# EVERYTHING
# YOU NEED TO KNOW
# ABOUT
# BUYING, SELLING AND
# OWNING PRIVATELY HELD
# MORTGAGES & NOTES,
# TRUST DEEDS & NOTES

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**A COMPLETE GUIDE**
**WITH GLOSSARY AND PAYMENT**
**RECORD KEEPER**
**$9.95**



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## Why An Owner's Guide?

This manual is designed to assist people who will be selling property or who are receiving monthly payments on a property they have already sold (mortgages, trust deeds or land contracts). Mortgages, trust deeds and land contracts can be excellent investments. These are all referred to as "Seller Take Backs" or privately held loans (mortgages, trust deeds, etc.). But, like anything else, it pays to know a few basics…pitfalls to avoid and opportunities to explore.

Please take a few moments to read this manual. It is full of valuable information from "What to do if the purchaser fails to make a payment on time," to "How you can sell some or all of the payments on your loan for cash."

We suggest you keep this manual in a safe place along with your land contract for as long as you receive monthly payments. A "Payment Record Keeper" is included at the back of this manual to assist you in keeping accurate records on your land contract, trust deed or mortgage.

## Introduction

A mortgage, trust deed or land contract is a written contract between a person who has sold property and the person who bought the property.

At the time you sold your property, odds are you would have preferred a cash sale. Taking back financing, however, provided a quick and inexpensive way to sell the property without the rigid guidelines, hassles, and delays of bank financing. This loan also provides you with some monthly income at, hopefully, a good rate of interest.

Taking back financing is a sensible way to sell property and is extremely common all over the United States. In some states they are called Trust Deeds, Contracts for Deeds, Deeds of Trust, Notes or (privately held) Mortgages, but they all represent the same thing: a way of selling property where the Purchaser "borrows" from the Seller rather than paying cash up front or borrowing from a bank. All of these vehicles are referred to as Seller Take Back financing. Let's explore some of the important ingredients in your mortgage, trust deed or land contract now. Although mortgages, trust deeds and land contracts are relatively simple documents, we suggest you read your documents and this owner's manual once a year. There's no better way to know your rights as well as your options.



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For valuable advice on how to sell property using Seller Take Back financing, see "Tips for Selling Property Using Seller Take Back Financing" of this owner's manual. When a property is sold and a Seller Take Back mortgage is used, the Seller, who is now also the Lender, is called the mortgagee. The Buyer, who is now the Borrower, is called the Mortgagor. When a property is sold using a Seller Take Back Trust Deed, the Seller is the Beneficiary; the Buyer is now the Trustor, and there is a third party who acts as the title holder called the Trustee. When a land contract is being used, the terms Purchaser and Seller are used.

> **Helpful Hint**
> On the Payment Record Keeper (see back of this manual), write the Buyer's phone number, particularly if it's an unlisted number. The Buyer's phone number is handy to have in case you need to reach him or her on short notice…if a payment is late, for instance, or if you would like the next payment sent to a summer address.

**Legal Description**

The Seller agrees to sell to the Purchaser only a carefully described parcel of land, and here is the place in the contract where the property is given its legal description. The city, village, or township of the property is noted, together with the country and state.

Along with the actual "soil" sold, the Seller also conveys such things as any buildings, easements, tenements, hereditaments, improvements and appurtenances. (See the Glossary for a quick definition of these items.) In short, the Seller conveys everything permanently affixed to the property sold.



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**Helpful Hint**

Next to the legal description on your contract, write in the parcel number (also known as a "Tax ID" number) of the property used by the tax authorities. This makes it easier to check to see if the taxes on the property have been properly paid by the Purchaser each year. An annual call to the treasurer of the county where the property is located is often required in order to find out whether the property payments are up to date. To avoid late payment penalties and the eventual sale of your property by the state for back taxes, make sure to check each year that the property taxes are paid!

Believe it or not, many contracts do not mention the actual street address of the property sold. For future reference, add it here, next to the legal description.

### Prices and Terms of Payment

This area contains the following figures and dates: total purchase price, down payment, beginning balance remaining (the purchase price minus the down payment), monthly payment (or annual or semi-annual payment, etc.), interest rate stated in terms of an annual rate, the date of the "balloon" payment (if any), and date the first payment is due.

**Purchase Price –** The purchase price (sometimes referred to as "consideration") is negotiated between the Seller and the Buyer. Properties sold with Seller Take Back financing often sell for more than properties sold for cash because the Seller provides the all important financing.

**Down Payment –** The down payment is usually 10 to 20 percent of the purchase price. From your standpoint as the Seller, the bigger the down payment the better. It represents money that does not have to be collected in the uncertain future, and it also represents the Purchaser's commitment to the property.
A property sold with no down payment is, therefore, quite risky since the Buyer, initially at least, is no more financially committed to the property than a renter would be.

