

**3:15pm - 4:55pm**  
**Hardcore Regulations:**  
**Land Contracts & Seller Financing**  
**2 hour Legal CE**



MICHIGAN REALTORS®

# THE CONVENTION

Soaring Eagle Casino & Resort, Mt. Pleasant • Oct. 5-7, 2016

*Engagement Counts*

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**Dr. Daniels and Son**  
**Investment Real Estate Capital**

2

**Hardcore Regulations:**



**Land Contracts & Seller Financing**

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Direct, Private Money for Real Estate Investments

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**Hardcore Regulations:**



**Land Contracts & Seller Financing**

Allan Daniels is not an attorney.

Information provided is not legal advice.

It is probably just made up. Don't pay any attention to it.

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## Hardcore Regulations: Land Contracts & Seller Financing

Who has sold a home (or client's home) via Land Contract?  
Has anyone made a "hard money" loan to a consumer?  
Is there consumer demand for seller financing and loans?  
If there is great demand, why would one exit this market?  
Answer???

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## Hardcore Regulations: Land Contracts & Seller Financing



***The Planet we live on  
Has Changed!***

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## Regulatory Changes



Is this you?

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## History Lesson

Question: Why would one exit a market when there is great demand for a product?

Answer: Laws and Regulations.

The Stroh Family stopped brewing beer and began ice cream production when the law of the land changed decades ago.

The Purple Gang and Al Capone filled the void.  
Let's look at the Laws of the Land...

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## Hardcore Regulations: Land Contracts & Seller Financing

Michigan Laws & Rules

Federal Laws & Regulations

What's the same? What's changed? What will happen?

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## MAJOR LAWS (Regulator)

Real Estate License Law - Article 25 of Occupational Code (MI LARA)

MBLSLA First Mortgage Act (MI DIFS fka OFIR)

SAFE Act (HUD & CFPB)

MLOLA (MI DIFS)

ECOA (CFPB)

RESPA (CFPB)

TILA (CFPB)

DODD-FRANK ACT: CFPB Created

CFPB Authority & Enforcement Powers

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## Brief History Lesson

Pre-1987 Michigan: Let's Go Back in Time...



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## Brief History Lesson

Pre-1987 Michigan

Michigan Usury Laws (Civil & Criminal)

Equitable Mortgage Doctrine (Case Law)

Federal Laws (TILA if "creditor")

Article 25 of Michigan Occupational Code

Real Estate License Law

Prior to 1987, only a Real Estate License Required

Real Estate License still required for Commercial and NON-Consumer 1-4 Family Mortgages.

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## Real Estate - Article 25

(h) "Real estate broker" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities who with intent to collect or receive a fee, compensation, or valuable consideration, sells or offers for sale, buys or offers to buy, provides or offers to provide market analyses, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of a building on real estate; who leases or offers or rents or offers for rent real estate or the improvements on the real estate for others, as a whole or partial vocation; who engages in property management as a whole or partial vocation; who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others; or who, as owner or otherwise, engages in the sale of real estate as a principal vocation.

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## Real Estate - Article 25

(i) "Real estate salesperson" means a person who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, to buy or offer to buy, to provide or offer to provide market analyses, to list or offer or attempt to list, or to negotiate the purchase or sale or exchange or mortgage of real estate, or to negotiate for the construction of a building on real estate, or to lease or offer to lease, rent or offer for rent real estate, who is employed by a real estate broker to engage in property management, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others, as a whole or partial vocation.

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## Real Estate - Article 25

**RULE SECTION EXCERPT: R 339.22319 Licensure required for owner of real estate engaging in sale as principal vocation; acts constituting principal vocation; sale of real estate owned by broker or associate broker; licensee to reveal ownership or interest when selling property licensee owns or has interest in.**

Rule 319. (1) Licensure as a real estate broker is required of an owner of real estate who engages in the sale of real estate as a principal vocation, unless the owner engages the services of a real estate broker. Acts constituting a principal vocation include any of the following:

(a) Engaging in more than 5 real estate sales in any 12-month period.

