

BILL ANALYSIS

H.B. 3993
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

H.B. 1823, 79th Legislature, Regular Session, 2005, addressed the selling of real estate under an executory contract commonly described as "contract for deed" sale. In an attempt to protect consumers from unscrupulous "contract for deed" sellers of real estate, this legislation restricted the use of "lease-option" contracts for the selling of real estate.

H.B. 3993 clarifies the legality of a "lease-option contract" in the sale of real estate and establishes regulations for such contracts to a protect tenant's rights in a lease-option contract.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3993 amends the Property Code to authorize a potential seller of property under an option contract who also has leased the property to the potential purchaser to enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under a lease-option contract only if the seller notifies the purchaser of the seller's intent to enforce a remedy under these provisions and the purchaser's right to cure the default within the specified 30-day period and the purchaser fails to cure the default within that period. The bill establishes requirements for the information included in the notice and for delivery of the notice. The bill provides that the affidavit of a person knowledgeable of the facts indicating that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired and requires a bona fide subsequent purchaser for value who relies on the affidavit to take title free and clear of the contract. The bill defines "lease-option contract" as one or more contracts that together provide an option to purchase residential property to the purchaser who is also authorized to occupy the property under a lease as a tenant.

H.B. 3993 makes its provisions applicable only to a lease-option contract for real property used or to be used as the purchaser's principal residence or as the principal residence of a person related to the purchaser within the second degree by consanguinity or affinity. The bill makes its provisions inapplicable to the sale of state land, a sale of land by the Veterans' Land Board, this state or a political subdivision of the state, or an instrumentality, public corporation, or other entity created to act on behalf of the state or a political subdivision of the state, including a public facility corporation, housing authority, or housing finance corporation, and to a transaction involving a lease-option contract if the purchaser of the property is related to the seller of the property within the second degree by consanguinity or affinity and has waived the provisions of the bill in a written agreement.

H.B. 3993 authorizes a purchaser in default under a lease-option contract to avoid the forfeiture of the option fee or the enforcement of a remedy of rescission or of forfeiture and acceleration by

complying with the terms of the contract on or before the 30th day after the date notice is given or the date indicated in the notice, whichever is later. The bill requires the seller, if the negotiations that precede the execution of a lease-option contract are conducted primarily in a language other than English, to provide a copy in that language of all written documents relating to the transaction, including the contract, disclosure notices, annual accounting statements, and a notice of default.

H.B. 3993 requires the seller to provide the purchaser with certain survey information relating to the property and a written notice informing the purchaser of the condition of the property. The bill requires the seller, if the property is not located in a recorded subdivision, to provide a separate disclosure relating to the availability of utilities to the property and requires any advertisement for a lease-option property to disclose information regarding the availability of water, sewer, and electric service. The bill requires the seller to disclose to the purchaser certain information relating to recorded liens filed against the property, the appraised value of the property, a tax certificate from the collector for each taxing unit that collects taxes due on the property, and evidence of insurance coverage relating to the property. The bill sets out requirements relating to the enforceability of a written lease-option contract and the prohibition of oral agreements and requires the seller to include in a separate document or in a provision of the contract a statement acknowledging that prohibition. The bill establishes that a seller's failure to provide any information required in these provisions is a false, misleading, or deceptive act or practice that is actionable in a public or private suit brought under provisions of the Deceptive Trade Practices-Consumer Protection Act and entitles the purchaser to cancel and rescind the contract and receive a full refund of all payments made to the seller. The bill specifies that these provisions do not limit the purchaser's remedy against the seller for other deceptive practices. The bill specifies that a disclosure required by its provisions that is made by a seller's agent is a disclosure made by the seller.

H.B. 3993 prohibits a seller from including as a term of the contract certain provisions on: a late payment, a penalty, charge, or fee for early payoff; adverse actions for requests for repairs or the exercise of other tenant rights, or a purchase price that exceed the appraised value by a certain amount. The bill establishes that a contract provision that purports to waive a right or exempt a party from a liability or duty under the bill's provisions is void. The bill makes a landlord who knowingly violates the bill's provisions liable to the purchaser for actual damages, a civil penalty, and reasonable attorney's fees, as well as any other remedy provided by law. The bill specifies that such a violation is actionable regardless of whether a purchaser pays the improper penalty, charge, or fee and requires a lease-option contract to include each provision of the subchapter of law added by the bill unless the seller provides the purchaser a copy of the subchapter of law added by the bill at the execution of the contract.

H.B. 3993 establishes a purchaser's right to cancel or rescind a lease-option contract and sets out requirements for the seller's return to the purchaser of the executed contract and any property exchanged or payments made by the purchaser under the contract and the cancellation of any security interest arising out of the contract. The bill establishes requirements for the seller's recording of a lease-option contract and, if the contract is terminated for any reason, the recording of the instrument that terminates the contract. The bill requires a seller to provide a purchaser with an annual statement in January of each year for the term of the lease-option contract containing certain information relating to payments and insurance and makes a seller who fails to provide the statement in the specified period liable to the purchaser for actual damages, a civil penalty, and court costs and reasonable attorney's fees. The bill specifies that a purchaser is not required to demonstrate actual harm to be entitled to recover under this provision. The bill provides for the disposition of insurance proceeds relating to property subject to a lease-option contract, the transfer of the property's title from the seller to the purchaser, and the purchaser's right to cancel or rescind a contract because of improper platting and to deduct the amount owed to the purchaser by the seller under the terms of the contract.

H.B. 3993 authorizes a potential seller to enter into a lease-option contract with a potential purchaser only if the seller maintains the property free from liens, with certain exceptions, and requires a seller or the seller's heirs or assigns to maintain title to the property covered by the contract free from any liens against the property covered by the contract for the entire duration of the contract, with certain exceptions. The bill requires a seller to provide to the purchaser at the seller's sole expense at the time the contract is executed a current title policy for the leasehold estate and to file a memorandum of the contract for record in the official real property records of the county in which the property is located. The bill establishes that a violation of a provision relating to title maintenance is a deceptive practice and is actionable in a public or private suit and in addition to other rights or remedies provided by law, entitles the purchaser to cancel and rescind the lease-option contract and receive from the seller the return of all payments of any kind made to the seller by the purchaser under the contract and reimbursement for the costs of any improvements made to the property by the purchaser. The bill exempts a seller from such liability if a lien is placed on the property by a person other than the seller and not later than the 30th day after the date the seller receives notice of the lien, the seller has the lien removed from the property.

H.B. 3993 establishes that its provisions do not affect the rights or remedies provided by other law, except that a seller in a lease-option transaction may not lock out or terminate the utility service of a purchaser except for bona fide repairs or construction in an emergency, or may not seize personal property unless the purchaser has abandoned the premises. The bill makes a seller who violates these prohibitions, in addition to any other remedy available by law, liable to the purchaser for actual damages, a civil penalty, and court costs and reasonable attorney's fees. The bill entitles a purchaser to injunctive relief and a writ of re-entry, if applicable, to remedy such a violation. The bill defines "default," "purchaser," and "seller."

H.B. 3993 repeals Sections 5.062(e), (f), and (g), Property Code, relating to the applicability of certain provisions to an executory contract for conveyance of real property, and it makes a conforming change.

EFFECTIVE DATE

September 1, 2009.