

## Chapter 17



### REAL ESTATE CONTRACTS, RENTING-TO-OWN AND OPTIONS TO BUY

Many people who cannot afford to buy a home using traditional bank financing choose instead to buy the home under a real estate contract. Under a real estate contract, the seller, not a bank, provides the financing. The buyer typically pays a down payment plus monthly payments of principal and interest for several years. The seller holds the title until the final payment is made.

Sellers often sell property with a real estate contract because the house cannot pass an inspection for a mortgage, because the price of the home exceeds its fair market value, or because the seller does not have good title to the home.

Unlike mortgages, there are very few laws regulating real estate contracts. The written contract controls the relationship between the seller and buyer, and the terms of the agreement almost always favor the seller.

If you are buying a house on a real estate contract, make sure you know exactly what the problems are with the house and make sure the price is reasonable given the problems. You should research whether the seller actually owns the property. Many sellers, themselves, are buying the property under a real estate contract. Under this kind of arrangement—called a *wraparound contract*—the seller does not have, and might never have, good title to the property. You could pay each and every payment owed but if your seller does not pay *his* seller, you still might lose the property and all of your money.

Make sure the contract includes *all* terms of the agreement between you and the seller, including the

purchase price, number of payments, dates of the first and last payments, and interest rate. The contract should contain the seller's warranty that he has good title to the property and that there are no termites, lead paint or other serious problems.

Most real estate contracts have provisions that if a payment is missed, the escrow company handling the payments sends out a notice. There is usually a fee for that. If the buyer does not make the payment, *and* pay the fee, the seller can declare forfeiture. Under some real estate contracts, failing to make a single payment may result in loss of the property and of all the money that you have paid, no matter how long you have paying on the contract. *Before signing any real estate contract, make sure you understand what will happen if you miss a payment.*

If you have a real estate contract and the seller wants to evict you, the seller must file the case in District Court. If the seller sues you in Magistrate Court or Metropolitan Court, tell the judge you have a real estate contract, and the judge will usually dismiss the case and tell the seller to file in District Court.

While home ownership is attractive, there are important downsides to buying a home:

- In a real estate contract the buyer usually pays for taxes and repairs. In a rental agreement, the landlord pays these things.
- Buyers under real estate contracts often pay deposits of thousands of dollars, which they usually lose if they are evicted. Tenant deposits are usually equal to just one month's rent.

- If the house you are buying turns out to be a dud, you are faced with making expensive repairs or walking away from the deal—neither of which you can afford. But a tenant can walk away from a rented home after giving proper notice, and perhaps find a better one.

Some tenants are involved in rent-to-own agreements or options to buy. The terms of these agreements almost always favor the seller/landlord. Often the agreements are poorly written or not written down at all. Often these agreements

amount to little more than a lease with a very large deposit.

If you are considering a real estate contract, a rent-to-own agreement or an option to buy, make sure the agreement is in writing. Review the written agreement very carefully and get legal advice if you have any questions. Make sure you can afford any deposit, the monthly payments, the taxes and any repairs. A home purchase is an enormous commitment. If in doubt about a particular purchase, you might consider just saying “no.”

