

Hawaii Agreement of Sale

In your traditional Hawaii real estate purchase, third party lenders (i.e. financial institutions) are involved and a mortgage is placed on the property until the loan is paid in full. However, with the recent mortgage credit crunch in Hawaii, an “Agreement of Sale” has become more popular. An Agreement of Sale is basically a method of Seller-provided financing. In other states, a Hawaii Agreement of Sale is known as a “Contract for Deed”, “Installment Sales Agreement” and “Land Contract”.

A Hawaii Agreement of Sale is a purchase contract and, if properly recorded, a security device between a Seller and Buyer of real property in which the Seller provides financing to buy the property for an agreed-upon purchase price and the Buyer repays the loan in installments. Under a Hawaii Agreement of Sale, the Seller retains the legal title to the property, while permitting the Buyer to take possession of it for most purposes (along with its risks and liabilities) other than legal ownership. When the full purchase price has been paid including any interest, the Seller is obligated to convey legal title to the property to the Buyer.

When entering into a Hawaii Agreement of Sale, there are some general concerns to consider:

- Will the Hawaii Agreement of Sale be recorded? - Recordation may be desired by Buyer to protect the Buyer’s priority interest against future liens on the property.
- Will a Holding Escrow be used so that the Seller’s pre-signed Satisfaction of Agreement of Sale is held by a neutral third-party who can then record it if all conditions of the Hawaii Agreement of Sale have been complied with?
- Will a Collection Agency be used to collect the Buyer’s installment payments under the Agreement of Sale and to disburse the payments for such items as the carrying costs associated with the property and the payments under the Seller’s mortgage(s), if any.
- Under Hawaii case law, even if Buyer defaults under the Agreement of Sale, cancellation may not be possible remedy for Seller if Buyer has substantial equity in the property due to past payments. We can discuss this further if we represent you.
- Will due diligence be conducted by Buyer on the property as you would with any other Hawaii real estate purchase?

Regardless of whether you are a Buyer or Seller under a Hawaii Agreement of Sale, it is highly recommended that you seek consultation with a Hawaii attorney-lawyer who is

experienced in handling such concerns. Such a Hawaii attorney-lawyer can draft a Hawaii Agreement of Sale that is tailored to your unique situation and needs. Please note that there are many additional issues that are common with Hawaii real estate purchases.