This is Charles Prince and Sharon Krivansky's Pittsburgh home. Charles describes "camping" in this Vision Property Management property for the first six months. Everything had been stripped within the 24 hours between viewing the property and signing the "triple net lease." Sharon searches for their paperwork.

This is Charles and Sharon's property. They live on the right side of the double. The left side has water damage due to a break in the city's water pipe. They are in dispute with the city's water company in regards to who is responsible for the fixing the pipe, and associated the water bills. An example of how these contracts hurt their family: all of the responsibilities of homeownership without the guarantee of owning the home.

The Resurgence of Residential Land Installment Contracts

A Case Study of Harbour Portfolio Advisors' Properties in Summit County, Ohio

By Luke Dowling

I. Introduction

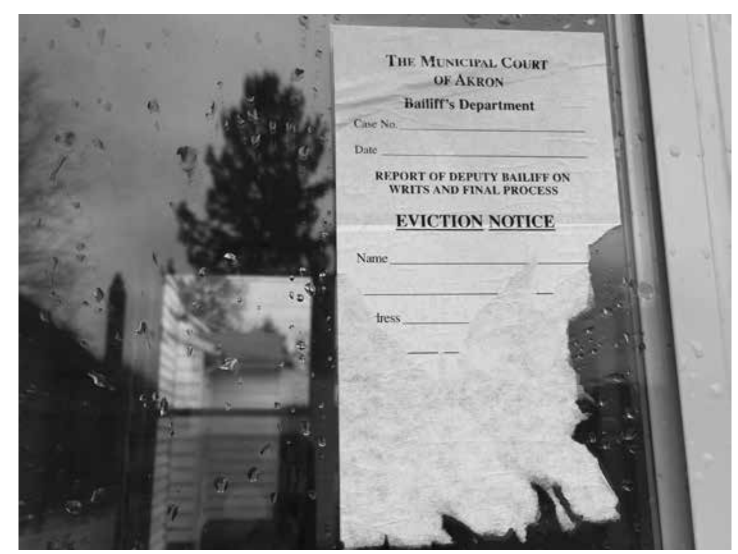
In the aftermath of the Great Recession, there has been a resurgence in land installment contracts for residential properties. Land installment contracts in the residential context operate as sort of a mixture of seller-backed mortgage and lease, but without the protections for the buyer that would be inherent in either. In a land installment contract, the buyer agrees to pay for the house, plus interest, over a period of years, living in the house while the seller retains the deed. Unlike a lease, the buyer is responsible for property taxes, insurance, and repairs. Unlike a mortgage, if the buyer falls even one month behind on their payments, the seller can evict them outright, rather than having to go through the more onerous process of foreclosure.

Often marketed as a way for aspiring homeowners to purchase a house even if they do not qualify for traditional methods of credit, consumer advocates argue that land installment contracts are a form of predatory lending. This is because an easy way to make money off of these contracts is to churn as many possible buyers through a property as possible, taking down payments, whatever monthly payments they can make, and their monetary and sweat equity investments in the property then, the moment they miss a single payment, evicting them to begin the process with a new buyer. Indeed, this was the business model of land installment contract sellers used to exploit black Chicagoans in the mid-20th-century.