Similarly, non-cash down payments (barter items such as used cars, snowmobiles, applied rent, etc.) and down payments to be paid over time, or borrowed from friends or parents, are also riskier than those paid in cash out of the Buyer's own pocket. (See "Tips for Selling Property Using Seller Take Back Financing.")

**Balance Remaining –** Initially, this amount is the purchase price minus the down payment. The balance remaining should go down with each monthly payment made by the Borrower. An amortization schedule shows how the balance will be reduced by monthly payments made on time. (See schedule in the "Payment Record Keeper" at the end of this manual to see how the balance is reduced by monthly payments over time.)

**Helpful Hint**

Amortization schedules can be obtained from banks, real estate offices, and title companies for a small charge. Feel free to call us for a complimentary amortization schedule based on the balance remaining, interest rate, and payment amount

**The Monthly Payment –** The amount of the monthly payment is determined by the amount of the loan, the interest rate and the terms of years (5, 10, 15, etc.). The higher the amount of the loan and the interest, the higher the payment. The shorter the term of years, the higher the payment.

Loans can be structured interest only and a balloon (see section on balloons) or for a longer term of years and a balloon. This keeps the Buyer's payment manageable and gets the Seller paid off in the desired time. If you need any assistance in structuring this type of payment plan, please call us.



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**Helpful Hint**
Some people have the monthly payments on their loans serviced by a bank, credit union or escrow company. Be advised, however, that banks, credit unions and escrow companies do not assist you in the collection of your payments. If the Borrower gets behind or defaults, this is your problem; they merely provide a bookkeeping function. See the section of this manual entitled "Selling All or Part of Your Mortgage, Trust Deed or Land Contract for Cash" for ideas on how you can sell your contract for instant cash and never have to worry

**Payment Due Date –** This is the date when the first payment is due. A "grace period" in some contracts permits the Purchaser a few days each month during which he or she may fail to make payments and not be considered in default. Also, some mortgages provide for a late fee if the payment is not received on time or within the grace period.

**Helpful Hint**
Do not let the Borrower get into the habit of making payments later than the due date or grace period. Be polite, but insist on promptness.

**Balloon Payment –** If your loan contains a clause that reads something like, "The entire purchase price and interest shall be fully paid within five years from the date hereof, anything herein to the contrary notwithstanding," then there is what is known as a "balloon" in the loan (a five-year balloon, in this example).

A "balloon payment" is the term used for a large, final payment on the loan. Balloon clauses usually call for the final payment to be made in 5, 10, 15 years, etc., from the original sale date.
If the Borrower fails to make a balloon payment, this constitutes default on the contract. (See the section entitled "Default" for a discussion of your options in the event your Borrower fails to "pop the balloon" by financing the last, large payment owed.



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**Helpful Hint**
It is a good idea to notify the Borrower by letter at least four to six months before the balloon is due. This gives the Borrower plenty of time to find a way to finance or otherwise pay that

For advice on what to do if your Borrower is unable to make a balloon payment, call us. We face these situations frequently and are experienced in exploring all the options available to someone who is owed a balloon payment by someone who can't pay it. We may even be able to provide you with all (or nearly all) of the money owed you by the Borrower without foreclosing or forcing a sale of the Borrower's home.

**Interest Rate –** The interest rate is stated in annual terms. When recording each payment made, interest is calculated for the payment period (usually monthly) by multiplying the interest rate by the balance due and then dividing this annual interest amount by the number of payments to be made each year. This number (total interest for the period) is then deducted from the payment. The rest of the payment is known as the principal portion of the payment and is deducted from the principal balance remaining on the loan.

Sound confusing? It's really not if you follow an example. Consider a transaction that has a sale price of $75,000, a down payment of $10,000, with a Seller take back loan of $65,000, payable with monthly payments at 10%. The interest portion of the first payment will be $541.67 ($65,000 x .10 divided by 12) payments per year and the principal portion of the payment will be $85.59 ($627.26 - $541.67). The remaining principal balance on the loan after the first payment will then be $64,914.41 ($65,000 minus $85.59). (See the "Payment Record Keeper" of this owner's manual to see a brief example of how interest is calculated and how you can easily keep records on your land contract.)

**Taxes and Insurance**
The person responsible for making tax and insurance payments can vary depending on the terms of the mortgage. The three most common ways to handle the payment of taxes and insurance on the property are as follows:

1. The Borrower pays taxes and insurance.
2. The Lender (Seller) pays taxes and insurance but then adds the amounts paid back to the balance on the contract.
3. The Borrower makes monthly contributions to an escrow account held by the Seller and the Seller pays taxes and insurance out of this account.

