

Terms Contract (or Installment Contracts)

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A "Terms Contract" is governed by the *Sale of Land Act* 1962 (SLA) and is defined in Section 2(1) to mean:

An executory contract for the sale and purchase of any land under which the purchaser is-

- (a) obliged to make two or more payments to the vendor after the execution of the contract and before he is entitled to a conveyance or transfer of the land; or
- (b) entitled to possession or occupation of the land before he becomes entitled to a conveyance or transfer of the land;

A terms contract arises in two ways. The first is where the contract provides for occupation or possession of the property by the purchaser before settlement has been effected (i.e. before the balance of the purchase price has been paid).

The second situation giving rise to a vendor terms contract is where the contract requires that the purchaser should make two or more payments after signing the contract, but before settlement, but not including any payment made at the time of signing (i.e. the deposit) or at settlement (i.e. payment of the balance at settlement).

Only the actual owner of the property can sell it on vendor terms. This means that the vendor must be the registered proprietor of the property, or is about to be registered on title (i.e. a dealing is already in the Titles Office awaiting registration).

There are numerous legal requirements that apply to the sale of property by way of a vendor terms contract, and legal advice should be sought before entering into such an arrangement.

A terms contract frequently require the purchaser to pay interest on the balance of the purchase price, either at the same time as the installments are payable or at less frequent intervals.

A terms contract are popular when economic conditions are stable and land prices and interest rates change less markedly.

Vendor:Advantages

- Easier to sell parcels of land, particularly vacant land in large subdivisions by permitting the purchaser an extended period for the payment of installments of the purchase price.
- It enable the vendor to collect money from purchases while retaining the existing mortgage on the property and using the funds from purchases to complete the subdivision or for other purposes
- Used when a lengthy delay is anticipated before the vendor will be in a position to complete due to completion of road works, sewerage, improvements etc.
- It enables a vendor to market parcels of land at an early stage of the development
- In default (by the purchaser) relatively easy to terminate the contract and to resell, as the vendor has remained the legal owner of the land and can retain benefit of any profit on resale.

Disadvantages

- Sale price is fixed when contract is executed (bad in high inflation market)
- Money paid over protracted period and as an inducement usually at a low fixed interest rate.

Purchaser:Advantages

- Generally a lower price than for a cash sale & low interest rate (incentives to release money early)
- Installment scheme which facilitates the transaction

Disadvantages

- Lack of security especially where vendor (typically developers) became bankrupt or insolvent.
- Had to deal with liquidators, receivers or trustees to enforce terms contract when vendor became bankrupt or insolvent.
- Often mortgagees stepped in and sold the land under the powers of sale
- Frequently moneys paid under terms contract proved to be non-recoverable

Consequence:

The vendor must give an additional vendor statement setting out the cost of vendor finance if the contract is a terms contract on the basis of the first definition of terms contract (ie more than 3 payments). This requirement does not apply if it is a terms contract as a result of the other definition (ie in relation to possession or occupation) see s32(2)(f) of the SLA

A person may not sell on terms unless that person is:

1. the registered proprietor of the land,
2. presently entitled to be registered or
3. entitled pursuant to statute to sell

A person is only 'presently entitled' if a dealing has been lodged in the Titles Office awaiting registration. See s31(1) & (3) of the SLA

A vendor cannot sell land on terms if the land is mortgaged unless the land sold is the only land subject to the mortgage unless the contract contains special conditions in relation to application of the proceeds of sale or the mortgage is discharged within 90 days of the sale . See s6 of the SLA.

A vendor of land sold on terms cannot subsequently mortgage the land. See s7 of the SLA.

A vendor may require a purchaser under a terms contract to take a transfer of the land and give a mortgage back to the vendor for the balance due under the contract. The purchaser may also require the vendor to advance stamp duty payable on the transfer. See s7 of the SLA.

A purchaser pursuant to a terms contract may call upon the vendor to transfer the land to the purchaser upon the purchaser entering into a mortgage over the land in favour of the vendor for the balance due under the terms contract. See s4 of the SLA.

Settlement

A terms contract usually separates the time of possession and time of payment of the final balance due under the contract, with the purchaser usually taking possession at some time earlier, often upon payment of just the deposit. Thus responsibility for adjustments of outgoings is made at time of when the purchaser becomes entitled to possession of the property (ie preliminary settlement). This is the time also that the Disposal and Acquisition notices are sent of to the authorities, but the acquisition notice for the Land Tax is usually lodged at the LTO with the transfer of land, but with the terms contract until sometime after the preliminary settlement, so the notice is lodged with the LTO at the time of lodging a caveat or sent independently to the SRO. A copy of the notice should be lodged when the transfer of land is ultimately lodged.

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