

SUBJECT: Revising contract-for-deed requirements

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Brimer, Dukes, Corte, J. Davis, Elkins, Solomons, Woolley
 0 nays
 2 absent — George, Giddings

SENATE VOTE: On final passage, February 22 — 29-0

WITNESSES: *(On House companion bill, HB 502)*
 For — John Henneberger, Texas Low Income Housing Information Service;
 Gloria M. Eurotas, Fort Worth City Council

 Against — None

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 a commonly used means for purchasing a residence in colonias and other low-income communities.

Property Code, ch. 5, subchapter E covers executory contracts in certain counties in the border region. Its requirements include:

- ! providing a copy of the contract in Spanish;
- ! disclosing the condition of the property and financial terms of the contract before a contract is signed;
- ! prohibiting certain terms to be required in the contract;
- ! allowing a purchaser to cancel a contract without cause within two weeks of signing;
- ! requiring the seller to file the contract and disclosure statement with the county clerk; and

! requiring the seller to provide an annual accounting statement.

DIGEST:

CSSB 198 would revise Property Code, ch. 5, subchapter E and extend its area of applicability to the entire state. Revisions to the subchapter would include the following:

Applicability. The bill would apply to an executory contract for a property that would be used as the residence of the purchaser or of a relative. It would not apply to the sale of state land or to a contract if the purchaser were related to the seller or had waived provisions of the bill and current law in writing.

Seller's remedies on default. Before a seller could rescind a contract or take other remedies against a purchaser in default, the seller would have to notify the purchaser of the purchaser's right to cure the default within 60 days. The purchaser would have 60 days from the date of notification to cure the default. If the purchaser failed to cure the default within the time period, the seller could move against the purchaser.

The bill would strike provisions in current law allowing a 15, 30, or 60 day grace period depending on the percentage of the purchase price that had been paid off.

Sale of property. If a seller wished to sell, through a trustee, the interest in a property of a purchaser that was in default, the trustee would have to guarantee that the property was free from any encumbrance, in addition to following other procedures required by law. An affidavit stating that notice was given and the sale was conducted as required by law would constitute prima facie evidence of those facts.

Foreign language requirement. If negotiations for the contract were conducted primarily in a language other than English, the seller would have to provide in that language a copy of all documents relating to the contract, disclosure notices, annual accounting statements, and any notice of default.

Seller's disclosure of tax payments and insurance coverage. Before the purchaser signed the contract, the seller would have to provide a tax certificate showing the amount of delinquent taxes, penalties, and interest due

on the property and a copy of the insurance policy indicating the name of the insurer and insured, a description of the property insured, and the amount for which the property was insured.

Failure to provide the required information would be actionable in a suit as an unlawful deceptive trade practice and would entitle the purchaser to cancel the contract and receive a full refund from the seller.

Oral agreements prohibited. Only a written contract would be enforceable. The seller would have to provide a statement for the purchaser and seller to sign that stated that the contract represented the final agreement between the seller and purchaser and could not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties, and that there were no unwritten oral agreements between the parties.

Failure to provide the required information would be actionable in a suit as an unlawful deceptive trade practice and would entitle the purchaser to cancel the contract and receive a full refund from the seller.

Recording requirements. The seller would have to record the contract and disclosure statement with the county clerk within 30 days after the contract was executed.

Annual accounting statement. The seller would have to provide the purchaser with an annual accounting statement that included:

- ! the amount paid to insure the property on the purchaser's behalf if collected by the seller;
- ! an accounting of insurance proceeds applied to the property, if the property had been damaged and the seller received a settlement;
- ! a legible copy of the current policy, binder, or other evidence, if the seller had changed insurance coverage.

A seller who failed to provide the statement, would be liable for liquidated damages of \$250 per day for each day the seller failed to provide the statement and attorney's fees.

Disposition of insurance proceeds. The person insured for the property

under the contract would have to provide to the insurer within 10 days a copy of the contract and the name and address of the other party to the contract. An insurer would have to issue proceeds jointly to the purchaser and seller. The purchaser and seller would have to ensure that the proceeds were used to repair, remedy, or improve the property.

Failure to provide the required information would be actionable in a suit as an unlawful deceptive trade practice.

Title transfer. A seller who did not transfer the title of the property to the purchaser within 30 days of the purchaser's final payments would be liable to the purchaser for damages each day the title was not transferred and attorney's fees at a rate of \$250 per day up to 90 days, and \$500 per day after 90 days. This requirement would not apply if the title transfer was delayed due to the seller's property interest passing to an heir and the heir pursued a transfer with reasonable diligence.

The bill would take effect September 1, 2001, and would apply only to transactions which took place on or after the effective date.

SUPPORTERS
SAY:

CSHB 198 would provide protection for people who use contracts for deeds to purchase residences. Contracts for deeds often are used for housing purchases along the border and in low-income inner-city neighborhoods. Unscrupulous developers frequently target immigrant populations and other low-income groups unfamiliar with the financial and legal aspects of contract negotiation. Many contract-for-deed purchasers do not speak English and must negotiate the contract through a friend or relative.

The bill would extend contract-for-deed protections already in place in the border region to the entire state. Purchasers would have 60 days from the date of notification of default to come into compliance with the contract regardless of the amount they had paid off. The seller would have to provide a copy of the contract in the language that it had been negotiated in, disclose insurance coverage and tax payments, file a copy of the contract with the county clerk, and provide an annual accounting statement.

A March 2000 tornado that struck a low-income neighborhood in Fort Worth illustrated the need for basic contract-for-deed protections. Many families

spent months living in their damaged houses until charities provided assistance in rebuilding and repairing their homes. Others had paid the seller for insurance each month but discovered after the tornado struck that they did not have a policy. Many families thought they had rented their houses and were waiting for the landlord to make repairs.

The bill would not prohibit contract-for-deed purchases but would provide basic protections for the purchaser. Contract-for-deed arrangements often provide a means for people to purchase homes who could not otherwise qualify for loans through the traditional lending market. The bill would ensure that people who chose this means to purchase a home had basic protections under the law.

OPPONENTS
SAY:

Complying with the requirements of the bill would create an administrative burden for sellers. Sending disclosure notices, translating contracts, and filing public records would require manpower and resources that many sellers might not have. In addition, the \$250 or \$500 per-day penalties for a delayed title transfer could bankrupt some sellers. Contract-for-deed sellers should not be penalized for providing an opportunity for low-income citizens to purchase their own homes.

NOTES:

The substitute changed the original to eliminate the requirement that the attorney provide document translation services contingent on a legislative appropriation.