

BILL ANALYSIS

Senate Research Center

H.B. 1823
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Contract-for-Deed and Rent-to-Own arrangements are home buying methods that leave the buyer extremely vulnerable to serious abuses, and deny homebuyers many of the same basic benefits and rights that other homeowners have. Texans who have purchased their homes through contract-for-deed do not get the title to their home until the house is completely paid off, often over 10 to 15 years. The buyer is dependent upon the seller for insurance, information on taxes and fees, and for logging payments correctly and on time. The buyer builds no equity over time in the house, and can lose every penny if they are evicted or for any other reason must move. The seller never has to go through foreclosure to reclaim the house.

Since the buyer does not hold the title, the buyer cannot freely refinance, or borrow on the value of the house. These circumstances leave this particular class of homeowners without the options, for example, of using the equity in their house to help finance their children's education or to make home improvements or to benefit from lower interest rates. If the buyer in a contract-for-deed arrangement passes away, the property reverts to the seller--not to the buyer's family--regardless of the amount of money the buyer has already paid on the home. If property values increase, the contract-for-deed homeowner pays the accompanying higher taxes, yet does not benefit from the added equity. Unlike other homeowners, contract-for-deed homeowners cannot benefit from tax deductions for mortgage payments, nor do they benefit from homestead exemptions.

Contract-for-deed arrangements encourage blight in our communities. Home buyers cannot borrow on the value of the home and, therefore, cannot qualify for a home improvement loan. Since the seller can take away the house at almost any time, many people do not want to make even the most basic improvements.

Many useful reforms to contracts-for-deed were passed in 2001, requiring owners to provide annual statements of what had been paid, the amount remaining on the principle, the interest rate, and the property valuation. Strong penalties for violating these rules were included, although they are not often imposed. Additionally, contracts-for-deed have disclosure requirements but nothing that regulates the terms which can be imposed. The owners of record must disclose every year the terms of the insurance, the amount remaining on the principal, the interest rate, and the property valuation.

H. B. No. 1823 gives contract-for-deed or lease-to-own home buyers and homeowners the same rights and benefits that homeowners have in any other type of home buying arrangement. It allows people in these contracts to obtain a title to the property upon request. The seller would still receive the same financial agreement and would have the same rights as any other company that finances a home sale.

H. B. No. 1823 also strengthens those protections passed in 2001.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 212.0115(c), Local Government Code, to require, on written request of an owner of land, a purchaser of real property under a contract for a 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 to make certain 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.

SECTION 2. Amends Subchapter A, Chapter 5, Property Code, by adding Section 5.014, as follows:

Sec. 5.014. **PROHIBITED FEES.** Prohibits a person who has a right of first refusal in real property from charging a fee for declining to exercise that right, such as a fee for providing written evidence of the declination.

SECTION 3. Amends Section 5.062(a) and (d), Property Code, and adding Subsection (e), as follows:

(a) Provides that, only for purposes of this subchapter, an option to purchase the property that includes or is combined or executed concurrently with a residential lease agreement, is considered an executory contract for conveyance of real property. Makes conforming changes.

(d) Provides that Sections 5.068-5.085, rather than 5.068-5.080, do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property meets certain requirements.

(e) Provides that this subchapter does not 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 have not been parties to an executory contract to purchase the property covered by the executory contract for longer than three years.

SECTION 4. Amends Subchapter D, Chapter 5, Property Code, by adding Section 5.0621, as follows:

Sec. 5.0621. **CONSTRUCTION WITH OTHER LAW.** (a) Provides that, except as provided by Subsection (b), if a residential lease of real property includes an option to purchase the property, the provisions of this subchapter and Chapter 92 (Residential Tenancies), Property Code, apply to the lease.

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

SECTION 5. Amends Subchapter D, Chapter 5, Property Code, by adding Section 5.0721, as follows:

Sec. 5.0721. **INFORMATION REQUIRED IN CONTRACT.** Requires an executory contract to contain certain information.

SECTION 6. Amends Section 5.073, Property Code, as follows:

Sec. 5.073. New heading: **CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED.** (a) Creates this subsection from existing text and adds provisions that are prohibited from being included as a term of the executory contract by a seller.

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

SECTION 7. Amends Subchapter D, Chapter 5, Property Code, by adding Section 5.0731, as follows:

Sec. 5.0731. TAX EXEMPTIONS AND AMORTIZATION SCHEDULE. Requires the seller, at the time an executory contract is executed, to provide certain forms and schedules to the purchaser.

SECTION 8. Amends Section 5.077(b), Property Code, to require the annual accounting statement to include certain information.

SECTION 9. Amends Subchapter D, Chapter 5, Property Code, by adding Sections 5.081-5.085, as follows:

Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) Entitles a purchaser, at any time without paying penalties or charges of any kind, to convert the purchaser's interest in property under an executory contract into recorded, legal title in accordance with this section.

(b) Requires the seller, 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, to transfer to the purchaser recorded, legal title of the property covered by the contract.

(c) Provides that, 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, the seller and the purchaser will be required to execute certain deeds.

(d) Requires the seller, on or before the 10th day after the date the seller receives a promissory note under Subsection (c) that substantially complies with that subsection, to take certain actions.

(e) Provides that 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 (Title Transfer) is liable to a purchaser. Provides that this subsection does not limit or affect any other rights or remedies a purchaser has under law.

(f) Provides that, on the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract is considered completed and has no further effect.

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

Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE. (a) Entitles a purchaser under an executory contract, on written request, to receive certain information from the seller.

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

(c) Authorizes the purchaser, if the seller does not timely respond to a request made under this section, to take certain actions.

(d) Requires a purchaser, for purposes of Subsection (c)(2), to 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.

Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING. (a) Authorizes the purchaser, except as provided by Subsection (c), in addition to other rights

or remedies provided by law, to 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. Requires a purchaser canceling and rescinding a contract under this subsection to take certain actions.

(b) Requires the seller, if the purchaser cancels the contract as provided under Subsection (a), to take certain actions not later than the 10th day after the date the seller receives the notice of cancellation and rescission.

(c) Prohibits a purchaser from exercising 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 takes certain actions.

(d) Prohibits the seller from terminating 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. Authorizes the purchaser, if a seller is liable to a purchaser under this subchapter, to 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 without taking judicial action.

Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE SIMPLE TITLE. (a) Prohibits a potential seller from executing 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) Requires a seller, or the seller's heirs or assigns, except as provided by this subsection, to 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. Provides that this subsection does not apply to certain liens or encumbrances placed on the property.

(c) Sets forth the results of a violation of this section.

SECTION 10. Makes application of Section 5.014, Property Code, as added by this Act, prospective.

SECTION 11. (a) Provides that 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 in effect of the effective date of this Act, regardless of the date on which the purchaser and seller entered into contract.

(b) Makes application of this Act prospective.

(c) Provides that 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.

(d) Provides that 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) Provides that 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.

(f) Makes application of Section 5.085, Property Code, as added by this Act prospective.

SECTION 12. Effective date: September 1, 2005.