**Helpful Hint**
Regarding insurance, you should first verify the policy is issued for an amount that represents at least the full value of the amount still owed to you. (The Borrower should want to insure the property for the full value.) Second, be sure you are listed as the mortgagee, trustee or first contract holder on the policy. This way, you will be entitled to the proceeds from any insurance claim ahead of the Borrower. If you are listed this way on the policy, you should get renewal notices each year from the insurance company. You should also get a notice of cancellation if the Borrower fails to keep the policy current. Finally, if you ever do get a cancellation notice, or for any reason find the property uninsured or under-insured, immediately contact the Borrower regarding this breach and purchase your own coverage until the problem is remedied.

**Helpful Hint**
Regarding taxes, you can determine if the taxes are current by calling the county where the property is located. We recommend doing this on an annual basis. The Borrower's failure to keep current on taxes is a breach of contract; an indication he or she may not be able to afford the property, even if the monthly payments are current. There is nothing more discouraging than foreclosing on a property only to discover that the first expense you have is several thousand dollars of unpaid back taxes.

If the Borrower ever fails to pay taxes or insurance bills, you have the right to pay them at any time after they are in default and then add the cost of those expenses to the balance of the contract. It is always a good idea, therefore, to inform the insurance company that you should be notified if there is a cancellation or some other lapse of coverage.

### Borrower's Duties to Maintain Premises

It is the Borrower's duty to protect the value of the property until it is paid in full. This clause is important because the value of the property is what keeps the Borrower making payments. If the Borrower ever defaults and suffers foreclosure, the value of the property should enable the Seller to resell without a loss.
Most loans require the Borrower to notify the Seller in writing before the Borrower or any third party neglects the property or allows it to be used in a way that lessens its value or removes, changes, or demolishes any buildings or improvements on the premises in a way which may diminish the property's value.

> **Helpful Hint**
> On a regular basis, drive by the property you sold. If you've moved out of state, have someone you know do this for you. Fundamental changes to or deferred maintenance on the buildings on a property can seriously diminish the value of your loan, while improvements to the property (a new roof or new landscaping, for instance) can make prompt payments by the Borrower more likely than ever.

### Default

If the Borrower fails to perform any significant part of the contract, the Seller may have the right, after notifying the Borrower in writing of the exact nature of the default, to take legal action. If the default continues, the Seller probably has the right to declare the remaining balance due and payable and, if the default is not then cleared up or the loan is not paid in full, the Seller can begin foreclosing.

Defaults by the Borrower may include failure to properly maintain the property, failure to adequately insure the property, or failure to pay taxes on the property as they become due.

The way Borrowers most commonly default is, as you would expect, by failing to make timely payments. If a payment is ever late, we recommend taking the following steps: (1) Check the contract to see if a "grace" period exists. If so, you must honor it. (2) If no grace period exists or if it has expired, phone the Borrower and ask about the payment. Insist upon payment, make a note of the date and time of the call and keep this information with your land contract. (3) On the same day as the above phone call, write a letter that identifies the default and summarizes any



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action the Purchaser has promised to perform and mail it, certified mail, return receipt requested. (4) If the above steps do not produce the desired results, contact an attorney immediately. Trying to cure a default by yourself can cause problems for you, the Seller.

**Helpful Hint**
If legal action is required, a Seller has the right to initiate foreclosure proceedings. Find an attorney with experience in the area of real estate foreclosure.
Also, because your attorney may be required to appear in court, it is best to hire one who lives near the property in question. This will save you from paying travel time and other

**Helpful Hint**
Declaring a loan to be in default and starting the foreclosure process is a serious matter and should be handled by an attorney familiar with the laws of the state in which the property is located. The biggest mistake made by Sellers in this area is (1) trying to take matters into their own hands, and (2) delaying the exercise of their rights. Begin to think in terms of foreclosure when the Borrower is one month behind, not three or four months.

Remember, you are not the “bad guy”…the Borrower is the one not making payments. They can sell the property, refinance the property or bring payments current. The ball is in their court, so to speak. Explain the available options and tell the Borrower you are prepared to bring legal action. After an initial phone call and a certified letter, only swift and decisive action taken with the assistance of legal counsel is likely to cause them to act. Be honest, firm and considerate. Don’t harass and don’t delay!

**Helpful Hint**
Keep records of all written and spoken conversations with the Borrower, including dates, times, and what was discussed. You’ll never know how or when these records will come in handy until you need them but don’t have them. Then it’s too

A failure to enforce any clause in your contract can, over time, establish the precedent that the clause is not binding and has no effect. In other words, actions speak louder than words. Consistent conduct over a period of time, in fact, can take precedence over the actual wording on your contract in a court of law! In short, stick to the contract or be prepared to find it difficult to enforce in court.

**Tips for Selling Property Using Seller Take Back Financing**

Using Seller Take Back financing can be an excellent way to sell your property quickly and at a good price. As conventional financing becomes even more costly, more difficult to obtain and more time consuming, Seller financing will become even more popular. (We estimate that approximately 15% to 20% of property sold is now sold with Seller financing.)

