LAND CONTRACTS
Act 237 of 1879

AN ACT to provide for the execution, acknowledgment, and recording of contracts for the sale of land.

History: 1879, Act 237, Eff. Aug. 30, 1879.

The People of the State of Michigan enact:

565.351 Land contract; acknowledgment; endorsement.

Sec. 1. A contract for the sale of land or any interest in that land shall be executed by the vendor named in the contract, and acknowledged before any judge or before any notary public within this state, and the officer taking the acknowledgment shall endorse a certificate of the acknowledgment and the date of making the acknowledgment under his or her hand.

History: 1879, Act 237, Eff. Aug. 30, 1879;—How. 5709;—CL 1897, 9035;—CL 1915, 11770;—CL 1929, 13350;—CL 1948, 565.351;—Am. 1991, Act 140, Imd. Eff. Nov. 25, 1991;—Am. 2002, Act 20, Imd. Eff. Mar. 4, 2002.

565.352 Land contract; execution and acknowledgment in another state.

Sec. 2. If any such contract be executed in any other state, district or territory, the same shall be executed and acknowledged in the same manner as provided in section 9 of chapter 150 of the Compiled Laws of 1871, for the execution of deeds in any other state, district, or territory.

History: 1879, Act 237, Eff. Aug. 30, 1879;—How. 5710;—CL 1897, 9036;—CL 1915, 11771;—CL 1929, 13351;—CL 1948, 565.352.

Compiler's note: For provisions of section 9, referred to in this section, see MCL 565.9.

565.353 Land contract; execution and acknowledgment in foreign country.

Sec. 3. If any such contract be executed in any foreign country, it may be executed and acknowledged according to the provisions contained in section 11 of chapter 150 Compiled Laws of 1871, providing for the execution of deeds in any foreign country.

History: 1879, Act 237, Eff. Aug. 30, 1879;—How. 5711;—CL 1897, 9037;—CL 1915, 11772;—CL 1929, 13352;—CL 1948, 565.353.

Compiler's note: For provisions of section 11, referred to in this section, see MCL 565.11.

565.354 Land contract; recording, effect.

Sec. 4. Any contract executed and acknowledged, according to the foregoing provisions, shall, with the certificates [certificate] thereto attached, be entitled to be recorded in the office of the register of deeds of the county where the lands lie, and the recording of the same shall have the same force and effect, as to subsequent encumbrancers and purchasers, as the recording of deeds and mortgages as now provided by law.

History: 1879, Act 237, Eff. Aug. 30, 1879;—How. 5712;—CL 1897, 9038;—CL 1915, 11773;—CL 1929, 13353;—CL 1948, 565.354.

565.355 Repealed. 1998, Act 106, Imd. Eff. June 3, 1998.

Compiler's note: The repealed section pertained to refusal to discharge land contract.

565.356 Definitions.

Sec. 6. As used in this act:

(a) "Assignee" means assignee of the vendor named in a land contract, a succeeding assignee, or a land contract mortgagee who became the absolute holder of the land contract as a result of security enforcement procedures.

(b) "Grantee" means grantee of the vendor named in a land contract, a succeeding grantee, or a grantee pursuant to a mortgage foreclosure of a mortgage upon the land but subordinate to the land contract.

(c) "Land contract mortgage" means a mortgage granted by a vendor or a vendee.

(d) "Land contract mortgagee" means the holder of a land contract mortgage granted by a vendor or vendee, or his or her heirs, successors, or assigns.

(e) "Nonmortgaging vendee" means a vendee who has not entered into a land contract mortgage granted by his or her vendor.

(f) "Nonmortgaging vendor" means a vendor who has not entered into a land contract mortgage granted by his or her vendee.

(g) "Real estate mortgage" means a mortgage granted upon an interest in real property, other than a mortgage upon a vendor's or vendee's interest in a land contract unless the vendor and the vendee join in or

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

subject their respective interests to a single mortgage. A land contract mortgage is not a real estate mortgage.

(h) "Third parties" means persons or entities other than the vendor, vendee, nonmortgaging vendor, nonmortgaging vendee, assignee, grantee, or land contract mortgagee, who have or claim an interest in or encumbrance upon real property or a vendor's or vendee's interest which is subject to a land contract mortgage.

(i) "Vendee" means the vendee named in the land contract and the vendee's heirs, successors, or assigns.

(j) "Vendor" means the vendor named in the land contract and the vendor's heirs, successors, or assigns.

History: Add. 1998, Act 106, Imd. Eff. June 3, 1998;—Am. 2002, Act 147, Imd. Eff. Apr. 2, 2002.

565.357 Land contract mortgage as security to debt or obligation; rights and interests of vendor or vendee; encumbrance; applicability of act to real estate mortgage; act additional to existing rights and remedies.

Sec. 7. (1) A vendor or a vendee under a land contract may grant a land contract mortgage to secure any debt or obligation that may be secured by a real estate mortgage. This subsection does not alter the effect of any contractual provisions which prohibit or result in a default upon the mortgage, sale, assignment, or further encumbrance of a vendor's or vendee's interest in a land contract which would otherwise be enforceable.