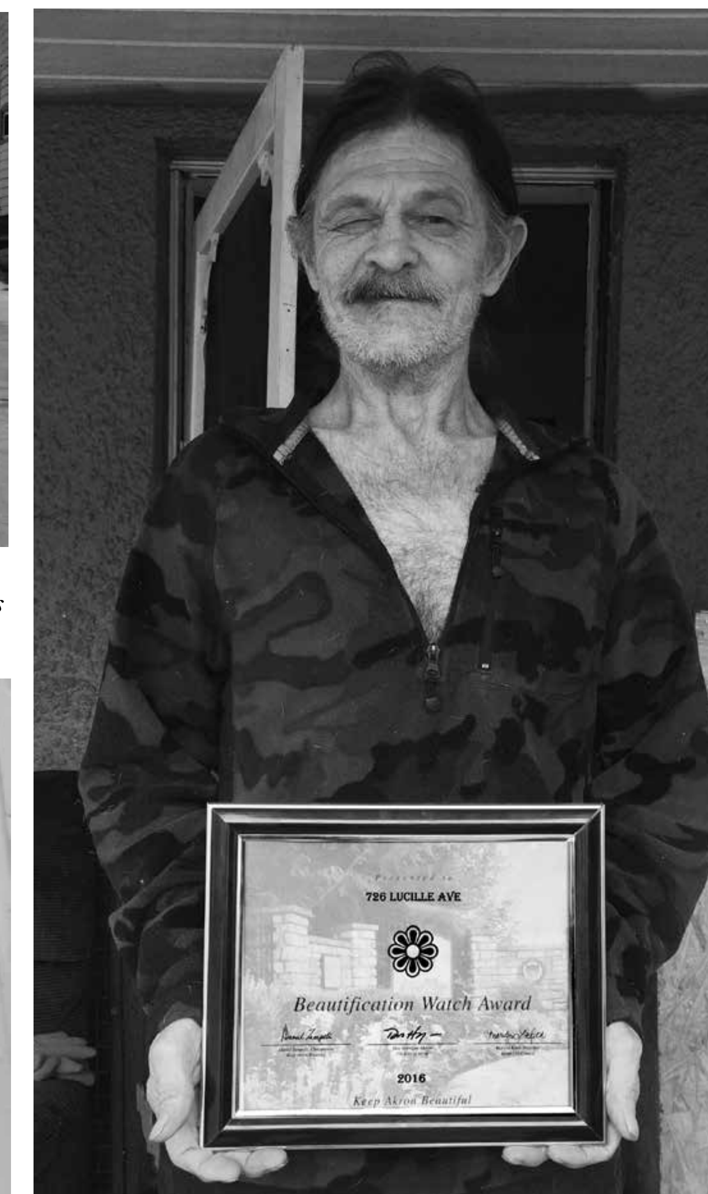
In the aftermath of the 2008 housing crisis, a number of companies purchased thousands of foreclosed properties cheaply and then began to offer them to buyers on land installment contracts. For instance, one of the largest players in this field, Harbour Portfolio Advisors, bought 6,700 properties, mostly from Fannie Mae's bulk sale program, in states all over the nation including Ohio, Georgia and Pennsylvania. A lawyer for Harbour described their business model as selling "unproductive residential housing" to "other people who will make them productive again" Consumer advocates, like the National Consumer Law Center, see it differently. They allege that Harbour Portfolio Advisor's business model is the resurrection of the installment land contract schemes from mid-20th-century Chicago, but even more insidious as it is perpetrated by complex financial firms like Harbour rather than individual sellers.

Here, I examine Harbour Portfolio Advisors's land installment contracts in Summit County, Ohio and use the data to suggest that, while Harbour is certainly not involved merely in making "unproductive residential housing" productive again, it is also not clear that they are involved in a mere resurrection of the same scheme

Another Vision property sits vacant in Youngstown. The neighbors said that the previous tenants were evicted, but with 30% of homes vacant or abandoned in this city - why?



The Home Savers Campaign saw many eviction notices posted on front doors in Akron, OH. These properties are owned by Vision Property Management and Harbour Portfolio. Land contract sales should end in homeownership, not eviciton.



Glenwood holds his beautification award for the hardwork he has put into this property he leases from Harbour Portfolio in Akron, Oh. He is a veteran and on a fixed income with which he has had to repair his home immensely. The ceiling caved in on his sister - who has since been unable to work since the accident.

Neighbors told us that this Vision property had been vacant for at least two weeks. This was another tragic sight to see - the downsides of eviction and precarious housing. We wondered if the dog had been left inside to guard the home from copper thieves. (Animal control was called).

This Detroit property shows the signs of a terrible fire. It appears to have happened while the property lay vacant.

A sign on a boarded up window indicates that there is some organization in the neighborhood where this abandoned propert resides. A sign for a handyman highlights the prevalence of property rehabilitation in Detroit.

perpetrated against African Americans in mid-20th-century Chicago. Instead, it appears that Harbour could be using land installment contracts as a method of circumventing traditional landlord-tenant protections, in particular the implied warranty of habitability, in order to offer substandard housing at low prices. That is, that the real product Harbour is offering may not be an opportunity to make "unproductive residential housing" productive again nor necessarily an attempt to cycle as many aspiring homeowners through their units to siphon off whatever money they can, but rather to offer rental housing at a lower price than is possible with residential protections like the implied warranty of habitability. To be clear, I do not intend to argue that the two schemes are mutually exclusive, or that Harbour is involved in only one or the other. It should also be clear that this is not a defense of Harbour. Using land installment contracts to rent properties to low-income tenants while circumventing tenant protections is hardly a good thing. The thesis of this paper is just that the data available from Summit County, along with disanalogies between the rental market in Chicago in the mid-20th-century and in modern day Summit, point to another business model that can be effectuated via land installment contracts.

