

Presented:
Mortgage Lending Institute

September 19-20, 2013, Austin, Texas
October 10-11, 2013, Dallas Texas
November 6-7, 2013, Houston, Texas

LAWS REMEMBERED AND LAWS FORGOTTEN: A REFRESHER ON THE PROPERTY CODE

JOE F. WHEAT
4544 POST OAK PLACE, SUITE 350
HOUSTON, TEXAS 77027
713-869-5911
joewheat@sbcglobal.net

MICHAEL BAUCUM
BAUCUM STEED BARKER
1100 N.W. LOOP 410, #260
SAN ANTONIO, TEXAS 78213-2253
1-210-349-5311
baucum@baucumsteadlaw.com

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LAWS REMEMBERED AND LAWS FORGOTTEN: A REFRESHER ON THE PROPERTY CODE

I. Introduction

A. History of Property Code. The Property Code was passed in 1983 and became effective January 1, 1984 which had the stated purpose of restating the law in modern American English to the greatest extent possible. Various provisions have been added to the Code since 1984, and there have been modifications of existing provisions.

B. New Provisions. Sections 5.027 through Section 5.031, correction instruments, became effective September 1, 2011, which sets out the rules for correction of recorded documents. Section 5.028 (nonmaterial corrections) and Section 5.030 (effect of Correction instrument) have been amended effective September 1, 2013. Section 5.201 through Section 5.207, Private Transfer Fee Obligations Void, became effective June 17, 2011. Section 5.008, Seller's Disclosure of Property Condition was amended almost every year beginning in 2005 until the last amendment which was effective September 1, 2013. Section 5.012, Notice of Obligation Related to membership in Property Owner's Association is amended effective January 1, 2012 which is the same form as in last year's publication. Although Section 12.008, cancellation of lis pendens, has been in effect since 1984, Section 12.0071., Motion to Expunge Lis Pendens, which allows the cancellation of an improperly filed lis pendens, without necessarily requiring security, became effective September 1, 2009. The Condominium Code was revised to provide that a condominium association can borrow money to pay for repairs when the dedicatory instruments do not permit the pledging of assessments. Probate Code Section 64 was amended to clarify that assignments of 'rent's does not apply to mineral interests in real property.

II. Selected Property Code Selections for Discussion

Title 1. General Provisions

A. Chapter 1. General Provisions. This chapter sets out the purpose and construction of the Property Code which was originally effective January 1, 1984.

B. Chapter 2. Nature of Property. This chapter provides that manufactured housing is personal property unless a statement of ownership has been filed in the real property records.

Title 2. Conveyances.

C. Chapter 5. Conveyances

Subchapter A. General Provisions.

1. Section 5.002. Failing as a Conveyance. This provision follows existing case law and provides that an instrument intended as a conveyance of real property or an interest in real property that fails as a conveyance may be enforceable as a contract to convey the property or interest. McGee v. Young, 198 SW 2nd 883 (Tex.Sup.Crt.-1946).

2. Section 5.003. Partial Conveyance. A conveyance of real property conveys any lesser interest owned if the Grantor does not own the entire interest conveyed.

3. Section 5.005. Aliens. Aliens have the same personal and real property rights as a US citizen.

4. Section 5.006. Attorneys Fees In Breach of Restrictive Covenant Action. A prevailing party is entitled to reasonable attorney's fees in an action based on breach of a restrictive covenant pertaining to real property.

5. Section 5.007. Vendor and Purchaser Risk Act. This section spells out whether the vendor or purchaser has the risk of loss of property in a contract of sale unless otherwise agreed. Generally, the vendor has the risk when neither the legal title nor the possession of the property has been transferred. If either legal title or possession has been transferred, then the purchaser has the risk and is not relieved from the duty to pay the contract price. This section is called the Uniform Vendor and Purchaser Risk Act.

6. Section 5.008. Seller's Disclosure of Property Condition. A seller of Residential Real Property comprising not more than one dwelling unit located in this state must give a written notice substantially similar to the notice set out in this section on or before the effective date of the contract. If the notice is given after the effective date of the contract, the purchaser has (7) seven days to cancel the contract after receipt of the notice. There are some exceptions to this notice requirement.

7. Section 5.009. Duties of Life Tenant. If a life tenant has the power to sell and reinvest any life tenancy property, the life tenant has all of the fiduciary duties of a Trustee imposed by the Texas Trust Code as to the sale and investment of the property. Otherwise, a regular life tenant does not have the fiduciary duties, but does have the common-law duties of a life tenant.

8. Section 5.010. Notice of Additional Tax Liabilities. If vacant land is being transferred that has a special appraisal valuation, notice of such appraisal is required to be given in the contract as set out in this section, except for certain exceptions. One exception is if there is a special provision in the contract providing for payment of any additional ad valorem taxes as a result of a rollback. If the notice is not given, then seller is responsible for the rollback taxes incurred if

the change in use of the land occurs before the 5th anniversary of the date of the transfer. Most standard form contracts contain provisions regarding roll back tax, but, if you are not using one of those standard form contracts, then this should be addressed.

9. Section 5.011. Seller's Disclosure Regarding Potential Annexation. A notice provided in this section must be given regarding possible annexation of the property, subject to certain exceptions, and provided that the property is not then located wholly within the boundaries of a municipality. The contract may be terminated by the purchaser within 7 days after the receipt of written notice or upon the date that the transfer occurs.

10. Section 5.012. Notice of Obligations Related to Membership in Property Owners Association. A seller of one residential unit that is in a property owners association must give the written notice set out in this section, subject to certain exceptions therein. The only remedy is a purchaser's right to terminate the contract.

11. Section 5.013. Seller's Disclosure of Location of Conditions Under Surface of Unimproved Real Property. 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 any transportation pipeline of gas, oil or any hazardous substance. This is not required if seller is obligated to furnish a Title Insurance Commitment under the terms of the contract and the buyer is entitled to terminate the contract if buyer's objections to title are not cured prior to closing.

12. Section 5.014. Notice of Obligations Related to Public Improvement District. A seller of residential property consisting of not more than one dwelling shall give the notice provided in this section if the property is in a public improvement district. Sole remedy of the purchaser is to cancel the contract.

13. Section 5.016. Conveyance of Residential Property Encumbered by Liens. The seller of an interest in residential real property must give notice of any lien encumbering the property to be conveyed on or before the 7th day before the earlier of the effective date of the conveyance, or the execution of an executory contract binding the purchaser to purchase the property, the execution of an option contract or other contract. The notice to be given must be in 12 point print and is set out in this Section as to the information to be contained in the notice. This Section is subject to certain exceptions, which include the situation where a purchaser obtains a title insurance policy upon the transfer of title, if the purchaser has entered into four or more contracts to purchase or convey property within the preceding 12 months, or if the seller takes reasonable action to release the lien within 30 days following the date of transfer.

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First appeared as part of the conference materials for the
47th Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Laws Remembered and Laws Forgotten: A Refresher on the Property Code"