

SECOND REGULAR SESSION

# SENATE BILL NO. 677

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time January 8, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

4892S.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, the following sections apply only 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:

**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 shall be granted the power to sell, through a  
5 trustee designated by the seller, the purchaser's interest in the  
6 property:

7           (a) As provided by this section; or

8           (b) As provided under the procedures specified in sections  
9 443.190 to 443.270;

10          (2) The seller shall not enforce the remedy of rescission or of  
11 forfeiture and acceleration; and

12          (3) The seller may exercise the power granted under subdivision

13 **(1) of this subsection after first notifying the purchaser of a default**  
14 **under the contract and allowing the purchaser at least thirty days after**  
15 **the date notice is given to cure the default. The notice shall be**  
16 **provided as prescribed by section 442.704 except that the notice**  
17 **specified in subsection 1 of section 442.704 shall be replaced by the**  
18 **following statement:**

19 **NOTICE**

20 **YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO**  
21 **BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED**  
22 **IN THIS NOTICE BY ..... (insert date), A TRUSTEE DESIGNATED**  
23 **BY THE SELLER HAS THE RIGHT TO SELL YOUR PROPERTY AT A**  
24 **PUBLIC AUCTION.**

25 **2. The trustee or a substitute trustee designated by the seller**  
26 **under subdivision (1) of subsection 1 of this section shall publish and**  
27 **serve a notice of sale as prescribed by sections 443.310, 443.320, and**  
28 **443.325. A notice of sale shall not be valid unless it is given after the**  
29 **period to cure has expired.**

30 **3. The trustee or a substitute trustee designated by the seller**  
31 **shall conduct the sale as prescribed by section 443.327. The seller shall:**

32 **(1) Convey to a purchaser at a sale conducted under this section**  
33 **fee simple title to the real property; and**

34 **(2) Warrant that the property is free from any encumbrance.**

35 **4. The remaining balance of the amount due under the executory**  
36 **contract shall be the debt for purposes of a sale under this section. If**  
37 **the net proceeds of the sale exceed the debt amount, the seller shall**  
38 **disburse the excess funds to the purchaser under the executory**  
39 **contract. If the proceeds of the sale are insufficient to extinguish the**  
40 **debt amount, the seller's right to recover the resulting deficiency shall**  
41 **be subject to sections 443.230 and 443.240 unless a provision of the**  
42 **executory contract releases the purchaser under the contract from**  
43 **liability.**

44 **5. The affidavit of a person knowledgeable of the facts that states**  
45 **that the notice was given and the sale was conducted as provided by**  
46 **this section shall be prima facie evidence of those facts. A purchaser**  
47 **for value who relies on an affidavit under this subsection shall acquire**  
48 **title to 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 PROPERTY AT**  
17 **..... (insert street address or legal description and city)**

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

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

21 **..... The property is in a recorded subdivision.**

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

25 **..... The property has operable public sewer service.**

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

29 **..... The property has electric service.**

30 **..... The property has operable gas or propane service.**

31 **..... The property is not in a one hundred year floodplain.**

32 **..... The roads to the boundaries of the property are paved and**  
33 **maintained by:**

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

39 ..... No individual or entity other than the seller:

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

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

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

47 NOTICE: SELLER ADVISES PURCHASER TO:

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

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

54 .....	.....
55 (Date)	(Signature of Seller)
56 .....	.....
57 (Date)	(Signature of Purchaser)

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

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

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

67 (1) Shall be an unlawful practice within the meaning of sections  
68 407.020 and 407.025 and shall be actionable in a public or private suit  
69 brought under such sections; and

70 (2) Shall entitle the purchaser to cancel and rescind the

71 **executory contract and receive a full refund of all payments made to**  
72 **the seller.**

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

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

6 (2) **A legible copy of any insurance policy, binder, or other**  
7 **evidence relating to the property that indicates:**

8 (a) **The name of the insurer and the insured;**

9 (b) **A description of the property insured; and**

10 (c) **The amount for which the property is insured.**

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

13 (1) **Shall be an unlawful practice within the meaning of sections**  
14 **407.020 and 407.025 and is actionable in a public or private suit brought**  
15 **under such sections; and**

16 (2) **Shall entitle the purchaser to cancel and rescind the**  
17 **executory contract and receive a full refund of all payments made to**  
18 **the seller.**

442.720. **Not less than ten days before an executory contract is**  
2 **signed by the purchaser, the seller shall provide to the purchaser a**  
3 **written statement that specifies:**

4 (1) **The purchase price of the property;**

5 (2) **The interest rate charged under the contract;**

6 (3) **The total amount of principal and interest (which shall be**  
7 **reasonably estimated if the interest rate is variable) to be paid under**  
8 **the contract;**

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

11 (5) **The interest rate upon default, if any, charged under the**  
12 **contract; and**

13 (6) **The fact that the seller shall not charge a prepayment penalty**  
14 **or any similar fee if the purchaser elects to pay the entire amount due**  
15 **under the contract before the scheduled payment date under the**  
16 **contract.**

442.722. 1. **An executory contract subject to sections 442.700 to**

2 442.746 shall not be enforceable unless the contract is in writing and  
3 signed by the party to be bound or by that party's authorized  
4 representative.

