

A bill for an act

relating to real property; clarifying eviction provisions; modifying provisions governing contracts for deed; regulating contracts for deed involving residential property and residential leases with an option to purchase; amending Minnesota Statutes 2008, sections 504B.285, subdivision 1; 507.235, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 559.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 504B.285, subdivision 1, is amended to read:

Subdivision 1. **Grounds.** The person entitled to the premises may recover possession by eviction when:

(1) any person holds over real property:

(i) after a sale of the property on an execution or judgment; or

(ii) after the expiration of the time for redemption on foreclosure of a mortgage, or after termination of contract to convey the property, provided that if the person holding the real property after the expiration of the time for redemption or termination was a tenant during the redemption or termination period, ~~the person entered into the~~ under a lease of any duration and the lease began after the date of the ~~notice of mortgage foreclosure or contract for deed cancellation and was executed but~~ prior to the expiration of the time for redemption or termination, and the person has received:

(A) at least two months' written notice to vacate no sooner than one month after the expiration of the time for redemption or termination, provided that the tenant pays the rent and abides by all terms of the lease; or

(B) at least two months' written notice to vacate no later than the date of the expiration of the time for redemption or termination, which notice shall also state that the

sender will hold the tenant harmless for breaching the lease by vacating the premises if the mortgage is redeemed or the contract is reinstated;

(2) any person holds over real property after termination of the time for which it is demised or leased to that person or to the persons under whom that person holds possession, contrary to the conditions or covenants of the lease or agreement under which that person holds, or after any rent becomes due according to the terms of such lease or agreement; or

(3) any tenant at will holds over after the termination of the tenancy by notice to quit.

Sec. 2. Minnesota Statutes 2008, section 507.235, is amended by adding a subdivision to read:

Subd. 1a. **Requirements of vendor.** (a) A vendor entering into a contract for deed involving residential real property must, contemporaneously with the execution of the contract for deed:

(1) deliver to the vendee a copy of the contract for deed containing original signatures in recordable form; and

(2) pay, or reimburse the vendee for payment of, any delinquent taxes necessary for recordation of the contract for deed.

(b) For the purposes of this subdivision:

(1) "contract for deed" has the meaning given in section 559.202, subdivision 2; and

(2) "residential real property" has the meaning given in section 559.202, subdivision

2.

Sec. 3. **[559.202] CONTRACTS FOR DEED INVOLVING RESIDENTIAL PROPERTY.**

Subdivision 1. **Scope.** This section applies to purchase agreements for contracts for deed and to contracts for deed that involve residential real property and are entered into on or after January 1, 2010.

Subd. 2. **Definitions.** (a) For purposes of this section, the following terms having the meanings given.

(b) "Contract for deed" means an executory contract for the conveyance of residential real property under which the seller provides financing for the purchase of the residential real property and under which the purchaser has a right to go into possession. The term does not include:

(1) a purchase agreement;

(2) an earnest money contract;

(3) an executed option or a lease, including a lease with an option to purchase; and

(4) a bona fide mortgage.

(c) "Family farm security loan" has the meaning given in section 41.52, subdivision

5.

(d) "Purchase agreement for a contract for deed" means a purchase agreement, an earnest money contract, or an executed option contemplating that, at closing, the seller and the purchaser will enter into a contract for deed.

(e) "Purchaser" means a person who is purchasing residential real property by means of a contract for deed.

(f) "Residential real property" means real property occupied, or intended to be occupied, by one to four families, if the purchaser intends to occupy the real property. Residential real property does not include property subject to a family farm security loan or a transaction subject to sections 583.20 to 583.32.

(g) "Seller" means a person who is selling residential real property by means of a contract for deed.

Subd. 3. **Disclosure requirement.** (a) A seller who offers to sell residential real property to a purchaser either by a purchase agreement for a contract for deed or by a contract for deed must deliver to at least one of the purchasers, in addition to the disclosures required under sections 513.52 to 513.60, the disclosure form specified in subdivision 4.

(b) If a dispute arises concerning whether or when the disclosure was provided to a purchaser or the right to cancel was waived, there is a rebuttable presumption that the disclosure was not provided if the seller cannot produce a copy of the disclosure or the waiver signed and dated by the purchaser.

Subd. 4. **Disclosure form.** (a) A seller must provide the disclosure required under subdivision 3 in the following verbatim form:

IMPORTANT INFORMATION FOR BUYERS

ABOUT CONTRACTS FOR DEED

The Basics

1. A contract for deed is NOT a mortgage. Minnesota's foreclosure laws DO NOT APPLY.

2. You are the owner of the property BUT the seller keeps the legal title until you make all the payments required under the contract.

3. To pay off the contract, you will need to make a large lump-sum payment (called a "balloon payment"). You will probably need to obtain financing (like a mortgage from a bank). There is no guarantee that financing will be available when you need it.

