

Lease/Option-to-Purchase Agreements: Severe Penalties for Violation of New Law

September 12, 2007

To Our Clients and Friends:

Our firm has been retained to defend what appears to be the first lawsuit in Texas under the 2005 revisions to the Texas Property Code regarding residential leases with an option to purchase. If you are a party to a residential lease with an option to purchase that was entered into on or after January 1, 2006, it is important for you to understand the law in Texas and the severe penalties for violation of this law.

Under Section 5.085(a) of the Texas Property Code, it is illegal in most cases to enter into residential lease/option to purchase agreements unless the owner owns the property free and clear of all liens and other encumbrances. Since most rental property has some type of mortgage—usually a purchase-money mortgage—this statute has broad application. There are minor exceptions to liability under this statute; however the landlord/owner must strictly comply with the notice requirements in order to avoid liability.

Landlord/owners must be particularly careful not to violate this statute due to the several Draconian remedies provided. In particular, a violation of this statute may entitle the tenant to a refund of *all* lease payments made under the agreement plus attorney fees and court costs. In addition, this statute is a tie-in to the Deception Trade Practices Act, which may entitle the tenant to additional damages under that statute, such as the trebling of damages.

If you are a party to a lease agreement that includes an option to purchase that was entered into on or after January 1, 2006, you should immediately seek the advice of an attorney regarding your potential liability.

If you have any questions or would like additional information about the topic of this update, please contact John D. Jacks at john.jacks@graybecker.com or Bradley B. Clark at bradley.clark@graybecker.com or 512.482.0061.

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