

SECOND REGULAR SESSION

# SENATE BILL NO. 555

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

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TERRY L. SPIELER, Secretary.

4175S.011

## AN ACT

To amend chapter 442, RSMo, by adding thereto twenty-four new sections relating to executory contracts for the conveyance of certain real property.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 442, RSMo, is amended by adding thereto twenty-four  
2 new sections, to be known as sections 442.700, 442.702, 442.704, 442.706,  
3 442.708, 442.710, 442.712, 442.714, 442.716, 442.718, 442.720, 442.722, 442.724,  
4 442.726, 442.728, 442.730, 442.732, 442.734, 442.736, 442.738, 442.740, 442.742,  
5 442.744, and 442.746, to read as follows:

**442.700. 1. Sections 442.700 to 442.746 shall be known and may  
2 be cited as the "Contract for Deed Act".**

**3 2. As used in sections 442.700 to 442.746, the following words  
4 shall mean:**

**5 (1) "Default", the failure to:**

**6 (a) Make a timely payment; or**

**7 (b) Comply with a term of an executory contract;**

**8 (2) "County", either a city not within a county or a county in  
9 Missouri.**

**442.702. 1. Sections 442.700 to 442.746 apply only to a transaction  
2 involving an executory contract for conveyance of real property,  
3 including but not limited to a contract for deed, used or to be used as  
4 the purchaser's residence or as the residence of a person related to the  
5 purchaser within the second degree of consanguinity or affinity. For  
6 purposes of sections 442.700 to 442.746, an option to purchase real  
7 property that includes or is combined or executed concurrently with a  
8 residential lease agreement, together with the lease, is also considered  
9 an executory contract for conveyance of real property.**

10           2. Sections 442.700 to 442.746 shall not apply to an executory  
11 contract that provides for the delivery of a deed from the seller to the  
12 purchaser within one hundred eighty days of the date of the final  
13 execution of the executory contract.

14           3. Notwithstanding any other provision of sections 442.700 to  
15 442.746, only the following sections apply to an executory contract  
16 consisting of a lease with an option to purchase if the term of the lease  
17 and any extension thereof is three years or less and the purchaser and  
18 seller, or the purchaser's or seller's assignee, agent, or affiliate, have  
19 not been parties to an executory contract to purchase the property  
20 covered by the executory contract for longer than three years:

21           (1) Sections 442.704, 442.706, and 442.708;

22           (2) Section 442.724, except for subdivision (2) of subsection 1 of  
23 section 442.724; and

24           (3) Sections 442.742 and 442.746.

          442.704. 1. Notice under section 442.706 shall be in writing and  
2 shall be delivered by registered or certified mail, return receipt  
3 requested. The notice shall be conspicuous and printed in  
4 fourteen-point bold-faced type or fourteen-point uppercase typewritten  
5 letters, and shall include on a separate page the statement:

6   NOTICE  
7 **YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO**  
8 **BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED**  
9 **IN THIS NOTICE BY**  
10 ..... (insert date), **THE SELLER HAS THE RIGHT TO TAKE**  
11 **POSSESSION OF YOUR PROPERTY.**

12           2. The notice shall also:

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

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

15           (a) The delinquent amount, itemized into principal and interest;

16           (b) Any additional charges claimed, such as late charges or  
17 attorney's fees; and

18           (c) The period to which the delinquency and additional charges  
19 relate; and

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

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

          442.706. A seller may enforce the remedy of rescission or of  
2 forfeiture and acceleration against a purchaser in default under an  
3 executory contract for conveyance of real property only if:

- 4           (1) The seller notifies the purchaser of:  
5           (a) The seller's intent to enforce a remedy under this section; and  
6           (b) The purchaser's right to cure the default within the  
7 thirty-day period described by section 442.708;  
8           (2) The purchaser fails to cure the default within the thirty-day  
9 period described by section 442.708; and  
10          (3) Section 442.710 does not apply.

          442.708. Notwithstanding an agreement to the contrary, a  
2 purchaser in default under an executory contract for the conveyance  
3 of real property may avoid the enforcement of a remedy described by  
4 section 442.706 by complying with the terms of the contract on or  
5 before the thirtieth day after the date notice is given under that  
6 section.