4.1 4. When you pay off the contract, the seller has to give you a deed to the property.

4.2 5. You have the right to live in (occupy) the house while you are paying off the
4.3 contract.

4.4 6. You will have to make monthly payments for some time (usually years) and then
4.5 one big payment (called a "balloon payment").

4.6 7. BUT, if you miss a monthly payment or the balloon payment, you could:

4.7 **a. lose all the money you have already paid;**

4.8 **b. lose your ownership rights; and**

4.9 **c. immediately be evicted.**

4.10 **Things to Consider Doing Before Signing a Contract for Deed**

4.11 1. Get the advice of a lawyer.

4.12 2. Get an independent appraisal and independent inspection of the property by
4.13 professionals.

4.14 3. Buy "title insurance" (which protects you against future problems with the title
4.15 and tells you about existing mortgages on the property).

4.16 4. Most mortgages prohibit the sale of the property if that mortgage is not being paid
4.17 off in full (a "due on sale" clause). If there is an existing mortgage on the property that is
4.18 not being paid off in full when you sign the contract for deed, you need to make sure that
4.19 your purchase by contract for deed does not cause that mortgage to go into default.

4.20 5. Get free home ownership advice from the Minnesota Home Ownership Center or
4.21 an agency approved by the United States Department of Housing and Urban Development.
4.22 You can contact the Home Ownership Center at 651-659-9336 or 866-462-6466 or
4.23 www.hocmn.org.

4.24 **Your Responsibilities Under a Contract for Deed**

4.25 1. You must pay the property taxes when due.

4.26 2. The risk of loss (like a fire) is on YOU. You are responsible for getting and
4.27 keeping up payments on property and liability insurance.

4.28 3. You must "record" the contract with the county in which the property is located
4.29 within four months after signing the contract.

4.30 a. "Recording" a document means to file it with the county as a public document.

4.31 Recording is important to protect your rights to the property.

4.32 b. To be able to record the contract:

4.33 (1) the legal description of the property must be contained in the contract for deed;
4.34 and

4.35 (2) you and the seller must sign the contract in front of a notary public.

c. Property taxes that are past due must be paid in order to record a contract for deed. The law requires the seller to pay any past due property taxes required to record the contract (or pay you back if you pay them).

Your Right to Cancel

1. If you do not get this disclosure more than ten days before signing a purchase agreement, you have the right to cancel the purchase agreement within ten days after actually receiving the disclosure.

2. To cancel, you must give, or send by postage prepaid envelope, a written notice of cancellation to the seller (or to a licensed agent who is assisting the seller) no later than ten days after receiving this disclosure and also before entering into a contract for deed with the seller.

What Happens When You Make Your Last Payment?

1. You should get a deed signed by the seller before a notary public right away. If you delay, you could have problems getting or selling the property or getting a mortgage.

2. You should record that deed with the county. You will need to pay any back taxes.

What Happens If You Miss a Payment?

1. The seller can cancel the contract for deed 60 days following your failure to make just one payment (or make your balloon payment), even if you have made all the payments up to that point.

2. BUT, you have those 60 days to pay what you owe – PLUS any additional payments that become due, any late fees, attorney fees, and possibly other charges – to avoid cancellation.

REMEMBER:

This is a legal agreement. Consider the pros and cons carefully and think about talking to a lawyer or other expert.

(b) The disclosure required under this subdivision must be in a document separate from the purchase agreement for a contract for deed, the contract for deed, or any other document or writing.

(c) The legend, IMPORTANT INFORMATION ABOUT CONTRACTS FOR DEED, must be in 14-point type and centered on the page. All other text must be in 12-point type with a double space between each disclosure.

Subd. 5. **Disclosure of payment schedule.** Every purchase agreement for a contract for deed where a payment schedule is established and every contract for deed must contain a conspicuous section that indicates:

(1) the approximate amount, or the exact amount if known, of any downpayment;

6.1 (2) the approximate amount, or the exact amount if known, of the regular monthly or
6.2 periodic payments, when those payments are due, and how many months or years those
6.3 payments are required under the contract for deed; and

6.4 (3) the approximate amount and due date, or the exact amount and due date if
6.5 known, of any final balloon payment, which must be designated as a "lump sum" (or
6.6 "balloon") payment in the contract for deed.

