

## Installment Sales Agreement – A viable option?

With sellers facing an extended time on the market and more buyers unable to obtain favorable financing terms, it is only natural that we turn to installment sales contracts as an option to the traditional transaction. The Pennsylvania Association of REALTORS® (“PAR”) does not publish a standard installment sales addendum to the agreement of sale, nor does it publish an installment sale contract. As a result, some licensees are lost as to how to proceed.

The best practice would be to start with the PAR *Standard Agreement* and complete it much like you would in any typical transaction. The parties and the licensees will be identified on the first page. The date and purchase price are noted on page 2 and so on. The changes from the typical agreement would be a waiver of the mortgage contingency would be waived; the settlement date would reflect “Settlement on the Installment Sales Agreement”; and Special Clauses (Paragraph 27) would indicate that the terms are modified by the attached Installment Sales Agreement. Further, the Installment Sales Agreement would be negotiated between the parties and attached to the agreement of sale. Its terms would specify how the transaction would work and everyone would know how to proceed.

Unfortunately, it rarely works out so easily. Here is an example: the parties have attempted to negotiate a traditional real estate transaction, but during the process of obtaining prequalification, they have learned that the buyer can't come up with the funds needed. So the parties discuss a lease/purchase agreement, which more often than not, means that, in theory, they agree to the sale on an installment basis. In an effort to commit the parties to the process, the selling agent endeavors to put something in writing for the parties to sign. All too often, the precise details of the installment arrangement are not known and will not be known until after the parties execute an initial “agreement.” The parties are then whisked off to the attorney who will draft the terms of the installment sale.

How might you put together an agreement before you have the precise terms of the installment sales plan formulated? In these cases I encourage the use of an Installment Sales Addendum to the agreement of sale. No such standard form exists, but I can guide you through the process. Once again, the PAR *Standard Agreement* would be completed almost the same as for any other transaction. Again, the mortgage contingency would be waived, the settlement date would indicate the date for “settlement on the Installment Sales Agreement”, and a special clause would be inserted indicating that the agreement of sale is modified by the terms of the Installment Sales Addendum.

So what goes in the Addendum? The Addendum should include:

- An opening statement that the *Agreement of Sale* will be modified by the terms of an Installment Sales Contract to be drafted by counsel (for seller or buyer) which will be delivered to the other party within \_\_\_\_ days of execution.

- The party receiving the proposed Installment Sales Agreement should be given a number of days from its receipt to review and accept or modify its terms.
- If the terms of an installment sales contract cannot be agreed upon within \_\_\_\_\_ days, the *Agreement of Sale* is terminated and buyer's initial deposit is to be returned.
- The Addendum would recite that the basic payment provisions to be incorporated in the Installment Sales Agreement:
  - Cash deposit to be paid on or before settlement on the Installment Sales Agreement;
  - A provision that the balance of the purchase price will be paid with interest at \_\_\_\_\_% per annum; amortized over \_\_\_\_\_ years and paid in monthly installments of \$\_\_\_\_\_ (a mortgage calculator should be used to determine what the monthly payments will be); and
  - A date when the balance of the entire purchase price must be paid (this provision is not necessary if the installment contract is to run the full amortization period; most often there is a balloon payment provision requiring payment of the then remaining balance so many years after settlement on the installment sales contract).

With regard to the deposit, if you represent a seller you clearly must endeavor to get a substantial sum. Remember, the seller is giving the buyer possession before receiving the full purchase price. The seller's only security may be the deposit. If things go badly and the buyer defaults, perhaps leaving the property in a state of disrepair, how badly will the seller suffer? Having a substantial deposit is more likely to inspire faithful performance by the buyer who is reluctant to lose that deposit.

I want to emphasize that the installment sales contract should be drafted by counsel for one of the parties. Both buyer and seller should be encouraged to engage legal counsel to negotiate the terms and explain fully the ramifications of entering into an installment sales contract. There is no such thing as a standard installment sale contract and a transaction of this nature does not inure itself to the development of one.

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