Land Installment and Rent-To-Own Contracts: Evolution of the Foreclosure Crisis
What & Why

➢ What are land installment contracts and rent-to-own contracts?
➢ What is Maryland law regarding these contracts?
➢ Why should advocates be concerned?
➢ How can advocates help?
After Foreclosure

➢ Mortgage lenders & banks generally don’t want to own the properties

➢ Large nationwide investors buy properties from banks, Fannie*, Freddie, cheaply and in bulk
  ▪ Investors are not usually developers

➢ Begin cycling tenant buyers through properties with rent to own and land installment contracts
  ▪ Contracts usually have a selling price for the home far above the actual value based on condition

➢ BIG problem—hard to track because there are so many subsidiaries
  ▪ Example: Vision Property Management has at least 7 subsidiaries in Baltimore City ALONE
National Investors (according to NCLC)

➢ Battery Point Financial
➢ Harbour Portfolio Advisors
  ▪ National Asset Advisors, LLC, RECA Properties, Home Solutions
➢ Vision Property Management
  ▪ Kaja Holdings, Allen Investments, Boom SC, RVFM Series, BAT Holdings
➢ New Renaissance Property Mgmt.
➢ Shelter Growth Capital Partners
➢ Apollo Global Management
  ▪ Home Servicing
Land Installment Contracts - History

- Contracts for land that very closely resembled leases
  - Created to get around rent control regulations
  - Required minimal or no down payment
  - Substantial weekly or monthly payments
  - Buyer took possession of the property at the beginning but **seller retained title**
  - IF all payments made at end of contract period, seller conveyed title to buyer
  - IF all payments were NOT made, owner could eject buyer, and buyer retained NO equity!
Land Installment Contract Act of 1951


Act was passed in order to “recast the contractual relationship” between buyers and sellers (Long v. Burson, 182 Md. App. 1 (2008)).

Changed the nature of buyer’s and seller’s interests in the property
- Buyer has equitable title (similar to mortgagor)
- Seller has bare legal title
- Contract acts as lien on property
Land Installment Contract Act of 1951

➢ Defined as executory contract where an interest in the property is sold but the seller retains title to the property, and the purchase price is paid in five or more payments (excluding down payment).

➢ Protects equity built by buyers over course of contract period

➢ Limits the ability of sellers to eject immediately upon default

➢ Under the Act, vendor = seller, and purchaser = buyer

➢ Contract must be:
  ▪ in writing,
  ▪ signed by all parties, and
  ▪ include all terms
Vendor’s obligations

➢ Upon execution of contract:
  ▪ Give signed copy of K to purchaser within 15 days of vendor signing
  ▪ Give purchaser receipt for any payment or deposit
  ▪ Record signed contract in county land records within 15 days or signing

➢ **Failure to record gives purchaser unconditional right to cancel AND immediate refund of all payments**
Periodic Statements

➢ Vendor must send statement to purchaser:
  ▪ Annually,
  ▪ Upon purchaser’s demand (up to twice a year), and
  ▪ When 40% of cash price has been paid.

➢ Contents:
  ▪ Total amount paid (including ground rent, insurance, taxes, etc)
  ▪ Amount credited toward principal and interest
  ▪ Balance still due.

➢ Vendor’s failure to deliver statements DO NOT make the contract void or voidable. 
  (Hudson v. Maryland State Housing Co., 207 Md. 320 (1955)).
Defaults

➢ Right to Cure:
  ▪ If purchaser defaults, but cures default before vendor gives termination notice, the contract continues in full force and effect.

