

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN THE MATTER OF THE PROPOSED ADOPTION)
OF UNIFORM CONVEYANCING BLANKS BY THE)
MINNESOTA DEPARTMENT OF COMMERCE TO) STATEMENT
REPLACE UNIFORM CONVEYANCING BLANKS) OF NEED
54-M THROUGH 57-M (CONTRACTS FOR DEED)) AND
AND 58-M and 59-M (ASSIGNMENTS OF) REASONABLENESS
CONTRACTS FOR DEED), ORIGINALS OF WHICH)
ARE FILED WITH THE SECRETARY OF STATE,)
AND COPIES OF WHICH ARE SET OUT)
FOLLOWING MINN. STAT. ANN. CHAPTER 507;))
CREATING TWO NEW RESIDENTIAL MORTGAGE)
BLANKS AND AN AFFIDAVIT OF IDENTITY AND)
SURVIVORSHIP FOR DEATH OCCURRING AFTER)
DECEMBER 31, 1979.)

Notice is hereby given that, pursuant to her authority under Minn. Stat. Section 507.09, the Commissioner of Securities and Real Estate intends to adopt the above-captioned uniform conveyancing blanks. The Commissioner has determined that the proposed adoption of these conveyancing blanks will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. Section 15.0412, subdivision 4h (1980).

On August 8, 1981 the Division caused to be published at 6 State Register 173 a notice of intent to solicit outside opinions concerning the adoption of these blanks. No comments were received pursuant to this notice.

The Uniform Conveyancing Blanks Commission was authorized by Laws 1929, Chapter 135 (Minn. Stat. Section 507.08). The work of this Commission was "...approved and recommended for use in the state..." by Laws 1931 Chapter 272, Section 1 (Minn. Stat. Section 507.09).

Section 507.08 (i.e., the Commission) was repealed by Laws 1975, Chapter 61, Section 26.

Laws 1975, Chapter 61, Section 2 authorized the Commissioner of Securities and Real Estate to appoint an advisory committee on uniform conveyancing forms to recommend to the Commissioner amended or new forms to be adopted by rule. The committee was appointed in 1976.

CONTRACT FOR DEED

(Revised forms 54-M through 57-M)

Before proceeding with any drafting the Committee consulted a number of resources with respect to these forms. It reviewed the statutory and case law in Minnesota concerning conveyancing; examined and commented upon the adequacy of existing uniform conveyancing blanks; reviewed blanks from other states; solicited outside opinions from individuals who use and work with these blanks; and considered the questions of consistency among the various kinds of forms.

After this inquiry the following objectives were agreed upon for any new Contract for Deed forms:

1. Although it was agreed that a one page form would be impossible to prepare, it was decided that like the Federal National Mortgage Association (Fannie Mae) approved mortgage forms, the contract for deed form should be on both sides of two attached pages. This will minimize the problems posed by pages of a multi-page document becoming separated.

2. The form should be readable and understandable to the general public.

3. The format should minimize the amount of additional typing necessary to complete the form and the probability of error by the person preparing the form.

4. The form should eliminate duplication of language and phrases rendered unnecessary by statutes or case law.

5. The form should contain new provisions dealing with substantive areas not covered by the existing uniform form of Contract for Deed.

The Committee believes that the proposed forms meet the foregoing objectives. Specifically, the following significant recommendations are made (all comments are based upon Form No. 55-M, Contract for Deed, Individual to Joint Tenants, but apply generally to all Contract for Deed forms):

1. The present form numbers and form titles should be continued, as the old forms identified by these numbers will no longer be printed and will be replaced by the new forms.

2. The recording data section near the top of the Contract for Deed form is consistent with other deed forms previously adopted by the Committee. The Committee has attempted to provide as much space as any County Recorder might require. It determined with earlier forms that the upper right-hand corner is most convenient for certain machine stamps. This arrangement has been reviewed by members of the County Recorders' Association.

3. The County Auditor's Certificate was placed in the upper left-hand corner for convenience. Provision was made for the Certificate of Real Estate Value in the same area. A blank for the insertion of the amount of mortgage registry tax due upon recording is located under the recording data section.