          442.710. 1. If a purchaser defaults after the purchaser has paid  
2 thirty percent or more of the amount due or the equivalent of forty-  
3 eight monthly payments under the executory contract:

- 4           (1) The seller is granted the power to sell, through a trustee  
5 designated by the seller, the purchaser's interest in the property:  
6           (a) As provided by this section; or  
7           (b) As provided under the procedures specified in sections  
8 443.190 to 443.270;

9           (2) The seller shall not enforce the remedy of rescission or of  
10 forfeiture and acceleration; and

11          (3) The seller may exercise the power granted under subdivision  
12 (1) of this subsection after first notifying the purchaser of a default  
13 under the contract and allowing the purchaser at least sixty days after

14 the date notice is given to cure the default. The notice shall be  
15 provided as prescribed by section 442.704 except that the notice  
16 specified in subsection 1 of section 442.704 shall be replaced by the  
17 following statement:

18 **NOTICE**

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

24 2. The trustee or a substitute trustee designated by the seller  
25 under subdivision (1) of subsection 1 of this section shall publish and  
26 serve a notice of sale as prescribed by sections 443.310, 443.320, and  
27 443.325. A notice of sale is not valid unless it is given after the period  
28 to cure has expired.

29 3. The trustee or a substitute trustee designated by the seller  
30 shall conduct the sale as prescribed by section 443.327. The seller shall:

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

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

34 4. The remaining balance of the amount due under the executory  
35 contract is the debt for purposes of a sale under this section. If the net  
36 proceeds of the sale exceed the debt amount, the seller shall disburse  
37 the excess funds to the purchaser under the executory contract. If the  
38 proceeds of the sale are insufficient to extinguish the debt amount, the  
39 seller's right to recover the resulting deficiency is subject to sections  
40 443.230 and 443.240 unless a provision of the executory contract  
41 releases the purchaser under the contract from liability.

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

47 6. If a purchaser defaults before the purchaser has paid thirty  
48 percent of the amount due or the equivalent of forty-eight monthly  
49 payments under the executory contract, the seller may enforce the  
50 remedy of rescission or of forfeiture and acceleration of the

51 indebtedness if the seller complies with the notice requirements of  
52 sections 442.704 and 442.706.

442.712. Notwithstanding any terms of a contract to the contrary,  
2 the placement of a lien for the reasonable value of improvements to  
3 residential real estate for purposes of providing utility service to the  
4 property shall not constitute a default under the terms of an executory  
5 contract for the purchase of the real property.

442.714. If the negotiations that precede the execution of an  
2 executory contract are conducted primarily in a language other than  
3 English, the seller shall provide a copy in that language of all written  
4 documents relating to the transaction, including the contract,  
5 disclosure notices, annual accounting statements, and a notice of  
6 default required by sections 442.700 to 442.746.

442.716. 1. Before an executory contract is signed by the  
2 purchaser, the seller shall provide the purchaser with:

3 (1) A legible copy of any document that describes an  
4 encumbrance or other claim, including a restrictive covenant or  
5 easement, that affects title to the real property; and

6 (2) A written notice, which shall be attached to the contract,  
7 informing the purchaser of the condition of the property that shall, at  
8 a minimum, be executed by the seller and purchaser and read  
9 substantially similar to the following:

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

12 **SELLER'S DISCLOSURE NOTICE CONCERNING THE**  
13 **PROPERTY AT ..... (insert street address or legal**  
14 **description and city)**

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

17 **CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:**

18 **.... The property is in a recorded subdivision.**

19 **.... The property has water service that provides potable water.**

20 **.... The property has sewer service.**

21 **.... The property has sewer service or has been approved by the**  
22 **appropriate municipal, county, or state agency for installation**  
23 **of a septic system.**

24 **.... The property has electric service.**

25 ..... The property is not in a floodplain.

26 ..... The roads to the boundaries of the property are paved and  
27 maintained by:

28 ..... The seller;

29 ..... The owner of the property on which the road exists;

30 ..... The municipality;

31 ..... The county; or

32 ..... The state.