If you're thinking about selling some property and taking back financing, here are some things you should know that could be beneficial to you in the future…especially if you want to sell that mortgage, trust deed or land contract for cash someday. The way a mortgage is planned and written can have a lot to do with its sales value in the future.

**The Purchase Price –** The purchase price is negotiated between you and the Borrower, but there are some objective standards that can be used as the basis for negotiation.

One method is to have three different Realtors do a market analysis on the property, complete with two or three "comparables" each. (Comparables are properties that are comparable to the subject property and can be used to determine its market value.) An average of these three analyses will usually give you a good idea of what the property should sell for. This service is often free since the Realtors will be competing for the right to list your property. (Be advised, though, that Realtors may overestimate the value of your property in order to win the right to list it.)

A second method is to hire an independent appraiser to do a complete appraisal on your property, which would include (as above) at least three comparables. This method is more expensive (from $150 to $600) but is also more authoritative.

**The Down Payment –** The down payment should be as large as possible. A larger down payment means the Purchaser has more equity and owes less, both of which makes the contract more secure and thus more saleable. Remember, the larger the down payment, the more your loan is worth. Make sure the down payment is paid out of the Borrower's pocket, not his or her parents' pockets. Politely but firmly ask where the money for the down payment is coming from and make your selling decision accordingly.

Finally, avoid "nothing down" ($0 down payment) Borrowers. Making no down payment is a shrewd way to purchase property but a poor way to sell it. Making down payments over time ($1,000 today, $1,000 in six months, etc.) is just another version of the $0 down Borrower. Consider carefully: Do you really want to sell to a Borrower who is unwilling or unable to financially commit himself or herself to the property?

**The Interest Rate –** The interest rate on your loan should be close to interest rates currently charged on mortgages by banks and savings and loan associations. There are legal maximums in most states. See your attorney for details.

**The Monthly Payment –** The amount of the monthly payment is determined by the amount of the loan, the interest rate and the term of years (5, 10, 15, etc.). The higher the amount of the loan and the interest, the higher the payment. The shorter the term of years, the higher the payment.

Loans can be structured, interest only and a balloon (see Section on Balloons), or for a longer term of years and a balloon. This keeps the Buyer's payment manageable and gets the Seller paid off in the desired time. If you need any assistance in structuring this type of payment plan, please call us.

**Taxes and Insurance –** Lending institutions generally require the buyer to pay one-twelfth of the estimated yearly real estate taxes per month and one-twelfth of the estimated insurance costs in addition to the monthly payment. At the end of the year, the money is on hand to pay the taxes and insurance. This is also your wisest strategy. Since the loan will run over a period of time, there is always the chance property taxes will be raised. Be sure to include a clause that provides for increasing the payment when this happens.

**Underlying Debt –** If you currently owe on a piece of property, you do not necessarily have to pay off your present land contract or mortgage. Instead, you can sometimes continue to make monthly payments in the required amount just as before. (The original obligation is often referred to as “underlying debt” since it “underlies” – is superior to and existed before – the debt owed to you on the more recent sale of the same property.) However, check the mortgage you are paying on to see if there is a socalled “Due on Sale” clause requiring you to pay off the debt if you sell the property.

**Amortization –** How long a loan is scheduled to run is referred to as the amortization. The amortization depends on the size of the contract, the size of the monthly payment, and the interest rate being charged. (The higher the interest rate and/or the smaller the monthly payment, the longer the amortization will be.)
For you, the Seller, the shorter the contract the better. To shorten the length of the contract, you can increase the down payment and/or increase the size of the monthly payments. Contracts with 10 to 20 year amortizations are common and are preferred to contracts with 30 year amortizations.

You may also consider including a “balloon payment” due in 5 to 10 years. A balloon payment means the full amount owed will be due at that time. Even if the balloon is not “popped” (paid in full by the Borrower), it gives you an opportunity to increase the monthly payment and the interest rate (or both), as well as set a new balloon payment one or two years down the road. By the time the balloon payment becomes due, such increases are generally easily accommodated by the Borrower and may be a preferred option to foreclosure.

As a service both to you and the Borrower, don’t set balloon dates that are too near. One and two-year balloon clauses are often unrealistic and create unnecessary difficulties for both you and the Borrower.

**The Borrower’s Credit Worthiness –** Just like any lender, you have every right to information that shows the Borrower has an adequate source of income to pay the obligation. Get references, find out where he/she works, annual income, and obtain a credit report showing how promptly current debts are paid. If selling to a person with a less than commendable credit record, insist on a large down payment or find another Buyer.

