

HOUSE BILL NO. 808

2/12 Introduced
2/12 Referred to Judiciary
2/21 Hearing
2/21 Committee Report-Bill Do Pass
2/23 2nd Reading Pass
2/25 3rd Reading Pass

Transmitted to Senate

3/04 Referred to Judiciary
3/13 Hearing
3/15 Tabled in Committee

1 (c) any delinquent taxes and assessments, including
 2 interest and penalty, due and payable to any governmental
 3 entity authorized to impose liens on the property, that are
 4 the purchaser's obligations under the contract for deed, if
 5 the taxes and assessments were paid by the seller pursuant
 6 to the terms of the contract for deed and to protect his
 7 interest in the property;

8 (d) any unpaid premiums for any policy or policies of
 9 insurance that are the obligation of the purchaser to
 10 maintain under the contract for deed, if the premiums were
 11 paid by the seller pursuant to the terms of the contract for
 12 deed and to protect his interest in the property.

13 (4) "Property" means the real property described in
 14 the contract for deed and any personal property included
 15 under the contract for deed.

16 (5) "Purchaser" means the person or any successor in
 17 interest to the person who has contracted to purchase the
 18 seller's title to the property that is the subject of the
 19 contract for deed.

20 (6) "Seller" means the person or any successor in
 21 interest to the person who has contracted to convey his
 22 title to the property that is the subject of the contract
 23 for deed.

24 Section 2. Forfeiture of interest of purchaser in
 25 default under contract for deed. (1) If a purchaser is in

1 default by failing to pay money due under the contract for
 2 deed, a seller may, after expiration of the applicable
 3 period stated in subsection (4) and after serving the notice
 4 of election to forfeit stated in [section 3], complete the
 5 forfeiture of the purchaser's interest in the property in
 6 the manner provided by [section 4 or 5]. If the seller
 7 elects to accelerate the principal or if the purchaser is in
 8 default under the contract for deed for reasons other than
 9 failing to pay money, foreclosures may be had only as
 10 provided in [section 8].

11 (2) The interest of a purchaser in any personal
 12 property included in a contract for deed is subject to
 13 forfeiture or foreclosure in the same manner as the real
 14 property, except that forfeiture or foreclosure does not
 15 affect or impair the rights of a holder of a security
 16 interest whose interest in the personal property is not
 17 subordinate to that of the seller.

18 (3) If a contract for deed provides that time is of
 19 the essence, a waiver of that provision occurs only if the
 20 seller has accepted money due under the contract for deed in
 21 an amount which is less than the total money due under the
 22 contract for deed at the time of the acceptance. Receipt of
 23 any money due under the contract for deed by an escrow agent
 24 does not constitute acceptance by the seller. A seller's
 25 delay in exercising any remedy granted either by the

1 contract for deed or by law does not constitute a waiver of
 2 a time-is-of-the-essence provision. If the
 3 time-is-of-the-essence provision has been waived, the seller
 4 may reinstate the provision by serving a written notice on
 5 the purchaser and the escrow agent, if one has been
 6 appointed, requiring strict performance of the purchaser's
 7 obligations to pay money due under the contract for deed.
 8 The notice must be served, either by delivery in person or
 9 deposit in the U.S. mail, first class, postage prepaid, at
 10 least 20 days prior to the date on which the seller will
 11 require the purchaser to pay the money due under the
 12 contract for deed. A copy of the notice need not be recorded
 13 in the county in which the real property is located or
 14 served on any person other than the purchaser and the escrow
 15 agent, if one has been appointed.

16 (4) Forfeiture of the interest of a purchaser in the
 17 property for failure to pay money due under the contract for
 18 deed may be enforced only after expiration of the following
 19 periods after the date such money was due:

20 (a) if there has been paid less than 20% of the
 21 purchase price, 30 days;

22 (b) if there has been paid 20% or more but less than
 23 30% of the purchase price, 60 days;

24 (c) if there has been paid 30% or more but less than
 25 50% of the purchase price, 120 days;

1 (d) if there has been paid 50% or more of the purchase
 2 price, 180 days; or

3 (e) if the monies due under the contract for deed are
 4 in excess of \$500,000 and the contract for deed does not
 5 involve the sale of farm or ranch property, the expiration
 6 periods of subsections (4)(a) through (4)(d) may be waived
 7 in writing by the purchaser and different expiration periods
 8 agreed to by the seller and the purchaser in writing. Under
 9 such contract for deed for which waiver and agreement have
 10 occurred, all other provisions of [this act] apply.

11 (5) For the purpose of computing the percentage of the
 12 purchase price paid under subsection (4), the total of only
 13 the following constitutes payment on the purchase price:

14 (a) downpayments paid to the seller;

15 (b) principal payments paid to the seller on the
 16 contract for deed; and

17 (c) principal payments paid to other persons who hold
 18 liens or encumbrances on the property, the principal portion
 19 of which constitutes a portion of the purchase price, as
 20 stated under the contract for deed.

21 Section 3. Notice of election to forfeit -- notice of
 22 reinstatement of purchaser's interest. (1) If the seller
 23 elects to forfeit the purchaser's interest in the property,
 24 the seller and the escrow agent, if one has been appointed,
 25 shall record a notice of election to forfeit with the clerk

1 and recorder of the county in which the real property is
 2 located. A notice of election to forfeit is ineffective
 3 unless recorded after expiration of the applicable period
 4 prescribed in [section 2(4)]. A copy of the notice must be
 5 served, either by delivery in person or by deposit in the
 6 U.S. mail, by certified mail with return receipt requested,
 7 at least 20 days prior to the effective date of the
 8 forfeiture, on the purchaser and on persons who, at the time
 9 of recordation of the notice of election to forfeit, appear
 10 on the records of the clerk and recorder of the county in
 11 which the real property is located as having an interest in
 12 or a lien or encumbrance on the property, the priority of
 13 which is subordinate to that of the seller, or who have
 14 requested a copy of such notice in the manner provided by
 15 [section 6]. If mailed, the notice must be addressed to the
 16 last mailing address filed in writing with the seller or
 17 with the escrow agent or as designated on the request for
 18 copy of notice of election to forfeit. If no address has
 19 been filed with the seller or the escrow agent, a copy of
 20 the notice may be mailed in care of the person to whom any
 21 recorded document evidencing an interest in or a lien or
 22 encumbrance on the property was directed to be mailed at the
 23 time of its recording.

24 (2) The notice of election to forfeit must be
 25 substantially in the following form:

1 Notice of Election to Forfeit
 2 The undersigned hereby gives notice that the purchaser
 3 under that certain contract for deed, by and between
 4, as seller, and
 5, as purchaser, dated
 6, 19.., and recorded (if recorded) on
 7, 19.., in book or reel, at
 8 page, records of County,
 9 Montana, covering real property described as follows:
 10
 11 and including personal property described as follows:
 12
 13 has failed to pay money due under the contract for deed for
 14 a period of time in excess of that provided by Montana Code
 15 Annotated [section 2(4)] and is now subject to having his
 16 interest under the contract for deed forfeited. The money
 17 due under the contract for deed that is required to be paid
 18 to reinstate such contract for deed is as follows:
 19 If the money due under the contract for deed is not
 20 received by five o'clock p.m. on the day of
 21, 19.., being at least 20 days after the
 22 serving of this notice, at, Montana, the
 23 interest of the purchaser and all persons who have an
 24 interest in or a lien or encumbrance on the property, the
 25 priority of which is subordinate to that of the seller, is

1 forfeited.

2 Dated, 19...

3

4 Signature of Seller

5

6 Signature of Escrow Agent

7 (if any)

8 (3) A person need not be served with a copy of the
9 notice of election to forfeit unless the person, at the time
10 of recordation of the notice, appeared on the records of the
11 clerk and recorder of the county in which the real property
12 is located as having an interest in or a lien or encumbrance
13 on the property, the priority of which is subordinate to
14 that of the seller, or requested a copy of the notice in the
15 manner provided for in [section 6].