33 ..... No individual or entity other than the seller:

34 (1) Owns the property;

35 (2) Has a claim of ownership to the property; or

36 (3) Has an interest in the property.

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

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

41 NOTICE: SELLER ADVISES PURCHASER TO:

42 (1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT  
43 COVERING THE PROPERTY AND HAVE THE ABSTRACT OR  
44 COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A  
45 CONTRACT OF THIS TYPE; AND

46 (2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE  
47 COVERING THE PROPERTY.

48 ..... ..

49 (Date) (Signature of Seller)

50 ..... ..

51 (Date) (Signature of Purchaser)

52 2. If the property is not located in a recorded subdivision, the  
53 seller shall provide the purchaser with a separate disclosure form  
54 stating that utilities may not be available to the property until the  
55 subdivision is recorded as required by law.

56 3. If the seller advertises property for sale under an executory  
57 contract, the advertisement shall disclose information regarding the  
58 availability of water, sewer, and electric service.

59 4. The seller's failure to provide information required by this  
60 section:

61 (1) Is an unlawful practice within the meaning of sections

62 407.020 and 407.025 and is actionable in a public or private suit brought  
63 under such sections; and

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

442.718. 1. Before an executory contract is signed by the  
2 purchaser, the seller shall provide the purchaser with:

3 (1) A statement of the amount, if any, of delinquent real property  
4 taxes or assessments due and owing on the property subject to the  
5 executory contract; and

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

8 (a) The name of the insurer and the insured;

9 (b) A description of the property insured; and

10 (c) The amount for which the property is insured.

11 2. The seller's failure to provide information required by this  
12 section:

13 (1) Is an unlawful practice within the meaning of sections  
14 407.020 and 407.025 and is actionable in a public or private suit brought  
15 under such sections; and

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

442.720. Before an executory contract is signed by the purchaser,  
2 the seller shall provide to the purchaser a written statement that  
3 specifies:

4 (1) The purchase price of the property;

5 (2) The interest rate charged under the contract;

6 (3) The total amount of principal and interest (which shall be  
7 reasonably estimated if the interest rate is variable) to be paid under  
8 the contract;

9 (4) The late charge, if any, that may be assessed under the  
10 contract; and

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

442.722. 1. An executory contract is not enforceable unless the  
2 contract is in writing and signed by the party to be bound or by that

3 party's authorized representative.

4 2. The rights and obligations of the parties to a contract are  
5 determined solely from the written contract, and any prior oral  
6 agreements between the parties are superseded by and merged into the  
7 contract.

8 3. An executory contract may not be varied by any oral  
9 agreements or discussions that occur before or contemporaneously with  
10 the execution of the contract.

11 4. The seller shall include in a separate document or in a  
12 provision of the contract a statement printed in fourteen-point bold-  
13 faced type or fourteen-point uppercase typewritten letters that reads  
14 substantially similar to the following:

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

21 .....  
22 (Date) (Signature of Seller)

23 .....  
24 (Date) (Signature of Purchaser)

25 5. The seller's failure to provide the notice required by this  
26 section:

27 (1) Is an unlawful practice within the meaning of sections  
28 407.020 and 407.025 and is actionable in a public or private suit brought  
29 under such sections; and

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

442.724. 1. A seller shall not include as a term of the executory  
2 contract a provision that:

3 (1) Imposes a late-payment fee that exceeds eight percent of the  
4 monthly payment under the contract;

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



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

12           **(4) Forfeits an option fee or other option payment paid under the**  
13 **contract for a late payment; or**

14           **(5) Increases the purchase price, imposes a fee or charge of any**  
15 **type, or otherwise penalizes a purchaser leasing property with an**  
16 **option to buy the property for requesting repairs.**

17           **2. A provision of the executory contract that purports to waive**  
18 **a right or exempt a party from a liability or duty under sections 442.700**  
19 **to 442.746 is void.**

**442.726. 1. In addition to other rights or remedies provided by**  
2 **law, the purchaser may cancel and rescind an executory contract for**  
3 **any reason by sending by certified or registered mail, return receipt**  
4 **requested, or by delivering in person a signed, written notice of**  
5 **cancellation to the seller not later than the fourteenth day after the**  
6 **date the purchaser signs the contract.**

