

By: Dutton

H.B. No. 3993

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) 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].~~

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) "Default" means:

(A) the failure to make a timely payment under a

1 lease-option contract; or

2 (B) a material breach of a term of the
3 lease-option contract.

4 (2) "Lease-option contract" means one or more
5 contracts that together provide an option to purchase residential
6 property to the purchaser who is also authorized to occupy the
7 property under a lease.

8 (3) "Purchaser" means a potential purchaser of
9 property under an option contract who is also authorized in a lease
10 agreement to occupy the property as a tenant.

11 (4) "Seller" means a potential seller of property
12 under an option contract who has also leased the property to the
13 purchaser.

14 Sec. 5.202. APPLICABILITY. (a) Unless otherwise excluded,
15 this subchapter applies only to a lease-option contract for real
16 property used or to be used as the purchaser's principal residence
17 or as the principal residence of a person related to the purchaser
18 within the second degree by consanguinity or affinity, as
19 determined under Chapter 573, Government Code.

20 (b) This subchapter does not apply to the following
21 transactions:

22 (1) the sale of state land;

23 (2) a sale of land by:

24 (A) the Veterans' Land Board;

25 (B) this state or a political subdivision of this
26 state; or

27 (C) an instrumentality, public corporation, or

1 other entity created to act on behalf of this state or a political
2 subdivision of this state, including an entity created under
3 Chapter 303, 392, or 394, Local Government Code; or

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

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

9 (B) has waived the applicability of this
10 subchapter in a written agreement.

11 Sec. 5.203. CONSTRUCTION WITH OTHER LAW. (a) Except as
12 provided by Subsection (b), the provisions of this subchapter do
13 not affect the rights or remedies provided by other law, including
14 Chapters 91 and 92.

15 (b) A seller may not:

16 (1) lock out or terminate the utility service of a
17 purchaser except:

18 (A) for bona fide repairs or construction; or

19 (B) in an emergency; or

20 (2) seize personal property unless the purchaser has
21 abandoned the premises.

22 (c) In addition to any other remedy available by law, a
23 seller who violates Subsection (b) is liable to the purchaser for:

24 (1) actual damages;

25 (2) a civil penalty of one month's rent plus \$1,000;

26 and

27 (3) court costs and reasonable attorney's fees.

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

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

14 (1) the seller notifies the purchaser of:

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

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

19 (2) the purchaser fails to cure the default within the
20 30-day period described by Section 5.206.

21 Sec. 5.206. RIGHT TO CURE DEFAULT. A purchaser in default
22 under a lease-option contract may avoid the forfeiture of the
23 option fee or the enforcement of a remedy described by Section 5.205
24 by complying with the terms of the contract on or before the 30th
25 day after the date notice is given under that section or the date
26 indicated in the notice, whichever is later.

27 Sec. 5.207. FOREIGN LANGUAGE REQUIREMENT. If the

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

7 Sec. 5.208. SELLER'S DISCLOSURE OF PROPERTY

8 CONDITION. (a) Not later than the fifth day before a lease-option
9 contract is signed by the purchaser, the seller shall provide the
10 purchaser with:

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

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

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

21 WARNING

22 IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE
23 TO LIVE ON THE PROPERTY OR BE ABLE TO OBTAIN CLEAR TITLE TO THE
24 PROPERTY.

25 SELLER'S DISCLOSURE NOTICE

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

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

3 CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

4 _____ The property is in a recorded subdivision.

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

6 _____ The property has sewer service.

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

9 _____ The property has electric service.

10 _____ The property is not in a floodplain.

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

13 _____ the seller;

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

15 _____ the municipality;

16 _____ the county; or

17 _____ the state.

18 _____ No individual or entity other than the seller:

19 (1) owns the property;

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

21 (3) has an interest in the property.

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

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

26 NOTICE: SELLER ADVISES PURCHASER TO:

27 (1) OBTAIN A TITLE ABSTRACT OR

1 TITLE COMMITMENT COVERING THE PROPERTY AND
2 HAVE THE ABSTRACT OR COMMITMENT REVIEWED BY
3 AN ATTORNEY BEFORE SIGNING A CONTRACT OF
4 THIS TYPE; AND

5 (2) PURCHASE AN OWNER'S POLICY
6 OF TITLE INSURANCE COVERING THE PROPERTY.

