

Minnesota Contracts for Deed

In Minnesota, the term “*Contract for Deed*” generally refers to an *executory contract* for the purchase and sale of real estate.

An *executory contract* is a contract:

- ♦ which has not yet been completed,
and
- ♦ which will require some future performance by one or more of the parties.

Minnesota Contract for Deed Financing

A Minnesota *Contract for Deed* is a method of financing the purchase and sale of real estate, whereby:

- ♦ the purchaser promises to pay to the seller the purchase price for the real estate over a specified number of months or years,
- ♦ at which time the seller will be obligated to convey a specified status of title to the purchaser pursuant to the delivery of a final deed.

History of Minnesota Contracts for Deed

The use of Minnesota *Contracts for Deed* originated in the late 1800s when farmers were unable to obtain sufficient capital from local banks to purchase farmland.

If a farmer of that era was able to locate a cooperative seller, the farmer could purchase Minnesota farmland:

- ♦ with a small initial down payment,
and
- ♦ pay the balance of the purchase price over a number of months or years pursuant to the terms of a *Contract for Deed*.

It wasn't long before city lawyers discovered that *Contracts for Deed* worked just as well for Minnesota residential and commercial property transactions as they did for sales involving farmland.

By cutting out the banks and working directly with real estate sellers, purchasers were able to purchase real estate without the paperwork and loan underwriting standards customarily required by banks, and with fewer closing costs and financing charges.

Minnesota Contract for Deed Terms

Minnesota Contracts for Deed

When negotiating the terms of Minnesota *Contracts for Deed*, purchasers and sellers are free to determine:

- ◆ the initial down payment to be required, if any;
- ◆ the interest rate to be charged on the unpaid balance of the purchase price, if any,
- ◆ the monthly payments which will be required, if any,
- ◆ the number of months or years the *Contract for Deed* will run until the remainder of the purchase price must be paid in full,
and
- ◆ other terms which may be appropriate for the transaction.

Minnesota Contract for Deed Title Issues

Upon the execution of a Minnesota *Contract for Deed* by both the purchaser and the seller:

- ◆ the purchaser will acquire “*equitable title*” to the real estate identified in the *Contract for Deed*;
and
- ◆ the seller will retain “*legal title*” to the real estate identified in the *Contract for Deed* until the entire purchase price has been paid, and the final deed delivered to the purchaser.

By retaining the “*legal title*” to the real estate identified in the *Contract for Deed*, the Seller will have the benefit of a security lien against the real estate title until such lien is released to the purchaser upon full payment of the purchase price, and delivery to the purchaser of the final deed.

By acquiring “*equitable title*” to the real estate identified in a Minnesota *Contract for Deed*, the *Contract for Deed* purchaser:

- ◆ will be considered to be the *equitable owner* of the real estate,
and
- ◆ will acquire certain rights in the real estate which are normally attributed to absolute owners of the property.

Therefore, the purchaser pursuant to a Minnesota *Contract for Deed*:

- ◆ not only will have contractual rights to purchase the real estate,
- ◆ but will also acquire certain real property interests from the seller.

Upon full payment of the purchase price, and satisfaction of all other obligations owed to the seller, the purchaser identified in a Minnesota *Contract for Deed* will have a right of specific performance to require the seller to transfer the “*legal title*” to the real estate to the purchaser.

Minnesota Contracts for Deed

However, the status of title to be received by the purchaser from the seller will be dependent upon:

- ◆ the terms of both the purchase agreement and the Minnesota *Contract for Deed* adopted by the parties,
and
- ◆ the actual liens, encumbrances, and other title matters affecting the real estate.

Therefore, an examination of the status of the real estate title record must be performed by the purchaser's legal counsel before both:

- ◆ the execution of the Minnesota *Contract for Deed*,
and
- ◆ the delivery of the final deed to the purchaser.

Minnesota Contract for Deed Default Issues

In the event that the purchaser identified in a Minnesota *Contract for Deed* defaults in any of the purchaser's obligations to the seller arising under the *Contract for Deed*, the seller generally will have the right to terminate the *Contract for Deed* pursuant to a statutory procedure, which, upon completion, will extinguish all of the rights the purchaser had previously acquired in the real estate.

Cancellation and Termination of Minnesota Contracts for Deed

Upon proper service of a *Notice of Cancellation* of a Minnesota *Contract for Deed* upon the purchaser in the event of the purchaser's default in the terms of the *Contract for Deed*, the purchaser of non-agricultural land will generally have only 60 days in which to correct all defaults, and reinstate the effectiveness of the *Contract for Deed*.

