

TITLE 2. CONVEYANCES
CHAPTER 5. CONVEYANCES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5.001. FEE SIMPLE. (a) An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law. Words previously necessary at common law to transfer a fee simple estate are not necessary.

(b) This section applies only to a conveyance occurring on or after February 5, 1840.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.002. FAILING AS A CONVEYANCE. An instrument intended as a conveyance of real property or an interest in real property that, because of this chapter, fails as a conveyance in whole or in part is enforceable to the extent permitted by law as a contract to convey the property or interest.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.003. PARTIAL CONVEYANCE. (a) An alienation of real property that purports to transfer a greater right or estate in the property than the person making the alienation may lawfully transfer alienates only the right or estate that the person may convey.

(b) Neither the alienation by deed or will of an estate on which a remainder depends nor the union of the estate with an inheritance by purchase or descent affects the remainder.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.004. CONVEYANCE BY AUTHORIZED OFFICER. (a) A conveyance of real property by an officer legally authorized to sell the property under a judgment of a court within the state passes absolute title to the property to the purchaser.

(b) This section does not affect the rights of a person who is not or who does not claim under a party to the conveyance or judgment.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.005. ALIENS. An alien has the same real and personal property rights as a United States citizen.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.006. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION. (a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim.

(b) To determine reasonable attorney's fees, the court shall consider:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the expertise, reputation, and ability of the attorney; and
- (4) any other factor.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.007. VENDOR AND PURCHASER RISK ACT. (a) Any contract made in this state for the purchase and sale of real property shall be interpreted as including an agreement that the parties have the rights and duties prescribed by this section, unless the contract expressly provides otherwise.

(b) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part of the property is destroyed without fault of the purchaser or is taken by eminent domain, the vendor may not enforce the contract, and the purchaser is entitled to recover any portion of the contract price paid.

(c) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part of the property is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not relieved from the duty to pay the contract price, nor is the purchaser entitled to recover any portion of the price already paid.

(d) This section shall be interpreted and construed to accomplish its general purpose to make uniform the law of those states that enact the Uniform Vendor and Purchaser Risk Act.

(e) This section may be cited as the Uniform Vendor and Purchaser Risk Act.

Added by Acts 1989, 71st Leg., ch. 1002, Sec. 1, eff. Sept. 1, 1989.

Sec. 5.008. SELLER'S DISCLOSURE OF PROPERTY CONDITION. (a) A seller of residential real property comprising not more than one

dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section or a written notice substantially similar to the notice prescribed by this section which contains, at a minimum, all of the items in the notice prescribed by this section.

(b) The notice must be executed and must, at a minimum, read substantially similar to the following:

SELLER'S DISCLOSURE NOTICE
CONCERNING THE PROPERTY AT _____
(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.
Seller ___ is ___ is not occupying the Property.
If unoccupied, how long since Seller has occupied the Property?

1. The Property has the items checked below:
Write Yes (Y), No (N), or Unknown (U).

<input type="checkbox"/> Range	<input type="checkbox"/> Oven	<input type="checkbox"/> Microwave
<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Trash Compactor	<input type="checkbox"/> Disposal
<input type="checkbox"/> Washer/Dryer	<input type="checkbox"/> Window	<input type="checkbox"/> Rain Gutters
<input type="checkbox"/> Hookups	<input type="checkbox"/> Screens	
<input type="checkbox"/> Security System	<input type="checkbox"/> Fire Detection Equipment	<input type="checkbox"/> Intercom System
<input type="checkbox"/> TV Antenna	<input type="checkbox"/> Cable TV	<input type="checkbox"/> Satellite Dish
<input type="checkbox"/> Ceiling Fan(s)	<input type="checkbox"/> Wiring	<input type="checkbox"/> Exhaust Fan(s)
<input type="checkbox"/> Central A/C	<input type="checkbox"/> Attic Fan(s)	<input type="checkbox"/> Wall/Window Air Conditioning
<input type="checkbox"/> Plumbing System	<input type="checkbox"/> Central Heating	<input type="checkbox"/> Public Sewer System
<input type="checkbox"/> Patio/Decking	<input type="checkbox"/> Septic System	<input type="checkbox"/> Fences
<input type="checkbox"/> Pool	<input type="checkbox"/> Outdoor Grill	<input type="checkbox"/> Spa
<input type="checkbox"/> Pool Equipment	<input type="checkbox"/> Sauna	<input type="checkbox"/> Hot Tub
	<input type="checkbox"/> Pool Heater	<input type="checkbox"/> Automatic Lawn Sprinkler System
<input type="checkbox"/> Fireplace(s) & Chimney (Woodburning)		<input type="checkbox"/> Fireplace(s) & Chimney (Mock)
<input type="checkbox"/> Gas Lines (Nat./LP)		<input type="checkbox"/> Gas Fixtures
Garage: <input type="checkbox"/> Attached	<input type="checkbox"/> Not Attached	<input type="checkbox"/> Carport
Garage Door Opener(s): <input type="checkbox"/>	<input type="checkbox"/> Electronic	<input type="checkbox"/> Control(s)
Water Heater: <input type="checkbox"/>	<input type="checkbox"/> Gas	<input type="checkbox"/> Electric
Water Supply: <input type="checkbox"/> City	<input type="checkbox"/> Well <input type="checkbox"/> MUD	<input type="checkbox"/> Co-op
Roof Type: _____	Age: _____	(approx)

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects, or that are in need of repair? ☐ Yes ☐ No ☐ Unknown.
If yes, then describe. (Attach additional sheets if necessary):

2. Are you (Seller) aware of any known defect/malfunctions in any of the following?
Write Yes (Y) if you are aware, write No (N) if you are not aware.