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

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

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

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

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

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

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

27 (e) Subsection (d) does not limit the purchaser's remedy

1 against the seller for other false, misleading, or deceptive acts
2 or practices actionable in a suit brought under Subchapter E,
3 Chapter 17, Business & Commerce Code.

4 Sec. 5.209. SELLER'S DISCLOSURE OF LIENS, APPRAISED VALUE,
5 TAX PAYMENTS, AND INSURANCE COVERAGE. (a) Not later than the
6 fifth day before a lease-option contract is signed by the
7 purchaser, the seller shall provide the purchaser with:

8 (1) a statement disclosing each recorded lien that is
9 filed against the property including:

10 (A) the name and address of the lienholder;

11 (B) the amount of the lien;

12 (C) the payments required to be made on the debt
13 secured by the lien;

14 (D) the name of the account holder; and

15 (E) whether or not the lienholder has consented
16 to the purchaser's ownership of the property;

17 (2) a statement disclosing the appraised value of the
18 property according to the last valuation of the tax appraisal
19 district with a copy of the last appraisal performed on the property
20 attached;

21 (3) a tax certificate from the collector for each
22 taxing unit that collects taxes due on the property as provided by
23 Section 31.08, Tax Code; and

24 (4) a legible copy of any insurance policy, binder, or
25 other evidence of coverage relating to the property that indicates:

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

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

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

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

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

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

11 (c) Subsection (b) does not limit the purchaser's remedy
12 against the seller for other false, misleading, or deceptive acts
13 or practices actionable in a suit brought under Subchapter E,
14 Chapter 17, Business & Commerce Code.

15 Sec. 5.210. ORAL AGREEMENTS PROHIBITED. (a) A
16 lease-option contract is not enforceable unless the contract is in
17 writing and signed by the party to be bound or by that party's
18 authorized representative.

19 (b) The rights and obligations of the parties to a contract
20 are determined solely from the written contract, and any prior oral
21 agreements between the parties are superseded by and merged into
22 the contract.

23 (c) A lease-option contract may not be varied by any oral
24 agreements or discussions that occur before or contemporaneously
25 with the execution of the contract.

26 (d) The seller shall include in a separate document or in a
27 provision of the contract a statement printed in 14-point boldfaced

1 type or 14-point uppercase typewritten letters that reads
2 substantially similar to the following:

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

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

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

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

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

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

21 (f) Subsection (e) does not limit the purchaser's remedy
22 against the seller for other false, misleading, or deceptive acts
23 or practices actionable in a suit brought under Subchapter E,
24 Chapter 17, Business & Commerce Code.

25 Sec. 5.211. CONTRACT TERMS, CERTAIN WAIVERS
26 PROHIBITED. (a) A seller may not include as a term of the
27 lease-option contract a provision that:

1 (1) imposes a late-payment fee that exceeds eight
2 percent of the monthly payment under the contract;

3 (2) imposes a penalty, charge, or fee if the purchaser
4 elects to pay the entire amount due under the contract before the
5 scheduled payment date under the contract;

6 (3) terminates the lease-option contract or forfeits
7 the option payment for a late payment;

8 (4) increases the purchase price, imposes a penalty,
9 charge, or fee of any type, or otherwise penalizes the purchaser
10 leasing property for requesting repairs or exercising any other
11 right under Chapter 92;

12 (5) permits the option to purchase to be exercised
13 after the third anniversary of the execution of the lease-option
14 contract; or

15 (6) provides for a purchase price that exceeds the
16 appraised value of the property according to the last valuation of
17 the tax appraisal district by more than five percent for each year
18 of the lease-option contract.

19 (b) A provision of the lease-option contract that purports
20 to waive a right or exempt a party from a liability or duty under
21 this subchapter is void. In addition to any other remedy provided
22 by law, a landlord who knowingly violates this subsection by
23 contracting with a purchaser to waive a right of the purchaser or a
24 liability or duty by the seller under this subchapter is liable to
25 the purchaser for:

26 (1) actual damages;

27 (2) a civil penalty of one month's rent plus \$2,000;

1 and

2 (3) reasonable attorney's fees.