If the purchaser identified in a Minnesota *Contract for Deed* has paid a considerable percentage of the purchase price for the real estate at the time of the purchaser's default on its obligations under the *Contract for Deed*, any termination of the *Contract for Deed* and resulting extinguishment of all of the rights which the purchaser had previously acquired in the real estate may constitute:

- ◆ a significant financial loss to the purchaser,
and possibly
- ◆ a significant gain to the seller,

since the seller in such a situation:

- ◆ would not only reacquire "*equitable title*" to the real estate,

Minnesota Contracts for Deed

- ♦ but would also be entitled to retain all payments which the seller had received from the purchaser prior to the termination of the *Contract for Deed*.

Recording of Minnesota Contracts for Deed

It is generally advisable, and it is legally required, for the purchaser to record a Minnesota *Contract for Deed* after it has been duly executed by the purchaser and the seller.

Proper recording of a Minnesota *Contract for Deed* prospectively provides constructive legal notice to all third parties of the respective interests of the purchaser and the seller in the real estate.

Payment of the Minnesota Deed Tax

One of the advantages to the seller with respect to the sale of real estate pursuant to a Minnesota *Contract for Deed* is that no Minnesota deed tax need be paid with respect to the transaction until the entire purchase price has been paid to the seller.

Therefore, whatever initial down payment the seller is able to collect from the purchaser need not be diluted by the immediate payment of Minnesota deed tax upon the recording of the *Contract for Deed*.

The payment of the deed tax will be deferred in a Minnesota *Contract for Deed* transaction until the deed conveying the “*legal title*” to the real estate has been delivered to the purchaser.

Minnesota Contract for Deed “Standard” Forms

While there are “standard” forms which may be used with respect to any Minnesota *Contract for Deed* transaction, many real property transactions involve unique circumstances which require careful drafting of the significant terms of the *Contract for Deed*.

Minnesota Contract for Deed “Customized” Forms

The preparation of a Minnesota *Contract for Deed* often begins with the preparation of a purchase agreement relating to the real estate involved, which upon closing of the transaction, will result in the purchaser and the seller generally executing a Minnesota *Contract for Deed* form customized for that particular transaction.

Real estate transactions involving Minnesota *Contracts for Deed* are best handled by Minnesota attorneys experienced in such matters.

Roles of Real Estate Brokers and Attorneys

Minnesota real estate brokers who are not attorneys are prohibited from providing legal advice to their customers.

Minnesota Contracts for Deed

Therefore, even if a purchaser or a seller has retained a Minnesota real estate broker to assist in the preparation of a purchase agreement which will culminate in the execution of a Minnesota *Contract for Deed*, it is always advisable for the purchaser and seller to each retain their own legal counsel in order to properly advise their clients with respect to:

- ♦ the preparation of the purchase agreement,
and
- ♦ the form and content of the *Contract for Deed*.

Modification of Minnesota Contracts for Deed

Once a Minnesota *Contract for Deed* has been duly executed by both the purchaser and the seller, in the event that both of the parties desire to modify its terms in order to:

- ♦ extend the final payment deadline date,
- ♦ lower or raise the interest rate,
- ♦ change the amount of the monthly payments,
or
- ♦ modify any of its other terms,

such changes to the original terms of the *Contract for Deed* can be documented in a recordable *Contract for Deed Modification Agreement*, with respect to which both the purchaser and the seller should be represented by separate legal counsel.

Assignment of Minnesota Contracts for Deed

Once a Minnesota *Contract for Deed* has been duly executed by both the purchaser and the seller, either the purchaser or the seller's interest in the *Contract for Deed* can be subsequently assigned to other parties - absent contractual limitations on such assignment rights.

If limitations on such assignment rights are desired by either a purchaser or a seller, such limitations should be incorporated into the terms of the Minnesota *Contract for Deed*.

Transferring a purchaser's "*equitable title*" in real estate, a seller's "*legal title*" in real estate, and a seller's rights to receive the future payments due on a Minnesota *Contract for Deed* pursuant to an *Assignment of Contract for Deed*, are transactions best handled by Minnesota attorneys experienced in such matters.

Conclusion

Both purchasers and sellers contemplating the use of a Minnesota *Contract for Deed*, and parties contemplating the assignment, cancellation, or modification of an existing Minnesota *Contract for Deed*, should retain the services of a Minnesota attorney experience in such matters.

Minnesota Contracts for Deed

Gary C. Dahle, Attorney at Law (763-780-8390), is licensed to practice law in the State of Minnesota, and is experienced in the creation, execution, assignment, cancellation, and modification of Minnesota *Contracts for Deed*.

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Gary C. Dahle

Attorney at Law

2704 County Road 10
Mounds View, MN 55112

Phone: 763-780-8390

Fax: 763-780-1735

gary@dahlelaw.com

Legal Disclaimer

Information provided herein is only for general informational and educational purposes. The laws regarding Minnesota Contract for Deeds involve many complex legal issues. **If you have a specific legal problem about which you are seeking advice, either consult with your own attorney or retain an attorney of your choice.**

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