

**Basics of Mortgage Foreclosure and Contract-for-Deed Cancellation
for Residential Tenants**

(Post 12/31/14)

by

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[1] Simplified Definitions

- a) Mortgage = Agreement between mortgagee (lender³) and mortgagor (borrower) whereby real estate (land plus buildings) is pledged as collateral for a loan (a “note”)
- b) Foreclosure = Procedure by which the lender gets the property back after borrower defaults on the loan
- c) Foreclosure by Action = Foreclosure through the court system
- d) Foreclosure by Advertisement = Foreclosure without a lawsuit
- e) Contract for Deed = Contract for sale of real estate. Typically, the vendee (buyer) agrees to pay vendor (seller) an agreed set of payments over time. If all payments are made, the deed is then transferred to the vendee and the vendee becomes the owner. If payment(s) is/are missed, the vendor can cancel the contract and take back the land. From an economist’s perspective, this functions in many ways like an alternative form of “mortgage” although the legal rules are different.⁴

[2] Foreclosure by Advertisement⁵

- a) The procedure starts with lender advertising the sale in a legal newspaper at least 6 weeks before the sheriff’s sale.

¹Those uninterested in the underlying legal analysis should skip the footnotes. Without the footnotes, this essay should be basic, and without the footnotes the essay is actually pretty short.

²This essay is about residential tenants; the law is different for commercial tenants .

³For reading ease, throughout the rest of this outline, I’m going to use the word “lender” for mortgagee and “borrower” for mortgagor. Of course, some loans do not involve mortgages, so some lenders are not mortgagees and some borrowers are not mortgagors. However, this outline is about loans with mortgages.

⁴In context, in parts of this outline, “lender” will also refer to “vendor” as well as “mortgagee”.

⁵See Minn. Stat. § 580.03. This statute and all Minnesota statutes are available at <http://www.leg.state.mn.us/leg/statutes.asp> .

b) At least 4 weeks before the sheriff's sale, the lender's process server personally serves the occupant/s with notice of the sale.

[3] Foreclosure by Action

a) The procedure starts with lender serving the borrower with a lawsuit seeking foreclosure. The lender also serves the occupants.

b) The defendant/borrower has 20 days to answer. After that, assuming the lender wins the case (or by default if no answer), the court will order a sheriff's sale.

c) This process is more cumbersome but does have one advantage over foreclosure by advertisement: the court has the power to issue a deficiency judgment (entering judgment for the money still owed if the bank eventually sells the property at a loss).

[4] Sheriff's Sale

Officially this is an auction. Usually, the lender is the only bidder. The lender starts the bidding at the full amount of principal + accrued interest owing. (Since the lender eventually gets this amount, this bid effectively involves the lender paying itself and thus risking nothing.) Others who attend, including the tenants, are free to bid more.

The winner of the auction receives a Certificate of Sale. For the rest of this outline, I'm going to assume that the winner of the auction is the lender.

[5] Redemption Period

a) After the sale, the lender does not possess the property. Instead, it has to wait for the redemption period to pass.

b) During the redemption period, the borrower remains in possession. This is a legal term. If the borrower is a landlord, he will continue to be the landlord just as before the sale. The tenants still pay him the rent and he still owes them the usual duties (e.g. doing repairs).⁶

c) During the redemption period, the borrower also has the right to redeem. This means paying off the entire winning bid (not just the unpaid monthly mortgage payments) + certain other costs. If the borrower redeems, he is fully restored to his prior position minus the mortgage. It is as if

⁶See Orr v. Bennett, 135 Minn. 443, 161 N.W. 165 (1917). Occasionally, the lender will get a court order creating a receiver to run the building during the six months. If so, the tenant will be served with the court order and should obey it. If the tenant is served with a non-court ordered Assignment of Rent, the rule is more complicated and the tenant should seek an attorney's advice.

he had paid off the mortgage without all the unpleasantness.

[6] How Long is the Redemption Period?

a) In most cases, the redemption period is 6 months.⁷

b) Rarely, the redemption period is longer or shorter. For example:

- * Most agricultural land has a 12-month redemption period.⁸
- * Reverse mortgages have a 12-month redemption period.⁹
- * Mortgages signed prior to July 1967 have a 12-month redemption period.¹⁰
- * If the borrower has paid off 1/3 of the principal, the redemption period is 12 months.¹¹
- * Upon proper motion to the court, the lender can reduce the redemption period to 5 weeks for *abandoned* residential property smaller than five units.¹²
- * The lender and borrower can make a certain kind of written agreement to reduce the redemption period to 2 months.¹³

[7] Cancellation of Contracts for Deed¹⁴

A Contract for Deed is not foreclosed. Instead, after a default the vendor serves a special notice on the vendee giving the vendee a choice of curing the breach (typically, catching up on payments plus paying certain costs) or having the contract terminated. The vendee has 60 days to

⁷See Minn. Stat. §§ 581.10, 580.23.