3 (c) A violation of this subchapter is actionable regardless
4 of whether a purchaser pays the improper penalty, charge, or fee.

5 (d) A lease-option contract must include each provision of
6 this subchapter unless the seller provides the purchaser a copy of
7 this subchapter at the execution of the lease-option contract.

8 Sec. 5.212. PURCHASER'S RIGHT TO CANCEL CONTRACT WITHOUT
9 CAUSE. (a) In addition to other rights or remedies provided by
10 law, the purchaser may cancel and rescind a lease-option contract
11 for any reason by sending by regular or certified mail, return
12 receipt requested, or by delivering in person a signed, written
13 notice of cancellation to the seller not later than the 14th day
14 after the date of the contract or the date the option fee is
15 tendered, whichever is later.

16 (b) If the purchaser cancels the contract as provided by
17 Subsection (a), the seller shall, not later than the 10th day after
18 the date the seller receives the purchaser's notice of
19 cancellation:

20 (1) return to the purchaser the executed contract and
21 any property exchanged or payments made by the purchaser under the
22 contract; and

23 (2) cancel any security interest arising out of the
24 contract.

25 (c) The seller shall include in immediate proximity to the
26 space reserved in the lease-option contract for the purchaser's
27 signature a statement printed in 14-point boldfaced type or

1 14-point uppercase typewritten letters that reads substantially
2 similar to the following:

3 YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE
4 NEXT TWO WEEKS OR THE TWO WEEKS AFTER YOU PAY THE OPTION FEE,
5 WHICHEVER ENDS LATER. THE DEADLINE FOR CANCELING THE CONTRACT IS
6 (date) UNLESS YOU PAY THE OPTION FEE AFTER THE DATE ON WHICH THIS
7 CONTRACT IS ENTERED INTO, IN WHICH CASE THE DEADLINE FOR
8 CANCELLATION IS THE 14TH DAY AFTER THE DATE THAT PAYMENT IS MADE.

9 THE ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.

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

15 (date of contract)

16 NOTICE OF CANCELLATION

17 YOU MAY CANCEL THE LEASE-OPTION CONTRACT FOR ANY REASON
18 WITHOUT ANY PENALTY OR OBLIGATION BY (date) UNLESS YOU PAY THE
19 OPTION FEE AFTER THE DATE ON WHICH THIS CONTRACT IS ENTERED INTO, IN
20 WHICH CASE THE DEADLINE FOR CANCELLATION IS THE 14TH DAY AFTER THE
21 DATE THAT PAYMENT IS MADE.

22 (1) YOU MUST SEND BY REGULAR OR CERTIFIED MAIL, RETURN
23 RECEIPT REQUESTED, OR DELIVER IN PERSON A SIGNED AND DATED COPY OF
24 THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO (Name of
25 Seller) AT (Seller's Address) BY (date) UNLESS YOU PAY THE OPTION
26 FEE AFTER THE DATE ON WHICH YOU ENTERED INTO THE LEASE-OPTION
27 CONTRACT, IN WHICH CASE THE LAST DAY TO SEND OR DELIVER NOTICE IS

1 THE 14TH DAY AFTER THE DATE THAT PAYMENT IS MADE.

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

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

6 (B) CANCEL ANY SECURITY INTEREST ARISING OUT OF
7 THE CONTRACT.

8 I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

9 _____
10 (Date) (Purchaser's Signature)

11 I HEREBY CANCEL THIS CONTRACT.

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

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

17 Sec. 5.213. RECORDING REQUIREMENTS. (a) Except as
18 provided by Subsection (b), the seller shall record the
19 lease-option contract, including the attached disclosure statement
20 required by Section 5.208, as prescribed by Title 3 on or before the
21 30th day after the date the contract is executed.

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

24 (c) If the lease-option contract is terminated for any
25 reason, the seller shall record the instrument that terminates the
26 contract.

27 (d) The county clerk shall collect the filing fee prescribed

1 by Section 118.011, Local Government Code.

