



Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color

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Overview

- What is a Land Installment Contract?
- Racist Roots – a historical perspective
- Recent Trend with Wall Street funding
- Predatory Features
- Impact on Communities of Color
- Legal Defenses
- Policy Proposal



Land Installment Contracts

Prepared By:
Harbour Portfolio VII, LP
P.O. Box 1996
Irma, SC 29063
(803) 798-4666

Contract Expiration : 05/01/2042
If payments are made in accordance
with the terms of this Agreement.

AGREEMENT FOR DEED (Land Contract)

Acct #62006827

CONTRACT SUBJECT TO ARBITRATION

THIS AGREEMENT FOR DEED is entered into on this 3rd day of May, 2012 between Harbour Portfolio VII, LP hereafter known as the "Seller" and LaRhonda Palmer hereafter known as the "Purchaser".

WITNESSETH that if Purchaser shall first make the payments and perform the covenant(s) hereafter described:

1. *SELLER* hereby covenant(s) and agree(s) in copy and assure to the Purchaser and his/her/their heirs, executors, administrators or assigns, in fee simple, clear of all encumbrances, by a good and sufficient deed, the lot and piece of land, situated at: 505 WEST ONTARIO AVE SW, in the County of Fulton, the city of ATLANTA, the State of GA and further known and described as follows, to-wit:

SEE Attachment "A" FOR LEGAL DESCRIPTION OF PROPERTY

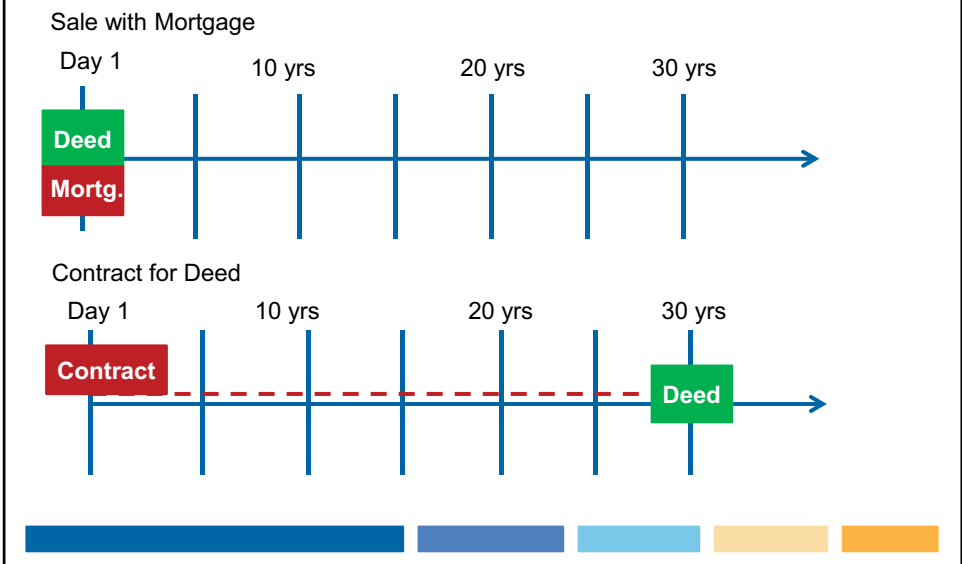
2. *PURCHASER* hereby covenant(s) and agree(s) to pay to the Seller the sum of Forty Six Thousand Five Hundred Fifty Dollars and no/cent, (\$46,250.00) in the manner as follows: One Thousand Two Hundred Dollars and no/cent, (\$1,200.00);

THIS DOWN PAYMENT IS NON-REFUNDABLE LP (initial)

