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What Buyers and Sellers of Residential Property in Texas Need to Know Before Entering into an Executory Contract

The process of either buying or selling a home is lengthy and there are many details to which the buyer and the seller must adhere. Under Texas law, additional requirements are involved if the buyer and seller enter into an executory contract for conveyance of real property to be used as the buyer's residence. An executory contract is a contract in which one of the parties promises to perform a future act, such as pay an amount of money. For example, one common form of an executory contract is a contract for deed. This is an agreement between a buyer and seller, in which the seller keeps title and all rights to the land until the buyer has paid the land's full price. Sellers must adhere to a number of requirements with very limited exceptions. If a seller does not satisfy his duties under the law, a court can impose various remedies and penalties such as awarding damages under the Deceptive Trade Practices Act (DTPA) to the buyer and rescinding the contract based on Chapter 5 of the Texas Property Code. Buyers and sellers of residential property should be aware of their duties under the law to avoid these potential pitfalls.

Requirements of a Seller Before Entering into an Executory Contract for Residential Property

Prior to entering into an executory contract for conveyance of a residential property, the seller must make a number of disclosures and provide the buyer with the following information:

- **Survey.** The seller must provide a survey of the property that has been completed within the past year.
- **Description of Encumbrances.** The seller must provide a legible copy of a document that describes any encumbrances on the property.
- **Description of Property Conditions.** The seller must attach written notice to the contract informing the buyer of the condition of the property, which must be executed by the seller and buyer.
- **Tax Payment Information.** The seller must provide a tax certificate for each taxing unit that collects taxes due on the property.
- **Insurance Policy.** The seller must provide a copy of any insurance policy or other evidence that indicates: (1) the name of the insurer and insured; (2) a description of the property insured; and (3) the amount for which the property is insured.
- **Disclosure of Financing Terms.** The seller must provide a written statement that specifies: (1) the purchase price of the property; (2) the interest rate charged under the contract; (3) an estimate of the

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dollar amount 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) any late charges or penalties that could be charged under the contract; and (6) no prepayment penalty.

If the seller does not supply the buyer with the information listed above before entering into the executory contract, the buyer can, under specific sections of Chapter 5 of the Texas Property Code, cancel and rescind the executory contract and demand a full refund of all payments previously made to the seller. Violations of those specific provisions that provide for cancellation or rescission are automatic violations of the Deceptive Trade Practices Act and allow claimants to seek DTPA damages. This statute allows for recovery of treble damages if the buyer can prove the alleged violations were performed intentionally. These penalties are harsh and are meant to provide the seller with an incentive to provide the buyer with the necessary information prior to entering into an executory contract.

In addition to the disclosure requirements, a seller cannot enter into an executory contract with a potential buyer if the seller does not own the property in fee simple free from any liens or other encumbrances. The seller must also maintain fee simple title free from any liens or other encumbrances throughout the duration of the executory contract. This is the general rule and there are a few exceptions, however, it is essential that a seller know the status of title to the property prior to entering into a contract with a potential buyer. If the seller does not meet one of the exceptions and violates these general requirements, the buyer can sue for treble damages under the DTPA, rescind the executory contract, seek the return of all payments made to the seller under the contract and seek reimbursement for all payments made to taxing authorities and for improvements made to the property.

Requirements of a Seller Before Entering into an Executory Contract for Residential Property

In addition to the obligations listed above, a seller must also satisfy several requirements after the parties enter into an executory contract. According to the Texas Property Code, the seller must meet the following provisions after both parties have entered into the contract.

- **Record the Deed.** The seller must record the executory contract with the country clerk within 30 days after the date the contract was executed by the parties.
- **Provide An Annual Accounting Statement.** The seller must provide the buyer with an annual statement in January of each year. The statement must include: (1) the amount paid under the contract; (2) the remaining amount owed; (3) the number of payments remaining; (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) an accounting of insurance proceeds applied to the property if the property has been damaged during the year; and (7) a copy of the insurance policy if the seller changed insurance coverage during the year.

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- **Transfer Title After Last Payment.** The seller must transfer legal title of the property to the buyer within 30 days after the date the seller receives the final payment due under the contract.

A seller who fails to provide the buyer with an annual accounting statement may be liable to the buyer for liquidated damages in the amount of \$250 a day for each day after January 31st that the seller fails to provide the buyer with this statement, if the seller entered into two or more contracts for deed within a 12-month period. If the seller fails to transfer title after the buyer makes the final payment due under the contract, the buyer can recover up to \$250 a day for each day the seller fails to satisfy this duty. If the seller still has not transferred legal title to the buyer 90 days after the buyer submits the final payment on the contract, the seller will be liable to the buyer for \$500 a day for each day the seller continues to fail to transfer title. Additionally, the buyer can collect reasonable attorney's fees from the seller for failing to provide an annual accounting statement and for failing to transfer title after the final payment.

Requirements of a Seller if a Buyer Defaults on Payments Under the Executory Contract

Unlike the seller, the buyer who is a party to an executory contract essentially has one key responsibility - satisfy the terms of the contract by making timely payments. If a buyer does not make timely payments as required under the executory contract for residential property, the seller has two options. First, if the buyer defaults before he has paid 40% of the amount due or the equivalent of 48 monthly payments under the contract, the seller may rescind the contract or seek forfeiture and accelerate payments under the contract. For the seller to implement this remedy, he must first notify the buyer of his intent to enforce a remedy and provide the buyer 30 days after notice is given to cure the default. Second, if the buyer defaults after he has paid 40% of the amount due or the equivalent 48 monthly payments, the seller can sell the property to compensate for the buyer's debt under the contract. For the seller to implement this remedy, he must first notify the buyer of a default and provide the buyer 60 days after notice is given to cure the default.

Contact Us

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