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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 536

02/13/2013 Authored by Davnie, Lesch, Hoppe, Davids, Dehn, R., and others
The bill was read for the first time and referred to the Committee on Housing Finance and Policy

1.1 A bill for an act
1.2 relating to real property; creating a notice requirement for sellers in real estate
1.3 sales for contracts for deed; creating a civil action remedy for violations of the
1.4 notice requirements for contracts for deed; amending Minnesota Statutes 2012,
1.5 sections 82.55, subdivision 19; 507.235, subdivision 2; 559.211, subdivision 2;
1.6 proposing coding for new law in Minnesota Statutes, chapter 559; repealing
1.7 Minnesota Statutes 2012, section 507.235, subdivision 4.

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

1.9 Section 1. Minnesota Statutes 2012, section 82.55, subdivision 19, is amended to read:

1.10 Subd. 19. **Real estate broker; broker.** "Real estate broker" or "broker" means
1.11 any person who:

1.12 (a) for another and for commission, fee, or other valuable consideration or with
1.13 the intention or expectation of receiving the same directly or indirectly lists, sells,
1.14 exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option,
1.15 exchange, purchase or rental of an interest or estate in real estate, or advertises or holds
1.16 out as engaged in these activities;

1.17 (b) for another and for commission, fee, or other valuable consideration or with
1.18 the intention or expectation of receiving the same directly or indirectly negotiates or
1.19 offers or attempts to negotiate a loan, secured or to be secured by a mortgage or other
1.20 encumbrance on real estate, which is not a residential mortgage loan as defined by section
1.21 58.02, subdivision 18;

1.22 (c) "real estate broker" or "broker" as set forth in clause (b) shall not apply to the
1.23 originating, making, processing, selling, or servicing of a loan in connection with the
1.24 ordinary business activities of a mortgagee, lender, or servicer approved or certified
1.25 by the secretary of Housing and Urban Development, or approved or certified by the

2.1 administrator of Veterans Affairs, or approved or certified by the administrator of the
 2.2 Farmers Home Administration, or approved as a multifamily seller/servicer by the Federal
 2.3 Home Loan Mortgage Corporation, or as a multifamily partner approved by the Federal
 2.4 National Mortgage Association;

2.5 (d) for another and for commission, fee, or other valuable consideration or with the
 2.6 intention or expectation of receiving the same directly or indirectly lists, sells, exchanges,
 2.7 buys, rents, manages, offers or attempts to negotiate a sale, option, exchange, purchase or
 2.8 rental of any business opportunity or business, or its good will, inventory, or fixtures, or
 2.9 any interest therein;

2.10 (e) for another and for commission, fee, or other valuable consideration or with
 2.11 the intention or expectation of receiving the same directly or indirectly offers, sells or
 2.12 attempts to negotiate the sale of property that is subject to the registration requirements of
 2.13 chapter 83, concerning subdivided land;

2.14 (f) for another and for commission, fee, or other valuable consideration or with
 2.15 the intention or expectation of receiving the same, promotes the sale of real estate by
 2.16 advertising it in a publication issued primarily for this purpose, if the person:

2.17 (1) negotiates on behalf of any party to a transaction;

2.18 (2) disseminates any information regarding the property to any party or potential
 2.19 party to a transaction subsequent to the publication of the advertisement, except that
 2.20 in response to an initial inquiry from a potential purchaser, the person may forward
 2.21 additional written information regarding the property which has been prepared prior to the
 2.22 publication by the seller or broker or a representative of either;

2.23 (3) counsels, advises, or offers suggestions to the seller or a representative of the
 2.24 seller with regard to the marketing, offer, sale, or lease of the real estate, whether prior
 2.25 to or subsequent to the publication of the advertisement;

2.26 (4) counsels, advises, or offers suggestions to a potential buyer or a representative of
 2.27 the seller with regard to the purchase or rental of any advertised real estate; or

2.28 (5) engages in any other activity otherwise subject to licensure under this chapter;

2.29 (g) engages wholly or in part in the business of selling real estate to the extent that a
 2.30 pattern of real estate sales is established, whether or not the real estate is owned by the
 2.31 person. A person shall be presumed to be engaged in the business of selling real estate if
 2.32 the person engages as principal in ~~five~~ three or more transactions during any 12-month
 2.33 period, unless the person is represented by a licensed real estate broker or salesperson.

