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**OHIO HOUSE BILL 368 CREATES  
MANY OBSTACLES FOR SELLER-  
FINANCED LAND CONTRACTS –  
UPDATE  
(May 28, 2019)**

On October 4, 2017, Ohio State Rep. Michele Lepore-Hagan introduced House Bill 368, *The Fair Lending through Land Contracts Act*. This new bill will bring massive changes to seller financing and could deter Land Contract originations. The new bill did not have bipartisan support at the time, therefore, on February 26, 2019, Ohio State Rep. Michele Lepore-Hagan and Ohio State Rep. Don Manning introduced Ohio House Bill 103. The language of the new House Bill 103 is identical to House Bill 368. Below are the important provisions that will affect Ohio Land Contracts once the bill becomes new law.

The current statute found in Ohio Revised Code Section 5313.02 allows for seller financing and has some necessary language to include in Land Contracts. House Bill 103 amends the current statute to a point that Land Contracts may become extinct in Ohio. Here are the major proposed amendments to the statute:

1. The Seller is responsible for the payment of property taxes, property insurance premiums, assessments and other charges against the property from the date of the contract;
2. The Seller is responsible for all repairs and maintenance on the property;
3. The Seller shall not hold a mortgage on the property;
4. A copy of the recorded Land Contract must be provided to the Purchaser;
5. Requirement that homeowner's insurance must be obtained on the property;

If the above responsibilities aren't hard enough, the House Bill also creates three new sections of the Ohio Revised Code that relate to Land Contracts. The first section is Section 5313.021, and includes the following:

1. A Seller shall pay off any liens on the property prior to executing the Land Contract;
2. A Seller shall not place a mortgage on the property during the course of the contract;
3. A Seller must comply with the requirements of any building codes;
4. A Seller must make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;
5. A Seller must contact the local building department for code enforcement to conduct an inspection;
6. If the inspector finds a violation, the Seller must fix the violation prior to entering into a Land Contract and have a further inspection;
7. A Seller must provide the Purchaser with a certificate from the building department stating the property complies with the building codes; and
8. Prior to executing the Land Contract, the Seller shall obtain and pay for an appraisal and shall provide the appraisal report to the Purchaser.

The House Bill does, however, allow the parties to agree to contrary provisions if both the Seller and Purchaser are each represented by an attorney. Also, interest on a Land Contract can not be more

than 2% above the treasury bill rate for loans of the same maturity on the date of the contract. The 20-year rate at the time of this article is hovering near 3%, so the highest you can charge on the Land Contract is 5%.

Finally, the House Bill gives the Purchaser a few more remedies for failure of the Seller to do anything that is required by statute:

1. A court can award monetary damages that include 2% of the principal; equity in the property; return of all money paid by Purchaser; court costs and attorney fees;
2. A court can also grant rescission of the Land Contract.

New House Bill 103 must stay on all investors' radar as potentially shaking up the landscape of seller-financing in Ohio. The proponents of this new House Bill believe that there is a litany of ills associated with Land Contracts, but in the same breath they also believe that, in fairness, not all Land Contracts have ill-will. Land Contracts serve a purpose for a borrower that doesn't have the means or the economic stature to obtain a loan from a traditional bank. Land Contracts also allow a borrower to build equity against the property through the monthly principal and interest payments. Without Land Contracts, borrowers would be forced to become renters and have no hope of actualizing the American Dream of owning a home.

As of the date of this publication, House Bill 103 has been referred to Committee and new leadership in the House is looking to act as early as this upcoming summer to take the bill out of the committee and on to the floor. If House Bill 103 becomes law, investors will be forced to investigate other options like Lease with Option to Purchase.

Attached to this document is the Bill Analysis that was prepared with the Bill. It contains a summary and a more in depth, detailed analysis of the Bill as it was introduced.

For more information, please feel free to contact Partner, Franco Barile, at [franco.barile@sottileandbarile.com](mailto:franco.barile@sottileandbarile.com).



