Summary of State Land Contract Statutes
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Overview[1]

Land contracts (aka "land installment contracts" or "contracts for deed") are agreements in which a homebuyer makes regular payments to the seller but the deed does not transfer at the outset; instead, the seller retains full ownership of the property until the final payment.

As we have described in other reports,[2] land contract transactions have certain core features that put consumers at significant risk. First, the transactions are typically invisible in the public deed records, which puts contract buyers at risk of having their interest jeopardized by a later transfer or encumbrance, and also puts the reliability of the public land records and ability to convey good title into question. Second, land contracts generally include a forfeiture remedy that can deprive contract buyers of all of their investment in the home, and any equitable interest in the home. In many states, the law requires little or no legal process or public auction of the home for highest and best value. When forfeiture is allowed without restriction, a buyer that defaults can lose everything and be evicted like a tenant. Unrestricted forfeitures allow land contracts to operate in a legal no-man's land, in which contract buyers have all of the obligations of homeownership (including paying property taxes and making repairs), none of the protections of homeownership (such as the right to a foreclosure process), and none of the protections of tenancy (such as the landlord's obligation to provide habitable conditions).

Some state legislatures have attempted to address the core structural unfairness of the forfeiture remedy. Other states have merely built up a framework for enforcing land contracts (including the harsh forfeiture remedy upon default) in ways that delineate clear land ownership in public records. Still others have chosen to require upfront disclosures or ongoing statements, providing information, but no substantive protection, to contract buyers. Even when the intention of a state legislature is to protect the buyers, the consequences of a disclosure-only system often undermine the protections that might otherwise exist through judicially created protections (see below for further explanation).

Proponents of land contracts say these arrangements provide a viable means for low-income and credit-challenged families to access homeownership, particularly in light of the difficulty faced by many consumers in obtaining a traditional mortgage loan from a bank or other financial institution. They argue that if land contracts become too highly regulated, they might disappear as an option and thereby remove a potential path to homeownership. If homeownership is the goal, statutes governing land contracts should be assessed based on how well they achieve it. Quite simply, whether and to what extent land contracts actually succeed in creating homeownership, and whether unfairness results when they fail, should be the only criteria used to determine how much or what kind of regulation is appropriate for this marketplace.

Our analysis of state land contract laws in this report relies on conclusions based on a legal analysis of state laws, statutes, and major legal cases that govern these arrangements; interviews with legal services attorneys; and experiences representing consumers in these contracts. We walk through various provisions of state land contract laws, discuss why they are effective, and give examples of states that have enacted this kind of protection and how these laws seem to be impacting consumers on the ground. We then include, for 23 states that we identified have relevant statutes, a summary of each state's entire framework for regulating land contract transactions.

In our discussions with advocates, we have asked: What is their assessment of how often these transactions result in the transfer of legal title to the buyers? How would this legal provision play out under various factual scenarios that we know to be relatively common? What do legal services attorneys and housing counselors say about the issues they see when consumers come to them for advice? How often are they able to get effective redress for unfair conduct against a consumer, and how often do sellers appear to be violating the state statute? Does the statute create incentives for sellers to comply? Does the statute actually work to increase homeownership opportunities? In some states, we were unable to connect with practitioners who have experience working with clients in these arrangements, so it is possible we may have missed some of the nuance of how courts apply the statute or how a land contract statute interplays with other statutes in the jurisdiction.

Most states do not have a statute on land contracts, which means that the only limitations on these transactions come from judicial decisions. In many states that have no statute authorizing the land contract transaction, the courts have created very effective restrictions on the forfeiture remedy. A large body of common law exists on this topic in many states, in which courts apply equitable, real property, or contract law principles to determine whether forfeiture should be permitted. This suggests that, when considering enacting a state statute on land contracts, it is important to be aware of the common law that has developed in the state.

Creating a state statute that defines land contracts and imposes insignificant consumer protections (such as pre-contract disclosures or annual account statements) would likely legitimize these contracts and undercut common law theories that otherwise provide meaningful protections. A state court may be more likely to enforce a forfeiture clause if the legislature has enacted a law on point and declined to restrict forfeiture in any way. Therefore, it can be better to have no statute on the books than a statute that regulates land contracts without creating effective incentives for success.

More work is needed to assess the effectiveness of a state land contract law in incentivizing transactions that are likely to succeed (and deterring transactions that are likely to fail). Such research should quantitatively measure the outcomes over time: What percentage of contract buyers end up completing the purchase and getting a deed? What percentage fail, and of those that fail, the likelihood that the unsuccessful buyer lost more money than she would have spent renting, are also key questions that should inform an assessment of the protections that are most meaningful to contract buyers in any state.

Issue-by-Issue Summary

Recording Requirements

Interviews with legal aid attorneys suggest that there are at least two significant problems that could be addressed through requiring that land contracts be recorded in the public deed records. First, the recordation of the contract puts the world on notice of the contract buyer's interest in the property. This prevents unscrupulous sellers from potentially conveying the property outright to another investor who could take the property without notice of the contract buyer's rights and from encumbering the property with a mortgage that could deplete the value of the property to the buyer. Once the contract is recorded, any other recipient of any interest in the property would take such an interest subject to the contract buyer's right to obtain full title to the property after complying with the contract. Recording effectively prevents a seller from taking out further encumbrances against the property (because any such secured lender would be secured merely by the seller's now-limited rights in the property). Documenting the ownership interest in the land records may also open up eligibility for property tax homestead exemptions and publicly funded home repair programs.

Secondly, recordation of the contract creates an incentive for successful transfer of title to the buyer. Contract sellers who plan to churn the property through multiple would-be homeowners do not typically want to record the contract, because a recorded land contract creates a title issue they will likely have to resolve in order to sell the house to someone else (at least if the sale involves a title search). Most sellers who plan to churn the property would rather keep the transactions invisible, so that they can more easily remove the buyer after a default and get a new person into the home with another down payment.

To be most effective at encouraging recordation, a state law should require the seller to record the contract within a fixed amount of time from the date of signing, and should include a strong remedy to induce compliance. For example, Iowa prohibits a seller from enforcing the contract (carrying out a forfeiture) if it has not been recorded in the deed records, and also requires the seller to record within 90 days. Nevada makes it an unfair or deceptive practice for the seller to fail to record the contract within 30 calendar days of the date the seller accepts the first payment from the buyer under the contract.[3] Illinois law provides that for land installment contracts entered into after Jan. 1, 2018, the buyer has a right to rescind up until such time as the seller records the contract and, upon rescission, the seller "shall return to the buyer all money paid to the seller as of the date of rescission."[4]

The Illinois law also specifically states, "Any provision in an installment sales contract that forbids the buyer to record the contract or a memorandum of the contract is void and unenforceable."[5] This represents another approach (less protective than requiring the seller to record or prohibiting forfeiture without timely recordation, but still somewhat helpful)—ensuring that buyers have the right to record the contract and that any provision in the contract stating "this agreement shall not be recorded" is void and unenforceable.

Minnesota places the onus upon the buyer to record the agreement and subjects the buyer to a civil penalty in the event the contract for deed is not recorded within four months of the contract's execution, unless the buyer has not received a copy of the contract in recordable form.[6] This seems poorly calibrated to lead to the desired result, since most contract buyers will have relatively less information about the statutory scheme and could be susceptible to pressure and misrepresentations from the sellers who often would rather avoid recordation.

Limits on Forfeiture

When it comes to creating incentives for successful transactions, limiting the forfeiture remedy is perhaps the most impactful intervention states can make. Unlike the foreclosure process that applies to mortgages and other loans, forfeiture allows a seller to cancel the contract based on any default, even a trivial one, simply by notifying the consumer that it is canceled, and then commence an eviction proceeding. The seller is permitted to keep the home, whatever its value, and keep all the money the consumer has paid. Forfeiture is generally permitted only when it is included as a provision in the contract, but this practice is relatively common. In some states, including many that have enacted land contract statutes, courts have allowed virtually unrestricted use of forfeiture clauses.

In contrast, statutes that prohibit forfeiture and instead require foreclosure in some or all circumstances have a built-in incentive for success. Carrying out a foreclosure (whether judicial or nonjudicial) is more costly than a simple eviction. Foreclosures also involve a public auction sale in which a third-party buyer might bid an amount higher than the remaining loan balance. If that occurs, the consumer in default on the land contract would receive the surplus funds. Essentially, a foreclosure creates the opportunity for the consumer to receive some of the equity in excess of the purchase price and ensures that the seller/lender will receive only the remaining balance owed on the loan, rather than a windfall that includes all of the buyer's investment. For a seller who truly intends to sell the house for a certain agreed-upon price, foreclosure would be an acceptable remedy. Conversely, the forfeiture remedy makes it easier for sellers to use a profit model that involves churning multiple unsuccessful buyers through a property.