16 (4) Failure to serve a copy of the notice of election
17 to forfeit on each person as stated in subsection (1) does
18 not invalidate the service of the notice of election to
19 forfeit as to persons served but extends the effective date
20 of the forfeiture until at least 20 days after the persons
21 not previously served have been served with a copy of the
22 notice.

23 (5) A purchaser who has failed to pay money due under
24 the contract for deed or any other person may, at any time
25 prior to expiration of the period provided for in the notice

1 of election to forfeit, avoid the forfeiture by complying
2 with the terms of the notice.

3 (6) If the purchaser or any other person timely
4 complies with the terms of the notice of election to
5 forfeit, the seller or the escrow agent shall record a
6 notice of reinstatement with the clerk and recorder of the
7 county in which the real property is located. The notice of
8 reinstatement must be substantially in the following form:

9 Notice of Reinstatement

10 The undersigned hereby gives notice that the notice of
11 election to forfeit, dated, 19..., pertaining
12 to a contract for deed which covers real property described
13 as follows:

14
15 and including personal property described as follows:

16
17 which notice was recorded on, 19..., in
18 book or reel, at page....., records of
19 County, Montana, is cancelled.

20 Dated....., 19...

21

22 Signature of Seller or

23 Signature of Escrow Agent

24 (if any)

25 Section 4. Completion of forfeiture by judicial

1 process. At any time after expiration of the period provided
 2 for in the notice of election to forfeit issued in
 3 accordance with [section 3(2)], the seller may complete the
 4 forfeiture of the interest of the purchaser and persons
 5 having an interest in or a lien or encumbrance on the
 6 property, the priority of which is subordinate to that of
 7 the seller, by filing an action in the district court in the
 8 county in which the real property is located to declare that
 9 the interest of the persons has been forfeited and to quiet
 10 title to the property in the seller. In the action, the
 11 seller shall name as defendants the purchaser and each
 12 person who, at the expiration of the period provided for in
 13 the notice of election to forfeit, had an interest in or a
 14 lien or encumbrance on the property, the priority of which
 15 was subordinate to that of the seller. Nothing in this
 16 section precludes the seller from using, instead, the
 17 completion of forfeiture by notice procedure in [section 5].

18 Section 5. Completion of forfeiture by notice. (1) If
 19 an escrow agent has been appointed to hold documents and
 20 collect money due under the contract for deed and the agent
 21 has recorded and served the notice of election to forfeit,
 22 as provided in [section 3], the seller and escrow agent may
 23 complete the forfeiture of the interest of the purchaser and
 24 persons having an interest in or a lien or encumbrance on
 25 the property, the priority of which is subordinate to that

1 of the seller, by recordation of an affidavit of completion
 2 of forfeiture with the clerk and recorder of the county in
 3 which the real property is located. The clerk and recorder
 4 shall index the affidavit of completion of forfeiture under
 5 the classification in which conveyances of real property are
 6 indexed.

7 (2) Recordation of an affidavit of completion of
 8 forfeiture terminates without right of redemption all right,
 9 title, and interest of the purchaser and all persons having
 10 an interest in or a lien or encumbrance on the property, the
 11 priority of which is subordinate to that of the seller,
 12 including the interest of any person acquiring an interest
 13 in or a lien or encumbrance on the property subsequent to
 14 recordation of the notice of election to forfeit. On
 15 recordation of the affidavit, the property reverts to the
 16 seller clear of all interests, liens, and encumbrances, the
 17 priority of which was subordinate to that of the seller. The
 18 recordation of the affidavit of completion of forfeiture
 19 also raises a presumption of compliance with all
 20 requirements of [this act] and constitutes conclusive
 21 evidence of the meeting of the requirements in favor of
 22 purchasers or encumbrancers for value and without actual
 23 notice.

24 (3) The affidavit of completion of forfeiture must be
 25 substantially in the following form:

Affidavit of Completion of Forfeiture

The undersigned, being duly sworn, deposes and says that the purchaser under that certain contract for deed, by and between, as seller, and, as purchaser, dated, 19.., and recorded (if recorded) on, 19.., in book or reel, at page, under Document No., records of County, Montana, covering real property described as follows:

and including personal property described as follows: failed to pay amounts due under the contract for deed; that on the date the money was due, any provision of the contract for deed which made time of the essence had not been waived or had been reinstated in the manner provided for in Montana Code Annotated [section 2(3)]; that the applicable period stated in Montana Code Annotated [section 2(4)] had expired after the date the money was due; that a notice of election to forfeit was recorded with the clerk and recorder of the county in which the real property is located; that a copy of the notice was served upon the purchaser and all persons who, at the time of recordation of the notice of election to forfeit, appeared on the records of the clerk and recorder

of the county in which the real property was located as having an interest in or a lien or encumbrance on the property, the priority of which was subordinate to that of the seller, or who had requested a copy of the notice in the manner provided for in Montana Code Annotated [section 6]; that the terms of the notice of election to forfeit were not complied with prior to expiration of the period provided for in the notice; and that all right, title, and interest of the purchaser and all persons having an interest in or a lien or encumbrance on the property, the priority of which was subordinate to that of the seller, are by this affidavit declared to be forfeited and to revert to the seller in accordance with the terms of the contract for deed and the laws of the State of Montana.

.....
Signature of Seller
.....
Signature of Escrow Agent

Section 6. Request for copy of notice of election to forfeit. (1) Any person, including, without limitation, a person in possession of the property or having an interest in or a lien or encumbrance on the property that is not disclosed by a document recorded with the clerk and recorder of the county in which the real property is located, who desires a copy of a notice of election to forfeit under a

1 contract for deed shall, prior to recording of a notice of
2 election to forfeit, record with the clerk and recorder of
3 the county in which the real property is located a request
4 for a copy of any notice of election to forfeit.

5 (2) A request for a copy of any notice of election to
6 forfeit under a contract for deed must be substantially in
7 the following form:

8 Request for Notice of Election to Forfeit

9 Request is hereby made that a copy of any election to
10 forfeit under that contract for deed, by and between
11, as seller, and
12, as purchaser, dated
13, 19.., and recorded (if recorded) on
14, 19.., in book or reel, at page
15, under Document NO.,
16 records of County, Montana, covering
17 real property described as follows:

18
19 and including personal property described as follows:

20
21 be mailed to:
22 at

23 Dated this day of, 19...

24
25 Signature

1 (3) The existence and contents of a recorded request
2 do not affect the title to the property or provide notice to
3 any person that a person requesting a copy of the notice has
4 an interest in or a lien or encumbrance on the property.

5 Section 7. Appointment of successor escrow agent --
6 notice of substitution. (1) If a person appointed as escrow
7 agent fails to qualify or is unwilling or unable to serve,
8 the seller may appoint a successor escrow agent and the
9 appointment constitutes a substitution of escrow agent.

10 (2) The seller may at any time remove an escrow agent
11 for any reason and appoint a successor escrow agent, and the
12 appointment constitutes a substitution of escrow agent.

13 (3) A substitution of an escrow agent must be made by
14 written notice, personally delivered or mailed in the U.S.
15 mail, first class, postage prepaid, to the purchaser, the
16 escrow agent, and the successor escrow agent and recorded
17 with the clerk and recorder of the county in which the real
18 property is located.