4. The following material is included in the first unnumbered paragraph of the Contract for Deed:

a. The words "Seller" and "Purchasers" are used rather than "party of the first part" and "parties of the second part", for purposes of brevity and a more understandable description of the parties.

b. A reminder has been included to recite the marital status of the Seller.

c. The Purchasers have been identified as "joint tenants" only. Reference to "and not as tenants in common, their assigns, the survivor of said parties, and heirs and assigns of the survivor" is not necessary to establish the joint tenancy.

5. The remainder of the Contract for Deed form has been substantially revised with changes in language and the addition of new provisions not previously covered in the uniform Contract for Deed form. The Committee decided that for ease of reading and reference, the provisions of the Contract for Deed should be numbered and labeled with descriptive titles. Said paragraphs are prefaced by the statement that the Seller and Purchasers agree to the terms which follow. This is sufficient for purposes of establishing the parties' agreement as to the terms of the Contract for Deed.

6. Property Description, paragraph 1, states that Seller and Purchasers sell and buy the real property, the description of which follows. A reference to "hereditaments and appurtenances" was also included as was done in deed forms previously prepared and adopted. For ease of reference the property in question is made a defined term, known as the "Property." A sufficient space for the legal description is included.

7. Title, paragraph 2, contains a warranty by the Seller as to the status of title on the date that the Contract for Deed is signed. In conformance with practice and most purchase agreements in use, the Committee has set forth general exceptions which it believes will be applicable to most transactions, assuming that the general practice is followed for an examination of title and title opinion or procurement of title insurance prior to execution of the Contract for Deed. Subparagraph (d) has been included to reflect that most purchasers will be assuming the payment of certain real estate taxes and special assessments, and reference is made to the provision contained in the Contract for Deed relative to such taxes and assessments. Subparagraph (e) has been included for reference to existing liens or encumbrances which may or may not be assumed by purchasers. The Committee believes that this form thereby requires Seller to disclose the status of any underlying financing which may affect the property. It further believes that such disclosure is desirable.

8. Delivery of Deed and Evidence of Title, paragraph 3, sets forth Seller's obligation upon full performance by Purchasers. Subparagraph (a) contains the obligation relative to execution, acknowledgement and delivery of a form of deed. This follows the existing form of Contract for Deed, thereby allowing the parties to insert the type of deed to be delivered. Reference is then made to the exceptions to marketable title which are permissible at the time of fulfillment of performance by purchasers. Reference has been made to the same exceptions as contained in paragraph 2 (a)-(d) and there has been included in subparagraph (a)(ii) matters which the purchasers have created, suffered or permitted to accrue. Subparagraph (a)(iii) refers to encumbrances or liens which will continue after performance by purchasers. In this way there will be no confusion as to existing financing which will either be

assumed or which will remain against the property when the deed is delivered. Subparagraph 3(b) basically continues the Seller's obligation to deliver an abstract or owner's duplicate certificate of title. However, we have deleted reference to the fact that the abstract must show "good title at the date hereof" has been deleted in order to conform to the general practice whereby the abstract is generally not updated to the date of the delivery of the deed. The Committee believes that the current practice of title opinions or title insurance which is updated or at least checked at the time of delivery of the deed will continue, and the form will now conform to practice.

9. Purchase Price, paragraph 4, continues the same format as previously used, except that a longer space has been allowed for the address to which payments are to be made. The Committee agreed that it would be appropriate to leave the space following this provision blank in order to allow the parties to insert their own payment provisions, consistent with present practice.

10. Prepayment, paragraph 5, contains what the Committee believes to be the generally accepted practice, which allows prepayment without penalty. The parties may, however, specifically provide that the Contract for Deed is not prepayable. It is believed that prepayment should not postpone or change the amount of installments to be paid under the Contract for Deed.

11. Real Estate Taxes and Assessments, paragraph 6, is basically divided into three parts. The first part relates to real estate taxes and installments of special assessments payable in the year following the date of the Contract for Deed and provides that Purchasers shall pay same. The second part will govern the parties' responsibilities with respect to taxes and assessments payable in the year in which the Contract for Deed is dated. A blank has been provided so that the parties may conform this provision to

their agreement, as is generally contained in the purchase agreement. The last part of the paragraph is Seller's warranty that such taxes and assessments are paid in the years preceding the year of the Contract for Deed.

12. Property Insurance, paragraph 7, contains updated language applicable to risks customarily described in current insurance policies and conforms, the Committee believes, to general expectations as to the kinds of insurance which should be obtained by Purchasers. The practice of filling in the amount of such insurance coverage has been continued. Subparagraph (b) contains an insurance requirement which provides Seller with rights similar to that of a mortgagee. Although in existing practice Seller is generally not afforded this protection, the Committee felt that it was crucial that Seller be protected. The Committee believes that Seller, as the provider of financing, should be given the protections generally afforded to a mortgagee under insurance policies. Subparagraph (c), concerning the requirement of notification in the event of fire or casualty damage to the property, is an addition which the Committee considers important.

13. Damage to the Property, paragraph 8, is divided into two subparagraphs. The first relates to application of insurance proceeds and the second relates to purchasers' election to rebuild. The Committee discussed this new provision at great length and has incorporated it in the belief that most purchasers have an expectation that insurance proceeds are available for repair and restoration of damaged property and, if not available, that they should be under certain circumstances. This may be a normal expectation because purchasers have procured and maintained the insurance. Subparagraph (a) is a statement of the method of application of insurance proceeds if they are not used for restoration. It follows the requirements of the prepayment provision. Subparagraph (b) is a rather detailed

provision which, the Committee believes, will protect the interests of both Seller and Purchasers if the insurance proceeds are to be made available for repair. Seller is protected by the use of an escrow arrangement and requirements that there be sufficient funds in said escrow to ensure that all work is paid for. There is then less likelihood that mechanics' liens will arise. Seller is also protected by provisions requiring the approval of plans and specifications and contracts. This will help insure that the value and utility of the property will not be lessened or diminished by the repair work. The Committee believes that this provision balances the interests of both parties and affords reasonable protection as well.

14. Injury or Damage Occurring on the Property, paragraph 9, pertains to liability. Subparagraph (a) is a statement of purchasers' responsibilities concerning injuries to persons or property on the property and contains an indemnification. The Committee believes that it is desirable that such a provision be contained in the Contract for Deed. An exception to indemnification relates to those injuries which are caused by the negligence or wrongful acts or omissions of Seller. Subparagraph (b) contains the requirement that purchasers obtain liability insurance for themselves and Seller. The Committee believes that this generally conforms to existing practice where such liability insurance is obtained along with the hazard insurance maintained by purchasers.

15. Insurance, Generally, paragraph 10, is essentially additional protection for Seller. It relates to the qualification of the insurance carrier. Also, customary notices to Seller in the event of cancellation, nonrenewal, termination or change in coverage are contained for the benefit of Seller. This, the Committee believes, conforms to endorsements customarily provided by insurance companies and is a reasonable expectation.

16. Condemnation, paragraph 11, is a statement of what the Committee believes is a defect in the existing form of Contract for Deed. Presently, there is no provision governing distribution of condemnation proceeds. The Committee believes that the necessary protection must lie with Seller so that any awards made for a taking are paid to Seller. Otherwise, Seller's security is impaired. The method of application of condemnation proceeds follows the prepayment provision. To the extent there are any remaining amounts after fully paying the Contract for Deed, that balance is paid to Purchasers.

17. Waste, Repair and Liens, paragraph 12, incorporates language contained in the old form concerning a prohibition on removal or demolition of buildings or improvements. The language is expanded to include fixtures and a statement that the Purchasers shall not commit waste upon the property. In addition, substantive provisions are added in this paragraph which the Committee believes should conform to reasonable expectations and good practice, including the obligation of Purchasers to maintain the property in good condition and repair and not to create or permit liens or adverse claims against the property which would constitute a lien or claim against the Seller's interest in the property.

18. Deed and Mortgage Registry Taxes, paragraph 13, essentially restates, the Committee believes, the practice concerning the payment of such taxes.

19. Notice of Assignment, paragraph 14, is a provision requiring notice of assignment. The Committee felt that in the event of an assignment it would be important that the nonassigning party be notified of the assignment in order that he might take whatever steps were necessary to protect his interests, if any.