A number of states, including Arizona and Florida, require that land installment contracts be terminated in the same way as a mortgage loan: through foreclosure. Other states, like Illinois and Ohio, require foreclosure instead of allowing a forfeiture once the borrower has paid for a certain length of time or has paid a certain percentage of the original principal balance.
Some states require that the buyer be provided with a written notice letter and a certain window of time to cure a default and reinstate the contract prior to a seller initiating a forfeiture. This is a relatively limited protection, as most consumers will not have the funds to cure the default; but it does give consumers one more chance to catch up before losing the home. In some states, the length of the required notice or cure period varies depending on the length of time a consumer has paid on the contract. Still other states provide for a right of redemption, in which the contract buyer may avoid the final effect of a forfeiture by paying the full, accelerated balance of the contract.

Habitability

Large investors that own a portfolio of uninhabitable homes often use land contracts as a means to draw a stream of income from a property they could not legally rent. NCLC has documented how these agreements harm consumers[7] and has called for legislative reforms to curb the use of land contracts to shift the burden of responsibility for making significant home repairs to contract buyers who too often fail to obtain homeownership. Sellers using this business model can be more profitable when buyers fail to complete the contract and do not qualify for the transfer of ownership. The seller makes a significant amount of money from the buyer's down payment; draws a stream of monthly payments without spending money to make the home habitable; and then when a buyer defaults, the seller reclaims possession of a home that is almost always in better condition than before, due to the buyer's uncompensated efforts to render it habitable. When sellers are permitted to use uninhabitable homes as the subjects of their land contracts, they can be unjustly rewarded for churning through multiple unsuccessful buyers. Each buyer will pay a hefty down payment and make at least some home repairs before falling behind on the monthly payments and losing their money, the value of their labor, and their hopes of obtaining homeownership.

When one evaluates a statutory provision based on whether it increases the likelihood that contract buyers will achieve homeownership, and not have a seller be unjustly rewarded if the purchase is unsuccessful, a habitability requirement in land contract transactions scores high on both metrics. Because so many buyers are low-income and they have to make substantial repairs to make their homes livable, the cost of making those repairs increases the likelihood of default on their monthly payments. A lack of post-closing liquidity (savings) makes this risk even more stark.[8] This is especially so because of the information imbalance between sellers and buyers—sellers know more about the condition of the home, and contract buyers rarely have the benefit of a home inspection by a licensed, independent home inspector. In addition to making success more likely, the requirement that a home sold on land contract be habitable at the point of origination means that buyers who ultimately fail will not have lost unfair or unreasonable amounts of money fixing up homes that they never legally own. The unsuccessful contract buyers will then be in roughly the same situation as if they had been renting.

Virginia is the only state in the country that requires by state law that land contract sellers provide habitable conditions (see more on Virginia below). Other states have tried but have not successfully enacted a habitability requirement.[9]

A number of city ordinances have successfully addressed the issue. Cincinnati passed an ordinance in 2018 requiring that prior to entering into a land installment contract with respect to a given property, the seller must obtain (and provide to the contract buyer) a current certificate of occupancy.[10] Cincinnati already had an ordinance making it clear that a landlord's typical duties to make sure the leased property is in habitable condition and to comply with local housing codes apply to leases with an option to buy.[11]

Toledo, Ohio, passed an ordinance in 2008 requiring inspections in order to prevent the sale of deteriorating houses to unsuspecting buyers under land installment contracts.[12] The ordinance requires that the seller apply for and obtain a certificate of property code compliance prior to entering into a land installment contract. In addition, the seller must record the land installment contract within 20 days of its execution.[13] If a seller fails to comply, the buyer may rescind the contract and recover actual damages plus attorney fees and costs. A seller who fails to comply with the ordinance is also guilty of a misdemeanor and subject to fines.

East St. Louis, Illinois, makes the seller responsible for repairs for a certain period of time whenever a down payment has been made (the seller's obligation lasts longer the larger the down payment).[14] However, in 2013 the city rescinded the section of the ordinance that provided for a private right of action, calling into question whether and how a private individual harmed by a violation could enforce these restrictions.[15] The ordinance requires mediation of certain categories of disputes arising under the ordinance, the costs of which are to be divided evenly between the parties.

Limits on Encumbrances

Another protection that makes it more likely that a contract buyer will succeed in purchasing the home is a rule barring a contract seller from having preexisting liens on the property or taking out new loans secured by the property after the land contract is entered into. Allowing sellers to borrow against the equity without limitation while a contract buyer is in the process of making payments to purchase the home creates an elevated risk that the seller will default on its obligations and place all of the buyer's interest at risk.

Maryland and Pennsylvania prohibit a land contract seller from mortgaging the property during the term of a land installment contract in an amount greater than the balance due under the contract, and also require that the monthly payment on any mortgage owed by the seller not exceed the periodic payments required under the land contract.[16] These protections may be better than nothing, but still leave a contract buyer at significant risk. If a seller is not required to apply all payments received from the contract buyer to the seller's mortgage obligation, there is still a risk that the contract buyer could be current on her payments but lose everything when the seller's mortgage creditor forecloses.

The Texas law provides that sellers may not sell the property using a land contract when it is subject to any liens and must maintain this status throughout the term of the contract.[17] The only exception to this rule allows a seller to encumber the property prior to the execution of the contract in exchange for a loan used by the seller to purchase the property, and only if the indebtedness secured by the lien will not be greater than the amount of the total outstanding balance owed by the buyer under the executory contract.[18] This exception is substantial, and creates the same risks described above with respect to the Maryland and Pennsylvania laws.

Other states require that the buyer must consent to the existence of any encumbrance.[19] Minnesota law states that a mortgage encumbering the seller's interest in a contract for deed is ineffective as a lien if the buyer has not joined in or consented to the mortgage in a recorded instrument when the mortgage is recorded after the recordation of the land installment contract.[20] This is a very powerful protection for contract buyers, but only if the contract has been recorded. Interestingly, Louisiana law does not appear to require notice to or consent from the buyer regarding an encumbrance, but it does declare unlawful the sale of real property that is encumbered by mortgage or "privilege" by a bond for deed contract if the seller has not first obtained a written guarantee from the mortgage and privilege holders to release the property upon payment by the purchaser of a stipulated mortgage release price.[21]

In perhaps the most significant protection of contract buyers from the risks posed by other encumbrances, California's statute makes it a crime punishable by a fine of up to $10,000, imprisonment for up to a year, or both, if the seller does not record the contract and thereafter causes an encumbrance upon such property not consented to in writing by the parties, in an amount that exceeds the amount then due under the land contract (or under which the periodic payments exceed the periodic payments due on the land contract).[22] It is also a crime punishable by a fine of up to $10,000, imprisonment, or both for a seller to "appropriate" a payment made by a contract buyer rather than using it to pay the seller's mortgage obligation.

Certain states do not limit a land contract seller's ability to encumber the property at all, but merely require a disclosure of existing liens to the buyer at the time the land contract is entered into. This kind of disclosure requirement is relatively ineffective, especially given that consumers can be misled by oral misrepresentations and might miss a written disclosure in a sea of other documents at closing. Moreover, it is likely that most buyers of land contracts will not understand the meaning or significance of this information and will not be able to protect themselves from the risks it imposes. Illinois, Indiana, North Carolina, and Texas require that a notice of encumbrances be provided to the buyer under the contract.[23] Not only are these disclosures of limited value in protecting the buyers from losses caused by the encumbrances, their presence on the contracts actually undermines subsequent efforts to challenge the encumbrances themselves as unfair and potentially illegal, as discussed in the next section.

Disclosures and Required Contractual Terms

One fairly common statutory scheme is requiring that certain facts be disclosed to the contract buyer at origination or listed in the body of the contract. Quite a few states have gone through the process of mandating certain disclosures in land contract transactions. Yet the experiences reported by legal services attorneys in these states suggest that such written disclosures are not effective in preventing consumers from entering into bad deals. It is easy for bad actors to provide a written disclosure in a context that makes it unlikely a consumer will read or understand it. But even if the disclosures were communicated clearly, consumers seem to be much less swayed by required written disclosures than by persuasive oral representations by unscrupulous land contract sellers. Moreover, the remedies for violations of these disclosure requirements are usually limited and do not protect contract buyers from the possibility that a future lienholder might take higher priority over their unrecorded interest. There is also a significant risk that the existence of such disclosure requirements in a state statute might prevent courts from limiting the forfeiture remedy (or imposing other more substantive protections).

