

CHAPTER 559

ADVERSE CLAIMS TO REAL ESTATE

559.21 Termination of contract of sale; notice, service and return, costs, reinstatement.

559.21 TERMINATION OF CONTRACT OF SALE; NOTICE, SERVICE AND RETURN, COSTS, REINSTATEMENT.

Subdivision 1. [Repealed, 1Sp1985 c 18 s 16]

Subd. 1a. [Repealed, 1Sp1985 c 18 s 16]

Subd. 2. [Repealed, 1Sp1985 c 18 s 16]

Subd. 2a. **Termination notice.** (a) If a default occurs in the conditions of a contract for the conveyance of real estate or an interest in the real estate that gives the seller a right to terminate it, the seller may terminate the contract by serving upon the purchaser or the purchaser's personal representatives or assigns, within or outside of the state, a notice specifying the conditions in which default has been made. The notice must state that the contract will terminate 60 days, or a shorter period allowed in subdivision 4, after the service of the notice, unless prior to the termination date the purchaser:

- (1) complies with the conditions in default;
- (2) makes all payments due and owing to the seller under the contract through the date that payment is made;
- (3) pays the costs of service of the notice, which include the reasonable costs of service by sheriff, public officer, or private process server, except as provided in paragraph (c);
- (4) pays two percent of any amount in default at the time of service, not including the final balloon payment, any taxes, assessments, mortgages, or prior contracts that are assumed by the purchaser; and
- (5) pays an amount to apply on attorneys' fees actually expended or incurred, of \$125 if the amount in default is less than \$750, and of \$250 if the amount in default is \$750 or more, except as provided in paragraph (b).

(b) An amount for attorneys' fees is not required to be paid under this section, unless some part of the conditions of default has existed at least 30 days prior to the date of service of the notice.

(c) Payment of costs of service is not required unless the seller notifies the purchaser of actual costs of service by certified mail to the purchaser's last known address at least ten days prior to the date of termination.

Subd. 3. For purposes of this section, the term "notice" means a writing stating the information required in this section, stating the name, address and telephone number of the seller or of an attorney authorized by the seller to accept payments pursuant to the notice and the fact that the person named is authorized to receive the payments, and including the following information in 12 point or larger bold type or in large legible handwritten letters:

THIS NOTICE IS TO INFORM YOU THAT BY THIS NOTICE THE SELLER HAS BEGUN PROCEEDINGS UNDER MINNESOTA STATUTES, SECTION 559.21, TO TERMINATE YOUR CONTRACT FOR THE PURCHASE OF YOUR PROPERTY FOR THE REASONS SPECIFIED IN THIS NOTICE. THE CONTRACT WILL TERMINATE DAYS AFTER (SER-

VICE OF THIS NOTICE UPON YOU) (THE FIRST DATE OF PUBLICATION OF THIS NOTICE) UNLESS BEFORE THEN THE PERSON AUTHORIZED IN THIS NOTICE TO RECEIVE PAYMENTS RECEIVES FROM YOU THE AMOUNT THIS NOTICE SAYS YOU OWE PLUS ANY ADDITIONAL PAYMENTS DUE UNDER THE CONTRACT TO THE SELLER SINCE THE NOTICE WAS SERVED PLUS THE COSTS OF SERVICE (TO BE SENT TO YOU) TOGETHER WITH \$ (WHICH IS TWO PERCENT OF THE AMOUNT IN DEFAULT AT THE TIME OF SERVICE OTHER THAN THE FINAL BALLOON PAYMENT, ANY TAXES, ASSESSMENTS, MORTGAGES, OR PRIOR CONTRACTS THAT ARE ASSUMED BY YOU) AND \$ TO APPLY TO ATTORNEYS' FEES ACTUALLY EXPENDED OR INCURRED; OR UNLESS BEFORE THEN YOU SECURE FROM A COUNTY OR DISTRICT COURT AN ORDER THAT THE TERMINATION OF THE CONTRACT BE SUSPENDED UNTIL YOUR CLAIMS OR DEFENSES ARE FINALLY DISPOSED OF BY TRIAL, HEARING OR SETTLEMENT. YOUR ACTION MUST SPECIFICALLY STATE THOSE FACTS AND GROUNDS THAT DEMONSTRATE YOUR CLAIMS OR DEFENSES. IF YOU DO NOT DO ONE OR THE OTHER OF THE ABOVE THINGS WITHIN THE TIME PERIOD SPECIFIED IN THIS NOTICE, YOUR CONTRACT WILL TERMINATE AT THE END OF THE PERIOD AND YOU WILL LOSE ALL THE MONEY YOU HAVE PAID ON THE CONTRACT; YOU WILL LOSE YOUR RIGHT TO POSSESSION OF THE PROPERTY; YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE; AND YOU WILL BE EVICTED. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY.

