



Legal Update

A WRA Publication Exclusively for the Designated REALTOR®

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Land Contract Financing

A seller who is willing to finance the sale of his or her real estate typically receives installment payments over time rather than the entire purchase price outright at closing. Such a seller has a choice of two common methods of securing the unpaid balance of the purchase price: the seller may give the buyer a deed and take a note and mortgage back, or the seller and the buyer may enter into a land contract. The economic essence of the two methods is the same – a seller becomes a secured creditor for the unpaid installments, with the sold property providing the security. There are, however, important differences between the two methods of seller financing.

This *Legal Update* examines the use of land contract financing, starting with a comparison of land contract and seller mortgage financing, and the advantages and disadvantages for the parties. This discussion focuses on the remedies available under these two types of seller financing. The *Update* then looks at the status of a buyer's ownership rights under a land contract. Tips for drafting an offer to purchase for a land contract and the land contract itself will be followed by a discussion of some of the tax consequences of a land contract sale. Discussion is supplemented with WRA Legal Hotline questions and answers concerning land contracts.

REALTORS® should keep in mind that the tax information included in this *Update* is of a general nature only, and is not tax advice. Members should consult with their attorneys and accountants for specific tax advice

as it applies to particular taxpayers and their circumstances.

Choice Between Land Contract and Seller Mortgage Financing

A land contract is used where the seller finances the buyer's purchase of the property. Rather than paying the entire purchase price at closing, the buyer pays the seller in installments and receives a deed when all payments have been made. When the seller enters into a land contract with the buyer, the seller reserves title to the property as security. The security function of the land contract is limited to securing the purchase price of the land sold for the seller.

The seller may deed the land to the buyer and accept back a note and mortgage from the buyer to evidence the debt and to secure the unpaid installments. The mortgage is more versatile and may be used to secure a variety of debts in a business transaction. For example, an open end or future advance mortgage can be used to secure a running line of credit or advances which can be made from time to time for business or construction purposes. A mortgage also may be used to secure a person who has agreed to act as surety for another. A land contract cannot be used for these purposes.

Seller's Perspective

Land contract financing allows the seller to report interest income and capital gains on his or her income tax returns over the term of the land con-

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tract payments by using the installment method under the Internal Revenue Code. The seller receives a stream of income and the total money received over the term of the land contract may be a good investment if the interest rate compares favorably to market rates. On the other hand, the seller may also be able to attract a broader range of potential buyers by offering land contract financing. Use of the land contract also means that the seller does not receive all of the sales proceeds at closing so the seller must be in a position where he or she does not need the sale proceeds to immediately pay off any mortgages or liens on the property.

Enforcement of a land contract is somewhat easier than enforcement of a mortgage, but the seller assumes the risk that he or she will have to retake the property and resell it. The seller may be better off with a land contract in those cases where it becomes necessary to foreclose because of the buyer's default. A practical disadvantage to the seller under the land contract is that if during the period of the contract the seller needs money and wants to dispose of his or her interest under the contract, the seller may have to accept a bigger discount than if he or she had a mortgage to assign. However, if the buyer has only minimal downpayment money or other financial constraints, land contract financing may be the only way to put the sale together.

A deceased sister's estate and a living sister (who is the personal representative of the deceased sister) own a property. The property will be developed as a condominium complex. The developer is offering to purchase the land for \$200,000 cash at closing plus \$6,875 from the sale of each condominium unit, with the balance due in full in the 25th month following completion of the first building. How would this deal

be structured to provide security for the sellers?

The possibilities would include a land contract or a sale with a seller mortgage. A land contract would permit the sellers to release the condominium units and deed them to the developers upon receipt of a \$6,875 payment. With a mortgage, the sellers could release condominium units from the blanket mortgage upon receipt of the \$6,875 payment. The mortgage position may not be very secure, however, if the developer ends up heavily in debt. The safest position, of course, is to have the sellers paid in full at closing.

Land Contract Remedies

A seller is going to take a property back that he sold on land contract. The buyer purchased it for income property. The buyer has a balloon payment at the end of the month that he is not going to make. What are the seller's potential remedies? Since the property is not owner-occupied, is there any kind of redemption period for the owner?

The following are possible remedies that the seller may consider in conjunction with the seller's legal counsel:

Voluntary Termination

The parties to a land contract can negotiate their own remedy to end the land contract relationship. This typically will involve the buyer quitclaiming the property back to the seller. The seller first should confer with legal counsel to examine any liens that may have attached to the buyer's interest in the property – it must be determined whether the liens will survive and continue to apply to the property if the buyer deeds it back to the seller. If the buyer has significant liens, the seller may choose to foreclose in order to remove the liens from title.

If the buyer is going to voluntarily deed the property back to the seller, good faith dealings are required. The transfer back to the seller must be vol-

untary and for adequate consideration (seller forgives buyer's remaining contract obligations). The law does not permit the seller to take advantage of the buyer's economic circumstances – this must be a solution to which the buyer willingly and freely agrees because the buyer will lose the property and the payments made so far. The seller's attorney will likely prepare an affidavit stating the circumstances of the conveyance and stating that the transfer is voluntary, done in good faith, and upon the advice of the buyer's legal counsel.

Quiet Title Action

The seller may declare the land contract to be at an end and file a quiet title action to remove the land contract as a cloud on the seller's title to the property. This remedy generally is only used if the buyer's equitable interest in the property is insignificant. This action may be faster than a foreclosure or strict foreclosure action because there is no redemption period. It may be useful in circumstances where the property has been abandoned or the buyer has left town. The seller usually keeps all payments the buyer has made up to that point.

Suit for Unpaid Purchase Price

The seller can sue the buyer for the money owing and get a money judgment. The acceleration clause in the Wisconsin State Bar Form No. 11 Land Contract makes it possible for the seller to declare the entire outstanding balance to be immediately due and sue for it if the buyer defaults on just one installment payment. This remedy allows the seller to quickly obtain a money judgment against the buyer.

However, this remedy of accelerating the debt and suing for the money does not take advantage of the seller's security interest in the land. The seller is proceeding like any unsecured creditor. As a practical matter, this remedy is not used unless the buyer

Wis. Stat. § 846.30 requires that the circuit court grant to all land contract vendees a redemption period of at least seven working days from the date of a judgment of strict foreclosure.

has other unencumbered assets that are easy to reach by attachment, garnishment, or execution. Because the same remedy is available under a mortgage arrangement, this is not a reason for the seller to choose a land contract instead of a mortgage.

Specific Performance or Land Contract Foreclosure

The seller also can sue for foreclosure by sale, usually called "specific performance." This is similar to a mortgage foreclosure. Foreclosure terms are stated in the land contract. Generally, any significant breach, such as failing to make an installment payment on time or damaging the property in a way that reduces its value, can lead to foreclosure. Based upon the acceleration clause in the land contract, the seller files suit for the entire outstanding balance on the land contract. The court establishes the redemption period in the foreclosure judgment. The court has a certain amount of discretion in fixing the redemption period, which may be as short as two months. If the buyer does not pay the balance, the sheriff sells the property at public sale. If the property does not bring in as much as the buyer owes, there may be a deficiency judgment against the buyer for the unpaid balance.

Costs of the land contract foreclosure action will probably equal those of a mortgage foreclosure, but the time required will usually be shorter than for mortgage foreclosure.

Strict Foreclosure

It may be more likely that a land con-

tract seller will ask for a strict foreclosure, something he or she cannot do if a mortgage is used. The seller who chooses this remedy has elected to rescind the contract, so he or she cannot get a deficiency judgment for the unpaid balance due on the contract. The seller gets his or her property back and keeps payments already made. There is no sheriff's sale. Costs may be less than those for the foreclosure of a mortgage, and the time required to complete the strict foreclosure is usually less than the time required by law for mortgage foreclosure.

Wis. Stat. § 846.30 requires that the circuit court grant to all land contract vendees a redemption period of at least seven working days from the date of a judgment of strict foreclosure. In addition, no strict foreclosure is final until the court enters an order, separate from the judgment and after the redemption period has expired, which confirms that the buyer has not redeemed. Within the redemption period fixed by the judge, the buyer must pay the entire balance to save his or her equity or lose all of his or her interest in the property.

The owner sold the property about six years ago on a land contract. The buyers are now behind on their payments, and they have vacated the property and moved to California. Before they left, the land contract buyers signed a listing agreement with a broker to sell their interest in the property. They have not made any more payments. The owner agreed to give them their downpayment back if they would quitclaim the property to the owner. The buyers agreed and sent a quitclaim deed back. Since then, the owner has received an offer to purchase the property that the owner would like to accept. Can the owner accept the offer or must he disclose this to the buyers who quitclaimed the property back?

The parties may agree to a voluntary termination of the land contract. The

parties must act in good faith in terminating the transaction. The broker and owner may consider working with legal counsel to review and document the transaction.

Mortgage Remedies

By way of contrast, the seller with a mortgage may sue for a money judgment, just as with a land contract. Practically all mortgages permit acceleration of the debt upon default by the buyer.

Foreclosure by sale under Chapter 846 of the Wisconsin Statutes is the required remedy on a defaulted mortgage. Unlike a land contract redemption period, the period within which the buyer can pay the mortgage debt is fixed by the Legislature, not the judge. For farms and owner-occupied residences, it is at least one year from entry of judgment, unless the mortgage holder waives any deficiency judgment, in which case the period is reduced from one year to six months. For commercial property, the redemption period is six months but may be reduced to three months if the mortgage holder waives any deficiency judgment. When a mortgage holder waives the deficiency judgment, he or she is taking the chance that the sale of the property will net enough money to pay off the mortgage debt. If it does not, the mortgage holder cannot obtain a judgment against the buyer for the remaining amount due (the deficiency).

Buyer's Perspective

For the buyer, the land contract may be the only financing method available depending upon economic conditions, the type of property, or the buyer's creditworthiness. The land contract may permit a small down payment and a low interest rate. Often, a land contract will have a short term and a lump sum (balloon) payment of the balance once the buyer's equity has built up to a point where the buyer can obtain conventional mortgage financing. The buyer

may ask to have a clause inserted in the land contract providing that the property will be deeded to buyer, who will give a mortgage back, once installments have been paid totaling a certain percentage of the purchase price. The flexibility of a land contract allows the parties to structure payments in a manner to accommodate the interests of each party, permitting varying payment amounts or interest-only payments. The buyer can also avoid closing costs such as loan fees, service charges, and mortgage insurance. A land contract may be particularly attractive to a buyer who is purchasing vacant land for future use.

The primary disadvantage to the buyer of a land contract is the risk of losing the property and all payments made up to that point if the buyer defaults. The redemption periods in land contract foreclosures and strict foreclosures may be relatively short, affording the buyer little opportunity to save his or her investment.

Most buyers seeking land contract financing, however, typically have little choice if they can make only a minimal down payment. Where the buyer has a larger amount to pay down, he or she has bargaining power and can push for a deed and mortgage arrangement with the seller or pay the seller in full by getting a mortgage loan from a financial institution.

From the buyer's perspective, the deed-and-mortgage-back arrangement seems best. There is not only the legislatively-assured "redemption" period in case he or she gets into financial difficulties and foreclosure is necessary, but there is also what one might call the psychology of the real estate market. If the buyer wants to sell, the fact that he or she has "legal title" under his or her deed is psychologically important, even though the real estate is heavily mortgaged. The buyer seems better off than if he or she owns a "mere"

land contract buyer's "equity." And, strangely, this attitude persists although the person with the land contract equity may actually have paid more of the purchase price than the person with a mortgage.

Transfer of Legal, Equitable and Record Title in Land Contract Transactions

Although we distinguish between the offer to purchase and the land contract, both contracts have the same basic legal effect in law. In general, at the instant a binding contract comes into existence, the seller is bound to convey the described land to the buyer at a time in the future, and the buyer is bound to make payments. If the buyer makes the payments according to the terms of the contract, the buyer is entitled to a deed conveying marketable title.

If the seller refuses to deliver the deed, the buyer can sue and get "specific performance." That is, the buyer can compel the seller to do what the seller promised, namely, to deliver the deed. Because this extraordinary remedy of specific performance is available to the buyer, Wisconsin and other state courts generalize this result and say that the buyer becomes "equitable owner" from the moment the offer to purchase or land contract is binding and any conditions or contingencies are satisfied. From the instant that the offer or land contract becomes binding, the buyer has an interest in the real estate, even though the contract gives no indication that this is to occur. If the buyer/equitable owner dies before the contract is performed, his or her interest is treated as real estate (not personal property) in the buyer's estate. "Equitable ownership" derives its name because the remedy of specific performance originated in the Chancery Court of England, which developed a branch of the law called "equity."

