

Sec. 16. Minnesota Statutes 2004, section 299A.61, subdivision 3, is amended to read:

Subd. 3. **LIMIT ON LIABILITY OF FINANCIAL INSTITUTION.** A financial institution, including its employees or company agents, that provides or reasonably attempts to provide information regarding stolen, forged, or fraudulent check information checks for use by the crime alert network, check verification services, consumer reporting agencies, a banking industry antifraud database consistent with federal privacy law, or by law enforcement agencies that are investigating a crime is not liable to any person for disclosing the information, provided that the financial institution is acting in good faith.

Sec. 17. Minnesota Statutes 2004, section 325F.69, is amended by adding a subdivision to read:

Subd. 6. **DECEPTIVE USE OF FINANCIAL INSTITUTION NAME.** No person shall include the name, trade name, logo, or tagline of a financial institution as defined in section 49.01, subdivision 2, in a written solicitation for financial services directed to a customer who has obtained a loan from the financial institution without written permission from the financial institution, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the financial institution, which shall be identified by name. This statement shall be made in close proximity to, and in the same or larger font size as, the first and most prominent use or uses of the name, trade name, logo, or tagline in the solicitation, including on an envelope or through an envelope window containing the solicitation. For purposes of this section, the term "financial institution" includes a financial institution's affiliates and subsidiaries. This subdivision shall not prohibit the use of a financial institution name, trade name, logo, or tagline of a financial institution if the use of that name is part of a fair and accurate comparison of like products or services.

Sec. 18. **REPEALER.**

(a) Minnesota Statutes 2004, section 52.062, subdivision 3, is repealed.

(b) Minnesota Rules, part 2675.2610, subpart 5, is repealed.

Sec. 19. **EFFECTIVE DATE.**

Section 8 is effective January 1, 2006.

Presented to the governor May 24, 2005

Signed by the governor May 27, 2005, 3:05 p.m.

CHAPTER 119—H.F.No. 367

An act relating to real property; providing for certain defeasible estates; modifying residential purchase agreement cancellations; amending the foreclosure advice notice; modifying

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the description of land deleted from the Mississippi Recreational River Land Use District in Sherburne County; amending Minnesota Statutes 2004, sections 500.20, subdivision 2a; 513.56, subdivision 3; 513.57, subdivision 2; 559.217; 580.041, by adding subdivisions; Laws 2005, chapter 30, section 1.

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

Section 1. Minnesota Statutes 2004, section 500.20, subdivision 2a, is amended to read:

Subd. 2a. **RESTRICTION OF DURATION OF CONDITION.** Except for any right to reenter or to repossess as provided in subdivision 3, all private covenants, conditions, or restrictions created by which the title or use of real property is affected, cease to be valid and operative 30 years after the date of the deed, or other instrument, or the date of the probate of the will, creating them, and may be disregarded.

This subdivision does not apply to covenants, conditions, or restrictions:

(1) ~~that were created before August 1, 1988, by deed or other instrument dated on or after August 1, 1982, or by will the date of death of the testator of which was on or after August 1, 1982;~~

(2) that were created before August 1, 1959, under which a person who owns or has an interest in real property against which the covenants, conditions, or restrictions have been filed claims a benefit of the covenant, condition, or restriction if the person records in the office of the county recorder or files in the office of the registrar of titles in the county in which the real estate affected is located, on or before March 30, 1989, a notice sworn to by the claimant or the claimant's agent or attorney: setting forth the name of the claimant; describing the real estate affected; describing the deed, instrument, or will creating the covenant, condition, or restriction; and stating that the covenant, condition, or restriction is not nominal and may not be disregarded under subdivision 1;

(3) (2) that are created by the declaration, bylaws, floor plans, or condominium plat of a condominium created before August 1, 1980, under chapter 515, or created on or after August 1, 1980, under chapter 515A or 515B, or by any amendments of the declaration, bylaws, floor plans, or condominium plat;

(4) (3) that are created by the articles of incorporation, bylaws, or proprietary leases of a cooperative association formed under chapter 308A;

(5) (4) that are created by a declaration or other instrument that authorizes and empowers a corporation of which the qualification for being a stockholder or member is ownership of certain parcels of real estate, to hold title to common real estate for the benefit of the parcels;

(6) (5) that are created by a deed, declaration, reservation, or other instrument by which one or more portions of a building, set of connecting or adjacent buildings, or complex or project of related buildings and structures share support, structural components, ingress and egress, or utility access with another portion or portions;

