

UNDERSTANDING SELLER-CARRIED FINANCING IN OREGON:

Promissory Notes vs. Land Sale Contracts

Seller-carried financing remains a powerful, often underutilized tool in Oregon real estate. Whether you're a seller looking to reach more buyers, or a buyer navigating lending hurdles, these alternative structures can open doors that traditional loans might leave closed.

One of the primary reasons sellers might offer financing is if they own the property outright or have a very small loan remaining, as most traditional mortgages have a "due on sale" clause requiring payoff upon transfer. This flexibility can make a property more appealing and potentially command a higher sale price.

But the mechanics matter. Two of the most commonly used instruments for seller financing in Oregon – Promissory Notes secured by a Trust Deed and Land Sale Contracts – operate very differently under the law, especially when it comes to foreclosure and the buyer's rights. Understanding these differences isn't just about compliance – it's about making smart, low-risk decisions on both sides of the transaction.

COMPARING THE FRAMEWORKS

A **Promissory Note** with Trust Deed functions similarly to a traditional mortgage, except the seller acts as the lender.

This is the most common method for seller financing in Oregon and can often be prepared by title companies and escrow firms. At closing, legal title transfers to the buyer. The buyer signs a promissory note outlining their repayment terms, secured by a deed of trust recorded against the property.

This deed of trust allows the seller to initiate a non-judicial foreclosure in the event of default, following the procedures outlined in ORS 86.705 to 86.815.

Land Sale Contract defers the title transfer. While less common, and potentially more expensive to set up as they are often drawn up by an attorney, they offer a different structure.

The buyer receives equitable title – granting the right to possess and use the property – while the seller retains legal title until the contract is paid in full.

If a default occurs, the seller can enforce a forfeiture process to reclaim the property and extinguish the buyer's interest, as outlined in ORS 93.905 to 93.940.

NON-JUDICIAL FORECLOSURE:

WHAT SELLERS GAIN AND RISK



For Promissory Notes, Oregon law permits a non-judicial foreclosure, a significant benefit for sellers. This process, also known as foreclosure by “advertisement and sale,” typically takes approximately 140 days.

If the buyer defaults – say, misses three consecutive payments—the seller can initiate foreclosure by filing a Notice of Default and Election to Sell. The trustee mails this notice, along with a “notice of home loss danger,” to the owner and other interested parties, and publishes the notice of sale in a newspaper.

After a statutory waiting period (minimum 120 days), and required notices to all parties of interest, the property can be sold at public auction.

This is often more efficient and less expensive than judicial foreclosure and avoids court delays. Sellers regain control of the property relatively quickly, and in some cases, may pursue a deficiency judgment if the sale doesn’t cover the loan balance – though this only applies to certain property types and is not available if the property is residential and foreclosed non-judicially. Following a non-judicial sale, the owner must move out within 10 days and generally has no right of redemption. However, the owner can stop the foreclosure by paying all delinquent payments, trustee’s fees, and attorney fees up to 5 days before the scheduled sale.

Still, the process has legal pitfalls. Strict compliance with statutory notice and timeline requirements is essential; procedural errors can invalidate the sale. And if the market has softened or the property has deteriorated, the seller may find themselves with a repossessed asset worth less than the original loan. It’s also crucial for sellers to be named as a co-insured or & ‘loss payee’ on the property’s insurance to protect their interest in case of damage like a fire.

FORFEITURE IN LAND SALE CONTRACTS:

SIMPLER ON PAPER, BUT MORE COMPLEX IN PRACTICE



With a **Land Sale Contract**, the seller keeps legal title until the buyer pays in full. If the buyer defaults, the seller can enforce a forfeiture process without going to court. This typically involves delivering a written notice of default, by service or by both first class and certified mail, to the buyer's last-known address and any other parties who have recorded a request for notice.

The notice must specify the nature of the default, the amount (if a payment default), and the date after which the contract will be forfeited if the default isn't cured. The cure period varies by statute, for instance, it may not be less than 60 days if the purchaser has reduced the unpaid balance to an amount greater than 75% of the purchase price, or 90 days if the unpaid balance is between 50% and 75% of the purchase price.

