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Housing

Predatory land contracts strip wealth from communities

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Introduction

Housing is a basic need that can be exploited for a profit. For some, homeownership provides stability and wealth, but many who aspire to own a home are taken advantage of by predatory lending practices. Communities that are locked out of traditional home buying because of income, race, and credit history are common targets for exploitative practices. Land installment contracts, also called land contracts, are one way of exploiting buyers. These contracts, common during legal housing segregation, have seen a resurgence as tightened access to conventional lending has reduced home-buying options for many aspiring homeowners.

A land contract is a seller-financed home purchase transaction where the buyer makes payments directly to the seller over time, and the seller agrees to transfer the title to the buyer after the house has been paid in full. They can include egregious terms like exorbitant fees, buyer-required repairs, and balloon payments. In Ohio if a buyer defaults before making substantial payments, the seller can cancel the contract through a process called forfeiture, which allows the seller to force the buyer to leave and to forfeit all prior payments and investments entirely. Land contracts are often advertised as an alternative model to homeownership, but usually they represent a blatant predatory lending practice that harms buyers and communities.

In Ohio, a state hit hard by the foreclosure crisis, investors, like Harbour Portfolio Advisors, are buying foreclosed derelict properties in bulk, marking up prices, and selling houses on contract. From January 2008 to January 2018, there were 47,610 recorded land contracts in Ohio.¹ This number does not include the large number of unrecorded contracts.² Land contracts often provide the illusion of homeownership to the buyer but are instead a predatory agreement that deeply, almost exclusively, advantages the seller.

To address the issue of predatory land contracts, Ohio should provide greater legal protections for land contract buyers, allowing seller financing to be restricted to terms that are fair, equitable, and ethical.

How land contracts harm communities

Predatory land contracts are designed to strip wealth from buyers and communities. Weak state laws allow unfair contracts with one-sided terms. Land contracts are usually used in communities lacking access to traditional credit. Prospective homeowners denied access to mortgages are vulnerable to predatory land contracts. Thus, homebuyers in land contracts are disproportionately low-income, people of color, and immigrants.³

For buyers, predatory land contracts bring the responsibilities of homeownership without the benefits. Under current law, buyers have few protections or rights under a land contract. The buyer builds no equity in the home until the principal, interest, taxes, liens and fees are paid in full. Only then does the seller transfer the deed. This rarely happens because, absent the

¹ Public records request from County Recorder's Offices. Montgomery County is not included. Montgomery County's online records system lists 7,490 land contracts. This number is an outlier and does not reflect the actual lower number of recorded land contracts. A staff person in the Montgomery County Recorder's Office confirmed their online database can include multiple records for one land contract, which results in an usually high number of records.

² Peter M. Ward, Heather K. Way, and Lucille Wood, The Contract for Deed Prevalence Project: A Final Report to the Texas Department of Housing and Community Affairs (Aug. 2012), available at <http://www.tdhca.state.tx.us/housing-center/docs/CFD-Prevalence-Project.pdf>

³ Battle, Jeremiah, Jr., Sarah Mancini, Margot Saunders, and Odette Williamson. "Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color." National Consumer Law Center, July 2016. <https://www.nclc.org/issues/toxic-transactions-threaten-communities-of-color.html>.

protections and access to programming that homeowners have, buyers struggle to meet contract demands. Typically, land contracts make buyers responsible for insurance, maintenance and major repairs. These buyers are often unable to obtain repair loans or access to loan and grant programs for low- to moderate-income homeowners. If a buyer defaults on any term of the contract, they can be kicked out of their home without recourse.

Without strong regulation, land contracts are structured to advantage sellers and disadvantage buyers. A report from the National Consumer Law Center found several common exploitative features of land contracts, described in the box below.⁴

Exploitative features of land contracts

- 1. Lack protections of renting or mortgages.** Predatory land contract purchases are designed to fail. Because the contracts lack the protections found in leases or mortgages, it is very easy to kick buyers out of their homes for defaulting on the contract.
- 2. Have artificially high purchase prices.** Often the purchase price of a land contract is significantly higher than the house's fair market value. Because most land contracts are sold without an inspection or independent appraisal, buyers are unaware of the true value. Over the life of the loan, buyers would typically pay much more than if they had access to traditional financing.
- 3. Make buyers responsible for repairs.** Many homes sold by land contract are barely habitable and not up to code. The condition often prevents the home from being rented or, in some cases, qualifying for a traditional bank loan. In addition, land contract buyers are generally ineligible for loan and grant programs designed to help moderate-income homeowners make repairs. To avoid the cost of making a home habitable, sellers sell the house through land contracts, which puts the legal burden of making repairs on the buyers
- 4. Contain title problems.** There are often title problems with the transactions. Land contracts are rarely recorded with the county, so buyers have little recourse when title problems arise. When contracts are recorded, if the seller defaults on the mortgage or property taxes or does not pay a lien, the house can be sold without consideration for the buyer. In many cases, a buyer pays the full term of the contract and the seller cannot provide them with a title.

Source: Policy Matters Ohio based on "Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color." National Consumer Law Center.

For corporations, the goal of selling a house through a land contract is often to buy cheap, sell high, and kick the buyer out before they finish paying off the contract. The exploitative features of many land contracts enable this business model. In part, the profitability of land contracts depends on the ability to constantly turn over properties with new buyers. Sellers force buyers out of their homes through forfeiture clauses. Forfeiture occurs when buyers default on the terms of the contract. It is especially harmful to buyers because they do not have foreclosure protections. In Ohio, these protections only take effect after buyers have been paying their contract for more than five years. Most land contracts come with forfeiture clauses outlining what a buyer must do to avoid losing their home.⁵ These requirements range from not missing payments to getting the property up to code in an allotted amount of time. Buyers of land contracts often struggle to make monthly payments because the homes they

⁴ Battle, Jeremiah, Jr., Sarah Mancini, Margot Saunders, and Odette Williamson. "Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color." National Consumer Law Center, July 2016. <https://www.nclc.org/issues/toxic-transactions-threaten-communities-of-color.html>.

⁵ Chapter 5313: Land Installment Contracts, Ohio Revised Code §. Accessed March 5, 2018. <http://codes.ohio.gov/orc/5313>.

buy are below code and need significant and expensive repairs. Thus, forfeiture clauses result in the constant turnover of buyers. This, perversely, increases corporate profit.

Racist history of land contracts

Land contracts have a racist history. In the mid-twentieth century land contracts were used to exploit black homebuyers. From the 1930s to 1960s, the U.S. government barred black people from receiving federally backed home loans and mortgages. Because black neighborhoods were shut out of traditional credit, land contracts were often one of the only ways to purchase a home. Unscrupulous and racist speculators emboldened by discriminatory federal policy sold black homebuyers land contracts with inflated prices and impossible-to-fulfill contract terms. Many families lost their homes, down payment, all monthly payments, interest, and the costs of repairs, maintenance, and insurance when they were not able to meet the contract demands.⁶ Land contracts were a part of the racist practices that stripped wealth from black families and continues to harm access to opportunity.⁷

Connection to foreclosure crisis

Today, land contracts are on the rise in part because of the foreclosure crisis, which hit Ohio hard. Many of the hardest hit areas have not recovered and are in need of targeted, intensive intervention. Real estate investors use foreclosed homes as an investment. Large corporations often buy foreclosed properties in bulk at dirt cheap prices, then dramatically increase the purchase price and sell the house by land contract. In Ohio, though they have fallen significantly, foreclosure rates are still higher than in the 1990s, prior to the onset of subprime lending and the housing crisis. The predatory practices of the mortgage lending industry led to the foreclosure crisis. Now, real estate investors use land contracts to prey on communities that have not yet recovered.

Corporate investors and Harbour Portfolio

After the housing crisis, real estate investment firms began buying up inexpensive houses in areas hit hard by foreclosures. Many investment firms selling homes on land contracts bought houses from Fannie Mae. These firms targeted areas with limited access to traditional mortgages and many dilapidated homes. Harbour Portfolio Advisors of Dallas, an investment firm that has been active in Ohio, was the largest buyer of homes from Fannie Mae. Harbour raised \$60 million from investors to buy houses in bulk for an average of \$8,000 per house between 2010 and 2014.⁸ The firm purchased over 6,700 single-family houses in Ohio, Michigan, Pennsylvania, Illinois, Georgia, Florida, and a few other states. In Ohio, there are 1,329 records involving Harbour.⁹ This does not capture the substantial number of unrecorded land contracts.

Harbour and other investment firms buy properties in bulk in poor communities to sell them on contract to community members at inflated prices with high interest rates. Cities like Youngstown, Toledo, Dayton, Akron, and Cincinnati. The City of Cincinnati sued Harbour Portfolio for “predatory and unconscionable” practices targeting low-income residents,¹⁰ including practices like selling houses for five times the purchase price. The city is suing

⁶ Battle, Jeremiah, Jr., Sarah Mancini, Margot Saunders, and Odette Williamson. “Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color.” National Consumer Law Center, July 2016. <https://www.nclc.org/issues/toxic-transactions-threaten-communities-of-color.html>.

⁷ Brotman, Barbara. “Decades Later, Black Homebuyers’ Battle for Justice Back in Spotlight.” *Chicagotribune.com*. Accessed March 6, 2018. <http://www.chicagotribune.com/news/ct-contract-buyers-league-20150724-story.html>.

⁸ Goldstein, Matthew, and Alexandra Stevenson. “Market for Fixer-Uppers Traps Low-Income Buyers.” *The New York Times*, February 20, 2016, sec. DealBook. <https://www.nytimes.com/2016/02/21/business/dealbook/market-for-fixer-uppers-traps-low-income-buyers.html>.

⁹ Public records requests from County Recorder’s Offices

¹⁰ Norton, Paula. “Cincinnati Sues ‘Predatory’ Housing Firm Harbour Portfolio Advisors.” *Cincinnati Business Courier*. Accessed March 6, 2018. <https://www.bizjournals.com/cincinnati/news/2017/04/21/cincinnati-sues-predatory-housing-firm.html>.

Harbour for \$360,000 in unpaid fines, fees, and violation notices.¹¹ In Akron, the Housing administrator’s office that oversees code violations has received several complaints about Harbour Portfolio. These are a couple examples of an out-of-state firm preying on Ohio communities.

How Ohio is affected

Nearly all counties in Ohio are affected by land contracts. From January 1, 2008 to January 31, 2018 a total of 47,610 land contracts were recorded in the state. This probably grossly understates the number of actual land contracts, many of which are unrecorded, in violation of state law.¹² The lack of recording obscures the magnitude of the problem. Moreover, unrecorded land contracts completely lack protections for buyers. Table 1 shows the top 10 counties for recorded land contracts.

Table 1	
Top 10 counties for recorded land contracts from Jan. 2008 - Jan. 2018	
County	Number of recorded land contracts
Trumbull	2,706
Stark	2,456
Franklin	2,094
Lucas	1,956
Summit	1,873
Mahoning	1,622
Cuyahoga	1,592
Clark	1,186
Butler	1,153
Lorain	989

Source: Policy Matters Ohio based on public records request from County Recorder’s Offices. Montgomery County is not included. Montgomery County’s online records system lists 7,490 land contracts. This number is an outlier and does not reflect the actual lower number of recorded land contracts. A staff person in the Montgomery County Recorder’s Office confirmed their online database can include multiple records for one land contract, which results in an usually high number of records.

The map in Figure 1, which shows recorded land contracts across the state, is hosted on our website provides information about Harbour Portfolio.¹³ Most land contracts are in higher populated urban areas. The number of recorded land contracts range from zero in Medina County to 2,706 in Trumbull County.

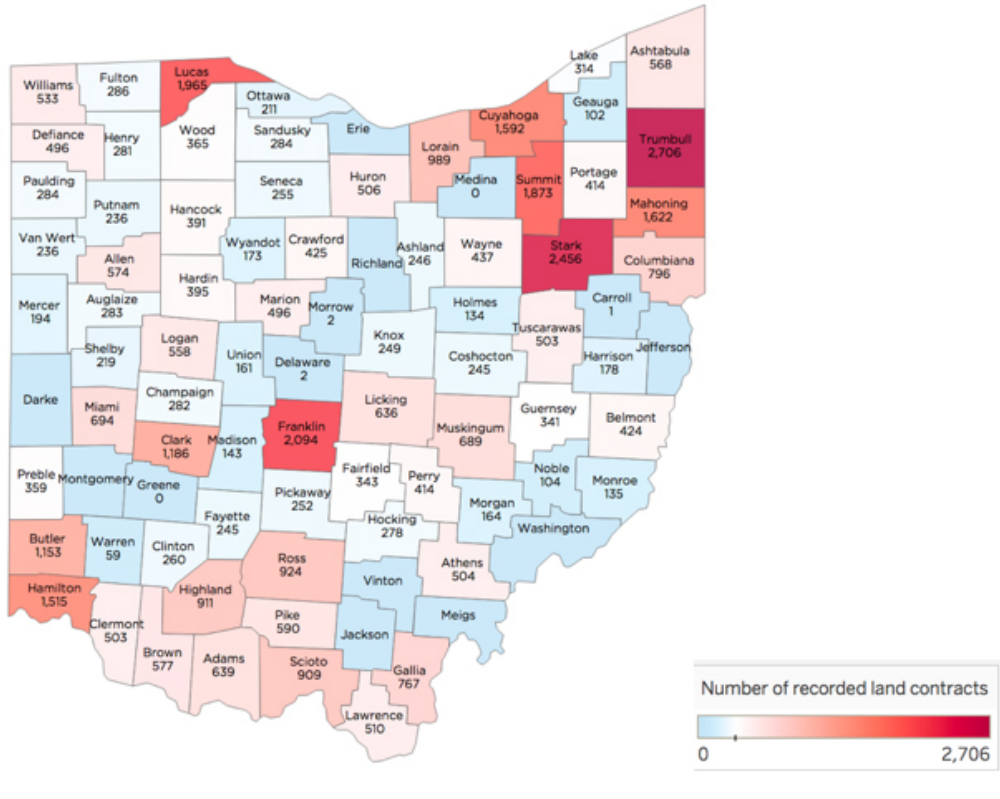
¹¹ Goldstein, Matthew, and Alexandra Stevenson. “Cincinnati Sues Seller of Foreclosed Homes, Claiming Predatory Behavior.” New York Times, April 20, 2017. <https://www.nytimes.com/2017/04/20/business/dealbook/cincinnati-sues-harbour-seller-foreclosed-homes.html>.

¹² Chapter 5313: Land Installment Contracts, Ohio Revised Code §. Accessed March 5, 2018. <http://codes.ohio.gov/orc/5313>.

¹³ Please view our website to see the interactive map accompanying this report that shows the number of recorded land contracts, the number of records involving Harbour Portfolio, the percent of residents in poverty and the percent of non-white residents for each county. In Ohio, in 2016 the poverty rate was 14.5 percent and the state was 17.8 percent non-white.