<input type="checkbox"/> Interior Walls	<input type="checkbox"/> Ceilings	<input type="checkbox"/> Floors
<input type="checkbox"/> Exterior Walls	<input type="checkbox"/> Doors	<input type="checkbox"/> Windows
<input type="checkbox"/> Roof	<input type="checkbox"/> Foundation/Slab(s)	<input type="checkbox"/> Basement
<input type="checkbox"/> Walls/Fences	<input type="checkbox"/> Driveways	<input type="checkbox"/> Sidewalks
<input type="checkbox"/> Plumbing/Sewers/Septics	<input type="checkbox"/> Electrical Systems	<input type="checkbox"/> Lighting Fixtures

☐ Other Structural Components (Describe): _____

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

3. Are you (Seller) aware of any of the following conditions?
Write Yes (Y) if you are aware, write No (N) if you are not aware.

- | | |
|--|---|
| <input type="checkbox"/> Active Termites
(includes wood-destroying insects) | <input type="checkbox"/> Previous Structural or Roof Repair |
| <input type="checkbox"/> Termite or Wood Rot
Needing Repair | <input type="checkbox"/> Hazardous or Toxic Waste |
| <input type="checkbox"/> Previous Termite Damage | <input type="checkbox"/> Asbestos Components |
| <input type="checkbox"/> Previous Termite Treatment | <input type="checkbox"/> Urea formaldehyde Insulation |
| <input type="checkbox"/> Previous Flooding | <input type="checkbox"/> Radon Gas |
| <input type="checkbox"/> Improper Drainage | <input type="checkbox"/> Lead Based Paint |
| <input type="checkbox"/> Water Penetration | <input type="checkbox"/> Aluminum Wiring |
| <input type="checkbox"/> Located in 100-Year Floodplain | <input type="checkbox"/> Previous Fires |
| <input type="checkbox"/> Present Flood Insurance Coverage | <input type="checkbox"/> Unplatted Easements |
| <input type="checkbox"/> Landfill, Settling, Soil Movement, Fault Lines | <input type="checkbox"/> Subsurface Structure or Pits |

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

4. Are you (Seller) aware of any item, equipment, or system in or on the property that is in need of repair? ☐ Yes (if you are aware) ☐ No (if you are not aware). If yes, explain (attach additional sheets as necessary). _____

5. Are you (Seller) aware of any of the following?
Write Yes (Y) if you aware, write No (N) if you are not aware.

- ☐ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.
- ☐ Homeowners' Association or maintenance fees or assessments.
- ☐ Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.
- ☐ Any notices of violations of deed restrictions of governmental ordinances affecting the condition or use of the Property.
- ☐ Any lawsuits directly or indirectly affecting the Property.
- ☐ Any condition on the Property which materially affects the physical health or safety of an individual.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

Date Signature of Seller
The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

Date Signature of Purchaser

(c) A seller or seller's agent shall have no duty to make a disclosure or release information related to whether a death by natural causes, suicide, or accident unrelated to the condition of the property occurred on the property or whether a previous occupant had, may have had, has, or may have AIDS, HIV related illnesses, or HIV infection.

(d) The notice shall be completed to the best of seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required by the notice is unknown to the seller, the seller shall indicate that fact on the notice, and by that act is in compliance with this section.

(e) This section does not apply to a transfer:
(1) pursuant to a court order or foreclosure sale;
(2) by a trustee in bankruptcy;
(3) to a mortgagee by a mortgagor or successor in interest, or to a beneficiary of a deed of trust by a trustor or successor in interest;
(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust or a sale pursuant to a court ordered foreclosure or has acquired the real property by

a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to one or more other co-owners;

(7) made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

(9) to or from any governmental entity;

(10) of a new residence of not more than one dwelling unit which has not previously been occupied for residential purposes; or

(11) of real property where the value of any dwelling does not exceed five percent of the value of the property.

(f) The notice shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within seven days after receiving the notice.

Added by Acts 1993, 73rd Leg., ch. 356, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 2005, 79th Leg., ch. 728, Sec. 17.001, eff. Sept. 1, 2005.

Sec. 5.009. DUTIES OF LIFE TENANT. (a) Subject to Subsection (b), if the life tenant of a legal life estate is given the power to sell and reinvest any life tenancy property, the life tenant is subject, with respect to the sale and investment of the property, to all of the fiduciary duties of a trustee imposed by the Texas Trust Code (Subtitle B, Title 9, Property Code) or the common law of this state.

(b) A life tenant may retain, as life tenancy property, any real property originally conveyed to the life tenant without being subject to the fiduciary duties of a trustee; however, the life tenant is subject to the common law duties of a life tenant.

Acts 1993, 73rd Leg., ch. 846, Sec. 34, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Property Code Sec. 5.008 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(42), eff. Sept. 1, 1995.

Sec. 5.010. NOTICE OF ADDITIONAL TAX LIABILITY. (a) A person who is the owner of an interest in vacant land and who contracts for the transfer of that interest shall include in the contract the following bold-faced notice:

If for the current ad valorem tax year the taxable value of the land that is the subject of this contract is determined by a special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.

NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES

(b) This section does not apply to a contract for a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) of only a mineral interest, leasehold interest, or security interest; or

(7) to or from a governmental entity.

(c) The notice described by Subsection (a) is not required

to be included in a contract for transfer of an interest in land if every transferee under the contract is:

(1) a person who is a co-owner with an owner described by Subsection (a) of an undivided interest in the land; or

(2) a spouse or a person in the lineal line of consanguinity of an owner described by Subsection (a).

(d) The notice described by Subsection (a) is not required to be given if in a separate paragraph of the contract the contract expressly provides for the payment of any additional ad valorem taxes and interest that become due as a penalty because of:

(1) the transfer of the land; or

(2) a subsequent change in the use of the land.

(e) If the owner fails to include in the contract the notice described by Subsection (a), the person to whom the land is transferred is entitled to recover from that owner an amount equal to the amount of any additional taxes and interest that the person is required to pay as a penalty because of:

(1) the transfer of the land; or

(2) a subsequent change in the use of the land that occurs before the fifth anniversary of the date of the transfer.