Moreover, in states that require certain terms to be included in the contract, it is most often left unclear what legal conclusion arises when such terms are not in fact included.

Periodic Statements and Property Taxes

Similar to upfront disclosure requirements, requirements to provide ongoing account statements or escrow calculations for property taxes may be helpful but are insufficient consumer protections standing alone. If a seller complies with a requirement for ongoing statements, it may help buyers to better understand how their payments are being applied to the loan. However, periodic statements do not alter the fundamental incentives of sellers in land contract transactions. They also do not change the unfairness or the incentive for churning that is created by the forfeiture remedy. These requirements can exist in a state law without deterring a seller in any meaningful way from creating contracts that are built to fail.

Some states require that land contract sellers provide buyers with annual or periodic statements that include certain information.[24] In Maryland, the seller has an obligation to provide an annual account statement once 40% of the purchase price has been paid.[25] Minnesota, Pennsylvania, and Illinois mandate that a seller provide a statement if the buyer requests it.[26] Typical information that must be provided in these periodic statements includes: the balance due on the contract, the number of payments remaining under the contract, the amount already paid, the amount credited to principal and interest, information about insurance, and information pertaining to property taxes.

The federal Truth in Lending Act also imposes a requirement to provide periodic statements that applies to some land contracts (depending on whether they meet the definition of a "federally related mortgage loan," which is typically the case for larger-volume sellers). The Real Estate Settlement Procedures Act (which also covers these larger players) requires proper handling of escrow accounts and provides a method to correct servicing errors.

Legal services attorneys report that tax issues are a common problem with land installment contracts—both the failure to clearly denote who is responsible for the payment of property taxes during the contract term and the large arrearages that may not be disclosed to the buyer. California, Colorado, and Louisiana have enacted protections for buyers relating to the escrow of certain obligations required in land installment contracts.[27] Effective Jan. 1, 2018, Illinois requires contracts to clearly allocate that responsibility to either the seller or the buyer and, if the responsibility is not clearly allocated, places the burden of paying ongoing taxes on the seller.[28]

Definition and Coverage

Most states with a relevant statute define land contracts to apply to long-term sales contracts with more than a certain number of payments, or in which a sale will not be completed within one year. This makes a distinction from a typical short-term executory purchase and sale agreement (in which a closing is expected to take place typically within a number of months).

A small number of states take the approach of regulating land contracts and lease-options under the same statutory scheme. Virginia is one. Texas includes lease-options in some of its land contract requirements and not others.

In states that do not impose requirements for lease-option contracts, in either the same statute or a different one, there is a risk of driving bad actors over to this other, similar type of contractual format rather than truly eradicating bad conduct.[29]

One important question is whether the statutory scheme includes all leases with option to buy, or at least the "spurious" lease-option contracts that in fact carry all of the defining features of a land contract. What we mean by "spurious" lease-option contracts is a contract that has "lease with option to buy" as its caption or title, but in substance, does not contemplate any separate transaction to exercise the option. Some investors have begun to use a practice of calling something a lease with option to buy, simply in an attempt to evade the state laws that apply to land contracts, when in reality the contract is a land contract. Maine has an effective definition that attempts to address this evasion problem: The statute excludes only lease-options in which there is a good faith expectation of a separate transaction when the option will be exercised; and it includes all other transactions. In this way, the Maine statute would apply to a transaction in which the agreement is titled "lease with option to buy" but does not provide for a good faith expectation of a separate transaction (and rather the buyer who makes all payments pursuant to the contract will end up with title at the end).

With respect to coverage, some states take the approach of requiring the protections only for owner-occupied homes or the principal residence of the buyer. Others have a numerical threshold in order for a seller to be covered (e.g., more than four land contract transactions in a calendar year). Given that "mom and pop" sellers of one single property typically have an incentive for the sale to succeed (rather than setting up a transaction to create churn), it can be reasonable to exempt them from certain requirements of the state law. However, if a numerical threshold is to be used, it is important to address the problem of multiple LLCs being created in an attempt to evade coverage. Some statutes (including Virginia) directly address the issue of affiliates or subsidiaries being relevant to meeting the numerical threshold as a covered creditor.

Remedies

As with most statutory schemes, the requirements and prohibitions are only as good as the enforcement mechanisms built into the law. A number of state statutes lack an effective deterrent because they are entirely silent on the question of remedies. Other states do explicitly provide for actual damages, statutory penalties, or injunctive relief as a defense to a forfeiture. Certain states make it a violation of the unfair and deceptive acts and practices (UDAP) statute if the land contract law is violated, which typically brings with it statutory damages/civil penalties and attorney's fees. In many states, violations of the land contract statute that are willful or intentional may also carry the possibility of punitive damages under the state's general punitive damages statute.[30]

A few land contract statutes specifically provide for attorney's fees for a prevailing consumer (including at least Maryland, Iowa). Providing for a plaintiff to recover attorney's fees is extremely important for creating incentives for compliance as well as a means to pursue violators. There are not enough legal services attorneys to meet the need for civil legal services, and an attorney's fee provision creates a possibility that private attorneys may take cases when violations are discovered.

Providing that a seller may not carry out a forfeiture or otherwise enforce a default on the contract if it has not previously complied with the statutory mandates has proved to be an effective way of modifying sellers' behavior, according to advocates in states where this statutory remedy exists.

When a statute requires certain behavior but contains no language regarding the significance of a violation, it creates uncertainty for both buyers and sellers, and undermines the effectiveness of the protections provided.

Access to high-quality civil legal services is essential if consumers are to benefit from even the strongest state statute. Government enforcement attorneys also must be given the authority and resources to police the marketplace against violators of the statutory regime.

State-by-State Summary

Following is a summary of each state's substantive law regulating land contracts. This includes all of the 21 states that we marked as a "yes" on the question of whether this state has a substantive law regulating land contract transactions. We also include descriptions for two additional states that we decided to move to the "no" column on that question—Indiana and Montana. Both of those states have laws of general applicability that include land contracts within their coverage. We ultimately determined that their statutes do not directly regulate the core aspects of land contract transactions; they merely include land contracts in requirements that also apply to mortgage or other secured lending. However, we kept the summaries here, because these two were close calls.

It can be very difficult to draw a line between states that have a law substantively regulating land contracts vs. states that do not. Almost every state in the country has a mention of land contracts in some statute of some kind, but many of those are in statutes that address other issues, such as foreclosure rescue scams, real estate transfer tax, and sellers' disclosures (through whatever kind of real property sale). Our goal here has been to draw a line between the states that regulate land contracts specifically (in a way that is different from other real estate transactions) versus states that do not.

Arizona

Arizona's land contract statute includes several limitations on the forfeiture remedy. First, a forfeiture may be carried out only after waiting a specified amount of time, ranging from 30 days to nine months, depending on the amount of money that has been paid toward the purchase price.[31] Second, the forfeiture remedy must be carried out in the manner set forth in the statute. Finally, if the contract is to be accelerated, or if the default is other than a failure to make payments, then the contract may not be terminated by forfeiture but only by a foreclosure.[32]

When forfeiture is permitted, the seller must record a notice of election to forfeit with the county recorder's office and serve it either in person or by U.S. mail at least 20 days prior to the effective date of the forfeiture. The notice of election to forfeit must recite the amount owed and provide a deadline to reinstate which is at least 20 days after the service of the notice. If the buyer or any other person pays the amount necessary to reinstate within the time allowed, the seller must record a notice of reinstatement in the county recorder's office.[33]

If the time provided in the notice of election to forfeit expires without reinstatement, the seller may complete the forfeiture by filing an action in the superior court to "declare that the interest of the persons has been forfeited and to quiet title to the property in the seller."[34] Or, if an account servicing agent has been appointed to hold documents and collect monies due under the contract, and such agent handled the recording and service of the notice of election to forfeit, then that agent may complete the forfeiture by recording an affidavit of completion of forfeiture in the county recorder's office.[35]

If the contract contains an acceleration clause and if the seller elects to accelerate the balance owed upon default, then the seller's only enforcement mechanism is foreclosure in the manner provided for mortgages. In addition, if the default is other than for failure to make payments, the seller may proceed only with foreclosure, not a forfeiture.[36]

Arizona's statute specifically provides that the **seller** may maintain an action **against the buyer** for damages arising from, or to prevent from occurring, physical abuse to the property, waste, or impairment of security provided by the contract.[37] There is no mention of the buyer having a claim for damages or other relief against the seller.

