

By: Canales

H.B. No. 311

A BILL TO BE ENTITLED

AN ACT

relating to an executory contract for the conveyance of real property; providing a penalty.

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

SECTION 1. Section 5.064, Property Code, is amended to read as follows:

Sec. 5.064. SELLER'S REMEDIES ON DEFAULT. A seller may enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property only if:

(1) the seller notifies the purchaser of:

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

(B) the purchaser's right to cure the default within the 30-day period described by Section 5.065;

(2) the purchaser fails to cure the default within the 30-day period described by Section 5.065; ~~and~~

(3) Section 5.066 does not apply; and

(4) the contract has not been recorded.

SECTION 2. Section 5.066(a), Property Code, is amended to read as follows:

(a) If a purchaser defaults after the purchaser has paid 40 percent or more of the amount due or the equivalent of 48 monthly payments under the executory contract or, regardless of the amount

1 the purchaser has paid, the executory contract has been recorded,
2 the seller is granted the power to sell, through a trustee
3 designated by the seller, the purchaser's interest in the property
4 as provided by this section. The seller may not enforce the remedy
5 of rescission or of forfeiture and acceleration after the contract
6 has been recorded.

7 SECTION 3. Section 5.076, Property Code, is amended by
8 adding Subsection (e) to read as follows:

9 (e) A seller who violates this section is liable to the
10 purchaser in the same manner and for the same amount as a seller who
11 violates Section 5.079 is liable to a purchaser, except the damages
12 may not exceed the greater of the value of the property or the
13 amount paid under the contract. An action to recover damages under
14 this section may be brought as an action for declaratory judgment
15 under Chapter 37, Civil Practice and Remedies Code. This subsection
16 does not limit or affect any other rights or remedies a purchaser
17 has under other law.

18 SECTION 4. Subchapter D, Chapter 5, Property Code, is
19 amended by adding Section 5.0765 to read as follows:

20 Sec. 5.0765. ENCUMBERED TITLE TRANSFERRED ON RECORDING.

21 (a) Notwithstanding any other law, on recording, an executory
22 contract conveys legal title to the purchaser, subject to a lien
23 retained by the seller for the amount of the unpaid contract price
24 less any lawful deductions.

25 (b) Extrinsic evidence may be used to supply the legal
26 description of the property if that information is not apparent
27 from the contract. The extrinsic evidence does not affect the

1 rights of a creditor or a subsequent purchaser who has paid valuable
2 consideration and who does not have notice of the executory
3 contract.

4 SECTION 5. Section 5.081, Property Code, is amended by
5 amending Subsection (a) and adding Subsection (h) to read as
6 follows:

7 (a) A purchaser, at any time and without paying penalties or
8 charges of any kind, is entitled to convert the purchaser's
9 interest in property under an executory contract into recorded,
10 legal title in accordance with this section, regardless of whether
11 the seller has recorded the executory contract.

12 (h) This section may not be construed to limit the
13 purchaser's equitable interest in the property established by other
14 law, if any, or any other rights of the purchaser under this
15 subchapter.

16 SECTION 6. Section 5.066(g), Property Code, is repealed.

17 SECTION 7. The changes in law made by this Act apply to an
18 executory contract entered into on or after the effective date of
19 this Act. An executory contract entered into before the effective
20 date of this Act is governed by the law in effect on the date the
21 contract was entered into, and that law is continued in effect for
22 that purpose.

23 SECTION 8. This Act takes effect September 1, 2015.