

By: Ordaz

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 real property and asserts that the person has entered into a contract with an owner of real property for the option to purchase an interest in the property or for a right of first refusal or first 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

1 address and a certificate of mailing that substantially complies
2 with Subsection (h) for recording with the unilateral memorandum of
3 contract; and

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

9 (A) the address of the property; and

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

14 (c) An owner of residential property who receives a letter
15 described by Subsection (b) may file for recording in the real
16 property records of the county in which the property is located:

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

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

21 (d) An owner of residential property who files an affidavit
22 under Subsection (c) shall send a copy of the filed affidavit and a
23 letter notifying the person who filed the unilateral memorandum of
24 contract of the filing of the affidavit. The letter and the copy of
25 the affidavit must be sent by registered or certified mail, return
26 receipt requested, to:

27 (1) the address provided to the county clerk by the

1 person who filed the memorandum; and

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

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

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

9 (2) after the affidavit is recorded:

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

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

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

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

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

24 (C) an interest in the residential property may
25 be transferred or encumbered free of all interests asserted in the
26 memorandum.

27 (f) If an owner of residential property has filed an

affidavit and certificate of mailing under Subsection (c) and a
contradicting affidavit is not filed under Subsection (g):

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

(2) 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.

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

(1) the affidavit or certificate of mailing filed by
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 an option to
purchase an interest in the property or a right of first refusal or
first offer to purchase an interest in the property.

(h) A certificate of mailing filed under Subsection (b) must

1 be in substantially the following form:

2 CERTIFICATE OF MAILING OF NOTICE OF FILED UNILATERAL MEMORANDUM OF
3 CONTRACT

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

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

9 (2) On the ____ day of _____, 20__, Affiant(s)
10 caused a Unilateral Memorandum of Contract asserting an option to
11 purchase an interest in residential property or a right of first
12 refusal or first offer to purchase an interest in residential
13 property ("Property") to be recorded in _____ (refer to
14 affidavit recording information) ("Memorandum").

15 (3) On the ____ day of _____, 20__, Affiant(s)
16 sent a copy of the Memorandum and a letter notifying the owner of
17 the residential property referenced in the Memorandum ("Property")
18 of the filing of the Memorandum, by registered or certified mail,
19 return receipt requested, to:

20 (A) the address of the Property; and
21 (B) any mailing address shown for the owner of
22 the Property on the Memorandum, in the real property records for the
23 Property, or in the records of the relevant appraisal district with
24 respect to the Property.

25 (4) Attached to this certificate are:

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

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

3 Signed on the _____ day of _____, 20_____.

4 _____

5 _____

6 (Signature of Affiant(s))

7 State of _____

8 County of _____

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

11 My commission expires:

12 _____

13 _____
14 Notary Public, State of Texas

15 Notary's printed name:

16 _____
17 (i) An affidavit filed under Subsection (c) must be in
18 substantially the following form:

19 AFFIDAVIT FOR RELEASE OF UNILATERAL MEMORANDUM OF CONTRACT

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

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

26 (describe the residential property)

27 (2) This affidavit is made for the purpose of

1 effecting a release of an option to purchase an interest in the
2 Property or a right of first refusal or first offer to purchase an
3 interest in the Property under a contract asserted to exist by that
4 unilateral memorandum of contract recorded in _____ (refer to
5 recording information of unilateral memorandum of contract)
6 ("Unilateral Memorandum of Contract").

7 (3) The factual basis for this affidavit is:

8 (describe the relevant facts)

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

14 Signed on this _____ day of _____, _____.

15 _____

16 _____

17 (Signature of Affiant(s))

18 State of _____

19 County of _____

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

22 My commission expires:

23 _____

24 _____
25 Notary Public, State of Texas

26 Notary's printed name:

27 _____

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

3 CERTIFICATE OF MAILING OF AFFIDAVIT FOR RELEASE OF UNILATERAL

4 MEMORANDUM OF CONTRACT

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

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

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

14 (3) On the _____ day of _____, 20__, Affiant(s)
15 sent a copy of the Affidavit and a letter notifying the person who
16 filed the Unilateral Memorandum of Contract referenced in the
17 Affidavit ("Memorandum") of the Affiant's/Affiants' claim for the
18 filing and release of the Affidavit, by registered or certified
19 mail, return receipt requested, to:

20 (A) the address of the person who filed the
21 Memorandum, as provided to the county clerk; and

22 (B) the address of any other person referenced in
23 the Memorandum.

24 (4) Attached to this certificate are:

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

27 (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:

(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;

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

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

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

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