A seller who receives full payment pursuant to a contract shall deliver a payoff deed to the buyer, stating that the deed is being delivered to consummate the contract, and cross-referencing the recorded contract.[38] For any contract with a purchase price of $1 million or less, if the seller fails to record a payoff deed within 60 days of full payment, a title insurer may record a payoff deed after 30 days' notice by certified mail to the seller and interested parties.[39]

California

California's statute uses the term "real property sales contract," defined as an agreement in which one party will convey title to another upon the satisfaction of certain conditions and the contract does not require conveyance of title within one year of contract formation.[40]

The key protection of the California statute is found in Section 2985.1, “transferability,” which provides that a real property sales contract may not be transferred separate from the real property which is the subject of the contract, and the real property, by the same token, may not be transferred without also transferring the contract.[41] Courts have interpreted this section to indicate that the buyer in a real property sales contract has a right of redemption (right to pay off the balance and obtain a deed) which can be cut off only through foreclosure.[42]

California also provides aggressive protections for buyers in a real property sales contract related to liens owed by the seller. If the seller either encumbers the property with liens that amount to a total periodic payment greater than the contract payment or receives funds from the buyer and fails to use the money to pay a mortgage on the property when any amount is due by the seller on the mortgage, it is a public offense punishable by a fine of up to $10,000.[43] California law provides that every installment land contract must contain a statement of the number of years required to complete payment in accordance with the terms of the contract and the basis upon which the tax estimate is made.[44] Amounts received from the buyer for insurance and taxes shall be held in trust for the designated purpose and shall not be disbursed for any other purpose without consent.[45] When the property at issue resulted from a subdivision of real property, the contract must contain a statement indicating the fact that the division creating the parcel(s) to be conveyed was made in compliance with, or exempt from, the Subdivisions Map Act.[46]

Colorado

Colorado requires that the seller in a contract for deed transaction fulfill two key obligations: (a) designate the county public trustee (an official responsible for verifying the satisfaction of mortgages and also carrying out foreclosure sales) as the escrow agent for payments made toward the property taxes for the property,[47] and (b) within 90 days of execution of the contract, notify the county treasurer and county assessor of the transfer by filing a written notice of transfer by contract for deed.[48] If a seller fails to do either of these things, the buyer has the option of voiding the contract, and if voided, the buyer is entitled to the return of all payments made, along with statutory interest and reasonable attorney’s fees and costs. The statute of limitations for a buyer to void the contract based on noncompliance by the seller is seven years.[49]

Colorado statute also provides that a land contract buyer (or “vendee”) “shall be considered as an owner,” except as to any portion of the property that the buyer has already transferred, and shall “be subject to all requirements in this article with respect to owners.”[50] According to attorneys practicing in the state, this does not amount to a requirement that foreclosure always be pursued in order to terminate the contract. Rather, courts apply a balancing test to determine whether a forfeiture should be permitted or whether the equities require that a right of redemption be honored.[51] There is a statutory right to cure for mobile home transactions.[52]

The definition of “contract for deed to real property” is a contract that provides that the purchaser shall assume possession of the real property and the rights and responsibilities of ownership, but the deed will not be delivered for at least 180 days after execution date and not until certain conditions have been met. (Section 1(b)). Regarding coverage, the requirement to use the public trustee as an escrow agent can be avoided if the seller pays the annual property taxes or posts a bond and the property is no smaller than one acre. (Section 4).

Florida

Florida’s statute simply and elegantly provides that all conveyances or instruments for the purpose of conveying property with a purpose of securing payment of money “shall be deemed and held mortgages” and “shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages.”[53] Courts have confirmed that this section applies to contracts for deed, which are deemed mortgages under Florida law.[54] The statute explains that a conveyance shall not be deemed a mortgage against a bona fide purchaser or mortgagee, without notice, holding under the grantee. This suggests that a buyer in an unrecorded land contract could face some risk; and there is no recording requirement in the Florida statute. However, the buyer’s possession of the property should provide constructive notice to any potential grantee, so if the buyer is in possession, a grantee would not take any interest in the property “without notice.”

Illinois

In 2017, Illinois passed the Installment Sales Contract Act that expanded protections for contract purchasers. Covered contracts now must address 28 statutorily mandated items, including 1) a statement of which party pays property taxes and insurance; 2) a list of known title issues with the property, including liens and mortgages; 3) a statement of which party is obligated to make repairs on the property, including a description of how buyer repairs will be accounted for in the contract price; 4) a certificate of compliance with building code or, in the absence of a certification, an express written warranty regarding notices that the seller has received from municipalities; and 5) a requirement that the buyer has 90 days to cure a default in payment before the seller can pursue legal remedies. Within 10 days of the sale, the seller must record the contract, and the statute provides the buyer with some limited rights to rescind if the seller fails to do so. Moreover, the law specifically states “any provision in an installment sales contract that forbids the buyer to record the contract or a memorandum of the contract is void and unenforceable.”[55] The statute clarifies that buyers may hire contractors for work on the home. It also bans prepayment penalties and provides a three-day cooling-off period. Violations of the statute are deemed an unlawful practice under Illinois’ UDAP statute.

While the statute is comprehensive, many of the protections are limited. Sellers who draft contracts can still impose all of the obligations for repair and payment on the buyers even on properties with known defects as long as they are disclosed. Arbitration limits are included but only on clauses that meet a high legal standard.

Illinois law does, however, limit forfeiture of a land installment contract if the amount unpaid under the contract is less than 80% of the initial contract price. Unfortunately, given the high interest rate on many contracts, buyers may pay for many years before the amount outstanding hits that threshold.

Indiana (no substantive law directly on land contracts)

Indiana does not have a statute that comprehensively addresses land installment contracts; however, two acts, Indiana's First Lien Mortgage Law and Home Loan Practices Act, do have provisions that impose some rules on land installment contracts.

Under Indiana's First Lien Mortgage Law, an entity that regularly extends first lien credit, including importantly land installment contracts, must have a license from the state and cannot engage in unfair or deceptive practices. Ind. Code 24-4.4-2-401; 24-4.4-3.104.6. In addition, a covered creditor must provide a timely payoff upon request and cannot charge a prepayment penalty. Ind. Code 24-4.4-2-20. Indiana's Home Loan Practices Act imposes similar requirements against deceptive and misleading acts on creditors who regularly make land installment contracts. Ind. Code § 24-9-3-7. Indiana law requires (specifically and only for land contract transactions) the seller to disclose any encumbrances (including any tax liens, foreclosure actions, legal judgments, or other encumbrance affecting title) to the purchaser in writing, by certified mail. The disclosure must be provided no later than the date the land contract is executed if the encumbrance is in existence before or at that time—or no later than 10 business days after any subsequent encumbrance is created. Ind. Code § 24-9-3-7(d).

Iowa

Iowa law provides three basic protections for land contract purchasers. First, Iowa law requires all land contract sellers to record the contracts within 90 days, and if sellers do not, they may be subject to a $100/day fine and limited in their ability to obtain forfeiture. Sellers who fail to record cannot pursue a forfeiture until the contract is recorded. Second, Iowa's statute requires that the seller deliver certain written disclosures to the buyer before executing the land installment contract. These include the current assessed value of the real estate (according to the proper taxing authority), a complete description of any property taxes due and unpaid for the property, whether the property taxes are delinquent and if any tax sale certificate has been issued, a complete description of any mortgages or liens encumbering the real estate, a complete amortization schedule for the payments to be made pursuant to the contract, description of any balloon payment required by the contract, the annual rate of interest to be charged, and—if the contract includes a forfeiture clause—an explanation of what that clause means. Within one year of execution of the contract, the buyer may rescind the contract if the seller fails to provide the required disclosures. Third, sellers seeking forfeiture of a land contract must provide buyers with 30 days to cure the default through a statutorily defined notice.