➢ If purchaser defaults, vendor must foreclose rather than eject
  ▪ Must follow Maryland Rules Title 14, Chapter 200 (Foreclosure of Lien Instruments)
  ▪ Md. Rule 14-202(b)(5) defines a purchaser as a “borrower”
  ▪ Contract must have been recorded

➢ Purchaser can file in court of equity to enforce provisions of Act
  ▪ If Court finds that vendor failed to comply:
    o May grant “appropriate relief”
    o Vendor pays court costs & reasonable attorney fees
Lease Purchase Contracts

➢ Commonly known as “rent to own”
➢ Leases with an ‘option’ contract included
  ▪ Option contract = tenant pays for opportunity to purchase the home from landlord under certain conditions
  ▪ Sometimes allows for part of rent payments to count toward down payment
  ▪ If the tenant cannot or chooses not to buy the property, the option is forfeited
Real Property § 8-202

➢ Only statute that specifically mentions lease options

➢ Option = *any* clause or separate document giving tenant power to purchase landlord’s interest in property.

➢ Agreement must have:
  - In all caps: THIS IS NOT A CONTRACT TO BUY
  - Clear statement of purpose and effect of agreement on ultimate purchase of property by tenant

➢ If option agreement doesn’t comply, it and/or the accompanying lease can be voided by non-drafting party (typically the tenant).
Downsides

➢ Properties are usually in bad shape & pose health and safety risks
➢ Buyer is usually responsible for all upkeep and maintenance
  ▪ Including major repairs
  ▪ No provisions for reimbursement if lease option not exercised
➢ Example: if appliances break, tenant must replace at their own cost and cannot take it with them when they leave
➢ Buyers treated as an ‘owner’ for purposes of maintaining the home, but as a tenant upon default

Photo of ceiling in rent-to-own home in Baltimore:

Photo Credit: Al Drago/NY Times
Recent Developments - Maryland

- In 2016, the Office of the Attorney General reached settlement agreement with Homes Direct Inc.
  - Targeted consumers who were “financially distressed” and couldn’t get traditional financing to buy a home
  - Charged illegal fees, violated security deposit laws, used other abusive tactics and provisions in their lease & lease option agreements
  - Homes were not habitable (ex. no running water in home, lead paint violations)
- Comprehensive legislation on rent to own contracts was introduced in 2017 session to try and curb many common abuses—it failed
- Ongoing litigation beginning in 2017 between Maryland Dept. of the Environment and Vision Property Management & subsidiaries
  - Violations of lead paint laws, among other issues
- Legislation passed in 2018 (HB1257) added a requirement to include in lease option agreements a statement that it is part of the lease and the tenant has the protections outlined in Title 8 of Real Property Code. Effective July 1, 2018.
Recent Developments – Nationally

- In 2017, Fannie Mae stopped selling foreclosed homes to Vision Property & imposed restrictions on future sales

- **Fair Housing Center of Central Indiana v. Marshall Welton** (Casas Baratas Aquí), No. 1:18-cv-1098 (S.D. Ind.)
  - Freddie Mac ‘examining’ loan extended to defendants after this suit filed

  - FHA, ECOA, Georgia FHA, TILA, Georgia Fair Business Practices Ace, Unfair & Deceptive Practices Towards Elderly Act, etc.

  - Complaint available at: [https://www.doj.state.wi.us/sites/default/files/news-media/First%20Amended%20Complaint%20with%20Exhibit%20A-E%20Attached-449638.PDF](https://www.doj.state.wi.us/sites/default/files/news-media/First%20Amended%20Complaint%20with%20Exhibit%20A-E%20Attached-449638.PDF)
Strategies for Advocates

- Counsel clients on the potential pitfalls PRIOR to signing
- Vendor default—some can void contract
- Unfair & deceptive practices under Maryland Consumer Protection Act?
- Common law contract defenses
- Federally - FHA, RESPA, TILA?
Resources for Advocates

➢ National Consumer Law Center
  ▪ www.nclc.org
  ▪ Manuals, Webinars, Conferences

➢ For clients:
  ▪ People’s Law Library: https://www.peoples-law.org/lease-option-agreements

➢ MVLS!
Resources for MVLS Volunteers
Upcoming Training:
Go to mvlslaw.org/events for more info!

June 21 – How the New Federal Tax Law Affects Your Family Law Cases
12 pm – 1:30 pm

June 12 – Tax Topic Twosday: Start-Ups and Tax Planning for Small Businesses
12 pm – 1 pm
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