

- SUBJECT:** Contract-for-deed arrangements in colonias
- COMMITTEE:** Business and Industry — substitute recommended
- VOTE:** 7 ayes — Brady, Corte, Crabb, Eiland, Giddings, Rhodes, Solomons
0 nays
2 absent — Brimer, Janek
- SENATE VOTE:** On final passage, March 13 — voice vote
- WITNESSES:** For — John Henneberger, Texas Low Income Housing Information Service
Against — Pablo Munoz, J. Gary Frisby, Robert J. Goodwin, Daniel Acevedo
- BACKGROUND:** An executory contract is a contract in which one of the parties promises to perform some future act, such as pay an amount of money or purchase a piece of land. One form of an executory contract is a contract for deed, which is an agreement between a buyer and seller of land in which the seller keeps the title and all rights to the land until the customer pays the land's price in full. Contracts for deeds are commonly used in colonias.
- Colonias are residential subdivisions in unincorporated areas of counties along the Texas-Mexico border. They are often characterized by substandard housing and the absence of sewers, water, electricity, gas utility services and paved roads.
- DIGEST:** CSSB 336 would make changes to the laws regarding executory contracts for residential deeds in counties within 200 miles of the Texas-Mexico border that have, in the most recent three consecutive years, a per capita income that averages 25 percent below the state average and an unemployment rate that averages 25 percent above the state average.
- The counties to which this bill would apply would be published in the *Texas Register* by the Texas Department of Housing and Community Affairs (TDHCA). In such counties the seller in a contract to deed would

also record the contract with the county clerk and would be required to record the instrument that terminates the contract if the contract is terminated for any reason.

CSSB 336 would require that the seller to provide to the purchaser a copy in Spanish of all written documents connected to the contract if the negotiations that precede the execution of the contract were conducted primarily in Spanish.

The seller would be required to provide the purchaser with copies of surveys or plats of property, of all restrictive covenants and easements and of other documents that encumber or affect title to the property. The seller would also be required to give the purchaser specific written notice informing the purchaser of the condition of the property. If the property is not located in a recorded subdivision, the seller would provide the purchaser with a separate disclosure form stating that utilities may not be available to the property until the subdivision is recorded as required by law. If the seller advertised property for sale under a executory contract, the advertisement would have to disclose information regarding the availability of water, sewer and electric service at the property.

The bill provides for penalties if the seller failed to disclose information about the condition of the property for sale, including the right of the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

Before the contract was signed by the purchaser, the seller would be required to disclose certain financing terms, including the purchase price of the property and the interest rate charged under the contract.

The seller could not include as a term in the contract a provision that imposed an additional late-payment fee that exceeded the lesser of five percent of the monthly payment under the contract or the actual administrative cost of processing the late payment.

A term in the contract could also not prohibit the purchaser from pledging the purchaser's interest in the property as security to obtain a loan to pay for improvements, including utility improvements or fire protection on the

property. Contract terms could also not impose a prepayment penalty if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

The purchaser would have the right to cancel and rescind a contract within 14 days, and the seller would be required to provide the purchaser written notice of this right.

The purchaser would be allowed to pledge the interest that accrues on the property in a contract entered into before September 1, 1995, if the purchaser's purpose for doing so was to obtain a loan to make improvements to the property, including the construction of a waste water system and septic system and safety improvements.

The seller would be required to give an annual accounting statement of the property to the purchaser. The statement would include the amount paid under the contract, the remaining amount owed under the contract and the number of payments remaining under the contract.

The seller would have the power to sell the purchaser's interest in the property if the purchaser defaults after paying 40 percent or more of the amount due or the equivalent of 48 monthly payments under the contract. However, the seller could not enforce the remedy of rescission or of forfeiture and acceleration. In addition, the seller would be required to notify the purchaser of the default under the contract and allow the purchaser at least 60 days after the date notice was given to cure the default.

The seller would be required to transfer title of the property covered by the contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment.

The TDHCA would be required to develop a consumer education program to educate consumers on contract transactions for conveyance of real property that the consumer intends to use as a residence.

**SUPPORTERS
SAY:**

CSSB 336 would resolve some of the problems involved with land sales in colonias by requiring in economically distressed areas along the border that contracts for deeds be recorded with the county clerk and that specific disclosures must be made by a seller under a contract for deed concerning the availability of water, waste water, electric service and the area's flood plain status.

Requiring that a contract for deed be recorded would ensure that there is a record in the courthouse that would be available should a prosecutor wish to go after an unscrupulous colonias developer.

Requiring that the contract for deed include details of the rights, services, and requirements attached to the property would help the buyer of the land better decide the land's value before committing to a purchase.

CSSB 336 would give colonias residents protection from illegal development and shady land deals through its requirements that the land transactions they enter have formal documentation and specify all relevant details of the land they purchase.

**OPPONENTS
SAY:**

The two-week cooling off period for a purchaser to be able to cancel a contract would be unreasonable and unfair to the seller. The bill should allow a purchaser the right to cancel an executory contract by using certified or registered mail with return receipt requested. In addition, prohibiting a seller from imposing an additional late payment fee that exceeds the lesser of five percent of the monthly payment under the contract should be raised so that the seller can charge a slightly higher fee.

NOTES:

The committee substitute would require a seller to provide a legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or easement, that affects title to the real property and a written notice, which must be attached to the contract informing the purchaser of the condition of the property. The substitute also expands the number of financing terms that the seller must provide to the purchaser.