Louisiana

Louisiana law imposes minimal requirements on land installment contracts, which it labels as bonds for deed. It requires sellers to provide purchasers who default on payments with a notice giving the purchasers 45 days to cure default. Purchasers make their installment payments through an authorized escrow agent. Sellers must obtain an agreement, which is recorded, from any pre-contract lienholders that they will release their liens upon payment of a specified amount. The law imposes criminal penalties for noncompliance.[56]

Maine

Maine requires foreclosure, rather than forfeiture, of any land contract for the sale of residential real estate if the buyer is in possession of the real estate at the relevant time.[57] If the buyer is not in possession of the home (e.g., if the buyer is renting the home to a tenant), the terms of the contract apply, meaning that a forfeiture could be allowed if the contract so states. Prior to acceleration and foreclosure, the seller must send a 30-day notice of the buyer's right to cure the default and reinstate the loan.[58] It appears that Maine's general 35-day notice of right to cure prior to foreclosure also applies.[59] Thus a seller would be well advised to send a notice that complies with both requirements, including providing 35 days to cure the default. After a foreclosure, the buyer in a land contract transaction has a 60-day right of redemption, but for good cause shown, the court may extend the redemption period to a maximum of one year.[60]

Maine takes the approach of requiring certain terms to be included in the contract. However, no remedies are specifically laid out in the statute, making it unclear what result would follow if the contract fails to include the required terms. The statute requires that the contract contain a conspicuous statement of any encumbrances against the property, a statement explaining that the contract is not a mortgage and that the buyer does not obtain title to the property until the purchase price is paid in full, a statement of the buyer's rights to cure a default, a provision that the seller will provide evidence of title by a copy of deed or otherwise at the time of the execution of the agreement, and a provision that if the seller defaults on any mortgage on the property the buyer may pay on the mortgage and receive credit under the contract. The contract also must disclose that the buyer is responsible for the payment of taxes, assessments, and other charges against the property from the date of the execution of the contract, unless agreed to the contrary. Finally, the contract must state that the buyer has the right to prepay any installment payments without penalty, unless agreed to the contrary.[61]

Within 20 days after the contract has been signed, the vendor is required to record either the contract or a memorandum of land contract in the deed records, at the buyer's expense.[62]

Maine's statute excludes from coverage only lease-option transactions where there is no good faith expectation of a separate transaction in which the full purchase price will be paid.[63] By extension, it covers transactions that are captioned as a lease-option but that in fact do **not** involve a good faith expectation of a separate transaction (so-called "land contracts in disguise").

Recent efforts have been made to amend Maine's statute to strengthen it and cover leases with the option to buy. Legislation passed both houses but was then vetoed by the Governor. Advocates then continued negotiating regarding a revised bill. As of this writing, that subsequent bill has not moved forward, in part due to COVID-related slowdowns and breaks in the session.

Maryland

Maryland law requires that land contracts be terminated through foreclosure rather than forfeiture.[64] The buyer is entitled to notice and a right to cure the default prior to foreclosure.[65]

Maryland requires a number of terms and provisions to be included in land installment contracts. The contract must list every transfer of title to the property, the sale price of each transfer, and the substantiated cost to the seller of repairs or improvements that occurred within the six-month period prior to the date of purchase.[66] The contract must disclose, among other things: any charge or fee for any service included in the contract separate from the cash price; the amount of any down payment; the principal balance owed; the amount and time of each installment payment and the total number of periodic installments; the cost to the buyer of any insurance coverage from the date of the contract's execution if the premium is to be financed and the amount or extent and expiration date of that coverage, a concise description of the type of the coverage, and the identification of every party to whom the insurance is payable. The contract must allow the buyer to prepay any installment payment and must include provisions stating clearly any collateral security taken for the buyer's obligation under the contract. The seller must inform the buyer of any written notices the seller received from any public agency requiring any repairs or improvements to be made to the property. Finally, the buyer is entitled to notice of his or her right to a copy of the contract at time of signing.[67]

The statute requires the seller to provide a copy of the contract to the buyer at or before the time the purchaser signs the contract (or within 15 days of the contract being signed by the vendor, if the buyer signs first).[68] Also within 15 days of the contract being signed by both parties, the vendor must record the contract in the county deed records. If the vendor fails to comply with either of these requirements, the buyer may cancel the contract, at his option, and be entitled to a refund of all payments and deposits made,[69] up until the time the contract is recorded (or at any time if the copy of the contract is not delivered by the statutory deadline). Allowing cancellation if a contract is not delivered or recorded is helpful; but a buyer that does receive a copy of the contract will have no right to cancel the transaction if, upon reading it, she realizes the terms are contrary to her best interest.

When 40% of the purchase price has been paid (unless the contract allows for an earlier timing), the buyer may demand a deed to the property on the condition that she executes a mortgage to the seller for the remaining principal balance.[70] The principal and interest payments on the replacement mortgage may not exceed the amount of the land contract payments unless agreed to by the buyer.

The seller must provide periodic statements annually, or on demand of the buyer up to twice per year, and also when 40% of the purchase price has been paid.[71] However, no clear remedy is set out by the statute for violating the periodic statements requirement, and courts have held that its violation does not give rise to a right to void the contract.[72]

No seller may place or hold any mortgage on the property subject to a land contract of a principal amount that exceeds the balance due under the land contract, or with monthly payments that exceed the payments required under the land contract.[73]

Michigan

Michigan law provides for a statutory forfeiture proceeding upon default under a land contract, or the seller may elect to carry out a foreclosure instead. The forfeiture proceeding allows for a redemption period in which the buyer may redeem by paying the arrearage; whereas in a foreclosure, the buyer may redeem only by paying the full, accelerated loan balance, provided that the contract contains an acceleration clause.[74] Therefore, some land contract sellers might elect to pursue a foreclosure, rather than a forfeiture, if the buyer has fallen behind and redeemed multiple times and the seller wishes to make it less likely that the borrower will be able to redeem. Or a land contract seller might be forced to foreclose (rather than pursue a forfeiture) if the contract does not contain a forfeiture clause.[75]

The statutory forfeiture process in Michigan begins with a 15-day right to cure letter.[76] After the running of that period, the seller may commence the summary proceeding for forfeiture with a summons and complaint.[77] Judgment is entered for the amount of back payments. The buyer may redeem within 90 days (or within six months if more than 50% of the purchase price has been paid) by paying the amount of the judgment.[78]

In addition, Michigan's generally applicable usury law limits the interest rate for land contracts and mortgages to 11% per year.[79]

Michigan law provides that land contracts executed with certain formalities "shall be entitled to be recorded" in the deed records. It is not clear whether that provision binds vendors or whether a contractual provision limiting the buyer's right to record would be effective.[80]
Finally, Michigan has a detailed law related to how and when a vendor and a vendee may mortgage their interest in the property that is subject to an active land contract without the consent of the other party to that contract.[81]

Minnesota

Minnesota has two basic protections for land installment contract buyers. Under Minn. Stat § 559.202, a "multiple seller" (who has arranged four or more contracts in the past 12 months) must provide a notice five days before execution of the contract that provides basic information about the contract. The notice includes a disclosure regarding which party pays property taxes, pays property insurance, and makes repairs. It also includes some basic language about the nature of land installment contracts and their complexity. The notice appears to place the burden of recording on the buyer and not the seller. It does not require multiple sellers to provide it to adequately represented buyers. It includes a very minimal right to cancel the transaction, and it provides damages for failing to provide the notice (including treble damages for a knowing failure).

The second protection provides a notice and right to cure to buyers prior to any land contract termination. Under Minn. Stat. § 559.21, for transactions executed after July 31, 1985, a seller seeking to terminate a contract must provide the buyer a specified notice that gives the buyer 60 days to cure a default. To cure, the buyer must pay relevant costs and attorney's fees.

There is also at least one unhelpful provision of the law. Minn. Stat. 559.205 states that "a renegotiated contract for deed or an agreement modifying the terms of a contract for deed which was valid at its inception shall not be construed as creating a mortgage or an equitable mortgage. This section does not modify any other requirements relating to contracts for deed."

Montana (no substantive law directly on land contracts)

According to a legal aid advocate in Montana, many land installment transactions adopt aspects of the Montana Small Tract Financing statute, which allows the seller to transfer the deed to an escrow agent pending the terms of the agreement. Mont. Code Ann. § 71-1-301 et seq. The advocate we spoke to explained that a very high percentage of real estate transactions happen through this "trust indenture" process, though in some ways these trust indentures are closer to mortgages. Montana also has a mortgage instrument (subject to judicial foreclosure), but secured lenders can opt to use a trust indenture in order to have the option of nonjudicial foreclosure upon default. Most mortgage lending in the state is done through trust indentures. It may be worth examining whether having an established, less burdensome system such as trust indentures for real estate-secured loans affects whether abusive land contracts are less prevalent. However, it does not appear that Montana's law prohibits land contracts that are outside of the trust indenture system. We did not find any statutory language limiting forfeiture or other problematic aspects of land installment contracts when they are not drafted within the trust indenture framework.