20. Protection of Interests, paragraph 15, is a new provision allowing the Seller to protect his interests in the event purchasers fail to perform any of their obligations under the Contract for Deed. The amount of any advances made by the Seller accrue interest at the rate provided in the Contract for Deed. This paragraph also contains a new substantive provision for the purchasers' protection, which conforms to existing practice wherein Seller agrees to pay any existing liens or mortgages not assumed or paid by purchasers. If Seller fails to meet his obligations purchasers may then pay lienholders or mortgages and deduct those amounts from the Contract for Deed.

21. Default, paragraph 16, is basically a restatement of the language contained in the existing form, with minor modifications.

22. Binding Effect, paragraph 17, provides that the Contract for Deed terms are binding upon successors in interest.

23. Headings, paragraph 18, is self-explanatory.

24. Assessments by Owners' Associations, paragraph 19, has been added to protect Seller and to clarify the purchasers' obligations in the typical situation involving a condominium or townhouse. The Committee believes that it is necessary, for the Seller's protection, to require that the purchasers pay any assessments imposed by an Owners' Association which may become liens against the property. Subparagraph (b) is a modification of insurance requirements and is deemed necessary in a situation where an Owners' Association obtains hazard insurance for the benefit of the Association members.

25. Additional Terms, paragraph 20, is a space provided for the parties to add whatever additional provisions they deem appropriate.

26. The signature, acknowledgment, drafted by, and tax statement blanks conform to the deed forms previously prepared and adopted.

27. Lastly, the Committee believes it important to emphasize to the parties that failure to record the Contract for Deed may have an adverse effect on one or both of the parties. Therefore, an admonition has been included to this effect.

28. These comments are also applicable to the other forms of Contract for Deed. However, the Committee wishes to note that with respect to the corporation or partnership forms, the blanks in the first paragraph make it possible for the form to be completed for either a corporation or partnership. Previous forms were designed only for corporations.

ASSIGNMENT OF CONTRACT FOR DEED

(Revised forms 58-M and 59-M)

With regard to these forms the Committee's main concern was to conform the recording information box and space for information pertaining to Certificates of Real Estate Value to those used in deeds and contracts for deed, and to otherwise make the forms more readable and understandable to the general public.

The Committee believes the proposed forms meet the foregoing objectives.

With respect to the two forms of Assignment of Contract for Deed:

1. The first three comments relative to the Contract for Deed are also applicable.

2. In the granting clause of the Assignment only "for valuable consideration" has been recited since the exact amount of consideration need not be declared to create a valid assignment.

3. "Assignor" and Assignee" are used rather than "party of the first part" and "party of the second part", for brevity and better description of the parties.

4. The parties to the Contract for Deed are designated "Seller" and "Purchaser" in order to conform to the Contract for Deed designations and for better description of the parties.

5. The reference to recording information has been modified to allow reference to the standard recording information pertaining to recordings or filings in the offices of County Recorders and Registrars of Titles.

6. The signature, acknowledgment, drafted by and tax statement provisions have been modified to conform to the deed forms previously prepared and adopted.

The Committee believes that the proposed forms represent a significant improvement over forms presently in use. It believes they will be more readily understood by those who prepare and sign them.

RESIDENTIAL MORTGAGE

(Forms 41 1/2-M and 42 1/2-M) (NEW)

Due to passage by the Minnesota Legislature of Minn. Stat. Section 47.20 in 1976, the Committee believes that two additional mortgage forms should be adopted for use by lenders making "conventional loans" pursuant to Minn. Stat. Section 47.20. Accordingly, the Committee proposes the following two forms of mortgages in addition to those currently in effect:

1. Residential Mortgage, Pursuant to Minn. Stat. Section 47.20, Individual to Individual (Form 41 1/2-M).
2. Residential Mortgage, Pursuant to Minn. Stat. Section 47.20, Individual to Corporation or Partnership. (Form 42 1/2-M).

The form of the above two mortgages essentially follows the format of previously adopted mortgages, subject to certain changes which were made to achieve the following objectives:

1. The forms should be readable and understandable to the general public.
2. The format should minimize the amount of additional typing necessary to complete the form and the probability of error by the person preparing the form.
3. The form should eliminate duplication of language and phrases rendered unnecessary by statute or case law.
4. The Mortgage should include language sufficient to bring it into compliance with the terms of Minn. Stat. Section 47.20.
5. The insurance clause should be modernized.

