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S.F. No. 3489 - Contracts for deed; disclosures required; purchaser's right to cancel; churning prohibited; civil remedies and enforcement

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Overview

S.F. 3489 modifies requirements governing contracts for deeds. This bill prohibits churning, a practice in which an investor seller frequently executes a contract for deed and subsequently terminates the contract for deed. This bill requires investor seller to make certain disclosures to purchasers prior to the execution of a contract for deed, including disclosure of balloon payments; provides the purchaser with a right to cancel the purchase agreement and receive a refund of all payments; permits the purchaser to bring an action against the investor seller; and permits enforcement by the attorney general.

Summary

Section 1. Conveyances, taxes paid before recording. Makes a conforming change.

Section 2. Requirements of vendor. Requires, that within four months of the execution of a contract for deed, the vendor must pay any delinquent taxes necessary for the recording of the contract for deed; and must record the contract for deed in the office of the county recorder or registrar of titles in the county in which the land is located. Requires the vendor to make a good faith effort to remove any impediments to recordation. Makes confirming changes.

Section 3. Civil enforcement. Removes a reference to a subdivision repealed in 2013.

Section 4. Private transfer free. Removes from the prohibition on private transfer fees, as exemption for consideration paid by a contract for deed vendee to a vendor pursuant to the terms of a recorded contract for deed.

Section 5. For post 7/31/1985 contract. Makes conforming changes. Provides that for contracts for deeds executed on or after August 1, 2024, the seller's notice to terminate must state that the purchaser pay, prior to termination, an amount to apply on the attorneys fees actually expended or incurred of \$1,000 in order to avoid termination of the contract.

Section 6. Law prevails over contract; procedure; conditions. Provides that a contract for deed executed by an investor seller terminates with 90 days' notice. No notice may be given unless at least 30 days prior to service of the notice to terminate, conditions of default existed and the investor seller notified the purchaser of the conditions of default.

Section 7. Termination prohibited for certain transfers regarding residential real property. Provides that no notice of termination may be given under section 559.21 for any contract for deed based on certain transfers.

Section 8. Termination prohibited if vendor fails to record contracts for deed involving residential real property. Prohibits termination under 559.21 if the contract for deed was not recorded or the vendor failed to make a good faith effort to correct defects to recordation.

Section 9. Affidavit of seller constituting prima facie evidence. Provides when a seller's affidavit constitutes prima facie evidence.

Section 10. Order; proceedings; security. Permits award of reasonable attorney fees and cost to the purchaser if the vendor made an appearance and the injunction was granted.

Section 11. Prima facie evidence of termination. Provides that it is not necessary to pay current or delinquent taxes owed on property subject to a contract for deed to record required documents, as long as the documents are presented to the county auditor for entry upon the transfer record and have the appropriate notation entered.

Section 12. Contracts for deed involving investor sellers and residential real property; definitions.

Subd. 1. Application. Provides definition for purposes of sections 559A.01 to 559A.05 (sections 12 to 16 of this bill).

Subd. 2. Balloon payment. Defines "balloon payment" as a schedule payment under a CFD that is significantly larger than regularly scheduled payments.

Subd. 3. Churning. Defines "churning" as a practice in which the investor seller completes two or more termination proceedings under section 559.21 within 48 months on the same property or any four or more termination proceedings within 48 months on residential real properties the investor seller sold on a contract for deed executed by the parties. Provides that an investor seller is the "same person" for purposes of the definition of churning if the person who sold the property is under common ownership or control with the investor seller or the person is related to the investor seller.

Subd. 4. Contract for deed. Defines “contract for deed” as a contract for the conveyance of residential real property under which the seller provides financing for the purchase of the property and the purchaser has the right to possess. Exempts certain agreements from the definition, including a lease with an option to purchase.

Subd. 5. Family farm security loan. Defines “family farm security loan.”

Subd. 6. Investor seller. Defines “investor seller” as a person entering into a contract for deed to sell residential real property.

Subd. 7. Person. Defines “person” to include natural persons and business entities.

Subd. 8. Purchase agreement. Defines “purchase agreement.”

Subd. 9. Purchaser. Defines “purchaser.”

Subd. 10. Residential real property. Defines “residential real property” as real property consisting of one to four family dwelling units, one of which is intended to be occupied as the principal residence of the purchaser.

Section 13. Applicability. Provides that this chapter applies to residential real property where a purchaser is entering into a contract for deed with an investor seller. Provides statements that may be used as a prima facie evidence that this chapter does not apply.