(b) Holding one's self out to the public as being principally engaged in the sale of real estate.

(c) Devoting over 50% of one's working time, or more than 15 hours per week in any 6-month period, to the sale of real estate.

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MORTGAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT  
Public Act 173 of 1987 (MBLSLA)

Consequence of 1980's Michigan "Scandals"  
Diamond Mortgage / A.J. Obie - Jackson Prison  
Salem Mortgage - circumvent usury laws:  
"Incorporating" consumers = Attorney General  
purchase/sale with buy-back on Land Contract  
= Equitable Mortgage Doctrine  
Form vs. Substance  
Decades of Case Law on Equitable Mortgages

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## EQUITABLE MORTGAGE DOCTRINE

“It is well settled that a court of equity can declare a deed absolute on its face to be a mortgage.”

(Grant v. Van Reken-1976)

Lease - Option Case

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## EQUITABLE MORTGAGE DOCTRINE Michigan Supreme Court (1958)

Suffice to say that its purpose is to protect the necessitous borrower from extortion.

In the accomplishment of this purpose a court must look squarely at the real nature of the transaction, thus avoiding, so far as lies within its power, the betrayal of justice by the cloak of words, the contrivances of form, or the paper tigers of the crafty.

We are interested not in form or color but in nature and substance. (Wilcox v. Moore)

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## 1987 First Mortgage Act (MBLSLA) Public Act 173 of 1987

Mortgage Loan Definition:

(r) "Mortgage loan" means a loan secured by a first mortgage on real property located in this state and used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families...

or a land contract covering real property located in this state used, or improved for use, as a dwelling and designed for occupancy by 4 or fewer families.

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## 1987 FIRST MORTGAGE ACT (MBLSLA) Public Act 173 of 1987 (MBLSLA)

Licensee Definition:

What is the definition? Raise your hand...

n) "Licensee" means a person licensed ...

Anything else...?

**or required to be licensed  
under this act.**

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1987 First Mortgage Act (MBLSLA)  
Public Act 173 of 1987

This act does not apply to any of the following:

(g) A mortgage lender that in the aggregate with any affiliates makes 10 or fewer mortgage loans in a 12-month period from January 1 to December 31.

(h) A mortgage servicer that in the aggregate with any affiliates services 10 or fewer mortgage loans in a 12-month period from January 1 to December 31.

(i) A mortgage servicer that in the aggregate with any affiliates services only 75 or fewer land contracts, of which 10 or fewer require the collection of money for the payment of taxes or insurance...

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1987 First Mortgage Act (MBLSLA)  
Public Act 173 of 1987

“Mortgage Loan” includes Land Contracts

Sec 2 (1) License required unless:

(a) acting as a MLO as an employee or agent for only 1 Licensee

(b) exempt under Sec. 25

Sec. 25 (g) exemption for lender making 10 or fewer “mortgage loans” (includes LC’s) **in the aggregate with any affiliates**

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**SAFE ACT: Licensing Individuals**  
**MLOLA (Act 75 of 2009—effective 7/31/10)**

OFIR FAQ’s issued: Subject to a subsequent HUD Final Rule, OFIR did not consider a Land Contract to be included in definition of Residential Mortgage Loan in MLOLA.

OFIR mentioned Land Contracts are specifically covered in MBLSLA and, unless otherwise exempt, licensure or registration is required. and then came the HUD Final Rule...

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**HUD SAFE Act Rule (issued June 30, 2011;  
effective date August 29, 2011)**

HUD Rule states Residential Mortgage Loan includes an “installment sales contract” since SAFE Act definition uses TILA term “mortgage, deed of trust, or other equivalent consensual security interest”.