Montana's other additional protection for purchasers is to ensure that, once the contract is recorded, the purchaser is entitled to receive any statutorily required notice that the owner is entitled to receive. Mont. Code Ann. § 70-20-115(2). Moreover, if a contract for deed is filed for recording in the deed records, the clerk shall prepare a certificate stating the value of consideration paid or to be paid in the transaction, in order to assess the real estate transfer tax.[82]

Nevada

Pursuant to Nev. Rev. Stat. § 598.0923(5), it is a deceptive practice for the seller in a land installment contract to fail to disclose in writing to the buyer any encumbrance or other legal interest in the real property, any condition known to the seller that would affect the buyer's use of the property, and the nature and extent of legal access to the real property. In addition, it is a deceptive practice for a seller to fail to record the contract within 30 days of accepting the first payment on the contract. Finally, it is a deceptive practice for a land installment contract not to provide rights and protections to the buyer that are substantially the same as those available in foreclosure.[83]

North Carolina

Under North Carolina law a contract for deed must contain a number of disclosures, and a copy of the contract must be provided to the buyer at the time the contract is signed. The buyer has the right to cancel the contract until midnight on the third business day after execution of the contract or being provided with a copy of a contract containing all of the required information, whichever occurs later.[84] The contract must contain a conspicuous disclosure of any pending order of any public agency or other matters of public record adversely affecting the property that the seller has actual knowledge of.[85] The contract also must disclose which party is responsible for the cost of repairs, taxes, hazard insurance premiums, flood insurance premiums, homeowner association dues, and other charges against the property from the date of the contract's execution. The contract must include a description of the condition of the property, including whether the property has utility service; whether the property is in a flood plain; whether anyone else has a legal interest in the property; and whether restrictive covenants prevent building or installing a dwelling. If restrictive covenants affect the property, a copy of the covenants must be made available to the purchaser at or before execution of the contract. A completed residential property disclosure statement must be provided, and the seller may not select the option of making "no representation" as to any characteristic or condition of the property.

The contract must list the current amount of any real estate taxes, homeowner association dues, and the amount of any special assessments required to be paid on the property, including the amount of any assessments that are delinquent. To the extent these amounts are not known at the time the contract is executed, a reasonable estimate must be given. Finally, if the property being sold is encumbered by one or more deeds of trust, mortgages, or other encumbrances evidencing or securing a monetary obligation that constitutes a lien on the property, the seller must notify the buyer in a separate written disclosure, provided at or before the execution of the contract.[86] It must also include a statement of the buyer's rights to cancel the contract and the right to cure a default.

A seller may not execute a contract for deed if they do not hold title to the property. The property may be encumbered by other liens at the time the contract is executed, with some limitations.[87] It is not clear whether the seller may encumber the property with new liens after the contract is entered into. The seller must record the contract for deed or a memorandum of contract for deed within five business days after the contract is executed. N.C. Gen. Stat. §§ 47H-2(d).

A buyer is entitled to periodic statements at least once per year which include the amount that has been paid under the contract, remaining amount owed, payments made for taxes and insurance, and the balance owed on any other outstanding liens secured by the property. N.C. Gen. Stat. § 47H-5.

Forfeiture is permitted by court order after a notice of default and 30-day right to cure. The notice of default must include a statement that the contract will be forfeited if all defaults are not cured by a date stated in the notice that is not less than 30 days after notice of default and intent to forfeit is served or any longer period specified in contract or other agreement. N.C. Gen. Stat. §§ 47H-3, 47H-4.

A seller's violation of the statute entitles the buyer to bring a claim for damages or to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract, minus fair rental value and damages for any wear and tear. The buyer also may seek declaratory or equitable relief. In addition, a violation of the land contract statute may be a basis for an unfair and deceptive practices claim.[88]

North Dakota

In North Dakota, a contract for deed may be terminated only after a required notice of right to cure is served on the buyer, unless the contract will be terminated through a judicial action at law or in equity. If the seller wishes to carry out a nonjudicial forfeiture, it must serve the required notice of right to cure and wait the appointed time, and contractual limitations on this protection are not enforceable.[89] If the contract is for purchase of three acres or more, or if the buyer has paid the balance down by at least one-third of the original balance, then the buyer must be provided a one-year period in which to cure the default and reinstate the contract. Otherwise, the period of time is six months. A notice of cancellation may be recorded in the deed records, together with an affidavit of service, as evidence of compliance with the statute.

If the buyer shows by affidavit filed with the district court that there is a legal counterclaim or valid defense against collection of the whole or any part of the amount owed, then a judge may enjoin the nonjudicial forfeiture and require the proceeding to be handled (and counterclaims/defenses addressed) in the district court.[90]

Ohio

Ohio law imposes minimum requirements for land installment contracts and protections for borrowers in default. The land installment contract must state any fees or charges for services that may be included, it must disclose any encumbrances and pending public orders, and a provision that the seller must cause the contract to be recorded. Moreover, the contract must inform the purchaser that she can pay on any mortgage on which the seller defaults and receive credit under the land installment sale contract. A buyer who falls behind on payments has a 30-day window to reinstate prior to forfeiture of the contract. The seller cannot pursue forfeiture and must pursue foreclosure upon default "if the vendee of a land installment contract has paid in accordance with the terms of the contract for a period of five years or more from the date of the first payment or has paid toward the purchase price a total sum equal to or in excess of twenty per cent thereof." Ohio Rev. Code § 5313.06. If the seller fails to meet its obligations, the buyer can obtain "appropriate relief" from an Ohio court.

Oklahoma

Oklahoma law deems all contracts for deed that are "made for the purpose of establishing immediate and continuing right of possession" to be mortgages and requires foreclosure in the case of default. Okla. Stat. Ann. tit. 16, § 11A. Prior to foreclosure, the seller must ensure that "the documents have been filed of record in the county clerk's office" and the applicable mortgage tax is paid. This simple requirement provides a substantial amount of protection to contract buyers as they do not face forfeiture and instead are deemed to have a mortgage on property.

Oregon

In Oregon, a contract for deed may be terminated only after service on the buyer and recording in the deed records a notice of default with a specified right-to-cure period. If the buyer has paid the unpaid balance down to an amount greater than 75% of the purchase price, a 60-day cure period must be provided. If the balance has been paid down to between 50% and 75% of the purchase price, 90 days are provided; and if the balance is below 50%, a 120-day cure period is provided.[91] The buyer may cure a default by paying the unpaid payments due at the time of cure, plus certain expenses, late fees, attorney's fees, and costs of title search. If the time period expires and no cure is made, the seller may record an affidavit of forfeiture. The statute does provide that a party may file an action to obtain a temporary restraining order during a land contract forfeiture.[92]

Pennsylvania

Pennsylvania's land installment contract statute applies, through its definitions, only to contracts in "any city of the first class or county of the second class," which limits its applicability to Philadelphia and Pittsburgh. It requires a 30-day notice prior to termination of the land contract for nonpayment and 60 days for failure to make repairs. Once the purchaser pays 25% of the balance owed on the contract, the purchaser is entitled to recover that portion of the contract price less damages upon default, rather than simply forfeiting the amounts paid.[93]

The buyer is entitled to periodic statements at least once every six months. In addition, the seller is required to maintain good and marketable title during the term of the contract, which also means that the seller cannot maintain a mortgage or other lien on the property in excess of the unpaid balance of the contract. If the seller violates either of these provisions, the buyer may elect to terminate the contract and get back the principal portion of payments plus any amounts paid for improvements, or remain in possession and withhold the principal portion of installments coming due while the seller is in violation.[94]

The Pennsylvania Loan Interest and Protection Law, which is referred to as Act 6, applies specifically to land installment contracts and provides some protection for the entire state. It requires sellers to provide a 30-day notice in advance of legal action, and the statute specifies the minimum information for the notice. The borrower has the right to cure the default and reinstate the contract. In addition, Act 6's limits on interest rates also apply to land installment contracts.

Texas

Texas has updated its land contract law a number of times over the past 20 to 30 years in an attempt to effectively address perceived problems in these transactions.

Before a contract is signed by the buyer, the seller must provide the buyer with several disclosures: a survey completed within the past year or the plat of a current survey; a legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or easement, that affects title to the real property; and a written notice (attached to the contract) informing the buyer of the condition of the property. The written notice must be signed by both the seller and the buyer and must be substantially similar to the statutory language. In addition, before an executory contract is signed by the buyer, the seller must provide the buyer with a tax certificate from all relevant tax collectors, and with information about any insurance, including a copy of any existing insurance policy. The seller's failure to provide this information constitutes a false, misleading, or deceptive act or practice and entitles the buyer to cancel the executory contract and receive a full refund of all payments made to the seller.[95]

The seller must also give the buyer a written statement that specifies, among other financing terms, what late charges are permitted by the contract, and the fact that prepayment penalties are not allowed.[96] The contract must prominently disclose that the buyer has the right to cancel the contract within two weeks after signing.[97] If the negotiations that precede the execution of an executory contract are conducted primarily in a language other than English, the seller must provide a copy of all written documents relating to the transaction in that language, including the disclosure notices.[98]

Texas law requires the seller to record the contract within 30 days after the contract's execution, and failure to comply makes the seller liable to the buyer for $500 per year in liquidated damages plus the buyer's reasonable attorney fees.[99] Of course, if the seller does not comply, the buyer may record the contract.