Mueller v. Novelty Dye Works, 273

Wis. 501, 78 N.W.2d 881 (1956), is the leading case in Wisconsin regarding equitable conversion in land contracts. The buyer under a land contract has equitable ownership of the property while the seller retains legal title as collateral for the balance due on the land contract. As a result of the equitable conversion, judgments against the seller do not attach to the property after the execution of the contract. Thus the purchaser is protected from the seller's creditors and any involuntary liens that might otherwise attach to the seller's property.

This protection is enhanced if the buyer records the land contract. By giving recorded notice, the buyer also is protected from any voluntary seller transaction or liens. At the same time, equitable conversion permits liens against the buyer to attach to the property, a point which must be remembered by a seller considering a voluntary deed back from the buyer in the case of buyer default.

Legal Hotline Questions and Answers - Equitable Conversion

If a buyer purchases a property on a land contract, may the buyer market the property and resell it before the land contract is satisfied?

As long as the buyer has equitable title to the property, the buyer may market and re-sell the property prior to obtaining legal title to the property. For purposes of a land contract, the buyer generally obtains equitable title to the property upon entering into the land contract and then obtains legal title to the property upon paying off the balance of the land contract.

In a condominium project where the condominium documents specify that there are to be no rentals, may a seller sell under a land contract?

Under a land contract, the buyer owns an equitable interest in the property and the seller retains a security interest in the land known as legal

title. This form of ownership is different than a tenancy created by rental of the property and therefore is not prohibited by a restriction against rentals.

Drafting an Offer to Purchase Calling for a Land Contract

In the typical Wisconsin residential land contract transaction, the owner of the property first enters into an offer to purchase with the buyer that calls for land contract financing. Drafting these offers may at times be challenging because the offer generally needs to establish all of the terms and conditions that will appear in the land contract. In fact, some parties and licensees prefer to fill out a land contract form (except for signatures) and attach it to the offer to make sure that all terms and conditions have been agreed upon in advance. Guidance is provided in some of the DRL-approved offer to purchase forms.

The WB-12 Farm Offer to Purchase, the WB-15 Commercial Offer to Purchase and the WB-16 Offer to Purchase – Business With Real Estate forms all contain substantially the same provision concerning land contract financing:

LAND CONTRACT: If this Offer provides for a land contract both Parties agree to execute a State Bar of Wisconsin Form 11 Land Contract, the terms of which are incorporated into this Offer by reference.

Prior to execution of the land contract Seller shall provide the same evidence of merchantable title as required above and written proof, at or before execution, that the total underlying indebtedness, if any, is not in excess of the proposed balance of the land contract, that the payments on the land contract are sufficient to meet all of the obligations of Seller on the underlying indebtedness, and

For purposes of a land contract, the buyer generally obtains equitable title to the property upon entering into the land contract and then obtains legal title to the property upon paying off the balance of the land contract.

that all creditors whose consent is required have consented to the land contract sale. Seller may terminate this Offer if creditor approval cannot be obtained. Seller may terminate this Offer if Buyer does not provide a written credit report which indicates that Buyer is credit worthy based upon reasonable underwriting standards within 15 days of acceptance. Buyer shall pay all costs of obtaining creditor approval and the credit report. Seller shall be responsible for preparation and the expense of preparation of all closing documentation, including the land contract.

This provision, together with the financing contingency provisions, is fairly thorough in covering most of the important considerations involved with land contract financing in a farm, commercial or business transaction. In offers without preprinted land contract provisions, many of these points will have to be specifically and separately addressed. There also may be other information, in addition to that included in the preprinted offer form, which will need to be addressed to enable the parties to reach a complete agreement on the financing component of a land contract transaction.

The key when drafting the offer to purchase for a land contract transaction is to have the parties agree on all of the terms and conditions that will be needed to complete the land contract document at closing. Some of

the basic points that need to be covered include:

1. Purchase price, downpayment, and land contract balance;
2. Interest rate, term, and amortization schedule;
3. Schedule and amounts of installment payments;
4. Maturity date;
5. Under what conditions, if any, prepayment will be allowed;
6. Any tax and insurance escrow;
7. Default grace period provisions;
8. Buyer's credit/financial status;
9. Status and disposition of any underlying mortgage;
10. Purchase price modifications;
11. Interest rate adjustments on the underlying mortgage;
12. Buyer's rights upon seller default on mortgage; and
13. Document preparation responsibilities and costs.

One approach to drafting an offer for a land contract is to complete a Form 11 Land Contract (except for signatures) and use it as an addendum to the offer.

The terms of payment are arguably the most important part of the land contract. By varying interest rate, term, installment payments, and the amortization, the installment payments can pay off all of the balance (like a mortgage); pay off only part of the balance, leaving a balloon payment due at the end of the land contract term; call for interest only payments; vary the amounts and or timing of payments from year to year, etc. In other words, there is a great deal of flexibility in setting the payment terms.

Another critical point to address is any underlying mortgage on the property. If the mortgage will remain on the property, the mortgagor usually will have to consent to the seller's a land contract sale – failure to obtain this consent may lead to acceleration of the mortgage with the entire balance outstanding becoming immedi-

ately due and payable. The underlying mortgage may also have an adjustable interest rate that may suggest to the parties that corresponding changes periodically may need to be made to the land contract. It is also important for the buyer to be able somehow to monitor the activity on the underlying mortgage, particularly if the seller is missing payments or is otherwise in default. The buyer may want to have the ability to make his or her payments directly to the mortgagee in order to help avoid foreclosure or other drastic remedies that would jeopardize the buyer's interest.

Land contract terms and conditions may be addressed in the Additional Provisions sections of the offer forms or in addenda. Different examples of the provisions that may be used can be found in the WRA Land Contract Rider form, in *Wisconsin Real Estate Clauses – Contingencies and Other Standard Provisions* book (Minter & Staff, 2000), in the *Real Estate Transaction Guide* (REALTORS® Association of South Central Wisconsin, 1996), and in the samples set forth in the Addendum to this *Legal Update*.

Legal Hotline Questions and Answers – Drafting the Offer

Re: Agent who did not provide the land contract seller with a copy of the buyer's credit report.

A licensee who has possession of a

credit report showing “bad” credit must provide the credit information to the seller. This is particularly important where the seller is providing land contract financing.

Re: Closing on a property with a land contract. There is a due on sale clause in the seller's mortgage. Both parties are willing to close without obtaining the lender's consent. What are the ramifications?