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**HUD SAFE Act Rule (issued June 30, 2011;  
effective date August 29, 2011)**

**HUD SAFE Act Rule nullified  
OFIR FAQ's re: Land Contracts.  
FAQ's removed from Website**

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**HUD SAFE Act Rule effective 8/29/2011**

HUD states individual must meet a requisite degree of habitualness within commercial context to be “engaged in business of loan originator”, but HUD lacks congressional authority to establish a de minimus.  
HUD “Punted” to the States

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**SAFE Act HUD Rule: Seller Financing**

(1) in a commercial context and  
(2) with some degree of habitualness or repetition... or  
Represents to the public, through advertising or other means of communicating or providing information that such individual can or will perform the activities  
Rule clarified that an individual selling his own residence is not engaged in the business of loan originator.

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**SAFE Act -- Seller Financing**

HUD chose not to decide how frequently an individual may provide financing before reaching the requisite degree of habitualness. SAFE Act now regulated by CFPB under DFA. Per NAR, “CFPB is also expected to defer to reasonable state laws on the number of seller financing transactions that would trigger licensing, but only time will tell.”  
Interesting foreshadow...

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## NEW MI DIFS SAFE Act FAQ's

MIAB-MAR-MMLA-OFIR (DIFS) Discussions 2012-13  
Defines level of activity constitutes being engaged in the business of a mortgage loan originator in Michigan  
Dodd-Frank Restrictions impacted FAQ's  
Can a Seller retain a MLO? HUD says yes, but this is **DIFFICULT IN MICHIGAN** -- 2 separate laws  
Per MBLSLA section 2 (1): a MLO can only provide services as an employee or agent of only 1 entity (sponsor).  
Per MLOLA: MLO must have a sponsor in order to become licensed. - Section 9 (h) and must not transact business if sponsorship ceases – Section 29 (3)  
"Approved Inactive" if no sponsor

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## DIFS FAQ's

Mortgage Loan Originator and Seller Financing  
FAQs  
<http://www.michigan.gov/difs/>  
Click FAQs on Left

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## "DODD-FRANKENSTEIN" Act -- CFPB



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## "DODD-FRANKENSTEIN" Act -- CFPB

The CFPB had until January 21, 2013, to issue the final Title XIV regulations, which must take effect no later than 12 months later.  
If the CFPB missed the deadline for issuing the final regulations, Title XIV would have taken effect anyway on January 21, 2013.  
Final Rule Issued January 20, 2013 and the rules went into effect on January 10, 2014  
Recess Appointment of CFPB Director Cordray  
Be careful what you wish for...

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## Senate Confirms CFPB Director

7/16/13: U.S. Senate voted 66 to 34 to confirm Richard Cordray for a 5 year term as Director. Recess appointment was to expire 12/31/13. Recess appointment was under legal challenge Supreme Court agreed to review NLRB case that invalidated similar recess appointments. Confirmation brings certainty that the CFPB's new rules went into effect in January, 2014. Rules may have been negated if Cordray appointment had been blocked by filibuster.

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The President appointed me as Director of the Bureau of Consumer Financial Protection on January 4, 2012, pursuant to his authority under the Recess Appointments Clause, U.S. Const. art. II, § 2, cl. 3. The President subsequently appointed me as Director on July 17, 2013, following confirmation by the Senate, pursuant to the Appointments Clause, U.S. Const. art. II, § 2, cl. 2.

I believe that the actions I took during the period I was serving as a recess appointee were legally authorized and entirely proper.

To avoid any possible uncertainty, however, I hereby affirm and ratify any and all actions I took during that period.

Dated: August 27, 2013. Richard Cordray,  
Director, Bureau of Consumer Financial Protection

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## “DODD-FRANKENSTEIN” Act -- LAW Ability to Repay Requirement (ATR)

New section 129C of the Truth in Lending Act (TILA) which provides that no one may make a residential mortgage loan without first making a reasonable and good faith determination that the consumer has the ability to repay. Determination = the process of establishing something exactly, by calculation or research.

