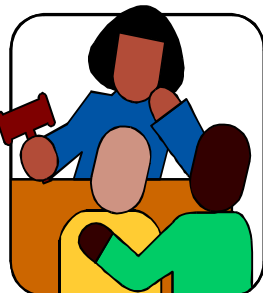
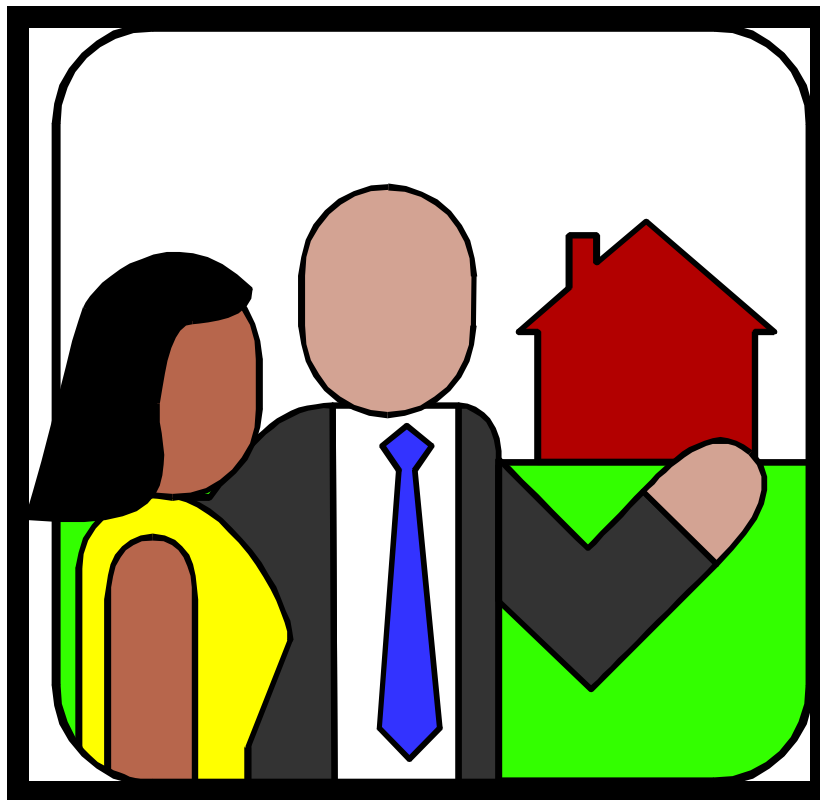


What happens if you miss payments on a contract for deed in Illinois©

Housing #1
July 1, 1998



The Self Help Legal Center
Southern Illinois University School Of Law
Carbondale, IL 62901
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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Look for these symbols to tell you when to:



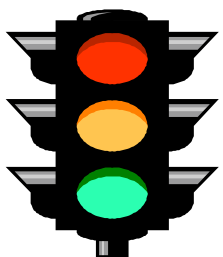
STOP!

You need legal representation or advice to continue.



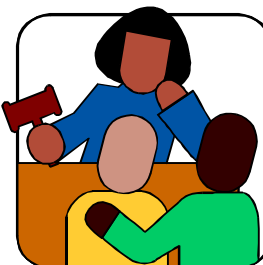
USE CAUTION!

This is very important so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Free sources of legal help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

618-462-0036

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

West Central Legal Assistance

Serves Knox, Henderson, Stark, Warren, McDonough, and Fulton counties

800-331-0617

Will County Legal Assistance

Serving Will County

815-727-5123

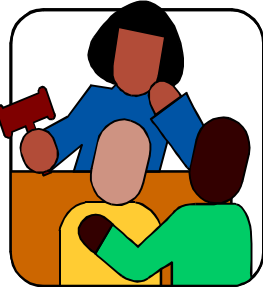
Who should not use this packet



This packet discusses what happens if you fall behind on a contract for deed in Illinois and the Seller threatens legal action against you.



If the payments on your contract for deed are over a period of more than 5 (five) years **and** you have paid more than 20 (twenty) percent of the purchase price, the Seller **must** use the



mortgage foreclosure procedure to regain possession of the home. If this applies to you, do not use this packet. Instead consult Packet #2 of the Housing Series which discusses mortgage foreclosure.



If you are unsure as to whether this packet applies to your situation, you should seek the assistance of an attorney.



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

People you should know

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

How to file a document in a court file

This section answers commonly asked questions about filing documents.

Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.



Who these people are



Judge:

The judge is the person who presides over the courtroom. In most cases, including contract for deed cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people that they are being sued. The sheriff does this by giving the person a notice called a "summons" . The sheriff also enforces the judge's orders.



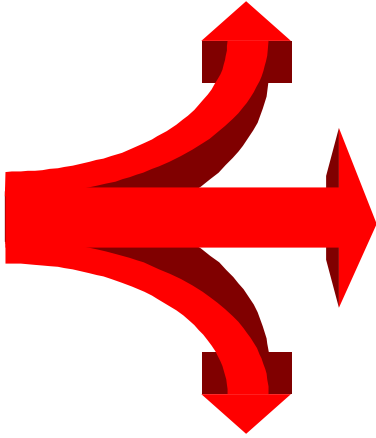
Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



Seller:

For the purposes of this packet, the person whom you are paying under your contract for deed is called the Seller.



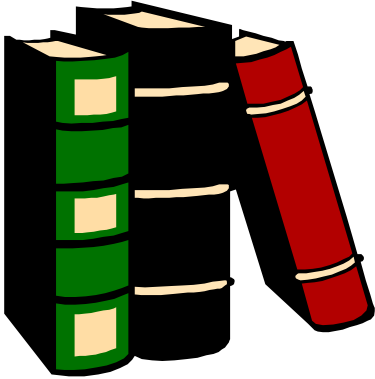
Mediation

In some cases, you may be able to work out an agreement with your seller as to what should be done about your home finance problem. A mediator is someone who can meet with you and the person with whom you are having a dispute and help you both come to a resolution you can both agree on. A mediator is not a judge and does not make decisions, but rather helps you and the other parent make a decision. In some counties, mediation is offered in certain types of cases, including contract for deed cases.

Local or municipal law

In some cities or municipalities, you may have additional rights not mentioned in this packet. For more information on whether a local ordinance affects your situation, consult an attorney.

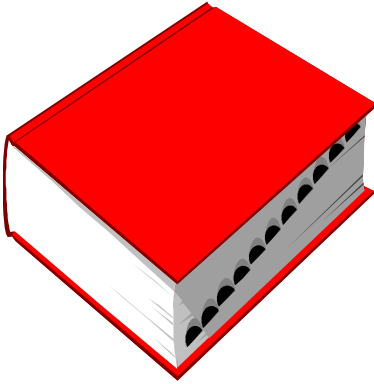




Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of contract for deeds. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

At the time we printed this packet, there were no self help publications which we were aware of which discussed this topic. Consult your local public or law library to see if there are any new publications on this topic. For the most recent information, consult the Self Help Legal Center.



answer or response

The written response to a complaint or a petition that is filed by the defendant (the person being sued) in a lawsuit. In small claims court, you are not required to file an answer as long as you show up to the first scheduled hearing on the plaintiff's complaint.

breach or "breaking" an agreement

To do something that an agreement prohibits you from doing or failing to do something that you had agreed to do.

circuit

The judicial system in Illinois is divided into circuits. Each circuit defines a geographic area in Illinois.

contract for deed

When a buyer makes periodic payments directly to the Seller for the purchase of real estate. The Seller retains the deed to the property until the purchase price has been paid in full. A contract for deed is also called a real estate installment contract.

exemption rights

In Illinois, certain property (including cash, income, personal property, and a portion of your car and home) cannot be taken from you to pay a debt. This property is called exempt property. If a judgment is entered against you in Illinois, you have the right to claim this property as exempt and not use it to pay a debt against you. For a discussion of your rights as a debtor, see Packet #1 of the Consumer Series.

default

If a person who is sued fails to appear at the first scheduled hearing (or any subsequent hearings) and/or if he/she fails to file an answer to a complaint, petition, motion, etc. filed against him/her, he/she can be held in default. Being held in default means that the other side (the person who filed the complaint, motion, petition) will usually receive whatever relief or money they were asking for.

defendant

A person who is sued.

deficiency

In foreclosure proceedings, the deficiency is the amount (if any) left unpaid by the Buyer after the property is sold and applied to the amount the Buyer owed.

hearing (trial)

An opportunity for both parties to tell the judge or jury their side of a dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

judgment

A final decision or order of the court.

jurisdiction

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a thing. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state that gave rise to the case.

lender

For the purposes of this packet, the lender is the person, bank, or other financial institution which loans money to the Buyer to pay the Seller.

mortgage

When the Seller is paid in full by a lender for a piece of property. The Buyer makes payments to the lender and the lender retains the deed to the property until the purchase price is paid in full.

motion

A written or oral request to the judge after a lawsuit has been started (see petition).

notary public

A person who verifies that a signature on a document is made by the person whose signature appears. The notary public does not verify the content of the document itself.

petition or complaint

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

plaintiff or petitioner

The person who starts a lawsuit.

pro-se

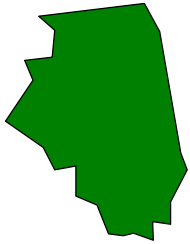
A person who is not represented by an attorney and is involved as a party in a lawsuit.

serve or service

The process where a person is officially notified of a pending lawsuit.

statute

The law that the state legislature or federal government enacted on a particular subject.



The process to terminate a contract for deed is governed by the Illinois Forcible Entry and Detainer Act. The Forcible Entry and Detainer Act can be found in Chapter 735, Act 5, Section 9 of the Illinois Compiled Statutes.

What is a contract for deed purchase?

A contract for deed purchase of a home is when the Buyer and the Seller have agreed that the Seller will keep the deed to the home until the Buyer has paid off the total purchase price, usually in installments. A contract for deed is also called a real estate installment contract.

Does a contract for deed need to be in writing?

No, although it is strongly recommended to help avoid future disagreements over what the terms of the agreement were.

What kind of notice must the Buyer receive if he falls behind?

The law in Illinois requires the Buyer to receive 2 different notices if he/she falls behind on a contract for deed purchase.

Under Section 9-104.1, the Seller must send a notice of his/her intent to terminate the contract for deed and then wait 30 days to allow the Buyer a chance to satisfy the terms of the demand.

Under Section 9-102, the Seller must make a written demand for immediate possession of the home.

The Buyer's rights to a "stay" or a hold on the judgment if he/she loses in court:

The right of the buyer to keep the home even if he/she loses in court by catching up on all the missed payments is discussed in Section 9-110.



If you are late or have missed a payment on your home, contact the Seller and inform the Seller when he/she can expect to receive the missed or late payment. Often problems regarding late or missed payments can be worked out among the Buyer and the Seller without having to go to court.

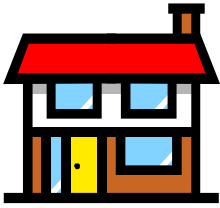
Sometimes, however, the Seller refuses to accept a late payment or says that he/she wants you to leave your home because you were late or missed a payment. The Seller might even threaten to take you to court. You should know, therefore, what the Seller must do if they want you (the Buyer) to leave your home.

Under Illinois law, if a Buyer has entered into a contract for deed to purchase a piece of property and later misses or is late with a payment, the Seller must go through 5 steps before the Buyer must leave their home and return it to the Seller.

- Step 1.** The Seller must send the Buyer a written notice of his/her intent to terminate the contract for deed. The Seller must then **wait 30 days** before proceeding to Step 2.
- Step 2.** The Seller must make a written demand for immediate possession of the home.
- Step 3.** The Seller must file a complaint against the Buyer in court asking for the possession of the home. When the Seller files his/her complaint, a date for a hearing in court on the complaint will be selected.
- Step 4.** The Buyer must be served with a Summons and a copy of the complaint against the Buyer. The Summons must notify the Buyer of the place, time, and date of the court hearing.
- Step 5.** A court hearing must be held where the Seller and the Buyer can call witnesses, present evidence, and testify before a judge and/or a jury. If the Buyer has received a Summons informing them about the hearing and the Buyer does not appear, then the hearing will proceed without the Buyer and the Buyer will most likely, lose.

