU UNDER THE CONTRACT; AND

8 (B) CANCEL ANY SECURITY INTEREST ARISING OUT OF
9 THE CONTRACT.

10 I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

11 _____
12 (Date) (Purchaser's Signature)

13 I HEREBY CANCEL THIS CONTRACT.

14 _____
15 (Date) (Purchaser's Signature)

16 (e) The seller may not request the purchaser to sign a
17 waiver of receipt of the notice of cancellation form required by
18 this section.

19 Sec. 5.216. PURCHASER'S RIGHT TO PLEDGE INTEREST IN
20 PROPERTY ON CONTRACTS ENTERED INTO BEFORE SEPTEMBER 1, 2007. (a)
21 On a lease-option contract entered into before September 1, 2007, a
22 purchaser may pledge the interest in the property that accrues
23 under Section 5.207 only to obtain a loan for improving the safety
24 of the property or any improvements on the property.

25 (b) Loans that improve the safety of the property and
26 improvements on the property include loans for:

27 (1) improving or connecting a residence to water

1 service;

2 (2) improving or connecting a residence to a
3 wastewater system;

4 (3) building or improving a septic system;

5 (4) structural improvements in the residence; and

6 (5) improved fire protection.

7 Sec. 5.217. RECORDING REQUIREMENTS. (a) Except as
8 provided by Subsection (b), the seller shall record the
9 lease-option contract, including the attached disclosure statement
10 required by Section 5.210, as prescribed by Title 3 on or before the
11 30th day after the date the contract is executed.

12 (b) Section 12.002(c) does not apply to a lease-option
13 contract filed for record under this section.

14 (c) If the lease-option contract is terminated for any
15 reason, the seller shall record the instrument that terminates the
16 contract.

17 (d) The county clerk shall collect the filing fee prescribed
18 by Section 118.011, Local Government Code.

19 Sec. 5.218. ANNUAL ACCOUNTING STATEMENT. (a) The seller
20 shall provide the purchaser with an annual statement in January of
21 each year for the term of the lease-option contract. If the seller
22 mails the statement to the purchaser, the statement must be
23 postmarked not later than January 31.

24 (b) The statement must include the following information:

25 (1) the amount paid under the contract;

26 (2) the remaining amount owed under the contract;

27 (3) the number of payments remaining under the

1 contract;

2 (4) the amounts paid to taxing authorities on the
3 purchaser's behalf if collected by the seller;

4 (5) the amounts paid to insure the property on the
5 purchaser's behalf if collected by the seller;

6 (6) if the property has been damaged and the seller has
7 received insurance proceeds, an accounting of the proceeds applied
8 to the property; and

9 (7) if the seller has changed insurance coverage, a
10 legible copy of the current policy, binder, or other evidence that
11 satisfies the requirements of Section 5.211(a)(2).

12 (c) A seller who conducts less than two transactions in a
13 12-month period under this section and who fails to comply with
14 Subsection (a) is liable to the purchaser for:

15 (1) liquidated damages in the amount of \$50 for each
16 annual statement the seller fails to provide to the purchaser
17 within the time required by Subsection (a); and

18 (2) reasonable attorney's fees.

19 (d) A seller who conducts two or more transactions in a
20 12-month period under this section and who fails to comply with
21 Subsection (a) is liable to the purchaser for:

22 (1) liquidated damages in the amount of \$100 a day for
23 each day after January 31 that the seller fails to provide the
24 purchaser with the statement, but not to exceed an amount equal to
25 the fair market value of the property; and

26 (2) reasonable attorney's fees.

27 Sec. 5.219. DISPOSITION OF INSURANCE PROCEEDS. (a) The

1 named insured under an insurance policy, binder, or other coverage
2 relating to property subject to a lease-option contract shall
3 inform the insurer, not later than the 10th day after the date the
4 coverage is obtained or the contract executed, whichever is later,
5 of:

6 (1) the lease-option contract for conveyance and the
7 term of the contract; and

8 (2) the name and address of the other party to the
9 contract.

10 (b) An insurer who disburses proceeds under an insurance
11 policy, binder, or other coverage relating to property that has
12 been damaged shall issue the proceeds jointly to the purchaser and
13 the seller designated in the contract.

14 (c) If proceeds under an insurance policy, binder, or other
15 coverage are disbursed, the purchaser and seller shall ensure that
16 the proceeds are used to repair, remedy, or improve the condition on
17 the property.

18 (d) The failure of a seller or purchaser to comply with
19 Subsection (c) is a false, misleading, or deceptive act or practice
20 within the meaning of Section 17.46, Business & Commerce Code, and
21 is actionable in a public or private suit brought under Subchapter
22 E, Chapter 17, Business & Commerce Code.

23 (e) Subsection (d) does not limit either party's remedy for
24 other false, misleading, or deceptive acts or practices actionable
25 in a suit brought under Subchapter E, Chapter 17, Business &
26 Commerce Code.

27 Sec. 5.220. TITLE TRANSFER. (a) The seller shall transfer

1 recorded, legal title of the property covered by the lease-option
2 contract to the purchaser not later than the 30th day after the date
3 the seller receives the purchaser's final payment due under the
4 contract.

5 (b) A seller who violates Subsection (a) is liable to the
6 purchaser for:

7 (1) liquidated damages in the amount of:

8 (A) \$250 a day for each day the seller fails to
9 transfer the title to the purchaser during the period that begins
10 the 31st day and ends the 90th day after the date the seller
11 receives the purchaser's final payment due under the contract; and

12 (B) \$500 a day for each day the seller fails to
13 transfer title to the purchaser after the 90th day after the date
14 the seller receives the purchaser's final payment due under the
15 contract; and

16 (2) reasonable attorney's fees.

17 (c) If a person to whom a seller's property interest passes
18 by will or intestate succession is required to obtain a court order
19 to clarify the person's status as an heir or to clarify the status
20 of the seller or the property before the person may convey good and
21 indefeasible title to the property, the court in which the action is
22 pending may waive payment of the liquidated damages and attorney's
23 fees under Subsection (b) if the court finds that the person is
24 pursuing the action to establish good and indefeasible title with
25 reasonable diligence.

26 (d) In this section, "seller" includes a successor,
27 assignee, personal representative, executor, or administrator of

1 the seller.

2 Sec. 5.221. LIABILITY FOR DISCLOSURES. For purposes of
3 this subchapter, a disclosure required by this subchapter that is
4 made by a seller's agent is a disclosure made by the seller.

5 Sec. 5.222. RIGHT TO CONVERT CONTRACT. (a) A purchaser, at
6 any time and without paying penalties or charges of any kind, is
7 entitled to convert the purchaser's interest in property under a
8 lease-option contract into recorded, legal title in accordance with
9 this section.

10 (b) If the purchaser tenders to the seller an amount of
11 money equal to the balance of the total amount owed by the purchaser
12 to the seller under the lease-option contract, the seller shall
13 transfer to the purchaser recorded, legal title of the property
14 covered by the contract.

15 (c) Subject to Subsection (d), if the purchaser delivers to
16 the seller of property covered by a lease-option contract a
17 promissory note that is equal in amount to the balance of the total
18 amount owed by the purchaser to the seller under the contract and
19 that contains the same interest rate, due dates, and late fees as
20 the contract:

21 (1) the seller shall execute a deed containing any
22 warranties required by the contract and conveying to the purchaser
23 recorded, legal title to the property; and

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

26 (A) contains the same terms as the contract
27 regarding the purchaser's and seller's duties concerning the

1 property;

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

4 (C) conveys the property to the trustee, in
5 trust, and confers on the trustee the power to sell the property if
6 the purchaser defaults on the promissory note or the terms of the
7 deed of trust.

8 (d) On or before the 30th day after the date the seller
9 receives a promissory note under Subsection (c) that substantially
10 complies with that subsection, the seller shall:

11 (1) deliver to the purchaser a written explanation
12 that legally justifies the reason the seller refuses to convert the
13 purchaser's interest into recorded, legal title under Subsection
14 (c); or

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

18 (e) A seller who violates this section is liable to the
19 purchaser in the same manner and amount as a seller who violates
20 Section 5.220 is liable to a purchaser. This subsection does not
21 limit or affect any other rights or remedies a purchaser has under
22 other law.

23 (f) On the last date that all conveyances described by
24 Subsections (b) and (c) are executed, the lease-option contract:

25 (1) is considered completed; and

26 (2) has no further effect.

27 (g) The appropriate use of forms published by the Texas Real

1 Estate Commission for transactions described by this section
2 constitutes compliance with this section.

3 Sec. 5.223. REQUEST FOR BALANCE AND TRUSTEE. (a) A
4 purchaser under a lease-option contract, on written request, is
5 entitled to receive the following information from the seller:

6 (1) as of the date of the request or another date
7 specified by the purchaser, the amount owed by the purchaser under
8 the contract; and

9 (2) if applicable, the name and address of the seller's
10 desired trustee for a deed of trust to be executed under Section
11 5.222.

12 (b) On or before the 30th day after the date the seller
13 receives from the purchaser a written request for information
14 described by Subsection (a), the seller shall provide to the
15 purchaser a written statement of the requested information.

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

18 (1) determine or pay the amount owed under the
19 contract, including determining the amount necessary for a
20 promissory note under Section 5.222; and

21 (2) if applicable, select a trustee for a deed of trust
22 under Section 5.222.

23 (d) For purposes of Subsection (c)(2), a purchaser must
24 select a trustee that has a residence or a place of business in the
25 same county in which the property covered by the lease-option
26 contract is located.

27 (e) Not later than the 30th day after the date a seller

1 receives notice of an amount determined by a purchaser under
2 Subsection (c)(1), the seller may contest that amount by sending a
3 written objection to the purchaser. An objection under this
4 subsection must:

5 (1) be sent to the purchaser by regular and certified
6 mail;

7 (2) include the amount the seller claims is the amount
8 owed under the contract; and

9 (3) be based on written records kept by the seller or
10 the seller's agent that were maintained and regularly updated for
11 the entire term of the lease-option contract.

12 Sec. 5.224. RIGHT TO CANCEL CONTRACT FOR IMPROPER
13 PLATTING. (a) Except as provided by Subsection (c), in addition to
14 other rights or remedies provided by law, the purchaser may cancel
15 and rescind a lease-option contract at any time if the purchaser
16 learns that the seller has not properly subdivided or platted the
17 property that is covered by the contract in accordance with state
18 and local law. A purchaser canceling and rescinding a contract
19 under this subsection must:

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

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

25 (b) If the purchaser cancels the contract as provided under
26 Subsection (a), the seller, not later than the 30th day after the
27 date the seller receives the notice of cancellation and rescission,

1 shall:

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

6 (2) return to the purchaser all payments of any kind
7 made to the seller under the contract less the fair market rental
8 value of the property during the term of the purchaser's occupancy
9 and reimburse the purchaser for:

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

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

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

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

19 (2) delivers in person or sends by telegram or
20 certified or registered mail, return receipt requested, to the
21 purchaser a signed, written notice providing evidence that the
22 property has been subdivided or platted in accordance with state
23 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. 5.225. 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 a lease-option contract. The seller may recover from
6 the purchaser any improper reduction plus court costs and
7 attorney's fees by taking judicial action.

8 SECTION 3. Sections 5.062(e), (f), and (g), Property Code,
9 are repealed.

10 SECTION 4. The change in law made by this Act applies only
11 to a lease-option contract entered into on or after the effective
12 date of this Act. A contract entered into before the effective date
13 of this Act is governed by the law in effect immediately before that
14 date, and that law is continued in effect for that purpose.

15 SECTION 5. This Act takes effect September 1, 2007.