Added by Acts 1997, 75th Leg., ch. 174, Sec. 1, eff. Jan. 1, 1998.

Sec. 5.011. SELLER'S DISCLOSURE REGARDING POTENTIAL ANNEXATION. (a) A person who sells an interest in real property in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE REGARDING POSSIBLE ANNEXATION

If the property that is the subject of this contract is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information.

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of real property that is located wholly within a municipality's corporate boundaries.

(d) If the notice is delivered as provided by this section, the seller has no duty to provide additional information regarding the possible annexation of the property by a municipality.

(e) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

(1) seven days after the date the purchaser receives the notice; or

(2) the date the transfer occurs.

Added by Acts 1999, 76th Leg., ch. 529, Sec. 1, eff. Jan. 1, 2000.

Sec. 5.012. NOTICE OF OBLIGATIONS RELATED TO MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION. (a) A seller of residential real

property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE
PROPERTY AT (street address) (name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk.

You are obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

Date: _____

Signature of Purchaser

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice prescribed by this section, the references to the street address and date in the notice, and the purchaser's signature on the notice may be omitted.

(c) This section does not apply to a transfer:

- (1) under a court order or foreclosure sale;
- (2) by a trustee in bankruptcy;
- (3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- (5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (6) from one co-owner to another co-owner of an undivided interest in the real property;
- (7) to a spouse or a person in the lineal line of consanguinity of the seller;
- (8) to or from a governmental entity;
- (9) of only a mineral interest, leasehold interest, or security interest; or
- (10) of a real property interest in a condominium.

(d) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

- (1) seven days after the date the purchaser receives the notice; or
- (2) the date the transfer occurs as provided by the executory contract.

(e) The purchaser's right to terminate the executory contract under Subsection (d) is the purchaser's exclusive remedy for the seller's failure to provide the notice required by this section.

Added by Acts 1999, 76th Leg., ch. 1420, Sec. 1, eff. Jan. 1, 2000.

Sec. 5.013. SELLER'S DISCLOSURE OF LOCATION OF CONDITIONS UNDER SURFACE OF UNIMPROVED REAL PROPERTY. (a) A seller of unimproved real property to be used for residential purposes shall provide to the purchaser of the property a written notice disclosing the location of a transportation pipeline, including a pipeline for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product, or a hazardous substance.

(b) The notice must state the information to the best of the seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required to be disclosed is not known to the seller, the seller shall indicate that

fact in the notice.

(c) The notice must be delivered by the seller on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered without the seller providing the notice as required by this section, the purchaser may terminate the contract for any reason not later than the seventh day after the effective date of the contract.

(d) This section applies to any seller of unimproved real property, including a seller who is the developer of the property and who sells the property to others for resale.

(e) In this section, "hazardous substance" and "hazardous waste" have the meanings assigned by Section 361.003, Health and Safety Code.

(f) A seller is not required to give the notice if:

(1) the seller is obligated under an earnest money contract to furnish a title insurance commitment to the buyer prior to closing; and

(2) the buyer is entitled to terminate the contract if the buyer's objections to title as permitted by the contract are not cured by the seller prior to closing.

Added by Acts 1997, 75th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Property Code Sec. 5.010 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(95), eff. Sept. 1, 2001.

Sec. 5.014. PROHIBITED FEES.

Text of section as added by Acts 2005, 79th Leg., ch. 825, Sec. 14, effective September 1, 2005

A person who has a right of first refusal in real property that is a condominium subject to Chapter 81 or Chapter 82 may not charge a fee for declining to exercise that right, such as a fee for providing written evidence of the declination.

Added by Acts 2005, 79th Leg., ch. 825, Sec. 14, eff. Sept. 1, 2005. For text of section as added by Acts 2005, 79th Leg., ch. 1085, Sec. 1, effective January 1, 2006, see Sec. 5.014, post.

Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT.

Text of section as added by Acts 2005, 79th Leg., ch. 1085, Sec. 1, effective January 1, 2006

(a) A seller of residential real property that is located in a public improvement district established under Chapter 372, Local Government Code, and that consists of not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT
TO (municipality or county levying assessment) CONCERNING THE
PROPERTY AT (street address)

As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment.

The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

Date: _____

Signature of Purchaser

(b) The seller shall deliver the notice required under Subsection (a) to the purchaser before the effective date of an executory contract binding the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice prescribed by this section, the references to the street address and date in the notice, and the purchaser's signature on the notice may be omitted.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of

trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of a real property interest in a condominium.

(d) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason not later than the earlier of:

(1) the seventh day after the date the purchaser receives the notice; or

(2) the date the transfer occurs as provided by the executory contract.

(e) The purchaser's right to terminate the executory contract under Subsection (d) is the purchaser's exclusive remedy for the seller's failure to provide the notice required by this section.

Added by Acts 2005, 79th Leg., 1085, Sec. 1, eff. Jan. 1, 2006.

For text of section as added by Acts 2005, 79th Leg., ch. 825, Sec. 14, effective September 1, 2005, see Sec. 5.014, ante.

SUBCHAPTER B. FORM AND CONSTRUCTION OF INSTRUMENTS

Sec. 5.021. INSTRUMENT OF CONVEYANCE. A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.022. FORM. (a) The following form or a form that is the same in substance conveys a fee simple estate in real property with a covenant of general warranty:

"The State of Texas,

"County of _____.

"Know all men by these presents, That I, _____, of the _____ (give name of city, town, or county), in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said _____, of the _____ (give name of city, town, or county), in the state of _____, all that certain _____ (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _____, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said _____, his heirs, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this _____ day of _____, A.D. 19____.

"Signed and delivered in the presence of _____"

(b) A covenant of warranty is not required in a conveyance.

