

BILL ANALYSIS

H.B. 2091
By: Canales
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that executory contracts for the sale of residential property have long been disfavored because they are poorly understood by consumers and are potentially abusive transactions under which legal title to homestead property may be withheld until many years after the buyer has built a home and made other expensive improvements. Interested parties note that, even with recent legislative efforts to discourage the use of these instruments, serious problems arising from their use, including eviction of purchasers whose contractual rights have not been legally terminated, persist. Parties also contend that there remain significant misunderstandings among sellers, buyers, and even judges and attorneys about the nature of executory contracts and about the rights and obligations of the various parties to such instruments. H.B. 2091 seeks to end the use of these instruments by revising the applicable law relating to an executory contract for the conveyance of real property.

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. 2091 amends the Property Code to add as an additional limitation on a seller's authority to enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract of conveyance of real property that the contract has not been recorded.

H.B. 2091 grants the seller the power to sell, through a trustee designated by the seller, the purchaser's interest in the property if the purchaser defaults and, regardless of the amount the purchaser has paid, the executory contract has been recorded. The bill, in a provision prohibiting the seller from enforcing the remedy of rescission or of forfeiture and acceleration, limits the prohibition's applicability to after the contract has been recorded.

H.B. 2091 makes a seller who violates the executory contract recording requirements liable to the purchaser in the same manner and for the same amount as a seller who violates statutory provisions requiring the transfer of recorded, legal title of property covered by the executory contract is liable to a purchaser, except that the damages are limited to the greater of the value of the property or the amount paid under the contract. The bill authorizes an action to recover such damages to be brought as an action for declaratory judgment under the Uniform Declaratory Judgments Act. The bill specifies that these provisions do not limit or affect any other rights or remedies a purchaser has under other law.

H.B. 2091 specifies that, on recording, an executory contract conveys legal title to the purchaser, subject to a lien retained by the seller for the amount of the unpaid contract price less any lawful deductions. The bill authorizes extrinsic evidence to be used to supply the legal description of the property if that information is not apparent from the contract.

H.B. 2091, in a provision entitling a purchaser to convert the purchaser's interest in property under an executory contract into recorded, legal title, specifies that the purchaser is so entitled regardless of whether the seller has recorded the executory contract. The bill specifies that statutory provisions relating to such an entitlement may not be construed to limit the purchaser's equitable interest in the property established by other law, if any, or any other rights of the purchaser under statutory provisions governing an executory contract for conveyance.

H.B. 2091 repeals a provision relating to a seller's authority to enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness under certain conditions.

H.B. 2091 repeals Section 5.066(g), Property Code.

EFFECTIVE DATE

September 1, 2013.