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~~(7)~~ (6) that were created after July 31, 1959, and before August 1, 1982, under which a person who owns or has an interest in real estate against which covenants, conditions, or restrictions have been filed claims a benefit of the covenants, conditions, or restrictions if the person records in the office of the county recorder or files in the office of the registrar of titles in the county in which the real estate affected is located during the period commencing on the 28th anniversary of the date of the deed or instrument, or the date of the probate of the will, creating them and ending on the 30th anniversary, a notice as described in clause ~~(2)~~ (1); or

~~(8)~~ (7) that are created by a declaration or bylaws of a common interest community created under or governed by chapter 515B, or by any amendments thereto.

A notice filed in accordance with clause ~~(2)~~ (1) or ~~(7)~~ (6) delays application of this subdivision to the covenants, conditions, or restrictions for a period ending on the later of seven years after the date of filing of the notice, or until final judgment is entered in an action to determine the validity of the covenants, conditions, or restrictions, provided in the case of an action the summons and complaint must be served and a notice of lis pendens must be recorded in the office of the county recorder or filed in the office of the registrar of titles in each county in which the real estate affected is located within seven years after the date of recording or filing of the notice under clause ~~(2)~~ (1) or ~~(7)~~ (6).

County recorders and registrars of titles shall accept for recording or filing a notice conforming with this subdivision and charge a fee corresponding with the fee charged for filing a notice of lis pendens of similar length. The notice may be discharged in the same manner as a notice of lis pendens and when discharged, together with the information included with it, ceases to constitute either actual or constructive notice.

Sec. 2. Minnesota Statutes 2004, section 513.56, subdivision 3, is amended to read:

Subd. 3. **INSPECTIONS.** (a) Except as provided in paragraph (b), a seller is not required to disclose information relating to the ~~physical condition~~ of the real property if a written report that discloses the information has been prepared by a qualified third party and provided to the prospective buyer. For purposes of this paragraph, "qualified third party" means a federal, state, or local governmental agency, or any person whom the seller, or prospective buyer, reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report.

(b) A seller shall disclose to the prospective buyer material facts known by the seller that contradict any information included in a written report under paragraph (a) if a copy of the report is provided to the seller.

Sec. 3. Minnesota Statutes 2004, section 513.57, subdivision 2, is amended to read:

Subd. 2. **LIABILITY.** A seller who fails to make a disclosure as required by sections 513.52 to 513.60 and was aware of the ~~condition of~~ material facts pertaining

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to the real property is liable to the prospective buyer. A person injured by a violation of this section may bring a civil action and recover damages and receive other equitable relief as determined by the court. An action under this subdivision must be commenced within two years after the date on which the prospective buyer closed the purchase or transfer of the real property.

Sec. 4. Minnesota Statutes 2004, section 559.217, is amended to read:

559.217 ~~DECLARATORY CANCELLATION OF RESIDENTIAL PURCHASE AGREEMENT.~~

Subdivision 1. **DEFINITIONS.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given.

(b) "Purchase agreement" means an earnest money contract, purchase agreement, or exercised option that ~~could be canceled under section 559.21, subdivision 4, paragraph (a) whether or not the instrument is subject to section 559.21.~~

(c) "Residential real property" means real property, including vacant land, occupied by, or intended to be occupied by, in the aggregate, one to four families as their residence.

(d) "Suspend" means to temporarily or permanently restrain or enjoin a cancellation proceeding under subdivision 3 or 4 pursuant to the provisions of section 559.211.

Subd. 2. **USE OF THIS SECTION.** Either the purchaser or the seller may cancel a purchase agreement for residential real property under this section. If either a seller or purchaser initiates a cancellation proceeding under this section and before completion of the proceeding the other party to the purchase agreement initiates a cancellation proceeding under this section, whether under subdivision 3 or 4, the purchase agreement is deemed canceled as of the date the second cancellation notice is served upon the other party to the purchase agreement under this section. Either party ~~can~~ may later pursue legal remedies at law to recover the earnest money. A court shall make a determination of which party is entitled to the earnest money without regard to which party first initiated the cancellation proceeding and may consider the terms of the canceled purchase agreement in making its determination.