19 (4) A notice of substitution of escrow agent must be
20 substantially in the following form:

21 Notice of Substitution of Escrow Agent

22 The undersigned seller hereby appoints:

23
24
25

1 successor escrow agent under that certain contract for deed,
 2 by and between, as seller, and
 3, as purchaser, dated
 4, 19..., and recorded (if recorded) on
 5, 19..., in book or reel, at
 6 page, under Document No., records of
 7 County, Montana, covering real
 8 property described as follows:

9
 10 and including personal property described as follows:
 11

12 Dated this day of, 19...
 13

14 Signature of Seller

15 Section 8. Enforcement of acceleration clause --
 16 foreclosure as mortgage. (1) A contract for deed may provide
 17 that the seller may elect to accelerate the principal
 18 balance due under the contract for deed to the seller on the
 19 purchaser's failure to pay the money due, and if the
 20 contract for deed so provides, the seller may accelerate the
 21 principal balance due to the seller at any time after the
 22 purchaser has failed to pay the money due under the contract
 23 for deed. The acceleration may occur before or after the
 24 expiration of the applicable period stated in [section 3].
 25 If the seller elects to accelerate the principal balance due

1 to the seller, the seller may only foreclose the contract
 2 for deed as a mortgage. If a purchaser is in default under
 3 the contract for deed for reasons other than failing to pay
 4 money due under the contract for deed, the seller may only
 5 foreclose the contract for deed as a mortgage.

6 (2) If an action to foreclose a contract for deed has
 7 been filed pursuant to subsection (1), a forfeiture, by
 8 judicial process as provided by [section 4] or by notice as
 9 provided by [section 5], may not thereafter be completed
 10 unless the foreclosure action is first dismissed and a
 11 notice of election to forfeit is served in the manner and on
 12 the persons provided for in [section 3].

13 (3) Foreclosure in the manner provided by law for
 14 foreclosure of mortgages on real property includes the right
 15 of redemption, right to a deficiency, as well as all other
 16 rights and obligations provided for by law.

17 Section 9. Other remedies. (1) The seller may maintain
 18 an action against any person, including the purchaser, for a
 19 claim for relief if injury or damages occur, or may occur,
 20 to the property, including without limitation an action for
 21 damages or to prevent any of the following:

- 22 (a) physical abuse to or distribution of the property;
- 23 (b) waste; or
- 24 (c) impairment of security provided by the contract
- 25 for deed.

1 (2) An action for recovery of damages under subsection
2 (1) may be maintained:

3 (a) at any time before the seller elects to forfeit or
4 foreclose the purchaser's interest in the property;

5 (b) within 90 days after completion of a forfeiture of
6 the purchaser's interest in the property as provided by
7 [section 5];

8 (c) in conjunction with completion of a forfeiture of
9 the purchaser's interest in the property as provided by
10 [section 4]; or

11 (d) in conjunction with the seller foreclosing the
12 contract for deed as a mortgage as provided for in [section
13 8].

14 (3) The remedies provided by [this act] are in
15 addition to and do not preclude any other remedy granted
16 either by the contract for deed or by law that is not
17 inconsistent with [this act].

18 Section 10. Contracts for deed executed before
19 [effective date of this act]. (1) All contracts for deed
20 executed before [the effective date of this act] may be
21 foreclosed by notice as provided for in [this act] and with
22 the same effect as provided for in [this act] if:

23 (a) the contract for deed provides for foreclosure by
24 recordation of a quit claim deed, whether escrowed or not,
25 after a notice period, whether or not acceleration is

1 required as a condition precedent to recordation;

2 (b) notice is given the purchaser in the form required
3 by the contract for deed and for a period before foreclosure
4 that is equal to the longer of the period required by
5 [section 2(4)] or the period or collective periods for
6 curing the default and acceleration of the balance required
7 under the contract for deed;

8 (c) the method of service is made in the manner
9 prescribed in [this act] unless a more stringent form of
10 service is required under the contract for deed, and if a
11 more stringent form of service is required under the
12 contract for deed, service must be made in the manner
13 provided for in the contract for deed; and

14 (d) both the quit claim deed required by the contract
15 for deed and affidavit of completion of forfeiture required
16 by this chapter are recorded.

17 (2) If a contract for deed executed before [the
18 effective date of this act] may not be foreclosed by notice
19 as provided in subsection (1), the seller may elect to
20 foreclose the contract for deed under [section 8].

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 808
2 INTRODUCED BY Ramirez

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
5 FORFEITURE OF PURCHASERS' INTERESTS UNDER CONTRACTS FOR DEED
6 FOR CONVEYANCE OF REAL PROPERTY; AND TO PROVIDE AN
7 OPPORTUNITY FOR REINSTATEMENT OF SUCH CONTRACTS AND
8 CANCELLATION OF THE FORFEITURE PROCEEDINGS."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Definitions. As used in [this act], the
12 following definitions apply:

13 (1) "Contract for deed" means a contract for
14 conveyance of real property, a contract for deed, a contract
15 to convey, an agreement for sale, or any similar contract
16 through which the seller has conveyed to a purchaser
17 equitable title in property and under which the seller is
18 obligated to convey to the purchaser the remainder of the
19 seller's title in the property, whether legal or equitable,
20 on payment in full of all money due under the contract for
21 deed. [This act] does not apply to purchase contracts and
22 receipts, escrow instructions, or similar executory
23 contracts that are intended to control the rights and
24 obligations of the parties to executory contracts pending
25 the closing of a sale or purchase transaction, nor does it

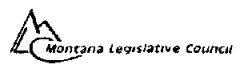
1 apply to contracts in which the primary purpose is to secure
2 the lending of money.

3 (2) "Escrow agent" means a joint agent of seller and
4 purchaser, appointed under a contract for deed or under a
5 separate agreement executed by the seller and the purchaser
6 to hold documents and collect money due under the contract
7 for deed, who does business under the laws of this state as
8 a bank, trust company, savings and loan association, title
9 insurance company, or agent thereof, or a legal entity that
10 is licensed, chartered, or regulated by the federal deposit
11 insurance corporation, the comptroller of the currency or
12 the federal savings and loan insurance corporation, or a
13 person who is a member or a firm whose members are members
14 of the state bar of Montana.

15 (3) "Money due under the contract for deed" means:

16 (a) any principal and interest payments that are
17 currently due and payable to the seller;

18 (b) any principal and interest payments that are
19 currently due and payable to other persons who hold existing
20 liens and encumbrances on the property, the unpaid principal
21 portion of which constitutes a portion of the purchase
22 price, as stated in the contract for deed, if the principal
23 and interest payments were paid by the seller pursuant to
24 the terms of the contract for deed and to protect his
25 interest in the property;



1 (c) any delinquent taxes and assessments, including
 2 interest and penalty, due and payable to any governmental
 3 entity authorized to impose liens on the property, that are
 4 the purchaser's obligations under the contract for deed, if
 5 the taxes and assessments were paid by the seller pursuant
 6 to the terms of the contract for deed and to protect his
 7 interest in the property;

8 (d) any unpaid premiums for any policy or policies of
 9 insurance that are the obligation of the purchaser to
 10 maintain under the contract for deed, if the premiums were
 11 paid by the seller pursuant to the terms of the contract for
 12 deed and to protect his interest in the property.

13 (4) "Property" means the real property described in
 14 the contract for deed and any personal property included
 15 under the contract for deed.

16 (5) "Purchaser" means the person or any successor in
 17 interest to the person who has contracted to purchase the
 18 seller's title to the property that is the subject of the
 19 contract for deed.

20 (6) "Seller" means the person or any successor in
 21 interest to the person who has contracted to convey his
 22 title to the property that is the subject of the contract
 23 for deed.

24 Section 2. Forfeiture of interest of purchaser in
 25 default under contract for deed. (1) If a purchaser is in

1 default by failing to pay money due under the contract for
 2 deed, a seller may, after expiration of the applicable
 3 period stated in subsection (4) and after serving the notice
 4 of election to forfeit stated in [section 3], complete the
 5 forfeiture of the purchaser's interest in the property in
 6 the manner provided by [section 4 or 5]. If the seller
 7 elects to accelerate the principal or if the purchaser is in
 8 default under the contract for deed for reasons other than
 9 failing to pay money, foreclosures may be had only as
 10 provided in [section 8].