2.34 Sec. 2. Minnesota Statutes 2012, section 507.235, subdivision 2, is amended to read:

3.1 Subd. 2. **Penalty for failure to file.** (a) A vendee who fails to record a contract for
 3.2 deed, as required by subdivision 1, is subject to a civil penalty, payable under subdivision
 3.3 5, equal to two percent of the principal amount of the contract debt, unless the vendee
 3.4 has not received a copy of the contract for deed in recordable form, as required under
 3.5 subdivision 1a. Payments of the penalty shall be deposited in the general fund of the
 3.6 county. The penalty may be enforced as a lien against the vendee's interest in the property.

3.7 (b) A person receiving an assignment of a vendee's interest in a contract for deed
 3.8 who fails to record the assignment as required by subdivision 1 is subject to a civil penalty,
 3.9 payable under subdivision 5, equal to two percent of the original principal amount of the
 3.10 contract debt. Payments of the penalty must be deposited in the general fund of the county.
 3.11 The penalty may be enforced as a lien against the vendee's interest in the property.

3.12 Sec. 3. **[559.201] DEFINITIONS.**

3.13 Subdivision 1. **Application.** The definitions in this section apply to section 559.202.

3.14 Subd. 2. **Business day.** "Business day" means any day other than a Saturday,
 3.15 Sunday, or holiday as defined in section 645.44, subdivision 5.

3.16 Subd. 3. **Family farm security loan.** "Family farm security loan" has the meaning
 3.17 given in Minnesota Statutes 2008, section 41.52, subdivision 5.

3.18 Subd. 4. **Multiple seller.** "Multiple seller" means a person that has acted as the
 3.19 seller in two or more contracts for deed involving residential real property in Minnesota in
 3.20 any calendar year. Multiple seller also includes a person who has acted in joint venture
 3.21 or joint enterprise with one or more persons who have sold residential real estate on
 3.22 a contract for deed.

3.23 Subd. 5. **Person.** "Person" means a natural person, partnership, corporation, limited
 3.24 liability company, association, trust, or other legal entity, however organized.

3.25 Subd. 6. **Purchase agreement.** "Purchase agreement" means a purchase agreement
 3.26 for a contract for deed, an earnest money contract, or an executed option contemplating
 3.27 that, at closing, the seller and the purchaser will enter into a contract for deed.

3.28 Subd. 7. **Purchaser.** "Purchaser" means a natural person who enters into a contract
 3.29 for deed to purchase residential real property. Purchaser includes all purchasers who enter
 3.30 into the same contract for deed to purchase residential real property.

3.31 Subd. 8. **Residential real property.** "Residential real property" means real property
 3.32 consisting of one to four family dwelling units, one of which the purchaser intends to
 3.33 occupy as the purchaser's principal place of residence. Residential real property does
 3.34 not include property subject to a family farm security loan or a transaction subject to
 3.35 sections 583.20 to 583.32.

4.1 Sec. 4. **[559.202] CONTRACTS FOR DEED INVOLVING RESIDENTIAL**
 4.2 **PROPERTY.**

4.3 Subdivision 1. Notice. (a) In addition to the disclosures required under sections
 4.4 513.52 to 513.60, a multiple seller must deliver a notice to a prospective purchaser:

4.5 (1) at least seven business days before the purchaser signs the purchase agreement; or

4.6 (2) if there is no purchase agreement, at least ten business days before the purchaser
 4.7 signs the contract for deed.

4.8 (b) The notice must be:

4.9 (1) provided in a document separate from any other document or writing;

4.10 (2) written in both English and in any other language used to negotiate the
 4.11 transaction; and

4.12 (3) signed and dated by the purchaser.

4.13 (c) The notice required under this subdivision must contain the title "Important
 4.14 Information About Contracts for Deed" and the title must be in 14-point, bold type and
 4.15 centered on the first page of the notice required under this subdivision. All other text must
 4.16 be in 12-point type with a double space between each disclosure.

