

“Assignment”

Assignment clauses frequently come up in the context of purchase agreements and specifically, wholesaling. While wholesaling is a controversial practice in some circles, it is important that Buyers and Sellers understand what an Assignment Clause allows the Parties to do.

What is it?

Definition: “Assignment”- An Assignment clause allows the Parties to “assign” a contract or purchase agreement to a third party. Most frequently, assignment clauses will allow Buyers to assign the purchase agreement, but in theory, nothing prevents a Seller from assigning as well. If a Party is “assigned” a contract, they will be responsible for performing certain duties and obligations under the Purchase Agreement. Generally, an Assignment that assigns every right and responsibility under the Purchase Agreement is referred to as a “novation”.

Layman’s Terms: Buyer and Seller can give their rights under a contract to a 3rd party.

Example- A has a purchase agreement with B for B’s home. A “assigns” his/her rights to purchase B’s home to C. C brings the money to closing and purchases B’s home.

How does it work?

Example 1 (Buyer Assignment)- A executes a purchase agreement with B for B’s home. A agrees to pay B \$100.00 for B’s home (interest rates are rising after all...) A then assigns this contract to C, a third party, for the price of \$110.00, netting a \$10.00 profit. At closing, C will pay \$110.00 to A, A will pay \$100.00 to B, and B will receive \$100.00. After closing, C will own the property, B will have \$100.00, and A will have a \$10.00 net profit with no property.

Example 2 (Entity Assignment)- A executes a purchase agreement with B to purchase B’s home. A, at the time of the execution, has A’s personal name on the purchase agreement. Prior to closing, A forms an LLC. Assignments are allowable under the purchase agreement, so A “assigns” the purchase agreement from A individually to A’s LLC. A’s LLC then purchases B’s home.

Example 3 (1031 Assignment)- Seller wishes to assign the proceeds of the sale to a 1031 Qualified Intermediary (QI). Prior to closing, B executes the necessary paperwork and a 1031 QI receives the proceeds for B. B then follows the 1031 guidelines to avoid paying income tax on the proceeds of the sale.

Common Mistake (No explicit Assignment): A and B execute a purchase agreement. A intends to assign the agreement to a third party but does not tell B. The purchase agreement does NOT have assignment language allowing the Parties to assign the agreement. A goes to assign the agreement, but when B finds out, B disallows the assignment. In this scenario, A is NOT entitled to an assignment as it was not explicitly in writing between the Parties.



Remedy: Make sure you have assignment language in your purchase agreement and always be upfront with Sellers. In my opinion, wholesaling is an acceptable practice, but the Parties have to be upfront with each other. It is legally grey and morally wrong to trick a Seller without informing Seller of the assignment.

Further Reading:

Read up on the “wholesaling” practice for more information. Each state has different rules and regulations for this area.

If you need a closing/title/settlement or escrow transaction handled in Pennsylvania, we would love to help! Our information is below:

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