5 2. The rights and obligations of the parties to a contract shall be  
6 determined solely from the written contract, and any prior oral  
7 agreements between the parties shall be superseded by and merged into  
8 the contract.

9 3. An executory contract shall not be varied by any oral  
10 agreements or discussions that occur before or contemporaneously with  
11 the execution of the contract.

12 4. The seller shall include in a separate document or in a  
13 provision of the contract a statement printed in fourteen-point bold-  
14 faced type or fourteen-point uppercase typewritten letters that reads  
15 substantially similar to the following:

16 **THIS EXECUTORY CONTRACT REPRESENTS THE FINAL**  
17 **AGREEMENT BETWEEN THE SELLER AND PURCHASER AND MAY**  
18 **NOT BE CONTRADICTED BY EVIDENCE OF PRIOR,**  
19 **CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE**  
20 **PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS**  
21 **BETWEEN THE PARTIES.**

22 .....	.....
23 <b>(Date)</b>	<b>(Signature of Seller)</b>
24 .....	.....
25 <b>(Date)</b>	<b>(Signature of Purchaser)</b>

26 5. The seller's failure to provide the notice required by this  
27 section:

28 (1) Shall be an unlawful practice within the meaning of sections  
29 407.020 and 407.025 and is actionable in a public or private suit brought  
30 under such sections; and

31 (2) Shall entitle the purchaser to cancel and rescind the  
32 executory contract and receive a full refund of all payments made to  
33 the seller.

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

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

5 (2) Imposes a prepayment penalty or any similar fee if the



6 purchaser elects to pay the entire amount due under the contract  
7 before the scheduled payment date under the contract; or

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

11 2. A provision of the executory contract that purports to waive  
12 a right or exempt a party from a liability or duty under sections 442.700  
13 to 442.746 shall be 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)

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 the seller certifying  
10 the 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 that the property  
13 is 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 shall be 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 shall be 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. Any  
24 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) Shall be 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) Shall entitle the purchaser to cancel and rescind the  
31 executory contract and receive a full refund of all payments made to  
32 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 shall be liable to the purchaser  
7 for:

8 (1) Liquidated damages in the amount of:

9           (a) Two hundred fifty dollars a day for each day the seller fails  
10 to transfer the title to the purchaser during the period that begins the  
11 thirty-first day and ends the ninetieth day after the date the seller  
12 receives the purchaser's final payment due under the contract; and

13           (b) Five hundred dollars a day for each day the seller fails to  
14 transfer title to the purchaser after the ninetieth day after the date the  
15 seller receives the purchaser's final payment due under the contract;  
16 and

17           (2) Reasonable attorney's fees.

18           3. If a person to whom a seller's property interest passes by will  
19 or intestate succession is required to obtain a court order to clarify the  
20 person's status as an heir or to clarify the status of the seller of the  
21 property before the person may convey good and indefeasible title to  
22 the property, the court in which the action is pending may waive  
23 payment of the liquidated damages and attorney's fees under  
24 subsection 2 of this section if the court finds that the person is  
25 pursuing the action to establish good and indefeasible title with  
26 reasonable diligence.

27           4. As used in this section, "seller" shall include a successor,  
28 assignee, personal representative, executor, or administrator of the  
29 seller.

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

442.736. For purposes of sections 442.700 to 442.746, a disclosure  
2 required by such sections that is made by a seller's agent shall be  
3 deemed 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, shall be entitled to convert the purchaser's interest in  
4 property under an executory contract into recorded, legal title in  
5 accordance 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) Shall be considered completed; and**

43           **(2) Shall have no further effect.**

**442.740. 1. A purchaser under an executory contract, on written**  
2 **request, shall be entitled to receive the following information from the**  
3 **seller:**

4           **(1) As of the date of the request or another date specified by the**  
5 **purchaser, the amount owed by the purchaser under the contract; and**

6           **(2) If applicable, the name and address of the seller's desired**  
7 **trustee for a deed of trust to be executed under section 442.738.**

8           **2. On or before the tenth day after the date the seller receives**  
9 **from the purchaser a written request for information described by**  
10 **subsection 1 of this section, the seller shall provide to the purchaser a**  
11 **written statement of the requested information.**

12           **3. If the seller does not timely respond to a request made under**  
13 **this section, the purchaser may:**

14           **(1) Determine or pay the amount owed under the contract,**  
15 **including determining the amount necessary for a promissory note**  
16 **under section 442.738; and**

17           **(2) If applicable, select a trustee for a deed of trust under section**  
18 **442.738. The seller may replace the trustee with a trustee of seller's**  
19 **choice at any time.**

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

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

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

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

32           **(3) Be based on written records kept by the seller or the seller's**  
33 **agent that were maintained and regularly updated for the entire term**  
34 **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.**

Bill ✓

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