

By: Ordaz, Hayes

H.B. No. 4063

A BILL TO BE ENTITLED

AN ACT

relating to the filing and release of record of a unilateral memorandum of contract concerning residential property.

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

SECTION 1. Chapter 12, Property Code, is amended by adding Section 12.020 to read as follows:

Sec. 12.020. FILING AND RELEASE OF UNILATERAL MEMORANDUM OF CONTRACT CONCERNING RESIDENTIAL PROPERTY. (a) In this section:

(1) "Residential property" means the real property and existing improvements for a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit structure used for residential purposes in which title to the individual units is transferred to the owners under a condominium system.

(2) "Unilateral memorandum of contract" means a written document that is signed only by a person who is not an owner of the residential property and asserts that the person has entered into a contract with an owner of residential property for the purchase of an interest in the property, for an option to purchase an interest in the property, for a right of first refusal or first offer to purchase an interest in the property, or for a right to match any offer to purchase an interest in the property. The term does not include a deed or a document granting a right of first refusal pursuant to a condominium declaration.

(b) A person who files for recording a unilateral memorandum

of contract concerning residential property shall:

(1) provide to the county clerk the person's mailing address and a certificate of mailing that substantially complies with Subsection (h) for recording with the unilateral memorandum of contract; and

(2) not later than the date the person files the memorandum with the county clerk, send a copy of the filed memorandum and a letter notifying the owner of the property of the filing of the memorandum by registered or certified mail, return receipt requested, to:

(A) the address of the property; and

(B) any mailing address shown for the owner on the filed memorandum, in the real property records for the property, or in the records of the relevant appraisal district with respect to the property.

(c) An owner of residential property who receives a letter described by Subsection (b) or otherwise has notice of a recorded unilateral memorandum of contract concerning the property may file for recording in the real property records of the county in which the property is located:

(1) an affidavit that substantially complies with Subsection (i); and

(2) a certificate of mailing that substantially complies with Subsection (j).

(d) An owner of residential property who files an affidavit under Subsection (c) shall send a copy of the filed affidavit and a letter notifying the person who filed the unilateral memorandum of

contract of the filing of the affidavit. The letter and the copy of the affidavit must be sent by registered or certified mail, return receipt requested, to:

(1) the address provided to the county clerk by the person who filed the memorandum; and

(2) the address of any other person referenced in the memorandum other than the property owner.

(e) Subject to Subsection (f) and except as provided by Subsection (g):

(1) an affidavit filed under Subsection (c) serves as a release of record of a contract, option, or right asserted to exist by the unilateral memorandum of contract referenced in the affidavit; and

(2) after the affidavit is recorded:

(A) the memorandum and any information derived or that could be derived from the memorandum does not:

(i) constitute constructive or actual notice of any contract, option, or right concerning the residential property that is asserted to exist by the memorandum;

(ii) create any duty of inquiry in a person with respect to the residential property described in the memorandum; or

(iii) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value;

(B) a contract, option, or right asserted to exist by the memorandum is not enforceable against a purchaser or lender described by Paragraph (A)(iii), regardless of whether the

1 purchaser or lender knew of the memorandum; and

2 (C) an interest in the residential property may
3 be transferred or encumbered free of all interests asserted in the
4 memorandum.

5 (f) If an owner of residential property has filed an
6 affidavit and certificate of mailing under Subsection (c) and a
7 contradicting affidavit is not filed under Subsection (g):

8 (1) a bona fide purchaser or a mortgagee for value or a
9 successor or assign of a bona fide purchaser or mortgagee for value
10 may rely conclusively on the affidavit filed by the owner under
11 Subsection (c) on and after the 45th day after the date the
12 certificate of mailing was recorded; and

13 (2) the sole remedy available in an action brought to
14 enforce a person's rights asserted under the unilateral memorandum
15 of contract referenced in the affidavit is money damages.

16 (g) An affidavit filed under Subsection (c) does not serve
17 as a release of record of a contract, option, or right asserted to
18 exist by a unilateral memorandum of contract filed for recording
19 under this section with respect to a purchaser or mortgagee of the
20 residential property that acquires the purchaser's or mortgagee's
21 interest from the owner if, not later than the 45th day after the
22 date a certificate of mailing was recorded under Subsection (c),
23 the person who filed the memorandum files for recording in the real
24 property records of the county in which the residential property is
25 located a contradicting affidavit asserting that:

26 (1) the affidavit or certificate of mailing filed by
27 the owner under Subsection (c) is untrue; or

(2) another reason exists as to why the memorandum serves as a valid notice of record of a contract for the purchase of an interest in residential property, for an option to purchase an interest in the property, for a right of first refusal or first offer to purchase an interest in the property, or for a right to match any offer to purchase an interest in the property.