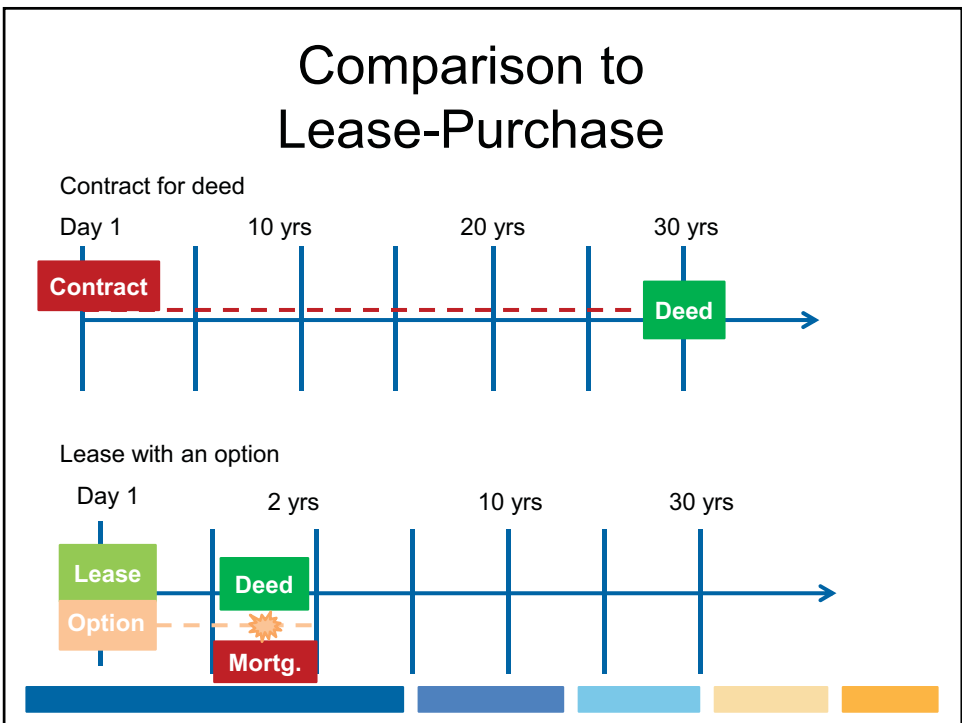
Land Installment Contracts

- Also known as a "contract for deed"
- A form of seller financing
 - Buyer makes payments for up to 30 years
 - Buyer takes on obligation to make repairs and pay property taxes and homeowner's insurance
 - Buyer does not get the deed until full purchase price has been paid
- Default can result in a "forfeiture," with seller keeping all money paid and evicting the buyer like a tenant

Comparison to a Purchase Money Mortgage



Comparison to Lease-Purchase



Racist Roots



Chicago Buyers League thwarts an eviction attempt, 1970.
Source: Chicago Sun-Times and *Family Properties*

Racist Roots of Land Contracts

- From the 1930s to the 1960s, federal homeownership programs prevented most African-Americans from gaining access to federally backed home loans
- Speculators peddled land contracts with inflated prices and harsh terms to residents of credit-starved communities
- According to one estimate, in the 1950's, 85% of the properties purchased by African-Americans in Chicago were sold on contract

Fast Forward: Subprime Lending and the Foreclosure Crisis

Racial / Ethnic Composition and Subprime Loan Originations in Baltimore (2006)

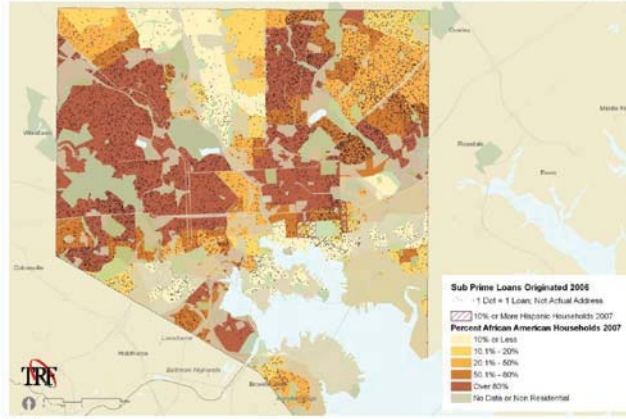


Figure 6



Subprime Lending and the Foreclosure Crisis

Racial / Ethnic Composition and Mortgage Foreclosures in Baltimore (2000-2003)

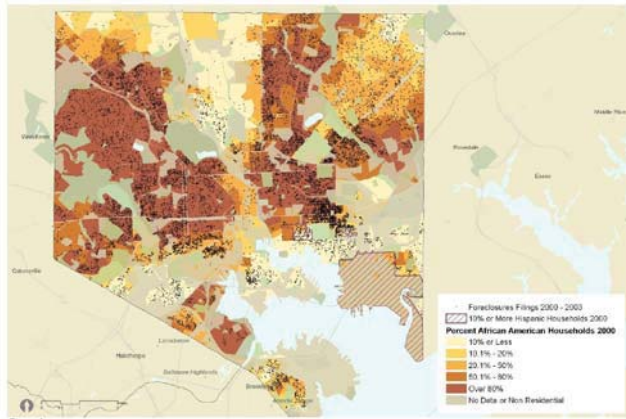
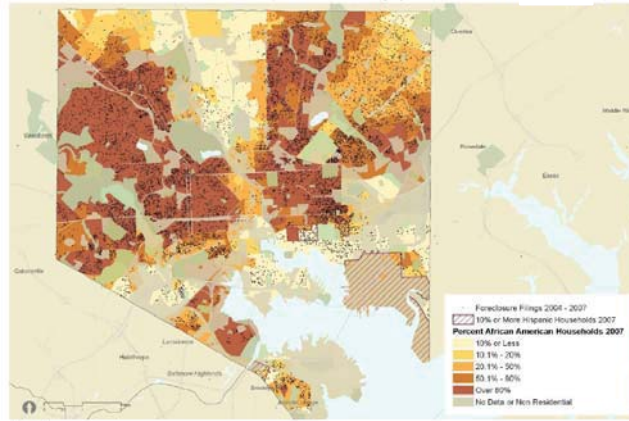


