Land Contracts

Most people buy homes with a mortgage, unless they can pay in cash. Another less common way to buy a home is through seller financing or a land contract for purchase (sometimes called “contract for deed” in other states). The buyer makes payments directly to the seller over time and receives full legal title once the contract is paid in full.

Land contracts let buyers gain some interest in the home with a smaller down payment, possibly a lower credit score, and normally do not require appraisals or inspections. However, they carry some risks for the buyer that a mortgage does not.

Land Contract Terms

To be enforceable, land contracts must be in writing and include a total purchase price, interest rate, and monthly payments from the buyer to the seller for a set period of time. At the end of the land contract, the buyer must make a "balloon payment" to pay off the remaining balance and complete the property transfer. While mortgages are usually fifteen to thirty years and are designed to pay the loan off completely, a land contract may be five or ten years and at the end the buyer must get a mortgage for the balloon payment.

Property taxes and insurance on the home are usually the responsibility of the land contract buyer. If they do not pay these, the seller can declare a default and foreclose. The buyer is also responsible for repairs and maintenance on the home, which can be expensive. In a typical home-buying process, these issues would have been found in an inspection.

When the contract is signed and recorded, the buyer gets “equitable title” to the property, but no warranty deed is recorded until the land contract is fully paid off.

Definition: An equitable title gives a person the right to use and enjoy property despite them not being the legal titleholders.

If the property increases in value during the contract period and the buyer makes all the payments and has good credit, the buyer should have an easier time borrowing the remaining amount to cover the balloon payment. When the buyer makes the balloon payment, the seller gives the buyer a deed, and full ownership of the property is transferred.

Seller's Options If Buyer Defaults

If the buyer does not make the contract payments, or fails to pay taxes or insurance, the seller has several options:

Strict Foreclosure

Foreclose on the land contract and take the property back through a court process. Unlike mortgage foreclosures, the seller does not need to wait until four payments are missed to start a foreclosure, and there is no three or six month “redemption” period set by law to allow the buyer to work things out or relocate. The seller must notify the buyer that they are in default and give them a deadline to pay before they start a foreclosure, but the notice can be as short as fifteen days (the contract will show what is required).

If a foreclosure judgment is ordered, the Court sets the “redemption” period for the buyer to pay off the entire balance of the contract, including the balloon payment. This period can be as short as seven working days. If the buyer cannot redeem the property, the seller gets the title back and can then get a writ (court order to the sheriff) to evict the buyer, but they cannot sue the buyer for more money. The buyer cannot get back any money they paid to buy or improve the property.

Specific Performance or Foreclosure by Sale

Foreclose on the property and sue for the entire purchase price. With this option, the property is sold at a sheriff’s sale after a redemption period set by the court. If the property sells for less than what is still owed, the seller can try to collect the remaining amount through a “deficiency judgment.”

Breach of Contract

Sue the buyer for breaking the contract. This would let the buyer keep the property and still have the right to collect the rest of the purchase price from the buyer.

Quiet Title

File a "quiet title" action to take back ownership of the property. A seller generally only chooses this option if the buyer has only made a few payments before defaulting. If needed, the seller can also ask for "ejectment," which would remove the buyer from the property. In cases with business property, the seller might ask the court to appoint someone (a “receiver”) to collect any rent from the property.

Buyer's Options if they can't Pay

If the buyer is not able to get a mortgage to make the balloon payment, they may be able to get the seller to enter another contract to extend the time the buyer has to make the balloon payment, especially if the seller is willing to help the buyer out.

Sometimes a land contract can be assigned or transferred to another buyer, possibly for some payment to the original buyer (if the property is worth more than the balance due), but the seller must agree to this.

If the buyer files for Chapter 13 bankruptcy, it could allow them to catch up on missed payments (including property taxes) or to pay off the remaining debt over three to five years, so they can keep the house.

Potential Land Contract Issues

Land contracts can create legal and financial risks because they are often treated as an informal way to sell property. When parties do not include all of the legally required terms in the contract, the contract may not be enforceable or disagreements might arise.

Failure to Properly Describe the Property

- If the contract does not clearly describe the property, it may not be enforceable under Wisconsin law.
- A vague description (e.g., “the seller’s land on Main Street”) can lead to disagreements over the property line or confusion over exactly what is being sold.

Solution: Always use the legal description found on the deed or tax records.

Lack of Agreement on Interest Rates and Terms

- Many informal land contracts do not clearly state an interest rate, structure for payments, grace periods or penalty terms for late payments.
- A land contract without clear payment terms may not be enforceable under Wisconsin law.
- If an interest rate is not included, disagreements can arise if the seller later demands higher payments due to extra interest adding up.

Solution: Clearly state the interest rate, payment schedule, and penalties for late payments.

Unclear Maintenance and Repair Responsibilities

- Unlike traditional sales, where the buyer has full ownership, land contracts create a split responsibility:
  - The buyer has equitable title and lives on the property.
  - The seller holds legal title until full payment.
- If the contract does not clearly state who is responsible for repairs, property taxes, and insurance, disagreements can arise when major repairs (roof damage, plumbing issues, etc.) become necessary.

Solution: Clearly outline who is responsible for property maintenance, taxes, and insurance.

Seller’s Failure to Deliver a Deed Upon Final Payment

- A common issue is when a seller fails or refuses to transfer legal title to the buyer after final payment.
- If the contract does not specify a deadline for the seller to provide a deed after final payment, the buyer may face legal battles to get ownership.

Solution: Include a provision stating that the seller must deliver the deed within a specific time frame after final payment.

Incomplete or Unrecorded Contracts

- While Wisconsin does not require land contracts to be recorded, failing to record the contract means that the buyer’s interest is not officially recognized in public records.
- This can lead to complications if the seller tries to sell the property to someone else or if the seller dies.
  - If the seller passes away, their heirs or estate may refuse to honor the contract.
  - If the contract was not properly documented, the buyer might have to go through probate court to enforce their rights.

Solution: Buyers should record the land contract with the county Register of Deeds to protect their interest and the contract should include a clause specifying that the seller’s estate must honor the agreement.

Conclusion

Land contracts are attractive to some people because they may offer lower down payments, easier financing, and flexible terms. At the same time, there are some risks. The seller risks the buyer defaulting and having to go to court to get back the property. If the buyer defaults, they may lose the property and all of the money they paid into the contract.

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