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## Understanding the Kansas Contract for Deed Act A Guide for KS Sellers and Buyers

A “contract for deed” is often referred to as a land contract, installment land contract, or an agreement for deed. It is a type of real estate transaction where the seller finances the sale of the property. Instead of the buyer obtaining a mortgage from a bank or lender, the buyer makes payments directly to the seller over time. The key characteristic of a contract for deed is that the seller retains legal title to the property until the buyer has paid the full purchase price, typically over a period of several years. Once all payments are made, the seller is obligated to transfer the title to the buyer.

### Key Features of a Contract for Deed:

1. **Ownership and Title Transfer:** The seller retains the legal title to the property until the full purchase price is paid by the buyer. The buyer typically gains equitable title, meaning they have the right to use and enjoy the property during the payment period.
2. **Payment Terms:** The buyer makes regular payments directly to the seller, which often include interest, property taxes, and insurance, depending on the terms of the agreement. These payments are often structured similarly to mortgage payments.
3. **Possession:** The buyer usually takes possession of the property and is responsible for its maintenance and upkeep during the contract period, even though they do not yet hold the legal title.
4. **Default and Forfeiture:** If the buyer defaults on the payments, the contract often allows the seller to reclaim the property without the need for foreclosure proceedings. This can result in the buyer losing both the property and the money they have already paid.

### Advantages and Risks:

- **Advantages:**
  - Easier financing for buyers who may not qualify for traditional mortgages due to poor credit or other factors.
  - Flexible terms that can be negotiated between the buyer and seller.
- **Risks:**
  - Higher risk for the buyer, especially in the event of default, as they could lose the property, all payments made, and any equity in the property.
  - Potential for the seller to default on their obligations, such as failing to pay an underlying mortgage, insurance or tax installment, which could lead to foreclosure and the buyer losing the property.

**The Kansas Contract for Deed Act – Effective July 1, 2024**

The Kansas Contract for Deed Act introduces a legal framework that governs transactions involving contract for deeds. This Act, encapsulated in Sections 10 through 13, sets out specific guidelines to protect both buyers and sellers involved in such agreements. Here's a breakdown of what this Act entails and how it affects you.

**Recording the Contract:** One of the key provisions under Section 11 is that any contract for deed or affidavit of equitable interest can be recorded with the county's register of deeds where the property is located. This makes the agreement public record and protects the buyer's interest in the property. In the event of default, the buyer has 15 days after notice to record a release or vacate the premises, or they may be liable for the seller's legal fees and other related costs.

**Seller's Obligations:** Section 12 mandates that a seller must hold a clear title to the property, free from any mortgage, lien, or encumbrance unless certain conditions are met, such as:

1. **Due to the Conduct of the Buyer:** If a lien or encumbrance is a result of the buyer's actions, this is an acceptable exception.
2. **Agreement with the Buyer:** If the buyer agrees, a lien can be placed on the property as a condition of a loan obtained to make improvements to the property.
3. **Pre-Existing Liens or Encumbrances:** If the seller has an existing mortgage, lien, or encumbrance on the property before executing the contract for deed, the seller can still proceed if:
  - The seller **discloses** the mortgage, lien, or encumbrance to the buyer.
  - The seller **continues to make timely payments** on the existing mortgage, lien, or encumbrance.
  - The seller **informs the mortgagee or lienholder** about the contract for deed.
  - The seller **obtains a release** of the mortgage, lien, or encumbrance before the buyer makes the final payment, unless the buyer agrees to assume the liability.

Violating these requirements is considered a deceptive act under the Kansas Consumer Protection Act, subjecting the seller to potential legal penalties, injunctions, and restitution on behalf of the buyer (the consumer). This provision protects buyers from unknowingly entering agreements where the property might have outstanding debts or legal claims against it.

**Protecting the Buyer's Rights:** Under Section 13, the seller must provide a buyer with a written notice of default and the right to cure. The notice must outline the following:

1. The buyer must be given notice of intent to forfeit, which must clearly describe the contract, the property, and the specific terms violated.
2. The buyer has **30 days** to cure the default if they've paid less than 50% of the purchase price, or **90 days** if they've paid 50% or more.
3. The notice must be delivered to the buyer in person, at their residence, or by certified mail with a return receipt requested.

**Void and Unenforceable Restrictive Covenants:** Section 14 addresses restrictive covenants that may violate anti-discrimination laws in Kansas. Any such restrictive covenants are deemed void

and unenforceable. Property owners have the right to release these covenants by recording a “Certificate of Release” with the county’s register of deeds, thus ensuring compliance with state law. The bill further permits cities and counties to initiate the removal process if any homeowner association responsible for the covenants are inactive.

### **Conclusion**

The Kansas Contract for Deed Act introduces protections for both sellers and buyers involved in real estate transactions through contract for deeds. By understanding these provisions, parties can navigate their agreements with greater confidence, ensuring compliance with state laws and safeguarding their interests. It is particularly crucial for sellers to familiarize themselves with these regulations to avoid potential legal pitfalls.

Anderson & Associates is offering 30-minute consultations for \$150.00 to assist sellers in understanding the bill, and in applying the bill to their current and future contract for deed. If you are interest in a consultation, please email [julie@mokslaw.com](mailto:julie@mokslaw.com).