Accordingly, the following changes are proposed:

1. The recording data section near the top of the mortgage form has been added to conform to the deed forms previously adopted. The Committee has attempted to provide as much space as any County Recorder would require. It was determined earlier that the upper right hand corner is the most convenient for certain machine stamps, and this arrangement has been reviewed by members of the County Recorders' Association.
2. The mortgage registry tax payment data section is located in the upper left hand corner for convenience, together with a space for insertion of the amount of mortgage registry tax due.
3. In the first paragraph a space has been provided to identify the marital status of the Mortgagor.

4. The terms "Mortgagor" and "Mortgagee" have been defined to apply to one or more parties. This procedure allows for the deletion of all blanks in the mortgage form requiring the insertion or omission of the plural designation and related blanks.
5. In addition, all blanks which were to be filled in with the words "successors or assigns" or related language have been omitted and one comprehensive statement to the effect that the terms of the document are binding on the parties and all successors in interest has been added at the end of the mortgage form in lieu thereof.
6. The term "Property" has been defined in the second paragraph of the proposed mortgage forms for easy reference throughout the remainder of the document.
7. The third and fourth paragraphs of the proposed mortgage forms are substantially the same as the existing mortgage forms except that blanks required for the use of the plural versus the singular and blanks dealing with "heirs and assigns" have been deleted in accordance with the above discussion. In addition, the term "Note" has been defined in the fourth paragraph and the description thereof shortened.
8. The fifth paragraph of the proposed mortgage forms has retained most of the language of the existing mortgage forms except that each covenant has now been numbered for easy identification and subparagraph 3 dealing with insurance has been expanded due to the Committee's feeling that the previous language was outdated and somewhat inadequate. The language adopted by the Committee conforms substantially to that adopted in the new proposed contract for deed form. All other changes

to this paragraph deal with language simplification and definitional modifications and do not affect the substance of the provisions.

9. The sixth paragraph of the proposed mortgage forms is substantially the same as the existing mortgage forms except that interest accruing on sums advanced by the Mortgagee to cure defaults by the Mortgagor will accrue at the same rate as is set forth in the obligation secured by the mortgage. It was felt by the Committee that the previous language providing that interest would accrue at the "highest rate permitted by law" was no longer susceptible of being defined due to the fact that there no longer are statutory limits placed on such interest rates.
10. The seventh paragraph of the proposed mortgage forms conforms substantially to that of the existing mortgage forms with the exception of the language simplification and definitional modifications discussed above.
11. The eighth paragraph of the proposed mortgage forms is new, and is the paragraph which has been included in order to comply with the requirements of Minn. Stat. Section 47.20. The statute requires that each of the three paragraphs set forth in the eighth paragraph of the proposed mortgage forms be included in any mortgage taking advantage of the higher interest rates allowed for conventional loans as defined in said statute.
12. A final sentence has been added to provide that the terms of the mortgage shall run with the Property and bind the parties and their successors in interest. This paragraph has been added as a comprehensive statement of the binding nature of the contract in order to avoid the continual

- repetition of this language, as discussed above.
13. The statutory form of acknowledgement has been included, as has the statutory requirement for space regarding identification of the person drafting the document. Again, this area has been changed to conform with the changes made to the uniform deed forms previously adopted.
 14. The proposed mortgage forms have been drafted to permit their use by corporations or partnerships, rather than limiting their use to only corporations, as do the current uniform mortgage forms.

AFFIDAVIT OF IDENTITY AND SURVIVORSHIP FOR DEATH OCCURRING
AFTER DECEMBER 31, 1979
(Form 119-M) (NEW)

Minnesota Statutes Section 291.14 provides that it is the responsibility of the personal representative or of the person to whom property is transferred to pay the tax. Prior to December 31, 1979, the tax was a lien upon property. There has never been a uniform form of an Affidavit of Identity and the form generally used prior to that date was one which included a certificate of the Commissioner of Taxation to the effect that either the tax had been paid or that the tax had been waived. That form is now obsolete.

Affidavits which have been presented for filing or recording since that date most often must be rejected for any number of reasons, including the fact that they are not tied into the chain of title, do not contain a legal description and are not properly executed.

The need for a form of affidavit that may be readily understood and completed is apparent and, therefore, the Committee proposes the attached form of affidavit for adoption.