7           **2. If the purchaser cancels the contract as provided by**  
8 **subsection 1 of this section, the seller shall, not later than the tenth day**  
9 **after the date the seller receives the purchaser's notice of cancellation:**

10           **(1) Return to the purchaser the executed contract and any**  
11 **property exchanged or payments made by the purchaser under the**  
12 **contract; and**

13           **(2) Cancel and release any security interest arising out of the**  
14 **contract.**

15           **3. The seller shall include in immediate proximity to the space**  
16 **reserved in the executory contract for the purchaser's signature a**  
17 **statement printed in fourteen-point bold-faced type or fourteen-point**  
18 **uppercase typewritten letters that reads substantially similar to the**  
19 **following:**

20           **YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY**  
21 **TIME DURING THE NEXT TWO WEEKS. THE DEADLINE FOR**  
22 **CANCELING THE CONTRACT IS ..... (insert date). THE**  
23 **ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.**

24           **4. The seller shall provide a notice of cancellation form to the**  
25 **purchaser at the time the purchaser signs the executory contract that**  
26 **is printed in fourteen-point bold-faced type or fourteen-point uppercase**

27 typewritten letters and that reads substantially similar to the following:  
28 (date of contract)

29 NOTICE OF CANCELLATION

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

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

37 (2) THE SELLER SHALL, NOT LATER THAN THE TENTH DAY  
38 AFTER THE DATE THE SELLER RECEIVES YOUR CANCELLATION  
39 NOTICE:

40 (a) RETURN THE EXECUTED CONTRACT AND ANY PROPERTY  
41 EXCHANGED OR PAYMENTS MADE BY YOU UNDER THE CONTRACT;  
42 AND

43 (b) CANCEL AND RELEASE ANY SECURITY INTEREST ARISING  
44 OUT OF THE CONTRACT.

45 I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION  
46 FORM.

47 .....  
48 (Date) (Signature of Purchaser)

49 I HEREBY CANCEL THIS CONTRACT  
50 .....  
51 (Date) (Signature of Purchaser)

52 5. The seller shall not request the purchaser to sign a waiver of  
53 receipt of the notice of cancellation form required by this section.

442.728. 1. Except as provided by subsection 2 of this section, the  
2 seller shall record the executory contract, including the attached  
3 disclosure statement required by subdivision (2) of subsection 1 of  
4 section 442.716, in the land records of the county in which the property  
5 is located on or before the thirtieth day after the date the contract is  
6 executed.

7 2. If the executory contract is terminated for any reason, the  
8 seller shall record an instrument that releases and terminates the  
9 contract.

442.730. 1. The seller shall provide the purchaser with an annual

2 statement in January of each year for the term of the executory  
3 contract. If the seller mails the statement to the purchaser, the  
4 statement shall be postmarked not later than January thirty-first.

5 2. The statement shall include the following information:

6 (1) The amount paid under the contract;

7 (2) The remaining amount owed under the contract;

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

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

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

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

16 (7) If the seller has changed insurance coverage, a legible copy  
17 of the current policy, binder, or other evidence that satisfies the  
18 requirements of subdivision (2) of subsection 1 of section 442.718.

19 3. A seller who conducts less than two transactions in a  
20 twelve-month period under this section who fails to comply with  
21 subsection 1 of this section is liable to the purchaser for:

22 (1) Liquidated damages in the amount of one hundred dollars for  
23 each annual statement the seller fails to provide to the purchaser  
24 within the time required by subsection 1 of this section; and

25 (2) Reasonable attorney's fees.

26 4. A seller who conducts two or more transactions in a  
27 twelve-month period under this section who fails to comply with  
28 subsection 1 of this section is liable to the purchaser for:

29 (1) Liquidated damages in the amount of two hundred fifty  
30 dollars a day for each day after January thirty-first that the seller fails  
31 to provide the purchaser with the statement, but not to exceed the fair  
32 market value of the property; and

33 (2) Reasonable attorney's fees.