To that end, in Section II, I give a quick background of the implied warranty of habitability as well as economic

This Detroit property fades into green bushes. The City has lost so many people over the last twenty years that some homes become swallowed by their surroundings.
Inset photo: Another home in Detroit taken over by greenery. The Home Savers Campaign and locals wonder why REO and county tax auctions allow large companies to buy and flip homes at such an enormous profit when there are so many properties that could be rehabbed or demolished.

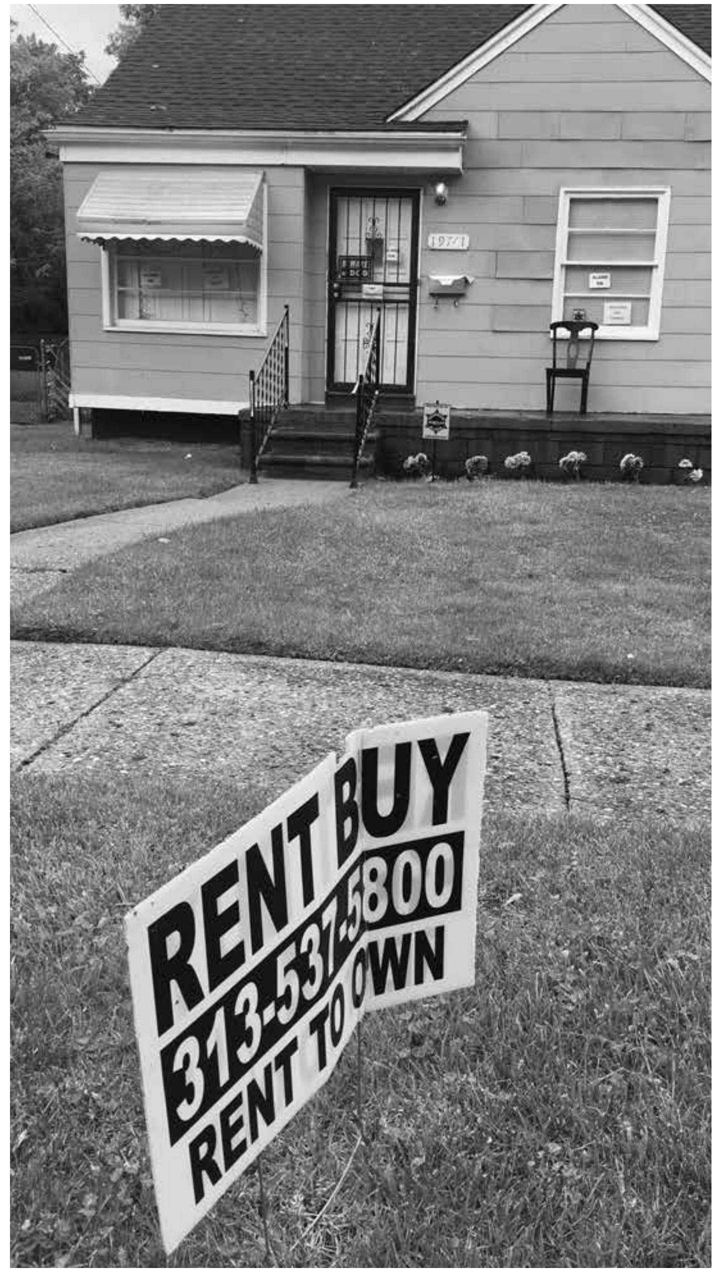
criticisms of it, for instance, its potential to decrease supply of low-income rental units while driving prices up. Finally, in Section III, I turn to a survey of the land installment contracts Harbour Portfolio Management has entered into in Summit County, Ohio. Using this survey, I argue that, for various reasons, that it is not clear that Harbour is currently involved in the Traditional Land Installment Contract Scheme (see Jack McNamara, Social Policy, v.46 #4). Instead, they appear to be offering substandard housing for rent, using land installment contracts to circumvent what would otherwise be their responsibility as a landlord.

II. The Implied Warranty of Habitability and the Low-Income Housing Market

Put most simply, the implied warranty of habitability reversed the common-law doctrine regarding residential leases that placed the responsibility for repairs entirely on the tenant. Instead, under the implied warranty of habitability landlords bear the responsibility for rectifying any defects in rental units, at least insofar as those defects are a major violation of the relevant housing code. Generally regarded as originating in the influential 1970 District of Columbia Circuit Court decision *Javins v. First*

A sign for Flip-Detroit is in the window of this brick home. These companies operate by word of mouth and signs like the one on this window as most of these sales are made over the phone.