Texas law mandates that sellers may not sell the property subject to any liens and must maintain this status throughout the term of the contract.[100] There are limited exceptions to this rule that would (a) allow a seller to encumber the property prior to the execution of the contract in exchange for a loan used by the seller to purchase the property, provided that the indebtedness secured by the lien will not be greater than the amount of the total outstanding balance owed by the buyer under the executory contract and provided that certain other protections are afforded to the contract buyer, and (b) allow for a loan that is agreed to by the purchaser and used to make improvements to the property.[101]

Since 2005, the Texas statute has given the buyer in a contract for deed transaction the right to convert the transaction into a deed encumbered by a deed of trust at any time by delivering to the seller a promissory note for the remaining amount due.[102] After the buyer delivers a promissory note for the remaining amount due, the seller is required to execute and record a deed to the buyer, and the buyer must simultaneously execute a deed of trust.[103]

However, this system of requiring the buyer to "opt in" to the available protections involves major hurdles—including the fact that buyers often lack information about the remaining balance due or access to legal assistance to draft an adequate promissory note.[104] Effective Sept. 1, 2015, the Texas legislature made the conversion into a deed subject to a mortgage (deed of trust) automatic upon recording of the land installment contract.[105] The seller is required by statute to record the land installment contract within 30 days of its execution, and faces monetary damages for failing to do so. If the seller does not record the contract, the buyer may obtain the greater protections afforded by holding a deed subject to a security interest either by recording the contract or by following the still applicable procedures established in the 2005 act by delivering a promissory note to the seller. Once the contract is converted to a deed and mortgage, foreclosure is required in lieu of forfeiture.[106] Also, if the purchaser defaults after having paid 40% or more of the amount due or the equivalent of 48 monthly payments under the contract, the seller may enforce the default through a trustee sale but may not enforce a forfeiture or rescission of the contract.

The seller is required to provide the buyer with an annual statement in January of each year for the term of the executory contract. If the seller mails the statement to the buyer, the statement must be postmarked no later than Jan. 31.[107]

Virginia

Under Virginia law, Va. Code 55.1-3000 et seq., passed in 2019, all executory contracts, including land installment contracts and lease-options contracts, are treated as rental agreements subject to the Virginia Residential Landlord and Tenant Act. Because the landlord-tenant law applies, the seller generally has the obligation to maintain the premises in a fit condition; however, the law allows the parties to agree in writing that the tenant will perform "specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord." Va. Code 55.1-1220(D). It is unclear whether this provision will be used to push significant repairs on the tenant. If a buyer defaults on the contract, the law provides 30 days for cure before eviction. It appears the seller cannot simply keep any option payment except to cover amounts owed under the contract or other amounts awarded by the court. Any party may record, and the buyer may elect remedies upon default of the seller.

The statute exempts sellers from compliance if they are a "natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in the Commonwealth unless the person or entity is an agent, affiliate, subsidiary, or parent company to another legal entity that owns at least one additional residential dwelling unit in the Commonwealth," and also exempts certain real estate and mortgage lending licensees.

Washington

Washington's land contract statute is similar to Oregon's law in many respects. In large part the statute consists of regulating the method of nonjudicial forfeiture—the required recordation and service of a notice of intent to declare a forfeiture, with a 90-day (or longer if the contract so provides) right to cure.[108] The statute specifically provides that a seller may, in the alternative, decide to foreclose judicially. A seller may pursue the forfeiture remedy only if the contract or a memorandum of land contract has been recorded.[109] If a seller elects to pursue a forfeiture, the buyer may bring an action to force a public sale in lieu of forfeiture, and the court may require a public sale if the fair market value of the property substantially exceeds the unpaid balance owed.[110]

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Endnotes

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1 The National Consumer Law Center prepared this white paper for The Pew Charitable Trusts after completing an analysis of relevant state law.

2 Jeremiah Battle et al., "Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color," National Consumer Law Center (2016), https://www.nclc.org/images/pdf/pr-reports/report-land-contracts.pdf.

3 Nev. Rev. Stat. § 598.0923(5).

4 765 Ill. Comp. Stat. § 67/15.

5 765 ILCS 67/20(a).

6 Minn. Stat. § 507.235.

7 Jeremiah Battle Jr., Sarah Mancini, Margot Saunders, & Odette Williams, "Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color," National Consumer Law Center (July 2016), http://www.nclc.org.

8 JP Morgan Chase & Co., Trading Equity for Liquidity (June 2019), https://www.jpmorganchase.com/institute/research/household-debt/report-trading-equity-for-liquidity.

9 See, e.g., Fair Lending Through Land Contracts, House Bill No. 368, 132d Gen. Assemb. (Ohio 2017) (introduced by Rep. Lepore-Hagan).

10 Cincinnati Mun. Code § 870-03, https://library.municode.com.

11 Cincinnati Mun. Code § 872-4, https://library.municode.com.

12 Toledo, Ohio Mun. Code ch. 1765, http://www.amlegal.com; Toledo, Ohio Ordinance 531-07 (2008).

13 Toledo, Ohio Mun. Code § 1765.05.

14 E. St. Louis, Ill., Code §§ 42-121, 42-108.

15 E. St. Louis, Ill., Bill No. 13-10142 (Nov. 14, 2013).

16 Md. Code. Ann., Real Prop. § 10-103(d) (West); 68 Pa. Cons. Stat. § 907(f) (title shall be deemed marketable even though there is a lien or encumbrance affecting it that can be extinguished by the payment of a definitely ascertainable sum not in excess of the unpaid balance of the purchase price). See also Ohio Rev. Code Ann. § 5313.02 (West) (prohibiting the seller from mortgaging the property during the term of a land installment contract in an amount greater than the balance due under the contract).

17 Tex. Prop. Code Ann. § 5.085 (West).

18 Tex. Prop. Code Ann. § 5.085 (West) (requiring, in addition, that that the seller notify the purchaser of the name, address, and telephone number of the lienholder, the loan number, the outstanding balance of the loan, the monthly payments due on the loan, and the due date of those payments).

19 Ohio Rev. Code Ann. § 5313.02 (West).

20 Minn. Stat. § 507.402.

21 La. Stat. Ann. §§ 9:2942, 9:2947 (imposing a fine of up to $1,000, or imprisonment for up to six months, or both, for violating La. Stat. Ann. § 9:2942). See also N.D. Cent. Code § 35-20-03 (providing that a person who pays any part of the price of real property under an agreement for the sale thereof has a special lien upon the property, independent of possession, for such part of the amount paid as that person may be entitled to recover in case of a failure of consideration).

22 Cal. Civ. Code § 2985.2 (West).

23 765 Ill. Comp. Stat. § 67/10; Ind. Code § 24-9-3-7(d); N.C. Gen. Stat. § 47H-2(b)(16); Tex. Prop. Code Ann. § 5.069 (West).

24 N.C. Gen. Stat. § 47H-5 (requiring seller to provide buyer with a statement of account at least once every 12 months for the term of the contract for deed); Ohio Rev. Code Ann. § 5313.03 (West) (requiring seller to provide a statement at least once a year or on demand of the buyer no more than twice a year); Tex. Prop. Code Ann. § 5.077(a) (West) (requiring seller to provide buyer with an annual statement in January of each year for the term of the executory contract; if seller mails the statement to buyer, the statement must be postmarked no later than Jan. 31).

25 Md. Code Ann., Real Prop. § 10-107(1) (West) (requiring a statement once 40% of the original cash price has been paid on an annual basis within 30 days of Jan. 1 *or* on demand of the buyer no more than twice a year).

26 Minn. Stat. § 559.202; 68 Pa. Cons. Stat. § 907(a)(2); 765 Ill. Comp. Stat. § 67/30 (effective for contracts originated after Jan. 1, 2018).

27 See also Minn. Unif. Conveyancing Form No. 30.2.1 (Contract for Deed Addendum) (includes an optional provision regarding escrow requirements which states that, in addition to the monthly payments of principal and interest, the buyer must deposit with the seller, with each payment, an amount representing one-twelfth of the annual real estate taxes, installments of special assessments, and insurance premiums with respect to the property (or such other amount that the seller is required to deposit under any underlying encumbrance on the property); providing that if the amount of such taxes, special assessments, and insurance premiums is unknown, it may be estimated by the seller; further providing that if the seller fails to make the appropriate payments when they are due, the buyer has the option to pay any delinquent amounts and then deduct those amounts from the payments coming due under the contract; providing further that if the balance deposited into this escrow account is insufficient to pay the taxes, special assessments and insurance premiums then, upon written demand, the buyer must pay the deficiency to the seller).

