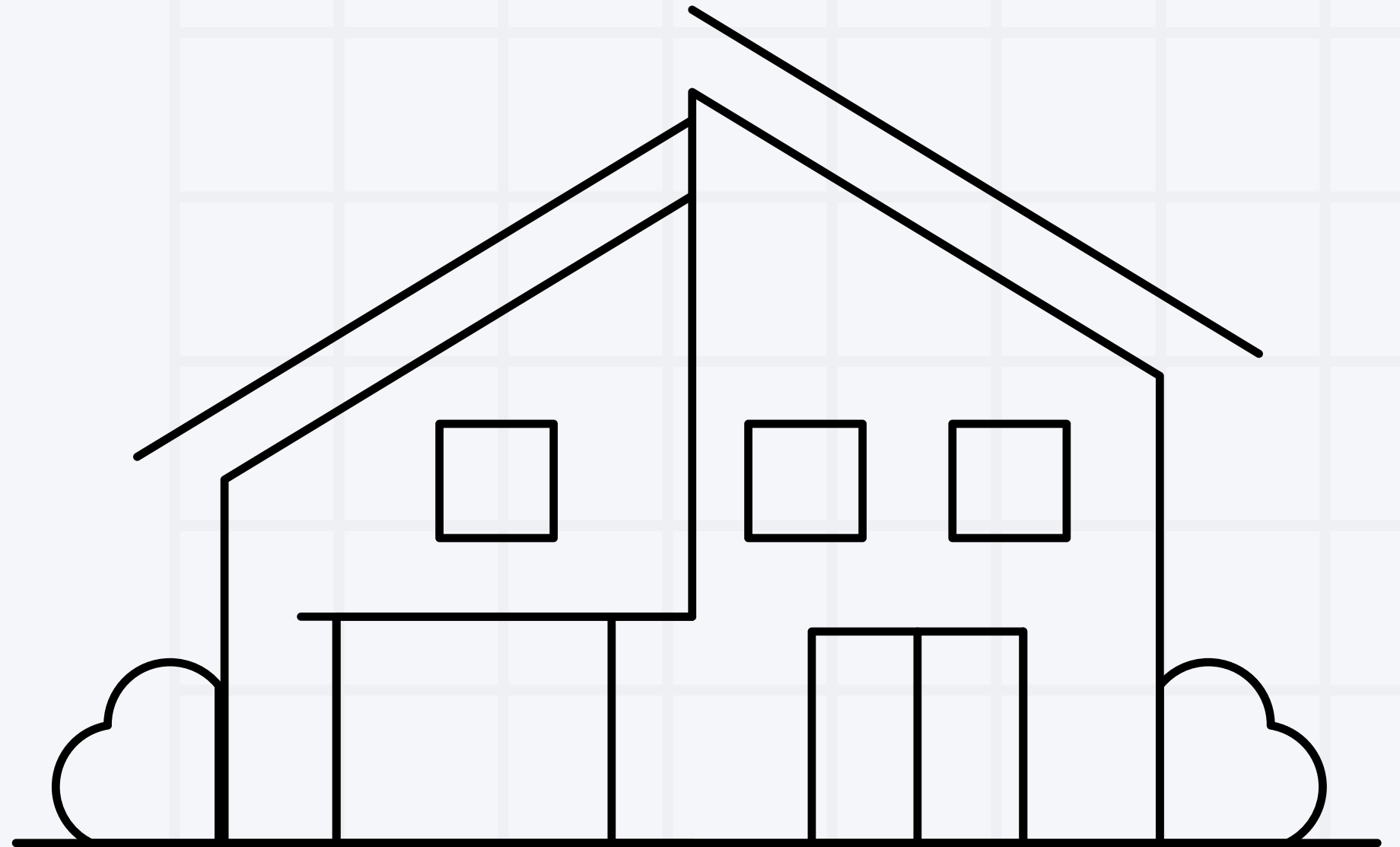


# Minnesota Contract For Deed Outline

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# 1. A Minnesota Contract for Deed is an Executory Contract.