## Selling All or Part of Your Mortgage, Trust Deed or Land Contract for Cash

We specialize in purchasing mortgages, trust deeds and land contracts. There are many ways of getting cash from your contract. Sell the whole mortgage now or, if you just need a smaller amount of money for some short-term goal, sell some payments now and collect monthly payments again in the future. Many of these plans give you 95% or even 100% of what is now due on the loan. We charge no fees, no points, and no commissions!

## Why Would I Want to Sell My Loan for Immediate Cash Now?

When you convert all or part of your loan into cash, you gain several advantages in addition to immediate cash:

1. You don't have to worry about the payments you receive each month slipping away on life's little expenses.
2. You receive a substantial sum of cash right now – enough to accomplish some major goals.
3. You don't have to worry about collecting monthly payments or servicing your contracts; we handle all of that.
4. You don't have to worry about whether the taxes and insurance premiums are paid each year to protect your investment; we handle all of that.
5. You don't have to worry about whether your Borrower will continue to make his or her payments.

## How Can I Find Out How Much My Mortgage Is Worth?

All you need to do is call. One brief consultation with us will answer all your questions, and enable us to clearly present a few options. Decide for yourself whether turning your loan into immediate cash – or keeping it – makes the most sense for you. The choice is yours.

If you have any further questions about selling property using Seller Take Back financing or about our other services, please call. Of course, there is no obligation and all discussions are totally confidential.

# Glossary

## _____A_____

**Abstract of Title –** A written history of the transactions or conditions bearing on the title to a designated parcel of land. It covers the period from the original source of title to the present and summarizes all documents of public record.

**Acceleration Clause –** A clause requiring the Purchaser to pay the entire principal balance due if certain conditions of the contract are violated. A few examples of these conditions are failure to make regular installment payments, non-payment of property taxes, and non-payment of hazard insurance premiums. This clause most often appears in land contracts under the heading "Enforcement on Default" or "Acceleration Clause."

**Accrued Interest –** Interest that has been earned but not paid.

**Add-Back Escrow –** In a land contract that utilizes an Add-Back escrow, the Purchaser includes an extra amount with each month's payment in order to cover future tax and/or insurance bills payable by the Purchaser. The Seller then pays property taxes and/or insurance premiums and adds back the amounts paid to the current principal balance owed. Add-Back escrows in contracts are usually worded as follows:
"The Purchaser is to pay monthly, in addition to the monthly payment hereinbefore stipulated, the sum of $____, which is an estimate of the monthly cost of the taxes, special assessments, and insurance premiums for the land, which shall be credited by the Seller on the unpaid principal balance owed on the contract. If Purchaser is not in default under the terms of this contract, Seller shall pay for Purchaser's account the taxes, special assessments, and insurance premiums mentioned above when due and before any penalty attaches, and submit receipts therefore to Purchaser upon demand. The amounts so paid shall be added to the principal balance of the contract.

**Addendum –** An addition to a written document. Addenda is the plural.

**Agent –** One who undertakes to transact business or to manage an affair for another, with the authority of the latter.

**Amendment –** An alteration to a contract.

**Amortization –** The length of time it will take to pay off a debt at the mutually agreed upon interest rate and payment amount. An example of an amortization schedule for a $23,000 balance with payments of $250 at 11% interest is shown below.
Pmt # Payment Interest Principal Tl Balance
0 - - - $23,000.00
1 $250.00 $210.83 $39.17 $22,960.83
2 $250.00 $210.47 $39.53 $22,921.30
3 $250.00 $210.11 $39.89 $22,881.41
4 $250.00 $209.75 $40.25 $22,841.16

**Appurtenance –** Something outside the property itself but considered part of the property that adds to its greater enjoyment, such as the right to cross another's land.

**Assessments –** The amount of tax or special payment due to a municipality or association.

**Assignee –** The person or corporation to whom an agreement or contract is assigned; one to whom real property or an interest in real property is transferred or set over.

**Assignment –** A transfer from one party to another.

**Assignor –** A party who assigns or transfers an agreement or contract to another.

**_____B_____**

**Balance Due –** The amount currently owed on a debt; the principal balance due.

**Balloon –** The final payment on a mortgage, trust deed or land contract when that payment is greater than the preceding installment payments and pays the loan in full.

**Bankruptcy –** The financial inability to pay one's debts when due. The debtor seeks relief through court action that may work out or erase debts.

**Breach of Contract –** A violation of the terms of a legal agreement.

**Buyer –** One who purchases property; also referred to as "Vendee" or "Purchaser."

## _____C_____

**Certificate of Title –** A written statement furnished by an abstract or title company or an attorney stating that the title to a piece of property is legally vested in the present owner.

**Certification –** The act of showing evidence of ownership or debt.

**Chain of Title –** The history of all the documents transferring title to a parcel of real estate, starting with the earliest existing document and ending with the most recent.

**Chattel –** Anything owned and tangible other than real estate, for example: furniture, automobiles, and jewelry.

**Clear Title –** Title is not encumbered or burdened with defects such as mortgages, unpaid taxes, or underlying liens.

**Cloud on Title –** Any condition revealed by a title search that adversely affects the title to a property. Usually cloud on title cannot be removed except by a quit claim deed, release or court action.

**Collateral –** Property pledged as security for a debt.

**Consideration –** A legal right or promise exchanged for the act, promise or property of another person. For example, in a contract for the purchase of a piece of property, the property itself and the money paid (or promised to be paid) are the considerations made by the property seller and the new property owner, respectively.

**Conveyance –** The document, such as deed, lease or mortgage, used to effect a transfer of property.

**Covenant –** A legally enforceable promise or restriction in a contract. For example, a purchaser on a mortgage, trust deed or land contract may covenant to keep the property in good repair and adequately insured against fire and other casualties. The breach of a covenant usually creates a default and can be the basis for foreclosure.



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## D

**Deed –** A written document that conveys or transfers title from one
party to another. There are various types of deeds; however, the two most commonly used are warranty and quit claim.

**Deed of Trust –** An instrument used in many states in place of a mortgage. Legal title to the property is vested in one or more trustees to secure the repayment of the loan.

**Default –** A failure to perform on one or more of the terms of a note or of the covenants of a mortgage or land contract.

**Delinquent Payment –** A payment not paid on a specified payment date. For example, if a payment is due on the first day of every month and it is not received until the fifth day of the month, that payment is delinquent. If a mortgage, trust deed or land contract has a 10-day grace period, then a payment would not be considered "delinquent" until the 11th day after the due date.

**Devise –** A gift of real estate by a will or last testament.

**Dispossess –** To obtain physical possession of property from another by due process of law.

**Dower –** Under common law, the legal right of a wife or child to a part of a deceased husband's or father's estate, regardless of the provisions in his will.

**Down Payment –** The amount of money paid at the execution of a mortgage or a land contract. This lump sum of money is subtracted directly from the original sales price. The remaining principal balance then begins to accrue interest at the specified interest rate.

**Due-On-Sale Clause –** A clause set forth in some mortgages and land contracts whereby the Lender or Seller has the right to "call in" the balance upon the sale or transfer of the property by the Borrower or Purchaser to a third party.

## E

**Earnest Money –** A deposit made by a Purchaser to demonstrate good faith; a down payment.



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**Easement –** A right created by grant, reservation, agreement, prescription, or necessary implication, which one has in the land of another. For example, the right of public utility companies to lay their lines across an other's property is a utility easement.

**Encumbrance –** Any right to or interest in land that effects its value, including outstanding mortgage loans, unpaid taxes, easements, or deed restrictions; a cloud on title.

**Equity –** The difference between fair market value and current indebtedness (balance due). For example, if a person owes $10,000 on his home and the market value is now $50,000, he now has 80% equity in his home ($40,000 out of $50,000).

**Escrow –** An agreement between two or more parties providing that certain instruments or property be placed with a third party for safekeeping, pending the fulfillment or performance of a specified act or condition.

**Escrow Account –** An account in which a prescribed amount of money is deposited each time a payment is collected to be used for paying real estate taxes and/or insurance. For example, a mortgage, trust deed or land contract may require a monthly payment of $260 with an additional $40 to pay taxes and insurance. This $40 goes into an escrow account which, technically, belongs to the Purchaser.

**_____F_____**

**Fee Simple –** The highest and best form of ownership recognized by law. Owner is entitled to the entire property with unconditional power to sell it.

**First Mortgage –** A real estate loan that creates a primary lien against real property.

**Fixtures –** Improvements or personal property so attached to the land as to become part of the real estate. For example, a porch would be considered a fixture, whereas a ceiling fan may just be personal property.

**Foreclosure –** A termination of all rights of a mortgagor in the property covered by a Mortgage. Statutory foreclosure is effected without recourse to courts but must conform to applicable laws.

**Forfeiture –** The loss of money or anything else of value because of failure to perform under contract. For example, because the prospective Purchaser failed to keep up payments under the land contract, he or she forfeited all of his or her rights to the property.

**Free and Clear Title –** Title to a property without encumbrances. It is generally used to refer to a property free of mortgage debt.

**_____G_____**

**Grace Period –** The period during which one party may fail to perform without being considered in default.

**Grantee –** The person to whom an interest in property is conveyed. For example, in a land contract sale the Grantee is most often referred to as the Purchaser.

**Grantor –** The person conveying an interest in property. For example, in a land contract sale the Grantor is most often referred to as the Seller.

**Guaranty –** A written promise by one party to pay a debt or perform an obligation contracted by another in the event that the original obligor fails to pay or perform as contracted. For example, a parent may guarantee payment owed by a son or daughter.

**____H_____**

**Hazard Insurance –** A type of insurance bought to insure property against losses due to fire, theft, vandalism, etc. Most land contracts require the Purchaser to carry hazard insurance at all times to protect the Seller from insurance losses.

**Heir –** One who inherits property.

**Hereditaments –** Any property, whether real or personal, tangible or intangible, that may be inherited.

**Homeowner's Policy –** An insurance policy designed especially for homeowners. Usually protects an owner from losses by common disasters, theft, etc.

**_____I_____**

**Improvements –** Those additions to undeveloped land such as buildings, streets, sewers, etc., that tend to increase its value.



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**Installments –** Parts of the same debt, payable at successive periods as agreed; payments made to reduce a mortgage.

**Insurance Premium –** The amount paid for the purchase of insurance.

**Interest Rate –** The percentage of money charged for its use. For example, a Seller may charge a Purchaser 10% interest on the unpaid balance of a mortgage, trust deed or land contract.

**_____J_____**

**Judgment –** A decree of a court stating that one individual is indebted to another for a certain fixed amount.

**Judgment Lien –** A lien upon the property of a debtor resulting from the decree of a court.

**Judicial Foreclosure –** Having a defaulted debtor's property sold at a price the court approves.

**_____L_____**

**Land Contract –** A real estate installment sale arrangement whereby the buyer may use, occupy, and enjoy land, but no deed is given by the Seller (so no title passes) until all or a specified part of the sale price has been paid.

**Late Charge –** An additional fee charged to a person for a payment that is delinquent. The most common methods of charging late fees are to charge a fixed dollar amount or a percentage of the payment.

**Lease –** A contract in which, for a payment called rent, the one entitled to the possession of real property transfers those rights to another for a specific period.

**Legal Description –** A property description recognized by law which is sufficient to locate and identify the property. A typical legal description will identify the county, township, and section of the township where the land is located.

**Legatee –** One who receives property by a will.

**Lessee –** One who receives property by a lease.

**Liability –** A debt or financial obligation.

**Liable –** Responsible or obligated. For example, one who borrowed on a mortgage generally becomes personally liable for its repayment.

**Lien –** A charge against property making it security for the payment of a debt, judgment, mortgage or taxes. A lien is a type of encumbrance.

**_____M_____**

**Maturity –** The date on which an instrument of indebtedness, such as a mortgage or land contract, becomes due and payable.

**Mortgage-** A pledge of real property as security for the payment of a debt. With a mortgage, the Borrower retains possession and the property. A mortgage is typically signed simultaneously with a note.

**Mortagagee –** The party lending the money and receiving the mortgage.

**Mortgagor –** The party borrowing money secured by real estate and giving a mortgage.

**_____N_____**

**Notary Public –** One who is authorized by the state or federal government to administer oaths and attest to the authenticity of signatures.

**Notice of Default –** A letter sent to a defaulting party as a reminder of the default. Such a notice may state a grace period and the penalties for failing to cure the default.

**_____O_____**

**Opinion of Title –** A certificate, generally from an attorney, as to the validity of the title of property being sold.

**Outstanding Balance –** The amount currently owed on a debt.

**_____P_____**

**Parcel –** A piece of property under one ownership; a lot in a subdivision.



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**Parcel Number –** A number given to a piece of property by the county for tax purposes.

**Payment –** An agreed upon dollar amount paid in regular installments by a Purchaser. The most common installment method for land contract payments is monthly payments.

**Per Annum –** In or for each year annually.

**Personal Property –** Any property that is not real property. For example, personal property is appliances, cash, securities, furniture, and mobile homes not permanently affixed to a site.

**Plat –** A plan or map of a specific land area.

**Plat Book –** A public record containing maps of land and showing the division of the land into streets, blocks, and lots and indicating the measurements of the individual parcels.

**Power of Attorney –** An instrument authorizing a person to act as the agent of the person granting it.

**Premises –** Land; an estate; the subject matter of a conveyance.

**Principal –** The original amount of the total due on a mortgage, trust deed or land contract; the principal portion of a payment is that portion which is not interest. (See "Amortization" for an example of a payment having both principal and interest portions.)

**Principal Balance –** The unpaid balance owed on a mortgage or land contract.

**Principal and Interest Payment –** A periodic payment, usually paid monthly, that includes the interest charges for the period plus an amount applied to the amortization of the principal balance.

**Purchase Money Mortgage –** A mortgage given by the Purchaser of real property to the Seller as part of the consideration in the sales transaction.

**Purchaser –** One who purchases property; also referred to as "Vendee" or "Buyer."



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## _____Q_____

**Quit Claim Deed –** A deed that transfers only such interest, title or right as a Grantor may have at the time the conveyance is executed; a deed without representations or warranties as to the nature of the rights conveyed.

## _____R_____

**Real Estate –** Land and everything attached to it.

**Real Property –** Real estate.

**Representations –** Descriptions as to the quality or character of something. For example, a building may be represented as being free from structural defects.