The Detroit Organizing Committee of the Home Savers Campaign gathered at the Messiah Episcopal Church their leases, purchase options, balloon payments and the tens of thousands they had each invested into their properties. They unanimously decided to formalize a demand for Vision Property Management to negotiate.



Rent to buy and Rent to Own sign with a local phone number will lead neighbors to call a local real estate company in Detroit.

National Realty Corp., most United States jurisdictions read leases as including an implied warranty of habitability.

The justification for abandoning the common-law doctrine regarding residential leases provided in *Javins* and substantially reproduced in the *Restatement (Second) of Property* was that the common-law doctrine was developed for a simpler, agrarian society. When the common-law doctrine was developed, residential units were usually freestanding, simple structures such that any defects were often apparent from a cursory inspection and within the ability of the tenant to rectify. On the other hand, modern, urban residential units tend to be a portion of a building such that critical facilities, such as plumbing, are located outside of the unit and cannot be inspected during a mere walk through of the actual unit rented. Moreover, even when a tenant can identify a defect in a modern rental unit, it often too complex for the tenant to be able to repair. These issues were compounded by the fact that urban areas often had severe housing shortages, which led to an imbalance in bargaining power in favor of the landlord. As such, it seemed unreasonable to suggest that urban tenants truly had the ability to bargain with the landlord over who should bear responsibility for repairs.

Critics of the implied warranty of habitability argue that it is actually detrimental to the lowest-income tenants. By legally requiring that landlords maintain units to a minimum standard, the implied warranty of habitability raises the costs associated with providing housing. These costs are then passed on to tenants in the form of increased rent. The critics' worry is that these raised rents will, in the best case scenario, merely increase the portion of the tenants' income that is spent on rent and, in the worst case scenario, completely price certain tenants out of rental housing.

The implied warranty of habitability, according to critics, also adversely affects the supply of low-income housing. Charles J. Meyers suggests that rental housing prior to the adoption of the implied warranty of habitability could be broken up into four broad categories. The first is composed of units that comply with local housing codes and, thus, would be unaffected by the adoption of the implied warranty of habitability. These units would remain on the market at the same price. The second category are units that currently do not comply with housing codes but can be brought into compliance with minor repairs that can be easily recovered by increasing the rental price of the units. After the adoption of the implied warranty of habitability, these units would remain on the market, but at the higher rent required to cover the costs of repairs meaning that the previous tenants would either be forced to pay a higher proportion of their income to remain in the unit or move to a cheaper one. The third is composed of units that would cost more to repair than could reasonably be covered by raising their rental price, but not so much so that the landlord is losing money keeping them on the market. After the adoption of the implied warranty of habitability, previous tenants in this class of units are presumably subject to the same consequences as those in the second group as their rents will be raised to some extent. However, they benefit more substantially because, as the market will not bear the full rent increase necessary to compensate the landlord for the repairs, the landlord is forced to pay for some of the repairs out of pocket. However, as the costs of operating this category of housing are higher for the landlord and the margins thinner, Meyers argues that no new housing of this category will be built and that, as these buildings age, the cost to maintain them will increase eventually forcing landlords to remove them from the market. The fourth and final group is composed of units that are so wildly out of compliance with housing code that the costs of bringing the units into compliance are so substantial that the landlord would expend so much money repairing them that any feasible increase in rental costs would still result in a net loss for the landlord. After the adoption of the implied warranty of habitability, these buildings will be fairly quickly removed from the market.

It is worth noting that it is simply unclear to what extent empirical evidence actually supports these criticisms of the implied warranty of habitability. However, this is partially because the statistics regarding housing in the period following the widespread adoption of the implied warranty of habitability are affected by a number of other demographic changes (e.g.: falling demand caused by rising preferences for homeownership as opposed to renting). Thus, it is hard to tell from available statistics exactly what impact of the adoption of the implied warranty of habitability alone had on rental markets. However, it is plausible that it cause some drop in the supply of rental housing as well as an increase in price in the remaining stock, even if the extent of its effects are unclear.

III. Harbour Portfolio Advisors' Land Installment Contracts in Summit County, Ohio

a. Why Harbour Portfolio Advisors and Summit County, Ohio?

