

CONTRACT FOR DEED

1. **What is it?** Financing arrangement between buyer and seller whereby seller finances the purchase rather than a financial institution. Buyer takes possession immediately but seller retains legal title until all payments are made.
2. How is it accomplished? A purchase agreement is entered into based upon the understanding that financing will be accomplished through a contract for deed. The terms of the contract for deed must be set forth in the purchase agreement.
3. **Do I get a commission?** Under the listing contract, the seller contracted your services to sell the property. If the seller agrees to finance the purchase that is perfectly acceptable but it does not negate the fact that you fulfilled your obligations under the listing contract and are entitled to payment. The listing contract states that you are entitled to your compensation if the seller "sells or agrees to sell" the property.
4. **Due on Sale Clause.** If the existing mortgage contains a Due on Sale Clause (most do), a transfer under a contract for deed would trigger such a clause allowing the mortgage company to accelerate the total amount due.
5. Many provisions that can be added to a Contract for Deed to make it more vendor/vendee friendly. It would be wise to instruct your client to have the Contract for Deed drafted by an attorney for added protection.
6. **Assumption.** It is an option for the purchaser to assume the existing mortgage and pay the difference on a contract for deed however this would require approval by the mortgage company.
 - a. Include a provision stating that a default under the existing mortgage constitutes a default under the contract for deed.
7. **Wrap-Around Contract for Deed.** Purchaser takes property subject to the existing financing, rather than assuming it. Purchaser makes overall payment to seller who will then make payments required on the existing financing.
8. **Assignment of Rents.** It is good practice to include an assignment of rents as a separate document along with a contract for deed. It would be additional security for the contract for deed and entitle the seller to any rents collected if the purchaser is in default. Any amounts collected would have to be applied to the amount owing but at least there would be cash flow. Assignment of Rents should authorize seller to give notice to tenants to pay rent directly to him/her.
9. **Taxes and Insurance.** A seller may want to consider requiring an escrow for taxes and insurance to ensure payment of same.
10. **Assignment.** Unless prohibited by the Contract, either party may freely sell, assign or mortgage his/her interest in the Contract.
11. **Cancellation.** Contracts executed prior to August 1, 1985 are governed by Minn. Stat. §559.21, Subd. 1(b) – 1(e). Contracts executed since that date are governed by Minn. Stat. §559.21, Subd. 2(a).

- a. Vendee must be served notice either personally or by publication.
 - b. For contracts executed since August 1, 1985, if the vendee is personally served, he/she has 60 days to cure the default. If served via publication, the period within which to cure is 90 days.
 - c. If serving by publication, vendor must personally serve the occupants of the property and mail a copy of the notice to the vendee at his/her last known address.
 - d. Notice provisions cannot be contractually waived or shortened.
 - e. Additional procedures to be followed if dealing with agricultural property. See Minn. Stat. §559.209.
 - f. Personal service. Must serve vendee, his personal representative and assigns. For example, if a tax lien exists against the vendee's interest which will be extinguished by the cancellation, you must also serve the government.
 - i. Judgment creditors are not considered assignees for notice purposes.
 - ii. It is good practice to serve anyone who may have an interest in the property.
 - iii. If vendee has a defense to the cancellation, it generally must be asserted before the cancellation is complete.
12. **Cure.** Vendee can cure the default after having received notice of cancellation. The vendee will also be required to pay some additional fees which depend on the date of the Contract.
13. **Injunctive Relief.** The other option available to a vendee is to seek injunctive relief. This would stop the cancellation.
14. **Waiver or Termination of Cancellation.** If vendor accepts payment following service of Notice of Cancellation, the cancellation (with limited exception) is deemed waived. Vendor may voluntarily terminate the cancellation process at any time.
15. **Unlawful Detainer.** If vendee does not leave at the end of the cancellation period, vendor would have to bring an Unlawful Detainer action to have the vendee removed from the property.
16. **Torrens Property.** If the property is Torrens, a Proceeding Subsequent will be necessary after the cancellation.