

SENATE AMENDMENTS

2nd Printing

By: Canales

H.B. No. 311

A BILL TO BE ENTITLED

1 AN ACT

2 relating to an executory contract for the conveyance of real
3 property; providing a penalty.

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

5 SECTION 1. Section 5.064, Property Code, is amended to read
6 as follows:

7 Sec. 5.064. SELLER'S REMEDIES ON DEFAULT. A seller may
8 enforce the remedy of rescission or of forfeiture and acceleration
9 against a purchaser in default under an executory contract for
10 conveyance of real property only if:

11 (1) the seller notifies the purchaser of:

12 (A) the seller's intent to enforce a remedy under
13 this section; and

14 (B) the purchaser's right to cure the default
15 within the 30-day period described by Section 5.065;

16 (2) the purchaser fails to cure the default within the
17 30-day period described by Section 5.065; ~~and~~

18 (3) Section 5.066 does not apply; and

19 (4) the contract has not been recorded.

20 SECTION 2. Section 5.066(a), Property Code, is amended to
21 read as follows:

22 (a) If a purchaser defaults after the purchaser has paid 40
23 percent or more of the amount due or the equivalent of 48 monthly
24 payments under the executory contract or, regardless of the amount

1 the purchaser has paid, the executory contract has been recorded,
2 the seller is granted the power to sell, through a trustee
3 designated by the seller, the purchaser's interest in the property
4 as provided by this section. The seller may not enforce the remedy
5 of rescission or of forfeiture and acceleration after the contract
6 has been recorded.

7 SECTION 3. Section 5.076, Property Code, is amended by
8 adding Subsection (e) to read as follows:

9 (e) A seller who violates this section is liable to the
10 purchaser in the same manner and for the same amount as a seller who
11 violates Section 5.079 is liable to a purchaser, except the damages
12 may not exceed the greater of the value of the property or the
13 amount paid under the contract. An action to recover damages under
14 this section may be brought as an action for declaratory judgment
15 under Chapter 37, Civil Practice and Remedies Code. This subsection
16 does not limit or affect any other rights or remedies a purchaser
17 has under other law.

18 SECTION 4. Subchapter D, Chapter 5, Property Code, is
19 amended by adding Section 5.0765 to read as follows:

20 Sec. 5.0765. ENCUMBERED TITLE TRANSFERRED ON RECORDING.
21 (a) Notwithstanding any other law, on recording, an executory
22 contract conveys legal title to the purchaser, subject to a lien
23 retained by the seller for the amount of the unpaid contract price
24 less any lawful deductions.

25 (b) Extrinsic evidence may be used to supply the legal
26 description of the property if that information is not apparent
27 from the contract. The extrinsic evidence does not affect the

1 rights of a creditor or a subsequent purchaser who has paid valuable
2 consideration and who does not have notice of the executory
3 contract.

4 SECTION 5. Section 5.081, Property Code, is amended by
5 amending Subsection (a) and adding Subsection (h) to read as
6 follows:

7 (a) A purchaser, at any time and without paying penalties or
8 charges of any kind, is entitled to convert the purchaser's
9 interest in property under an executory contract into recorded,
10 legal title in accordance with this section, regardless of whether
11 the seller has recorded the executory contract.

12 (h) This section may not be construed to limit the
13 purchaser's equitable interest in the property established by other
14 law, if any, or any other rights of the purchaser under this
15 subchapter.

16 SECTION 6. Section 5.066(g), Property Code, is repealed.

17 SECTION 7. The changes in law made by this Act apply to an
18 executory contract entered into on or after the effective date of
19 this Act. An executory contract entered into before the effective
20 date of this Act is governed by the law in effect on the date the
21 contract was entered into, and that law is continued in effect for
22 that purpose.