11 (2) The interest of a purchaser in any personal
 12 property included in a contract for deed is subject to
 13 forfeiture or foreclosure in the same manner as the real
 14 property, except that forfeiture or foreclosure does not
 15 affect or impair the rights of a holder of a security
 16 interest whose interest in the personal property is not
 17 subordinate to that of the seller.

18 (3) If a contract for deed provides that time is of
 19 the essence, a waiver of that provision occurs only if the
 20 seller has accepted money due under the contract for deed in
 21 an amount which is less than the total money due under the
 22 contract for deed at the time of the acceptance. Receipt of
 23 any money due under the contract for deed by an escrow agent
 24 does not constitute acceptance by the seller. A seller's
 25 delay in exercising any remedy granted either by the

1 contract for deed or by law does not constitute a waiver of
 2 a time-is-of-the-essence provision. If the
 3 time-is-of-the-essence provision has been waived, the seller
 4 may reinstate the provision by serving a written notice on
 5 the purchaser and the escrow agent, if one has been
 6 appointed, requiring strict performance of the purchaser's
 7 obligations to pay money due under the contract for deed.
 8 The notice must be served, either by delivery in person or
 9 deposit in the U.S. mail, first class, postage prepaid, at
 10 least 20 days prior to the date on which the seller will
 11 require the purchaser to pay the money due under the
 12 contract for deed. A copy of the notice need not be recorded
 13 in the county in which the real property is located or
 14 served on any person other than the purchaser and the escrow
 15 agent, if one has been appointed.

16 (4) Forfeiture of the interest of a purchaser in the
 17 property for failure to pay money due under the contract for
 18 deed may be enforced only after expiration of the following
 19 periods after the date such money was due:

20 (a) if there has been paid less than 20% of the
 21 purchase price, 30 days;

22 (b) if there has been paid 20% or more but less than
 23 30% of the purchase price, 60 days;

24 (c) if there has been paid 30% or more but less than
 25 50% of the purchase price, 120 days;

1 (d) if there has been paid 50% or more of the purchase
 2 price, 180 days; or

3 (e) if the monies due under the contract for deed are
 4 in excess of \$500,000 and the contract for deed does not
 5 involve the sale of farm or ranch property, the expiration
 6 periods of subsections (4)(a) through (4)(d) may be waived
 7 in writing by the purchaser and different expiration periods
 8 agreed to by the seller and the purchaser in writing. Under
 9 such contract for deed for which waiver and agreement have
 10 occurred, all other provisions of [this act] apply.

11 (5) For the purpose of computing the percentage of the
 12 purchase price paid under subsection (4), the total of only
 13 the following constitutes payment on the purchase price:

14 (a) downpayments paid to the seller;

15 (b) principal payments paid to the seller on the
 16 contract for deed; and

17 (c) principal payments paid to other persons who hold
 18 liens or encumbrances on the property, the principal portion
 19 of which constitutes a portion of the purchase price, as
 20 stated under the contract for deed.

21 Section 3. Notice of election to forfeit -- notice of
 22 reinstatement of purchaser's interest. (1) If the seller
 23 elects to forfeit the purchaser's interest in the property,
 24 the seller and the escrow agent, if one has been appointed,
 25 shall record a notice of election to forfeit with the clerk

1 and recorder of the county in which the real property is
 2 located. A notice of election to forfeit is ineffective
 3 unless recorded after expiration of the applicable period
 4 prescribed in [section 2(4)]. A copy of the notice must be
 5 served, either by delivery in person or by deposit in the
 6 U.S. mail, by certified mail with return receipt requested,
 7 at least 20 days prior to the effective date of the
 8 forfeiture, on the purchaser and on persons who, at the time
 9 of recordation of the notice of election to forfeit, appear
 10 on the records of the clerk and recorder of the county in
 11 which the real property is located as having an interest in
 12 or a lien or encumbrance on the property, the priority of
 13 which is subordinate to that of the seller, or who have
 14 requested a copy of such notice in the manner provided by
 15 [section 6]. If mailed, the notice must be addressed to the
 16 last mailing address filed in writing with the seller or
 17 with the escrow agent or as designated on the request for
 18 copy of notice of election to forfeit. If no address has
 19 been filed with the seller or the escrow agent, a copy of
 20 the notice may be mailed in care of the person to whom any
 21 recorded document evidencing an interest in or a lien or
 22 encumbrance on the property was directed to be mailed at the
 23 time of its recording.

24 (2) The notice of election to forfeit must be
 25 substantially in the following form:

1 Notice of Election to Forfeit
 2 The undersigned hereby gives notice that the purchaser
 3 under that certain contract for deed, by and between
 4, as seller, and
 5, as purchaser, dated
 6, 19.., and recorded (if recorded) on
 7, 19.., in book or reel, at
 8 page, records of County,
 9 Montana, covering real property described as follows:
 10
 11 and including personal property described as follows:
 12
 13 has failed to pay money due under the contract for deed for
 14 a period of time in excess of that provided by Montana Code
 15 Annotated [section 2(4)] and is now subject to having his
 16 interest under the contract for deed forfeited. The money
 17 due under the contract for deed that is required to be paid
 18 to reinstate such contract for deed is as follows:
 19 If the money due under the contract for deed is not
 20 received by five o'clock p.m. on the day of
 21, 19.., being at least 20 days after the
 22 serving of this notice, at, Montana, the
 23 interest of the purchaser and all persons who have an
 24 interest in or a lien or encumbrance on the property, the
 25 priority of which is subordinate to that of the seller, is

1 forfeited.

2 Dated, 19...

3

4 Signature of Seller

5

6 Signature of Escrow Agent

7 (if any)

8 (3) A person need not be served with a copy of the
9 notice of election to forfeit unless the person, at the time
10 of recordation of the notice, appeared on the records of the
11 clerk and recorder of the county in which the real property
12 is located as having an interest in or a lien or encumbrance
13 on the property, the priority of which is subordinate to
14 that of the seller, or requested a copy of the notice in the
15 manner provided for in [section 6].

16 (4) Failure to serve a copy of the notice of election
17 to forfeit on each person as stated in subsection (1) does
18 not invalidate the service of the notice of election to
19 forfeit as to persons served but extends the effective date
20 of the forfeiture until at least 20 days after the persons
21 not previously served have been served with a copy of the
22 notice.

23 (5) A purchaser who has failed to pay money due under
24 the contract for deed or any other person may, at any time
25 prior to expiration of the period provided for in the notice

1 of election to forfeit, avoid the forfeiture by complying
2 with the terms of the notice.

3 (6) If the purchaser or any other person timely
4 complies with the terms of the notice of election to
5 forfeit, the seller or the escrow agent shall record a
6 notice of reinstatement with the clerk and recorder of the
7 county in which the real property is located. The notice of
8 reinstatement must be substantially in the following form:

9 Notice of Reinstatement

10 The undersigned hereby gives notice that the notice of
11 election to forfeit, dated, 19..., pertaining
12 to a contract for deed which covers real property described
13 as follows:

14
15 and including personal property described as follows:

16
17 which notice was recorded on, 19..., in
18 book or reel, at page....., records of
19 County, Montana, is cancelled.

20 Dated....., 19...

21

22 Signature of Seller or

23 Signature of Escrow Agent

24 (if any)

25 Section 4. Completion of forfeiture by judicial

1 process. At any time after expiration of the period provided
 2 for in the notice of election to forfeit issued in
 3 accordance with [section 3(2)], the seller may complete the
 4 forfeiture of the interest of the purchaser and persons
 5 having an interest in or a lien or encumbrance on the
 6 property, the priority of which is subordinate to that of
 7 the seller, by filing an action in the district court in the
 8 county in which the real property is located to declare that
 9 the interest of the persons has been forfeited and to quiet
 10 title to the property in the seller. In the action, the
 11 seller shall name as defendants the purchaser and each
 12 person who, at the expiration of the period provided for in
 13 the notice of election to forfeit, had an interest in or a
 14 lien or encumbrance on the property, the priority of which
 15 was subordinate to that of the seller. Nothing in this
 16 section precludes the seller from using, instead, the
 17 completion of forfeiture by notice procedure in [section 5].