442.732. 1. The named insured under an insurance policy,  
2 binder, or other coverage relating to property subject to an executory  
3 contract for the conveyance of real property shall inform the insurer,  
4 not later than the tenth day after the date the coverage is obtained or  
5 the contract executed, whichever is later, of:

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

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

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

13           3. If proceeds under an insurance policy, binder, or other  
14 coverage are disbursed, the purchaser and seller shall ensure that the  
15 proceeds are used to repair, remedy, or improve the condition on the  
16 property.

17           4. Notwithstanding the provisions of this section, if the  
18 purchaser and seller agree that repair is not feasible, the insurance  
19 proceeds shall first be used to satisfy any remaining amounts due  
20 under the executory contract and any remaining balance shall be paid  
21 to the purchaser.

22           5. The seller's failure to comply with the provisions required by  
23 this section:

24           (1) Is an unlawful practice within the meaning of sections  
25 407.020 and 407.025 and is actionable in a public or private suit brought  
26 under such sections; and

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

          442.734. 1. The seller shall transfer recorded, legal title of the  
2 property covered by the executory contract to the purchaser not later  
3 than the thirtieth day after the date the seller receives the purchaser's  
4 final payment due under the contract.

5           2. A seller who violates subsection 1 of this section is liable to  
6 the purchaser for:

7           (1) Liquidated damages in the amount of:

8           (a) Two hundred fifty dollars a day for each day the seller fails  
9 to transfer the title to the purchaser during the period that begins the  
10 thirty-first day and ends the ninetieth day after the date the seller  
11 receives the purchaser's final payment due under the contract; and

12           (b) Five hundred dollars a day for each day the seller fails to  
13 transfer title to the purchaser after the ninetieth day after the date the  
14 seller receives the purchaser's final payment due under the contract;

15 **and**

16 **(2) Reasonable attorney's fees.**

17 **3. If a person to whom a seller's property interest passes by will**  
18 **or intestate succession is required to obtain a court order to clarify the**  
19 **person's status as an heir or to clarify the status of the seller or the**  
20 **property before the person may convey good and indefeasible title to**  
21 **the property, the court in which the action is pending may waive**  
22 **payment of the liquidated damages and attorney's fees under**  
23 **subsection 2 of this section if the court finds that the person is**  
24 **pursuing the action to establish good and indefeasible title with**  
25 **reasonable diligence.**

26 **4. As used in this section, "seller" includes a successor, assignee,**  
27 **personal representative, executor, or administrator of the seller.**

**442.736. For purposes of sections 442.700 to 442.746, a disclosure**  
2 **required by sections 442.700 to 442.746 that is made by a seller's agent**  
3 **is a disclosure made by the seller.**

**442.738. 1. A purchaser, at any time after paying fifteen percent**  
2 **of the principal purchase price and without paying penalties or charges**  
3 **of any kind, is entitled to convert the purchaser's interest in property**  
4 **under an executory contract into recorded, legal title in accordance**  
5 **with this section.**

6 **2. If the purchaser tenders to the seller an amount of money**  
7 **equal to the balance of the total amount owed by the purchaser to the**  
8 **seller under the executory contract, the seller shall transfer to the**  
9 **purchaser recorded, legal title of the property covered by the contract.**

10 **3. Subject to subsection 4 of this section, if the purchaser**  
11 **delivers to the seller of property covered by an executory contract a**  
12 **promissory note that is equal in amount to the balance of the total**  
13 **amount owed by the purchaser to the seller under the contract and that**  
14 **contains the same interest rate, due dates, and late fees as the contract:**

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

18 **(2) The purchaser shall simultaneously execute a deed of trust**  
19 **that:**

20 **(a) Contains the same terms as the contract regarding the**  
21 **purchaser's and seller's duties concerning the property;**

22           **(b) Secures the purchaser's payment and performance under the**  
23 **promissory note and deed of trust; and**

24           **(c) Conveys the property to the trustee, in trust, and confers on**  
25 **the trustee the power to sell the property if the purchaser defaults on**  
26 **the promissory note or the terms of the deed of trust.**

27           **4. On or before the tenth day after the date the seller receives a**  
28 **promissory note under subsection 3 of this section that substantially**  
29 **complies with that subsection, the seller shall:**