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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 103  
133rd General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Lepore-Hagan and D. Manning

Carla Napolitano, Attorney

### Summary

- Requires each land installment contract to provide a specified notice at the beginning of the contract regarding the seller's and buyer's obligations and the buyer's right to a civil action.
- Shifts from the buyer to the seller the default responsibility for taxes, assessments, and other charges against the property.
- Requires the land installment contract to contain a provision specifying that homeowners insurance must be obtained for the property, the extent of the coverage, and to whom the insurance is payable.
- Prohibits a seller from holding a mortgage on the property at the time of executing the land installment contract with the buyer or placing a mortgage on the property during the course of the contract, replacing limitations on the seller's ability to hold a mortgage on the property.
- Requires a seller to pay off all liens on the property subject to a land installment contract prior to executing a contract with a buyer.
- Requires the seller to obtain a certificate indicating the property complies with the applicable building code before executing a land installment contract with a buyer.
- Request the seller to make all repairs to keep the property in a fit and habitable condition during the course of the land installment contract.
- Requires the seller to obtain an independent appraisal of the property before executing a land installment contract with a buyer and to provide the buyer with a copy of the appraisal report.
- Permits the parties to a land installment contract to agree to contrary terms described in the Law if both the buyer and the seller are represented by an Ohio licensed attorney.

- Caps the permitted interest rate on a land installment contract to 2% above the Treasury bill rate for the loans of same maturity on the date of the contract, replacing the current cap of 8% above the Federal Reserve discount rate on a 90-day commercial paper in effect when the contract is executed.
- Explicitly states that land installment contracts are subject to the federal Truth in Lending Act.
- Specifies damages a court must award and injunctive relief a court may provide when a buyer sues a seller for failing to comply with the Land Installment Contract Law.

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## Detailed Analysis

### Land Installment Contract Law overview

The bill makes changes to the Land Installment Contract Law,<sup>1</sup> which regulates the execution and enforcement of land installment contracts. A land installment contract is an agreement in which the vendor (seller) agrees to convey the title to real property located in Ohio to the vendee (buyer) and the buyer agrees to pay the purchase price in installment payments, while the seller retains title to the property as security for the buyer's obligation.<sup>2</sup> The bill makes changes to the Law by, in part, modifying the required contract terms, assigning new obligations to the seller that must be completed prior to executing the contract with the buyer, and limiting the interest rate on the contract.

### Contract requirements

Continuing law sets out the minimum standards for what terms are required to be stated in each land installment contract and, in addition, requires that each contract be executed in duplicate and a copy be provided to the buyer (see "**Contrary contract terms**," below). The bill modifies some of these contract requirements and requires that a copy of the contract also be provided to the buyer's and seller's attorneys, if applicable.<sup>3</sup>

### Taxes and other charges

The bill eliminates a required contract provision that states the buyer is responsible for the payment of taxes, assessments, and other charges against the property from the date of the contract, unless the parties agreed to the contrary. The bill instead requires a provision in the contract stating the seller is responsible for these payments.<sup>4</sup> In addition, the bill requires the contract to contain a provision that specifies that homeowners insurance must be obtained for the property, the extent of the coverage, and to whom the insurance is payable. Under the bill, the seller is responsible for the payment of the homeowner's insurance premiums.<sup>5</sup> (See "**Contrary contract terms**," below.)

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<sup>1</sup> R.C. Chapter 5313.

<sup>2</sup> R.C. 5313.01(A), not in the bill.

<sup>3</sup> R.C. 5313.02(A).

<sup>4</sup> R.C. 5313.02(A)(1) and (15).

<sup>5</sup> R.C. 5313.02(A)(1)(a)(ii) and (17).

## **Mortgage**

Under current law, the contract must contain a provision stating that if the seller defaults on any mortgage on the property, the buyer can pay on the mortgage and receive credit on the land installment contract. The bill replaces this provision with a required contractual provision that prohibits a seller from holding a mortgage on the property.<sup>6</sup>

## **Recording**

The bill requires a contract provision stating that a copy of the recorded contract must be provided to the buyer's and the buyer's attorney, if applicable.<sup>7</sup> Under continuing law, the contract provision must state that the seller is required to record the contract.

## **Notice**

The bill requires that each land installment contract provide a notice in at least 12-point type at the beginning of the contract, stating that the seller is responsible for (1) the payment of taxes, assessments, and other charges against the property from the date of the contract, (2) the payment of homeowner's insurance premiums, and (3) all repairs and maintenance on the property. The notice must also include a statement that the buyer has a right to sue if the seller does not comply with the Land Installment Contract Law.<sup>8</sup>

## **Seller's obligations**

### **Mortgages and other liens on the property**

The bill prohibits a seller from holding a mortgage on a property sold by a land installment contract or placing a mortgage on the property during the course of the contract. A seller is required to pay off any liens on the property subject to the contract prior to executing the contract with the buyer. Under current law, the seller can hold a mortgage, but the mortgage cannot be greater than the balance due on the contract, unless it covers real property in addition to the property covered by the contract and the seller makes certain written disclosures. Current law prohibits the seller from placing a mortgage on the property in an amount greater than the balance due on the contract without the consent of the seller.<sup>9</sup>

### **Building code compliance**

Under the bill, a seller is required to comply with the requirements of any applicable building code and make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.