18 Section 5. Completion of forfeiture by notice. (1) If
 19 an escrow agent has been appointed to hold documents and
 20 collect money due under the contract for deed and the agent
 21 has recorded and served the notice of election to forfeit,
 22 as provided in [section 3], the seller and escrow agent may
 23 complete the forfeiture of the interest of the purchaser and
 24 persons having an interest in or a lien or encumbrance on
 25 the property, the priority of which is subordinate to that

1 of the seller, by recordation of an affidavit of completion
 2 of forfeiture with the clerk and recorder of the county in
 3 which the real property is located. The clerk and recorder
 4 shall index the affidavit of completion of forfeiture under
 5 the classification in which conveyances of real property are
 6 indexed.

7 (2) Recordation of an affidavit of completion of
 8 forfeiture terminates without right of redemption all right,
 9 title, and interest of the purchaser and all persons having
 10 an interest in or a lien or encumbrance on the property, the
 11 priority of which is subordinate to that of the seller,
 12 including the interest of any person acquiring an interest
 13 in or a lien or encumbrance on the property subsequent to
 14 recordation of the notice of election to forfeit. On
 15 recordation of the affidavit, the property reverts to the
 16 seller clear of all interests, liens, and encumbrances, the
 17 priority of which was subordinate to that of the seller. The
 18 recordation of the affidavit of completion of forfeiture
 19 also raises a presumption of compliance with all
 20 requirements of [this act] and constitutes conclusive
 21 evidence of the meeting of the requirements in favor of
 22 purchasers or encumbrancers ~~for value and without actual~~
 23 notice.

24 (3) The affidavit of completion of forfeiture must be
 25 substantially in the following form:

1 Affidavit of Completion of Forfeiture

2 The undersigned, being duly sworn, deposes and says
3 that the purchaser under that certain contract for deed, by
4 and between, as seller, and
5, as purchaser, dated
6, 19.., and recorded (if recorded) on
7, 19.., in book or reel, at page
8, under Document No., records
9 of County, Montana, covering real property
10 described as follows:

11
12 and including personal property described as follows:

13
14 failed to pay amounts due under the contract for deed; that
15 on the date the money was due, any provision of the contract
16 for deed which made time of the essence had not been waived
17 or had been reinstated in the manner provided for in Montana
18 Code Annotated [section 2(3)]; that the applicable period
19 stated in Montana Code Annotated [section 2(4)] had expired
20 after the date the money was due; that a notice of election
21 to forfeit was recorded with the clerk and recorder of the
22 county in which the real property is located; that a copy of
23 the notice was served upon the purchaser and all persons
24 who, at the time of recordation of the notice of election to
25 forfeit, appeared on the records of the clerk and recorder

1 of the county in which the real property was located as
2 having an interest in or a lien or encumbrance on the
3 property, the priority of which was subordinate to that of
4 the seller, or who had requested a copy of the notice in the
5 manner provided for in Montana Code Annotated [section 6];
6 that the terms of the notice of election to forfeit were not
7 complied with prior to expiration of the period provided for
8 in the notice; and that all right, title, and interest of
9 the purchaser and all persons having an interest in or a
10 lien or encumbrance on the property, the priority of which
11 was subordinate to that of the seller, are by this affidavit
12 declared to be forfeited and to revert to the seller in
13 accordance with the terms of the contract for deed and the
14 laws of the State of Montana.

15
16 Signature of Seller
17
18 Signature of Escrow Agent

19 Section 6. Request for copy of notice of election to
20 forfeit. (1) Any person, including, without limitation, a
21 person in possession of the property or having an interest
22 in or a lien or encumbrance on the property that is not
23 disclosed by a document recorded with the clerk and recorder
24 of the county in which the real property is located, who
25 desires a copy of a notice of election to forfeit under a

1 contract for deed shall, prior to recording of a notice of
2 election to forfeit, record with the clerk and recorder of
3 the county in which the real property is located a request
4 for a copy of any notice of election to forfeit.

5 (2) A request for a copy of any notice of election to
6 forfeit under a contract for deed must be substantially in
7 the following form:

8 Request for Notice of Election to Forfeit

9 Request is hereby made that a copy of any election to
10 forfeit under that contract for deed, by and between
11 as seller, and
12 as purchaser, dated
13, 19.., and recorded (if recorded) on
14, 19.., in book or reel, at page
15, under Document No.,
16 records of County, Montana, covering
17 real property described as follows:

18
19 and including personal property described as follows:

20
21 be mailed to:
22 at

23 Dated this day of 19...

24
25 Signature

1 (3) The existence and contents of a recorded request
2 do not affect the title to the property or provide notice to
3 any person that a person requesting a copy of the notice has
4 an interest in or a lien or encumbrance on the property.

5 Section 7. Appointment of successor escrow agent --
6 notice of substitution. (1) If a person appointed as escrow
7 agent fails to qualify or is unwilling or unable to serve,
8 the seller may appoint a successor escrow agent and the
9 appointment constitutes a substitution of escrow agent.

10 (2) The seller may at any time remove an escrow agent
11 for any reason and appoint a successor escrow agent, and the
12 appointment constitutes a substitution of escrow agent.

13 (3) A substitution of an escrow agent must be made by
14 written notice, personally delivered or mailed in the U.S.
15 mail, first class, postage prepaid, to the purchaser, the
16 escrow agent, and the successor escrow agent and recorded
17 with the clerk and recorder of the county in which the real
18 property is located.

19 (4) A notice of substitution of escrow agent must be
20 substantially in the following form:

21 Notice of Substitution of Escrow Agent

22 The undersigned seller hereby appoints:

23
24
25

1 successor escrow agent under that certain contract for deed,
 2 by and between, as seller, and
 3, as purchaser, dated
 4, 19.., and recorded (if recorded) on
 5, 19.., in book or reel, at
 6 page, under Document No., records of
 7 County, Montana, covering real
 8 property described as follows:

9
 10 and including personal property described as follows:
 11
 12 Dated this day of, 19...

13
 14 Signature of Seller

15 Section 8. Enforcement of acceleration clause --
 16 foreclosure as mortgage. (1) A contract for deed may provide
 17 that the seller may elect to accelerate the principal
 18 balance due under the contract for deed to the seller on the
 19 purchaser's failure to pay the money due, and if the
 20 contract for deed so provides, the seller may accelerate the
 21 principal balance due to the seller at any time after the
 22 purchaser has failed to pay the money due under the contract
 23 for deed. The acceleration may occur before or after the
 24 expiration of the applicable period stated in [section 3].
 25 If the seller elects to accelerate the principal balance due

1 to the seller, the seller may only foreclose the contract
 2 for deed as a mortgage. If a purchaser is in default under
 3 the contract for deed for reasons other than failing to pay
 4 money due under the contract for deed, the seller may only
 5 foreclose the contract for deed as a mortgage.

6 (2) If an action to foreclose a contract for deed has
 7 been filed pursuant to subsection (1), a forfeiture, by
 8 judicial process as provided by [section 4] or by notice as
 9 provided by [section 5], may not thereafter be completed
 10 unless the foreclosure action is first dismissed and a
 11 notice of election to forfeit is served in the manner and on
 12 the persons provided for in [section 3].

13 (3) Foreclosure in the manner provided by law for
 14 foreclosure of mortgages on real property includes the right
 15 of redemption, right to a deficiency, as well as all other
 16 rights and obligations provided for by law.

17 Section 9. Other remedies. (1) The seller may maintain
 18 an action against any person, including the purchaser, for a
 19 claim for relief if injury or damages occur, or may occur,
 20 to the property, including without limitation an action for
 21 damages or to prevent any of the following:

- 22 (a) physical abuse to or distribution of the property;
- 23 (b) waste; or
- 24 (c) impairment of security provided by the contract
- 25 for deed.