2 Sec. 5.214. ANNUAL ACCOUNTING STATEMENT. (a) The seller
3 shall provide the purchaser with an annual statement in January of
4 each year for the term of the lease-option contract. If the seller
5 mails the statement to the purchaser, the statement must be
6 postmarked not later than January 31.

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

8 (1) the amount paid under the contract;

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

10 (3) the number of payments remaining under the
11 contract;

12 (4) the amounts paid to taxing authorities on the
13 purchaser's behalf if collected by the seller and any amount owing
14 to the taxing authorities;

15 (5) the amounts paid to insure the property if
16 collected by the seller;

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

20 (7) if the seller has changed insurance coverage, a
21 legible copy of the current policy, binder, or other evidence that
22 satisfies the requirements of Section 5.209(a)(4).

23 (c) A seller who violates this section is liable to the
24 purchaser for:

25 (1) actual damages;

26 (2) a civil penalty in the amount of \$50 for each day
27 the seller fails to provide the purchaser the complete statement as

1 required under Subsection (a);

2 (3) an additional civil penalty in the amount of \$25
3 for each day after the 60th day after the date on which the
4 provision of the statement as required under Subsection (a) becomes
5 overdue; and

6 (4) court costs and reasonable attorney's fees.

7 (d) A purchaser is not required to demonstrate actual harm
8 to be entitled to recover under this section.

9 Sec. 5.215. DISPOSITION OF INSURANCE PROCEEDS. (a) The
10 named insured under an insurance policy, binder, or other coverage
11 relating to property subject to a lease-option contract shall
12 inform the insurer, not later than the 10th day after the date the
13 coverage is obtained or the contract executed, whichever is later,
14 of:

15 (1) the lease-option contract for conveyance and the
16 term of the contract; and

17 (2) the name and address of the other party to the
18 contract.

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

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

27 (d) The failure of a seller or purchaser to comply with

1 Subsection (c) is a false, misleading, or deceptive act or practice
2 within the meaning of Section 17.46, Business & Commerce Code, and
3 is actionable in a public or private suit brought under Subchapter
4 E, Chapter 17, Business & Commerce Code.

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

9 Sec. 5.216. TITLE TRANSFER. (a) The seller shall transfer
10 recorded, legal title of the property covered by the lease-option
11 contract to the purchaser on receiving the purchaser's final
12 payment due under the contract. The title transferred may be
13 subject only to a lien described by Section 5.220.

14 (b) In addition to any other remedy provided by law, a
15 seller who violates Subsection (a) is liable to the purchaser for:

16 (1) a civil penalty of:

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

21 (B) \$500 a day for each day the seller fails to
22 transfer title to the purchaser after the 90th day after the date
23 the seller receives the purchaser's final payment due under the
24 contract; and

25 (2) court costs and reasonable attorney's fees.

26 (c) If a person to whom a seller's property interest passes
27 by will or intestate succession is required to obtain a court order

1 to clarify the person's status as an heir or to clarify the status
2 of the seller or the property before the person may convey good and
3 indefeasible title to the property, the court in which the action is
4 pending may waive payment of the liquidated damages and attorney's
5 fees under Subsection (b) if the court finds that the person is
6 pursuing the action to establish good and indefeasible title with
7 reasonable diligence.

8 (d) In this section, "seller" includes a successor,
9 assignee, personal representative, executor, or administrator of
10 the seller.

11 Sec. 5.217. LIABILITY FOR DISCLOSURES. For purposes of
12 this subchapter, a disclosure required by this subchapter that is
13 made by a seller's agent is a disclosure made by the seller.

14 Sec. 5.218. RIGHT TO CANCEL CONTRACT FOR IMPROPER
15 PLATTING. (a) Except as provided by Subsection (c), in addition to
16 other rights or remedies provided by law, the purchaser may cancel
17 and rescind a lease-option contract at any time if the purchaser
18 learns that the seller has not properly subdivided or platted the
19 property that is covered by the contract in accordance with state
20 and local law. A purchaser canceling and rescinding a contract
21 under this subsection must:

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

24 (2) send a signed, written notice of the cancellation
25 and rescission to the seller by regular or certified mail, return
26 receipt requested.