(c) The parties to a conveyance may insert any clause or use any form not in contravention of law.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.023. IMPLIED COVENANTS. (a) Unless the conveyance expressly provides otherwise, the use of "grant" or "convey" in a conveyance of an estate of inheritance or fee simple implies only that the grantor and the grantor's heirs covenant to the grantee and the grantee's heirs or assigns:

(1) that prior to the execution of the conveyance the grantor has not conveyed the estate or any interest in the estate to a person other than the grantee; and

(2) that at the time of the execution of the conveyance the estate is free from encumbrances.

(b) An implied covenant under this section may be the basis for a lawsuit as if it had been expressed in the conveyance. Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.024. ENCUMBRANCES. "Encumbrance" includes a tax, an assessment, and a lien on real property.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.025. WOOD SHINGLE ROOF. To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, the restriction is void.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.026. DISCRIMINATORY PROVISIONS. (a) If a restriction that affects real property, or a provision in a deed that conveys real property or an interest in real property, whether express or incorporated by reference, prohibits the use by or the sale, lease, or transfer to a person because of race, color, religion, or national origin, the provision or restriction is void.

(b) A court shall dismiss a suit or part of a suit to enforce a provision that is void under this section.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. FUTURE ESTATES

Sec. 5.041. FUTURE ESTATES. A person may make an inter vivos conveyance of an estate of freehold or inheritance that commences in the future, in the same manner as by a will.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.042. ABOLITION OF COMMON-LAW RULES. (a) The common-law rules known as the rule in Shelley's case, the rule forbidding a remainder to the grantor's heirs, the doctrine of worthier title, and the doctrine or rule prohibiting an existing lien upon part of a homestead from extending to another part of the homestead not charged with the debts secured by the existing lien upon part of the homestead do not apply in this state.

(b) A deed, will, or other conveyance of property in this state that limits an interest in the property to a particular person or to a class such as the heirs, heirs of the body, issue, or next of kin of the conveyor or of a person to whom a particular interest in the same property is limited is effective according to the intent of the conveyor.

(c) Status as an heir or next of kin of a conveyor or the failure of a conveyor to describe a person in a conveyance other than as a member of a class does not affect a person's right to take or share in an interest as a conveyee.

(d) Subject to the intention of a conveyor, which controls unless limited by law, the membership of a class described in this section and the participation of a member in a property interest conveyed to the class are determined under this state's laws of descent and distribution.

(e) This section does not apply to a conveyance taking effect before January 1, 1964.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1999, 76th Leg., ch. 1510, Sec. 5, eff. Sept. 1, 1999.

Sec. 5.043. REFORMATION OF INTERESTS VIOLATING RULE AGAINST PERPETUITIES. (a) Within the limits of the rule against perpetuities, a court shall reform or construe an interest in real or personal property that violates the rule to effect the ascertainable general intent of the creator of the interest. A court shall liberally construe and apply this provision to validate an interest to the fullest extent consistent with the creator's intent.

(b) The court may reform or construe an interest under Subsection (a) of this section according to the doctrine of cy pres by giving effect to the general intent and specific directives of the creator within the limits of the rule against perpetuities.

(c) If an instrument that violates the rule against perpetuities may be reformed or construed under this section, a court shall enforce the provisions of the instrument that do not violate the rule and shall reform or construe under this section a provision that violates or might violate the rule.

(d) This section applies to legal and equitable interests, including noncharitable gifts and trusts, conveyed by an inter vivos instrument or a will that takes effect on or after September 1, 1969, and this section applies to an appointment made on or after that date regardless of when the power was created.

Acts 1983, 68th Leg., p. 3484, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 16, eff. Sept. 1,

1991.

SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

Sec. 5.061. DEFINITION. In this subchapter, "default" means the failure to:

- (1) make a timely payment; or
- (2) comply with a term of an executory contract.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.065 and amended by Act 2001, 77th Leg., ch. 693, Sec. 1, Sept. 1, 2001.

Sec. 5.062. APPLICABILITY. (a) This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence or as the residence of a person related to the purchaser within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code. For purposes of this subchapter, and only for the purposes of this subchapter:

(1) a lot measuring one acre or less is presumed to be residential property; and

(2) an option to purchase real property that includes or is combined or executed concurrently with a residential lease agreement, together with the lease, is considered an executory contract for conveyance of real property.

(b) This subchapter does not apply to the following transactions under an executory contract:

(1) the sale of state land; or

(2) a sale of land by:

(A) the Veterans' Land Board;

(B) this state or a political subdivision of this state; or

(C) an instrumentality, public corporation, or other entity created to act on behalf of this state or a political subdivision of this state, including an entity created under Chapter 303, 392, or 394, Local Government Code.

(c) This subchapter does not apply to an executory contract that provides for the delivery of a deed from the seller to the purchaser within 180 days of the date of the final execution of the executory contract.

(d) Section 5.066 and Sections 5.068-5.080 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property:

(1) is related to the seller of the property within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

(2) has waived the applicability of those sections in a written agreement.

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

(f) Notwithstanding any other provision of this subchapter, only the following sections apply to an executory contract described by Subsection (a)(2) if the term of the contract is three years or less and the purchaser and seller, or the purchaser's or seller's assignee, agent, or affiliate, have not been parties to an executory contract to purchase the property covered by the executory contract for longer than three years:

(1) Sections 5.063-5.065;

(2) Section 5.073, except for Section 5.073(a)(2); and

(3) Sections 5.083 and 5.085.

(g) Except as provided by Subsection (b), if Subsection (f) conflicts with another provision of this subchapter, Subsection (f) prevails.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.091 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 978, Sec. 2, eff. Sept. 1, 2005.

Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Except as provided by Subsection (b), the provisions of this subchapter and Chapter 92 apply to the portion of an executory contract described by Section 5.062(a)(2) that is a residential lease agreement.

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

Added by Acts 2005, 79th Leg., ch. 978, Sec. 3, eff. Sept. 1, 2005.