(2) For the purposes of sections 6 to 11, the respective interests of a vendor or a vendee subject to a land contract mortgage includes all of the respective rights of a vendor or vendee including, without limitation, the vendor's rights to payments and the vendee's rights to conveyance. For the purposes of sections 6 to 11, the interests of vendors and vendees subject to a land contract mortgage are real property interests.

(3) Unless otherwise provided by the parties, a land contract mortgage encumbers all of the vendor's or vendee's interests that are mortgaged, whether real, personal, or mixed, in the same manner and to the same extent as a real estate mortgage.

(4) This act does not apply to real estate mortgages unless the parties otherwise agree.

(5) This act is in addition to existing rights and remedies at law with respect to the financing and encumbering of the vendor's and vendee's interests in land contracts.

History: Add. 1998, Act 106, Imd. Eff. June 3, 1998.

565.358 Land contract mortgage; document; form; execution, acknowledgement, and recording; identification of encumbered interest; perfection of mortgage; priority.

Sec. 8. (1) Any document that would be sufficient to constitute a real estate mortgage upon an interest in real property shall constitute a land contract mortgage upon the vendor's or vendee's interest.

(2) A land contract mortgage shall be in a form and shall be executed, acknowledged, and recorded in the same manner as provided for real estate mortgages.

(3) A land contract mortgage need not specifically identify the interest encumbered as a vendor's or vendee's interest.

(4) A land contract mortgage that is recorded in the manner provided for real estate mortgages is perfected for all purposes, without filing, under the uniform commercial code, 1962 PA 172, MCL 440.1101 to 440.11102, any notice to the nonmortgaging vendor or the nonmortgaging vendee or the taking of possession of the original land contract document or otherwise. A land contract mortgage perfected in accordance with this section takes priority as a matter of law over all other mortgages, liens, security, or other interests in such vendor's or vendee's interests except those as to which a real estate mortgage would be subordinate.

History: Add. 1998, Act 106, Imd. Eff. June 3, 1998.

565.359 Land contract mortgage; enforcement; foreclosure; additional remedies.

Sec. 9. (1) A land contract mortgage may be enforced in accordance with any existing procedure for the enforcement of a real estate mortgage, including, without limitation, foreclosure by advertisement and judicial foreclosure. Upon completion of a foreclosure by advertisement or judicial foreclosure of a land contract mortgage and the expiration of the applicable redemption period, the successful bidder at foreclosure shall succeed to all of the mortgaged interests of the respective foreclosed vendor or vendee.

(2) Other rights and remedies that may be available to a real estate mortgagee, including, without limitation, future advance mortgages, assignments of rents, or receiverships may, in a proper case, be applied in favor of a land contract mortgagee.

(3) All remedies that existed before the effective date of sections 6 to 11 shall continue to apply. However, a land contract mortgage made pursuant to this act may, at the option of the land contract mortgagee, also be enforced as provided in this act.

History: Add. 1998, Act 106, Imd. Eff. June 3, 1998.

CAUTION! The document is from an archive and may contain outdated information.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

565.360 Nonmortgaging vendor or vendee; rights or remedies affected; duties; payments; conditions; duties of third party.

Sec. 10. (1) A land contract mortgage shall not, absent voluntary subordination as provided by law, encumber or otherwise affect the rights or remedies of the nonmortgaging vendor or the nonmortgaging vendee except as otherwise provided in subsection (2) or (3).

(2) If the vendee's interest is encumbered by a recorded land contract mortgage, the nonmortgaging vendor shall do all of the following:

(a) Provide the same notices with respect to the remedies of forfeiture and foreclosure to the land contract mortgagee as are required to be provided to the vendee.

(b) Name the land contract mortgagee as a party in interest in any legal proceeding, the effect of which would be to terminate the vendee's interest, and thus the land contract mortgagee's lien.

(c) Accept from the land contract mortgagee any cure of any default that the nonmortgaging vendor would be obligated to accept from the vendee.

(3) A nonmortgaging vendee, when the vendor's interest has been subjected to a land contract mortgage, shall continue to make payments in accordance with the land contract's terms to the vendor or assignee until any of the following occur:

(a) Notice to the vendee of the completion of foreclosure and the expiration, without redemption, of the applicable redemption period with respect to the land contract mortgage, after which all payments shall be made to the successful bidder at the foreclosure, or the successful bidder's heirs, successors, and assigns. However, if the vendee has actual notice of the foreclosure sale, installment payments shall be made during the redemption period as provided in section 6058 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6058.

(b) If the land contract mortgage contains a collateral assignment of the payments of the vendee under the land contract, delivery to the vendee of a notice of default signed under oath by the land contract mortgagee asserting that a default exists under the land contract mortgage together with a copy of the recorded land contract mortgage containing the collateral assignment and a demand that all further payments under the land contract be made to the land contract mortgagee, after which all payments shall thereafter be made in accordance with that notice.

