

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 629  
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### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Historically, low-income residents do not have access to traditional financing when they are purchasing real property. Consequently, these residents often turn to nontraditional forms of purchasing land, such as executory contracts ("contracts for deed"). A contract for deed is an agreement by which land is sold through installment payments, and the seller provides the deed to the land only after all the payments have been made. This type of conveyance is unlike a typical deed of trust transaction in that it takes place outside of traditional land sales and property development, usually leaving buyers with few rights.

Along the Texas-Mexico border region, contracts for deed created an unregulated market for very low-cost and substandard dwellings and are among the reasons why substandard housing (colonias) flourished in the region. As housing advocates have reported, unscrupulous developers and contract for deed sellers often promise prospective home and land buyers that the government--be it city, county, or state--will soon provide needed public services (i.e., water and wastewater systems and electricity). Since these services are not usually provided, unsafe and unsanitary housing conditions often develop.

In 1995, the 74th Legislature started to address some of the problems created through contract for deed land sales. Although certain safeguards have been put in place, contract for deed land sales continue to persist and to create substandard housing problems across the state.

S.B. 629 provides five major reforms to address the continuing problem of contracts for deeds.

### **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 212.0115(c), Local Government Code, to require, on written request of an owner of land, a purchaser of real property under a contract for a deed, executory contract, or other executory conveyance, an entity that provides utility service, or the governing body of the municipality, the municipal authority responsible for approving plats to make certain determinations regarding the owner's land or the land in which the entity or governing body is interested that is located within the jurisdiction of the municipality.

SECTION 2. Amends Section 5.062(a), Property Code, to provide that, for purposes of this subchapter, a residential lease of real property that includes an option to purchase the property is considered an executory contract for conveyance of real property. Makes conforming changes.

SECTION 3. Amends Subchapter D, Chapter 5, Property Code, by adding Section 5.0621, as follows:

Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Provides that, except as provided by Subsection (b), if a residential lease of real property includes an option to purchase the property, the provisions of this subchapter and Chapter 92 (Residential Tenancies), Property Code, apply to the lease.

(b) Provides that, after a tenant exercises an option to purchase leased property under a residential lease described by Subsection (a), Chapter 92, Property Code no longer applies to the lease.

SECTION 4. Amends Section 5.073, Property Code, as follows:

Sec. 5.073. New heading: **CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED.** (a) Creates subsection from existing text and adds provisions that are prohibited from being included as a term of the executory contract by a seller.

(b) Provides that a provision of the executory contract that purports to waive a right or exempt a party from liability or duty under this subchapter is void.

SECTION 5. Amends Subchapter D, Chapter 5, Property Code, by adding Sections 5.081-5.085, as follows:

Sec. 5.081. **RIGHT TO CONVERT CONTRACT.** (a) Entitles a purchaser, at any time without paying penalties or charges of any kind, to convert the purchaser's interest in property under an executory contract into recorded, legal title in accordance with this section.

(b) Requires the seller, if the purchaser tenders to the seller an amount of money equal to the balance of the total amount owed by the purchaser to the seller under the executory contract, to transfer to the purchaser recorded, legal title of the property covered by the contract.

(c) Provides that, subject to Subsection (d), if the purchaser delivers to the seller of property covered by an executory contract a promissory note that is equal in amount to the balance of the total amount owed by the purchaser to the seller under the contract and that contains the same interest rate, due dates, and late fees as the contract, the seller and the purchaser will be required to execute certain deeds.

(d) Requires the seller, on or before the 10th day after the date the seller receives a promissory note under Subsection (c) that substantially complies with that subsection, to take certain actions.

(e) Provides that a seller who violates this section is liable to the purchaser in the same manner and amount as a seller who violates Section 5.079 (Title Transfer) is liable to a purchaser. Provides that this subsection does not limit or affect any other rights or remedies a purchaser has under law.

(f) Provides that, on the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract is considered completed and has no further effect.

(g) Provides that the appropriate use of forms published by the Texas Real Estate Commission for transactions described by this section constitutes compliance with this section.

Sec. 5.082. **REQUEST FOR BALANCE AND TRUSTEE.** (a) Entitles a purchaser under an executory contract, on written request, to receive certain information from the seller.

(b) Requires the seller, on or before the 10th day after the date the seller receives from the purchaser a written request for information described by Subsection (a), to provide to the purchaser a written statement of the requested information.

(c) Authorizes the purchaser, if the seller does not timely respond to a request made under this section, to take certain actions.

(d) Requires a purchaser, for purposes of Subsection (c)(2), to select a trustee that lives or has a place of business in the same county where the property covered by the executory contract is located.

Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING. (a) Authorizes the purchaser, except as provided by Subsection (c), in addition to other rights or remedies provided by law, to cancel and rescind an executory contract at any time if the purchaser learns that the seller has not properly subdivided or platted the property that is covered by the contract in accordance with state and local law. Requires a purchaser canceling and rescinding a contract under this subsection to take certain actions.

(b) Requires the seller, if the purchaser cancels the contract as provided under Subsection (a), to take certain actions not later than the 10th day after the date the seller receives the notice of cancellation and rescission.

(c) Prohibits a purchaser from exercising the purchaser's right to cancel and rescind an executory contract under this section if, on or before the 90th day after the date the purchaser receives the seller's notice under Subsection (b)(1), the seller takes certain actions.

(d) Prohibits the seller from terminating the purchaser's possession of the property covered by the contract being canceled and rescinded before the seller pays the purchaser any money to which the purchaser is entitled under Subsection (b).

Sec. 5.084. RIGHT TO DEDUCT. Authorizes the purchaser, if a seller is liable to a purchaser under this subchapter, to deduct the amount owed to the purchaser by the seller from any amounts owed to the seller by the purchaser under the terms of an executory contract without taking judicial action.

Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE SIMPLE TITLE. (a) Prohibits a potential seller from executing an executory contract with a potential purchaser if the seller does not own the property in fee simple free from any liens or other encumbrances.

(b) Requires a seller, or the seller's heirs or assigns, except as provided by this subsection, to maintain fee simple title free from any liens or other encumbrances to property covered by an executory contract for the entire duration of the contract. Provides that this subsection does not apply to certain liens or encumbrances placed on the property.

(c) Sets forth the results of a violation of this section.

SECTION 6. (a) Provides that Section 5.062, Property Code, as amended by this Act, and Section 5.0621, Property Code, as added by this Act, apply to an executory contract for conveyance in effect of the effective date of this Act, regardless of the date on which the purchaser and seller entered into contract.

(b) Makes application of this Act prospective.

(c) Provides that Sections 5.081 and 5.082, Property Code, as added by this Act, apply to a conversion of title initiated or a request for information made on or after the effective date of this Act, regardless of the date on which the purchaser and seller entered into the executory contract that is the subject of the conversion or request.

(d) Provides that Section 5.083, Property Code, as added by this Act, applies only to a seller's failure or refusal to subdivide or plat real property on or after the effective date of this Act, regardless of the date on which the purchaser and seller entered into the executory contract covering the property that is improperly subdivided or platted.

(e) Provides that Section 5.084, Property Code, as added by this Act, applies to the computation of any amount owed to the seller by the purchaser under the terms of an executory contract on or after the effective date of this Act, regardless of the date on which the purchaser and seller entered into the executory contract.

(f) Makes application of Section 5.085, Property Code, as added by this Act prospective.

SECTION 7. Effective date: September 1, 2005.