30           **(1) Deliver to the purchaser a written explanation that legally**  
31 **justifies why the seller refuses to convert the purchaser's interest into**  
32 **recorded, legal title under subsection 3 of this section; or**

33           **(2) Communicate with the purchaser to schedule a mutually**  
34 **agreeable day and time to execute the deed and deed of trust under**  
35 **subsection 3 of this section.**

36           **5. A seller who violates this section is liable to the purchaser in**  
37 **the same manner and amount as a seller who violates section 442.734**  
38 **is liable to a purchaser. This subsection shall not limit or affect any**  
39 **other rights or remedies a purchaser has under other law.**

40           **6. On the last date that all of the conveyances described by**  
41 **subsections 2 and 3 of this section are executed, the executory contract:**

42           **(1) Is considered completed; and**

43           **(2) Has no further effect.**

**442.740. 1. A purchaser under an executory contract, on written**  
2 **request, is entitled to receive the following information from the seller:**

3           **(1) As of the date of the request or another date specified by the**  
4 **purchaser, the amount owed by the purchaser under the contract; and**

5           **(2) If applicable, the name and address of the seller's desired**  
6 **trustee for a deed of trust to be executed under section 442.738.**

7           **2. On or before the tenth day after the date the seller receives**  
8 **from the purchaser a written request for information described by**  
9 **subsection 1 of this section, the seller shall provide to the purchaser a**  
10 **written statement of the requested information.**

11           **3. If the seller does not timely respond to a request made under**  
12 **this section, the purchaser may:**

13           **(1) Determine or pay the amount owed under the contract,**  
14 **including determining the amount necessary for a promissory note**  
15 **under section 442.738; and**

16           **(2) If applicable, select a trustee for a deed of trust under section**  
17 **442.738.**

18           **4. For purposes of subdivision (2) of subsection 3 of this section,**  
19 **a purchaser shall select a trustee that lives or has a place of business**  
20 **in the same county where the property covered by the executory**  
21 **contract is located.**

22           **5. Not later than the twentieth day after the date a seller**  
23 **receives notice of an amount determined by a purchaser under**  
24 **subdivision (1) of subsection 3 of this section, the seller may contest**  
25 **that amount by sending a written objection to the purchaser. An**  
26 **objection under this subsection shall:**

27           **(1) Be sent to the purchaser by regular and certified mail;**

28           **(2) Include the amount the seller claims is the amount owed**  
29 **under the contract; and**

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

**442.742. 1. Except as provided by subsection 3 of this section, in**  
2 **addition to other rights or remedies provided by law, the purchaser**  
3 **may cancel and rescind an executory contract at any time if the**  
4 **purchaser learns that the property that is covered by the contract is**  
5 **not properly subdivided or platted in accordance with state and local**  
6 **law. A purchaser cancelling and rescinding a contract under this**  
7 **subsection shall:**

8           **(1) Deliver a signed, written notice of the cancellation and**  
9 **rescission to the seller in person; or**

10           **(2) Send a signed, written notice of the cancellation and**  
11 **rescission to the seller by certified or registered mail, return receipt**  
12 **requested.**

13           **2. If the purchaser cancels the contract as provided under**  
14 **subsection 1 of this section, the seller, not later than the tenth day after**  
15 **the date the seller receives the notice of cancellation and rescission,**  
16 **shall:**

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

20           **(2) Return to the purchaser all payments of any kind made to the**

21 seller under the contract and reimburse the purchaser for:

22 (a) Any payments the purchaser made to a taxing authority for  
23 the property; and

24 (b) The value of any improvements made to the property by the  
25 purchaser.

26 3. A purchaser shall not exercise the purchaser's right to cancel  
27 and rescind an executory contract under this section if, on or before  
28 the ninetieth day after the date the purchaser receives the seller's  
29 notice under subdivision (1) of subsection 2 of this section, the seller:

30 (1) Properly subdivides or plats the property; and

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

35 4. The seller shall not terminate the purchaser's possession of the  
36 property covered by the contract being cancelled and rescinded before  
37 the seller pays the purchaser any money to which the purchaser is  
38 entitled under subsection 2 of this section.

