

Information & Instructions: ~~Contract for deed or sale~~

PREVIEW

Avoidance of foreclosure notice Statutory Contract of Sale terms and forms

1. If the property is to be used as the buyer's residence, the seller must comply with Texas Property Code §5.061-5.065 which requires a notice provision for defaults to be placed on contracts for Deed.

2. The seller must comply with this provision before enforcing the seller's remedies for default. If the property is located in a county that is within 200 miles of the international border and has been designated by the Texas Department of Housing and Community Affairs and Code by the Texas Department of Housing and Community Affairs, and the property is used for the buyer's residence, then additional requirements must be complied with. See Texas Property Code §5.091-5.103.

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3. Some of the additional requirements include advance property condition and financial disclosures. There are special requirements if the property is located on the Gulf Coast. If the property was constructed before 1978 then the Lead Based Paint warnings/disclosures must be given.

4. If the buyer has paid 40% or more of the sale price or paid 48 monthly payments, then additional warnings must be placed in the notice. See Texas Property Code §5.061 and 5.062

5. A utility service Lien may not constitute an event of default under the terms of a contract for sale. See Texas Property Code §5.064. Defaults must be of the contract itself such as non payment of the monthly contract payment or failure to comply with the terms of the executory contract. See Texas Property Code §5.065.

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6. If the property has a federal tax Lien on it, and the Lien has been on file for more than 30 days before the forfeiture, the IRS must be given notice prior to the forfeiture, see 26 U.S.C. §1445. The notice must be sent to the IRS by registered or certified mail at least 25 days before the forfeiture.

7. Default notices for a contract of sale. See Texas Property Code §201.5 use a Notice to Cure Default form per Texas Property Code §5.062.

8. The notice must be conspicuous and in 14 point type, bold and specify in addition to the 5.061 requirements the following three items:

THANK YOU

- a. The delinquent amount, the itemized principle and interest
- b. Any additional charges and claims such as late fees or attorney's fees
- c. The period for which the delinquency and additional charges were late. This is for the notice.

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PREVIEW
NOTICE YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

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THANK YOU

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Form: Contracts for sale: Notice to cure default under a contract for deed

PREVIEW
NOTICE OF TO CURE DEFAULT
FOR PROPERTY THAT IS USED AS A RESIDENCE

[Date]

[Buyer's Name and Address]

Dear [Buyer's salutation]

Please be advised that you have failed to comply with the terms of your contract for Deed that is dated [Date of contract] between [Seller's Name] and [Buyer's Name] for the following property [Describe the property].

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You have breached the following provisions of the contract: [State the breach, i.e. failed to make a payment in the amount of \$ [Amount] that was due on [Date].

NOTICE OF DEFAULT

YOU HAVE FAILED TO MAKE TIMELY PAYMENTS REQUIRED BY YOUR

CONTRACT FOR DEED AND NOW OWE:

(A) THE DELINQUENT AMOUNT OF \$[AMOUNT].

THIS AMOUNT CONSISTS OF \$[AMOUNT OF PRINCIPAL] AND \$[AMOUNT OF INTEREST].

THIS AMOUNT IS DUE FOR [TIME PERIOD].

(B) YOU OWE LATE CHARGES IN AMOUNT OF \$[AMOUNT DUE] FOR [TIME PERIOD].

(C) YOU OWE ATTORNEY'S FEES IN AMOUNT OF \$[AMOUNT DUE] THESE

FEES ARE OWED AS A RESULT OF THE SELLER BEING REQUIRED TO

ENFORCE YOUR OBLIGATIONS THAT ARE STATED IN THE CONTRACT.

[If other provisions of the contract have been breached include:

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YOU HAVE FAILED TO COMPLY WITH A TERM OF YOUR CONTRACT FOR DEED
BY [STATE THE PROVISION THAT WAS BREACHED].

PREVIEW

TO CURE THIS DEFAULT OR VIOLATION YOU MUST [STATE THE ACTION
REQUIRED TO CURE THE DEFAULT].

UNLESS ALL DEFAULTS ARE CURED BY [DATE], SELLER INTENDS TO ENFORCE
SELLER'S RIGHT TO CANCEL THE CONTRACT, TO DECLARE YOUR INTEREST
UNDER THE CONTRACT FORFEITED, AND TO RETAIN ALL MONEY YOU HAVE
PAID AS LIQUIDATED DAMAGES.

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THIS MEANS YOU WILL HAVE NO FURTHER RIGHTS IN THE PROPERTY. YOU
WILL HAVE TO VACATE AND LEAVE THE PROPERTY AND THE CONTRACT
WILL BE TERMINATED AND CANCELLED WITH NO MONEY REFUNDED TO YOU.

PLEASE REFER TO THE ENCLOSED SEPARATE NOTICE STATEMENT. TO AVOID
ENFORCEMENT OF THE REMEDY DESCRIBED ABOVE, YOU MUST COMPLY
WITH THE TERMS OF YOUR CONTRACT UP TO THE DATE OF COMPLIANCE.

THIS DOCUMENT

PLEASE CONSULT YOUR ATTORNEY IMMEDIATELY SO THAT YOU MAY
UNDERSTAND YOUR LEGAL RIGHTS.

SELLER

Certified Mail Return Receipt Request Number

THANK YOU

Accompanying notice per Texas Property Code §5.062 This notice must be sent on a separate
page.

NOTICE

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YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY
PREVIEW
YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE
BY [DATE], THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR
PROPERTY.

§25:253 Form: Notice of cancellation of a contract for deed

NOTICE OF CANCELLATION OF A CONTRACT FOR DEED

[Buyer's Name and Address] ^[Date]
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Dear [Buyer's salutation]

Please be advised that you have failed to comply with the terms of your contract for Deed that is dated [Date of contract] between [Seller's Name] and [Buyer's Name] for the following property [Describe the property].

You have breached the following provisions of the contract: [State the breach, i.e. failed to make a payment in the amount of \$ [Amount] that was due on [Date].

THIS DOCUMENT STATUTORY NOTICE

YOU FAILED TO CURE THE DEFAULTS SET OUT IN MY NOTICE OF DEFAULT TO YOU DATED AND MAILED [Date] WITHIN THE PERMITTED CURE PERIOD.

THE CONTRACT FOR DEED DESCRIBED IS NOW CANCELED, AND YOUR INTEREST UNDER THE CONTRACT AND IN THE PROPERTY IS NOW FORFEITED.

I SHALL RETAIN ALL SUMS PREVIOUSLY PAID UNDER THE CONTRACT AS LIQUIDATED DAMAGE, AS PROVIDED IN THE CONTRACT.

THANK YOU

SELLER

Certified Mail Return Receipt Request Number

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Information & Instructions: Avoidance of forfeiture and acceleration on a contract for deed per Texas Property Code §5.061

PREVIEW

1. A seller may enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property used or to be used as the purchaser's residence only if the seller notifies the purchaser of:

- a. the seller's intent to enforce a remedy under this section; and
- b. the expiration of the following periods:

(A) if the purchaser has paid less than 10 percent of the purchase price, 15 days after the date notice is given;

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(B) if the purchaser has paid 10 percent or more but less than 20 percent of the purchase price, 30 days after the date notice is given; and

(C) if the purchaser has paid 20 percent or more of the purchase price, 60 days after the date notice is given.

2. Notice under Section 5.061 of this code must be in writing. If the notice is mailed, it must be by registered or certified mail. The notice must be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters, and must include on a separate page the statement:

THIS DOCUMENT

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY [Date] THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

The notice must also:

- (1) identify and explain the remedy the seller intends to enforce;
- (2) if the purchaser has failed to make a timely payment, specify:
 - (A) the delinquent amount, itemized into principal and interest;
 - (B) any additional charges claimed, such as late charges or attorney's fees; and
 - (C) the period to which the delinquency and additional charges relate; and

If the purchaser has failed to comply with a term of the contract, specify the term violated and the action required to cure the violation.

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Notice by mail is given when it is mailed to the purchaser's residence or place of business.

Notice by other writing is given when it is delivered to the purchaser at the purchaser's residence or place of business.

The affidavit of a person knowledgeable of the facts to the effect that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired.

A bona fide subsequent purchaser for value who relies upon the affidavit under this subsection shall take title free and clear of the contract.

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Information & Instructions: Texas Property Code §5.063 right to cure default in a contract for deed

1. Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property used or to be used as the purchaser's residence may, at any time before expiration of the applicable period provided by Section 5.061 of this code, avoid the enforcement of a remedy described by that section by complying with the terms of the contract up to the date of compliance.

§ 5.063. Notice.

(a) Notice under Section 5.061 must be in writing and must be delivered by registered or certified mail, return receipt requested. The notice must be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters, and must include on a separate page the statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

(b) The notice must also:

(1) identify and explain the remedy the seller intends to enforce;

(2) if the purchaser has failed to make a timely payment, specify:

(A) the delinquent amount, itemized into principal and interest;

(B) any additional charges claimed, such as late charges or attorney's fees; and

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(C) the period to which the delinquency and additional charges relate; and

PREVIEW

(3) if the purchaser has failed to comply with a term of the contract, identify the term violated and the action required to cure the violation.

(c) Notice by mail is given when it is mailed to the purchaser's residence or place of business. The affidavit of a person knowledgeable of the facts to the effect that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired. A bona fide subsequent purchaser for value who relies upon the affidavit under this subsection shall take title free and clear of the contract.

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THANK YOU

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Seller's Remedies On Default

PREVIEW

A seller may enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property only if:

(1) the seller notifies the purchaser of:

(A) the seller's intent to enforce a remedy under this section; and

(B) the purchaser's right to cure the default within the 60-day period described by Section 5.065;

(2) the purchaser fails to cure the default within the 60-day period described by Section 5.065; and

(3) Section 5.066 does not apply

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§ 5.065. Right To Cure Default.

Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property may avoid the enforcement of a remedy described by Section 5.064 by complying with the terms of the contract on or before the 60th day after the date notice is given under that section

Information & Instructions: Contracts subject to special conditions per Texas Property Code §5.091

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Applicability

(a) This subchapter applies only to an executory contract that covers real property located in a county that, as determined by the Texas Department of Housing and Community Affairs:

(1) has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; and

(2) is within 200 miles of an international border.

THANK YOU

(b) This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence. For purposes of this subchapter, a lot measuring one acre or less is presumed to be residential property.

(c) This subchapter does not apply to a transaction involving a sale of land by the Veterans' Land Board under an executory contract.

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(d) This subchapter does not apply to an executory contract that provides for the delivery of a Deed from the seller to the purchaser within 180 days of the date of the final execution of the executory contract.

PREVIEW

Information & Instructions: Contract for deed annual accounting statement

§ 5.077. Annual Accounting Statement.

(a) The seller shall provide the purchaser with an annual statement in January of each year for the term of the executory contract. If the seller mails the statement to the purchaser, the statement must be postmarked not later than January 31.

(b) The statement must include the following information:

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(1) the amount paid under the contract;

(2) the remaining amount owed under the contract;

(3) the number of payments remaining under the contract;

(4) the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller;

(5) the amounts paid to insure the property on the purchaser's behalf if collected by the seller;

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(6) if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and

(7) if the seller has changed insurance coverage, a legible copy of the current policy, binder, or other evidence that satisfies the requirements of Section 5.070(a)(2).

(c) A seller who fails to comply with Subsection (a) is liable to the purchaser for :

(1) liquidated damages in the amount of \$250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement; and

(2) reasonable attorney's fees.

THANK YOU

Information & Instructions: Contract for deed equity protection provisions

§ 5.066 Equity Protection; Sale Of Property.

(a) If a purchaser defaults after the purchaser has paid 40 percent or more of the amount due on the equity loan, if a majority payment under the executory contract, the seller is granted the power to sell, through a trustee designated by the seller, the purchaser's interest in the

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property as provided by this section. The seller may not enforce the remedy of rescission or of forfeiture and acceleration.

PREVIEW

(b) The seller shall notify a purchaser of a default under the contract and allow the purchaser at least 60 days after the date notice is given to cure the default. The notice must be provided as prescribed by Section 5.063 except that the notice must substitute the following statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) A TRUSTEE DESIGNATED BY THE SELLER HAS THE RIGHT TO SELL YOUR PROPERTY AT A PUBLIC AUCTION.

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(c) The trustee or a substitute trustee designated by the seller must post, file, and serve a notice of sale and the county clerk shall record and maintain the notice of sale as prescribed by Section 51.002. A notice of sale is not valid unless it is given after the period to cure has expired.

(d) The trustee or a substitute trustee designated by the seller must conduct the sale as prescribed by Section 51.002. The seller must:

(1) convey to a purchaser at a sale conducted under this section fee simple title to the real property; and

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(2) warrant that the property is free from any encumbrance.

(e) The remaining balance of the amount due under the executory contract is the debt for purposes of a sale under this section. If the proceeds of the sale exceed the debt amount, the seller shall disburse the excess funds to the purchaser under the executory contract. If the proceeds of the sale are insufficient to extinguish the debt amount, the seller's right to recover the resulting deficiency is subject to Sections 51.003, 51.004, and 51.005 unless a provision of the executory contract releases the purchaser under the contract from liability.

(f) The affidavit of a person knowledgeable of the facts that states that the notice was given and the sale was conducted as provided by this section is prima facie evidence of those facts. A purchaser for value who relies on an affidavit under this subsection acquires title to the property free and clear of the executory contract.

THANK YOU

(g) If a purchaser defaults before the purchaser has paid 40 percent of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller may enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness if the seller complies with the notice requirements of Sections 5.063 and 5.064.

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Information & Instructions: Contract for deed title transfer provisions

§ 5.079. Title Transfer.

PREVIEW

(a) The seller shall transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract.

(b) A seller who violates Subsection (a) is liable to the purchaser for :

(1) liquidated damages in the amount of:

(A) \$250 a day for each day the seller fails to transfer the title to the purchaser during the period that begins the 31st day and ends the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(B) \$500 a day for each day the seller fails to transfer title to the purchaser after the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(2) reasonable attorney's fees.

(c) If a person to whom a seller's property interest passes by will or intestate succession is required to obtain a court order to clarify the person's status as an heir or to clarify the status of the seller or the property before the person may convey good and indefeasible title to the property, the court in which the action is pending may waive payment of the liquidated damages and attorney's fees under subsection (b) if the court finds that the person is pursuing the action to establish good and indefeasible title with reasonable diligence.

(d) In this section, "seller" includes a successor, assignee, personal representative, executor, or administrator of the seller.

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