Subd. 3. **CANCELLATION WITH RIGHT TO CURE.** (a) If a default occurs or an unfulfilled condition exists after the date specified for fulfillment in the terms of a purchase agreement for the conveyance of residential real property, which does not by its terms cancel the purchase agreement, the purchaser or the seller may initiate a cancellation by serving upon the other party to the purchase agreement and any third party that is holding earnest money under the purchase agreement a notice:

(1) specifying the residential real property that is the subject of the purchase agreement, including the legal description;

(2) specifying the purchase agreement by date and names of parties, and the unfulfilled condition or default; and

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(3) stating that the purchase agreement will be canceled 15 days after service of the notice upon the other party to the purchase agreement unless prior to the cancellation date the party upon whom the notice is served complies with the conditions in default and completes the unfulfilled conditions, including, if applicable, completion of the purchase or sale of the residential real property according to the terms of the purchase agreement.

(b) The notice must be served in the manner provided in section 559.21, subdivision 4, paragraphs (a) and (b). The notice required by this subdivision must be given notwithstanding any provisions in the purchase agreement to the contrary.

(c) The purchase agreement is canceled unless, within 15 days after the service of the notice upon the other party to the purchase agreement, the party upon whom the notice was served fully complies with the conditions in default and completes the unfulfilled conditions or secures from a court an order suspending the cancellation.

Subd. 4. DECLARATORY CANCELLATION. (a) If a default ~~occurs or~~ an unfulfilled condition exists after the date specified for fulfillment in the terms of a purchase agreement for the conveyance of residential real property, which by the terms of the purchase agreement cancels the purchase agreement, either the purchaser or the seller may confirm the cancellation by serving upon the other party to the purchase agreement and any third party that is holding earnest money under the purchase agreement a notice:

(1) specifying the residential real property that is the subject of the purchase agreement, including the legal description;

(2) specifying the purchase agreement by date and names of parties, and the unfulfilled condition ~~or~~ default; and

(3) stating that the purchase agreement has been canceled.

(b) The notice must be served in the manner provided in section 559.21, subdivision 4, paragraphs (a) and (b).

(c) The cancellation of the purchase agreement is complete, unless, within 15 days after the service of the notice upon the other party to the purchase agreement, the party upon whom the notice was served secures from a court an order suspending the cancellation.

Subd. 5. FORM OF NOTICE OF CANCELLATION. (a) For purposes of subdivision 3, the term "notice" means a writing stating the information required in subdivision 3, paragraph (a), stating the name, address, and telephone number of that party serving the notice or of an attorney authorized by such party to serve the notice, and including the following information in 12-point or larger underlined uppercase type, or 8-point type if published, ~~or in large legible handwritten letters:~~

"THIS NOTICE IS TO INFORM YOU THAT BY THIS NOTICE THE (SELLER) (PURCHASER) (STRIKE ONE) HAS BEGUN PROCEEDINGS UNDER MINNESOTA STATUTES, SECTION 559.217, TO CANCEL YOUR PURCHASE AGREEMENT FOR THE (PURCHASE) (SALE) (STRIKE ONE) OF THE ABOVE

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PROPERTY FOR THE REASONS SPECIFIED IN THIS NOTICE. THE PURCHASE AGREEMENT WILL BE CANCELED ... DAYS AFTER (SERVICE OF THIS NOTICE UPON YOU) (THE FIRST DAY OF PUBLICATION OF THIS NOTICE) (STRIKE ONE) UNLESS BEFORE THEN:

(A) YOU HAVE FULLY COMPLIED WITH ALL OF YOUR OBLIGATIONS UNDER THE PURCHASE AGREEMENT THAT WERE REQUIRED TO BE PERFORMED AS OF THE DATE OF SERVICE OF THIS NOTICE, INCLUDING, WITHOUT LIMITATION, THE ITEMS OF DEFAULT SPECIFIED IN THIS NOTICE; ~~OR AND THE UNFULFILLED CONDITIONS SPECIFIED IN THIS NOTICE ARE COMPLETED, INCLUDING, IF APPLICABLE, COMPLETION OF THE PURCHASE OR SALE OF THE RESIDENTIAL REAL PROPERTY ACCORDING TO THE TERMS OF THE PURCHASE AGREEMENT; OR~~

(B) YOU SECURE FROM A DISTRICT COURT AN ORDER THAT THE TERMINATION OF THE PURCHASE AGREEMENT 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 PURCHASE AGREEMENT WILL BE CANCELED AT THE END OF THE PERIOD (AND YOU WILL LOSE ALL EARNEST MONEY YOU HAVE PAID ON THE PURCHASE AGREEMENT) (STRIKE IF NOT APPLICABLE); AND YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE.

