

Commission Position 23 - Lease Options, Lease Purchase Agreements, and Installment Land Contracts

(Recodification adoption June 7, 2022: CP-39 Commission Position on Lease Options, Lease Purchase Agreements and Installment Land Contracts recodified to CP 23 - Lease Options, Lease Purchase Agreements, and Installment Land Contracts)

The Commission recognizes that in order to maintain the resilience of the real estate market during times when conventional lending requirements are rigorous, alternative funding practices are utilized to sustain the market conditions of supply and demand. The Commission has received and investigated numerous complaints pertaining to lease options, lease purchase agreements, and installment land contracts (i.e., types of “seller financing” agreements). Although the Commission does not have the authority to prohibit the types of real estate transactions that Brokers participate in, the Commission strongly cautions Brokers to utilize the services of a Colorado licensed attorney when performing Real Estate Brokerage Services in such transactions.

It has been the Commission’s observation, based on complaints received, that these types of seller financing agreements are complex and generally contain provisions with significant financial risk posed to the prospective buyer and seller. These agreements afford buyers the opportunity to take possession of the real property and make installment payments to the seller. There is a significant potential for harm to the seller, buyer, or assignee if these contracts are not properly drafted. Both buyers and sellers should seek separate legal representation to advise them and draft the contracts. In all of the above transactions, the seller retains legal title to the property while the buyer may acquire equitable title.

The Commission does not have a Commission-Approved Form sufficient to memorialize the terms and nuances related to these complex transactions, or any jurisdictional regulations that may be relevant. Pursuant to sections 12-10-217 and 12-10-403(4), C.R.S., and Rule 7.1., Brokers are prohibited from drafting a contract document that would reflect the terms of such a transaction to the extent that it would exceed their level of competency and is a matter requiring the expertise and advice of an attorney. Additionally, such behavior may be construed as the unauthorized practice of law by the Broker and subject to civil penalties. The contracts for these transactions should not be prepared by a Broker; rather, the documents should be drafted by a licensed Colorado attorney engaged for the specific transaction.