

House Bill 311
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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 the purchaser has paid, the executory contract has been recorded, the seller is granted the power to sell,

SENATE VERSION (IE)

SECTION 1. Section 5.062(e), Property Code, is amended to read as follows:

- (e) Sections 5.066, 5.067, 5.071, 5.075, 5.079, 5.081, and 5.082 do not apply to an executory contract described by Subsection (a)(2).

SECTION 2. 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 in the county in which the property is located.

SECTION 3. Same as House version.

CONFERENCE

House Bill 311
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

through a trustee designated by the seller, the purchaser's interest in the property as provided by this section. The seller may not enforce the remedy of rescission or of forfeiture and acceleration after the contract has been recorded.

No equivalent provision.

No equivalent provision.

No equivalent provision.

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

SENATE VERSION (IE)

SECTION 4. Section 5.070, Property Code, is amended by adding Subsection (d) to read as follows:
(d) If the executory contract is recorded, the seller is not required to continue insuring the property.

SECTION 5. The heading to Section 5.072, Property Code, is amended to read as follows:
Sec. 5.072. ORAL AGREEMENTS [~~PROHIBITED~~].

SECTION 6. Section 5.072, Property Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:
(a) Except as provided by Subsection (g), an [~~An~~] executory contract is not enforceable unless the contract is in writing and signed by the party to be bound or by that party's authorized representative.
(g) If the parties enter into an oral executory contract, the contract is enforceable if the purchaser occupies the property as a homestead, maintains or makes improvements to the property, and provides the seller with consideration. [FA1(1)]

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

CONFERENCE

House Bill 311
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

Sec. 5.0765. ENCUMBERED TITLE TRANSFERRED ON RECORDING. (a) Notwithstanding any other law, 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.

(b) Extrinsic evidence may be used to supply the legal description of the property if that information is not apparent from the contract. The extrinsic evidence does not affect the rights of a creditor or a subsequent purchaser who has paid valuable consideration and who does not have notice of the executory contract.

No equivalent provision.

SENATE VERSION (IE)

(e) A seller who violates this section is liable to the purchaser in the same manner and for the same amount as a seller who violates Section 5.079 is liable to a purchaser, except the damages may not exceed \$500 for each calendar year of noncompliance. This subsection does not limit or affect any other rights or remedies a purchaser has under other law.

No equivalent provision.

SECTION 8. Section 5.077, Property Code, is amended by adding Subsection (e) to read as follows:

(e) The requirements of this section continue to apply after a purchaser obtains title to the property by conversion or any

CONFERENCE

House Bill 311
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

other process.

No equivalent provision.

SECTION 9. Section 5.079(a), Property Code, is amended to read as follows:

(a) A recorded executory contract shall be the same as a deed with a vendor's lien. The vendor's lien is for the amount of the unpaid contract price, less any lawful deductions, and may be enforced by foreclosure sale under Section 5.066 or by judicial foreclosure. A general warranty is implied unless otherwise limited by the recorded executory contract. If an executory contract has not been recorded or converted under Section 5.081, the [The] seller shall transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract.

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

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

(h) This section 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 this subchapter.

SECTION 10. Section 5.081, Property Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

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

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

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

No equivalent provision.

House Bill 311
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

SENATE VERSION (IE)

SECTION 11. (a) The changes in law made by this Act to Sections 5.064 and 5.066, Property Code, apply only to a default that occurs on or after the effective date of this Act. A default that occurred before the effective date of this Act is governed by the law in effect on the date the default occurred, and that law is continued in effect for that purpose.

(b) Sections 5.072, 5.079, and 5.081, Property Code, as amended by this Act, apply to an executory contract entered into before, on, or after the effective date of this Act.

(c) The changes in law made by this Act to Sections 5.070 and 5.076, Property Code, apply to an executory contract entered into on or after the effective date of this Act. An executory contract entered into before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and that law is continued in effect for that purpose.

(d) The changes in law made by this Act to Section 5.077, Property Code, apply to an executory contract that is converted to transfer legal title on or after the effective date of this Act. An executory contract that is converted to transfer legal title before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and that law is continued in effect for that purpose.

SECTION 12. Same as House version.

CONFERENCE