6.7 Subd. 6. **Purchaser's right to cancel.** (a) If a purchaser is not given a disclosure
6.8 statement required under subdivision 3 more than ten days before entering into a purchase
6.9 agreement for a contract for deed, the purchaser may, before entering into a contract for
6.10 deed, cancel the purchase agreement within ten days after first receiving the disclosure
6.11 statement. If a purchaser is given the disclosure statement more than ten days before
6.12 entering into a purchase agreement for a contract for deed, the purchaser may not cancel
6.13 the purchase agreement for a contract for deed under this section. The ten-day rescission
6.14 period may be modified or waived, in writing, by agreement of the purchaser only after the
6.15 purchaser has received and had an opportunity to review the disclosure statement. A seller
6.16 required to deliver a disclosure statement may not condition the sale of the property on the
6.17 purchaser agreeing to modify or waive the purchaser's ten-day right of rescission, may not
6.18 contractually obligate the purchaser to modify or waive the purchaser's ten-day right of
6.19 rescission, and may not include a modification or waiver of the ten-day right of rescission
6.20 in any purchase agreement for a contract for deed. To be effective, a modification or
6.21 waiver of a purchaser's ten-day right of rescission must be evidenced by an instrument
6.22 separate from the purchase agreement signed by the purchaser more than seven days after
6.23 the purchaser receives the disclosure statement.

6.24 (b) Cancellation of the purchase agreement for a contract for deed is effective
6.25 upon delivery by the purchaser to the seller or the licensed agent assisting the seller of a
6.26 written notice of cancellation before entering into the contract for deed with the seller.
6.27 Delivery may be made by hand or by mailing notice via postage prepaid United States
6.28 mail. In the event of cancellation:

6.29 (1) the seller may not impose a penalty and must promptly refund to the purchaser
6.30 all payments made by the purchaser before cancellation; and

6.31 (2) any move-in agreement entered into in connection with the purchase agreement
6.32 for a contract for deed is deemed canceled and the purchaser is liable to the seller for a pro
6.33 rata portion of any rent payable under the move-in agreement.

6.34 (c) The purchaser's cancellation rights under this section terminate upon the
6.35 purchaser's entering into a contract for deed with the seller.

Subd. 7. **Purchaser's right to offset.** If a seller fails to deliver to the purchaser the disclosure statement required under subdivision 3 at least ten days before entering into a contract for deed with the purchaser, the purchaser has a right under the contract for deed to offset an amount equal to \$500 against payments next due to the seller under the contract for deed, notwithstanding any contrary provision contained in the contract for deed. The right of offset expires upon cancellation of the contract for deed in accordance with applicable law. The recording is prima facie evidence of termination of the contract for deed pursuant to section 559.213 and is prima facie evidence that any right of offset terminated or was satisfied.

Sec. 4. [559.203] RESIDENTIAL LEASE WITH OPTION TO PURCHASE AGREEMENTS.

Subd. 1. **Scope.** This section only applies to transactions between landlords and renters involving rental residential real property with an option to purchase by the renter.

Subd. 2. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Landlord" means the person who leases the property and who grants the right to purchase the property to the renter.

(c) "Lease with option to purchase agreement" means a transaction between a landlord and renter in which the renter acquires a possessory interest in the property and, for valuable consideration, obtains the right to acquire a fee interest in the property at a future time, and includes both the lease and the option, whether in one or more agreements.

(d) "Option agreement" means a contract, separate from the lease, that provides the renter with an option to purchase and contains the terms under which the option may be exercised.

(e) "Renter" means the person making lease payments on the residential real property and to whom the option to purchase is granted.

(f) "Residential real property" means property intended and used principally for the occupancy of one or two families, if the renter intends to occupy the real property.

Subd. 3. **Written option agreement required.** An option agreement must be in a writing separate from the lease and contain, at a minimum, the following:

(1) legal description of the property subject to the option;

(2) purchase price and any limitations on the exercise of the option to purchase;

(3) conditions under which the option may be exercised;

(4) amount and schedule of payments and the percentage or amount of each payment that will be dedicated to rent payments and the option payment;

(5) whether and to what extent rent or option payments will be credited toward any downpayment on the property;

(6) purchase price of the property or how the purchase price of the property will be determined;

(7) any preexisting mortgage, lien, or other encumbrance on the land or title;

(8) whether or not the conveyance, transfer, or assignment of the renter's option is permitted and if prior notice to the landlord is required;

(9) whether or not the option agreement contemplates the assumption by the renter of a preexisting mortgage; and

(10) that the landlord is obligated to remain current on payments of property taxes and building casualty insurance, unless these obligations are delegated to and accepted by the renter.

Subd. 4. Definitions; legal interests, rights, and obligations of parties. (a) A landlord in a lease with option to purchase agreement is a landlord, as that term is defined under section 504B.001, subdivision 7, and a renter in a lease with option to purchase agreement is a residential tenant, as that term is defined in section 504B.001, subdivision 12.

(b) The execution of a lease with an option to purchase agreement does not affect or impair the rights conferred, obligations or duties imposed, or remedies available under chapter 504B.