⁸See Minn. Stat. §580.23.

⁹See Minn. Stat. §580.23. “Reverse mortgage” is defined in Minn. Stat. §47.58 .

¹⁰See Minn. Stat. § 580.23.

¹¹See Minn. Stat. § 580.23.

¹²See Minn. Stat. § 582.032.

¹³See Minn. Stat. § 582.32.

¹⁴See Minn. Stat. § 559.21.

cure (similar to redeeming a mortgage). If the vendee does not cure or get a court order to stop the process, after the 60 days the ownership reverts to the vendor (similar to the mortgagee getting full ownership after the redemption period with a mortgage sheriff's sale). Just like the mortgage redemption period, during the 60 days the vendee is still the landlord and the tenant is still the tenant of the vendee.

[8] Foreclosure: What Happens After the Redemption Period Ends?

Two statutes – one federal statute and one state statute – come into play.¹⁵ Because the federal statute has sunset, I only discuss it briefly.

Federal Statute

The federal statute¹⁶ sunset on December 31, 2014.¹⁷ Some of its language affected tenancies before that date in ways that survived the sunset. Put another way, some federal rights and responsibilities vested prior to the sunset. The state statute, discussed below, was modeled after the federal statute. Furthermore, the federal statute spawned a good bit of case law that might help one understand the state law. Therefore, the federal law is reprinted as Appendix I.

State Statute

- a) The state statute¹⁸ only applies to foreclosures of “residential real property”¹⁹.
- b) If the tenant's lease has 90 days or less remaining, the lender must give the tenant 90-days

¹⁵At common law, after the redemption or cancellation period the lender simply took over, the lease was cancelled, and the tenant became a tenant at sufferance (almost like a trespasser). The one exception to this common-law rule is that if the lease was signed before the mortgage or contract for deed and the lender knew of the lease, then the lease is not cancelled. The theory behind this rule is that if the lender had nothing to do with a lease signed after the mortgage or contract for deed, the lender should not be burdened with something done completely out of his control. See Schrunk v. Andres, 221 Minn. 465,470, 22 N.W.2d 548,551 (1946). However, the statutes discussed in this essay overcome the common law.

¹⁶See Public Law 111-22, Title VII, reprinted in Appendix I.

¹⁷See Public Law 111-203, Section 1484(2), amending Public Law 111-22, Section 704.

¹⁸See Minn. Stat. § 504B.285, subd. 1a, reprinted in Appendix II.

¹⁹See Minn. Stat. § 504B.285, subd. 1a. Thus it applies to dwellings like houses and apartments as opposed to businesses. It probably applies to a person who owns a manufactured home but rents a lot in a manufactured home park if the lender forecloses on the park. See Minn. Stat. § 504B.001, subd. 11, defining “residential building” to include manufactured home parks.

notice to vacate.²⁰ A month-to-month lease is an example of such a lease. The tenant does have to honor the lease to maintain the right to the 90-day notice.²¹

The notice cannot be given until the redemption period ends.²² This 90-day-notice-rule applies to any residential lease, not only to “bona fide” or at-market-rate leases.²³

c) If the lease has more than 90 days remaining and is “bona fide”, the lender must honor the lease.²⁴ “Bona fide” basically means the lease has to be a fair deal at approximately the going

²⁰See Minn. Stat. § 504B.285, subd. 1a(a). Technically, what this subparagraph says is that “the immediate successor in interest must provide at least 90 days’ written notice to vacate”. Since any subsequent owner would take no more than the immediate successor in interest had available to sell, very likely this same rule applies to non-immediate successors. The federal statute was more explicit, using the following language for the same principle: “any immediate successor in interest ... shall assume such interest subject to – (1) the provision, by such successor in interest of a notice to vacate at least 90 days before the effective date of such notice.” There is little doubt that the state legislature intended the state law to mirror the federal law. See Transcript of Minnesota Senate Committee on Judiciary, March 16, 2010, comments of Senator Higgins (“I’m chuckling ...”) and surrounding discussion, available at <https://homelinemn.org/selected-legislative-history/> (click on TRANSCRIPT).

