

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548****FILE: B-206852****DATE: March 9, 1983****MATTER OF: Joseph F. Rinozzi--Attorneys' Fees--Land  
Contract****DIGEST:**

An employee entered into a "land contract" for purchase of a residence at his new official station, and sought reimbursement for payment of related attorneys' fees. Paragraph 2-6.1c of the FTR sets out the title requirements that must be met before reimbursement of real estate expenses is authorized. A "land contract" providing for installment payments, for immediate legal possession and occupancy, and for conveyance of the deed upon payment of the full price, vested the employee as purchaser with equitable title sufficient for reimbursement purposes under 5 U.S.C. § 5724a(a)(4) (1976).

This action is in response to a request for an advance decision from Claude F. Pickelsimer, Jr., Director of the Financial Management Office, Centers for Disease Control, Department of Health and Human Services, regarding the propriety of reimbursing a transferred employee for his payment of attorneys' fees incurred in the purchase of a home at his new official station. Although the relevant statute provides for the reimbursement of expenses such as attorneys' fees, the applicable regulations impose certain title requirements. The question posed is whether the employee's purchase by way of "land contract" conforms to those title requirements. Following our decision in Larry W. Day, 57 Comp. Gen. 770 (1978), we find that the employee holds sufficient title for reimbursement purposes.

Mr. Joseph F. Rinozzi entered into a land contract to purchase the residence in question when he was authorized a permanent change of station from Cincinnati, Ohio to Madison, Wisconsin effective July 26, 1981. He submitted a travel voucher in the amount of \$128.00 for reimbursement of attorneys' fees which he had paid for the examination of title insurance, the drafting of mortgages and mortgage notes and for services performed in conjunction with the closing. The Financial Management Office has recommended

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reimbursement to Mr. Rinozzi for the attorneys' fees but seeks clarification of our position on the matter of land contracts.

Under 5 U.S.C. § 5724a(a)(4) (1976) an employee who qualifies under section 5724(a) may be reimbursed for the expenses of selling a residence at his old station and of purchasing a home at his new official station, as long as the expenses do not exceed those customarily charged in the locality where the residence is located. Paragraph 2-6.2c of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR) (applying to travel and relocation prior to November 1, 1981), makes broad provision for the payment of legal fees which have not been included in another expense category, which are within the customary range, and which are not related to litigation. We interpreted that provision in George W. Lay, 56 Comp. Gen. 561 (1977). Drawing on congressional recognition of the complexity of real estate transactions and of the variation in legal services required in different communities, we concluded in that case that attorneys' fees for advisory and representational services are among the expenses allowable under the regulation. Therefore, the fees in this case are reimbursable under the statute if the other requirements are satisfied.

Paragraph 2-6.1 of the FTR enumerates certain other conditions which must be met before allowances are payable. One of these requires that the title to the residence be held "in the name of the employee alone," or in the name of an immediate family member alone, or jointly in the names of the employee and a member of his immediate family. FTR para. 2-6.1c (1973). Under the land contract involved in this case, the employee agreed to pay the purchase price in installments over a prescribed period of time. The seller agreed to give legal possession and the right to immediate occupancy at the time of the closing and to convey the property by warranty deed upon payment of the purchase price. The issue is whether such an arrangement meets the requirement that title be held in the name of the employee before the reimbursement of real estate expenses.

Although the legal title remains in the name of the seller as security for payment, the transfer of equitable title which is effected by the land contract is sufficient for purposes of real estate expenses reimbursement under section 5724a(a)(4). The common law doctrine of equitable conversion provides the basis for the applicable rule.

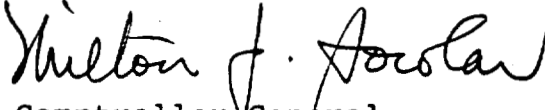
Under that theory, the purchaser under a contract for the sale of land is, "regarded in equity as owner of the land and debtor for the purchase money \* \* \*." 3 American Law of Property § 11.22 (A. Casner, ed.) (1952). See First National Bank & Trust Co. of Chickasha v. United States, 462 F.2d 908, 910 (10th Cir. 1972). Employing a similar analysis, we have defined the "purchase" required for reimbursement under section 5724a(a)(4) as the transfer of at least equitable title in the property, and have recognized that the effect of a land contract is to transfer equitable ownership of the real estate to the buyer. Larry W. Day, 57 Comp. Gen. 770 (1978), citing Larry J. Light, B-188300, August 29, 1977; Marion B. Gamble, B-185095, August 13, 1976; B-165146, September 16, 1968; 46 Comp. Gen. 677 (1967). Therefore, Mr. Rinozzi's purchase under the contract in this case has vested him with an equitable title to the property which is sufficient for purposes of relocation expenses reimbursement.

The rule of Peter D. Pendergast, B-204915, January 15, 1982--a decision which Mr. Pickelsimer cited in his submission--is inapplicable to this case. In Pendergast, as in Gamble, above, we held that:

"\* \* \* section 5724a(a)(4), does not apply to lease/purchase transactions, in which only an interest in property, rather than legal or equitable title, is passed. A purchase, for purposes of section 5724a(a)(4) \* \* \* consists of the conveyance of some form of ownership. A mere interest, such as the opportunity to purchase the property, does not suffice."

In contrast to the transactions involved in Pendergast and Gamble (leases with options to purchase), the contract for sale in this case obligated Mr. Rinozzi to purchase the residence, and it passed equitable title to him at the time of the closing. Therefore, the title requirement has been met, and reimbursement is authorized under 5 U.S.C. § 5724a (1976).

The voucher in question may be paid, assuming the attorneys' fees have otherwise been found to be reasonable and customary.

for   
Comptroller General  
of the United States