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## DODD-FRANK Act -- LAW

The Dodd-Frank Act definition of "mortgage originator" exempts an individual (or estate or trust) that provides mortgage financing for **no more than 3 properties in ANY 12 month period** from certain requirements of Title XIV, but **only if the financing meets certain criteria:**

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## DODD-FRANK Act -- Law

The seller did not construct the home to which the financing is being applied. (Rehabbers???)

The loan is fully amortizing (no balloons).

The seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan.

The loan has a fixed rate or is adjustable after 5 or more years, subject to reasonable annual and lifetime caps.

Meets other criteria set by the Fed & CFPB.

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## DODD-FRANK Act -- CFPB Rules

NAR Comment Letter to CFPB:

Major Concerns for seller financiers:

Ability to Pay Determination

No Balloons

CFPB Response:

Final Rule was issued SUNDAY 1/20/13

Final Rule is slightly better than expected.

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“Keeping up with all the rules is a full-time job”

7 CFPB FINAL RULES ISSUED JANUARY, 2013:

1. Ability-to-Repay (“ATR”)
2. High-Cost Mortgage
3. Escrow
4. Servicing
5. Appraisals for High-Risk Mortgages
6. Copies of Appraisals
7. Mortgage Loan Originator Compensation

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Hardcore Regulations: Dodd-Frank & CFPB

1. Ability-to-Repay (“Qualified Mortgage”)
2. High-Cost Mortgage - Requires Counseling
3. Escrow - HPML, effective 6/1/13, 5 years
4. Servicing - 1/10/14, 120 days late before FC
5. Appraisals for High-Risk Mortgages - HPML, Interior Insp., 2nd Appraisal (lender pd) if “flip”
6. Copies of Valuations - for ALL 1-4 family
7. Mortgage Loan Originator Compensation

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**Hardcore Regulations:  
LAND CONTRACTS & SELLER FINANCING**

Ability to Repay Final Rule

General Requirements & Severe Penalties for Violations

Qualified Mortgage (QM)

QM - Safe Harbor

QM - Rebuttable Presumption

Temporary QM

Mortgage Loan Originator Compensation Final Rule

Loan Originator Definition

Real Estate Brokerage Activities Exclusion

Seller Financing Restrictions

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**General Ability to Repay (ATR) Final Rule  
Lender Must Consider 8 Factors to Determine Ability to Repay**

1. Verified Income or assets, excluding value of the dwelling
2. Employment status
3. Credit history
4. Monthly payment on the mortgage
5. Monthly payment on any simultaneous loan (piggy-back)
6. Monthly payment for mortgage-related obligations-----  
(taxes, insurance, association fees, or lot rent)
7. Other debt obligations, alimony and child support
8. Monthly debt-to-income ratio (DTI) or residual income ---  
(money left over for borrower to live on)

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**Mortgage Loan Originator Compensation Rule:  
Dodd-Frank Seller Financing Restrictions**

Final Rule -- Effective 1/10/14

CFPB provided some flexibility in final rule

Two categories of seller financing excluded  
from the definition of loan originator:

Selling 3 or fewer in **any 12-month period**

Selling only 1 in **any 12-month period**

Both cases must meet other criteria.

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**Mortgage Loan Originator Compensation Rule:  
Dodd-Frank Seller Financing Restrictions**

Final Rule -- Effective 1/10/14

Seller Financers—3-Property Exclusion

Applies to “persons” as defined broadly under TILA  
to include not only “natural” persons but also a  
wide range of organizations such as corporations,  
partnerships, proprietorships, estates, and trusts.

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## Seller Financing—3-Property Exclusion

To be excluded from the definition of loan originator using the 3-property exclusion, you must meet all of the following criteria:

i. The person provides financing for the sale of 3 or fewer properties in any 12-month period. Each property must be owned by the seller and serve as security for the financing.

