

BILL ANALYSIS

Senate Research Center

H.B. 311
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Executory contracts for the sale of residential property (sometimes referred to as “contracts for deed”) have long been disfavored because they encumber title without transferring title, cannot be sold in the real estate market, cannot be used to borrow money to make improvements, and are potentially abusive transactions under which legal title to homestead property may be withheld until many years after the buyer has built a home and made other expensive improvements. While the Texas Legislature has made changes to discourage the use of these instruments, serious problems persist from their use. Parties also contend that there remain significant misunderstandings among sellers, buyers, and even judges and attorneys about the nature of executory contracts and about the rights and obligations of the various parties to such instruments. H.B. 311 continues the progression to modernize residential real estate transactions, improve transparency, and improve the process of conversion of these relics of real estate.

H.B. 311 amends current law relating to an executory contract for the conveyance of real property and provides a penalty.

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 5.064, Property Code, as follows:

Sec. 5.064. SELLER'S REMEDIES ON DEFAULT. Authorizes a seller to 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 the contract has not been recorded. Makes nonsubstantive changes.

SECTION 2. Amends Section 5.066(a), Property Code, as follows:

(a) Provides that 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, through a trustee designated by the seller, the purchaser's interest in the property as provided by this section. Prohibits the seller from enforcing the remedy of rescission or of forfeiture and acceleration after the contract has been recorded.

SECTION 3. Amends Section 5.076, Property Code, by adding Subsection (e), as follows:

(e) Provides that 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 (Title Transfer) 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. Provides that an action to recover damages under this section may be brought as an action for declaratory judgment under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code. Provides that

this subsection does not limit or affect any other rights or remedies a purchaser has under other law.

SECTION 4. Amends Subchapter D, Chapter 5, Property Code, by adding Section 5.0765, as follows:

Sec. 5.0765. ENCUMBERED TITLE TRANSFERRED ON RECORDING. (a) Provides that, 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) Provides that extrinsic evidence may be used to supply the legal description of the property if that information is not apparent from the contract. Provides that 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.

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

(a) Provides that 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) Prohibits this section from being 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 6. Repealer: Section 5.066(g) (relating to the remedy of rescission or forfeiture and acceleration of the indebtedness), Property Code.

SECTION 7. Provides that the changes in law made by this Act apply to an executory contract entered into on or after the effective date of this Act. Provides that 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. Effective date: September 1, 2015.