State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 1829

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The bill was read for the first time and referred to the Committee on Commerce and Labor

A bill for an act

relating to real property; regulating contracts for deed and rental purchase agreements; providing attorney fees and other remedies; amending Minnesota Statutes 2008, sections 504B.285, subdivision 1; 507.235, subdivisions 1, 2; 559.205; 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~~ the 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, subdivision 1, is amended to read:

Subdivision 1. **Filing required.** All contracts for deed executed on or after January 1, 1984, shall be recorded by the ~~vendee~~ <u>vendor</u> within four months in the office of the county recorder or registrar of titles in the county in which the land is located. Any other person may record the contract<u>, provided that a vendor may not require a vendee to record</u>. This filing period may be extended if failure to pay the property tax due in the current year on a parcel as required in section 272.121 has prevented filing and recording of the contract. In the case of a parcel that was divided and classified under section 273.13 as class 1a or 1b, the period may be extended to October 31 of the year in which the sale occurred, and in the case of a parcel that was divided and classified under section 273.13 as class 2a, the period may be extended to November 30 of the year in which the sale occurred.

A person receiving an assignment of a vendee's interest in a contract for deed that is transferred on or after January 1, 1989, shall record the assignment within four months of the date of transfer in the office of the county recorder or registrar of titles in the county in which the land is located. For the purpose of this section, "assignment" means an assignment or other transfer of all or part of a vendee's interest in a contract for deed. Any other person may record an assignment.

Sec. 3. Minnesota Statutes 2008, section 507.235, subdivision 2, is amended to read:

Subd. 2. **Penalty for failure to file.** (a) A ~~vendee~~ <u>vendor</u> who fails to record a contract for deed, as required by subdivision 1, is subject to a civil penalty, payable under subdivision 5, equal to two percent of the principal amount of the contract debt. Payments of the penalty shall be deposited in the general fund of the county. The penalty may be enforced ~~as a lien against the vendee's interest in the property~~ <u>under sections 270A.01 to 270A.12</u>.

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

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

Subdivision 1. **Scope.** (a) This section only applies to transactions involving residential real property.

(b) This section does not apply to transactions entered into or facilitated by:

(1) a nonprofit organization, as that term is defined under section 462A.03, subdivision 22;

(2) a state or local unit of government; or

(3) a housing and redevelopment authority created pursuant to sections 469.001 to 469.047.

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

(b) "Contract for deed" means an executory contract for the conveyance of residential real property, the original principal amount of which is less than $300,000. A commitment for a contract for deed shall include an executed purchase agreement or earnest money contract wherein the seller agrees to finance any part or all of the purchase price by a contract for deed.

(c) "Family farm security loan" has the meaning given it under section 41.52, subdivision 5.

(d) "Person" means an individual, corporation, business trust, partnership or association, or any other legal entity.

(e) "Residential real property" means property intended and used principally for the occupancy of from one to four families, whether or not the owner occupies the real property. Residential real property does not include property subject to a family farm security loan or any transaction subject to sections 583.20 to 583.32.

(f) "Vendee" means a person who agrees to acquire title through a contract for deed.

(g) "Vendor" means a person who agrees to convey title through a contract for deed.

(h) "Wraparound contract for deed" means a contract for deed where the vendee takes subject to existing financing. Any contract in which the vendee does not assume the mortgage is deemed to be a wraparound contract for deed.

Subd. 3. **Legal interests, rights, and obligations of the parties.** (a) Upon execution of a contract for deed:

(1) the vendor obtains a reversionary interest in the property and holds the title as security for payment of the contract;

(2) the vendee:

(i) obtains an equitable ownership interest in the property; and

(ii) unless otherwise specified in the contract for deed, obtains the right to exclusive possession of, and becomes responsible for payment of property taxes and the acquisition of liability and casualty insurance on, the property.

(b) Upon completion of performance by the vendee, the vendor must convey marketable title and the physical deed to the vendee.

(c) A contract for deed may not be conveyed, transferred, or assigned unless permitted under the contract. Where permissible, prior notice to the adverse party is required.

(d) Following execution of a contract for deed, a vendor may refinance the vendor's debt through a mortgage or other instrument only upon the written consent of the vendee. A vendee may not be held personally liable for repayment of the refinanced debt.

