

OPINION NO. 73-044**Syllabus:**

R.C. 5313.06 does not provide for an automatic forfeiture of a vendee's interest in a land installment contract where the vendee has neither made payments under the contract for five years, nor paid a sum equal to twenty percent of the purchase price. Such forfeiture can only be accomplished pursuant to a judgment in a forfeiture action under R.C. 1923.01 to 1923.14.

To: Bernard V. Fultz, Meigs County Pros. Atty., Pomeroy, Ohio
By: William J. Brown, Attorney General, May 7, 1973

I have before me your request for my opinion, the questions of which may be stated as follows:

1. Does R.C. 5313.06 provide for an absolute forfeiture of a vendee's interest in a land installment contract, if the

vendee has not made payments in accordance with the contract for at least five years, or has not paid at least twenty percent of the purchase price?

2. If so, what procedure should the county recorder follow to cancel the installment contract of record when the vendor has complied with R.C. 5313.06?

I cannot agree that the rights of a vendee under a land installment contract can be cancelled, for defaults in payment, without a court proceeding resulting in a judgment against the vendee. R.C. 5313.05 and 5313.06 together provide the initial steps to be taken by the vendor. But the vendor's next steps are determined generally by the amount of the vendee's equity. If the vendee has made payments under the contract for at least five years, or if he has paid at least twenty percent of the price called for by the contract, R.C. 5313.07 requires the vendor to bring a foreclosure action under R.C. 2323.07. But if the contract has been in effect less than five years, R.C. 5313.08 permits the vendor to bring an action for forfeiture under R.C. 1923.01 to 1923.14.

R.C. 5313.06, which provides for the initiation of the forfeiture of the interest of a vendee in default under a land installment contract, reads as follows:

Following expiration of the period of time provided in section 5313.05 of the Revised Code, forfeiture of the interest of a vendee in default under a land installment contract shall be initiated by the vendor or by his successor in interest, by serving or causing to be served on the vendee or his successor in interest, if known to the vendor or his successor in interest, a written notice which:

(A) Reasonably identifies the contract and describes the property covered by it;

(B) Specifies the terms and conditions of the contract which have not been complied with;

(C) Notifies the vendee that the contract will stand forfeited unless the vendee performs the terms and conditions of the contract within ten days of the completed service of notice and notifies the vendee to leave the premises.

Such notice shall be served by the vendor or his successor in interest by handing a written copy of the notice to the vendee or his successor in interest in person, or by leaving it at his usual place of abode or at the property which is the subject of the contract or by registered or certified mail by mailing to the last known address of the vendee or his successor in interest. (Emphasis added.)

A thirty-day grace period between the vendee's default and the initiation of forfeiture is provided by R.C. 5313.05, which reads as follows:

When the vendee of a land installment contract defaults in payment, forfeiture of the interest of the vendee under the contract may be enforced only after the expiration of thirty days from the date of the default. A vendee in default may, prior to the expiration of the thirty-day period, avoid the forfeiture of his interest under the contract by making all payments currently due under the contract and by paying any fees or charges for which he is liable under the contract. If such payments are made within the thirty-day period, forfeiture of the interest of the vendee shall not be enforced. (Emphasis added.)

If the vendee has complied with the terms of the contract for at least five years, or if he has paid at least twenty percent of the purchase price, R.C. 5313.07 requires the vendor to proceed by foreclosure. In pertinent part, the Section provides:

If the vendee of a land installment contract has paid in accordance with the terms of the contract for a period of five years or more from the date of the first payment or has paid toward the purchase price a total sum equal to or in excess of twenty per cent thereof, the vendor may recover possession of his property only by use of a proceeding for foreclosure and judicial sale of the foreclosed property as provided in section 2323.07 of the Revised Code. Such action may be commenced after expiration of the period of time prescribed by sections 5313.05 and 5313.06 of the Revised Code. In such an action, as between the vendor and vendee, the vendor shall be entitled to proceeds of the sale up to and including the unpaid balance due on the land installment contract. (Emphasis added.)

But if the contract has been in effect for less than five years, the vendor may institute an action for forfeiture. R.C. 5313.08 provides:

If the contract has been in effect for less than five years, in addition to any other remedies provided by law and after the expiration of the periods prescribed by sections 5313.05 and 5313.06 of the Revised Code, if the vendee is still in default of any payment the vendor may bring an action for forfeiture of the vendee's rights in the land installment contract and for restitution of his property under sections 1923.01 to 1923.14, inclusive, of the Revised Code. The court may also grant any other claim arising out of the contract.

You ask whether R.C. 5313.06 provides for an absolute forfeiture in certain cases. I am satisfied that the language of

R.C. 5313.06 provides only for the initiation of forfeiture and for proper notice, and that it nowhere specifies that a forfeiture shall become automatic under that Section. Instead, it is clear from the provisions of R.C. 5313.08 that the vendor may effect a forfeiture of the vendee's rights only by an action for forfeiture in accordance with the provisions of R.C. 1923.01 to 1923.14. This is the view adopted in an analysis of the land installment contract statutes in the Ohio State Bar Association Service Letter for December 1969, in which the author stated (at page 4):

A ten-days notice requirement, after the 30-days grace period, is required prior to enforcement which may now be by an action for forfeiture of the Vendee's interest under the Forcible Entry Law, or by Foreclosure and Judicial sale laws. (Emphasis added.)

This passage clearly means that mere compliance by the vendor with R.C. 5313.06 does not result in an automatic forfeiture of the vendee's rights, but that an action must be brought, either under R.C. 5313.07 for foreclosure and judicial sale, or under R.C. 5313.08 for forfeiture and restitution. In the situation that you pose, in which the vendee has neither paid for five years, nor paid a sum equal to twenty percent of the purchase price, the vendor may proceed either by forfeiture or by foreclosure. If the vendee has made payments for five years or has paid twenty percent, the vendor must proceed by foreclosure.

Once the vendor has obtained a judgment, the land installment contract is cancelled, and the county recorder must record the judgment as an instrument of cancellation. R.C. 5313.09. Since it appears that a forfeiture can only be enforced in the instant case by an action under R.C. 5313.08, I must conclude that R.C. 5313.06 does not provide for an automatic forfeiture of a vendee's interest in a land installment contract. Since the answer to your first question is in the negative, it is not necessary to answer the second question.

In specific answer to your question it is my opinion, and you are so advised, that R.C. 5313.06 does not provide for an automatic forfeiture of a vendee's interest in a land installment contract where the vendee has neither made payments under the contract for five years, nor paid a sum equal to twenty percent of the purchase price. Such forfeiture can only be accomplished pursuant to a judgment in a forfeiture action under R.C. 1923.01 to 1923.14.