Harbour Portfolio Advisors is a particularly good subject for a case study for two reasons. One is that it is one of the largest players in this area of the real estate market. Two is that, unlike its competition, e.g. Vision Property Management, Harbour tends to file their land installment contracts with the appropriate county recorder's office. Summit County, Ohio is the site of the case study for this paper for a few reasons. The first is that it is one of the locations where Harbour Portfolio Advisors is active. The second reason for focusing on Summit County is that, unlike other counties where Harbour is active, their recorder's office is accessible online rather than in solely in person.

b. Methodology

I examined all forty-three unique land installment contracts available through the Summit County Recorder's Office. The earliest was filed in November of 2010 and the most recent was filed in February of 2017.

All of the contracts, except for the most recent contract filed, were identical in content and form except for names, addresses and amounts. They were all for a term of thirty years and had an interest rate of ten percent. The most recent contract is no longer of the same form and has slightly different terms, but retained both the term of years and interest rate.

In each contract, the amount that the buyer was obligated to pay per month was dictated by a "promissory note" apparently executed at the same time as the contract. With the exception of the very first contract filed in November of 2010 for 1276 Pondview Avenue, this "promissory note" or "purchase money note" was not included in the documents filed with the Summit County Recorder's Office. This presented an issue in determining exactly how much each buyer was obligated to pay per month under the terms of the land installment contracts. However, in the 1276 Pondview Avenue contract, I noted that the amount payable under the "purchase money note" was the same amount down to the cent ($351.03) as the rent the buyer is obligated to pay under the land installment contract if the agreement is terminated and the buyer becomes a month-to-month tenant. Accordingly, I inferred that this amount, referred to in the body of all of the other contracts, was the same amount as the monthly payment required in the omitted "purchase money notes".

Address	Full price per contract	Price/ month per contract	Nearest house address for rent[46]	Nearest house rental price per month[47]
1276 Pondview Ave.	$40,500.00	$351.03	1400 Pondview Ave.	$649
2245 9th St. SW	$32,000.00	$275.43	2045 13th St. SW	$670
4677 Bevington St.	$34,725.00	$298.59	140 Conrad St.	$810
1519 Woodbirch Ave.	$37,500.00	$321.70	1277 W Wilbeth Rd.	$695
1187 Pitkin Ave.	$37,700.00	$324.70	1251 Big Falls Ave.	$735
357 Kline Ave.	$31,725.00	$274.02	429 Kline Ave.	$750
1002 Tritt Dr.	$38,000.00	$323.19	629 Bridge Rd.	$950
1085 Winston St.	$35,000.00	$298.37	1218 McIntosh Ave.	$829
473 Adkins Ave.	$40,500.00	$344.89	1106 Brown St.	$710
374 Hillwood Dr.	$34,725.00	$300.35	157 Hollinger Ave.	$870
2076 Manister Ct.	$34,925.00	$300.35	2035 13th St. SW	$670
760 Marie Ave.	$34,725.00	$298.59	1460 Rockaway St.	$1002
1588 Hillside Ter.	$15,000.00	$127.25	[illegible]	$890
411 Lindenwood Ave.	$15,000.00	[illegible]	[illegible]	$900
998 Collinwood Ave.	[illegible]	[illegible]	[illegible]	$975
716 Annapolis Ave.	[illegible]	[illegible]	[illegible]	$975
1078 Linden Ave.	[illegible]	[illegible]	[illegible]	$975
820 Brown St.	[illegible]	[illegible]	[illegible]	$829
643 Glendora Ave.	[illegible]	[illegible]	[illegible] Glendora Ave.	$750
364 Rexford St.	[illegible]	$247.69	424 Lockwood St.	$800
951 Roslyn St.	$31,225.00	$267.88	1168 Orlando Ave.	$650
1052 Berwin St.	$29,725.00	$252.08	1123 Berwin St.	$1000
950 Independence Ave.	$34,725.00	$295.96	1261 Bailey Rd.	$975
726 Lucille Ave.	$31,725.00	$274.02	524 Delmar Dr.	$600
1460 5th St.	$30,000.00	$256.25	629 Bridge Rd.	$950
567 Garry Rd.	$34,725.00	$300.25	572 Eastland Ave.	$925
256 27th St. NW	$45,800.00	$394.91	335 31st St. NW	$750
760 Marie Ave.	$30,000.00	$294.95	1460 Rockaway St.	$1002
944 Redfern Ave.	$28,000.00	$248.98	2238 19th St. SW	$595
1300 Sunrise Dr.	$37,925.00	$322.29	1225 Manchester Rd.	$750
885 McKinley Ave.	$29,700.00	$244.52	511 Talbot Ave.	$725
1078 Linden Ave.	$28,000.00	$275.25	1058 Big Falls Ave.	$975
357 Kline Ave.	$35,700.00	$297.61	429 Kline Ave.	$750
1133 Bethany Ave.	$38,600.00	$321.97	429 Kline Ave.	$750
2076 Manister Ct.	$35,700.00	$297.95	2035 13th St. SW	$670
2301 26th St. SW	$37,400.00	$320.23	2209 25th St. SW	$700
1189 Sherman St.	$17,300.00	$141.84	321 Cole Ave.	$690
473 Adkins Ave.	$37,400.00	$312.75	1106 Brown St.	$710
998 Collinwood Ave.	$42,600.00	$357.43	1058 Big Falls Ave.	$975
345 Pioneer St.	$28,800.00	$244.09	1434 Laffer Ave.	$825
75 Lake St.	$42,100.00	$362.00	130 E Emerling Ave.	$700
845 Dayton St.	$43,250.00	$375.16	1014 Dayton St.	$795
368-370 Wildwood Ave.	$26,500.00	$192.70	944 Delia Ave.	$885
Cheapest full apartment (i.e. not a room with shared kitchen and bathroom) available: $325/ month[48]				