Sec. 5.063. NOTICE. (a) Notice under Section 5.064 must be in writing and must be delivered by registered or certified mail,

return receipt requested. The notice must be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters, and must include on a separate page the statement:

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

NOTICE

(b) The notice must also:

(1) identify and explain the remedy the seller intends to enforce;

(2) if the purchaser has failed to make a timely payment, specify:

(A) the delinquent amount, itemized into principal and interest;

(B) any additional charges claimed, such as late charges or attorney's fees; and

(C) the period to which the delinquency and additional charges relate; and

(3) if the purchaser has failed to comply with a term of the contract, identify the term violated and the action required to cure the violation.

(c) Notice by mail is given when it is mailed to the purchaser's residence or place of business. The affidavit of a person knowledgeable of the facts to the effect that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired. A bona fide subsequent purchaser for value who relies upon the affidavit under this subsection shall take title free and clear of the contract.

Acts 1983, 68th Leg., p. 3485, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 444, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.062 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.064. SELLER'S REMEDIES ON DEFAULT. A seller may 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:

(1) the seller notifies the purchaser of:

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

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

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

(3) Section 5.066 does not apply.

Acts 1983, 68th Leg., p. 3484, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.061 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 959, Sec. 1, eff. Sept. 1, 2003.

Sec. 5.065. RIGHT TO CURE DEFAULT. Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property may avoid the enforcement of a remedy described by Section 5.064 by complying with the terms of the contract on or before the 30th day after the date notice is given under that section.

Acts 1983, 68th Leg., p. 3485, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.063 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 959, Sec. 2, eff. Sept. 1, 2003.

Sec. 5.066. EQUITY PROTECTION; SALE OF PROPERTY. (a) 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, 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. The seller may not enforce the remedy of rescission or of forfeiture and acceleration.

(b) The seller shall notify a purchaser of a default under the contract and allow the purchaser at least 60 days after the date

notice is given to cure the default. The notice must be provided as prescribed by Section 5.063 except that the notice must substitute the following statement:

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) A TRUSTEE DESIGNATED BY THE SELLER HAS THE RIGHT TO SELL YOUR PROPERTY AT A PUBLIC AUCTION.

NOTICE

(c) The trustee or a substitute trustee designated by the seller must post, file, and serve a notice of sale and the county clerk shall record and maintain the notice of sale as prescribed by Section 51.002. A notice of sale is not valid unless it is given after the period to cure has expired.

(d) The trustee or a substitute trustee designated by the seller must conduct the sale as prescribed by Section 51.002. The seller must:

(1) convey to a purchaser at a sale conducted under this section fee simple title to the real property; and

(2) warrant that the property is free from any encumbrance.

(e) The remaining balance of the amount due under the executory contract is the debt for purposes of a sale under this section. If the proceeds of the sale exceed the debt amount, the seller shall disburse the excess funds to the purchaser under the executory contract. If the proceeds of the sale are insufficient to extinguish the debt amount, the seller's right to recover the resulting deficiency is subject to Sections 51.003, 51.004, and 51.005 unless a provision of the executory contract releases the purchaser under the contract from liability.

(f) The affidavit of a person knowledgeable of the facts that states that the notice was given and the sale was conducted as provided by this section is prima facie evidence of those facts. A purchaser for value who relies on an affidavit under this subsection acquires title to the property free and clear of the executory contract.

(g) If a purchaser defaults before the purchaser has paid 40 percent of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller may enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness if the seller complies with the notice requirements of Sections 5.063 and 5.064.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.101 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.067. PLACEMENT OF LIEN FOR UTILITY SERVICE. Notwithstanding any terms of a contract to the contrary, the placement of a lien for the reasonable value of improvements to residential real estate for purposes of providing utility service to the property shall not constitute a default under the terms of an executory contract for the purchase of the real property.

Added by Acts 1991, 72nd Leg., ch. 743, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.064 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.068. FOREIGN LANGUAGE REQUIREMENT. If the negotiations that precede the execution of an executory contract are conducted primarily in a language other than English, the seller shall provide a copy in that language of all written documents relating to the transaction, including the contract, disclosure notices, annual accounting statements, and a notice of default required by this subchapter.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.093 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.069. SELLER'S DISCLOSURE OF PROPERTY CONDITION. (a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a survey, which was completed within the past year, or plat of a current survey of the real property;

(2) 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

(3) a written notice, which must be attached to the contract, informing the purchaser of the condition of the property

that must, at a minimum, be executed by the seller and purchaser and read substantially similar to the following:

WARNING

IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE PROPERTY.

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT (street address or legal description and city)

THIS DOCUMENT STATES CERTAIN APPLICABLE FACTS ABOUT THE PROPERTY YOU ARE CONSIDERING PURCHASING.

CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

- _____ The property is in a recorded subdivision.
- _____ The property has water service that provides potable water.
- _____ The property has sewer service.
- _____ The property has been approved by the appropriate municipal, county, or state agency for installation of a septic system.
- _____ The property has electric service.
- _____ The property is not in a floodplain.
- _____ The roads to the boundaries of the property are paved and maintained by:
 - _____ the seller;
 - _____ the owner of the property on which the road exists;
 - _____ the municipality;
 - _____ the county; or
 - _____ the state.

_____ No individual or entity other than the seller:

- (1) owns the property;
- (2) has a claim of ownership to the property; or
- (3) has an interest in the property.

_____ No individual or entity has a lien filed against the property.

_____ There are no restrictive covenants, easements, or other title exceptions or encumbrances that prohibit construction of a house on the property.

NOTICE: SELLER ADVISES PURCHASER TO:

- (1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT COVERING THE PROPERTY AND HAVE THE ABSTRACT OR COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND
- (2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING THE PROPERTY.

(Date)

(Signature of Seller)

(Date)

(Signature of Purchaser)

(b) If the property is not located in a recorded subdivision, the seller shall 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.

(c) If the seller advertises property for sale under an executory contract, the advertisement must disclose information regarding the availability of water, sewer, and electric service.