1 (2) An action for recovery of damages under subsection
2 (1) may be maintained:

3 (a) at any time before the seller elects to forfeit or
4 foreclose the purchaser's interest in the property;

5 (b) within 90 days after completion of a forfeiture of
6 the purchaser's interest in the property as provided by
7 [section 5];

8 (c) in conjunction with completion of a forfeiture of
9 the purchaser's interest in the property as provided by
10 [section 4]; or

11 (d) in conjunction with the seller foreclosing the
12 contract for deed as a mortgage as provided for in [section
13 8].

14 (3) The remedies provided by [this act] are in
15 addition to and do not preclude any other remedy granted
16 either by the contract for deed or by law that is not
17 inconsistent with [this act].

18 Section 10. Contracts for deed executed before
19 [effective date of this act]. (1) All contracts for deed
20 executed before [the effective date of this act] may be
21 foreclosed by notice as provided for in [this act] and with
22 the same effect as provided for in [this act] if:

23 (a) the contract for deed provides for foreclosure by
24 recordation of a quit claim deed, whether escrowed or not,
25 after a notice period, whether or not acceleration is

1 required as a condition precedent to recordation;

2 (b) notice is given the purchaser in the form required
3 by the contract for deed and for a period before foreclosure
4 that is equal to the longer of the period required by
5 [section 2(4)] or the period or collective periods for
6 curing the default and acceleration of the balance required
7 under the contract for deed;

8 (c) the method of service is made in the manner
9 prescribed in [this act] unless a more stringent form of
10 service is required under the contract for deed, and if a
11 more stringent form of service is required under the
12 contract for deed, service must be made in the manner
13 provided for in the contract for deed; and

14 (d) both the quit claim deed required by the contract
15 for deed and affidavit of completion of forfeiture required
16 by this chapter are recorded.

17 (2) If a contract for deed executed before [the
18 effective date of this act] may not be foreclosed by notice
19 as provided in subsection (1), the seller may elect to
20 foreclose the contract for deed under [section 8].

-End-

1 HOUSE BILL NO. 808
 2 INTRODUCED BY Ramirez
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
 5 FORFEITURE OF PURCHASERS' INTERESTS UNDER CONTRACTS FOR DEED
 6 FOR CONVEYANCE OF REAL PROPERTY; AND TO PROVIDE AN
 7 OPPORTUNITY FOR REINSTATEMENT OF SUCH CONTRACTS AND
 8 CANCELLATION OF THE FORFEITURE PROCEEDINGS."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Definitions. As used in [this act], the
12 following definitions apply:

13 (1) "Contract for deed" means a contract for
 14 conveyance of real property, a contract for deed, a contract
 15 to convey, an agreement for sale, or any similar contract
 16 through which the seller has conveyed to a purchaser
 17 equitable title in property and under which the seller is
 18 obligated to convey to the purchaser the remainder of the
 19 seller's title in the property, whether legal or equitable,
 20 on payment in full of all money due under the contract for
 21 deed. [This act] does not apply to purchase contracts and
 22 receipts, escrow instructions, or similar executory
 23 contracts that are intended to control the rights and
 24 obligations of the parties to executory contracts pending
 25 the closing of a sale or purchase transaction, nor does it

1 apply to contracts in which the primary purpose is to secure
2 the lending of money.

3 (2) "Escrow agent" means a joint agent of seller and
 4 purchaser, appointed under a contract for deed or under a
 5 separate agreement executed by the seller and the purchaser
 6 to hold documents and collect money due under the contract
 7 for deed, who does business under the laws of this state as
 8 a bank, trust company, savings and loan association, title
 9 insurance company, or agent thereof, or a legal entity that
 10 is licensed, chartered, or regulated by the federal deposit
 11 insurance corporation, the comptroller of the currency or
 12 the federal savings and loan insurance corporation, or a
 13 person who is a member or a firm whose members are members
 14 of the state bar of Montana.

15 (3) "Money due under the contract for deed" means:

16 (a) any principal and interest payments that are
17 currently due and payable to the seller;

18 (b) any principal and interest payments that are
 19 currently due and payable to other persons who hold existing
 20 liens and encumbrances on the property, the unpaid principal
 21 portion of which constitutes a portion of the purchase
 22 price, as stated in the contract for deed, if the principal
 23 and interest payments were paid by the seller pursuant to
 24 the terms of the contract for deed and to protect his
 25 interest in the property;

THIRD READING

HB 808



1 (c) any delinquent taxes and assessments, including
 2 interest and penalty, due and payable to any governmental
 3 entity authorized to impose liens on the property, that are
 4 the purchaser's obligations under the contract for deed, if
 5 the taxes and assessments were paid by the seller pursuant
 6 to the terms of the contract for deed and to protect his
 7 interest in the property;

8 (d) any unpaid premiums for any policy or policies of
 9 insurance that are the obligation of the purchaser to
 10 maintain under the contract for deed, if the premiums were
 11 paid by the seller pursuant to the terms of the contract for
 12 deed and to protect his interest in the property.

13 (4) "Property" means the real property described in
 14 the contract for deed and any personal property included
 15 under the contract for deed.

16 (5) "Purchaser" means the person or any successor in
 17 interest to the person who has contracted to purchase the
 18 seller's title to the property that is the subject of the
 19 contract for deed.

20 (6) "Seller" means the person or any successor in
 21 interest to the person who has contracted to convey his
 22 title to the property that is the subject of the contract
 23 for deed.

24 Section 2. Forfeiture of interest of purchaser in
 25 default under contract for deed. (1) If a purchaser is in

1 default by failing to pay money due under the contract for
 2 deed, a seller may, after expiration of the applicable
 3 period stated in subsection (4) and after serving the notice
 4 of election to forfeit stated in [section 3], complete the
 5 forfeiture of the purchaser's interest in the property in
 6 the manner provided by [section 4 or 5]. If the seller
 7 elects to accelerate the principal or if the purchaser is in
 8 default under the contract for deed for reasons other than
 9 failing to pay money, foreclosures may be had only as
 10 provided in [section 8].

11 (2) The interest of a purchaser in any personal
 12 property included in a contract for deed is subject to
 13 forfeiture or foreclosure in the same manner as the real
 14 property, except that forfeiture or foreclosure does not
 15 affect or impair the rights of a holder of a security
 16 interest whose interest in the personal property is not
 17 subordinate to that of the seller.

18 (3) If a contract for deed provides that time is of
 19 the essence, a waiver of that provision occurs only if the
 20 seller has accepted money due under the contract for deed in
 21 an amount which is less than the total money due under the
 22 contract for deed at the time of the acceptance. Receipt of
 23 any money due under the contract for deed by an escrow agent
 24 does not constitute acceptance by the seller. A seller's
 25 delay in exercising any remedy granted either by the

1 contract for deed or by law does not constitute a waiver of
 2 a time-is-of-the-essence provision. If the
 3 time-is-of-the-essence provision has been waived, the seller
 4 may reinstate the provision by serving a written notice on
 5 the purchaser and the escrow agent, if one has been
 6 appointed, requiring strict performance of the purchaser's
 7 obligations to pay money due under the contract for deed.
 8 The notice must be served, either by delivery in person or
 9 deposit in the U.S. mail, first class, postage prepaid, at
 10 least 20 days prior to the date on which the seller will
 11 require the purchaser to pay the money due under the
 12 contract for deed. A copy of the notice need not be recorded
 13 in the county in which the real property is located or
 14 served on any person other than the purchaser and the escrow
 15 agent, if one has been appointed.