Placement text

In Figure 1, I provide the address each contract refers to, the total purchase price of the property, the monthly payment required by the buyer and then offer a comparison to the current rent of the nearest available house for rent on Zillow.com as well as the lowest-priced, currently available single apartment in all of Summit County, Ohio also on Zillow.com. Moreover, the median gross rent (rent plus average monthly cost of utilities and fuel) in Summit County, Ohio from 2011 to 2015 according to the U.S. Census is $744.

c. Analysis of data

The thing that stands out most from the survey of Harbour Portfolio Advisors' land installment contracts is that in every case the monthly payment under the terms of the land installment contract is cheaper than the price per month to rent the nearest available house. Often it is substantially so, as the rental prices of nearby houses range from a little less than double to more than four times the price per month under a Harbour land installment contract.

Even more striking is that only eight of the forty-three contracts have a per-month price that is more than the per-month price to rent the cheapest available apartment in all of Summit County, Ohio. In those eight cases, they cost at most about seventy dollars more per-month than the apartment. Although, this does not factor in the often-considerable costs associated with a land installment contract that can arise from taxes, insurance, and repairs, the "sticker price" for a house via land installment contract appears incredibly low. In addition, the apartment in question is 300 square feet, whereas even some of the cheapest Harbour properties are three or more times larger than that. For instance, the property that costs almost seventy dollars more a month than the apartment includes a 1,176 square foot house on a 6,300 square foot lot.

All of the per month prices for the Harbour properties are also considerably lower than the median gross rent for Summit County, Ohio during the relevant time period, which was $744. Again, this comparison is somewhat inexact as the price of the Harbour properties does not include utilities or fuel whereas the median gross rent does and, under the Harbour contracts, the buyer is responsible for all repairs, insurance and taxes.

Finally, in the period from November of 2010 to February of 2017 only six of the Harbour properties in Summit County were the subject of more than one land installment contract. Of these properties, none have been the subject of more than two. Unfortunately, absent further research, the import of this data point is unclear. The data at hand shows that at least six of the forty-three land installment contracts in this period were terminated as the properties were the subject of a subsequent land installment contract. However, this does not mean that they were the only land installment contracts that were terminated. It is possible that any of the other thirty-seven land installment contracts have been terminated, either by forfeiture or conversion to month-to-month tenancy, but that Harbour has not entered into a subsequent land installment contract.

Keeping this limitation in mind, I propose that there are a few factors that could explain the limited number of times that the Harbour properties in Summit County have changed hands. The most straightforward is that, given the low monthly price of the contracts, even with the hidden costs of property tax, insurance and repairs, the buyers are unlikely to miss a payment. Another is that Harbour is, for various reasons, loath to exercise their contractual right to forfeiture, preferring to keep buyers in the property as long as possible in the hopes of receiving whatever payments they are capable of making. Indeed, anecdotal evidence suggests that companies involved in this business are willing to negotiate forbearance in certain cases. A final reason, which could either explain why Harbour is loath to exercise their contractual right to forfeiture or, alternately, simply why they have not been able to execute new land installment contracts despite evicting previous buyers, is that the market for housing in Summit County is weak and there is a dearth of buyers willing to enter into land installment contracts.