(e) Every contract for deed, and any subsequent conveyance, transfer, or assignment, must be recorded under section 507.235.

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

Subd. 4. **Written contract.** (a) Every contract for deed must be in writing and contain, at a minimum, the following provisions:

(1) the legal property description;

(2) the purchase price and payment schedule, including any balloon payments;

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

(4) any covenants or restrictions attached to or running with the land;

(5) whether or not conveyance, transfer, or assignment of either the vendor or vendee's interest is permitted, and if permitted that prior notice to the adverse party is required;

(6) the nature of the vendee's possessory interest in the property;

(7) whether the vendee assumes a preexisting mortgage;

(8) that any mortgage or financing secured by the vendee after the execution and recordation of the contract for deed does not encumber the property;

(9) that the vendee, transferee, or assignee has the right to fully or partially prepay the contract for deed at any time without penalty;

(10) whether the vendor or vendee is liable for taxes and insurance, and, if the vendee is liable, whether payments for taxes and insurance will be held in escrow and the disposition of escrow funds upon cancellation;

(11) the rights and requirements of the vendee to cure a default; and

(12) the rights and obligations of the parties if the instrument is a wraparound contract for deed.

(b) In the absence of a writing, a person granting a possessory right to property in exchange for periodic payment or other consideration is deemed to be a landlord, as that term is defined in section 504B.001, subdivision 7, and subject to all duties imposed under state law, municipal ordinance, and the common law.

(c) An agreement for a contract for deed that is not in writing or a contract for deed entered into with a vendee without the capacity to contract is subject to rescission by the vendee.

(d) Nothing precludes the parties from making agreements as part of or in addition to the contract for deed that are not inconsistent with this section.

Subd. 5. **Disclosures.** (a) Prior to executing a contract for deed, a vendor must disclose, in a plain language, easy-to-read document, separate from the contract and signed by both parties:

(1) the legal interest is of both parties upon execution of the contract for deed;

(2) that it is advisable that the vendee obtain an independent appraisal and inspection of the property, and conduct a title search, prior to executing a contract for deed;

(3) that it is prudent to seek the advice of an attorney prior to entering into a contract for deed;

(4) whether conveyance, transfer, or assignment of the vendor's or vendee's interest is permissible and, if permissible, that prior notice to the adverse party is required;

(5) the amount and timing of payments, including the amount and timing of any balloon payments;

(6) that the vendee may fully or partially prepay the contract for deed at any time without penalty;

(7) whether and to what extent the vendee obtains a possessory interest in the property;

(8) that the vendee may claim the homestead credit for state income tax purposes;

(9) which party bears the risk of loss and the responsibility for the payment of taxes and the acquisition of liability and casualty insurance;

(10) any preexisting encumbrance that will adversely affect the vendee's ability to become the title owner of the property;

(11) that, although encumbrances may be preexisting, it is the vendor's duty to convey good title upon delivery of the deed at the completion of the vendee's performance;

(12) that an encumbrance created or suffered by the vendor following execution of the contract for deed will not affect the vendee's interest;

(13) whether the vendee may create an encumbrance following execution of the contract for deed and, if permissible, the effect of the encumbrance on the vendee's interest; and

(14) the right and requirements of a vendee to cure a default.

(b) Subsequent to the execution of a contract for deed, a vendor must disclose to the vendee any mortgages, liens, or any other encumbrances that attach to the property.

Subd. 6. **Assumption of mortgage; wraparound contract for deed.** (a) Unless otherwise stated in the contract for deed, a vendee does not assume a preexisting mortgage.

(b) If the instrument is a wraparound contract for deed, the vendee shall provide notice to the holder of the mortgage of the existence of the contract and the name of the vendee. Upon default by the vendor, the holder shall provide the vendee with the right to cure. Default by the vendor:

(1) creates a unilateral right in the vendee to modify the payment provisions of the contract for deed, allowing subtraction of the portion of the payments designated for repayment to the holder and assume the mortgage;

(2) voids any provision permitting the vendor to secure additional financing or refinancing following execution of the contract; and

(3) entitles the vendee to a premium payment equal to ten percent of the regular installment payment.

Subd. 7. **Personal property.** Unless specified in the contract for deed, a vendor has no grant of a security interest in personal property, including fixtures.