Also, it might be an open question if this 90-day protection applies across the board or only to Eviction Actions. Given the exact language of this subparagraph and the placement of it in the Eviction Action statute, perhaps one could argue that the 90-day notice does not apply if the lender uses some other court action. However, other court actions take quite a while. Even if a lender were to risk time, effort and money to try such an end run around the 90-day rule, and won the gamble, it might not gain the lender any time. Lenders are unlikely to take such a risk. Therefore, on a practical basis, 90 days is the rule because essentially all these cases that end up in court do so via an Eviction Action.

²¹See Minn. Stat. § 504B.285, subd. 1a(a) (“the immediate successor in interest must provide at least 90 days’ written notice ... provided that the tenant pays the rent and abides by all terms of the lease”).

²²See Minn. Stat. § 504B.285, subd. 1a(a).

²³See Minn. Stat. § 504B.285, subd. 1a(a) and compare it to Minn. Stat. § 504B.285, subd. 1a(b), which requires the lease to be “bona fide” if the tenant with a longer lease wishes more protection than the 90-day protection.

²⁴See Minn. Stat. § 504B.285, subd. 1a(b).

rate and not a sweetheart deal.²⁵ The tenant does have to honor the lease to maintain these rights.²⁶

There is one exception. If the unit is purchased by someone who will occupy the unit as a primary residence (in slang, an “owner occupant”), then the lease (the right to occupy) can be cut short. However, a 90-day notice must still be given.²⁷ The tenant does have to honor the lease to maintain this right.²⁸

d) If the lease is a section 8, voucher lease, the lease and the HAP contract (the contract between Housing Authority and landlord [now the lender]) survives the foreclosure.²⁹ The only exception is the same owner-occupant escape provision that applies to non-voucher leases. The tenant does have to honor the lease to maintain these rights.³⁰

e) If the tenant does not want extra time and just wants to move out and declare the lease over after the redemption period ends, this is okay.³¹

²⁵ See Minn. Stat. § 504B.285, subd. 1a(b) defining “bona fide” to mean that the tenant is not the parent, child, or spouse of the original mortgagor; the rent is not substantially less than fair market rent; and the lease resulted from an arms-length transaction.

²⁶ See Minn. Stat. § 504B.285, subd. 1a(b) (“provided that the tenant pays the rent and abides by all terms of the lease”).

²⁷ See Minn. Stat. § 504B.285, subd. 1a(b).

²⁸ See Minn. Stat. § 504B.285, subd. 1a(b) (“provided that the tenant pays the rent and abides by all terms of the lease”).

²⁹ See Minn. Stat. § 504B.285, subd. 1a(c).

³⁰ See Minn. Stat. § 504B.285, subd. 1a(c) (“provided that the tenant pays the rent and abides by all terms of the lease”).

³¹ Minn. Stat. § 504B.285 does not directly say this, but its entire language is written in terms of steps the lender must take to get rid of the tenant and is clearly intended to benefit the tenant by giving the tenant rights not available at common law. Moreover, as the state statute mirrors the federal statute (see footnote 20) and the federal statute says that it removes no tenant rights, the tenant almost certainly can stand on his rights under common law (see footnote 15) and simply move out at the end of the redemption period.

[9] Cancellation: What Happens After the Cancellation Period Ends?

This situation is governed solely by state law. The vendor has to give the tenants a two-months' notice.³³ The notice can be given during the cancellation period so long as the notice is at least two months and so long as the notice period ends no earlier than the end of the cancellation period.³⁴ For example, if the cancellation period ends on October 15, the vendor could give the two-month notice on September 15 to be effective November 15.

If the tenant holds a Section-8 voucher, the cancellation might not cancel the lease and even a two-month notice might not be of any legal effect. The law is unsettled on this point.³⁵

[10] What Happens If the Owner Sells the Building?

An owner in financial straits will often sell the building, or “give it away”, in return for not being sued for money, or otherwise transfer the building voluntarily. Sometimes this is called a “short

³²In this situation, the word “month” really means “month” and not “rental period”. For example, a lender’s notice given on January 17 to vacate by March 17 is a two-months’ notice. See Minn. Stat. § 645.14.

³³See Minn. Stat. § 504B.285, subd. 1b. This law actually only governs eviction actions. If the vendor (owner) used an alternative method to remove the tenant, such as an ejection action, the tenant is not protected. However, the alternative methods tend to be expensive, time-consuming, or both. As a result, the time frames set out in this statute become the de facto timing rule.