442.744. If a seller is liable to a purchaser under sections 442.700  
2 to 442.746, the purchaser, without taking judicial action, may deduct  
3 the amount owed to the purchaser by the seller from any amounts owed  
4 to the seller by the purchaser under the terms of an executory contract.

442.746. 1. A potential seller shall not execute an executory  
2 contract with a potential purchaser if the seller does not own the  
3 property in fee simple free from any liens or other encumbrances.

4 2. Except as provided by this subsection, a seller, or the seller's  
5 heirs or assigns, shall maintain fee simple title free from any liens or  
6 other encumbrances to property covered by an executory contract for  
7 the entire duration of the contract. This subsection shall not apply to  
8 a lien or encumbrance placed on the property that is:

9 (1) Placed on the property because of the conduct of the  
10 purchaser;

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

14 (3) Placed on the property by the seller prior to the execution of  
15 the contract in exchange for a loan used only to purchase the property



16 **if:**

17       **(a) The seller, not later than the third day before the date the**  
18 **contract is executed, notifies the purchaser in a separate written**  
19 **disclosure:**

20       **a. Of the name, address, and phone number of the lienholder or,**  
21 **if applicable, servicer of the loan;**

22       **b. Of the loan number and outstanding balance of the loan;**

23       **c. Of the monthly payments due on the loan and the due date of**  
24 **those payments; and**

25       **d. In fourteen-point type that, if the seller fails to make timely**  
26 **payments to the lienholder, the lienholder may attempt to collect the**  
27 **debt by foreclosing on the lien and selling the property at a foreclosure**  
28 **sale;**

29       **(b) The lien:**

30       **a. Is attached only to the property sold to the purchaser under**  
31 **the contract;**

32       **b. Secures indebtedness that, at no time, is or will be greater in**  
33 **amount than the amount of the total outstanding balance owed by the**  
34 **purchaser under the executory contract; and**

35       **c. Secures indebtedness that by its terms is scheduled to be fully**  
36 **repaid on a date after the date on which the purchaser's installment**  
37 **payments on the executory contract are scheduled to be fully paid;**

38       **(c) The lienholder:**

39       **a. Does not prohibit the property from being encumbered by an**  
40 **executory contract; and**

41       **b. Consents to verify the status of the loan on request of the**  
42 **purchaser and to accept payments directly from the purchaser if the**  
43 **seller defaults on the loan; and**

44       **(d) The following covenants are placed in the executory contract:**

45       **a. A covenant that obligates the seller to make timely payments**  
46 **on the loan and to give monthly statements to the purchaser reflecting**  
47 **the amount paid to the lienholder, and the information described by**  
48 **paragraph (a) of this subdivision;**

49       **b. A covenant that obligates the seller, not later than the third**  
50 **day after the seller receives or has actual knowledge of a document or**  
51 **an event described by this subparagraph, to notify the purchaser in**  
52 **writing in fourteen-point type that the seller has been sent a notice of**

53 default, notice of acceleration, or notice of foreclosure or has been sued  
54 in connection with a lien on the property and to attach a copy of all  
55 related documents received to the written notice; and

56 c. A covenant that warrants that if the seller does not make  
57 timely payments on the loan or any other indebtedness secured by the  
58 property, the purchaser may, without notice, cure any deficiency with  
59 a lienholder directly and deduct from the total outstanding balance  
60 owed by the purchaser under the executory contract, without the  
61 necessity of judicial action, one hundred fifty percent of any amount  
62 paid to the lienholder.

63 3. A violation of this section:

64 (1) Is an unlawful practice within the meaning of sections  
65 407.020 and 407.025 and is actionable in a public or private suit brought  
66 under such sections; and

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

70 (a) The return of all payments of any kind made to the seller  
71 under the contract; and

72 (b) Reimbursement for:

73 a. Any payments the purchaser made to a taxing authority for  
74 the property; and

75 b. The value of any improvements made to the property by the  
76 purchaser.

77 4. A seller is not liable under this section if:

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

80 (2) Not later than the thirtieth day after the date the seller  
81 receives notice of the lien, the seller takes all steps necessary to  
82 remove the lien and has the lien removed from the property.

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