

THE KAMAN REPORT



AN UPDATE ON CURRENT TOPICS AND ISSUES AFFECTING
OHIO CONDOMINIUM AND HOMEOWNER ASSOCIATIONS

KAMAN &
CUSIMANO, LLC

2010 NO. 3

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LAND CONTRACT SALES AND THE EFFECT ON ASSOCIATION OPERATIONS

A land installment contract ("land contract") is a special type of arrangement between the purchaser (called the "vendee" under Ohio law) and the selling owner (called the "vendor") of a unit/home. In this arrangement, the selling owner acts somewhat like a bank/financing company, agreeing to take monthly payments for a set number of years. The selling owner does, however, retain certain rights, including legal title to the property as security for payment of the contract price and the ability to reclaim the property if the purchaser fails to comply with all of the contract terms. When the contract terms are fulfilled, including the payment of the final installment, the purchaser receives a deed from the owner that transfers to him/her the legal ownership of the property.

Land contracts are governed by a specific provision of the Ohio Revised Code known as the Land Installment Contract Act (Chapter 5313). The Act controls what terms and conditions must be in every contract and how it is to be executed. Land Installment Contracts must contain, for example, the following:



By Lynda L. Kovach, Esq.

- (1)** The full names and the current mailing addresses of all the parties to the contract;
- (2)** The date when the contract was signed by each party;
- (3)** A legal description of the property;
- (4)** The contract price;
- (5)** Any charges or fees for services that are included

in the contract separate from the contract price;

- (6)** The amount of down payment;
- (7)** The principal balance owed;
- (8)** The amount and due date of each installment payment;
- (9)** The interest rate on the unpaid balance and the method of computing the rate;
- (10)** A statement of any encumbrances including liens against the property;
- (11)** A statement requiring the owner to deliver a deed to the purchaser upon completion of the terms and conditions of the contract;
- (12)** A provision that the owner is to provide evidence of title;
- (13)** A provision that, if the owner defaults on any mortgage on the property, the purchaser can pay on that mortgage and receive credit for the payment;

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KAMAN'S KORNER

**Dear
Board
Member:**



Trick or Treat? Trust or Deceit? Fall brings to Ohio colorful foliage, the autumn moon, and Halloween. I remember when Halloween was not such a big deal, but now it has almost become a theme park. Perhaps the holiday is meant to remind us to be wary of some. In community associations, where living in very close proximity to others is a way of life, neighbors and neighborhoods are something to cherish and be cherished. However, we must be wary of the Tier III sex offenders and be prepared on how to respond if one moves in. Attorney Kate Bushey's article in this issue will help.

Land contracts have been around in Ohio for a very long time. With banks becoming a more and more difficult source of financing for community associations, Sellers are turning to land contracts to finance the purchase of their homes or units. Land contracts are NOT something that needs to be feared, but rather, must be understood. Attorney Lynda Kovach's article in this issue will help with that understanding.

After one of the warmest summers in history, enjoy the coolness of fall in Ohio. As always, do not hesitate to telephone me with any questions.

Sincerely yours,

David W. Kaman

DAVID W. KAMAN

LAND CONTRACT SALES AND THE EFFECT ON ASSOCIATION OPERATIONS

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(14) A provision that the owner shall file a copy of the contract with the County; and

(15) A statement that purchaser is required to pay taxes, assessments, and other charges against the property from the date of the contract; unless the parties agree that the owner should continue paying such charges.

Ohio Revised Code Section 5313.02 (C) mandates that land contracts be recorded within twenty (20) days of execution with the County. By recording the contract everyone is on notice that the purchaser has a legal interest in the property.

Once the land contract has been recorded, board members need to determine who is entitled to vote at the annual or special meetings and on amendments, who receives notice of an enforcement violation, and who is responsible for assessments. A recent Ohio Court of Appeals case clarified the voting rights of a buyer and selling owner in a land contract. Under a land contract, the buyer does not acquire legal title until all of the conditions of the contract have been fulfilled. Since the legal title remains with the selling owner, only the selling owner has the right to participate in voting at an annual or special meeting or on an amendment to the governing documents. A seller can give his/her proxy to vote at association meetings to the buyer but is not required to do so.

Unless the land contract states differently, the buyer is responsible for any property/real estate taxes and association assessments. If

the buyer becomes delinquent in paying any association fees, collection action is against the unit/home and both the buyer and seller are named as parties since they both have a legal interest in the home.

With respect to enforcement violations, since the governing documents require that owners and occupants/residents comply with the governing document restrictions both buyer and seller need to receive notice of any violation.

Many associations have some type of leasing restriction in their governing documents. Currently, associations are being inundated with owners claiming they have entered into a land contract and, therefore, the leasing restrictions found in the governing documents do not apply. A properly executed and recorded land contract is not a leasing arrangement as the purchaser has an equitable, legal interest in the property, however, any unrecorded land contract is not effective or binding on the association.

To summarize, a land contract is a method where a purchaser can avoid having to secure a bank or mortgage financing. The selling owner retains legal ownership of the unit/home until the terms of the agreement are fulfilled. At that point the property is then transferred to the purchaser. A land contract must conform to Ohio law and be recorded with the County. The selling owner retains the right to vote on association business and receive notice of any enforcement violations. Depending on the agreement, generally, the purchaser is responsible for the payment of association assessments, however, both parties are named in any collection action. Finally, a recorded land contract is not a violation of a leasing restriction.