Prior to August 1, 2008, if the tenant signed the lease during the redemption period (and by implication, the cancellation period), the two-month rule did not apply. Broszko v. Principal Mutual Life Ins. Co., 533 N.W.2d 656 (Minn. Ct. App. 1995). However, the rule of Broszko was abrogated by 2008 Minn. Laws ch.177, sec.3, modifying Minn. Stat. § 504B.285, subd. 1(1)(i-iii). The 2009 legislature further modified this provision to clarify that it applies whether the tenant moved in before or after the sheriff sale so long as the tenant moved in before the end of the redemption or cancellation period. See 2009 Minn. Laws ch. 130, sec. 1. The 2010 legislature moved the language around but kept the language, and therefore the rule of law, intact. See and compare 2010 Minn. Laws ch. 315, s.10,12 to the 2008 and 2009 laws.

³⁴See Minn. Stat. § 504B.285, subd. 1b.

³⁵This is the holding in a set of cases from New England. See Bristol Savings Bank v. Savinelli, CV-95-0377478-S, 1996 Conn. Super Lexis 742 (Conn. Super. Ct. Mar. 21, 1996); Webster Bank v. Occhipinti, No. CV-970059147S, 1998 WL 846105 (Conn. Sup. Ct. Nov. 20, 1998); EMC Mortgage Corp. v. Smith, Civ. No. 95-04794, Housing Court Dept, City of Boston, MA (Jan. 5, 1996). These were foreclosure cases, but the principles should apply to cancellation cases.

sale” in slang. Unless the voluntary redemption procedure (see footnote 13) or something like it is used, the buyer (“grantee” in legalese) simply steps into the shoes of the seller. In other words, the buyer is now the landlord of the tenant whether either likes it or not.³⁶

[11] Limit on Renting a Unit in Foreclosure or Cancellation.

An owner in foreclosure or cancellation generally may not lawfully sign a new lease for more than the redemption or cancellation period.³⁷ In addition, the owner must notify the prospective tenant in writing that the building is in foreclosure or cancellation and tell the tenant the date the redemption or cancellation period ends.³⁸

However, if the lender gives the owner permission to enter into longer leases (up to a year) and agrees to honor the leases if it takes over the building, the owner may do so and does not have to warn the tenant of the impending foreclosure or cancellation.³⁹ If the lender does take over the building, the tenant is bound to the lender (new owner) under the lease as well. The idea behind this exception is that if the foreclosure or cancellation has no effect on the tenant, the tenant needs no special protection.

If this statute is violated, it doesn’t do the tenant much good in fighting with the bank or vendor, but it could help in defending an eviction case. The tenant could also sue the landlord for money; one clear claim the tenant would have is a \$500 penalty claim against the landlord.⁴⁰

³⁶See Fisher v. Heller, 219 N.W. 79,80, 174 Minn. 233,236 (1928). Of course, the new landlord and the “old” tenant can make a deal to end the lease if they both agree to it.

³⁷See Minn. Stat. § 504B.151.

³⁸See Minn. Stat. § 504B.151.

³⁹See Minn. Stat. § 504B.151, subd. 1(b), subd. 2-4.

⁴⁰See Minn. Stat. § 504B.151, subd. 1(d) (“A landlord who violates the requirements in this subdivision is liable to the lessee for a civil penalty of \$500, unless the landlord falls under the exception in subdivision 2. The remedy provided under this paragraph is in addition to and shall not limit other rights or remedies available to landlords and tenants.”). This provision became effective August 1, 2013. See 2013 Minn. Laws. ch. 100, s. 1, which went into effect on the default date of August 1 of the year of enactment (s. 6 of that law, dealing with a different issue, specified that s. 6 went into effect 5/24/13).

[12] Security Deposits

- a) The security deposit is held by the landlord until 21 days after the end of the tenancy.⁴¹ Thus, the security deposit is not actually in play while the tenant is still in the unit.
- b) The successor in interest to the original landlord, even the lender taking back the property, is liable for the deposit.⁴²
- c) The original landlord is also liable for the deposit unless he transfers the deposit to the successor, tells the tenant the amount transferred, and the tenant is given 20 days to object to the amount as well as a stamped envelope in which to send the objection.⁴³
- d) The security deposit statute was modified in 2008 such that the security-deposit statute's penalties for not paying the last month rent do not apply in the foreclosure/cancellation situation.⁴⁴ In most cases, the filing of an Eviction Action is the biggest threat to a non-paying tenant. In the last month of the redemption period, the owner is unlikely to file an Eviction Action because he is about to lose the property. Thus, faced with a broke owner in the last throes of his ownership, not paying the last month of rent should be a serious consideration.⁴⁵

⁴¹See Minn. Stat. § 504B.178.