4.17 (d) If a dispute arises concerning whether or when the notice required by this
 4.18 subdivision was provided to the purchaser, there is a rebuttable presumption that the notice
 4.19 was not provided if the multiple seller cannot produce a copy of the notice signed and
 4.20 dated by the purchaser.

4.21 (e) The notice must contain the following language:

4.22 **"IMPORTANT INFORMATION ABOUT CONTRACTS FOR DEED**

4.23 **Key Things to Know Before You Sign**

4.24 (1) A contract for deed is a complex legal agreement. You should know ALL of your
 4.25 obligations and rights before you sign a purchase agreement or contract for deed.

4.26 (2) As a contract for deed purchaser you are NOT a tenant and the laws protecting tenants
 4.27 do not apply. The seller usually does not maintain or repair the property.

4.28 (3) Your contract for deed places obligations on you that a tenant does not have, for
 4.29 example, you (seller must circle one):

4.30 (i) DO DO NOT have to pay property taxes.

4.31 (ii) DO DO NOT have to pay homeowner's insurance premiums.

4.32 (iii) DO DO NOT have to make and pay for some or all of the repairs.

4.33 (4) You will probably need to make a large lump sum payment (called a "balloon
 4.34 payment"). You should know when you will have to make that payment and how much it
 4.35 will be. You will probably need to get a new mortgage from a bank at that time.

5.1 (5) If you miss just a single payment or can't make the balloon payment, the seller can
5.2 cancel your contract and:

5.3 (i) you will likely lose all the money you have already paid;

5.4 (ii) you will likely lose your ability to purchase the home; and

5.5 (iii) the seller can likely evict you in 60 days.

5.6 **Key Things to Do Before You Sign**

5.7 Before you sign the purchase agreement or the contract for deed, you should:

5.8 (1) Get advice from a lawyer or the Minnesota Home Ownership Center at 1-866-462-6466.

5.9 (2) Get an independent, professional appraisal of the property to find out how much it
5.10 is worth.

5.11 (3) Get an independent, professional inspection of the property.

5.12 (4) Buy title insurance.

5.13 (5) Call the county where the property is located to find out if there is a mortgage lien
5.14 on the property and if the property taxes have been paid.

5.15 (6) Call the city where the property is located to find out if there are inspection reports on
5.16 file for the property, and if the city is aware of unpaid utility bills.

5.17 **Your Right to Cancel the Purchase Agreement**

5.18 (1) The seller must give you this notice seven business days or more before you sign a
5.19 purchase agreement (or ten business days or more before you sign the contract for deed if
5.20 there is no purchase agreement).

5.21 (2) You should take this time to consider the information in the notice and to ask for advice
5.22 from a lawyer or the Minnesota Home Ownership Center (their number is 1-866-462-6466).

5.23 (3) If you DO sign a purchase agreement, you can cancel it and get your money back if:

5.24 (i) you do not get this notice seven days or more before you sign the purchase agreement;
5.25 and

5.26 (ii) you haven't already signed the contract for deed.

5.27 (4) To cancel, you must give or mail a written notice of cancellation to the seller (or to
5.28 an agent who is assisting the seller), and you must do so:

5.29 (i) within seven business days after you get this paper; and

5.30 (ii) BEFORE you sign the contract for deed."

6.1 Subd. 2. Remedies for failure to timely deliver notices. (a) Notwithstanding any
6.2 contrary provision in the contract for deed, a purchaser has a private right of action against
6.3 a multiple seller who fails to timely deliver the notice required under subdivision 1. The
6.4 multiple seller is liable to the purchaser for an amount equal to three contract payments.
6.5 The amount due to the purchaser must be applied to offset outstanding contract installment
6.6 payments past due or next due under the contract for deed.

6.7 (b) No notice of cancellation of the contract for deed based on nonpayment and
6.8 served or published pursuant to section 559.21 is effective unless delinquencies remain
6.9 after the application of the offset.

6.10 (c) The right to offset expires upon cancellation of the contract for deed in accordance
6.11 with applicable law. Recordation of the documents specified in section 559.213 constitutes
6.12 prima facie evidence that any right to offset under this subdivision has expired.