Section 14. Contracts for deed involving investor sellers and residential real property; disclosures.

Subd. 1. Disclosures required. Requires disclosures that must be affixed to the front of any purchase agreement. Prohibits the investor seller from entering into a contract for deed within ten days of the execution of the purchase agreement and provision of the required disclosures and cancellation instructions. If there is no purchase agreement, the disclosures must be provided ten days before the execution of a contract for deed in a separate document. The parties must acknowledge delivery and receipt of the disclosure.

Subd. 2. Disclosure of balloon payment. Requires disclosure of all balloon payments in a specific form and type.

Subd. 3. Disclosure of price paid by investor seller to acquire property. Requires the investor seller to disclose the purchase price and date of earliest acquisition of the property by the investor seller, unless the acquisition occurred more than one year prior to the section of the contract for deed. Describes when a person is deemed to be the same person as the investor seller, including if they are under common ownership. Provides the specific form and type for the disclosure.

Subd. 4. Disclosure of other essential terms. Requires disclosure of the purchase price, the annual interest rate, the amount of any downpayment, and whether the purchaser is responsible for any other payments. Provides the specific form and type for the disclosure.

Subd. 5. General disclosure. Requires a general disclosure about contract for deeds and provides the specific form and type for the disclosure.

Subd. 6. Amortization schedule. Requires the investor seller to provide an amortization schedule to the purchaser in a separate document,

Subd. 7. Disclosures in other languages. Requires the investor seller to provide the disclosure in another language if a language other than English was used to advertise or negotiate with the purchaser.

Subd. 8. No waiver. Prohibits waiver of this section.

Subd. 9. Effects of violation. In general, a violation of this section has no effect on the validity of the contract for deed.

Section 15. Contracts for deed involving investor sellers and residential real property; rights and requirements.

Subd. 1. Requirement of investor seller if property subject to mortgage. Prohibits an investor seller from executing a contract for deed on property that is subject to a mortgage and not expressly assumed by the contract for deed purchaser unless the investor seller meets certain requirements, including obtaining the mortgage holder's consent to the sale and promising to perform all obligations under the mortgage.

Subd. 2. Right to cancel purchase agreement. Permits a prospective purchaser to cancel a purchase agreement prior to the execution of a contract for deed or within ten days of receiving required disclosures, whichever is earlier. Requires the investor seller to provide the purchaser with information about where a cancellation may be sent. In the event of cancellation, the investor seller may not impose a penalty or fee and must refund all payments made by the prospective purchaser.

Subd. 3. Duty of investor seller to account. Requires the investor seller to inform the purchaser, in separate writing, of the right to request an annual accounting.

Subd. 4. Churning prohibited. Prohibits an investor seller from engaging in churning.

Subd. 5. Duty of investor seller to refund down payments. Provides a refund to the purchaser of any portion of the down payment that exceeded ten percent of the purchase price if an investor seller terminates a contract for deed within 48 months of executing the contract.

Section 16. Contracts for deed involving investor sellers and residential real property; remedies for violation.

Subd. 1. Definition. Defines "material violation of section 559A.03."

Subd. 2. Remedy for violation of disclosure requirements or churning. Permits the purchaser to bring an action within two years of the execution of the contract for deed for material violations or for churning. Permits a prevailing purchaser to rescind the contract and

recover an amount equal to all payments made, reasonable value of improvements made, damages, and reasonable attorney's fees and cost.

Subd. 3. Remedy for failure of investor seller to procure agreement with mortgage holder. If a mortgage holder commences foreclosure of its mortgage based on the sale to the purchaser under the contract for deed, a purchaser may bring an action against the investor seller for failure to procure the required agreement from the mortgage holder. A prevailing purchaser may rescind the contract and recover an amount equal to payments made by the purchaser, reasonable value of any improvements, damages, and reasonable attorneys fees and costs.

Subd. 4. Defense termination. Provides that a purchaser's right to remedy under this section constitutes grounds for injunctive relief under section 559.211.

Subd. 5. Effect of action on title. Provides that an action under this section does not constitute an interest separate from the purchaser's interest in the contract for deed.

Subd. 6. Rights cumulative. Provides that the rights provided under this section do not limit other rights.

Subd. 7. Public enforcement. Provides that the attorney general may investigate and prosecute violations of sections 559A.03 (required disclosures) and 559A.04, subdivision 4 (prohibition on churning).

Section 17. Repealer. Repeals sections 559.201 (definitions) and 559.202 (contracts for deed involving residential property)