(h) A certificate of mailing filed under Subsection (b) must
be in substantially the following form:

CERTIFICATE OF MAILING OF NOTICE OF FILED UNILATERAL MEMORANDUM OF
CONTRACT

Before me, the undersigned authority, on this day personally
appeared _____ ("Affiant(s)") (insert name(s) of Affiant(s))
who, being first duly sworn, upon oath state(s):

(1) My name is/Our names are _____ (insert
name(s) of Affiant(s)).

(2) On the _____ day of _____, 20____, Affiant(s) caused a Unilateral Memorandum of Contract asserting the existence of a contract for the purchase of an interest in residential property, for an option to purchase an interest in residential property, for a right of first refusal or first offer to purchase an interest in residential property, or for a right to match any offer for the purchase of an interest in residential property ("Property") to be recorded in _____ (refer to affidavit recording information) ("Memorandum").

(3) On the ____ day of _____, 20__, Affiant(s) sent a copy of the Memorandum and a letter notifying the owner of the residential property referenced in the Memorandum ("Property")

of the filing of the Memorandum, by registered or certified mail,
return receipt requested, to:

(A) the address of the Property; and

(B) any mailing address shown for the owner of
the Property on the Memorandum, in the real property records for the
Property, or in the records of the relevant appraisal district with
respect to the Property.

(4) Attached to this certificate are:

(A) a true and correct copy of the letter
described by Subdivision (3) of this certificate; and

(B) proof of mailing of the letter as described
by Subdivision (3) of this certificate.

Signed on the _____ day of _____, 20_____.

(Signature of Affiant(s))

State of _____

County of _____

SWORN TO AND SUBSCRIBED before me on the _____ day of
_____, 20_____.

My commission expires:

Notary Public, State of Texas

Notary's printed name:

(i) An affidavit filed under Subsection (c) must be in

substantially the following form:

AFFIDAVIT FOR RELEASE OF UNILATERAL MEMORANDUM OF CONTRACT

Before me, the undersigned authority, on this day personally
appeared _____ ("Affiant(s)") (insert name(s) of Affiant(s))
who, being first duly sworn, upon oath state(s):

(1) My name is/Our names are _____ (insert
name(s) of Affiant(s)). I/We own the following described
residential property ("Property"):

(describe the residential property)

(2) This affidavit is made for the purpose of
effecting a release of a contract for the purchase of an interest in
the Property, an option to purchase an interest in the Property, a
right of first refusal or first offer to purchase an interest in the
Property, or a right to match any offer to purchase an interest in
the Property under a contract asserted to exist by that unilateral
memorandum of contract recorded in _____ (refer to recording
information of unilateral memorandum of contract) ("Unilateral
Memorandum of Contract").

(3) The factual basis for this affidavit is:

(describe the relevant facts)

(4) This affidavit serves as a release of any contract
for the purchase of an interest in the Property, option to purchase
an interest in the Property, right of first refusal or first offer
to purchase an interest in the Property, or right to match any offer
to purchase an interest in the Property under the contract asserted
to exist by the Unilateral Memorandum of Contract in accordance
with Section 12.020, Property Code.

Signed on this _____ day of _____, _____.

(Signature of Affiant(s))

State of _____

County of _____

SWORN TO AND SUBSCRIBED before me on the _____ day of

_____, 20____.

My commission expires:

Notary Public, State of Texas

Notary's printed name:

(j) A certificate of mailing filed under Subsection (c) must
be in substantially the following form:

CERTIFICATE OF MAILING OF AFFIDAVIT FOR RELEASE OF UNILATERAL

MEMORANDUM OF CONTRACT

Before me, the undersigned authority, on this day personally
appeared _____ ("Affiant(s)") (insert name(s) of Affiant(s))
who, being first duly sworn, upon oath state(s):

(1) My name is/Our names are _____ (insert
name(s) of Affiant(s)).

(2) On the _____ day of _____, 20__, Affiant(s)
caused an Affidavit for Release of UNILATERAL MEMORANDUM OF
CONTRACT to be recorded in _____ (refer to affidavit recording
information) ("Affidavit").

Notary's printed name:

(k) If a unilateral memorandum of contract filed for recording on or after September 1, 2025, does not comply with Subsection (b):

(1) the memorandum and any information derived or that could be derived from the memorandum does not:

(A) constitute constructive or actual notice of any contract, option, or right concerning the residential property that is asserted to exist by the memorandum;

(B) create any duty of inquiry in a person with respect to the residential property described in the memorandum; or

(C) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value;

(2) a contract, option, or right asserted to exist by the memorandum is not enforceable against a purchaser or lender described by Subdivision (1)(C), regardless of whether the purchaser or lender knew of the memorandum;

(3) an interest in the residential property may be transferred or encumbered free of all interests asserted in the memorandum; and

(4) the sole remedy available in an action brought to enforce a person's rights asserted under the unilateral memorandum of contract referenced in the affidavit is money damages.

SECTION 2. This Act takes effect September 1, 2025.