HOWEVER, IF WITHIN THE TIME PERIOD SPECIFIED IN THIS NOTICE YOU SERVE YOUR OWN NOTICE UNDER MINNESOTA STATUTES, SECTION 559.217, YOUR PURCHASE AGREEMENT WILL BE IMMEDIATELY CANCELED, BUT YOUR ENTITLEMENT TO EARNEST MONEY MUST BE DETERMINED BY A COURT OR DETERMINED BY ARBITRATION IF AGREED TO BY THE PARTIES.

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY."

(b) For purposes of subdivision 4, the term "notice" means a writing stating the information required in subdivision 4, paragraph (a), stating the name, address, and telephone number of the party serving the notice or of an attorney authorized by that such party to serve the notice, and including the following information in 12-point or larger underlined uppercase type, or 8-point type if published, or in large legible handwritten letters:

"THIS NOTICE IS PURSUANT TO MINNESOTA STATUTES, SECTION 559.217, TO INFORM YOU THAT YOUR PURCHASE AGREEMENT FOR THE (PURCHASE) (SALE) (STRIKE ONE) OF THE ABOVE PROPERTY HAS BEEN CANCELED FOR THE REASONS SPECIFIED IN THIS NOTICE. THE CANCEL-

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LATION WILL BE CONFIRMED ... DAYS AFTER (SERVICE OF THIS NOTICE UPON YOU) (THE FIRST DAY OF PUBLICATION OF THIS NOTICE) (STRIKE ONE) UNLESS BEFORE THEN YOU SECURE FROM A DISTRICT COURT AN ORDER THAT THE CONFIRMATION OF CANCELLATION OF THE PURCHASE AGREEMENT 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 OBTAIN SUCH A COURT ORDER WITHIN THE TIME PERIOD SPECIFIED IN THIS NOTICE, THE CONFIRMATION OF CANCELLATION OF YOUR PURCHASE AGREEMENT WILL BE FINAL AT THE END OF THE PERIOD (AND YOU WILL LOSE ALL EARNEST MONEY YOU HAVE PAID ON THE PURCHASE AGREEMENT) (STRIKE IF NOT APPLICABLE); AND YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE.

HOWEVER, IF WITHIN THE TIME PERIOD SPECIFIED IN THIS NOTICE YOU SERVE YOUR OWN NOTICE UNDER MINNESOTA STATUTES, SECTION 559.217, YOUR PURCHASE AGREEMENT WILL BE IMMEDIATELY CANCELED, BUT YOUR ENTITLEMENT TO EARNEST MONEY MUST BE DETERMINED BY A COURT OR DETERMINED BY ARBITRATION IF AGREED TO BY THE PARTIES.

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY."

Subd. 6. SUSPENSION OF CANCELLATION, ATTORNEY FEES, COURT FEES, AND COSTS OF SERVICE. ~~If the party A~~ seller or a purchaser upon whom the notice is served ~~commences~~ may commence a proceeding under section 559.211 to obtain a court order to suspend the cancellation of a purchase agreement under this section, and in the proceeding the court shall may award court filing fees, attorney fees, and costs of service actually expended to the prevailing party in an amount not to exceed \$3,000.

Subd. 7. AFFIDAVIT OF CANCELLATION. (a) After a cancellation under subdivision 3 or a confirmation of cancellation under subdivision 4, the purchase agreement is void and of no further force or effect, and, except as provided in subdivision 2, any earnest money held under the purchase agreement must be distributed to, and become the sole property of, the party completing the cancellation of the purchase agreement.

(b) When a cancellation under this section has been completed, the party who served the notice, or that party's attorney, may execute an affidavit stating that the party caused a notice of cancellation to be served upon the other party, that the other party neither complied with the actions required in the notice, if applicable, nor obtained a court order suspending the cancellation, and that the property is residential real property.

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(c) A copy of the affidavit of cancellation, when attached to a copy of the notice, is prima facie evidence of the facts therein stated.

(d) Except as provided in subdivision 2, the affidavit of cancellation, when delivered to a person third party holding earnest money under the purchase agreement, is a sufficient basis for that person to release the earnest money to the party initiating and completing the cancellation.

