Hear it From the Judge
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Contract for Deed: What is This Option?

Many, who either wish to buy or sell property, consider doing so directly and without financing from a bank. This type of transaction is called a contract for deed. What does this mean? How is it done? What happens if payment is not received?

The contract for deed is a form of transaction in which the seller finances some, or all, of the purchase price. The buyer does not borrow money from a bank and, as a result, there is no real estate mortgage involved. Instead, the buyer may provide a down payment to the seller and makes payments monthly to the seller until the balance of the contract is paid in full. The seller will also receive an interest payment from the buyer. Therefore, in many ways this is very similar to bank loans, especially for the buyer. However, there are other key differences involved.

The seller remains the title holder of the property until the contract is paid in full. The buyer is an equitable owner though does possess most of the usual incidents of full ownership such as full possession of the property and the obligation for payment of property taxes. Upon full payment, the seller provides the deed to the buyer. Until the purchase price is paid in full, the buyer does not have complete ownership. However, unlike the bank mortgage situation, the seller remains legal title holder for the length of the contract. What can occur if the buyer does not pay the contract as required?

A common remedy for a seller if payment is not received is to cancel the contract for deed and to receive the property back from buyer. Minnesota law allows for strict enforcement of these types of contracts. Therefore, regardless of how many payments the buyer may have made before a default in payments occur, the seller may cancel the contract and receive the property back. The advantage of this process for a seller is that cancellation of a contract for deed is typically much quicker than a foreclosure of a mortgage.

Historically, contracts for deed became popular in the 19th century when cash poor farmers could not borrow money from lending institutions. This became the best method to buy land. This type of transaction has evolved to include residential as well as commercial property and especially occurs during those times when money from lenders is not available except at high interest rates. Additionally, the seller's desire in a contract for deed may be to receive a greater return on their money than other types of investments

Though the parties may create their own agreement, just as in any contract, it is not recommended they do so. If a buyer or seller wishes to consider this type of land transaction, they should consult with an attorney just as if a traditional house purchase with mortgage was contemplated. Good luck with your contract for deed!