(4) A third party asserting a prior lien or interest to that of a land contract mortgagee whose land contract mortgage has been recorded shall do all of the following:

(a) Provide to the land contract mortgagee copies of all notices that must be provided to the vendor or vendee as a prerequisite to the assertion or enforcement of the third party rights or remedies, but only to the extent that those notices would be required to be provided if the vendor or vendee were the fee owner of the real property and the land contract mortgage were a mortgage upon the fee.

(b) Name the land contract mortgagee as a party in interest in any legal proceeding, the effect of which would be to terminate, assert, or enforce a prior lien or encumbrance upon the vendor's or vendee's interest that is subject to the land contract mortgage.

(c) Accept from the land contract mortgagee any payment, performance, or cure that the third party would be obligated to accept from the vendor or the vendee.

History: Add. 1998, Act 106, Imd. Eff. June 3, 1998.

565.361 Payment and performance of contract obligations; conveyance of land; discharge of land contract mortgage or release of security assignment; failure or refusal to make conveyance or discharge; penalties; enforcement; title as marketable; subordination to other real estate interest.

Sec. 11. (1) When the vendee named in a land contract, or his or her heirs, successors, or assigns, has fully paid and performed the obligations under the contract that are a precondition to the sale and conveyance of the land, the vendor named in the contract shall make conveyance of the land to the vendee by a deed of conveyance as specified in the land contract, or, if the form of the deed is not specified in the land contract, by an appropriate deed. Until the vendor named in the contract has ceased in law to be bound by the provisions of the contract, the obligation to convey the land remains a continuing executory obligation on the part of the vendor.

(2) The vendor named in the land contract who has assigned his or her interest in the contract or sold or mortgaged the land subject to the contract, whether absolutely or as collateral security, shall remain fully obligated to deliver a deed of conveyance as provided in subsection (1). However, if the assignee assumed the conveyancing obligation of the vendor, the original vendor is only secondarily liable for that obligation.

(3) When the vendee named in a land contract, or his or her heirs, successors, or assigns, has fully paid and

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

performed the obligations that are a precondition to the sale and conveyance of the land subject to the contract, the assignee and all succeeding assignees, including the holder of a land contract vendor's interest who has become the absolute holder of that interest as a result of security enforcement procedures after an assignment of the vendor's interest as collateral security, and the grantee, and all succeeding grantees including any grantee pursuant to a mortgage foreclosure regarding a mortgage made upon the land but subject to the land contract in any deed of the land given subject to the land contract by the vendor, shall make the conveyance of the land to the vendee. The conveyance shall be made as specified in the land contract if the vendor's assignee or grantee has assumed the vendor's continuing executory conveyancing obligation, or by quitclaim deed if the vendor's assignee or grantee has not assumed the vendor's conveyancing obligation. However, an assignee named in the contract who has not assumed the conveyancing obligation of the vendor and who has reassigned the entire vendor's interest and, therefore, retains no further interest, whether absolute or as security, has no obligation to provide a deed of conveyance.

(4) When the vendee named in the land contract, or his or her heirs, successors, or assigns, has fully paid and performed the obligations under the contract that are a precondition to the sale and conveyance of the land, the land contract mortgagee under any land contract mortgage of the land made by the vendor subject to the land contract, or the assignee of any assignment for collateral security purposes of the vendor's interest under the land contract, shall execute a discharge of the land contract mortgage or a release of the security assignment in the same manner as now provided by law for the discharge of mortgages.

(5) When the vendor named in the land contract has ceased in law to be bound by the provisions of the contract, and is entitled to a release from the contract, the vendee named in the contract, or his or her heirs, successors, or assigns, including, without limitation, any land contract mortgagees or other parties claiming a lien or security interest upon or in the vendee's interests in the contract, shall, when requested by the vendor, execute a discharge of the contract in the same manner as now provided by law for the discharge of mortgages.

(6) A person who is required under this section to enter into a conveyance or discharge and who fails or refuses to make the conveyance or discharge is subject to the same penalties, and to any other penalties or remedies existing before the effective date of this act, as are now provided by law for a refusal to discharge a real estate mortgage after the real estate mortgage has been fully paid. The party entitled to the conveyance or discharge may enforce the conveyance or discharge as provided in section 44 of 1846 RS 65, MCL 565.44, for enforcing the discharge of mortgages. The petition or bill asking for the discharge shall contain all the material averments regarding the matter as required by that section in regard to mortgages, as applicable to land contracts. However, a land contract is not invalid for want of acknowledgment or recording.

(7) This section does not render a title unmarketable if that title would otherwise have been marketable.

(8) For the purposes of this act, a mortgage, deed, or land contract is subject to another real estate interest if, by its terms or by an independent voluntary subordination, it is subordinate to the other real estate interest or, as a matter of law, it would be automatically subordinate to the other real estate interest.

History: Add. 1998, Act 106, Imd. Eff. June 3, 1998.

CAUTION! This document is from an archive and may contain errors. Verify with original.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov