

1. Specific performance (including a court order directing the seller to give the required deed);
2. Quiet title;
3. Cancellation of the land contract (seeking return of the money paid by the buyer in exchange for all of the buyer's rights in the property);
4. Money damages.

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ABOVE ALL, BOTH THE BUYER AND THE SELLER MAY BE ABLE TO AVOID PROBLEMS IF THEY TALK TO EACH OTHER AT THE TIME QUESTIONS OR CONCERNS FIRST ARISE REGARDING THE LAND CONTRACT.

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THIS BROCHURE SHOULD NOT BE USED IN PLACE OF LEGAL ASSISTANCE. BEFORE SIGNING A LAND CONTRACT AND IN THE EVENT OF A LAND CONTRACT DISPUTE, SEEK LEGAL ADVICE.



**REAL PROPERTY LAW SECTION
STATE BAR OF MICHIGAN**

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State Bar of Michigan

LAND CONTRACT SALES



A land contract is an agreement for the sale of real estate, whereby the buyer (called the vendee) makes an initial down payment to the seller (called the vendor) and pays the remainder of the purchase price, plus interest – which may not exceed 11% per year – in installments over a period of time. The seller retains ownership of the real estate and, as such, there is no promissory note or mortgage involved. When the final payment is made the deed is delivered to the buyer.

BUYER DEFAULT

When a buyer fails to make payments or otherwise breaches the contract a seller should look to the land contract in order to determine the parties' rights and obligations. Generally, in the event of a default by the buyer, a land contract will give the seller the option of pursuing specific performance (suing to enforce the provision breached) or of regaining possession of the property, which can be accomplished by one of two means:

1. Seeking forfeiture of the land contract; or
2. Foreclosing on and selling the land contract property.

Generally, a seller must use the court system in order to regain possession of the property and evict a land contract buyer who has failed to meet the requirements of the land contract. The method used for regaining possession of the property must be set forth in the land contract itself.

LAND CONTRACT FORFEITURE

A seller may regain possession of land contract property through forfeiture if (i) the land contract expressly provides for forfeiture and termination of the land contract, and (ii) the buyer has either failed to make payment of money required to be paid or has materially breached the land contract (failed to pay taxes, keep the property insured, etc.).

Procedure to regain possession of the property through forfeiture:

1. Seller must provide the buyer with a written notice of forfeiture describing the default.
2. The buyer has at least 15 days (or more if stated in the land contract) to correct the default. If the buyer fails to respond in writing or otherwise reach an agreement with the seller, the seller may take legal action.
3. The seller must file a summons and complaint, together with a copy of the land contract, the notice of forfeiture and proof of service with

the appropriate court.

4. The court will deliver or mail to the buyer the summons and complaint, which will provide the date and time on which the court will hold a hearing (usually called a summary proceeding).
5. If the seller is successful at the hearing, the buyer will have either 90 or 180 days (depending upon the circumstances) in which to pay the missed payments and court costs and/or to correct any other breach of the land contract. A buyer who fails to pay or correct the breach within such time may be evicted in the same way a tenant is evicted from rental property.

Advantages of Forfeiture:

- A seller is able to regain possession much quicker than in a foreclosure proceeding.
- The buyer's time period for redeeming the property is much shorter than in a foreclosure.

Disadvantages of Forfeiture:

- A buyer may prevent the loss of the property by merely paying past due installments.
- When a seller has regained possession of the property, the buyer typically has no further liability under the land contract.

LAND CONTRACT FORECLOSURE

A seller may regain possession of land contract property through foreclosure if (i) the land contract expressly provides for foreclosure and contains an acceleration provision, and (ii) the buyer has breached the land contract.

Advantages of Foreclosure

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- A buyer may be required to pay the entire balance due under the land contract to prevent foreclosure.
- Even if the property is returned to the seller the buyer may remain liable to the seller for the portion of the balance due under the land contract which was not satisfied by the sale of the property.

Disadvantages of Foreclosure:

- A foreclosure sale cannot take place until 3 months after filing a complaint with the court.
- The buyer will have 6 months after a foreclosure sale to pay the principal and interest due, with costs, and "redeem" the property.

SELLER DEFAULT

Generally, upon a buyer's fulfillment of the land contract the seller should give the buyer the required deed conveying the property free of liens created by the seller. A seller who fails to provide the required deed may be in breach of the contract. If the seller is unwilling or unable to give the required deed the buyer may have various options including legal action for: