

BUYING A HOME ON A LAND CONTRACT



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BUYING A HOME ON A LAND CONTRACT

Many people dream of owning their own home. A land contract is one way to own a home. Some people who dream of owning their own home attempt to purchase a home using a poorly written land contract. As a consequence, the attempted purchase does not occur. This brochure attempts to describe some of the problems that could occur if you buy property on a land contract and some ways you can protect your rights as a buyer.

It is important to note that buying a home under any type of financing is a complicated matter. Good legal advice is important. A buyer should always consult an attorney when buying a home. The information in this booklet does not replace legal advice from an attorney. This booklet is merely a general, simple introduction to the issues involved in buying a home on a land contract.

What are the different ways to buy a home?

Mortgage-Bank or other financial institution

Many people apply to a bank or other lending institution for a loan to buy a home. If the buyer's application for a loan is approved, the bank will give the buyer money to give to the seller. The seller will give the buyer a deed. The bank will file a mortgage against the property for the amount of the loan. Many banks have special loans for first-time home buyers. Many municipalities have money to give to low-income first-time home buyers to help them pay for closing costs, down payments and rehabilitation costs.

Owner-held Mortgage

Sometimes a seller will sell a home to a buyer and the seller will hold the mortgage. The seller gives the buyer a deed. Then the seller files a mortgage against the property for the amount of the loan.

Land Contract/Installment Contract

A buyer can enter into an agreement with the seller to buy a piece of property in installments. At the signing of the land contract, the buyer receives "equitable title" and possession of the property. The seller keeps a legal title interest in the property. The agreement sets the purchase price and monthly payments. The buyer makes payments to the seller. After all of the payments have been made by the buyer, legal title transfers and the seller must deliver good legal title of the property to the buyer by way of a deed.

What is the difference between a Mortgage and a Land Contract?

The most important difference between buying a home with a mortgage and through a land contract is that the deed transfers to the buyer right away when buying with a mortgage. With a land contract, the deed does not transfer until after all the payments have been made. So while the buyer lives on the land, the property actually belongs to the seller until all of the payments have been made.

What Kinds of problems could occur when you are buying property on a land contract?

Property is condemned by a municipality. Bill tried to buy a home on a land contract. The property was condemned. Bill lost the property and lost all of the money he paid towards his home.

Seller does not have clear title to transfer to the buyer. Suzie bought a home on a land contract. She made monthly payments for six years. She finally finished all of the payments. Unfortunately, the seller could not give her a warranty deed because the seller did not have good title. The seller said it would take thousands of dollars to clear up the title. The buyer needs the warranty deed to make improvements on the property.

Seller has a mortgage on the property and failed to make payments. Chris is buying a home on a land contract. Chris paid a deposit and started making monthly payments. Then Chris found out that the seller had a \$18,000 mortgage on the property. The Seller did not pay the mortgage payments and the bank started to foreclose on the property. In addition, the seller had not paid child support. The County had a \$4,000 lien against the property for child support.

Seller failed to pay property tax. Mary signed a land contract to buy a home. She just finished making all of her monthly payments. One day a man came to her and said he had bought the property at the county tax foreclosure auction. The seller had failed to pay property taxes five years ago and the county had foreclosed on the property.

Seller treats Buyer like a tenant. Adam is buying a home on a land contract. The seller keeps coming on his property and telling him to make repairs. Adam tried to make the repairs the best he could. Now the seller is threatening to take him to landlord/tenant court and evict him for not keeping the property in good repair. Adam is afraid he will lose the \$8,000 deposit he made on the property.

Seller is not the only owner of the property. Elise signed a land contract to buy a home. She signed the contract with a woman. She later found out that the property was owned by both the woman and her husband and that the couple was in the middle of a divorce. Elise is afraid of what may happen to the property in the divorce action.

Seller refuses to sign deed over to Buyer. Denise bought a house on a land contract from a couple. She made all of her payments. She asked the sellers to give her a warranty deed. The sellers refused to sign the paperwork.

Seller dies before deed is transferred. Jane bought a house on a land contract from her neighbor. Jane makes payments for five years, and the Seller dies. The deed has not been transferred to Jane.

While the above examples paint a grim picture of land contracts, many people do purchase homes successfully on a land contract. There are steps you can take to protect yourself against some of the risks of buying on a land contract.

What should I do before entering a land contract?

- Contact an attorney (any property transfer is a complicated matter – get some good advice);
- Do a title search (make sure the seller is the owner of the property, there are no liens against the property and that the seller has good title to the property);
- Make sure the land contract is filed in the county clerk’s office.
- Hire an Inspector (make sure there are no serious structural and/or environmental problems);
- Check Taxes (make sure the seller is up-to-date in property taxes).

What should my land contract include?

One of the most important steps you need to take to protect your rights is to file your land contract with the County Clerk’s Office after it is signed. In order for a land contract to be recorded in the County Clerk’s Office, the land contract must have two parts:

Description of the property

The land contract must have a “Schedule A” attached to it, which is a legal description of the property. The name of the town where the home is located must be included in this description. The tax map number in the land contract should also be included.

Proper signature format

The land contract must be signed in front of a notary public in the form of acknowledging a deed. If the land contract is not signed in this way, the document will not be in recordable form and the county clerk will not record the land contract.

The following wording must follow both the buyer’s signature and seller’s signature on the land contract as the correct acknowledgment of a deed:

State of New York)
) ss.:
County of _____)

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature of Notary Public

Your land contract should also include the following:

- Names of the parties;
- Total sales price and an agreement to buy and sell;
- Interest rate (if any);
- Amount of monthly payment;
- Who pays the taxes;
- Who pays for insurance;
- Who pays for recording fees, preparation of deed, attorney's fees;
- The process if there is a default;
- The process if the property is destroyed in some way;
- Assurance by the seller that the seller has good title to give buyer a warranty deed;
- The process for the seller to deliver the deed to the buyer after all payments are made;
- The rights of successors and assigns of the parties;
- The right for the buyer to prepay the sales price.

What should I do after I sign the land contract?

1. Record the Land Contract

When you go to file your land contract at the County Clerk's Office, you will also need to file a cover page and a Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (TP-584). You can find both of these forms at your County Clerk's Office. You will have to pay a filing fee, transfer fee and mortgage tax.

2. Contact the County Treasurer's Office

Tell the County Treasurer's Office that you are an interested party in the property. You will then be sent the tax bills for the property. Pay the taxes if you are responsible for the taxes in the land contract. If you are not responsible for the taxes, you will want to make sure that the taxes are being paid. If either party fails to pay the taxes, be sure to pay the taxes before the redemption date such that the county does not foreclose on the property.

3. Obtain house fire and liability insurance

4. Make timely payments and keep good records

Owning a home is a wonderful, but difficult process. Take your time in the process to make the right choices. If you have additional questions, please contact the community resources available in your area, such as your local legal services offices or housing advocacy groups.