

Here is the bill as enrolled and will be going to the governor. Please note the 3 years in Section 2 of the bill.

H.B. No. 1823

AN ACT

relating to the rights of a purchaser under an executory contract for conveyance of real property.

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

SECTION 1. Section 212.0115(c), Local Government Code, is amended to read as follows:

(c) On the written request of an owner of land, a purchaser of real property under a contract for deed, executory contract, or other executory conveyance, an entity that provides utility service, or the governing body of the municipality, the municipal authority responsible for approving plats shall make the following determinations regarding the owner's land or the land in which the entity or governing body is interested that is located within the jurisdiction of the municipality:

(1) whether a plat is required under this subchapter for the land; and

(2) if a plat is required, whether it has been prepared and whether it has been reviewed and approved by the authority.

SECTION 2. Section 5.062, Property Code, is amended by amending Subsections (a) and (b) and adding Subsections (e), (f), and (g) to read as follows:

(a) This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence or as the residence of a person related to the purchaser within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code. For purposes of this subchapter, and only for the purposes of this subchapter:

(1) [,] a lot measuring one acre or less is presumed to be residential property; and

(2) an option to purchase real property that includes or is combined or executed concurrently with a residential lease agreement, together with the lease, is considered an executory contract for conveyance of real property.

(b) This subchapter does not apply to the following transactions under an executory contract:

(1) [a transaction involving] the sale of state land;
or

- (2) a sale of land by:
 - (A) the Veterans' Land Board;
 - (B) this state or a political subdivision of this state; or
 - (C) an instrumentality, public corporation, or other entity created to act on behalf of this state or a political subdivision of this state, including an entity created under Chapter 303, 392, or 394, Local Government Code [under an executory contract].

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

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(f) Notwithstanding any other provision of this subchapter, only the following sections apply to an executory contract described by Subsection (a)(2) if the term of the contract is three years or less and the purchaser and seller, or the purchaser's or seller's assignee, agent, or affiliate, have not been parties to an executory contract to purchase the property covered by the executory contract for longer than three years:

- (1) Sections 5.063-5.065;
- (2) Section 5.073, except for Section 5.073(a)(2); and
- (3) Sections 5.083 and 5.085.

(g) Except as provided by Subsection (b), if Subsection (f) conflicts with another provision of this subchapter, Subsection (f) prevails.

SECTION 3. Subchapter D, Chapter 5, Property Code, is amended by adding Section 5.0621 to read as follows:
 Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Except as provided by Subsection (b), the provisions of this subchapter and Chapter 92 apply to the portion of an executory contract described by Section 5.062(a)(2) that is a residential lease agreement.

(b) After a tenant exercises an option to purchase leased property under a residential lease described by Subsection (a), Chapter 92 no longer applies to the lease.

SECTION 4. Section 5.073, Property Code, is amended to read as follows:

Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED.

(a) A seller may not include as a term of the executory contract a provision that:

- (1) imposes an additional late-payment fee that exceeds the lesser of:
 - (A) eight percent of the monthly payment under the contract; or
 - (B) the actual administrative cost of processing the late payment;

(2) prohibits the purchaser from pledging the purchaser's interest in the property as security to obtain a loan to place improvements, including utility improvements or fire protection improvements, on the property; [or]

(3) imposes a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract;

(4) forfeits an option fee or other option payment paid under the contract for a late payment; or

Remove withholding Rent credit from option

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(5) increases the purchase price, imposes a fee or charge of any type, or otherwise penalizes a purchaser leasing property with an option to buy the property for requesting repairs or exercising any other right under Chapter 92.

(b) A provision of the executory contract that purports to waive a right or exempt a party from a liability or duty under this subchapter is void.

SECTION 5. Section 5.077, Property Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A seller who conducts less than two transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

- (1) liquidated damages in the amount of \$100 for each annual statement the seller fails to provide to the purchaser within the time required by Subsection (a); and
- (2) reasonable attorney's fees.

(d) A seller who conducts two or more transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

- (1) liquidated damages in the amount of \$250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement, but not to exceed the fair market value of the property; and
- (2) reasonable attorney's fees.

SECTION 6. Subchapter D, Chapter 5, Property Code, is amended by adding Sections 5.081 through 5.085 to read as follows:

ANA → Sec. 5.081. RIGHT TO CONVERT CONTRACT. (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.

(b) If the purchaser tenders to the seller an amount of money equal to the balance of the total amount owed by the purchaser to the seller under the executory contract, the seller shall transfer to the purchaser recorded, legal title of the property covered by the contract.