(c) In a lease with an option to purchase agreement, until the renter exercises the option and completes the purchase:

(1) the landlord retains title; and

(2) the renter has no interest other than a possessory interest as a leaseholder with an option to purchase.

(d) Within 30 days of any conveyance by the landlord of the title to the property subject to the option agreement, the landlord must notify the renter that a conveyance has occurred and to whom the conveyance was made.

(e) A renter may convey, transfer, or assign the option without the prior written consent of the landlord unless the option to purchase agreement states otherwise.

(f) The enumeration of rights and obligations in this subdivision does not restrict a court from finding the existence of other rights and obligations not inconsistent with this section.

Subd. 5. Disclosure requirement. At least ten days before entering into an option agreement, a landlord must deliver to the renter, in addition to the disclosures required under sections 513.52 to 513.60, as applicable, the written disclosure in the form required

under subdivision 6. A renter who does not execute the agreement is entitled to the return of any money given to the landlord in contemplation of execution of the agreement.

Subd. 6. Disclosure form. (a) The disclosure required under subdivision 5 must be in a document separate from the lease with an option to purchase agreement or any other document or writing.

(b) The disclosure must contain:

(1) a legend, IMPORTANT INFORMATION ABOUT RENT-TO-OWN TRANSACTIONS, which must be in 28-point bold and underlined type and centered on the page; and

(2) a subheading, THIS IS A RENTAL AGREEMENT, NOT A SALE OF PROPERTY, which must be in 24-point type and centered on the page.

(c) All other text must be in 12-point type. The disclosure statement must be double-spaced, except that there must be four spaces between each section.

(d) The disclosure must be in the following verbatim form:

IMPORTANT INFORMATION FOR RENTERS ABOUT

RENT-TO-OWN TRANSACTIONS

THIS IS A RENTAL AGREEMENT

IT IS NOT A SALE OF PROPERTY

The Basics

1. Agreements like this are called "lease with an option to buy" or "rental purchase agreements" or "rent-to-own agreements."

2. This agreement DOES NOT GIVE YOU ANY OWNERSHIP RIGHTS.

3. What you get is the right to buy the property when the option goes into effect.

4. You continue to be a renter according to the terms of your lease until and unless you exercise the option to buy.

5. You can claim the Minnesota Renters Credit on your taxes.

Things to Consider Doing Before Signing a Rent-to-Own Agreement

1. Get the advice of a lawyer.

2. Get an independent appraisal of the property by a professional.

3. Get an independent inspection of the property by a professional.

What are the Landlord's Responsibilities in this Transaction?

1. Until the option to buy goes into effect, the landlord must follow all the laws that govern landlords and assume all the duties assigned to the landlord by the lease.

2. You and the landlord, as provided under existing law, may agree that you will take on certain repairs or maintenance but only if you are compensated for doing so.

What are Your Rights Under This Agreement?

You have the right to:

1. Live in the house and have all the other rights under law given to tenants.

2. Know what the cost of buying the house will be or how that cost will be determined.

3. How your right to buy the house may be exercised.

4. Know about any problems with the title that might make it difficult or impossible for you to buy the house at the end of the agreement.

5. Know whether or not you can sell your right to buy the house to somebody else.

What Happens if the Landlord Sells the House?

If the new buyer does not have to (or will not) honor the option agreement, the transaction is automatically canceled and the landlord has to give back all the money you paid for the option.

What Happens if You Miss Your Rent Payments or Otherwise Violate the Lease?

1. You could be evicted and lose your option to buy and the money you paid for the option.

2. BUT, if you miss a rent payment, you have 15 days to make up the payments.

3. A rent-to-own arrangement is NOT A MORTGAGE. You have NO PROTECTION under Minnesota's foreclosure laws.

What Happens When it is Time to Exercise Your Option to Buy?

1. You will probably have to get a mortgage or other loan or come up with the money to buy the house.

2. If you do not buy the property, you will probably lose your option payment and you may have to leave the property if that condition is in the lease.

Subd. 7. **Right to cure nonpayment.** (a) Notwithstanding any other provision of law, a renter who has entered into a lease with an option to purchase agreement may cure a breach of the lease consisting of nonpayment of rent within 15 days of the breach or until the date by which the option is to be exercised, whichever is sooner, before a landlord may commence eviction under section 504B.321.

(b) An option agreement remains effective if:

(1) the renter redeems the tenancy pursuant to section 504B.291; or

(2) the landlord voluntarily agrees to permit the renter to cure by paying the rent and recover or retain possession following the disposition of an eviction action.

Subd. 8. **Automatic cancellation of option.** Upon conveyance of the landlord's interest in the property to a third party, if the third party does not take subject to the

- 11.1 option, the landlord must, within ten days of the conveyance, return the entire cost of
- 11.2 the option to the renter.
- 11.3 Subd. 9. **Waiver.** The provisions of this section may not be waived.