Figure 1

Number of recorded land contracts by county



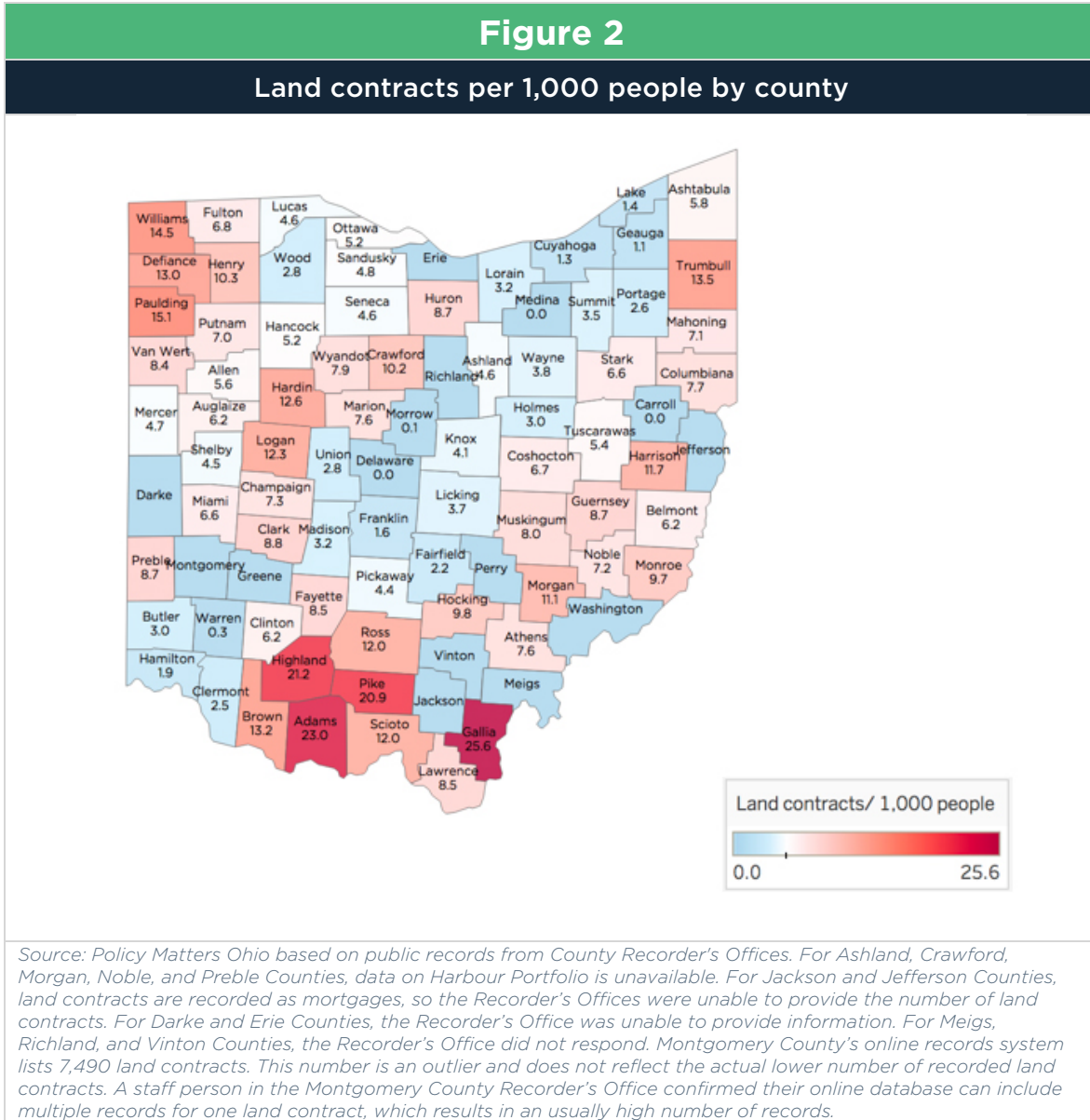
Source: Policy Matters Ohio based on public records from County Recorder's Offices. For Ashland, Crawford, Morgan, Noble, and Preble Counties, data on Harbour Portfolio is unavailable. For Jackson and Jefferson Counties, land contracts are recorded as mortgages, so the Recorder's Offices were unable to provide the number of land contracts. For Darke and Erie Counties, the Recorder's Office was unable to provide information. For Meigs, Richland, and Vinton Counties, the Recorder's Office did not respond. Montgomery County's online records system lists 7,490 land contracts. This number is an outlier and does not reflect the actual lower number of recorded land contracts. A staff person in the Montgomery County Recorder's Office confirmed their online database can include multiple records for one land contract, which results in an usually high number of records.

Land contracts are recorded in most counties in the state. Southern Ohio has counties with the highest number of land contracts per 1,000. The top 10 counties for recorded land contracts per 1,000 people are in Table 2.

Table 2	
Top 10 counties for land contracts/1,000 people from Jan. 2008-Jan. 2018	
County	Number of recorded land contracts
Galia	25.6
Adams	22.7
Highland	22.6
Pike	15.6
Trumbull	15.3
Williams	14.3
Brown	13.1
Defiance	12.9
Hardin	12.5
Paulding	12.0

Source: Policy Matters Ohio based on public records request from County Recorder's Offices. Montgomery County's online records system lists 7,490 land contracts. This number is an outlier and does not reflect the actual lower number of recorded land contracts. A staff person in the Montgomery County Recorder's Office confirmed their online database can include multiple records for one land contract, which results in an usually high number of records.

The map in Figure 2 shows the number of recorded land contracts per 1,000 people. The number of recorded land contracts per 1,000 people range from zero in Medina County to 25.6 in Galia County.



Ohio's insufficient land contract law

Predatory land contracts are a threat to communities because weak regulation allows investors and others to exploit homebuyers for profit. Ohio's land contract law is not sufficient to protect Ohioans from problematic corporations and contracts. Ohio law spells out the definition and requirements for land contracts, rights of the buyer and seller, and the process of forfeiture and contract cancellation. Ohio law favors the rights of sellers. There are some laws protecting buyers, but not enough to stop the sale of bad contracts and protect buyers and the money they have invested in houses. Also, buyers often do not have access to legal representation to help enforce their rights. Existing law contains the following provisions:

1. Requires land contracts to be recorded by the seller with the county recorder within 20 days of contract execution and outlines information to include in the contract.
2. At least once a year but no more than twice per year, the seller must inform the buyer of how much they owe and how much they have paid to principal and interest.
3. The buyer can take the seller to court if they do not abide by the law.
4. Buyers are responsible for the payment of taxes, assessments, and other charges against the property from the date of the contract, unless agreed otherwise.
5. With few exceptions, no seller can hold a mortgage on property sold by a land installment contract in an amount greater than the balance due under the contract.
6. If a buyer defaults on payments, a seller can use eviction and forfeiture to seize the house, unless the buyer pays in full within 30 days. However, if the buyer has paid on the house for longer than five years or has paid 20 percent or more of the value of the contract, the seller must go through the foreclosure process to take back the house.
7. The process of cancelling a land contract is outlined.¹⁴

The existing land contract law in Ohio does not sufficiently protect homebuyers. There are several problematic provisions, like requiring buyers to pay taxes, assessments, and other charges against the property, and not having foreclosure protections for buyers who have been paying their contracts for less than five years. Lawmakers should do more to protect Ohioans from predatory land contracts by passing laws to protecting buyers from common exploitative features of land contracts.

Recommendations

Ohio needs to create better rules for land contracts and better enforce them once they're in place. Without regulation, Ohioans are vulnerable to predatory practices. Community leaders have been working with the legislature to document the problems and put forth best practice solutions. Solutions should include:

1. Require houses sold through land contracts to be habitable and up to code prior to sale and over the course of the contract and require sellers to provide documentation that property is in compliance.
2. Require sellers to pay for independent inspections and appraisals, ensure clear rules about inspections, and ensure that sellers use reputable appraisers.
3. Require sellers to pay off liens on the property prior to executing a contract and prohibit sellers from holding a mortgage on the property.
4. Ensure that contracts are understandable, clearly spell out seller obligations, are provided to buyers, and inform buyers of their rights.
5. Deviation from land contract law provisions should only be permitted when the buyer and seller each have their own attorney.
6. Ensure that buyers have the right to sue for contract or law violations and can be awarded money damages.
7. Contracts must be subject to the federal Truth in Lending Act. Contracts should not be permitted to contain forfeiture clauses; prepayment penalties; or unfair, deceptive, or abusive practices.
8. The state should vigorously enforce and monitor compliance, including collecting data to enable assessment of how land contracts affect communities.

¹⁴ Ohio Revised Code. Chapter 5313: LAND INSTALLMENT CONTRACTS, Ohio Revised Code §. Accessed March 5, 2018. <http://codes.ohio.gov/orc/5313>.



It is essential that Ohio protect its people from predatory land contracts. Legislators should support measures to shield Ohio communities from predatory practices that strip wealth from homebuyers and harm neighborhoods.

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