placement

Indeed, this latter point is one that is worth considering when looking to compare Harbour Portfolio Advisors' business model with the Traditional Land Installment Contract Scheme. At the time the Traditional Scheme was developed in Chicago, there were a considerable number of distorting influences on the demand for rental housing amongst African American homebuyers and renters in Chicago. First, because of the influx of migrants from the South to Chicago, there were many people looking for housing. Second, because of racially restrictive covenants and the actions of the FHA, the area in which they could rent was artificially restricted to small areas of the city. Finally, as the FHA rarely backed mortgages in redlined neighborhoods, it was unlikely that African American homebuyers could purchase a home through traditional methods. The only one of these three features that has significant parallels in modern day Summit County is the third, in that communities of color were the subject of subprime mortgages which resulted in destroyed credit after the foreclosure crisis which would preclude them from receiving home financing through traditional means. It is plausible that this would increase the demand for alternative paths to homeownership, like the land installment contract, amongst people whose credit was destroyed during the 2008 housing crisis.

But it was not simply demand for alternative methods of financing homeownership that enabled the Traditional Scheme to operate. In order to make kicking a buyer out of a property on the first payment a viable business strategy for the seller, the seller would have to be reasonably certain that they could find a new buyer in short order. Without a land installment contract buyer in a property, the seller is not only making no income off of that property, but also incurs costs since property taxes and code violations are the responsibility of the seller absent contractual provisions to shift that responsibility to the buyer. In Chicago in the mid-20th century, sellers had no problem finding new buyers with the increased demand for housing from an influx of African American migrants as well as the decreased supply of housing for those very migrants caused by racially-restrictive covenants. It is not clear if the market for housing in Summit County, Ohio is good enough to take the gamble on finding another buyer.

If it is the case that there are not enough buyers ready and waiting for any available Harbour property and, therefore, conditions are not right for the Traditional Scheme, then the question is: what is the new scheme? Harbour Portfolio Advisors managed to raise more than $60 million from investors, who presumably are interested in a return on their investment. One possibility is that they are acting as a home rental agency that can avoid the costs Meyers argued were associated with the implied warranty of habitability and, thus, can offer de facto home rentals at a cost much lower than de jure landlords.

One way of thinking of Harbour Portfolio Advisors' position upon purchasing thousands of foreclosed upon homes is by analogy to a landlord of substandard housing at the adoption of the implied warranty of habitability. Presumably, some of the homes are in good condition and could be rented or sold without investing any money in repairs. But the rest are in various states of disrepair. However, with thousands of homes purchased for cheap in bulk, it would be expensive to conduct an independent inspection of each home to determine which are in good condition and which are not. Moreover, those that are not up to code are split up between Meyers three categories, meaning that while some can be sold or rented at a profit even with repairs, some will be a wash with repairs and some will be an outright loss even with repairs. Again, to determine which are which would require inspection then actual repairs, all of which could be expensive. Instead, what they can do is offer up all of these houses, regardless of condition, for purchase under land installment contracts. This means that not only are inspections of the houses unnecessary before the buyers move in, they also are not responsible for any major violations of code that occur during the course of the contract, as they would be if they were a traditional lessor.

This also helps explain the 30-year term of the land installment contracts. Under the Traditional Scheme, where the goal is to siphon as much money out of the buyer as quickly as possible, a shorter-term with higher payments per month allows for more money to be drained from the buyer as well as significantly increasing the chance the buyer will default. On the other hand, a longer-term contract actually decreases the financial strain on the buyer, making it more likely that the buyer will be able to afford both the monthly payment and whatever payments are required in the form of taxes, insurance, and repairs. Decreasing the chances the buyer will default is only desirable if you intend for the buyer to stay as long as possible, as a landlord might prefer as long as a tenant can keep paying.

The fact that monthly payments are so low as to be competitive with the cheapest apartments in all of Summit County also helps attract buyers to these contracts. Given the choice offered above between a 300-square foot apartment for $325 a month and a house for as low as $141.84 a month, why would anyone take the former? Of course, there are more hidden fees that come from buying a home under a land installment contract than come along with traditional renting. Taxes and insurance are unavoidable. However, to some extent, repair costs can be deferred, provided the issue is not too grievous. Moreover, for less legally-sophisticated renters, who are themselves unaware of the implied warranty of habitability and are often unable to bear the cost of moving apartments, there is always the chance that the responsibility for repairs has been placed onto them by unscrupulous landlords anyway. In that case, the choice between paying for repairs in a market-rate apartment and paying for repairs in a home that they have at least some chance, even if it is a long shot, of owning might seem like a good one.

IV. Conclusion

Thinking about the new wave of land installment contract purveyors as simply a resurgence of the Traditional Land Installment Contract Scheme, where the goal is to churn through as many buyers as possible, is a potentially simplistic view of the phenomenon of residential land installment contracts.