Unless the consent for the sale is obtained, the lender may accelerate the loan when they learn of the land contract and foreclose upon the seller. It would be considered incompetent practice to fail to record the land contract in order to prevent the lender learning of the sale (as well as jeopardizing the buyer's title).

A seller has been approached to sell property under land contract. The seller has three mortgages, all with the same lender. The land contract calls for a one-year balloon land contract with a substantial amount down, but the bank said they have due on sale clauses within the notes so this cannot be done. The seller has elected to try to go around the due on sale clauses. If the seller wants to do this, what liability would the listing agent have?

In this situation, the agent may wish to write a letter or memo to the buyer and the seller, advising them that the mortgage loan notes contain due on sale clauses that have not been released by the lender. In the event the lender may choose to invoke the due on sale clause, all amounts on all loans would become immediately due and payable. The bank could foreclose on the property, leaving both parties in serious difficulty. Such a letter may conclude with the suggestion that each party confer with his or her own attorney for advice.

A prospective buyer is unable to obtain conventional financing through a lender. However, the seller has agreed to do a land contract for one year. The buyer is able to put down \$5,000, but

this is not enough to pay the listing broker's commission. The seller said that he would pay the commission after the terms of the land contract are fulfilled and the buyer obtains conventional financing. How to proceed?

The listing contract states that the "commission is due and payable in full at the earlier of closing or the date set for closing, unless otherwise agreed in writing." If the listing broker agrees to the seller's proposal, this should be put in writing in an amendment to the listing contract. Ideally, the seller would also give the broker a promissory note for the commission due, payable in one year.

A commercial property is listed and the sale price now has been changed. The broker is concerned about what the effect is on the land contract that was spelled out in the existing offer.

The seller and the buyer should agree in writing in an amendment to the offer upon whether the reduction comes off the land contract or cash down payment.

The seller's parcel of land has a number of black walnut trees. The buyer would like to purchase the property and get the deed to the land for \$50,000, and then purchase the timber rights to the trees on some kind of installment basis, such as a land contract, where the buyer would pay a sum down and then monthly installments with a balloon at the end of two years. How would something like this be structured?

The parties should confer with their attorneys in this regard. The manner in which the deal is structured may depend upon whether the trees will be viewed as a partial interest in the real estate or treated as timber to be cut and sold. In the former case, the trees would be excluded from the deed and placed upon a land contract. In the latter case, the trees could be deeded with the property and the seller could take back a promissory note, security agreement and a UCC financing statement filed

with respect to the timber. Thought should be given to how this may play out should the buyer fail on his installment obligation.

Drafting the Land Contract

Where the deal involves a transfer by land contract and there are technical issues involved, a real estate broker would be well advised to obtain legal advice, or encourage the parties to obtain legal advice in preparing the offer to purchase as well as the land contract. A real estate salesperson is not authorized to draft land contracts and should obtain the services of an attorney.

A broker may fill in the State Bar of Wisconsin Form 11 Land Contract because it has been approved by the Department of Regulation and Licensing for use by licensees. It should be noted that there is also a State Bar of Wisconsin Form 18 Condominium Land Contract designed for use when the property sold on land contract is a condominium unit; and a Form 10 Consumer Land Contract for use when the amount financed is not more than \$25,000 and the transaction falls under the Wisconsin Consumer Act.

If the offer to purchase has been carefully prepared, it will furnish all of the information needed to complete the land contract. A few basic tips for filling in a land contract include:

- (1) The form calls the seller the "Vendor," and the buyer the "Purchaser."
- (2) Check the deed under which the seller got his or her title to see if it names him or her alone or if there is also a spouse named. If both spouses are named, the deed must name whichever spouse or spouses has management and control under the Wisconsin Marital Property Act.

(3) If the seller's deed names the seller alone, the seller who owns property in his or her own name as individual property may not want his or her spouse to get a shared right to the money which the buyer will owe under the contract. Yet, the spouse must sign the land contract if the property is a homestead. The Wisconsin Supreme Court suggests that the seller's spouse should not be named in the body of the contract but should merely sign at the end. Another option would be to insert the name of the seller's spouse in the first line of the contract but say in parentheses after the name ("joined as a party to this contract only for the purpose of releasing homestead rights"). The important thing is to be sure that the seller's spouse signs the contract for the sale of a homestead.

- (4) Land contracts are usually executed with the necessary formalities and are recorded in the Office of the Register of Deeds for the county where the land is located.
- (5) If the land contract is being recorded, the Wisconsin Real Estate Transfer Return form must be completed for submission at the time the land contract is recorded; the transfer fee is payable at that

Where the deal involves a transfer by land contract and there are technical issues involved, a real estate broker would be well advised to obtain legal advice, or encourage the parties to obtain legal advice in preparing the offer to purchase as well as the land contract. A real estate salesperson is not authorized to draft land contracts and should obtain the services of an attorney.

time based upon the full sale price. If this is done, no transfer fee need be paid when the land contract has been paid off and the deed is recorded. The transfer fee is legally the responsibility of the seller. However, in practice, the buyer or his or her attorney records the land contract and pays the transfer fee. Accordingly, the buyer may receive a credit for the amount of the transfer fee on the closing statement. Alternatively, the title company (or whoever closes the transaction) may issue a check payable to the Register of Deeds in the amount of the transfer and recording fees and give it to whoever is recording the land contract.

Legal Hotline Questions and Answers – Drafting the Land Contract

Can a licensee with a broker's license draft land contracts to be recorded?

Yes, § RL 16.03(1)(a) provides: (1) In addition to forms prepared and approved by the department pursuant to s. 452.05(1)(b), Stats., the department approves the following for use by brokers:

- (a) Forms prepared and approved by the state bar of Wisconsin for deeds, mortgages, mortgage notes, truth-in-lending disclosures, land contracts, release of mortgage, satisfaction of mortgage, assignment of mortgage and assignment of land contract.

An accepted offer to purchase has a provision for a land contract for a small part of the purchase price. The buyer subsequently decided to place the title in both his name and his wife's name. Can the buyer add his wife to the deed but leave the land contract in only his name? If his wife's name is added to the land contract, will an amendment to the offer to purchase be required?

All owners need to sign the land contract. Therefore, the buyer's wife

should be added by amendment to the offer to purchase.

In a land contract transaction, the selling agent is loaning money to the buyer to use in making the down payment. Must that be disclosed to the seller?

The selling agent may offer the loan to the buyer as a buyer incentive. Incentives may be offered to sellers and/or buyers to induce them to sell or purchase real estate. Seller or buyer incentives can be offered in any amount as cash or as an item of personal property such as a home warranty plan, a savings bond, a gift certificate, an appliance or some other item. Such party incentives must be clearly documented in advance - prior to closing. The parties must have a clear and thorough understanding of the terms and conditions of the incentives. This advance documentation of the party incentive is necessary to establish that the incentive is not a fee-splitting arrangement with a non-licensee, which would be illegal under Wisconsin law.

Such an incentive would not have to be disclosed to the seller or listing broker. It is not a sign of disloyalty to provide a loan that helps facilitate the transaction, so long as the loan does not distort disclosures made regarding the buyer's credit worthiness.

An agent has a signed residential listing contract (in an area for a proposed strip mall). He has just discovered that the individual who signed the listing has an unrecorded land contract for this property from her father. The father has written a letter (to no one in particular) stating that his daughter has full authority to sell the property. The father feels that his letter is proper authorization and does not want to have to sign the listing contract. Is this listing contract legally binding? Must the agent have the father sign?

It is not necessary to record a land contract to obtain the equitable title necessary to list and sell real estate. On the other hand, until the title

company and legal counsel have reviewed the land contract, it is not certain that the document was a valid conveyance under Chapter 706.

A buyer and seller have entered into a land contract or a lease/option and it looks like it will not come to fruition. If both parties agree to cancel, is a CAMR capable of terminating all responsibilities of both parties?

To terminate a land contract, the vendee generally quitclaims to the vendor. The WB-45 Cancellation Agreement and Mutual Release may be modified for use with a lease/option if the parties direct the licensee to prepare a termination document.

An agent received a listing for a home purchased on land contract. The land contract was never recorded. Does this seller have any interest in the property? Does this situation make it simple for the land contract holder to foreclose if the terms of the contract are not met? Was the buyer done a disservice because a title search was not conducted?

The seller's foreclosure rights will not change because the land contract is not recorded. What will change is the buyer's exposure to intervening encumbrances on title. Because of this concern and the possibility that the land contract is not being recorded to avoid compliance with a due on sale clause in the seller's underlying mortgage, licensees involved in efforts to encourage no recording of land contracts may be found to be acting incompetently or unethically.

Transfer of the Buyer's Interest Under a Land Contract

The buyer's interest under a land contract is real property. The buyer has an equitable interest in the real estate, often referred to as "equitable ownership." The buyer's interest, however, is junior to and subject to the overriding security interest of the seller.

If a creditor gets a judgment against a land contract seller, the creditor cannot place a lien against the land contract property because the seller does not have a real property interest.

The buyer may want to sell his or her interest to a third person or mortgage his or her interest to secure a loan. First, the buyer must check the terms and conditions of the land contract to see if it contains a “non-assignment clause” forbidding the buyer to convey or transfer the buyer’s interest in the land contract without the seller’s consent. If so, written consent from the seller will be needed for a sale of the buyer’s interest and may be necessary for a mortgage or other security interest transfer as well. These non-assignment clauses are intended to protect the seller from having an unacceptable person move in and take over the property and the buyer’s payment obligations.

For instance, the non-assignment clause in the State Bar of Wisconsin Form 11 Land Contract (1982) states that “Purchaser shall not transfer, sell or convey any legal or equitable interest in the Property (by assignment of any of Purchaser’s rights under this Contract or by option, long-term lease or in any other way) without the prior written consent of Vendor unless either the outstanding balance payable under this Contract is first paid in full or the interest conveyed is a pledge or assignment of Purchaser’s interest under this Contract solely as security for an indebtedness of Purchaser. In the event of any such transfer, sale or conveyance without Vendor’s written consent, the entire outstanding balance payable under this Contract shall become immediately due and payable in full, at Vendor’s option without notice.” Under this provision, the buyer would need the sell-

er’s consent to sell his or her interest, but would not need permission if the buyer’s interest was used as security for a loan.

If consent has been obtained, or if there is no non-assignment clause in the contract, then the buyer can sell or mortgage his or her land contract interest. A formal assignment of the buyer’s interest (State Bar Form 15, Assignment of Land Contract) or possibly a deed or mortgage may be used. The Assignment of Land Contract form may be used for either a sale or security purposes. Whatever conveyance document is used, it should be executed with the formalities required for recording and should recite that it is subject to the seller’s rights under the land contract. Once the transfer is completed, the assignee steps into the shoes of the buyer. The assignee may or may not be personally liable to make the remaining payments under the contract, depending upon the agreement of the parties.

Legal Hotline Questions and Answers — Transfer of Land Contract Buyer’s Interest

Can a land contract buyer assign his land contract to someone else?

The buyer should review the language used in the land contract — assignment likely will require the vendor’s prior written consent. A buyer is well advised to consult with legal counsel for advice and the drafting of the assignment document (see State Bar of Wisconsin Form 15 Assignment of Land Contract).

Transfer of the Seller’s Interest Under a Land Contract

A seller under a land contract has an entitlement or claim for the payments that the buyer owes. The seller’s reserved legal title is security for this claim. The Wisconsin Supreme Court has held that the seller’s interest generally is personal property. So if a seller dies, for example, his or her land

contract interest will be handled as personal property in his or her estate. If a creditor gets a judgment against a land contract seller, the creditor cannot place a lien against the land contract property because the seller does not have a real property interest.

The seller’s interest is a valuable asset and the seller may wish to sell the right to receive future land contract payments or use it as security for a loan. These tasks may be accomplished by using the State Bar of Wisconsin Form 15 Assignment of Land Contract. The Assignment of Land Contract may be used for either a sale or security purposes. Once executed, it should then be recorded and the buyer should be notified to make future land contract payments to the seller’s assignee instead of the seller.

Usury

One concern that may arise when the parties negotiate the terms and conditions of a land contract transaction is whether there are any limits on the interest rate that is used in the contract. The seller may want to know if there are any upper limits on the interest rate that may be used.

Under current Wisconsin law, there is no interest ceiling for land contracts where the amount financed is over \$25,000. Thus licensees and the parties need not be concerned about an upper limit on the interest rate that is negotiated for use in a land contract over \$25,000.

A State Bar of Wisconsin Form 10 Consumer Land Contract must be used when the amount financed does not exceed \$25,000, the seller regularly extends credit, and the loan is for personal, family, household, or agricultural purposes. According to the Wisconsin Banking Commissioner, a mortgage and note back to the seller cannot be used under these circumstances. For any consumer credit transaction entered into after October 31, 1984, there is

no maximum limit on interest rates or finance charges.