⁴²Minn. Stat. § 504B.178, subd. 6 provides that "Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to the deposit, except that if tenant does not object to the stated amount within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return the deposit shall be limited to the amount contained in the notice."

⁴³See Minn. Stat. § 504B.178, subd. 5-6.

⁴⁴See Minn. Stat. § 504B.178, subd. 8.

⁴⁵In fact, Minn. Stat. § 504B.178, subd. 8 could be read to affirmatively allow the tenant to apply his deposit to pay rent during the last month of the redemption or cancellation period. The author is unaware of any court rulings on this precise question and there is more than one plausible reading of Minn. Stat. § 504B.178, subd 8.

Appendix I

PUBLIC LAW 111-22, TITLE VII PROTECTING TENANTS AT FORECLOSURE ACT

SEC. 701. SHORT TITLE.

This title may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'.

SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.

(a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure--

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) Bona Fide Lease or Tenancy- For purposes of this section, a lease or tenancy shall be considered bona fide only if--

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair

market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) Definition- For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended--

(1) by inserting before the semicolon in subparagraph (C) the following: 'and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner--

'(i) will occupy the unit as a primary residence; and

'(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.'; and

(2) by inserting at the end of subparagraph (F) the following: 'In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.'

SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.⁴⁶

⁴⁶See footnote 17 for subsequent extension from December 31, 2012 to December 31, 2014.

Appendix II

Relevant Excerpts from Minn. Stat. § 504B.285

EVICTION ACTIONS; GROUNDS; ***

Subdivision 1. **Grounds.**

(a) The person entitled to the premises may recover possession by eviction when:

(1) any person holds over real property:

(ii) after the expiration of the time for redemption on foreclosure of a mortgage, or after termination of contract to convey the property;

Subd. 1a. **Grounds when the person holding over is a tenant in a foreclosed residential property.**

(a) With respect to residential real property or a dwelling where the person holding the residential real property or dwelling after the expiration of the time for redemption on foreclosure of a mortgage was a tenant during the redemption period under a lease of any duration, and the lease began after the date the mortgage was executed, but prior to the expiration of the time for redemption, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, and effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

(b) With respect to residential real property or a dwelling where the term of a bona fide lease extends more than 90 days beyond the date of the expiration of the time for redemption, the immediate successor in interest must allow the tenant to occupy the premises until the end of the remaining term of the lease, and provide at least 90 days' written notice to vacate, effective no sooner than the date the lease expires, provided that the tenant pays the rent and abides by all terms of the lease, except if the immediate successor in interest or an immediate subsequent bona fide purchaser will occupy the unit as the primary residence, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

For purposes of this section, a "bona fide lease" means:

- (1) the mortgagor or the child, spouse, or parent of the mortgagor is not the tenant;
- (2) the lease or tenancy was the result of an arm's-length transaction; and
- (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized by a federal, state, or local subsidy.

(c) With respect to residential real property or a dwelling involving a tenancy subject to section 8 of the United States Housing Act of 1937, as amended, where the term of the lease extends more than 90 days beyond the date of the expiration of the time for redemption, the immediate successor in interest must allow the tenant to occupy the premises until the end of the remaining term of the lease and provide at least 90 days' written notice to vacate, effective no sooner than the date the lease expires, provided that the tenant pays the rent and abides by all terms of the lease, except if the immediate successor in interest will occupy the unit as the primary residence, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

Subd. 1b. Grounds when the person holding over is a tenant in a property subject to a contract for deed.

The person entitled to the premises may recover possession by eviction when any person holds over real property after termination of contract to convey the property, provided that if the person holding the real property after the expiration of the time for termination was a tenant during the termination period under a lease of any duration and the lease began after the date the contract for deed was executed but prior to the expiration of the time for termination, and the person has received:

- (1) at least two months' written notice to vacate no sooner than one month after the expiration of the time for termination, provided that the tenant pays the rent and abides by all terms of the lease; or
- (2) at least two months' written notice to vacate no later than the date of the expiration of the time for termination, which notice shall also state that the sender will hold the tenant harmless for breaching the lease by vacating the premises if the contract is reinstated.