Prior to executing the contract, the seller must verify that the property complies with the applicable building code by contacting the local building department or other entity responsible for code enforcement in that jurisdiction, following rules required to be adopted by the Board of Building Standards pursuant to the bill. If the inspector determines that a violation

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<sup>6</sup> R.C. 5313.02(A)(14).

<sup>7</sup> R.C. 5313.02(A)(15) and (B).

<sup>8</sup> R.C. 5313.02(A)(1).

<sup>9</sup> R.C. 5313.02(A)(14) and (B) and 5313.021(A) and (B).

of the building code exists, the seller is responsible for fixing any violation of the building code prior to entering into a contract with a buyer. The seller must continue to have the property inspected until the entity providing the inspection certifies that the property is in full compliance. The seller must provide the buyer with this certificate prior to executing a contract.

The Board of Building Standards is required to adopt rules to implement these procedures, including the procedures the seller must follow to obtain an inspector, issuance of the certificate indicating successful compliance with the applicable building code, and any fees associated with these procedures. The bill requires the seller to be responsible for any fines associated with a code violation and fees associated with the inspection.<sup>10</sup>

## **Appraisal**

Under the bill, the Department of Commerce must post on its website a list of Ohio certified or licensed real estate appraisers that can provide an independent appraisal of property subject to a land installment contract. Prior to executing the contract with the buyer, the seller is required to obtain and pay for an appraisal of the property using an appraiser from this list and provide a copy of the appraisal report to the buyer.<sup>11</sup>

## **Contrary contract terms**

The bill permits the buyer and seller to agree to terms contrary to any of the Land Installment Contract Law required contract provisions and seller's obligations, if both the buyer and seller are each separately represented by an Ohio licensed attorney.<sup>12</sup>

## **Interest rate cap**

The bill prohibits interest on a land installment contract from exceeding 2% above the Treasury bill rate for the loans of the same maturity on the date of the contract. If on a given day the 5-year Treasury bill rate is 2.64%, for example, the interest rate on a 5-year land installment contract executed on that day could not exceed 4.64%.<sup>13</sup> Under current law, the parties can agree to any interest rate, except it cannot be more than 8% in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the fourth Federal Reserve district at the time the contract is executed; in other words, if the 90-day commercial paper rate is 2%, the maximum interest rate under current law would be 10%.<sup>14</sup>

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<sup>10</sup> R.C. 3781.10(L) and 5313.021(C) and (D).

<sup>11</sup> R.C. 5313.021(E).

<sup>12</sup> R.C. 5313.022.

<sup>13</sup> R.C. 5313.031; U.S. Department of the Treasury, *Daily Treasury Long Term Rate Data*, <https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=longtermrate> (accessed March 20, 2019).

<sup>14</sup> R.C. 1343.01(B)(4); Board of Governors of the Federal Reserve System, *Commercial Paper Rates and Outstanding Summary*, <https://www.federalreserve.gov/releases/cp/default.htm> (accessed March 20, 2019).

## Federal consumer protection

The bill explicitly states that land installment contracts must be considered loans secured by an interest in real property, in which the federal Truth in Lending Act, applies.<sup>15</sup>

### Buyer's remedies

Under continuing law, the buyer can sue in municipal court, county court, or court of common pleas, if the seller fails to comply with the Land Installment Contract Law. If the court determines that the seller did not comply with the Law, the court must grant appropriate relief. The bill specifies that this relief must include money damages, court costs, and reasonable attorney fees. The money damages must include at least one of the following:

1. Two per cent of the principal amount of the contract debt;
2. Equity in the property;
3. Return of all moneys paid by the buyer.

Under the bill, the court can also grant an injunction, order specific performance, or other relief, including rescission of the contract. The bill specifically states that nothing regarding the provisions on remedies prevents a buyer and seller from settling disputes through mediation or arbitration.<sup>16</sup>

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## History

Action	Date
Introduced	02-26-19

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H0103-I-133/ar

<sup>15</sup> R.C. 5313.12 and "Truth in Lending Act," 15 United States Code 1601, *et seq.* (the bill cites to section 1602, an LSC technical error and should instead cite 1601).

<sup>16</sup> R.C. 5313.04.