- Contract which has not been completed.
- Requires future performance by one or both parties.

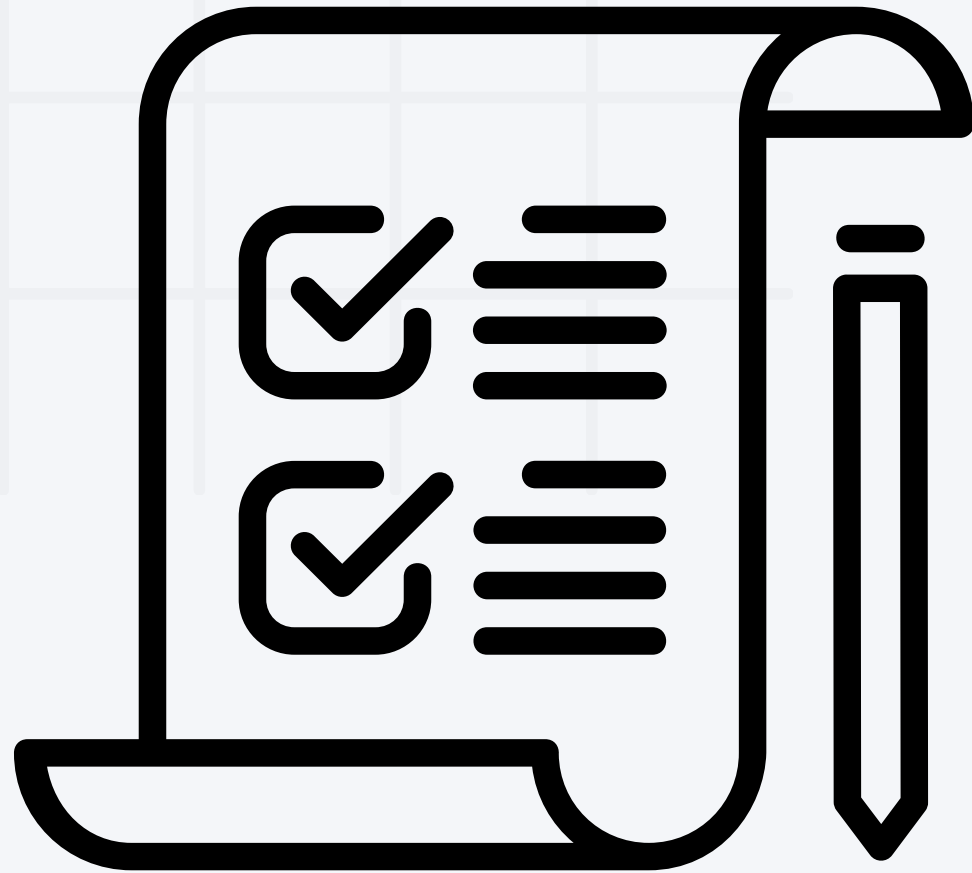


## 2. Method of Financing (Seller Financing).

- Buyer pays seller over a period of months or years.
- Buyer gets equitable title, including right of possession.
- Seller retains legal title. Upon payment, Seller deeds property to Buyer.



# 3. Typical Terms.



- Down payment.
- Interest rate, if any.
- Monthly payments.
- Years/Months.
- Balloon payment or payoff.



# **4. Title. Contract for Deed will be filed with the County Recorder or Registrar of Titles.**



- Equitable title to buyer.
- Legal title remains with seller.

# 5. Existing Mortgages.



If mortgage exists, it is generally not suitable for C/D financing.

- Mortgage lien holder could call mortgage due. (i.e. due on sale clause).
- However, if payments still being made, mortgage lien holder may not know about the contract for deed.
- In these situations, the existing mortgage is a prior lien and has priority. I recommend special language in the C/D disclosing the mortgage and making Seller responsible to continue to pay it. Need to verify appropriate level of equity.

# 6. Equitable Title.

- Equitable ownership.
- Has rights to purchase real estate.
- Upon full payment, seller deeds property to buyer.
- Recommend a title search before entry into contract for deed and after conveyance of title to buyer.