27 (b) If the purchaser cancels the contract as provided under

1 Subsection (a), the seller, not later than the 30th day after the
2 date the seller receives the notice of cancellation and rescission,
3 shall:

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

8 (2) return to the purchaser all payments of any kind
9 made to the seller under the contract, including reimbursement to
10 the purchaser for any payments the purchaser made to a taxing
11 authority for the property and the value of any improvements made to
12 the property by the purchaser, minus the fair market rental value of
13 the property during the term of the purchaser's occupancy.

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 regular and
20 certified mail, return receipt requested, to the purchaser a
21 signed, written notice providing evidence that the property has
22 been subdivided or platted in accordance with state and local law.

23 (d) The seller may not terminate the purchaser's possession
24 of the property covered by the contract being canceled and
25 rescinded before the seller properly plats or subdivides the
26 property and pays the purchaser any money to which the purchaser is
27 entitled under Subsection (b).

1 Sec. 5.219. RIGHT TO DEDUCT. (a) Except as provided by
2 Subsection (b), if a seller is liable to a purchaser under this
3 subchapter, the purchaser, without taking judicial action, may
4 deduct the amount owed to the purchaser by the seller from any
5 amounts owed to the seller by the purchaser under the terms of a
6 lease-option contract.

7 (b) A purchaser may not make a deduction under this section
8 unless, before making the deduction, the purchaser:

9 (1) notifies the seller in writing of the amount for
10 which the seller is liable and specifies the date after which the
11 purchaser will make a deduction under this section if the seller
12 does not pay the specified amount; and

13 (2) if the deduction is for an expenditure made by the
14 purchaser in connection with the property, provides the seller with
15 adequate documentation of the amount and purpose of the
16 expenditure.

17 (c) The seller may recover from the purchaser any improper
18 reduction plus court costs and attorney's fees by taking judicial
19 action.

20 Sec. 5.220. MAINTENANCE OF TITLE. (a) A potential seller
21 may enter into a lease-option contract with a potential purchaser
22 only if the seller maintains the property free from any liens other
23 than liens described by this section.

24 (b) Except as provided by this section, a seller, or the
25 seller's heirs or assigns, must maintain title to the property
26 covered by the lease-option contract free from any liens against
27 the property covered by the lease-option contract for the entire

1 duration of the contract. This subsection does not apply to a lien
2 placed on the property that is:

3 (1) placed on the property because of the conduct of
4 the purchaser; or

5 (2) described in a title commitment for the leasehold
6 estate provided by the seller to the purchaser under Subsection (c)
7 before the lease-option contract is executed that:

8 (A) is placed on the property by the seller
9 before the date the lease-option contract is executed in exchange
10 for a loan that is secured only by the property that is the subject
11 of the lease-option contract;

12 (B) is attached only to the property sold to the
13 purchaser under the contract; and

14 (C) secures in its aggregate with all liens or
15 other indebtedness an amount that at no time is or will be greater
16 than the amount of the total outstanding balance owed by the
17 purchaser under the lease-option contract.

18 (c) The seller must:

19 (1) provide to the purchaser at the seller's sole
20 expense at the time the lease-option contract is executed a current
21 title policy for the leasehold estate; and

22 (2) file a memorandum of the lease-option contract for
23 record in the official real property records of the county in which
24 the property is located.

25 (d) A violation of this section:

26 (1) is a false, misleading, or deceptive act or
27 practice within the meaning of Section 17.46, Business & Commerce

1 Code, and is actionable in a public or private suit brought under
2 Subchapter E, Chapter 17, Business & Commerce Code; and

3 (2) in addition to other rights or remedies provided
4 by law, entitles the purchaser to cancel and rescind the
5 lease-option contract and receive from the seller:

6 (A) the return of all payments of any kind made to
7 the seller by the purchaser under the contract; and

8 (B) reimbursement for the costs of any
9 improvements made to the property by the purchaser.

10 (e) A seller is not liable under this section if:

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

13 (2) not later than the 30th day after the date the
14 seller receives notice of the lien, the seller:

15 (A) takes all steps necessary to remove the lien;
16 and

17 (B) has the lien removed from the property.

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

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

25 SECTION 5. This Act takes effect September 1, 2009.