If they don't cure, the seller records an affidavit of forfeiture with the property description and a copy of the notice of default in the county deed records, extinguishing the buyer's rights and reclaiming possession. According to ORS 93.930, upon recording this affidavit, the purchaser and those claiming through them (who were properly notified) have no further rights in the property, and all sums previously paid belong to the seller.

All rights of the purchaser to improvements made are also forfeited, and the seller is entitled to possession 10 days after the declaration of forfeiture is recorded. After the declaration is recorded, the seller generally has no further claim against the purchaser for any unpaid portion of the purchase price.

On paper, this seems straightforward. But in practice, enforcing a forfeiture can be more legally fraught—especially when a buyer has made substantial payments or improvements to the property. Courts may intervene if a buyer contests the forfeiture, arguing for the right to redeem or recover equity. Unlike the clean lien-and-auction model of the trust deed, forfeiture can veer into gray areas, particularly when long-term contracts or emotional investments are involved.



WHAT THIS MEANS FOR *BUYERS*

Buyers who enter a seller-financed deal with a **Promissory Note** receive legal title immediately. This allows them to treat the property as their own: renovate, refinance, even resell—subject to the terms of the trust deed. However, it also places them squarely within the formal foreclosure framework if they default.

There is no statutory right of redemption in Oregon's non-judicial foreclosure process for trust deeds, meaning once the property is sold at auction, the loss is final. Buyers should also be aware of the Seller's Property Disclosure Statement requirements under ORS 105.464, which, if not provided when required, can give the buyer the right to revoke their offer prior to closing.

In contrast, buyers under a **Land Sale Contract** build equity over time but don't receive title until the final payment is made.

Their control is more limited, and if they default – even late in the contract – they risk forfeiting everything, including all their previous payments and any improvements made, as per ORS 93.930.

It's a stark outcome, and one that has surprised many buyers unfamiliar with the fine print.

REAL SCENARIOS, REAL CONSEQUENCES

Consider a seller who finances the sale of a rental duplex using a **Promissory Note** and Trust Deed. After 18 months of regular payments, the buyer begins missing payments due to vacancy and rising costs. The seller initiates a non-judicial foreclosure and reclaims the property within six months, re-renting it at a higher rate in a recovered market.

Now contrast that with a **Land Sale** scenario: a buyer has made payments on time for five years and has invested heavily in landscaping and renovations. They hit financial hardship and default. The seller initiates forfeiture, regains possession, and resells the property—without compensating the buyer for any equity or improvements, as allowed by ORS 93.930. If contested, this could trigger litigation and delays.



FINAL THOUGHTS

Both instruments offer viable paths for seller financing in Oregon, but they serve different purposes. A **Promissory Note** with Trust Deed aligns more closely with traditional financing—it's predictable, formalized, and gives the buyer ownership from day one. **Land Sale Contracts** offer more control for sellers but introduce more ambiguity and risk, especially around forfeiture and equitable interests.

Sellers considering this route should be aware of licensing requirements; for instance, an individual selling investment property or a vacation home generally does not need a mortgage loan originator license for that transaction, but real estate brokers or agents may not “take an application” or “negotiate terms” of seller-carry financing unless they also hold an Oregon licensed mortgage broker or loan originator license.



Neither route is one-size-fits-all. If you're a buyer or seller considering a seller-carried transaction, the right choice depends on your goals, risk tolerance, and legal guidance. Each structure has implications that unfold over time—not just at closing. Utilizing a collection escrow account can be a convenient service for both parties, handling payments, accounting, and providing necessary documentation for tax purposes.

This guide is not legal advice. If you're exploring seller-carried financing, consult a real estate attorney or licensed professional to protect your interests and ensure compliance with Oregon law. The Oregon State Bar provides resources and can help in finding an attorney.

This material is for informational purposes only and is not intended as legal advice. It references Oregon statutes (e.g., ORS 86.705-86.815 for trust deed foreclosures, ORS 93.905-93.940 for land sale contract forfeitures), which can change and are complex. Individual situations vary. Readers are strongly advised to consult with a qualified Oregon real estate attorney for professional legal guidance before making any decisions based on this information. Reliance on this information is solely at your own risk.