



Land Contracts

Jason Seaver, esq, First American Title
Insurance Co., Senior Underwriting Counsel
& Caitlin Leszczynski, esq, CLTP, Legacy Title
Agency

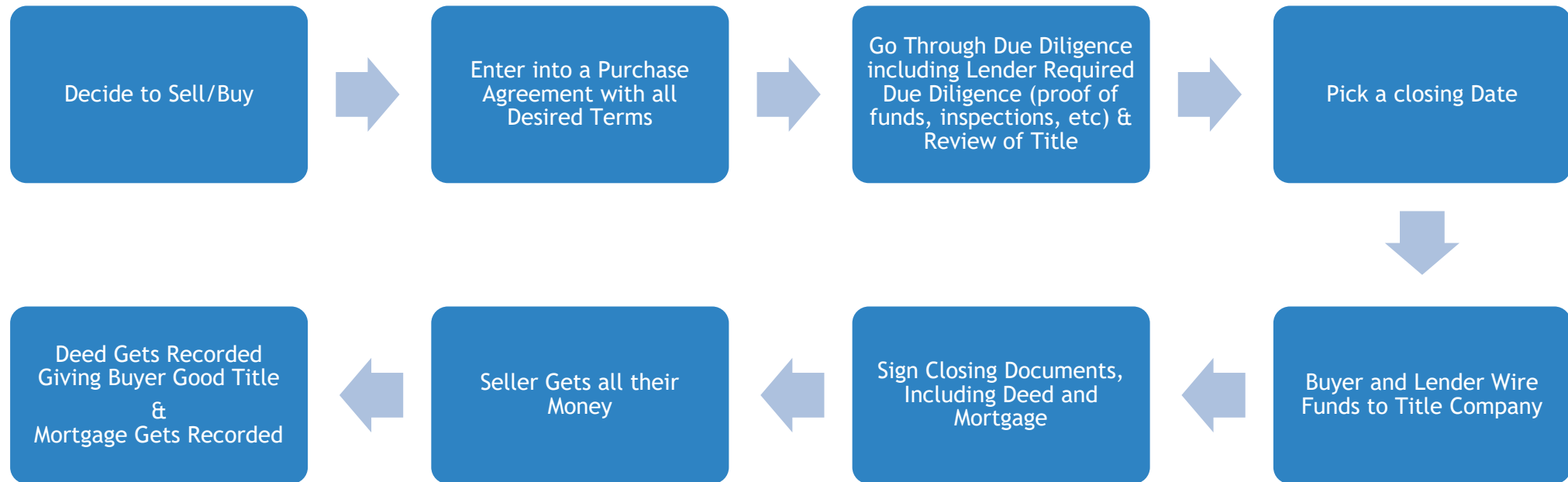
Disclaimer Slide

1. “it depends”
2. “ask your underwriter”
3. We may be attorneys - but we aren't YOUR attorney

What is a Land Contract?

- Seller Agrees to Sell the property to the Buyer
 - Buyer makes payments to the seller, and once all payments are made, THEN legal title will transfer to the buyer
 - “Seller Financing”
- Gives the Buyer “Equitable Title” (contract interest) while Seller keeps “Legal Title”
 - Until all payments are made, then the Buyer gets Legal Title (a real estate interest)
- Land Contract Terminology:
 - Vendor – Seller
 - Vendee - Buyer

Life of a Typical Sale Transaction



Life of a Land Contract Transaction



Step 1 –

Land Contract Addendum

Ongoing Payments

- Who is Paying Taxes
- Who is Paying Utilities
- Who is Paying Homeowner's Insurance

Closing Payment Terms

- How Much is the Total Purchase Price
- What is the payment period
- How Much will be put down
 - How Much money will seller walk away with
 - Does this mean Seller needs to bring cash to the table
- What are the Monthly Payments

Step 1.5 – Land Contract Commitment

- Schedule A
 - Interest being insured - **Vendee's Interest**
 - NOT FEE SIMPLE
- Schedule B1 - Requirements
 - Adjust requirements (no deed to be recorded at close, record memorandum of land contract)
- Schedule B2 - Exceptions
 - Add exceptions for terms of land contract

Step 2 – At Closing

Land Contract Closing Documents

Land Contract

- ACTUAL Agreement (like the mortgage)
- Doesn't usually get recorded
- Amortization Schedule
- Waste
- Specifically Allow Remedies (Forfeiture and Foreclosure w/ due on sale)
- Legal Document - **Best Practice is preparation by an attorney**

Memorandum of Land Contract

- Gets Recorded
- Minimal Information
- Preserves Buyer's Rights by providing Notice
- Usually prepared by Title Company

Remember:

- Still file a PTA, PRE and Request to Rescind PRE
- File a 1099s for the seller with the gross proceeds reflected. It is up to their tax professional on how capital gains/income are paid/reported by the seller

Step 3 – After Closing

1. Record Memorandum of Land Contract
2. Buyer Makes Payments to Seller (hopefully)
 - a) Someone Pays Taxes
 - b) Someone Pays Insurance
 - c) Someone keeps up with accounting to know how much is still owed
3. Buyer finishes payments to seller (fulfills land contract) and deed from seller in fulfillment of land contract gets recorded

What Extra STUFF do “We” need?