Legal Hotline Questions and Answers – Usury

A subdivision is for sale (vacant lots for home building). The developer would like to offer to finance the lots with 10% down at 0% interest rate. It would be 100% principal payments amortized for a 5-year period. Is this acceptable? If so, what disclosures does the listing broker need to make regarding financing terms and conditions?

Regulation Z, also known as the Truth-in-Lending regulations, contains disclosure rules that apply to REALTORS® who advertise real estate financing terms. These rules state that if an ad contains any of the “triggering terms”, then the ad must also contain (1) the dollar amount or percentage of the down payment; (2) all of the repayment terms including the number and amount of the payments and the period of repayment; and (3) the “annual percentage rate,” using that term or the abbreviation “APR.” The “triggering terms” generally include the dollar amount or percentage of the down payment, the number of payments, the period of repayment, the amount of any payment, or amount of any finance charge.

There is, however, a little-known exception to the general rule. The use of the down payment by itself in an ad does not trigger the Reg. Z disclosure requirements unless the transaction is a “credit sale.” A “credit sale” will be present in residential real estate transactions only when the seller is offering seller financing and the seller has provided seller financing in residential transactions more than five times in the current or preceding calendar year.

Mortgages from banks and other lenders involve loans and not credit sales. Thus an ad by a real estate agent containing only the down payment percentage for a mortgage

available through an area lender will not be subject to the Reg. Z disclosure requirements.

This down payment exception is limited to advertisements which state only the down payment amount or percentage for financing other than credit sales. If such a financing ad also includes any other triggering term, for example, the monthly payment amount, the additional disclosures required under Reg. Z would be triggered.

There is no minimum interest rate on seller financing (such as a land contract), but, for tax purposes, if a rate below certain calculated levels is charged, the IRS will “impute” interest at a higher level in many transactions. For land contract (and other seller financed) sales, imputation of interest means that the seller will recognize income at the imputed level and the buyer may deduct interest (if deductible) at that level, although for purposes of calculating payments and the balance due, the agreed upon terms and amounts control.

The key rate is the Applicable Federal Rate (AFR), essentially what the government is paying to borrow funds. The AFR has components that vary according to maturity (under 3 years, 3-9 years, and over 9 years) and compounding/payment periods (monthly, quarterly, semi-annually). Land contract terms must be matched to these variables to get the correct rate.

Unstated (Imputed) Interest

While the seller may be concerned with any interest rate upper limits, there is also reason for concern with minimum interest rates. An installment sale contract such as a land contract generally provides that each payment on the sale will include interest, and the interest provided in the contract is called “stated interest.” If interest is not charged or the interest rate is too low, federal law may set a minimum amount of interest that a

seller is considered to have received. This is “imputed” or “unstated” interest and it is taxable.

An installment sale contract does not provide for adequate stated interest if the stated interest rate is lower than the test rate. As a result, the parties may have to use the applicable federal rate (AFR) to figure the unstated interest on the sale.

Applicable Federal Rates (AFRs)

The interest test rate for a contract is the 3-month applicable federal rate. The 3-month rate is the lower of the following applicable federal rates (AFRs).

1. The lowest AFR (based on the appropriate compounding period) in effect during the 3-month period ending with the first month in which there is a binding written contract that substantially provides the terms under which the sale or exchange is ultimately completed.
2. The lowest AFR (based on the appropriate compounding period) in effect during the 3-month period ending with the month in which the sale or exchange occurs.

The AFR depends on the month the binding contract for the sale or exchange of the property is made and the term of the contract.

1. For a term of 3 years or less, the AFR is the federal short-term rate.
2. For a term of over 3 years, but not over 9 years, the AFR is the federal mid-term rate.
3. For a term of over 9 years, the AFR is the federal long-term rate.

The applicable federal rates are published monthly in the Internal Revenue Bulletin (IRB). This information may be obtained by contacting an IRS office. IRBs are also available on the IRS Web site at www.irs.gov.

For sales or exchanges of property involving seller financing of \$3,960,100 or less, the interest test rate cannot be more than 9%, compounded semiannually. For seller financing over \$3,960,100, the interest test rate is 100% of the AFR. In the case of certain land transfers between related persons, the test rate is no more than 6 percent, compounded semiannually.

Rules for the Seller

If imputed interest applies to a land contract, the seller must treat part of the installment sale price as interest, even though interest is not called for in the land contract. The seller must reduce the stated selling price of the property and increase his or her interest income by this interest.

Rules for the Buyer

Any part of the stated selling price of a land contract that must be treated by the buyer as interest reduces the buyer's basis in the property and increases the buyer's interest expense. These rules may not apply to personal-use property (for example, property not used in a trade or business).

Obviously, these rules are very complicated and confusing, and this material should not be considered as tax advice. It is intended only to give REALTORS® a general sense of the rules and legal restrictions that may apply. Any member or party with a concern about minimal or imputed interest should consult with his or her attorney or accountant to determine the applicable AFR and whether it applies to the particular transaction.

Legal Hotline Questions and Answers — Imputed Interest

A licensee has an agreement between the buyer and the seller that the seller is going to let the buyer move in before closing. How does the seller secure protection from liability?

The licensee may wish to use the WRA Addendum O. If the parties

choose to do a land contract instead, the parties should consider the effects of imputed interest.

There is no minimum interest rate on seller financing (such as a land contract), but for tax purposes, if a rate below certain calculated levels is charged, the IRS will “impute” interest at a higher level. For land contract (and other seller financed) sales, imputation of interest means that the seller will recognize income at the imputed level and the buyer may deduct interest (if deductible) at that level, although for purposes of calculating payments and the balance due, the agreed-upon interest rate controls.

The key rate is the Applicable Federal Rate (AFR), essentially what the government is paying to borrow funds. The AFR has components that vary according to maturity (under 3 years, 3-9 years, and over 9 years) and compounding/payment periods (monthly, quarterly, semi-annually). The rates are published monthly in the Internal Revenue Bulletin. You can get this information by contacting the IRS at 1-800-829-2040 or online at www.irs.org. Land contract terms must be matched to these variables to obtain the correct rate.