Figure 8



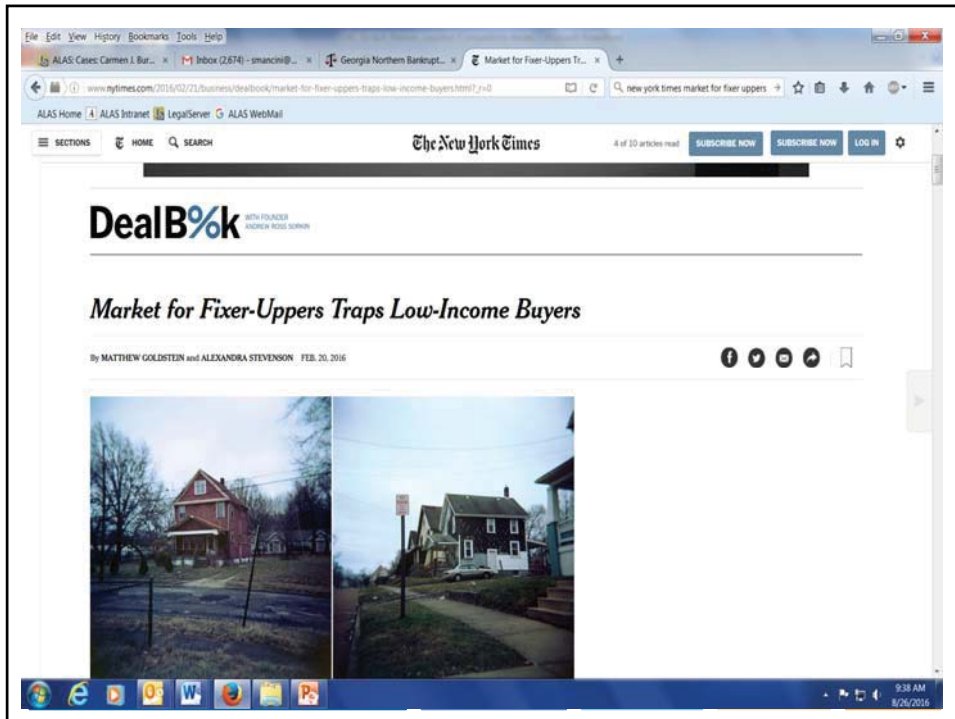
Subprime Lending and the Foreclosure Crisis

Racial / Ethnic Composition and Mortgage Foreclosures in Baltimore (2004-2007)



The Revival Land Contracts – in the Wake of the Foreclosure Crisis

- The New York Times, Bloomberg, and others have reported a growing interest in “contract for deed” or “land installment contract” transactions from Wall Street-backed investors
 - Harbour Portfolio
 - Shelter Growth Capital Partners
 - Apollo Global Management
 - Battery Point Financial
 - Vision Property Management



Harbour Portfolio

- Dallas-based firm has bought more than 6,700 homes to sell through land contracts, mostly in Ohio, Michigan, Illinois, Florida, Georgia, and Pennsylvania
- Has raised more than \$60 million from investors
- Purchased more properties from Fannie Mae's bulk sale program from 2010 to 2014 than any other single buyer
- Other companies involved in servicing Harbour contracts: RECA Properties and National Asset Advisors
- "Market for Fixer-Uppers Traps Low Income Buyers," *The New York Times*, Feb. 21, 2016

Vision Property Management

- Also uses the name Kaja Holdings
- 7 year lease with an option to buy
- Agreement says the tenant must take responsibility for all repairs
- CEO Alex Szkaradek calls the contract a “hybrid lease” that enables renters to build up “implied equity” with each monthly rent payment
- Converts to contract for deed at 7 years or 30% of purchase price
- Goldstein and Stevenson, “Rent-to-Own Homes: A Win-Win for Landlords, a Risk for Struggling Tenants,” *The New York Times* (Aug 21, 2016)



Other Investors

- Shelter Growth Capital Partners, founded in 2014 by Daniel Sparks and two other former Goldman Sachs executives
- Battery Point Financial, has \$40 million in private equity funding from Kohlberg Kravis Roberts & Co
- Apollo Global Management has a real estate investment trust, partnering with Baton Rouge-based Home Servicing to sell homes on land contract (mostly in the Southeast)



What factors are creating fertile ground for this scheme?

