

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 311
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Business & Commerce
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Committee Report (Substituted)

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. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 311 amends current law relating to an executory contract for the conveyance of real property and provides a civil 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 5.062(e), Property Code, to add a reference to Section 5.079 (Title Transfer).

SECTION 2. 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 in the county in which the property is located. Makes nonsubstantive changes.

SECTION 3. 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 4. Amends Section 5.070, Property Code, by adding Subsection (d), to provide that, if the executory contract is recorded, the seller is not required to continue insuring the property.

SECTION 5. Amends the heading to Section 5.072, Property Code, as follows:

Sec. 5.072. ORAL AGREEMENTS.

SECTION 6. Amends Section 5.072, Property Code, by amending Subsection (a) and adding Subsection (g), as follows:

(a) Adds an exception provided by Subsection (g) and makes a nonsubstantive change.

(g) Provides that, if the parties enter into an oral executory contract, the contract is enforceable if the purchaser occupies the property as a homestead, maintains or makes improvements to the property, and provides the seller with consideration. Provides that if the seller fails to reduce the oral contract to writing and execute it, the seller is considered to have failed to provide the notice required by this section.

SECTION 7. 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 is liable to a purchaser, except the damages may not exceed \$500 for each calendar year of noncompliance. Provides that this subsection does not limit or affect any other rights or remedies a purchaser has under other law.

SECTION 8. Amends Section 5.077, Property Code, by adding Subsection (e), to provide that the requirements of this section continue to apply after a purchaser obtains title to the property by conversion or any other process.

SECTION 9. Amends Section 5.079(a), Property Code, as follows:

(a) Requires that a recorded executory contract be the same as a deed with a vendor's lien. Provides that the vendor's lien is for the amount of the unpaid contract price, less any lawful deductions, and may be enforced by foreclosure sale under Section 5.066 (Equity Protection; Sale of Property) or by judicial foreclosure. Provides that a general warranty is implied unless otherwise limited by the record executory contract. Requires the seller, if an executory contract has not been recoded or converted under Section 5.081 (Right to Convent Contract), to transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract.

SECTION 10. 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 interest in the property established by other law, if any, or any other rights of the purchaser under this subchapter.

SECTION 11. (a) Provides that the changes in law made by this Act to Sections 5.064 and 5.066, Property Code, apply only to a default that occurs on or after the effective date of this Act. Makes application of this Act prospective.

(b) Provides that Sections 5.072 (Oral Agreements Prohibited), 5.079, and 5.081, Property Code, as amended by this Act, apply to an executory contract entered into before, on, or after the effective date of this Act.

(c) Provides that the changes in law made by this Act to Sections 5.070 (Seller's Disclosure of Tax Payments and Insurance Coverage) and 5.076, Property Code, apply to

an executory contract entered into on or after the effective date of this Act. Makes application of this Act prospective.

(d) Provides that the changes in law made by this Act to Section 5.077 (Annual Accounting Statement), Property Code, apply to an executory contract that is converted to transfer legal title on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2015.