16 (4) Forfeiture of the interest of a purchaser in the
 17 property for failure to pay money due under the contract for
 18 deed may be enforced only after expiration of the following
 19 periods after the date such money was due:

20 (a) if there has been paid less than 20% of the
 21 purchase price, 30 days;

22 (b) if there has been paid 20% or more but less than
 23 30% of the purchase price, 60 days;

24 (c) if there has been paid 30% or more but less than
 25 50% of the purchase price, 120 days;

1 (d) if there has been paid 50% or more of the purchase
 2 price, 180 days; or

3 (e) if the monies due under the contract for deed are
 4 in excess of \$500,000 and the contract for deed does not
 5 involve the sale of farm or ranch property, the expiration
 6 periods of subsections (4)(a) through (4)(d) may be waived
 7 in writing by the purchaser and different expiration periods
 8 agreed to by the seller and the purchaser in writing. Under
 9 such contract for deed for which waiver and agreement have
 10 occurred, all other provisions of [this act] apply.

11 (5) For the purpose of computing the percentage of the
 12 purchase price paid under subsection (4), the total of only
 13 the following constitutes payment on the purchase price:

14 (a) downpayments paid to the seller;

15 (b) principal payments paid to the seller on the
 16 contract for deed; and

17 (c) principal payments paid to other persons who hold
 18 liens or encumbrances on the property, the principal portion
 19 of which constitutes a portion of the purchase price, as
 20 stated under the contract for deed.

21 Section 3. Notice of election to forfeit -- notice of
 22 reinstatement of purchaser's interest. (1) If the seller
 23 elects to forfeit the purchaser's interest in the property,
 24 the seller and the escrow agent, if one has been appointed,
 25 shall record a notice of election to forfeit with the clerk

1 and recorder of the county in which the real property is
 2 located. A notice of election to forfeit is ineffective
 3 unless recorded after expiration of the applicable period
 4 prescribed in [section 2(4)]. A copy of the notice must be
 5 served, either by delivery in person or by deposit in the
 6 U.S. mail, by certified mail with return receipt requested,
 7 at least 20 days prior to the effective date of the
 8 forfeiture, on the purchaser and on persons who, at the time
 9 of recordation of the notice of election to forfeit, appear
 10 on the records of the clerk and recorder of the county in
 11 which the real property is located as having an interest in
 12 or a lien or encumbrance on the property, the priority of
 13 which is subordinate to that of the seller, or who have
 14 requested a copy of such notice in the manner provided by
 15 [section 6]. If mailed, the notice must be addressed to the
 16 last mailing address filed in writing with the seller or
 17 with the escrow agent or as designated on the request for
 18 copy of notice of election to forfeit. If no address has
 19 been filed with the seller or the escrow agent, a copy of
 20 the notice may be mailed in care of the person to whom any
 21 recorded document evidencing an interest in or a lien or
 22 encumbrance on the property was directed to be mailed at the
 23 time of its recording.

24 (2) The notice of election to forfeit must be
 25 substantially in the following form:

1 Notice of Election to Forfeit
 2 The undersigned hereby gives notice that the purchaser
 3 under that certain contract for deed, by and between
 4, as seller, and
 5, as purchaser, dated
 6, 19.., and recorded (if recorded) on
 7, 19.., in book or reel, at
 8 page, records of County,
 9 Montana, covering real property described as follows:
 10
 11 and including personal property described as follows:
 12
 13 has failed to pay money due under the contract for deed for
 14 a period of time in excess of that provided by Montana Code
 15 Annotated [section 2(4)] and is now subject to having his
 16 interest under the contract for deed forfeited. The money
 17 due under the contract for deed that is required to be paid
 18 to reinstate such contract for deed is as follows:
 19 If the money due under the contract for deed is not
 20 received by five o'clock p.m. on the day of
 21, 19.., being at least 20 days after the
 22 serving of this notice, at, Montana, the
 23 interest of the purchaser and all persons who have an
 24 interest in or a lien or encumbrance on the property, the
 25 priority of which is subordinate to that of the seller, is

1 forfeited.

2 Dated, 19...

3

4 Signature of Seller

5

6 Signature of Escrow Agent

7 (if any)

8 (3) A person need not be served with a copy of the
9 notice of election to forfeit unless the person, at the time
10 of recordation of the notice, appeared on the records of the
11 clerk and recorder of the county in which the real property
12 is located as having an interest in or a lien or encumbrance
13 on the property, the priority of which is subordinate to
14 that of the seller, or requested a copy of the notice in the
15 manner provided for in [section 6].

16 (4) Failure to serve a copy of the notice of election
17 to forfeit on each person as stated in subsection (1) does
18 not invalidate the service of the notice of election to
19 forfeit as to persons served but extends the effective date
20 of the forfeiture until at least 20 days after the persons
21 not previously served have been served with a copy of the
22 notice.

23 (5) A purchaser who has failed to pay money due under
24 the contract for deed or any other person may, at any time
25 prior to expiration of the period provided for in the notice

1 of election to forfeit, avoid the forfeiture by complying
2 with the terms of the notice.

3 (6) If the purchaser or any other person timely
4 complies with the terms of the notice of election to
5 forfeit, the seller or the escrow agent shall record a
6 notice of reinstatement with the clerk and recorder of the
7 county in which the real property is located. The notice of
8 reinstatement must be substantially in the following form:

9 Notice of Reinstatement

10 The undersigned hereby gives notice that the notice of
11 election to forfeit, dated, 19.., pertaining
12 to a contract for deed which covers real property described
13 as follows:

14

15 and including personal property described as follows:

16

17 which notice was recorded on, 19.., in
18 book or reel, at page....., records of
19 County, Montana, is cancelled.

20 Dated....., 19...

21

22 Signature of Seller or

23 Signature of Escrow Agent

24 (if any)

25 Section 4. Completion of forfeiture by judicial

1 process. At any time after expiration of the period provided
 2 for in the notice of election to forfeit issued in
 3 accordance with [section 3(2)], the seller may complete the
 4 forfeiture of the interest of the purchaser and persons
 5 having an interest in or a lien or encumbrance on the
 6 property, the priority of which is subordinate to that of
 7 the seller, by filing an action in the district court in the
 8 county in which the real property is located to declare that
 9 the interest of the persons has been forfeited and to quiet
 10 title to the property in the seller. In the action, the
 11 seller shall name as defendants the purchaser and each
 12 person who, at the expiration of the period provided for in
 13 the notice of election to forfeit, had an interest in or a
 14 lien or encumbrance on the property, the priority of which
 15 was subordinate to that of the seller. Nothing in this
 16 section precludes the seller from using, instead, the
 17 completion of forfeiture by notice procedure in [section 5].

18 Section 5. Completion of forfeiture by notice. (1) If
 19 an escrow agent has been appointed to hold documents and
 20 collect money due under the contract for deed and the agent
 21 has recorded and served the notice of election to forfeit,
 22 as provided in [section 3], the seller and escrow agent may
 23 complete the forfeiture of the interest of the purchaser and
 24 persons having an interest in or a lien or encumbrance on
 25 the property, the priority of which is subordinate to that

1 of the seller, by recordation of an affidavit of completion
 2 of forfeiture with the clerk and recorder of the county in
 3 which the real property is located. The clerk and recorder
 4 shall index the affidavit of completion of forfeiture under
 5 the classification in which conveyances of real property are
 6 indexed.

7 (2) Recordation of an affidavit of completion of
 8 forfeiture terminates without right of redemption all right,
 9 title, and interest of the purchaser and all persons having
 10 an interest in or a lien or encumbrance on the property, the
 11 priority of which is subordinate to that of the seller,
 12 including the interest of any person acquiring an interest
 13 in or a lien or encumbrance on the property subsequent to
 14 recordation of the notice of election to forfeit. On
 15 recordation of the affidavit, the property reverts to the
 16 seller clear of all interests, liens, and encumbrances, the
 17 priority of which was subordinate to that of the seller. The
 18 recordation of the affidavit of completion of forfeiture
 19 also raises a presumption of compliance with all
 20 requirements of [this act] and constitutes conclusive
 21 evidence of the meeting of the requirements in favor of
 22 purchasers or encumbrancers for value and without actual
 23 notice.