23 SECTION 8. This Act takes effect September 1, 2015.

ADOPTED

MAY 22 2015

Lois L. Low
Secretary of the Senate

By: *Lois L. Low* .B. No. _____

Substitute the following for .B. No. _____:

By: *Thurman* C.S. # .B. No. 311

A BILL TO BE ENTITLED

1 AN ACT

2 relating to an executory contract for the conveyance of real
3 property; providing a civil penalty.

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

5 SECTION 1. Section 5.062(e), Property Code, is amended to
6 read as follows:

7 (e) Sections 5.066, 5.067, 5.071, 5.075, 5.079, 5.081, and
8 5.082 do not apply to an executory contract described by Subsection
9 (a)(2).

10 SECTION 2. Section 5.064, Property Code, is amended to read
11 as follows:

12 Sec. 5.064. SELLER'S REMEDIES ON DEFAULT. A seller may
13 enforce the remedy of rescission or of forfeiture and acceleration
14 against a purchaser in default under an executory contract for
15 conveyance of real property only if:

16 (1) the seller notifies the purchaser of:

17 (A) the seller's intent to enforce a remedy under
18 this section; and

19 (B) the purchaser's right to cure the default
20 within the 30-day period described by Section 5.065;

21 (2) the purchaser fails to cure the default within the
22 30-day period described by Section 5.065; [and]

23 (3) Section 5.066 does not apply; and

24 (4) the contract has not been recorded in the county in

1 which the property is located.

2 SECTION 3. Section 5.066(a), Property Code, is amended to
3 read as follows:

4 (a) If a purchaser defaults after the purchaser has paid 40
5 percent or more of the amount due or the equivalent of 48 monthly
6 payments under the executory contract or, regardless of the amount
7 the purchaser has paid, the executory contract has been recorded,
8 the seller is granted the power to sell, through a trustee
9 designated by the seller, the purchaser's interest in the property
10 as provided by this section. The seller may not enforce the remedy
11 of rescission or of forfeiture and acceleration after the contract
12 has been recorded.

13 SECTION 4. Section 5.070, Property Code, is amended by
14 adding Subsection (d) to read as follows:

15 (d) If the executory contract is recorded, the seller is not
16 required to continue insuring the property.

17 SECTION 5. The heading to Section 5.072, Property Code, is
18 amended to read as follows:

19 Sec. 5.072. ORAL AGREEMENTS [PROHIBITED].

20 SECTION 6. Section 5.072, Property Code, is amended by
21 amending Subsection (a) and adding Subsection (g) to read as
22 follows:

23 (a) Except as provided by Subsection (g), an [An] executory
24 contract is not enforceable unless the contract is in writing and
25 signed by the party to be bound or by that party's authorized
26 representative.

27 (g) If the parties enter into an oral executory contract,

1 the contract is enforceable if the purchaser occupies the property
2 as a homestead, maintains or makes improvements to the property,
3 and provides the seller with consideration. If the seller fails to
4 reduce the oral contract to writing and execute it, the seller is
5 considered to have failed to provide the notice required by this
6 section.

7 SECTION 7. Section 5.076, Property Code, is amended by
8 adding Subsection (e) to read as follows:

9 (e) A seller who violates this section is liable to the
10 purchaser in the same manner and for the same amount as a seller who
11 violates Section 5.079 is liable to a purchaser, except the damages
12 may not exceed \$500 for each calendar year of noncompliance. This
13 subsection does not limit or affect any other rights or remedies a
14 purchaser has under other law.

15 SECTION 8. Section 5.077, Property Code, is amended by
16 adding Subsection (e) to read as follows:

17 (e) The requirements of this section continue to apply after
18 a purchaser obtains title to the property by conversion or any other
19 process.