Subd. 4. (a) The notice required by this section must be given notwithstanding any provisions in the contract to the contrary, except that earnest money contracts, purchase agreements, and exercised options that are subject to this section may, by their terms, provide for a shorter termination period, not less than 30 days. The notice must be served within the state in the same manner as a summons in the district court, and outside of the state, in the same manner, and without securing any sheriff's return of not found, making any preliminary affidavit, mailing a copy of the notice or doing any other preliminary act or thing whatsoever. Service of the notice outside of the state may be proved by the affidavit of the person making the same, made before an authorized officer having a seal, and within the state by such an affidavit or by the return of the sheriff of any county therein.

(b) Three weeks published notice, and if the premises described in the contract are actually occupied, then in addition thereto, the personal service of a copy of the notice within ten days after the first date of publication of the notice, and in like manner as the service of a summons in a civil action in the district court upon the person in possession of the premises, has the same effect as the personal service of the notice upon the purchaser, his personal representatives or assigns, either within or outside of the state as herein provided for. In case of service by publication, as herein provided, the notice shall specify the conditions in which default has been made, state that the purchaser, his personal representative, or assigns are allowed 90 days from and after the first date of publication of the notice to comply with the conditions of the contract, and state that the contract will terminate 90 days after the first date of publication of the notice, unless prior thereto the purchaser:

- (1) complies with the conditions;
- (2) makes all payments due and owing to the seller under the contract through the date that payment is made;
- (3) pays the costs of service, as provided in subdivision 2a;

(4) pays two percent of the amount in default at the time of service, not including the final balloon payment, any taxes, assessments, mortgages, or prior contracts that are assumed by the purchaser; and

(5) pays attorneys' fees as provided in subdivision 2a.

(c) The contract is reinstated if, within the time mentioned, the person served:

(1) complies with the conditions;

(2) makes all payments due and owing to the seller under the contract through the date that payment is made;

(3) pays the costs of service as provided in subdivision 2a;

(4) pays two percent of the amount in default, not including the final balloon payment, any taxes, assessments, mortgages, or prior contracts that are assumed by the purchaser; and

(5) pays attorneys' fees as provided in subdivision 2a.

(d) The contract is terminated if the provisions of paragraph (c) are not met.

(e) In the event that the notice was not signed by an attorney for the seller and the seller is not present in the state, or cannot be found therein, then compliance with the conditions specified in the notice may be made by paying to the clerk of the district court in the county wherein the real estate or any part thereof is situated any money due and filing proof of compliance with other defaults specified, and the clerk of the district court shall be deemed the agent of the seller for such purposes. A copy of the notice with proof of service thereof, and the affidavit of the seller, his agent or attorney, showing that the purchaser has not complied with the terms of the notice, may be recorded with the county recorder, and is prima facie evidence of the facts therein stated; but this section in no case applies to contracts for the sale or conveyance of lands situated in another state or in a foreign country.

[For text of subd 5, see M.S.1984]

Subd. 6. Temporary additional notice. (a) Notwithstanding the provisions of any other law to the contrary, a notice to terminate a contract for conveyance of homestead property to which the provisions of chapter 583 apply, served after May 24, 1983, and prior to May 1, 1985, or after June 8, 1985, and prior to May 1, 1987, must include a statement that the purchaser may be eligible for an extension of the time prior to termination under sections 583.01 to 583.12.

(b) The statement must be in bold type, capitalized letters, or other form sufficient for the reader to quickly and easily distinguish the statement from the rest of the notice. The requirements of this paragraph must be followed on notices served under this subdivision on or after August 1, 1985. A violation of this paragraph is a petty misdemeanor.

(c) This subdivision does not apply to earnest money contracts, purchase agreements or exercised options.

[For text of subd 7, see M.S.1984]

Subd. 8. Attorney as agent. Any attorney expressly authorized by the seller to receive payments in the notice of termination under this section is designated as the attorney who may receive service as agent for the seller of all summons, complaints, orders, and motions made in conjunction with an action by the purchaser to restrain the termination.

History: 1985 c 300 s 29; 1985 c 306 s 7; 1Sp1985 c 16 art 2 s 44; 1Sp1985 c 18 s 6-10,16