

Message From Chris....

The real estate world sometimes uses terms like "contract for deed," "lease to own," "rent to own," "lease to purchase," and/or "lease with an option to purchase." We've all heard of these. They're actually all synonyms though, legally speaking.... What do they really mean?

There's a lot of misinformation out there about these arrangements, and I've gotten a lot of calls on these lately, so I address them this month. When interest rates rise (as they are doing), this form of financing to "**get deals done**" becomes a large player in the deal financing arena, as some buyers want to avoid otherwise higher, market-rate interest rates and/or can't qualify for a bank loan.... **Few things keep the Court system as alive and healthy as divorces and these arrangements.**

Note: While this piece admittedly covers the issues faced more by a Seller/Landlord, it doesn't necessarily make a Buyer/Tenant happy either to learn that they already own something they thought they were just leasing (especially in terms of general liability to the public, insurability issues related to such liability, tax liabilities, etc...). Everybody take note....

Contracts For Deed / Lease To Purchase Q&A

1. **I've heard these terms used a lot, but what are they really?** They're something the law calls a "contract for deed," and the law views all of them the same way; no matter what you call them; no matter how you try to characterize or label them in your deal docs....
2. **How does the law view them?** No matter what they're called, they're viewed by the law as a **conveyance and sale**. This means that the person purporting to be the "landlord" has, no matter what they meant to do, in fact, **"sold"** their property to the person purporting to be the "tenant."
3. **Why do "Landlords/Sellers" agree to do these conveyances?** Whether to get the deal done more quickly or to circumvent a would-be-tenant's inability to otherwise get their own real, orthodox, deed/note/mortgage/loan from an institutional lender (excluding sellers that own their property debt free, with no encumbrances filed of record), some sellers entertain the prospect of "renting" their property to a "tenant" with the understanding that the "tenant" ultimately pays off the note and then "owns the property." However, this isn't as easy as it sounds.... Why?
4. **What are the complications with these conveyances?** Oftentimes, the "tenant" defaults. So? Afterwards, the "landlord" goes to **evict** the "tenant." Once things go to Court, the judge politely tells the "landlord" that they can't evict, instead, they have to **foreclose on their property to reclaim possession, because the arrangement was a**

conveyance and sale, not just a lease. And foreclosing is a much longer, more expensive process than an eviction. *See the problem??*

5. **What are other complications with these arrangements?** Unless the property is completely paid off, something called the landlord's/seller's "due on sale clause" in the landlord's/seller's loan docs (with their own lender) will be violated. This means that, once the landlord's/seller's lender finds out about the "sale," the landlord/seller has to pay off their own lender immediately because they've now **sold** their property to the "tenant." And everyone's hope that the lender won't find out lasts until about hail season, when insurance companies begin paying out roof replacement claims as people struggle over who "actually owns the property." *See the problem??*

What My Clients Are Saying

"I have been extremely pleased with the legal services provided by Chris. He is an expert on real estate issues; devotes immediate attention to our needs and follows through with all required action. I look forward to a continuing relationship with Chris."

Harrison Levy / Oklahoma City, Oklahoma

The information presented within this article is of a general nature and is not intended to be relied upon as legal advice in any particular matter without first consulting qualified counsel.

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