24 (3) The affidavit of completion of forfeiture must be
 25 substantially in the following form:

Affidavit of Completion of Forfeiture

The undersigned, being duly sworn, deposes and says that the purchaser under that certain contract for deed, by and between, as seller, and, as purchaser, dated, 19.., and recorded (if recorded) on, 19.., in book or reel, at page, under Document No., records of County, Montana, covering real property described as follows:

..... and including personal property described as follows:

failed to pay amounts due under the contract for deed; that on the date the money was due, any provision of the contract for deed which made time of the essence had not been waived or had been reinstated in the manner provided for in Montana Code Annotated [section 2(3)]; that the applicable period stated in Montana Code Annotated [section 2(4)] had expired after the date the money was due; that a notice of election to forfeit was recorded with the clerk and recorder of the county in which the real property is located; that a copy of the notice was served upon the purchaser and all persons who, at the time of recordation of the notice of election to forfeit, appeared on the records of the clerk and recorder

of the county in which the real property was located as having an interest in or a lien or encumbrance on the property, the priority of which was subordinate to that of the seller, or who had requested a copy of the notice in the manner provided for in Montana Code Annotated [section 6]; that the terms of the notice of election to forfeit were not complied with prior to expiration of the period provided for in the notice; and that all right, title, and interest of the purchaser and all persons having an interest in or a lien or encumbrance on the property, the priority of which was subordinate to that of the seller, are by this affidavit declared to be forfeited and to revert to the seller in accordance with the terms of the contract for deed and the laws of the State of Montana.

..... Signature of Seller

..... Signature of Escrow Agent

Section 6. Request for copy of notice of election to forfeit. (1) Any person, including, without limitation, a person in possession of the property or having an interest in or a lien or encumbrance on the property that is not disclosed by a document recorded with the clerk and recorder of the county in which the real property is located, who desires a copy of a notice of election to forfeit under a

1 contract for deed shall, prior to recording of a notice of
2 election to forfeit, record with the clerk and recorder of
3 the county in which the real property is located a request
4 for a copy of any notice of election to forfeit.

5 (2) A request for a copy of any notice of election to
6 forfeit under a contract for deed must be substantially in
7 the following form:

8 Request for Notice of Election to Forfeit

9 Request is hereby made that a copy of any election to
10 forfeit under that contract for deed, by and between
11, as seller, and
12, as purchaser, dated
13, 19.., and recorded (if recorded) on
14, 19.., in book or reel, at page
15, under Document No.,
16 records of County, Montana, covering
17 real property described as follows:

18
19 and including personal property described as follows:
20
21 be mailed to:
22 at

23 Dated this day of, 19...
24
25 Signature

1 (3) The existence and contents of a recorded request
2 do not affect the title to the property or provide notice to
3 any person that a person requesting a copy of the notice has
4 an interest in or a lien or encumbrance on the property.

5 Section 7. Appointment of successor escrow agent --
6 notice of substitution. (1) If a person appointed as escrow
7 agent fails to qualify or is unwilling or unable to serve,
8 the seller may appoint a successor escrow agent and the
9 appointment constitutes a substitution of escrow agent.

10 (2) The seller may at any time remove an escrow agent
11 for any reason and appoint a successor escrow agent, and the
12 appointment constitutes a substitution of escrow agent.

13 (3) A substitution of an escrow agent must be made by
14 written notice, personally delivered or mailed in the U.S.
15 mail, first class, postage prepaid, to the purchaser, the
16 escrow agent, and the successor escrow agent and recorded
17 with the clerk and recorder of the county in which the real
18 property is located.

19 (4) A notice of substitution of escrow agent must be
20 substantially in the following form:

21 Notice of Substitution of Escrow Agent
22 The undersigned seller hereby appoints:
23
24
25

1 successor escrow agent under that certain contract for deed,
 2 by and between, as seller, and
 3, as purchaser, dated
 4, 19..., and recorded (if recorded) on
 5, 19..., in book or reel, at
 6 page, under Document No., records of
 7 County, Montana, covering real
 8 property described as follows:

9
 10 and including personal property described as follows:
 11
 12 Dated this day of, 19...

13
 14 Signature of Seller

15 Section 8. Enforcement of acceleration clause --
 16 foreclosure as mortgage. (1) A contract for deed may provide
 17 that the seller may elect to accelerate the principal
 18 balance due under the contract for deed to the seller on the
 19 purchaser's failure to pay the money due, and if the
 20 contract for deed so provides, the seller may accelerate the
 21 principal balance due to the seller at any time after the
 22 purchaser has failed to pay the money due under the contract
 23 for deed. The acceleration may occur before or after the
 24 expiration of the applicable period stated in [section 3].
 25 If the seller elects to accelerate the principal balance due

1 to the seller, the seller may only foreclose the contract
 2 for deed as a mortgage. If a purchaser is in default under
 3 the contract for deed for reasons other than failing to pay
 4 money due under the contract for deed, the seller may only
 5 foreclose the contract for deed as a mortgage.

6 (2) If an action to foreclose a contract for deed has
 7 been filed pursuant to subsection (1), a forfeiture, by
 8 judicial process as provided by [section 4] or by notice as
 9 provided by [section 5], may not thereafter be completed
 10 unless the foreclosure action is first dismissed and a
 11 notice of election to forfeit is served in the manner and on
 12 the persons provided for in [section 3].

13 (3) Foreclosure in the manner provided by law for
 14 foreclosure of mortgages on real property includes the right
 15 of redemption, right to a deficiency, as well as all other
 16 rights and obligations provided for by law.

17 Section 9. Other remedies. (1) The seller may maintain
 18 an action against any person, including the purchaser, for a
 19 claim for relief if injury or damages occur, or may occur,
 20 to the property, including without limitation an action for
 21 damages or to prevent any of the following:

- 22 (a) physical abuse to or distribution of the property;
- 23 (b) waste; or
- 24 (c) impairment of security provided by the contract
- 25 for deed.

1 (2) An action for recovery of damages under subsection
2 (1) may be maintained:

3 (a) at any time before the seller elects to forfeit or
4 foreclose the purchaser's interest in the property;

5 (b) within 90 days after completion of a forfeiture of
6 the purchaser's interest in the property as provided by
7 [section 5];

8 (c) in conjunction with completion of a forfeiture of
9 the purchaser's interest in the property as provided by
10 [section 4]; or

11 (d) in conjunction with the seller foreclosing the
12 contract for deed as a mortgage as provided for in [section
13 8].

14 (3) The remedies provided by [this act] are in
15 addition to and do not preclude any other remedy granted
16 either by the contract for deed or by law that is not
17 inconsistent with [this act].

18 Section 10. Contracts for deed executed before
19 [effective date of this act]. (1) All contracts for deed
20 executed before [the effective date of this act] may be
21 foreclosed by notice as provided for in [this act] and with
22 the same effect as provided for in [this act] if:

23 (a) the contract for deed provides for foreclosure by
24 recordation of a quit claim deed, whether escrowed or not,
25 after a notice period, whether or not acceleration is

1 required as a condition precedent to recordation;

2 (b) notice is given the purchaser in the form required
3 by the contract for deed and for a period before foreclosure
4 that is equal to the longer of the period required by
5 [section 2(4)] or the period or collective periods for
6 curing the default and acceleration of the balance required
7 under the contract for deed;

8 (c) the method of service is made in the manner
9 prescribed in [this act] unless a more stringent form of
10 service is required under the contract for deed, and if a
11 more stringent form of service is required under the
12 contract for deed, service must be made in the manner
13 provided for in the contract for deed; and

14 (d) both the quit claim deed required by the contract
15 for deed and affidavit of completion of forfeiture required
16 by this chapter are recorded.

17 (2) If a contract for deed executed before [the
18 effective date of this act] may not be foreclosed by notice
19 as provided in subsection (1), the seller may elect to
20 foreclose the contract for deed under [section 8].

-End-