(e) If either a seller or purchaser commences a cancellation proceeding under this section and before completion of the first proceeding the other party initiates a cancellation proceeding under this section, either party or that party's attorney may execute an affidavit stating that both parties caused the notice of cancellation to be served upon the other party and further specifying the date the second notice of cancellation was served upon the other party. A copy of the affidavit of cancellation, when attached to copies of both notices of cancellation, is prima facie evidence of the cancellation of the purchase agreement and of the effective date of the cancellation of the purchase agreement.

Subd. 8. **ATTORNEY AS AGENT FOR SERVICE.** Any attorney authorized to serve the notice of cancellation by a party initiating a cancellation under this section is designated as the attorney who may receive service as agent for the party initiating the cancellation of all summons, complaints, orders, and motions made in connection with an action by the party upon whom the notice is served to restrain the cancellation. Service in the action may be made upon the party initiating the cancellation by mailing a copy of the process to such party or to such party's attorney, by first class mail, postage prepaid, to the address stated in the notice.

EFFECTIVE DATE. This section is effective August 1, 2005, and applies to purchase agreements entered into on or after that date.

Sec. 5. Minnesota Statutes 2004, section 580.041, is amended by adding a subdivision to read:

Subd. 1a. **APPLICABILITY.** This section applies to foreclosure of mortgages under this chapter on property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residency on the date of service of the notice of sale on the owner.

Sec. 6. Minnesota Statutes 2004, section 580.041, is amended by adding a subdivision to read:

Subd. 3. **AFFIDAVIT.** Any person may establish compliance with or inapplicability of this section by recording, with the county recorder or registrar of titles, an affidavit by a person having knowledge of the facts, stating that the notice required by this section has been delivered in compliance with this section or that this section is not applicable because the property described in the notice of foreclosure did not consist of one to four family dwelling units, one of which was occupied by the owner as the owner's principal place of residency. The affidavit and a certified copy of a recorded affidavit shall be prima facie evidence of the facts stated in the affidavit. The affidavit may be recorded regarding any foreclosure sale, including foreclosure sales which

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occurred prior to the effective date of this section, and may be recorded separately or as part of the record of a foreclosure.

Sec. 7. Minnesota Statutes 2004, section 580.041, is amended by adding a subdivision to read:

Subd. 4. VALIDATION OF FORECLOSURE SALES. No mortgage foreclosure sale under this chapter shall be invalid because of failure to comply with this section unless an action to invalidate the sale is commenced and a notice of lis pendens is filed with the county recorder or registrar of titles within one year after the last day of the redemption period of the mortgagor, the mortgagor's personal representatives, or assigns. This subdivision shall not affect any action or proceeding pending on August 1, 2005, or which is commenced before February 1, 2006, in any court of this state, provided a notice of lis pendens of the action is filed with the county recorder or registrar of titles before February 1, 2006.

Sec. 8. Laws 2005, chapter 30, section 1, is amended to read:

Section 1. DELETION FROM MISSISSIPPI RECREATIONAL RIVER LAND USE DISTRICT IN WRIGHT AND SHERBURNE COUNTIES.

(a) The following area is deleted from the Mississippi Recreational River Land Use District in Wright County: That part of government lots 3 and 4 located in Section 26, Township 121 North, Range 23 West, lying south and west of Wright County State-Aid Highway Number 42.

(b) The following area is deleted from the Mississippi Recreational River Land Use District in Sherburne County: That part of government lots 1, 2, and 3 in Section 35, Township 33 North, Range 28 West, lying north and east of Sherburne County Road Number 14; and that part of government lot 2 of Section 36, Township 33 North, Range 28 West, lying north and east of Sherburne County Road Number 44 That part of Government Lots 1 and 2 in Section 35, Township 33 North, Range 28 West, Sherburne County, Minnesota, lying north and east of the centerline of County State Aid Highway No. 14 and that part of said Government Lot 2 and that part of Government Lot 3, said Section 35 lying north and east of County State Aid Highway No. 11. Together with that part of Government Lot 2, Section 36, said Township 33 North, Range 28 West, lying north and east of said centerline of County State Aid Highway No. 14.

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

Sec. 9. REVISOR'S INSTRUCTION.

The revisor of statutes shall renumber Minnesota Statutes, section 580.041, subdivision 1, as subdivision 1b.

Presented to the governor May 24, 2005

Signed by the governor May 27, 2005, 4:41 p.m.

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