28 765 Ill. Comp. Stat. § 67/10(8).

29 Only four states have a statute addressing lease-option transactions, and two of these treat lease-options within their land contract statute (Virginia and Texas).

30 See, e.g., O.C.G.A. § 51-12-5.1.

31 Ariz. Rev. Stat. Ann § 33-742 (D) (amount of time that must pass prior to a forfeiture depends on amount paid to purchase price, which is defined as the down payment plus amounts applied to the principal).

32 Ariz. Rev. Stat. Ann § 33-742, 33-748.
33 Ariz. Rev. Stat. Ann § 33-743.
34 Ariz. Rev. Stat. Ann. 33-744.
35 Ariz. Rev. Stat. Ann. 33-745.
36 Ariz. Rev. Stat. 33-748.
37 Ariz. Rev. Stat. 33-749.
38 Ariz. Rev. Stat. 33-750.
39 Id.
40 Cal. Civ. Code § 2985.
41 Cal. Civ. Code § 2985.1.
42 Petersen v. Hartell, 707 P.2d 232 (Cal. 1985).
43 Cal. Civ. Code § 2985.2, Cal. Civ. Code § 2985.3.
44 Cal. Civ. Code § 2985.5.
45 Cal. Civ. Code § 2985.4.
46 Cal. Civ. Code § 2985.51 (applies to contracts entered into on and after Jan. 1, 1978; also provides for penalty for willful violation).
47 Colo. Rev. Stat. 38-35-126(1).
48 Colo. Rev. Stat. 38-35-126(2).
49 Colo. Rev. Stat. 38-35-126(3).
50 Colo. Rev. Stat. 38-38-305.
51 Woods v. Monticello Dev. Co., 656 P.2d 1324 (Colo. App. 1982).
52 Co. Rev. Stat. § 5-5-110, 111.
53 Fla Stat 697.01.
54 Webb v. Kirkland, 899 So.2d 344 (Fl. Ct. App. 2005); Muina v. Canning, App. 1 Dist., 717 So.2d 550 (Fl. Ct. App. 1998) (cause dismissed 718 So.2d 169).
55 765 ILCS 67/20(a).
56 See generally Endya L. Hash, "Bond for Deed in Louisiana: 99 Problems but Being a Sale Ain't One," Louisiana Law Review 78, no. 1289 (2018): 1293-94.
57 14 MRS 6203-F(2)(B).
58 14 MRS 6203-F(2).
59 See Me. Stat. tit. 33, Sec 482 (subsection L, requiring the contract to notify the buyer of the right to cure a default as established by Title 14, Section 6111).
60 14 MRS 6203-F(1).
61 Me. Stat. tit. 33, § 482(1). See Thurston v. Galvin, 94 A.3d 16 (Me. 2014) (land installment contract complied with statutory requirements and was therefore enforceable).
62 Me. Stat. tit. 33, § 482(2).
63 Me. Stat. tit. 33, 481.
64 See Md. R. Prop. Sales Rule 14-202(b)(5) (including purchaser under a land installment contract in the definition of "borrower" for purposes of the Maryland foreclosure statute).
65 Md. Code Ann., Real Prop. § 10-106.
66 Md. Code Ann., Real Prop. § 10-103.
67 Md. Code Ann., Real Prop. § 10-103.
68 Md. Code Ann., Real Prop. § 10-103.
69 Courts have held that no offset of fair rental value is permitted; payments must be refunded in full. Whitaker v. Whitaker, 169 Md. App. 312, 319 (Md. Ct. App. 2006).
70 Md. Code Ann., Real Prop. § 10-105.
71 Md. Code Ann., Real Prop. § 10-107.
72 Hudson v. Maryland State Housing Co., 207 Md. 320 (Md. 1955).
73 Md. Code Ann., Real Prop. § 10-103(d).

74 MCL 600.3101 et seq. (foreclosure by court process; six-month redemption period in which to pay the full accelerated balance). Michigan also allows for nonjudicial foreclosure, but land contracts generally do not contain a power of sale authorizing nonjudicial foreclosure; so if a lender elects to foreclose the land contract, it will be through judicial foreclosure. 75 Forfeiture is only permitted if the contract provides for the remedy. MCL 600.5726.

76 MCL 600.5728.

77 MCL 600.5726 et seq; MCR 4.202.

78 MCL 600.5744(2)(f). The buyer is not required to pay amounts that come due during the redemption window as part of the redemption amount. See Wilson v. Taylor, 457 Mich. 232 (1998).

79 MCL 438.31(c)(2)(6).

80 Mich. Comp. Laws § 565.354.

81 Mich. Comp. Laws § 565.356 et seq.

82 Mont. Code Ann. § 15 -7-305(4). Despite these two references to contracts for deed being recorded, the statute does not explicitly authorize a buyer to record the agreement. However, these references could be taken as an implicit indication that contracts submitted for recording should be recorded and that a buyer should not be prevented from recording.

83 Nev. Rev. Stat. § 598.0923(5). Note that there is some debate about who can raise deceptive trade claims in Nevada: https://www.nvbar.org/wp-content/uploads/NevadaLawyer_April2020_DJustice-Unchained.pdf.

84 N.C. Gen. Stat § 47H-2(c).

85 N.C. Gen. Stat § 47H-2.

86 The statement, in 14-point type, boldface, capital letters, must read: "THIS PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE LIEN HOLDER MAY FORECLOSE ON THE PROPE28R TY, EVEN IF YOU HAVE MADE ALL YOUR PAYMENTS." N.C. Gen. Stat. § 47H-6.

87 N.C. Gen. Stat § 47H-6.

88 See N.C. Gen. Stat § 47H-6(c), N.C. Gen. Stat § 47H-8 (pointing out that the UDAP statute, N.C. Gen. Stat. 75-1.1, would not apply to sale of a homeowner's primary residence through contract for deed; by inverse implication, it would apply otherwise).

89 N.D. Cent. Code §§ 32-18-01 to 32-18-06.

90 N.D. Cent. Code § 32-18-06.

91 Or. Rev. Stat. § 593.915.

92 Or. Rev. Stat. § 593.915(6).

93 68 P.S. § 901-906.

94 68 P.S. § 907.

95 Tex. Prop. Code Ann. § 5.070 (West). See Weaks v. White, 479 S.W.3d 432 (Tex. App. 2015) (after exercising right of rescission, buyer must restore to seller the value of post-rescission occupation of the property). Cf. Smith v. Davis, 462 S.W.3d 604, 615 (Tex. App. 2015) (buyers on land contract were entitled to a full refund of monies paid, with no offset for fair rental value, when seller had failed to plead offset as an affirmative defense).

96 Tex. Prop. Code Ann. § 5.071 (West).

97 Tex. Prop. Code Ann. § 5.075 (West).

98 Tex. Prop. Code Ann. § 5.068 (West).

99 Tex. Prop. Code Ann. §§ 5.076, 5.079 (West) (effective dates found at 2015 Tex. Sess. Law Serv. ch. 996 [West]).

100 Tex. Prop. Code Ann. § 5.085 (West).

101 Tex. Prop. Code Ann. § 5.085 (West) (requiring, in addition, that that the seller notify the purchaser of the name, address, and telephone number of the lienholder, the loan number, the outstanding balance of the loan, the monthly payments due on the loan, and the due date of those payments).

102 2005 Tex. Sess. Law Serv. ch. 978, § 6 (West). See also Genevieve Hébert Fajardo, "'Owner Finance! No Banks Needed!' Consumer Protection Analysis of Seller-Financed Home Sales: A Texas Case Study," *Georgetown Journal on Poverty Law & Policy* 20, no. 429 (2013).

103 Tex. Prop. Code Ann. § 5.081 (West).

104 Fajardo, "'Owner Finance!'"

105 Tex. Prop. Code Ann. § 5.079 (West); 2015 Tex. Sess. Law Serv. ch. 996, § 8 (West) (effective Sept. 1, 2015).

106 Tex. Prop. Code Ann. § 5.079 (West); 2015 Tex. Sess. Law Serv. ch. 996, § 8 (West) (eff. Sept. 1, 2015).

107 Tex. Prop. Code Ann. § 5.077(a) (West)

108 Wash. Rev. Code §§ 61.30.010, 61.30.090

109 Wash. Rev. Code §§ 61.30.030.

110 Wash. Rev. Code §§ 61.30.120.