

FIRST REGULAR SESSION

SENATE BILL NO. 388

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time February 26, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1793S.011

AN ACT

To amend chapter 442, RSMo, by adding thereto twenty-three new sections relating to contracts for deeds.

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-three
2 new sections, to be known as sections 442.700, 442.702, 442.704, 442.706,
3 442.708, 442.710, 442.712, 442.716, 442.718, 442.720, 442.722, 442.724, 442.726,
4 442.728, 442.730, 442.732, 442.734, 442.736, 442.738, 442.740, 442.742, 442.744,
5 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, but
6 excluding an executory contract for a newly constructed residence not
7 theretofore occupied. For purposes of sections 442.700 to 442.746, an
8 option to purchase real property that includes or is combined or
9 executed concurrently with a residential lease agreement, together

10 with the lease, is also considered an executory contract for conveyance
11 of real property.

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

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

- 23 (1) Sections 442.704, 442.706, and 442.708;
- 24 (2) Section 442.724, except for subdivision (2) of subsection 1 of
25 section 442.724; and
- 26 (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 (insert date), THE SELLER HAS THE
10 RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

- 11 2. The notice shall also:
 - 12 (1) Identify and explain the remedy the seller intends to enforce;
 - 13 (2) If the purchaser has failed to make a timely payment, specify:
 - 14 (a) The delinquent amount, itemized into principal and interest;
 - 15 (b) Any additional charges claimed, such as late charges or
16 attorney's fees; and
 - 17 (c) The period to which the delinquency and additional charges
18 relate; and
 - 19 (3) If the purchaser has failed to comply with a term of the
20 contract, identify the term violated and the action required to cure the

21 violation.

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

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.

442.716. 1. Not less than ten days before an executory contract
2 is signed by the purchaser, the seller shall provide the purchaser with:

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

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

12 **WARNING: IF ANY OF THE ITEMS BELOW HAVE NOT BEEN**
13 **CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE**
14 **PROPERTY. BEFORE SIGNING A CONTRACT, YOU HAVE THE RIGHT**
15 **TO INSPECT THE PROPERTY INSIDE AND OUT.**

16 **SELLER'S DISCLOSURE NOTICE CONCERNING THE**
17 **PROPERTY AT (insert street**
18 **address or legal description and city)**

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

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

22 The property is in a recorded subdivision.

23 The property has water service that has been approved by the
24 appropriate municipal, county, or state agency and that provides
25 potable water.

26 The property has operable public sewer service.

27 The property has an operable, private septic system sewer which
28 has been approved by the appropriate municipal, county, or state
29 agency for installation of a septic system.

30 The property has electric service.

31 The property has operable gas or propane service.

32 The property is not in a one hundred year floodplain.

33 The roads to the boundaries of the property are paved and
34 maintained by:

35 The seller;

- 36 The owner of the property on which the road exists;
- 37 The municipality;
- 38 The county; or
- 39 The state.

40 No individual or entity other than the seller:

- 41 (1) Owns the property;
- 42 (2) Has a claim of ownership to the property; or
- 43 (3) Has an interest in the property.

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

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

48 NOTICE: SELLER ADVISES PURCHASER TO:

49 (1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT
50 COVERING THE PROPERTY AND HAVE THE ABSTRACT OR
51 COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A
52 CONTRACT OF THIS TYPE; AND

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

55
56 (Date)	(Signature of Seller)

57
58 (Date)	(Signature of Purchaser)

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

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

66 4. The seller's failure to provide information required by this
67 section:

68 (1) Is an unlawful practice within the meaning of sections
69 407.020 and 407.025 and is actionable in a public or private suit brought
70 under such sections; and

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

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

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

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

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

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

442.720. Not less than ten days 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 total amount of principal and interest (which shall be reasonably estimated if the interest rate is variable) to be paid under the contract;

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

(5) The interest rate upon default, if any, charged 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.

442.722. 1. An executory contract subject to sections 442.700 to 442.746 is not enforceable unless the contract is in writing and signed by the party to be bound or by that party's authorized representative.

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.

32 442.724. 1. A seller shall not include as a term of the executory
33 contract a provision that:

34 (1) Imposes a late payment fee that exceeds five percent of the
35 monthly payment under the contract;

36 (2) Imposes a prepayment penalty or any similar fee if the
37 purchaser elects to pay the entire amount due under the contract
38 before the scheduled payment date under the contract; or

39 (3) Forfeits that portion of an option fee or other option payment
40 exceeding one thousand five hundred dollars paid under the contract
41 for a late payment.

42 2. A provision of the executory contract that purports to waive
43 a right or exempt a party from a liability or duty under sections 442.700
44 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, accompanied by an affidavit executed by seller certifying the
10 termination occurred in compliance with the terms of the contract,
11 including, if applicable, certification of delivery of a written default
12 and termination notice from seller to purchaser, and the property is
13 not occupied by the purchaser.

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 seller's good faith

6 understanding of the following information:

7 (1) The amount paid under the contract;

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

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

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

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

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

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

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

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

26 (2) Reasonable attorney's fees.