If the Seller prevails at the hearing, a Judgment will be entered by the judge granting possession of the premises to the Seller and the Buyer must leave the premises.

How to keep your home even if you lose in court 14



If the judge finds that the Buyer has paid **25% or more** of the total purchase price of the property, he **must postpone enforcement of the judgment for at least 60 days** but can grant up to **180 days** for the Buyer to catch up on any missed payments.

If the Buyer catches up on their payments during that time, they get to keep the home and the contract for deed remains in effect.

Consequently, if you have paid 25% of the total purchase price, therefore, and a judgment is entered against you giving the premises back to the Seller, you should inform the court that you want at least 60 days under the law to give you time to try to catch up on your payments.



Q: What is a court file?

A: The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

Q: When do you need to file a document in a court file?

A: Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

Q: What does it mean to file a document in a court file?

A: Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

Q: Does filing a document make it legal?

A: No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

Q: Why is filing so important?

A: Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.



4 Commonly held beliefs about contract for deed sales which are not true:

I sent in a partial payment to the Seller and they sent it back to me. This means that I don't have to send it in again or that I can use the money on something else. It also means that they can't sue me.

While you can use the money on something else, that is not a good idea for several reasons. First, just because the Seller returned a partial payment does not deny them the option of taking you to court. Second, do not confuse the fact that a payment was returned to you as a sign that the Seller doesn't care if you sent in partial or late payments. Often, the reason a payment is sent back is because the Seller is concerned that if they accept a partial payment it will be used as evidence they agreed it was OK for you to continue to send partial payments. You should save the partial payment until you can afford to send in a full payment. Third, the more money you pay or save to pay on your home now will lower the amount you may have to come up with later to exercise your right to catch up on your missed payments (see page 14).

I don't need to record my contract for deed until it is paid off.

Wrong. You should record your contract for deed with the Recorder's office in your county as soon as you sign the contract. There are 2 reasons for this. First, it will inform anyone who tries to buy the property from the Seller or take the property via a tax sale, foreclosure, etc, that you have an interest in the property. Second, in the event that the Seller tries to sell the same piece of property to two different Buyers, the law will look at who recorded their agreement to purchase first as a method in determining who gets to keep the property.

Like a landlord, the Seller is responsible for maintaining the home.

Wrong. Unless your contract says otherwise, the Buyer is responsible for maintaining the home.

I don't need to worry about paying taxes or keeping insurance on the home until I have paid it off.

Wrong. Unless your contract says otherwise, the Buyer is responsible for maintaining insurance on the home and paying any real estate taxes that are for the period of the contract.



Get everything in writing.

While it is not required, you should try to get all verbal agreements with the Seller in writing in the event that you have to prove the terms of the agreement. For example, if the Seller agrees to allow you to pay less than your regular monthly payment for a period of time, you should get this in writing.

Look at your income and expenses realistically

Before you decide whether to employ one of the options in this packet, you should realistically look at your monthly expenses and your income and figure out what you can afford to pay on a regular basis.

Take whatever you need to prove your claim to your hearing

Remember that you can only testify as to facts or events of which you have direct personal knowledge. If you need a witness, document, picture, etc. to prove something, make sure that you bring it with you on the date of your hearing. Do not assume that the judge will give you a continuance to get this information or that the judge will require the other party to give this information to you.



Similarly, keep in mind that documents like letters, estimates, and written statements may not be considered by a judge if the person who wrote the letter/estimate/or statement doesn't appear in court on the date of your hearing. If you need this evidence to prove your claim, you should either bring these people with you or subpoena them to appear in court.

Get help if you need it

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, appearing in court may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if representing yourself in court proves to be too difficult a task for you, talk to an attorney.