

Reforming Land Contracts

Establishing New Protections for Ohioans Purchasing Homes through Installment Contracts

Land contracts are a form of seller financing. They are similar to a mortgage, but rather than borrowing money from a traditional lender or bank, the buyer makes payments to the real estate owner (or seller) until the purchase price is paid in full.

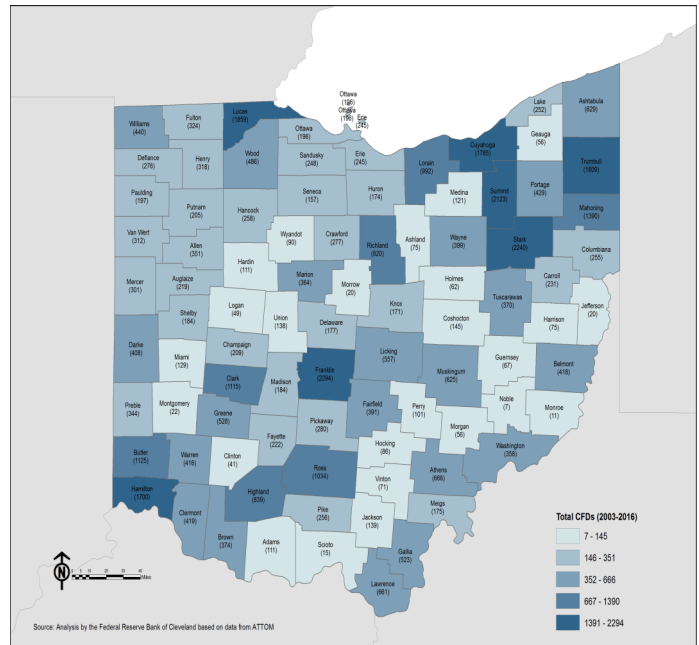
While generally subject to the same legal rules as any contract involving the sale or transfer of land, a land contract anticipates that the buyer will take possession immediately and make payments over an extended period of time before the seller conveys title, instead of the seller remaining in residence until the sale is completed. Courts have historically interpreted the state's **Land Installment Contract Law (ORC Chapter 5513.)** to apply only to residential and not commercial property.

An Uneven History

Land contracts have historically been marketed as an alternative path to homeownership for consumers who have limited income and/or have difficulty establishing traditional lines of credit. While land contracts do offer opportunity for some individuals to achieve the American Dream of homeownership, a recent increase in the prevalence of predatory land contracts has created a crisis in communities across Ohio.

In the wake of the subprime mortgage crisis of 2007-2010, thousands of homes across the Ohio ended up in foreclosure. As a result of the crisis, the Federal National Mortgage Association (Fannie Mae) found itself with a large inventory of homes and a need to dispose of them in an expedited manner. Fannie Mae used the bulk sale program to rid itself of this inventory, and allowed large investment firms to purchase foreclosed homes for pennies on the dollar. Some firms then turned around and began offering the homes for sale through land contracts with terms many buyers found hard to meet. Neighborhoods of color and immigrant neighborhoods were especially vulnerable.

Examples of these built-in failures include requirements that buyers bring homes that up-to code. This often costs the buyers money that might otherwise go towards



Land Contracts in Ohio

Number of Land Contracts recorded (2013-2016)

Source: Analysis by the Federal Reserve Bank of Cleveland (based on data from ATTOM)

their purchase price obligations. If a buyer misses or is late with a payment, the seller will evict the purchaser from the property, allowing them to not only retain the money acquired from the original sale, but to resell the property at a higher rate than it was previously sold for because of the increased value arising from the improvements made by the previous buyer. There are examples of properties across Ohio that have been 'sold' through a land contract multiple times.

Reforming Existing State Law

Greater Ohio Policy Center supports enacting legislation that will bring about needed reform to the state's existing land contract statute while still preserving the ability of buyers to purchase a home through a land installment contract. Many Ohioans who would otherwise not be able to purchase a home through a

traditional mortgage can still become homeowners through land contracts if changes are made to state law to rein-in some of the 'problem actors' who have taken advantage of gaps in state law.

Require the Land Contract be Recorded

While existing law states that a seller should record the contract once it is entered into, there is nothing in state law that penalizes a seller who fails to record and provide a copy of the contract to the buyer. This makes the contracts difficult to enforce when a buyer attempts to pursue legal action to enforce the contract.

Greater Ohio Policy Center recommends:

- Require the contract to be recorded within 30 days of the contract being signed, and providing a copy of the contract to the buyer.
- Require the contract to be recorded with both the county recorder and county auditor, with the existence of the contract being indicated on the county tax list.
- Require the seller to notify the recorder, auditor, and buyer in the event that they transfer interest in the property to another party.
- Failure to record the contract does not impair the validity of the contract and the seller gives up the right to forfeiture under the contract if they fail to record. Failure to record within 90 days of the execution of the contract will result in rescission of the contract and actual damages being awarded to the buyer (payment on the contract + legal fees).
- A grace period following enactment of a new recordation statute which allows contracts that were not previously recorded to be; otherwise failure to record will result in rescission of the contract and a buyer being entitled to a quiet title action.

Requirements of a Land Installment Contract

Certain disclosures and statements in a land contract will ensure that both parties (buyer and seller) have a clear understanding of who is responsible for what under the contract.

Greater Ohio Policy Center recommends:

- The contract include provisions stating who is responsible for paying property taxes, hazard insurance and who is responsible for repairs and maintenance on the property (including the right of the buyer, should they elect to maintain the property, to have the right to hire their own contractors to make repairs.

- Require the disclosure of all mortgages, including a list of the holders of those mortgages; and a provision disallowing any new mortgages to be taken out against the property after entering into a land installment contract.
- Require a statement indicating there are no liens currently attached to the property and requirements that the seller cannot cause a lien to be attached (including for unpaid property taxes, unpaid federal or state taxes and liens for utilities) and require that should a lien be placed on the property, the seller is required to have it removed within 60 days, otherwise the buyer will have standing for a quiet title action.

Additional Responsibilities for a Seller

A common problem at present is that many buyers do not have the opportunity to inspect a property before they enter into a land contract, and sellers are not required to fully disclose problems with the home (often selling properties "as is").

Greater Ohio Policy Center recommends:

- Require the seller to allow the buyer to have access to the property for an inspection prior to entering into the land contract.
- Require the seller to have the property inspected by the municipal, township, or county building department or by an inspector certified by a national organization. The inspection should state that the property complies with all local building, housing, health and safety codes, include inspection of electrical, plumbing, sanitary systems, HVAC fixtures and appliances, and require the seller to pay all associated costs with acquiring the inspection, and must ensure everything is in working order.
- Inspections should occur within 1 year of the possible sale through a land contract.
- Require the seller to provide the buyer with monthly statements showing each payment and amounts credited towards principal, interest, fees, escrow, or other charges, along with the total balance due on the contract (a passbook can be provided in lieu of a monthly statement).

Additional Resources

The American Dream or Just an Illusion? Understanding Land Contract Trends in the Midwest Pre- and Post-Crisis

By Ann Carpenter, Taz George and Lisa Nelson

Joint Center for Housing Studies of Harvard University