Subd. 8. **Property improvements.** A vendee may not make any improvements to the property including, but not limited to, repairs, replacements, or modifications that would create a lien without the consent of the vendor. A vendee is not financially liable for any improvements to the property made by the vendor following execution of the contract for deed.

Subd. 9. **Escrow for taxes and insurance.** The contract for deed may contain a provision whereby the vendor holds vendee payments for taxes and insurance in escrow, provided that the escrow payments are held in a separate account, bear interest, and are not commingled with any other vendor funds unless otherwise specified in the contract.

Subd. 10. **Prepayment.** A vendee, transferee, or assignee shall have the right to fully or partially prepay the contract for deed at any time without penalty.

Subd. 11. **Late payment.** A vendor may charge no more for late payment or default than is provided for under section 559.21, subdivision 2a. The requirements of this subdivision may not be waived.

Subd. 12. **Acceleration.** Any acceleration provision in a contract for deed is not effective unless the vendee has failed to comply with the requirements to cure as specified in section 559.21, subdivision 2a.

Subd. 13. **Bona fide purchases; notice.** A bona fide purchaser is deemed to have inquiry notice of the existence of the contract for deed, regardless of whether the contract is recorded.

Subd. 14. **Effect of acceptance of payments after initiation of cancellation.** A vendor is deemed to waive the right to proceed with cancellation if the vendor accepts payments from the vendee after initiation of the cancellation action.

Subd. 15. **Good faith and fair dealing required.** In all matters associated with the execution of and performance under the contract for deed, the parties shall be held to a standard of good faith and fair dealing.

Subd. 16. **Remedies.** (a) A vendor or vendee has a private right of action for actual, consequential, and incidental damages, plus reasonable attorney fees, court costs, and disbursements, for violation of any provisions of this section that adversely affect the vendor or vendor's rights or interests.

(b) Any provision in a contract for deed permitting a vendor to cancel the contract or commence an action for cancellation for any contractual or statutory violation other than nonpayment is void and unenforceable.

(c) In addition to any other remedy, a vendee:

(1) upon rescission, is entitled to a refund of all payments, plus reasonable attorney fees, court costs, and disbursements;

(2) upon discovery of the failure of a vendor to disclose any preexisting encumbrance that adversely affects the vendee's ability to become the title owner of the property, may void the contract for deed and is entitled to damages of $5,000 plus reasonable attorney fees and court costs;

(3) upon completion of performance, has a private right of action for specific performance if the vendor fails to deliver marketable title or the physical deed or both;

(4) where a vendor violates subdivision 11, has a private right of action for disgorgement, plus reasonable attorney fees and court costs; and

(5) may commence an action under section 8.31. Any action commenced under section 8.31 is in the public interest.

Subd. 17. **Defenses.** A vendor or vendee may assert a defense in any venue and in any action relating to the contract for deed, unless a court finds the defense barred by res judicata or collateral estoppel.

Sec. 5. **[559.203] RENTAL PURCHASE AGREEMENTS INVOLVING RESIDENTIAL PROPERTY.**

Subdivision 1. **Scope.** (a) This section only applies to transactions involving residential real property.

(b) This section does not apply to transactions entered into or facilitated by:

(1) a nonprofit organization, as that term is defined under section 462A.03, subdivision 22;

(2) a state or local unit of government; or

(3) a housing and redevelopment authority created pursuant to sections 469.001 to 469.047.

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

(b) "Lease with option to purchase agreement" or "rental purchase agreement" or "rent-to-own agreement" means a transaction between a lessor and lessee in which the lessee acquires a possessory interest in the property and the right to acquire a fee interest in the property at a future time.

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

(d) "Lessor" means the person who leases the property and who grants the right to purchase the property to the lessee.

(e) "Person" means an individual, corporation, business trust, partnership or association, or any other legal entity.

(f) "Residential real property" means property intended and used principally for the occupancy of from one to four families, whether or not the owner occupies the real property.

Subd. 3. **Written contract.** (a) Every rental purchase agreement for residential real property must be in writing and contain, at a minimum, the following provisions:

(1) the legal property description;

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

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

(4) the amount and schedule of lease payments;

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

(6) any covenants or restrictions attached to or running with the land;

(7) whether or not conveyance, transfer, or assignment of the lessee's option in interest is permitted and, if permitted, that prior notice to the lessor is required;

(8) whether the contract contemplates the assumption by the lessee of a preexisting mortgage; and

(9) that the lessor is obligated to remain current on taxes and insurance.