20 SECTION 9. Section 5.079(a), Property Code, is amended to
21 read as follows:

22 (a) A recorded executory contract shall be the same as a
23 deed with a vendor's lien. The vendor's lien is for the amount of
24 the unpaid contract price, less any lawful deductions, and may be
25 enforced by foreclosure sale under Section 5.066 or by judicial
26 foreclosure. A general warranty is implied unless otherwise
27 limited by the recorded executory contract. If an executory

1 contract has not been recorded or converted under Section 5.081,
2 the [The] seller shall transfer recorded, legal title of the
3 property covered by the executory contract to the purchaser not
4 later than the 30th day after the date the seller receives the
5 purchaser's final payment due under the contract.

6 SECTION 10. Section 5.081, Property Code, is amended by
7 amending Subsection (a) and adding Subsection (h) to read as
8 follows:

9 (a) A purchaser, at any time and without paying penalties or
10 charges of any kind, is entitled to convert the purchaser's
11 interest in property under an executory contract into recorded,
12 legal title in accordance with this section, regardless of whether
13 the seller has recorded the executory contract.

14 (h) This section may not be construed to limit the
15 purchaser's interest in the property established by other law, if
16 any, or any other rights of the purchaser under this subchapter.

17 SECTION 11. (a) The changes in law made by this Act to
18 Sections 5.064 and 5.066, Property Code, apply only to a default
19 that occurs on or after the effective date of this Act. A default
20 that occurred before the effective date of this Act is governed by
21 the law in effect on the date the default occurred, and that law is
22 continued in effect for that purpose.

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

26 (c) The changes in law made by this Act to Sections 5.070 and
27 5.076, Property Code, apply to an executory contract entered into

1 on or after the effective date of this Act. An executory contract
2 entered into before the effective date of this Act is governed by
3 the law in effect on the date the contract was entered into, and
4 that law is continued in effect for that purpose.

5 (d) The changes in law made by this Act to Section 5.077,
6 Property Code, apply to an executory contract that is converted to
7 transfer legal title on or after the effective date of this Act. An
8 executory contract that is converted to transfer legal title before
9 the effective date of this Act is governed by the law in effect on
10 the date the contract was entered into, and that law is continued in
11 effect for that purpose.

12 SECTION 12. This Act takes effect September 1, 2015.

ADOPTED

MAY 22 2015

Lotay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: Chairman [Signature]

1 Amend C.S.H.B. No. 311 (senate committee printing) in
2 SECTION 6 of the bill, in added Section 5.072(g), Property Code, by
3 striking the last sentence of that subsection (page 2, lines
4 13-16).

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 23, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB311 by Canales (Relating to an executory contract for the conveyance of real property; providing a civil penalty.), As Passed 2nd House

No significant fiscal implication to the State is anticipated.

The bill would clarify legal proceedings surrounding an executory contract for the sale of real property. It is anticipated that the bill would not significantly increase the number or length of legal proceedings.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450 Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, SJS, MW, ED

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 15, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB311 by Canales (Relating to an executory contract for the conveyance of real property; providing a civil penalty.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would clarify legal proceedings surrounding an executory contract for the sale of real property. It is anticipated that the bill would not significantly increase the number or length of legal proceedings.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450 Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, SJS, MW, ED

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 5, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce
FROM: Ursula Parks, Director, Legislative Budget Board
IN RE: HB311 by Canales (Relating to an executory contract for the conveyance of real property; providing a penalty.), As Engrossed

No significant fiscal implication to the State is anticipated.

The bill would clarify legal proceedings surrounding an executory contract for the sale of real property. It is anticipated that the bill would not significantly increase the number or length of legal proceedings.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450 Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, SJS, MW, ED

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 5, 2015

TO: Honorable René Oliveira, Chair, House Committee on Business & Industry

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB311 by Canales (Relating to an executory contract for the conveyance of real property; providing a penalty.), As Introduced

No significant fiscal implication to the State is anticipated.

The bill would clarify legal proceedings surrounding an executory contract for the sale of real property. It is anticipated that the bill would not significantly increase the number or length of legal proceedings.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 450 Department of Savings and Mortgage Lending

LBB Staff: UP, CL, SD, SJS, MW, ED