Tax Treatment of Installment Sales

An installment sale is a sale of property where the seller receives at least one payment after the tax year of the sale. If the seller finances the sale of the property, instead of having the buyer get a loan or mortgage from a third party, the seller probably has an installment sale. If the seller sells property in an installment sale, the seller reports part of his or her gain when the seller receives each installment payment. The seller cannot use the installment method to report a loss.

The seller is required to report the sale on the installment method unless the seller “elects out” in the year of sale. If the seller elects out, the seller

reports all of the gain as income in the year of the sale. The seller cannot use the installment method to report gain from the sale of inventory or stocks and securities traded on an established securities market. Under the installment method, the seller includes in income each year only part of the gain received plus the interest.

Although it had been true that sellers who used an accrual method of accounting could not use the installment method to report gain on certain property sold or disposed of after December 16, 1999, Congress has repealed the federal legislation creating this exception. On December 28, 2000, President Clinton signed the Installment Tax Correction Act, H.R. 3594, which became Public Law No. 106-573. This repeal is effective retroactive to the original legislation eliminating the installment reporting method for accrual basis taxpayers. These taxpayers will likely be permitted to file amended tax returns for 1999, the year for which the installment reporting elimination was effective. For more information about this and other important tax changes, see IRS Publication 553, *Highlights of 2000 Tax Changes*. You can get this information by contacting the IRS at 1-800-829-2040 or online at www.irs.org.

Installment Tax Reporting

If a sale qualifies as an installment sale, the gain must be reported under the installment method unless the seller elects out of using the installment method, or the seller uses an accrual method of accounting. The buyer's obligation to make future payments to the seller can be in the form of a note, land contract, mortgage, or other evidence of the buyer's debt to the seller. The installment sale rules generally apply regardless of the form of the installment obligation. Sales of real property held for sale to customers in the ordinary course of a trade or business, however, cannot be

reported under the installment method. Installment reporting does apply to an installment sale of property used or produced in farming.

Figuring Installment Income

Each payment on an installment sale usually consists of the following three parts.

1. Interest income. The seller must report interest as ordinary income.
2. Tax-free return of the seller's adjusted basis in the property. The seller does not include in income the part that is the return of the basis in the property.
3. Gain on the sale.

Figuring Gain Part of Payment

To figure what part of any payment is gain, the seller multiplies the payment (less interest) by the gross profit percentage. The following illustrates the seller's calculation of the gross profit percentage:

1) Selling price	—
2) Installment sale basis:	
Adjusted basis of property	—
Selling expenses	—
Depreciation recapture	—
3) Gross profit	—
(line 1 – line 2)	
4) Contract price	—
5) Gross profit %	—
(line 3 ÷ line 4)	

1. Selling price.

The selling price is the total cost of the property to the buyer. It includes any money and the fair market value of any property the seller receives and any debt the buyer pays, assumes, or takes, to which the property is subject. The debt could be a note, mortgage, or any other liability, such as a lien, accrued interest, or taxes the seller owes on the property. If the buyer pays any of the seller's selling

expenses, that amount is also included in the selling price. The selling price does not include interest, whether stated or unstated.

2. Installment sale basis.

The installment sale basis is comprised of:

1. Adjusted basis. The basis of purchased property is generally its cost. Some events, such as adding rooms or making permanent improvements, increase basis. Others, such as deductible casualty losses or depreciation previously allowed or allowable, decrease basis. The result is adjusted basis.
2. Selling expenses. Selling expenses are any expenses that relate to the sale of the property. They include commissions, attorney fees, and any other expenses paid on the sale. Selling expenses are added to the basis of the sold property.
3. Depreciation recapture. If the seller took depreciation deductions on the asset, the seller may need to recapture part of the gain on the sale as ordinary income.

3. Gross profit.

Gross profit is the total gain the seller reports on the installment method. To figure gross profit, the installment sale basis is subtracted from the selling price. If the property sold is a home, the seller may subtract from the gross profit any gain the seller can exclude.

4. Contract price.

The contract price is the total of all principal payments the seller is to receive on the installment sale. If part of the selling price is paid in cash and the seller holds a mortgage payable from the buyer to the seller for the remainder, then the contract price equals the selling price.

5. Gross profit percentage.

A certain percentage of each payment (after subtracting interest) is reported

as gain from the sale. It is called the "gross profit percentage" and is figured by dividing your gross profit from the sale by the contract price. The gross profit percentage generally remains the same for each payment received.

Example

Joe sold land with a basis of \$40,000 for \$100,000. Joe's gross profit was \$60,000. Joe received a \$20,000 down payment and the buyer's note for \$80,000. The note provides for four annual payments of \$20,000 each, plus 12% interest. Joe's gross profit percentage is 60% ($\$60,000 \div \$100,000$). Joe will report a gain of \$12,000 (60% of \$20,000) for each payment received.

Forms for Reporting Installment Sales

Form 6252

Form 6252 is used to report an installment sale in the year it takes place and to report payments received in later years. It should be attached to the seller's tax return for each year. Form 6252 helps a seller determine the gross profit, contract price, gross profit percentage, and how much of each payment received during the tax year to include in income.

Schedule D (Form 1040)

The gain figured on Form 6252 (line 26) for personal-use property (capital assets) is entered on Schedule D (Form 1040), Capital Gains and Losses. If the gain from the installment sale qualifies for long-term capital gain treatment in the year of sale, it will continue to qualify in later tax years. The gain is long-term if the seller owned the property for more than one year when he or she sold it.

Form 4797

Use Form 4797 to report an installment sale of property used in a business or that earns rent or royalty income. All or part of any gain from such a sale may be ordinary gain from

depreciation recapture.

Seller Financing of Home Sale

Special reporting procedures apply if the seller finances the sale of his or her home to an individual. When the seller reports interest income received from a buyer who uses the property as a personal residence, the buyer's name, address, and social security number (SSN) should be written on line 1 of Schedule B (Form 1040) or Schedule 1 (Form 1040A). When deducting the mortgage interest, the buyer must write the seller's name, address, and SSN on line 11 of Schedule A (Form 1040). If either person fails to include the other person's SSN, a \$50 penalty will be assessed.

Disposition of an Installment Obligation

A disposition generally includes a sale, exchange, cancellation, bequest, gift, forgiveness of debt, distribution, or transmission of an installment obligation such as a land contract. An "installment obligation" is the seller's interest in the land contract, buyer's note, or other evidence that the buyer will make future payments to the seller. If a seller is using the installment method and assigns or transfers the land contract, generally the seller will have a gain or loss to report. It is considered a gain or loss on the sale of the property for which the seller received the land contract. If the original installment sale produced ordinary income, the disposition of the land contract will result in ordinary income or loss. If the original sale resulted in a capital gain, the disposition of the land contract will result in a capital gain or loss.

