

CFPB Addresses “Contracts for Deeds,” a Mortgage-Like Product That Has Recently Gained Popularity

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On August 13th, the Consumer Financial Protection Bureau (“CFPB”) published a [consumer advisory](#) as well as an [advisory opinion](#) addressing “contracts for deeds”, which are also variously called a “bond for deed”, “land installment contract” or “buying on contract.” Basically, with these products the purchase of a residential property is made pursuant to an installment plan with payments being made directly to the seller. So instead of going to a bank or mortgage lender to get a traditional mortgage loan, the buyer and seller enter into a private transaction. As the CFPB states, “As the buyer under a contract for deed, you must act as the property owner during the term of the contract, even though the deed is not yours yet. In a typical contract for deed, property taxes, insurance, repairs, and maintenance are paid by the buyer.”

Noting that federal and state laws provide limited protections, the consumer advisory tells consumers that they can “choose to file the contract with the state or local office in charge of land records” which will entitle them “to receive notices about the property, such as when the deed is transferred to another owner, a mortgage is taken out on the property, or a lien is filed.”

Meanwhile, the advisory opinion sets out arguments as to why these kinds of transactions are “credit” under the Truth In Lending and Regulation Z – “in a typical contract for deed transaction . . . a debt is created by the buyer receiving exclusive possession of the property, along with certain ownership obligations, at the outset of the contract in exchange for the obligation to repay the agreed-upon value of that property over time.” Then, the opinion argues that contracts for deeds are “residential mortgage loans” under TILA and Regulation Z – “Congress defined ‘residential mortgage loan’ to include ‘any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.’” The argument for why a contract of deed is a residential mortgage loan is a bit tortured, with the CFPB having to reference Black’s Law Dictionary definitions and an assortment of individual state laws to support it.

But, the upshot of the advisory opinion is that contracts for deeds should comply with all consumer rights and disclosures that apply to residential mortgage loans, as described in TILA and Regulation Z, including high-cost mortgage provisions, including HOEPA requirements and protections.