



NEWS FROM THE FIRM

May 2010

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Chris Griswold, P.C.
A Business Transactions
and Estate Planning Firm

Memberships

- OK, TX & American Bar Associations
Licensed in all OK & TX State Courts
- International Council of Shopping Centers
- Commercial Real Estate Council of Oklahoma City
- Oklahoma Renewable Energy Council
- CCIM Chapter of Oklahoma

Links & Resources

Commercial Real Estate Council of OKC
www.crecokc.com

International Council of Shopping Centers
www.icsc.org

Oklahoma Renewable Energy Council
www.ocgi.okstate.edu.orec

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Message from Chris....

"40 Acres, No Mule." I'm sure you can relate given that deals are hard to finance lately. As a result, more than a few people have asked for assistance in helping them owner-carry (or buy some owner-carried) real estate. During the conversation, people usually mention the "contract for deed" arrangement. While still a legal way to convey property, it's honestly not the most desirable way. However, if you should find yourself in a situation where the other party insists on using it, read below to find out how to more effectively use the contract for deed ("CFD").

Using CFD's

Actual Conveyance. As a seller, you must realize that in signing the CFD, you have actually executed a legal conveyance to the buyer. What does this mean? It means you have sold it with just as much force and validity as if you had received the entire proceeds from the buyer's lender at a conventional closing. It also means that if the buyer defaults in their payments under the CFD, you'll have to actually foreclose on the mortgage you hold (as opposed to simply terminating the CFD and demanding possession back like you'd do with a normal land installment contract). This is, in part, why people have really gotten away from using CFD's and instead started using conventional "mortgage, note and deed" vehicles.

Recording CFD's; Escrowing Deed. As a buyer, you need to understand that, once signed, a CFD needs to be recorded with the relevant county clerk. If the seller balks at recording, you need to walk away because that's the only evidence which proves you own the subject property. Also, as a buyer, you should require that the deed (which conveys title to you) be escrowed with a reliable person or entity such as an accountant, attorney or bank for future recording (which usually shouldn't occur later than 10 years after signing the CFD). Otherwise, the seller could die, change jobs, skip town or just move away and you'd be short a deed....

Due On Sale Clauses. Whether you're a buyer or seller, you need to understand that the seller's existing mortgage (if there is one) on the subject property will undoubtedly contain a "due on sale clause." This clause will require the immediate and full payment of seller's existing mortgage if seller attempts to sell (or even long-term lease) the property (i.e., enter into a CFD). This clause can cause countless problems with title insurance and property casualty/general liability insurance coverages. Among them, who gets the proceeds upon a property casualty? Who has an insurable interest? If coverages are purchased by buyer, what will prevent the due on sale clause from triggering and, if so, who/what protects the buyer?

What My Clients Are Saying....

"WhichWich? is experiencing tremendous growth and we feel fortunate to have Chris Griswold, P.C. as our lead Real Estate Attorney during this time of expansion. His knowledge, professionalism, tenacity, integrity and drive have given our brand an edge over our competition when securing premier locations throughout the country. He continues to make our needs a priority and we look forward to working with him for many years to come."

Jeff Vickers

Director of Development / Which?Which / Dallas, Texas

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