

## **CHAPTER 32-18 CANCELLATION OF LAND CONTRACTS**

### **32-18-01. Instruments for future conveyance - Cancellation - Owner must give written notice to vendee or purchaser.**

No owner of real estate, or owner of any equity therein, who shall make or execute a contract for deed, bond for deed, or other instrument for the future conveyance of any such real estate or equity therein, shall have the right to declare a cancellation, termination, or forfeiture thereof or thereunder, except upon written notice to the vendee or purchaser, or the vendee's or purchaser's assigns, as provided in this chapter, and such notice shall be given to such vendee or purchaser or such vendee's or purchaser's assigns, notwithstanding any provision or condition in any such instrument to the contrary.

### **32-18-02. Default - Contents of notice.**

Whenever any default shall have been made in the terms or conditions of any such instrument for future conveyance of real estate or equity therein, and the owner or vendor shall desire to cancel or terminate the same, the owner or vendor, within a reasonable time after such default, shall cause a written notice to be served upon the vendee or purchaser, or the vendee's or purchaser's assigns, stating that such default occurred and that said contract will be canceled or terminated, and the time when said cancellation or termination shall take effect, which shall be as provided in section 32-18-04.

### **32-18-03. Notice of default - How served.**

Notice of cancellation shall be served upon the vendee or purchaser, or the vendee's or purchaser's assigns, in the manner provided for the service of a summons in the district court of this state, if the person to be served resides within the state. If such vendee or purchaser, or such vendee's or purchaser's assigns, as the case may be, resides without the state or cannot be found therein, of which fact the return of the sheriff of the county in which said real estate is situated that such person cannot be found in the sheriff's county shall be prima facie evidence, then such notice shall be served by the publication thereof in a legal newspaper within said county, or, if there is no legal newspaper within said county, then in a newspaper published in an adjoining county and having a general circulation in the county, once each week for three successive weeks.

### **32-18-04. Time allowed to correct default.**

The vendee or purchaser, or the vendee's or purchaser's assigns, shall have the following periods of time after the service of notice of cancellation upon such party in which to perform the conditions or comply with the provisions upon which the default shall have occurred:

1. If the amount claimed due under such instrument at the date of notice is more than sixty-six and two-thirds percent of the original indebtedness, the time allowed to correct the default shall be six months.
2. In any other case, the time for correction shall be one year.

Upon such performance and upon making such payments, together with the cost of service of such notice, such contract or other instrument shall be reinstated and shall remain in full force and effect as if no default had occurred therein. If, however, such vendee or purchaser, or such vendee's or purchaser's assigns, shall not complete such performance or make such payment within the time periods provided by this section, the contract shall be terminated and shall not be reinstated by any subsequent offer of performance, or tender of payment. No provisions in any contract for the purchase of land or an interest in land shall be construed to obviate the necessity of giving the aforesaid notice and no contract shall terminate unless such notice is given, any provision in such contract to the contrary notwithstanding, but the notice herein required shall not be deemed necessary if the contract in question is sought to be terminated by an action at law or in equity brought for that purpose upon failure to perform. This section shall apply to all instruments for a future conveyance of real estate or an equity therein which are

executed on or after July 1, 1971. The time allowed to correct the default shall not be less than one year except in contracts involving an area not to exceed three acres.

**32-18-05. Notice of cancellation to be recorded.**

In all cases of cancellation by notice of any contract for deed which has been recorded in the office of the recorder, the following documents shall also be recorded in that office: a copy of the notice of cancellation served upon the vendee, together with an affidavit of service and an affidavit of the vendor or the vendor's assigns that the default of the vendee under the terms of the contract was not cured, after the date of service of such notice, within the time periods provided in section 32-18-04.

**32-18-06. Counterclaim - Injunction against canceling contract.**

When it shall be made to appear by affidavit of the vendee or purchaser, or the vendee's or purchaser's assigns, agent, or attorney, to the satisfaction of a judge of the district court of the county where the property is situated, that the vendee or purchaser, or the vendee's or purchaser's assigns, has a legal counterclaim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such contract, such judge, by an order to that effect, may enjoin the vendor or the vendor's successor in interest from the cancellation of such contract by notice and may direct that all further proceedings for the cancellation be had in the district court properly having jurisdiction of the subject matter, and, for the purpose of carrying out the provisions thereof, service may be made upon the vendor or the vendor's assigns or upon the vendor's attorney or agent.