- **Land Contract Addendum**
 - Terms of the Land Contract -
 - Down payment
 - Will there be a deed in escrow
- **Land Contract**
 - Reiterates ALL the terms for the parties moving forward, and embodies Land Contract Addendum
 - This is **THE CONTRACT** - usually goes into more depth than a land contract addendum
 - **MUST** be written and Notarized (or signed before a judge) to be valid (MCL 565.351 Land contract)
- **(Amortization Schedule)**
- **Memorandum of Land Contract**
- **(Deed in Escrow Agreement - along with the Deed in Fulfillment of Land Contract)**
- **1099-s (for the full consideration)**
- **Property Transfer Affidavit (tax bills now in the name of the buyer)**
- **Principal Residence Exemption Afft. & Request to Rescind**

How does Buyer (Vendee) get Title

1. Fulfill Terms of Land Contract
 - a) Through the Natural Course of Payments, or
 - b) Payoff Early
 - A. Seller / Vendor may need to provide a payoff!
 - B. Don't forget to account for transfer taxes!
2. Buyer and Seller will need to request the release of the deed out of escrow OR have a new deed created
3. Record Deed (maybe held in escrow)
Will need to pay transfer tax on this
4. Request a Policy Endorsement / “re-close” through a title company

How does Buyer (Vendee) get Title – WHAT IFs

1. What if I didn't issue the initial vendee's policy?
 - a) Can I still do an endorsement to put Vendee/Buyer into fee simple?
 - b) Can I issue a new policy?
2. What if I DID issue the initial vendee's policy?
 - a) Can I still do an endorsement to put Vendee/Buyer into fee simple?
 - b) Do I have to issue a new policy?
3. What if my "seller" is actually the land contract vendee
 - a) So do they really own it? How might my Schedule A look for this?
 - b) How do they sell it?
 - c) ...Don't forget transfer tax

But Really – What happens if something goes wrong?

Once a Land Contract is created - Seller has given an Interest to the Buyer, and the Seller has also retained an Interest - you have three options to convey good title:

1. Fulfillment of the Land Contract (deed from Seller to Buyer in “Fulfillment of the Land Contract”)
2. Legal Remedies (Forfeiture & Eviction, Quiet Title, or Foreclosure)
 - a) Forfeiture - “Self Help” and needs to be specifically included in the contractual rights
 - AND Order of Eviction
 - b) Foreclosure - only by judicial proceedings, not by advertisement and there must be an acceleration clause in the land contract to allow for the full amount to be owed upon default
 - c) Quiet Title against a Non performing buyer or seller when/if other remedies are not available
3. Deed from Buyer back to Seller

Sticky Stuff

- **MCL 445.1627** - Contract for sale or transfer of residential property which is subject to a mortgage; provisions in boldface type:
Sec.7 Each contract for the sale or transfer of residential property which is subject to a mortgage shall provide in boldface type substantially as follows:
“Seller understands that consummation of the sale or transfer of the property described in this agreement shall not relieve the seller of any liability that seller may have under the mortgage(s) to which the property is subject, unless otherwise agreed to by the lender or required by law or regulations.”
- **MCL 445.1628** ...(2) Any person licensed to do business in this state who, while carrying on that business, knowingly advises a person selling or transferring property securing a residential window period loan not to notify a lender as required by section 3 or who knowingly otherwise aids or assists a person in evading the enforcement of a due-on-sale clause enforceable under this act shall be liable for a civil fine not to exceed \$5,000.00 for each offense and shall be subject to revocation of his or her license.

Pro Tips

1. **Fraud, fraud and more fraud**
 - a) Ripe for seller fraud
 - b) A few consecutive land contracts may also be a red flag
2. Confirm you have all the required documents (Land Contract and Memo - and don't accidentally record OR deliver a deed held in escrow)
 - a) **SERIOUS PRO TIP** - get that land contract WAY before the closing
3. Don't get wrapped up in sticky stuff - licensing rules around lending, usury laws, and due on sale clauses are the danger zone - seek help when needed
4. **Make sure you're collecting for transfer tax**
 - a) Especially on any deeds in fulfillment
 - b) Consider face value of deed = gross amount paid on contract (not payoff amount)



Thanks for attending!