Repossession

If the seller repossesses the property after making a land contract sale, the seller must figure the following amounts:

1. The seller's gain (or loss) on the repossession.

2. The seller's basis in the repossessed property.

The rules for figuring these amounts depend on the kind of property, and special rules may apply if the seller repossesses property that was his or her main home before the sale. The repossession rules apply whether or not title to the property was ever transferred to the buyer. It does not matter how the seller repossesses the property, whether he or she forecloses, or the buyer voluntarily surrenders the property to the seller. For the repossession rules to apply, the repossession must at least partially discharge (satisfy) the buyer's installment obligation to the seller.

Obviously, these rules are very complicated and confusing, and this material should not be considered tax advice. It is intended only to give REALTORS® a general sense of the rules and legal restrictions that may apply. Any member or party with questions about the income tax consequences of a land contract installment sale should consult with his or her attorney or accountant to determine the appropriate income tax strategies for the parties.

For detailed instructions on how to report an installment sale, see http://www.irs.ustreas.gov/prod/forms_pubs/pubs/p53704.htm or Publication 537, Installment Sales, which may be found at <http://ftp.fedworld.gov/pub/irs-pdf/p537.pdf>. Other forms and publications may be found at http://www.irs.gov/forms_pubs/index.html, or ordered by calling 1-800-829-3676.

Conclusion

The land contract is a flexible financing instrument that involves detailed negotiation. The parties need good legal advice to assure that the land contract reflects their agreements and that their interests are protected.

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ALTERNATE OFFER TO PURCHASE PROVISIONS FOR LAND CONTRACT FINANCING

Seller shall provide Land Contract financing to buyer, on the terms and conditions of the attached Wisconsin State Bar Form No. 11 (completed but not signed), marked as Addendum ___, and incorporated herein be reference.

ALTERNATE OFFER TO PURCHASE PROVISIONS FOR LAND CONTRACT FINANCING

This Addendum is attached to and made part of the Offer to Purchase made by buyer and dated _____, with respect to the Property at _____, Wisconsin. **Paragraphs preceded by a box are a part of this Addendum if marked, such as with an "X." They are not part of this Addendum if marked "N/A" or left blank.**

Payment of Purchase Price. Seller shall provide Land Contract financing to buyer, on the following terms and conditions. In addition to the earnest money of \$ _____, Buyer shall pay the amount of \$ _____ at closing and Buyer shall pay the balance of \$ _____ (____% of the total purchase price) on land contract, per the terms and conditions of the Wisconsin State Bar Form No. 11 Land Contract.

Interest Rate & Term. The annual rate of interest of interest shall be ____ %, the term of the land contract shall be for ____ years, and the payment of the balance shall be amortized over ____ years. Interest shall be calculated [CHECK ONE] in advance in arrears.

Installment Payments. Monthly payments of principal and interest of not less than \$ _____ shall be due on the ____ day of each and every month commencing on _____, provided that the entire outstanding balance shall be paid in full on or before ____ years from closing, on _____, the Maturity Date. Any amount may be prepaid upon principal without penalty or fee at any time.

Tax and Insurance Escrow [CHECK ONE]

- Monthly payments shall include property taxes and insurance escrow payments. Buyer shall pay to the Seller, along with the monthly payments of principal and interest, 1/12th of the net estimated property taxes and 1/12th of the annual premium for the fire and extended coverage insurance required by the land contract.
- Buyer shall not be required to pay monthly real estate tax and insurance escrow payments. Buyer shall promptly pay the real estate taxes and annual insurance premiums for the fire and extended coverage when due, and shall provide Seller with evidence of payment upon request.

Default. The default period for a default in any payment shall be ____ days, and the default period for the Purchaser's performance of any other obligations shall be ____ days. Following any payment default, the interest rate shall be ____% on the entire amount in default.

Buyer's Financial Status. Buyer authorizes Seller to obtain, at buyer's expense, a consumer credit report from a consumer credit reporting agency, within ____ days of acceptance of this Offer. Buyer shall also provide, at buyer's expense, any other financial information (for example, financial statements, tax returns, verification of employment) requested by Seller which is reasonably pertinent to Seller's determination of Buyer's creditworthiness and financial ability to meet the Buyer's obligations under the land contract. Buyer shall be provided with a copy of the credit report, and any other financial information provided by Buyer shall be treated by Seller with the highest level of confidentiality, making no copies of these

documents, and showing them only to Seller's advisors (attorney, accountant, banker, etc.). All such documents shall be returned to Buyer within ___ days of Seller's receipt, along with written notice if Seller determines that Buyer will be unable to fully comply with the obligations of the land contract, based upon reasonable underwriting standards. The Offer shall be null and void unless buyer furnishes Seller with a loan commitment to buy the Property within ___ days of Buyer's receipt of Seller's notice.

Mortgagee Consent. Seller shall provide Buyer with a copy of the written consent of Seller's mortgagee within ___ days of acceptance. The consent must specify the mortgagee's approval of the land contract financing described in this Offer. If Seller fails to provide a copy of this written consent to Buyer by the specified deadline, this Offer shall be null and void and all earnest money shall be returned to buyer.

Purchase Price Modification

If the purchase price under this Offer is modified, the land contract amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted to maintain the term and amortization set forth in this addendum.

Interest Rate Adjustments

Buyer acknowledges that the rate of interest on Seller's underlying mortgage is subject to adjustment by Seller's mortgagee. If the interest rate on Seller's underlying mortgage is increased, the interest rate on the land contract shall be increased by the same number of percentage points as the interest rate on Seller's mortgage. The interest rate on the land contract shall not exceed ___%.

Outstanding Balance

The outstanding balance on Seller's underlying mortgage shall never exceed the outstanding principal balance under the land contract.

Buyer's Rights Upon Seller Default

If Seller is in default on Seller's underlying mortgage on the Property, Buyer may cure such defaults and any amounts paid by Buyer for such purpose shall be credited against the Buyer's outstanding balance under the land contract. Seller shall obtain the mortgagee's promise to notify Buyer if the mortgagee commences any action to accelerate the secured mortgage obligation, foreclose, or enforce its rights in any other manner against Seller or the Property.

Document Preparation

Seller shall be responsible, at Seller's expense, for the preparation of all closing documentation, including the land contract.