Of course, there are reasons to doubt the foregoing argument. One is that Harbour Portfolio Advisors does consider itself, and advertises itself, as being in the business of rent-to-own homes. However, the point is not that Harbour Portfolio Advisors, and other companies like it, are necessarily involved in offering units via land installment contract purely to circumvent the implied warranty of habitability, but rather that there are significant differences, both historically and economically, in the conditions that exist today and those that enabled the Traditional Land Installment Contract scheme, that deserve careful analysis in order to determine what companies like Harbour are really up to.

Luke Dowling is currently a student enrolled at Harvard Law School.

Notes Rounding Out the Unproblematic Liberal Social Order

The Invention of a Civic Sector

By Daniel W. Rossides

England's liberal (capitalist) social order emerged slowly over the centuries without conscious intent or design. By the seventeenth century its political claims were being contested at the basic level, civil war. The struggle between feudal monarchy (based on landed property) and the new social order (in which all property groups would share control over society) had erupted into a fight to determine which social order would prevail (and could proclaim itself the embodiment of truth and morality, that is, unproblematic). Out of the Glorious Revolution of 1688, with no apparent leadership or foresight, and occurring helter-skelter over the ensuing decades, an historically unique sociopolitical order emerged, the monarch-in-parliament (government by wealth from whatever source). A key feature of the new political system is that it tackled problems one at a time thus obscuring their origin in the taken-for-granted social order. The monarch-in-parliament polity would last for over two centuries by which time English capitalism was firmly planted and could rebuff the rising demand for democracy that it itself had made possible.

In the ideological struggle between the social orders, the most revolutionary of the contending positions were the social contract theories of Thomas Hobbes and John Locke. Social contract theories introduced startling new assumptions about human nature and about how society should be restructured. Hitherto, the timeless, perfected hierarchical structure of society, reflecting the perfection of God and the wisdom of the past, had been thought of as prior to individuals and the only source of their identity. The social contract theory reversed the relationship with a sharp, clean stroke, declaring that individuals had identities prior to society and that henceforth society would receive its identity from them.

The idea that humankind is composed of individuals, sharing much in common and existing in their own right, and the accompanying idea that individuals create society instead of being its creatures, was a radical departure from the main current of Western social thought. These ideas, however, were not abrupt, inspired solutions to the conflicts of English society. For centuries, many Westerners had exhibited individualism in behavior and had become accustomed to acting singly and from private motives. For centuries, they had been creating machines for every type of utility, as well as new legal and economic forms (for example, joint-stock companies, credit, double-entry bookkeeping, insurance) to exploit the opportunities presented by their machines. It is not surprising, then, that many came at last to feel that society itself was not beyond their powers of creation.

The social contract theory of John Locke (1632-1704) holds special interest because of the strong influence it had on America's Founders. His ideas bear the authentic marks of liberalism: individualism, private property, the primacy of economic motives and market relations, utilitarianism, a separate and supreme realm of positive law, and a night watchperson state. Property for Locke came from mixing one's labor with nature. No individual (male) in the state of nature would have more than he could use, though some would have more than others because of unequal ability. Once these natural individuals agreed on the use of money and trade (owing nothing in all this to the state) substantial inequalities could ensue. Locke declares that those without tangible property can sell the property they have in their own labor (at wages at the taken for granted subsistence level). The landless and the idle, along with poor children, were considered less rational and willfully unindustrious and could be forced to work by the state (a similar attitude emerged in feudal England as early as 1349 and Locke's version resonated favorably with those who were creating the liberal social order). As for women, they would remain subservient in the now voluntary family.

Locke, like other seventeenth-century liberals, developed the central assumption of liberal social theory—its conception of the individual (male) as essentially the proprietor of his own person or capacities, owing nothing to society for them. The individual was seen neither as a moral whole, nor as part of a larger social whole, but as an owner of himself. The relation of ownership, having become for more and more men the critically important relation determining their actual freedom and actual prospect of realizing their full potentialities, was read back into the nature of the individual himself. The individual, it was thought, is free inasmuch as he is proprietor of his person and capacities. The human essence is freedom from dependence on the wills of others, and freedom is a function of possession. Society becomes an aggregate of free, equal individuals related to each other as proprietors of their own capacities and of what they have acquired by their exercise. Society consists of relations of exchange between proprietors. Political society becomes a calculated device for the protection of this property and for the maintenance of an orderly relation of exchange (and no more).

Locke's work goes a long way in explaining how America could minimize the role of the state when it