- Large number of foreclosed homes available for low prices (\$10K-\$50K) in certain areas
- Lack of access to traditional mortgage credit, particularly for small dollar loans (under \$50K)

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PREDATORY FEATURES

Predatory Features

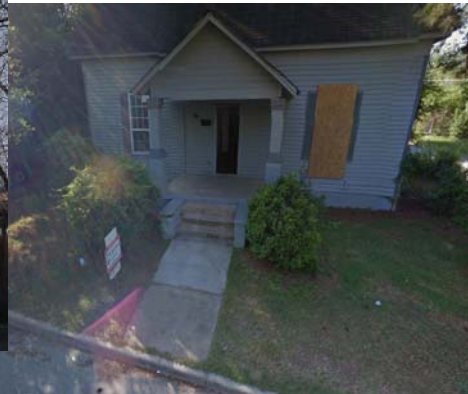
- Built to fail
- Inflated purchase price
 - No inspection
 - No appraisal
- Title problems
 - Tax liens
- Shifting the burden of major repairs



Houses in Bad Condition



Source: The New York Times



Source: Google Earth

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Unfair and Deceptive Practices



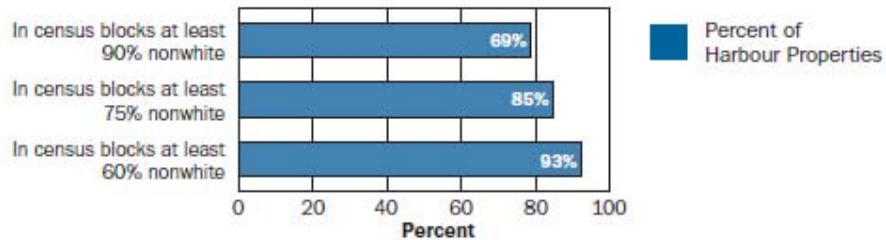
- Luring people in with the false promise of homeownership
- Buyers making large downpayments, paying the property taxes, and spending \$10-15K on repairs to make the house habitable
- Buyers think they are building up equity in the home... only to lose it all

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**IMPACT ON
COMMUNITIES OF COLOR**

Harbour Portfolio Properties in Atlanta and % Nonwhite

CHART 1
Percent of Harbour Portfolio Properties in Primarily Nonwhite Census Blocks




Patchwork of State Laws


Some states require:

- Disclosures
- Recording the contract in the deed records
- Notice and time to cure a default before proceeding with an eviction
- Treating the contract like a mortgage
 - (Oklahoma; Texas if the contract is recorded)

Potential Legal Claims

- Equitable Mortgage – some courts have said that regardless of the contract language, this is really like a mortgage
 - Rescission – some courts have refused to enforce a forfeiture, and instead required seller to return to the buyer all payments made and money spent on repairs; buyer to return to seller fair market rent
 - Unfair and Acts and Deceptive Practices – money damages, depending on state statutes
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Truth in Lending Act

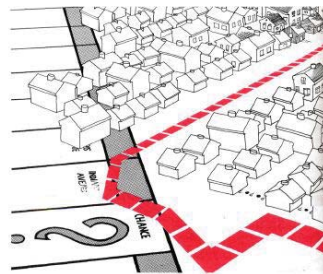
- The contract is “credit” for purposes of TILA because it creates a debt (the purchase price) and defers its payment
 - The seller meets the definition of a “creditor” under TILA if he or she is a person who “regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including the down payment) and to whom the obligation is initially payable.”
 - “Regularly extends” credit =
 - more than five transactions secured by a dwelling in the last calendar year;
 - or 2 high cost loans;
 - or 1 high cost loan arranged by a broker
- 

Truth in Lending Act


- Requires disclosures about the cost of credit (1 year statute of limitations; no rescission because purchase money transaction)
- Dwelling-secured loans: must verify ability to pay; ban on forced arbitration (3 yr SOL)
- For “higher priced mortgage loans” (3 yr SOL)
 - Must verify ability to pay
 - Must obtain an independent appraisal
 - Must escrow for taxes and insurance
- For “high cost” loans (3 yr SOL)
 - No prepayment penalties or balloons; counseling

Discrimination Claims


- Reverse Redlining: targeting a predatory product only (or disproportionately) to members of a protected class
- Fair Housing Act
- Equal Credit Opportunity Act



Policy Proposal

- Independent inspection and third-party appraisal
 - Disclosure of finance charge and APR
 - Require recordation of land contract
 - Payment of taxes and liens at time of sale
 - Statement of amounts paid and how payments were applied
 - Protections for early termination
 - Right to cure or prepay
- 

Policy Proposal

- Prohibit unfair, deceptive and abusive practices
 - Provide documents in buyer's language
 - Strong enforcement
 - Collect data
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QUESTIONS?