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

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

34 (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, and to any lender secured by any deed of
13 trust affecting the property if such deed of trust so requires.

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

18 4. Notwithstanding the provisions of this section, and unless any
19 existing deed of trust affecting the property states otherwise, if the
20 insurer determines repair is not feasible, the insurance proceeds shall
21 first be used to satisfy any remaining amounts due under the deed of
22 trust and promissory note which it secures, and shall then be used to
23 satisfy any remaining amounts due under the executory contract, and
24 any remaining balance shall be paid to the purchaser.

25 5. The seller's failure to comply with the provisions required by
26 this 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.

442.734. 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. Unless a court finds good cause for noncompliance, a seller
6 who violates subsection 1 of this section is liable to 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 of 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.**

28 **5. As used in this section, "good cause for noncompliance" shall**
29 **include the failure of the seller, if the seller is an heir to the original**
30 **seller, to have received from the original seller or any other person**
31 **notice of the requirements of the executory contract.**

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. The seller may replace the trustee with a trustee of seller's
18 choice at any time.

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

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

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

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

31 (3) Be based on written records kept by the seller or the seller's
32 agent that were maintained and regularly updated for the entire term
33 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, split, or platted in accordance with state and
6 local law, and the seller has failed to correct the deficiency within six
7 months of receiving written notice from buyer. A purchaser cancelling
8 and rescinding a contract under this subsection shall:

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

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

14 2. If the purchaser cancels the contract as provided under
15 subsection 1 of this section, the seller, not later than the tenth day after

16 the date the seller receives the notice of cancellation and rescission,
17 shall:

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

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

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

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

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

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

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

36 4. The seller shall not terminate the purchaser's possession of the
37 property covered by the contract being cancelled and rescinded before
38 the seller pays the purchaser any money to which the purchaser is
39 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 not
4 previously disclosed in writing to the purchaser in accordance with
5 subsection 1 of section 442.716.

6 2. Except as provided by subsection 1 and this subsection, a
7 seller, or the seller's heirs or assigns, shall maintain fee simple title
8 free from any liens or other encumbrances to property covered by an
9 executory contract for the entire duration of the contract. This

10 subsection shall not apply to a lien or encumbrance placed on the
11 property that is:

12 (1) Placed on the property because of the conduct of the
13 purchaser;

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

17 (3) Placed on the property by the seller prior to the execution of
18 the contract in exchange for a loan used only to purchase or repair the
19 property, or subsequently placed on the property by the seller in
20 exchange for a loan to refinance such prior loan, if:

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

24 a. Of the name, address, and phone number of the lienholder or,
25 if applicable, servicer of the loan;

26 b. Of the loan number and outstanding balance of the loan;

27 c. Of the monthly payments due on the loan and the due date of
28 those payments;

29 d. In fourteen-point type that, if the seller fails to make timely
30 payments to the lienholder, the lienholder may attempt to collect the
31 debt by foreclosing on the lien and selling the property at a foreclosure
32 sale; and

33 e. Of seller's consent to allow purchaser to receive
34 communications from the lienholder about the loan secured by the lien;

35 (b) The lien:

36 a. Is attached only to the property sold to the purchaser under
37 the contract;

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

41 c. Secures indebtedness that by its terms is scheduled to be fully
42 repaid on a date before the date on which the purchaser's installment
43 payments on the executory contract are scheduled to be fully paid;

44 (c) The lienholder:

45 a. Does not prohibit the property from being encumbered by an
46 executory contract;

47 **b. Agrees in the lien instrument or other recorded instrument to**
48 **give written notice to purchaser of any indebtedness default; and**

49 **c. Consents to verify the status of the loan on request of the**
50 **purchaser and to accept payments directly from the purchaser if the**
51 **seller defaults on the indebtedness; and**

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

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

57 **b. A covenant that obligates the seller, not later than the third**
58 **day after the seller receives or has actual knowledge of a document or**
59 **an event described by this subparagraph, to notify the purchaser in**
60 **writing in fourteen-point type that the seller has been sent a notice of**
61 **default, notice of acceleration, or notice of foreclosure or has been sued**
62 **in connection with a lien on the property and to attach a copy of all**
63 **related documents received to the written notice; and**

64 **c. A covenant that warrants that if the seller does not make**
65 **timely payments on the loan or any other indebtedness secured by the**
66 **property, the purchaser may, without notice, cure any deficiency with**
67 **a lienholder directly and deduct from the total outstanding balance**
68 **owed by the purchaser under the executory contract, without the**
69 **necessity of judicial action, one hundred fifty percent of any amount**
70 **paid to the lienholder.**

71 **3. A violation of this section:**

72 **(1) Is an unlawful practice within the meaning of sections**
73 **407.020 and 407.025 and is actionable in a public or private suit brought**
74 **under such sections; and**

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

78 **(a) The return of all payments of any kind made to the seller**
79 **under the contract; and**

80 **(b) Reimbursement for:**

81 **a. Any payments the purchaser made to a taxing authority for**
82 **the property; and**

83 **b. The value of any improvements made to the property by the**

84 **purchaser.**

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

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

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

✓
Unofficial

Bill

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