(b) In the absence of a writing, where a controversy arises as to the existence of a rental purchase agreement, the burden shall be on the lessor to show that no rental purchase agreement exists.

Subd. 4. **Definition, legal interests, rights, and obligations of the parties.** (a) A lessor in a rental purchase agreement is a landlord, as that term is defined in section 504B.001, subdivision 7, and a lessee in a rental purchase agreement is a residential tenant, as that term is define in section 504B.001, subdivision 12.

(b) The execution of a rental purchase agreement does not affect or impair the rights conferred, obligations or duties imposed, or remedies available under chapter 504B, except as provided in subdivision 6.

(c) A lessor may not shift any responsibilities, including the payment of taxes and insurance, to the lessee and any provisions in the rental purchase agreement that requires a lessee to assume financial or other responsibilities that belong to a property owner or lessor are void and unenforceable.

(d) Under a rental purchase agreement, the lessor retains fee title until the lessee exercises the option, and the lessee has no interest, equitable or otherwise, other than the possessory interest as a leaseholder.

(e) A lessor may not sell the property without prior notice to the lessee and, upon receipt of notice and request by the lessee, a lessor must refund the entire cost of the option, plus a penalty of $1,000.

(f) A rental purchase agreement encumbers the property and a bona fide purchaser takes with the encumbrance.

(g) A lessee may not convey, transfer, or assign the option without the prior written consent of the lessor.

(h) A lessor must record the rental purchase agreement within four months of its execution.

(i) 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. **Disclosures.** Prior to executing a rental purchase agreement, a lessor must provide to the lessee a document, separate from the contract or any other documents and signed by both parties, containing:

(1) a legend, centered at the top, in bold, capital letters, and in 28-point type stating: "NOTICE: THIS IS A RENTAL AGREEMENT, NOT A SALE OF PROPERTY"; and

(2) the following disclosures, in capital and small font type, in a minimum of 14-point type:

(i) the legal interest is of both parties upon execution of the agreement;

(ii) that it is advisable that the lessee obtain an independent appraisal and inspection of the property prior to executing a rental purchase;

(iii) that it is prudent to seek the advice of an attorney prior to entering into a rental purchase agreement;

(iv) whether conveyance, transfer, or assignment of the lessee's interest is permissible and, if permissible, that prior notice to the lessor party is required;

(v) the amount and timing of payments and the cost of the purchase option;

(vi) the mechanism for exercise of the purchase option;

(vii) that failure to pay rent or other breach of the lease will result in eviction and loss of the option to purchase;

(viii) that the lessee may claim the renter's credit for state income tax purposes;

(ix) that it is the lessor's responsibility to pay taxes and maintain homeowner's insurance;

(x) that it is the lessor's responsibility to maintain the premises and make all repairs;

(xi) that any improvements made by the lessee may not be recovered if the lessee does not exercise the option to purchase;

(xii) any preexisting encumbrance that will adversely affect the vendee's ability to become the title owner of the property; and

(xiii) that an encumbrance created or suffered by the lessor following execution of the rental purchase agreement may affect the vendee's option.

Subd. 6. **Right to cure.** (a) Notwithstanding any other provision of law, a lessee who has entered into a lease purchase agreement has 60 days to cure a breach of the lease before a lessor may commence eviction under section 504B.321.

(b) Upon commencement of an eviction action, any option payment must be either:

(1) subtracted from the rent owed; or

(2) if no rent is owed, returned to lessee within ten days of the commencement of the eviction action.

Subd. 7. **Remedies.** In addition to any other remedies available at law or equity, a court must award a person aggrieved by a violation of subdivision 4, paragraph (c), recovery of actual, consequential, and incidental damages, damages of $2,000, reasonable attorney fees, and court costs.

Sec. 6. Minnesota Statutes 2008, section 559.205, is amended to read:

559.205 CONTRACTS FOR DEED; MODIFICATION.

Notwithstanding any law to the contrary, a renegotiated contract for deed or an agreement modifying the terms of a contract for deed which was valid at its inception shall not be construed as creating a mortgage or an equitable mortgage. This section does not modify any other requirements relating to contracts for deed and applies to contracts for deed involving both residential and commercial properties.