(c) Subject to Subsection (d), if the purchaser delivers to the seller of property covered by an executory contract a promissory note that is equal in amount to the balance of the total amount owed by the purchaser to the seller under the contract and that contains the same interest rate, due dates, and late fees as the contract:

- (1) the seller shall execute a deed containing any warranties required by the contract and conveying to the purchaser recorded, legal title of the property; and
- (2) the purchaser shall simultaneously execute a deed of trust that:

(A) contains the same terms as the contract regarding the purchaser's and seller's duties concerning the property;

(B) secures the purchaser's payment and performance under the promissory note and deed of trust; and

(C) conveys the property to the trustee, in trust, and confers on the trustee the power to sell the property if the purchaser defaults on the promissory note or the terms of the deed of trust.

(d) On or before the 10th day after the date the seller receives a promissory note under Subsection (c) that substantially complies with that subsection, the seller shall:

(1) deliver to the purchaser a written explanation that legally justifies why the seller refuses to convert the purchaser's interest into recorded, legal title under Subsection (c); or

(2) communicate with the purchaser to schedule a mutually agreeable day and time to execute the deed and deed of trust under Subsection (c).

(e) A seller who violates this section is liable to the purchaser in the same manner and amount as a seller who violates Section 5.079 is liable to a purchaser. This subsection does not limit or affect any other rights or remedies a purchaser has under other law.

(f) On the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract:

(1) is considered completed; and

(2) has no further effect.

(g) The appropriate use of forms published by the Texas Real Estate Commission for transactions described by this section constitutes compliance with this section.

ADVA → Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE. (a) A purchaser under an executory contract, on written request, is entitled to receive the following information from the seller:

(1) as of the date of the request or another date specified by the purchaser, the amount owed by the purchaser under the contract; and

(2) if applicable, the name and address of the seller's desired trustee for a deed of trust to be executed under Section 5.081.

(b) On or before the 10th day after the date the seller receives from the purchaser a written request for information described by Subsection (a), the seller shall provide to the purchaser a written statement of the requested information.

(c) If the seller does not timely respond to a request made under this section, the purchaser may:

(1) determine or pay the amount owed under the contract, including determining the amount necessary for a promissory note under Section 5.081; and

(2) if applicable, select a trustee for a deed of trust under Section 5.081.

(d) For purposes of Subsection (c)(2), a purchaser must select a trustee that lives or has a place of business in the same county where the property covered by the executory contract is located.

(e) Not later than the 20th day after the date a seller receives notice of an amount determined by a purchaser under Subsection (c)(1), the seller may contest that amount by sending a

written objection to the purchaser. An objection under this subsection must:

- (1) be sent to the purchaser by regular and certified mail;
- (2) include the amount the seller claims is the amount owed under the contract; and
- (3) be based on written records kept by the seller or the seller's agent that were maintained and regularly updated for the entire term of the executory contract.

APPLY → **Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING.**

(a) Except as provided by Subsection (c), in addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract at any time if the purchaser learns that the seller has not properly subdivided or platted the property that is covered by the contract in accordance with state and local law. A purchaser canceling and rescinding a contract under this subsection must:

- (1) deliver a signed, written notice of the cancellation and rescission to the seller in person; or
- (2) send a signed, written notice of the cancellation and rescission to the seller by telegram or certified or registered mail, return receipt requested.

(b) If the purchaser cancels the contract as provided under Subsection (a), the seller, not later than the 10th day after the date the seller receives the notice of cancellation and rescission, shall:

- (1) deliver in person or send by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice that the seller intends to subdivide or plat the property properly; or
- (2) return to the purchaser all payments of any kind made to the seller under the contract and reimburse the purchaser for:

- (A) any payments the purchaser made to a taxing authority for the property; and
- (B) the value of any improvements made to the property by the purchaser.

(c) A purchaser may not exercise the purchaser's right to cancel and rescind an executory contract under this section if, on or before the 90th day after the date the purchaser receives the seller's notice under Subsection (b)(1), the seller:

- (1) properly subdivides or plats the property; and
- (2) delivers in person or sends by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice evidencing that the property has been subdivided or platted in accordance with state and local law.

(d) The seller may not terminate the purchaser's possession of the property covered by the contract being canceled and rescinded before the seller pays the purchaser any money to which the purchaser is entitled under Subsection (b).

Sec. 5.084. RIGHT TO DEDUCT. If a seller is liable to a purchaser under this subchapter, the purchaser, without taking judicial action, may deduct the amount owed to the purchaser by the

seller from any amounts owed to the seller by the purchaser under the terms of an executory contract.

APPLIES Sec. 5.085: FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE SIMPLE TITLE.

(a) A potential seller may not execute an executory contract with a potential purchaser if the seller does not own the property in fee simple free from any liens or other encumbrances.

(b) Except as provided by this subsection, a seller, or the seller's heirs or assigns, must maintain fee simple title free from any liens or other encumbrances to property covered by an executory contract for the entire duration of the contract. This subsection does not apply to a lien or encumbrance placed on the property that is:

- (1) placed on the property because of the conduct of the purchaser;
- (2) agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility or fire protection improvements; or
- (3) placed on the property by the seller prior to the execution of the contract in exchange for a loan used only to purchase the property if:

(A) the seller, not later than the third day before the date the contract is executed, notifies the purchaser in a separate written disclosure:

- (i) of the name, address, and phone number of the lienholder or, if applicable, servicer of the loan;
- (ii) of the loan number and outstanding balance of the loan;
- (iii) of the monthly payments due on the loan and the due date of those payments; and
- (iv) in 14-point type that, if the seller fails to make timely payments to the lienholder, the lienholder may attempt to collect the debt by foreclosing on the lien and selling the property at a foreclosure sale;

Disclosure

- (B) the lien:
 - (i) is attached only to the property sold to the purchaser under the contract; and
 - (ii) secures indebtedness that, at no time, is or will be greater in amount than the amount of the total outstanding balance owed by the purchaser under the executory contract;

- (C) the lienholder:
 - (i) does not prohibit the property from being encumbered by an executory contract; and
 - (ii) consents to verify the status of the loan on request of the purchaser and to accept payments directly from the purchaser if the seller defaults on the loan; and

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- (D) the following covenants are placed in the executory contract:
 - (i) a covenant that obligates the seller to make timely payments on the loan and to give monthly statements to the purchaser reflecting the amount paid to the lienholder, the date the lienholder receives the payment, and the information described by Paragraph (A);

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(ii) a covenant that obligates the seller, not later than the third day the seller receives or has actual knowledge of a document or an event described by this subparagraph, to notify the purchaser in writing in 14-point type that the seller has been sent a notice of default, notice of acceleration, or notice of foreclosure or has been sued in connection with a lien on the property and to attach a copy of all related documents received to the written notice; and

(iii) a covenant that warrants that if the seller does not make timely payments on the loan or any other indebtedness secured by the property, the purchaser may, without notice, cure any deficiency with a lienholder directly and deduct from the total outstanding balance owed by the purchaser under the executory contract, without the necessity of judicial action, 150 percent of any amount paid to the lienholder.

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(c) A violation of this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) in addition to other rights or remedies provided by law, entitles the purchaser to cancel and rescind the executory contract and receive from the seller:

(A) the return of all payments of any kind made to the seller under the contract; and

(B) reimbursement for:

(i) any payments the purchaser made to a taxing authority for the property; and

(ii) the value of any improvements made to the property by the purchaser.

(d) A seller is not liable under this section if:

(1) a lien is placed on the property by a person other than the seller; and

(2) not later than the 30th day after the date the seller receives notice of the lien, the seller takes all steps necessary to remove the lien and has the lien removed from the property.

SECTION 7. (a) Section 5.062, Property Code, as amended by this Act, and Section 5.0621, Property Code, as added by this Act, apply to an executory contract for conveyance entered into on or after January 1, 2006.

(b) Section 5.073, Property Code, as amended by this Act, applies only to an executory contract for conveyance that was entered into on or after the effective date of this Act. An executory contract that was entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

DNA (c) Sections 5.081 and 5.082, Property Code, as added by this Act, apply to a conversion of title initiated or a request for information made on or after the effective date of this Act, regardless of the date on which the purchaser and seller entered into the executory contract that is the subject of the conversion or

request

APPROVES

(d) Section 5.083, Property Code, as added by this Act, applies only to a seller's failure or refusal to subdivide or plat real property on or after the effective date of this Act, regardless of the date on which the purchaser and seller entered into the executory contract covering the property that is improperly subdivided or platted.

(e) Section 5.084, Property Code, as added by this Act, applies to the computation of any amount owed to the seller by the purchaser under the terms of an executory contract on or after the effective date of this Act, regardless of the date on which the purchaser and seller entered into the executory contract.

APPROVES

(f) Section 5.085, Property Code, as added by this Act, applies only to an executory contract for conveyance that is entered into on or after the effective date of this Act. An executory contract for conveyance that is entered into before the effective date of this Act is covered by the law in effect at the time the contract was entered into, and that law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 1823 was passed by the House on May 12, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1823 on May 26, 2005, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1823 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date