6.13 (d) A purchaser required to commence or defend an action to enforce the remedies
6.14 provided under this subdivision is entitled to reasonable attorney fees and costs.

6.15 Subd. 3. Additional remedies for bad faith violations. (a) A multiple seller who
6.16 acts in bad faith in failing to timely deliver the notice required under subdivision 1 is
6.17 liable to the purchaser for:

6.18 (1) an amount equal to three times the amount of the penalty in subdivision 2,
6.19 paragraph (a);

6.20 (2) attorney fees; and

6.21 (3) court costs.

6.22 (b) The sanctions in paragraph (a) are in addition to what the purchaser is entitled to
6.23 in subdivision 2, paragraph (a).

6.24 (c) The rights and remedies provided in this subdivision are cumulative to, and not
6.25 a limitation of, any other rights and remedies provided by the law. Any action brought
6.26 pursuant to this subdivision must be commenced within four years from the date of the
6.27 alleged violation.

6.28 Subd. 4. Right to cancel purchase agreement. (a) A natural person may rescind
6.29 the purchase agreement within seven business days after actually receiving the notice
6.30 required under subdivision 2 if a multiple seller fails to timely deliver the notice, provided
6.31 that the person has not executed the contract for deed.

6.32 (b) Cancellation of the purchase agreement is effective upon delivery of a written
6.33 notice of cancellation to the multiple seller or the licensed agent assisting the multiple
6.34 seller. Delivery may be made by hand or by United States mail to the last known address
6.35 of the multiple seller or the multiple seller's agent.

7.1 (c) In the event of cancellation, the multiple seller may not impose a penalty and
7.2 must promptly refund all payments made by the person prior to cancellation.

7.3 Subd. 5. **Duty of multiple seller to account.** (a) In addition to any other legal
7.4 duties the multiple seller is obligated to perform, the multiple seller must, by January 30
7.5 of each year, provide on a form acceptable to the Internal Revenue Service for tax filing
7.6 a statement indicating the interest paid by the purchaser to the multiple seller under the
7.7 contract for the previous calendar year.

7.8 (b) Upon request by the purchaser, a multiple seller must provide an accounting of
7.9 all payments made pursuant to the contract for deed, the amount of interest paid, and the
7.10 amount remaining to satisfy the principal balance under the contract.

7.11 Subd. 6. **Records.** A multiple seller must retain copies of all signed notices required
7.12 under subdivision 2 for four years from the date the notice was signed and dated.

7.13 Subd. 7. **No waiver.** The provisions of this section may not be waived.

7.14 **EFFECTIVE DATE.** This section is effective August 1, 2013, and applies to
7.15 purchase agreements for contracts for deed and to contracts for deed that involve
7.16 residential real property and are entered into on or after that date.

7.17 Sec. 5. Minnesota Statutes 2012, section 559.211, subdivision 2, is amended to read:

7.18 Subd. 2. **Remedies additional.** The remedies provided in this section are in
7.19 addition to and do not limit other rights or remedies available to purchasers or vendors of
7.20 real estate. Subject to the provisions of sections 559.213 and 559.217, subdivision 7, this
7.21 section shall not be construed to bar a court from determining the validity, effectiveness,
7.22 or consequences of proceeding under section 559.21 or 559.217, or granting other relief in
7.23 connection therewith, by reason of the failure of a purchaser to seek or obtain relief under
7.24 this section prior to the purported effective date of the termination of the contract.

7.25 Sec. 6. **REPEALER.**

7.26 Minnesota Statutes 2012, section 507.235, subdivision 4, is repealed.

7.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.

APPENDIX
Repealed Minnesota Statutes: 13-1133

507.235 FILING CONTRACTS FOR DEED.

Subd. 4. **Criminal penalty.** A person who is required to record a contract for deed or an assignment of a contract for deed under subdivision 1 and who fails to record the contract for deed or assignment within 14 days of receipt of the notice required under subdivision 5 is guilty of a misdemeanor. A city in which the land is located or, if the land is not located within a city, the county in which the land is located, may prosecute criminal violations of this section. This criminal liability is in addition to civil liability imposed under this section.