## _____S_____

**Sales Price –** The mutually agreed upon dollar amounts to be paid for a particular piece of property.

**Section –** One square mile in a government rectangular survey. There are 36 sections in a six-mile-square township.

**Security –** Something given as a pledge to payment.

**Seller –** Individual who has sold real estate; also referred to as Vendor.

**Subordinate –** One who moves to a lower priority, as a lien who if it changes from a first mortgage to a second mortgage.

**Successor –** One who receives title to property.

## _____T_____

**Tenements –** Possessions that are permanent and fixed; structures attached to land.

**Term –** The amount of time (usually computed in months) until the balance of a mortgage or land contract is due and payable. For example, a land contract may fully amortize over a 10-year period (120 months). However, the contract may also call for a balloon payment to be made at the end of the fifth year (60th month). In this case, the term of the land contract would be 60 months or five years.

**Title –** Evidence that the owner of the land is in lawful possession thereof.

**Title Insurance –** A form of insurance purchased to protect against any losses or defects in the title of a particular piece of property.

**Title Search –** An examination of public records, law, and court decisions to disclose the past and current facts regarding ownership of real estate.

**Township –** A six-mile-square tract delineated by a government rectangular survey.

**Trust Deed –** A claim against real estate similar to a mortgage but
title is held by a third part called a Trustee for the Beneficiary.

**Trustee –** One who holds property in trust for another to secure performance of an obligation.

**_____U_____**

**Underlying Debt –** An original loan that is still in existence. This loan may be owed on a mortgage, trust deed or land contract.

**Use Restrictions –** A clause in a deed which places limitations or restrictions on the property's use. For example, "this property can never be used to sell liquor" or "this property can never be used to raise farm animals." These limitations "run with the land and are therefore binding on subsequent owners.

**_____V_____**

**Vendee –** A person who buys property; another word for "Purchaser."

**Vendor –** A person who transfers property by sale; another word for "Seller."

**_____W_____**

**Warranties –** Promises contained in a contract. For example, a Seller may warrant that a property sold is structurally sound.

**Warranty Deed –** A deed that conveys or transfers title from one party to another with covenants assuring that the title transferred is free from all encumbrances.

## Y

**Yield –** The rate of return on an investment. For example, if one invests $100 and receives $15 after the first year, one's yield is 15% on the invested cash for the first year.

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## SAMPLE

### Payment Record

Real Property Buyer: James Carson (makes payments to you)
Date of Original Note: 02/20/1988
Amt of Original Note: $75,000
Remaining Note Balance: $23,888.62 (When you purchased it)
Monthly Payment: $699.10
Day of Month Payment is Due: 1st
Interest rate: 9.5%
Term in months: 240
Property Address: 123 Main Street, Daytona Beach
Insurance Company: State Farm Florida Insurance Company
Taxes: Volusia County Property Appraiser (386) 257-6000
Note payer: James Carson
555 International Speedway Blvd.
Daytona Beach, FL 32114
Office (386) 555-1234
Home (386) 555-1212
Cell (386) 123-4567
Next door neighbor: Bob Smith (386) 255-1234
Police Dept: Daytona Beach Police Dept. (386) 671-5100

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Formula to calculate accrued interest:
Principal bal. X interest rate / 365 X # days = interest

| Payment Date | Principal Balance | Days Interest | Interest Amount | Payment Amount | New Balance |
|---|---|---|---|---|---|
| | | | | | 23,888.62 |
| 10-03-2005 | 23,888.62 | 33 | 205.18 | 699.10 | 23,394.70 |
| 11-01-2005 | 23,394.70 | 28 | 170.49 | 699.10 | 22,866.09 |
| 12-05-2005 | 22,866.09 | 34 | 202.35 | 699.10 | 22,369.34 |
| | 22,369.34 | | | | |

Principal Balance + interest - payment = new balance



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## Payment Record

Real Property Buyer: ______________________________
Date of Original Note: _________________________
Amt of Original Note: $___________________
Remaining Note Balance: $_______________
Monthly Payment: $__________________
Day of Month Payment is Due:__________________
Interest rate: _____________
Term in months: ______________
Property Address:
Insurance Company:
Taxes:
Note payer: Name:
Address:
City:
Office Phone:
Home Phone:
Cell Phone:
Next door neighbor:
Police Dept:

(Get all the information you need in case of a problem)

---

Formula: Principal bal. X interest rate / 365 X # days = interest

| Payment Date | Principal Balance | Days Interest | Interest Amount | Payment Amount | New Balance |
|---|---|---|---|---|---|

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Formula: Principal bal. X interest rate / 365 X # days = interest

| Payment Date | Principal Balance | Days Interest | Interest Amount | Payment Amount | New Balance |
|---|---|---|---|---|---|

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