

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, ~~and~~

~~[(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

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

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

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

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

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

(b) A seller may not:

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

(A) for bona fide repairs or construction; or

(B) in an emergency; or

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

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

(1) actual damages;

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

and

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

(d) To remedy a violation under this section, a purchaser is entitled to injunctive relief and a writ of reentry under Section 92.009, if applicable.

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

## NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY  
YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE  
BY (date) THE SELLER HAS THE RIGHT TO TERMINATE YOUR LEASE-OPTION  
CONTRACT AND TAKE POSSESSION OF THE PROPERTY.

(b) The notice must also:

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

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

(A) the delinquent amount;

(B) any additional charges claimed, including  
late charges; and

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

(3) if the purchaser has failed to comply with a term of the contract, identify the term violated and the action required to cure the violation.

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

negotiations that precede the execution of a lease-option contract are conducted primarily in a language other than English, the seller shall 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 required by this subchapter.

Sec. 5.208. SELLER'S DISCLOSURE OF PROPERTY CONDITION. (a) Not later than the fifth day before a lease-option contract is signed by the purchaser, the seller shall provide the purchaser with:

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

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

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

WARNING

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

SELLER'S DISCLOSURE NOTICE

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

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

CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

\_\_\_\_\_ The property is in a recorded subdivision.

\_\_\_\_\_ The property has water service that provides potable water.

\_\_\_\_\_ The property has sewer service.

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

\_\_\_\_\_ The property has electric service.

\_\_\_\_\_ The property is not in a floodplain.

\_\_\_\_\_ The roads to the boundaries of the property are paved and  
maintained by:

\_\_\_\_\_ the seller;

\_\_\_\_\_ the owner of the property on which the road exists;

\_\_\_\_\_ the municipality;

\_\_\_\_\_ the county; or

\_\_\_\_\_ the state.

\_\_\_\_\_ No individual or entity other than the seller:

(1) owns the property;

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

(3) has an interest in the property.

\_\_\_\_\_ No individual or entity has a lien filed against the property.

\_\_\_\_\_ There are no restrictive covenants, easements, or other title  
exceptions or encumbrances that prohibit construction of a house on  
the property.

NOTICE: SELLER ADVISES PURCHASER TO:

(1) OBTAIN A TITLE ABSTRACT OR

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

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

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(Date) (Signature of Seller)

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(Date) (Signature of Purchaser)

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

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

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

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

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

(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

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

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

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(Date) (Signature of Seller)

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(Date) (Signature of Purchaser)

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

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

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

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

Sec. 5.211. CONTRACT TERMS, CERTAIN WAIVERS  
PROHIBITED. (a) A seller may not include as a term of the  
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

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

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

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

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

I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

\_\_\_\_\_  
(Date) (Purchaser's Signature)

I HEREBY CANCEL THIS CONTRACT.

\_\_\_\_\_  
(Date) (Purchaser's Signature)

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

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

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

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

(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

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

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

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

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

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

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

(c) The seller must:

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

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

(d) A violation of this section:

(1) is a false, misleading, or deceptive act or 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.