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# 7. Recording.



- Parties should record the Contract for Deed.
- Recording gives legal notice to any third party of purchaser's interest.





# 8. Default and Cancellation.

- If Buyer defaults, then Seller can cancel upon sixty (60) days notice, with right to cure.
- Buyer can cure default during sixty (60) day notice period.



**9. No Deed Tax Until C/D  
Paid In Full.**

**10. Typically, a Purchase  
Agreement comes first.  
Purchase Agreement  
provides for C/D financing.**



# 11. Standard/ Statutory Form.

- See page 1 of form attached.
- Recommend customization through exhibit to Contract For Deed.



**12. Contract For Deed  
can be Amended or  
Assigned by either  
party.**



# 13. Contracts for Deed and 1031 Exchange

**a. Buyer Situation.** A party to a 1031 exchange can purchase Replacement Property using a contract for deed.

- Buyer must use all of their exchange funds toward the purchase.
- Federal tax issue. Vendee is generally deemed to be the equitable owner, vendor holds title as an enforcement mechanism to collect payments.



## **b. Seller Situation. Much more complicated.**

- First, in the event that the taxpayer/seller actually receives or constructively receives the seller carry-back note or paper, than that amount of non-cash proceeds may nevertheless be recognized and trigger gains, which may occur on the instalment basis. This is where you need a good qualified intermediary. Also, it should be noted that portions of gain related to depreciation recapture cannot be deferred under the instalment method according to Sections 751, 1245 and 1250, and the taxpayer/seller may have recognize the depreciation recapture as ordinary income in the year of sale. This is a potentially big trap for the unwary for part 1031 and part instalment sales.
- If the taxpayer wants to use the installment note to acquire replacement property, they must recognize the inherent difficulties of persuading a seller to take the paper and attempt to persuade the seller of the replacement property to accept an allonge of the third party note as partial payment for the replacement property. An allonge is typically given to a successor lender when a seller-back note is assigned in full or partial consideration for the purchase of the Replacement Property.





## **b. Seller Situation. Much more complicated.**

- Another possibility if the taxpayer/seller has enough cash to contribute to the transaction available at the time of the closing of the Relinquished Property, is to have the taxpayer/seller fund the loan to the buyer out of other sources (out-of-pocket), rather than the sale proceeds, and offset any amount loaned to the purchaser of the relinquished property; **that way the same amount of equity will go to the qualified intermediary as would normally occur if there was no seller-back loan.**



## **b. Seller Situation. Much more complicated.**

- Further, yet another possibility for dealing with seller-back financing involving a promissory note is to have the taxpayer/seller instruct the buyer to make the promissory note in favor of the qualified intermediary; that way the qualified intermediary receives all of the cash and non-cash proceeds (including the seller-back note or paper); and prior to the closing of the Replacement Property, the taxpayer arranges for a third party to purchase the note from the qualified intermediary for the note's face value so that the qualified intermediary has sufficient cash in the exchange account to pay over to the seller of the Replacement Property and transfer all of the taxpayer's equity into the Replacement Property.



## **b. Seller Situation. Much more complicated.**

\_\_\_\_\_ **It should be noted that this strategy will not work the same way with a contract for deed, executory land contract or installment land contract** because if the taxpayer/seller is listed as the vendor on the contract, the seller may be deemed to be in privity of contract with the buyer and to have actually received non-cash proceeds (boot) from the buyer by virtue of the rights and benefits accorded the vendor under the contract; **and it may be necessary in the case of a land contract to have the taxpayer/seller deed the Relinquished Property to the qualified intermediary** (or a wholly owned special purpose entity of the QI), so that the seller is fully insulated from receiving any proceeds and the qualified intermediary is formally listed as the vendor under the land contract. Post relinquished property closing, the qualified intermediary may sell off the vendor's interest to get all cash into the exchange account, that way the qualified intermediary can contribute the cash exchange funds for the purchase of the new replacement property.





**Thank You**

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