(d) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(e) Subsection (d) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.094 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.070. SELLER'S DISCLOSURE OF TAX PAYMENTS AND INSURANCE COVERAGE. (a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a tax certificate from the collector for each taxing unit that collects taxes due on the property as provided by Section 31.08, Tax Code; and

(2) a legible copy of any insurance policy, binder, or other evidence relating to the property that indicates:

- (A) the name of the insurer and the insured;
- (B) a description of the property insured; and
- (C) the amount for which the property is insured.

(b) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(c) Subsection (b) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.071. SELLER'S DISCLOSURE OF FINANCING TERMS. Before an executory contract is signed by the purchaser, the seller shall provide to the purchaser a written statement that specifies:

(1) the purchase price of the property;

(2) the interest rate charged under the contract;

(3) the dollar amount, or an estimate of the dollar amount if the interest rate is variable, of the interest charged for the term of the contract;

(4) the total amount of principal and interest to be paid under the contract;

(5) the late charge, if any, that may be assessed under the contract; and

(6) the fact that the seller may not charge a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.095 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.072. ORAL AGREEMENTS PROHIBITED. (a) An executory contract is not enforceable unless the contract is in writing and signed by the party to be bound or by that party's authorized representative.

(b) The rights and obligations of the parties to a contract are determined solely from the written contract, and any prior oral agreements between the parties are superseded by and merged into the contract.

(c) An executory contract may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the contract.

(d) The seller shall include in a separate document or in a provision of the contract a statement printed in 14-point boldfaced type or 14-point uppercase typewritten letters that reads substantially similar to the following:

THIS EXECUTORY CONTRACT REPRESENTS THE FINAL AGREEMENT BETWEEN THE SELLER AND PURCHASER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(Date)

(Signature of Seller)

(Date)

(Signature of Purchaser)

(e) The seller's failure to provide the notice required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(f) Subsection (e) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED. (a)

A seller may not include as a term of the executory contract a provision that:

(1) imposes an additional late-payment fee that exceeds the lesser of:

(A) eight percent of the monthly payment under the contract; or

(B) the actual administrative cost of processing the late payment;

(2) prohibits the purchaser from pledging the purchaser's interest in the property as security to obtain a loan to place improvements, including utility improvements or fire protection improvements, on the property;

(3) imposes a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract;

(4) forfeits an option fee or other option payment paid under the contract for a late payment; or

(5) increases the purchase price, imposes a fee or charge of any type, or otherwise penalizes a purchaser leasing property with an option to buy the property for requesting repairs or exercising any other right under Chapter 92.

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

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.096 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 978, Sec. 4, eff. Sept. 1, 2005.

Sec. 5.074. PURCHASER'S RIGHT TO CANCEL CONTRACT WITHOUT CAUSE. (a) In addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract for any reason by sending by telegram or certified or registered mail, return receipt requested, or by delivering in person a signed, written notice of cancellation to the seller not later than the 14th day after the date of the contract.

(b) If the purchaser cancels the contract as provided by Subsection (a), the seller shall, not later than the 10th day after the date the seller receives the purchaser's notice of cancellation:

(1) return to the purchaser the executed contract and any property exchanged or payments made by the purchaser under the contract; and

(2) cancel any security interest arising out of the contract.

(c) The seller shall include in immediate proximity to the space reserved in the executory contract for the purchaser's signature a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE NEXT TWO WEEKS. THE DEADLINE FOR CANCELING THE CONTRACT IS (date).

THE ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.

(d) The seller shall provide a notice of cancellation form to the purchaser at the time the purchaser signs the executory contract that is printed in 14-point boldface type or 14-point uppercase typewritten letters and that reads substantially similar to the following:

(date of contract)

NOTICE OF CANCELLATION

YOU MAY CANCEL THE EXECUTORY CONTRACT FOR ANY REASON WITHOUT ANY PENALTY OR OBLIGATION BY (date).

(1) YOU MUST SEND BY TELEGRAM OR CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR DELIVER IN PERSON A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO (Name of Seller) AT (Seller's Address) BY (date).

(2) THE SELLER SHALL, NOT LATER THAN THE 10TH DAY AFTER THE DATE THE SELLER RECEIVES YOUR CANCELLATION NOTICE:

(A) RETURN THE EXECUTED CONTRACT AND ANY PROPERTY EXCHANGED OR PAYMENTS MADE BY YOU UNDER THE CONTRACT; AND

(B) CANCEL ANY SECURITY INTEREST ARISING OUT OF THE CONTRACT.

I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

(Date)

I HEREBY CANCEL THIS CONTRACT.

(Purchaser's Signature)

(Date)

(Purchaser's Signature)

(e) The seller may not request the purchaser to sign a waiver of receipt of the notice of cancellation form required by this section.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.097 by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.075. PURCHASER'S RIGHT TO PLEDGE INTEREST IN PROPERTY ON CONTRACTS ENTERED INTO BEFORE SEPTEMBER 1, 2001. (a) On an executory contract entered into before September 1, 2001, a purchaser may pledge the interest in the property, which accrues pursuant to Section 5.066, only to obtain a loan for improving the safety of the property or any improvements on the property.

(b) Loans that improve the safety of the property and improvements on the property include loans for:

(1) improving or connecting a residence to water service;

(2) improving or connecting a residence to a wastewater system;

(3) building or improving a septic system;

(4) structural improvements in the residence; and

(5) improved fire protection.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.098 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.076. RECORDING REQUIREMENTS. (a) Except as provided by Subsection (b), the seller shall record the executory contract, including the attached disclosure statement required by Section 5.069, as prescribed by Title 3 on or before the 30th day after the date the contract is executed.

(b) Section 12.002(c) does not apply to an executory contract filed for record under this section.

(c) If the executory contract is terminated for any reason, the seller shall record the instrument that terminates the contract.

(d) The county clerk shall collect the filing fee prescribed by Section 118.011, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.099 and amended Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.077. ANNUAL ACCOUNTING STATEMENT. (a) The seller shall provide the purchaser with an annual statement in January of each year for the term of the executory contract. If the seller mails the statement to the purchaser, the statement must be postmarked not later than January 31.

(b) The statement must include the following information:

(1) the amount paid under the contract;

(2) the remaining amount owed under the contract;

(3) the number of payments remaining under the contract;

(4) the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller;

(5) the amounts paid to insure the property on the purchaser's behalf if collected by the seller;

(6) if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and

(7) if the seller has changed insurance coverage, a legible copy of the current policy, binder, or other evidence that satisfies the requirements of Section 5.070(a)(2).

(c) A seller who conducts less than two transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of \$100 for each annual statement the seller fails to provide to the purchaser within the time required by Subsection (a); and

(2) reasonable attorney's fees.

(d) A seller who conducts two or more transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of \$250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement, but not to exceed the fair market value of the property; and

(2) reasonable attorney's fees.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.100 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 978, Sec. 5, eff. Sept. 1, 2005.

Sec. 5.078. DISPOSITION OF INSURANCE PROCEEDS. (a) The named insured under an insurance policy, binder, or other coverage relating to property subject to an executory contract for the conveyance of real property shall inform the insurer, not later than the 10th day after the date the coverage is obtained or the contract executed, whichever is later, of:

(1) the executory contract for conveyance and the term of the contract; and

(2) the name and address of the other party to the contract.

(b) An insurer who disburses proceeds under an insurance policy, binder, or other coverage relating to property that has been damaged shall issue the proceeds jointly to the purchaser and the seller designated in the contract.

(c) If proceeds under an insurance policy, binder, or other coverage are disbursed, the purchaser and seller shall ensure that the proceeds are used to repair, remedy, or improve the condition on the property.

(d) The failure of a seller or purchaser to comply with Subsection (c) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

(e) Subsection (d) does not limit either party's remedy for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.079. TITLE TRANSFER. (a) The seller shall 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.

(b) A seller who violates Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of:

(A) \$250 a day for each day the seller fails to transfer the title to the purchaser during the period that begins the 31st day and ends the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(B) \$500 a day for each day the seller fails to transfer title to the purchaser after the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(2) reasonable attorney's fees.

(c) If a person to whom a seller's property interest passes by will or intestate succession is required to obtain a court order to clarify the person's status as an heir or to clarify the status of the seller or the property before the person may convey good and indefeasible title to the property, the court in which the action is pending may waive payment of the liquidated damages and attorney's fees under Subsection (b) if the court finds that the person is pursuing the action to establish good and indefeasible title with reasonable diligence.

(d) In this section, "seller" includes a successor, assignee, personal representative, executor, or administrator of the seller.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.102 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.080. LIABILITY FOR DISCLOSURES. For purposes of this subchapter, a disclosure required by this subchapter that is made by a seller's agent is a disclosure made by the seller.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Property Code Sec. 5.103 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) 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.

(b) 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, the seller shall transfer to the purchaser recorded, legal title of the property covered by the contract.

(c) 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:

(1) the seller shall execute a deed containing any warranties required by the contract and conveying to the purchaser recorded, legal title of the property; and

(2) the purchaser shall simultaneously execute a deed of trust that:

(A) contains the same terms as the contract regarding the purchaser's and seller's duties concerning the property;

(B) secures the purchaser's payment and performance under the promissory note and deed of trust; and

(C) conveys the property to the trustee, in trust, and confers on the trustee the power to sell the property if the purchaser defaults on the promissory note or the terms of the deed of trust.

(d) On or before the 10th day after the date the seller receives a promissory note under Subsection (c) that substantially complies with that subsection, the seller shall:

(1) deliver to the purchaser a written explanation that legally justifies why the seller refuses to convert the purchaser's interest into recorded, legal title under Subsection (c); or

(2) communicate with the purchaser to schedule a mutually agreeable day and time to execute the deed and deed of trust under Subsection (c).

(e) 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 is liable to a purchaser. This subsection does not limit or affect any other rights or remedies a purchaser has under other law.

(f) On the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract:

(1) is considered completed; and

(2) has no further effect.

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

Added by Acts 2005, 79th Leg., ch. 978, Sec. 6, eff. Sept. 1, 2005.

Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE. (a) A purchaser under an executory contract, on written request, is entitled to receive the following information from the seller:

(1) as of the date of the request or another date specified by the purchaser, the amount owed by the purchaser under the contract; and

(2) if applicable, the name and address of the seller's desired trustee for a deed of trust to be executed under Section 5.081.

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

(c) If the seller does not timely respond to a request made under this section, the purchaser may:

(1) determine or pay the amount owed under the contract, including determining the amount necessary for a promissory note under Section 5.081; and

(2) if applicable, select a trustee for a deed of trust under Section 5.081.

(d) For purposes of Subsection (c)(2), a purchaser must 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.

(e) Not later than the 20th day after the date a seller receives notice of an amount determined by a purchaser under

Subsection (c)(1), the seller may contest that amount by sending a written objection to the purchaser. An objection under this subsection must:

(1) be sent to the purchaser by regular and certified mail;

(2) include the amount the seller claims is the amount owed under the contract; and

(3) be based on written records kept by the seller or the seller's agent that were maintained and regularly updated for the entire term of the executory contract.

Added by Acts 2005, 79th Leg., ch. 978, Sec. 6, eff. Sept. 1, 2005.

Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING. (a) Except as provided by Subsection (c), in addition to other rights or remedies provided by law, the purchaser may 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. A purchaser canceling and rescinding a contract under this subsection must:

(1) deliver a signed, written notice of the cancellation and rescission to the seller in person; or

(2) send a signed, written notice of the cancellation and rescission to the seller by telegram or certified or registered mail, return receipt requested.

(b) If the purchaser cancels the contract as provided under Subsection (a), the seller, not later than the 10th day after the date the seller receives the notice of cancellation and rescission, shall:

(1) deliver in person or send by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice that the seller intends to subdivide or plat the property properly; or

(2) return to the purchaser all payments of any kind made to the seller under the contract and reimburse the purchaser for:

(A) any payments the purchaser made to a taxing authority for the property; and

(B) the value of any improvements made to the property by the purchaser.

(c) A purchaser may not exercise 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:

(1) properly subdivides or plats the property; and

(2) delivers in person or sends by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice evidencing that the property has been subdivided or platted in accordance with state and local law.

(d) The seller may not terminate 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).

Added by Acts 2005, 79th Leg., ch. 978, Sec. 6, eff. Sept. 1, 2005.

Sec. 5.084. RIGHT TO DEDUCT. If a seller is liable to a purchaser under this subchapter, the purchaser, without taking judicial action, may 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.

Added by Acts 2005, 79th Leg., ch. 978, Sec. 6, eff. Sept. 1, 2005.

Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE SIMPLE TITLE. (a) A potential seller may not execute 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) Except as provided by this subsection, a seller, or the seller's heirs or assigns, must 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. This subsection does not apply to a lien or encumbrance placed on the property that is:

(1) placed on the property because of the conduct of the purchaser;

(2) agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility or fire protection improvements; or

(3) placed on the property by the seller prior to the

execution of the contract in exchange for a loan used only to purchase the property if:

(A) the seller, not later than the third day before the date the contract is executed, notifies the purchaser in a separate written disclosure:

(i) of the name, address, and phone number of the lienholder or, if applicable, servicer of the loan;

(ii) of the loan number and outstanding balance of the loan;

(iii) of the monthly payments due on the loan and the due date of those payments; and

(iv) in 14-point type that, if the seller fails to make timely payments to the lienholder, the lienholder may attempt to collect the debt by foreclosing on the lien and selling the property at a foreclosure sale;

(B) the lien:

(i) is attached only to the property sold to the purchaser under the contract; and

(ii) secures indebtedness that, at no time, is or will be greater in amount than the amount of the total outstanding balance owed by the purchaser under the executory contract;

(C) the lienholder:

(i) does not prohibit the property from being encumbered by an executory contract; and

(ii) consents to verify the status of the loan on request of the purchaser and to accept payments directly from the purchaser if the seller defaults on the loan; and

(D) the following covenants are placed in the executory contract:

(i) a covenant that obligates the seller to make timely payments on the loan and to give monthly statements to the purchaser reflecting the amount paid to the lienholder, the date the lienholder receives the payment, and the information described by Paragraph (A);

(ii) a covenant that obligates the seller, not later than the third day the seller receives or has actual knowledge of a document or an event described by this subparagraph, to notify the purchaser in writing in 14-point type that the seller has been sent a notice of default, notice of acceleration, or notice of foreclosure or has been sued in connection with a lien on the property and to attach a copy of all related documents received to the written notice; and

(iii) a covenant that warrants that if the seller does not make timely payments on the loan or any other indebtedness secured by the property, the purchaser may, without notice, cure any deficiency with a lienholder directly and deduct from the total outstanding balance owed by the purchaser under the executory contract, without the necessity of judicial action, 150 percent of any amount paid to the lienholder.

(c) A violation of this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) in addition to other rights or remedies provided by law, entitles the purchaser to cancel and rescind the executory contract and receive from the seller:

(A) the return of all payments of any kind made to the seller under the contract; and

(B) reimbursement for:

(i) any payments the purchaser made to a taxing authority for the property; and

(ii) the value of any improvements made to the property by the purchaser.

(d) A seller is not liable under this section if:

(1) a lien is placed on the property by a person other than the seller; and

(2) not later than the 30th day after the date the seller receives notice of the lien, the seller takes all steps necessary to remove the lien and has the lien removed from the property.

Added by Acts 2005, 79th Leg., ch. 978, Sec. 6, eff. Sept. 1, 2005.

SUBCHAPTER F. REQUIREMENTS FOR CONVEYANCES OF MINERAL OR ROYALTY INTERESTS

Sec. 5.151. DISCLOSURE IN OFFER TO PURCHASE MINERAL INTEREST. (a) A person who mails to the owner of a mineral or royalty interest an offer to purchase only the mineral or royalty interest, it being understood that for the purpose of this section the taking of an oil, gas, or mineral lease shall not be deemed a purchase of a mineral or royalty interest, and encloses an instrument of conveyance of only the mineral or royalty interest and a draft or other instrument, as defined in Section 3.104, Business & Commerce Code, providing for payment for that interest shall include in the offer a conspicuous statement printed in a type style that is approximately the same size as 14-point type style or larger and is in substantially the following form:

BY EXECUTING AND DELIVERING THIS INSTRUMENT YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTEREST IN (DESCRIPTION OF PROPERTY BEING CONVEYED).

(b) A person who conveys a mineral or royalty interest as provided by Subsection (a) may bring suit against the purchaser of the interest if:

(1) the purchaser did not give the notice required by Subsection (a); and

(2) the person has given 30 days' written notice to the purchaser that a suit will be filed unless the matter is otherwise resolved.

(c) A plaintiff who prevails in a suit under Subsection (b) may recover from the initial purchaser of the mineral or royalty interest the greater of:

(1) \$100; or

(2) an amount up to the difference between the amount paid by the purchaser for the mineral or royalty interest and the fair market value of the mineral or royalty interest at the time of the sale.

(d) The prevailing party in a suit under Subsection (b) may recover:

(1) court costs; and

(2) reasonable attorney's fees.

(e) A person must bring a suit under Subsection (b) not later than the second anniversary of the date the person executed the conveyance.

(f) The remedy provided under this section shall be in addition to any other remedies existing under law, excluding rescission or other remedies that would make the conveyance of the mineral or royalty interest void or of no force and effect.

Added by Acts 1999, 76th Leg., ch. 1200, Sec. 1, eff. Sept. 1, 1999.