An aspiring dancer purchased an apartment near the theater district from a local real estate broker. To complete the sale, the dancer signed a document entitled "Contract for Deed." The document provided that the dancer was to pay the broker in monthly installments over a five-year period for the apartment, but it was silent as to remedies in the event of any default.

Four years later, after never missing a payment, the dancer suffered a severe injury and was out of work for many months. When she missed a monthly payment, the broker notified her that he intended to retake possession of the apartment. The dancer refused to surrender possession unless the broker refunded some of the money that she paid him over the years.

Which of the following outcomes is the court LEAST likely to impose?

A. Require the broker to initiate judicial foreclosure proceedings on the property.

B. Require the broker to refund the dancer's payments to the extent that they exceed the broker's actual damages upon forfeiture.

C. Require the dancer to indemnify the broker for the delinquent payments in order to retain possession.

D. Require the dancer to pay the remaining contract balance to retain possession and obtain ownership.

Explanation:

Mortgage alternatives

Absolute deed	Debtor gives deed to creditor with intent to secure loan (ie, equitable mortgage)
Deed of trust	Debtor gives deed of trust to third-party trustee as collateral for debt, & creditor can instruct trustee to foreclose upon default
Installment land contract	Debtor agrees to buy land through installment payments & gets immediate possession, but seller keeps legal title until paid in full
Sale-leaseback	Seller leases property from buyer immediately after sale, & seller's rental payments function as repayments on loan
Equitable vendor's lien	Seller finances buyer's purchase with equitable vendor's lien when seller transfers title to buyer but purchase price not fully paid

A **contract for deed** (ie, installment land contract) is a type of mortgage alternative. Under this contract, the **buyer may take immediate possession** of the property, but the **seller retains title** until the buyer makes the final payment under an installment payment plan. Traditionally, a contract for deed allowed the seller to **keep all installment payments** and **retake possession** if the buyer failed to make a single payment—even if all but one payment was made. However, states now seek to assist a buyer in default by:

treating an installment land contract as a mortgage and requiring the seller to foreclose on the property to gain clear title **(Choice A)**

offering the buyer the equitable right of redemption by paying the remaining contract balance to retain possession and obtain ownership **(Choice D)** *or*

allowing the seller to retain ownership of the property but requiring some form of restitution to the buyer—eg, refunding the contract payments to the extent that they exceed the damages caused to the seller by the buyer's default **(Choice B)**.

However, a buyer cannot regain possession by merely indemnifying (ie, reimbursing) the seller for the missed payments. Therefore, the court is least likely to impose this outcome.

Educational objective:

A contract for deed allows a buyer to take immediate possession of the property while the seller retains title until the final installment payment is made. The seller could traditionally keep all installment payments and retake possession upon default. But states now assist buyers in default by requiring a foreclosure, offering the equitable right of redemption, or granting the buyer restitution.

References

Restatement (Third) of Property: Mortgages § 3.4 (Am. Law Inst. 1997) (contract for deed).