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## Seller Financing—3-Property Exclusion

ii. The person has not constructed, or acted as construction contractor for, a residence on the property in the ordinary course of business of the person.

iii. The person provides seller financing that meets the following requirements:

iv. A. The financing is fully amortizing (no balloon mortgages or negative amortization).

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## Seller Financing—3-Property Exclusion

B. The person determines in good faith that the consumer (buyer) has a reasonable ability to repay.

C. The financing has a fixed interest rate or an adjustable interest rate that is adjustable after 5 or more years.

Must Determine Ability to Repay

Must be Fully Amortizing

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## 3-Property Exclusion - Ability to Repay

Payroll or earning statements, W-2s, etc.; other income from a federal, state, or local agency providing benefits and entitlements; and/or income earned from assets (such as financial assets or rental property).

The value of the dwelling may not be considered as evidence of the buyer's ability to repay.

The seller may rely on copies of tax returns.

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## Seller Financing—1-Property Exclusion

More flexible exception

Applies only to a narrower definition of “persons”

ONLY natural persons, estates, and trusts that sell only 1 property in a 12-month period.

The exclusion is not available to other organizations, such as corporations, partnerships, or proprietorships.

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## Seller Financing—1-Property Exclusion

To be exempt from the definition of loan originator using the 1-property exclusion, you must meet the following criteria:

i. The person provides financing for the sale of only one property in any 12-month period. The property must be owned by the seller and serve as security for the financing.

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## Seller Financing—1-Property Exclusion

ii. The person has not constructed, or acted as construction contractor for, a residence on the property in the ordinary course of business of the person. (This is the same requirement as applies for the 3- property exclusion.)

iii. The person provides seller financing that meets the following requirements:

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## Seller Financing—1-Property Exclusion

A. The financing has a repayment schedule that does not result in negative amortization. A balloon mortgage is permitted. (NAR sought relief from the prohibition against balloon mortgages.)

B. The financing has a fixed interest rate or an adjustable interest rate that is adjustable after 5 or more years.

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## Seller Financing—1-Property Exclusion

If you sell one property using the less restrictive exclusion rules and then seek to sell a second property, the safest course would be to wait for the expiration of 12 months after closing of the first sale before selling the second property.

WHY?

Risk of Ability to Repay Violations:

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## DODD-FRANK Act -- CFPB

Harsh liability for violation of ability-to-repay requirement.

Damages include all of the following:

Actual damages

Three years of finance charges

All fees the consumer paid

Plus costs and attorneys' fees.

AND...

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## DODD-FRANK Act -- CFPB

Consumers may assert ability-to-pay violations as a defense to foreclosure...

with no statute of limitation.

These damages are likely to exceed the profit.

Cost of Litigation alone will often exceed the balance owed.

The [legal] cost to prove I did my job correctly is so significant I've got to reconsider making a loan in the first place.

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## DODD-FRANK Act -- CFPB

Enhanced damages for ability-to-repay violations provide consumers and their counsel with a strong arsenal to delay foreclosure and to obtain substantial compensation by threatening litigation.

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## DODD-FRANK Act -- CFPB

Any consumer who wishes to delay a foreclosure, or who wishes compensation regardless of the merits, has an incentive to raise ability-to-pay allegations.

It might constitute malpractice for an attorney not to at least attempt to bring such a claim.

Dodd-Frank: Funding for Foreclosure Defense.  
= "Demise of Seller Financing"

Intentionally evading TILA is a crime.

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## CIRCUMVENTION IS A CRIME

Message to "creative" individuals:

Federal crime to circumvent truth in lending

Extreme Caution is in order if Lease-Option is structured in a manner to mimic a Land Contract or mortgage loan.

Remember the history lessons:

Equitable Mortgage Doctrine (Case Law)

Attempts to circumvent laws = JAIL

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## Residential Mortgage definition

Per TILA: Residential mortgage transaction means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest ...

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 **Seller Financing Addendum to Exclusive Listing Contract (Residential Property)**  Q

**What Should Agents Tell Clients?**

This is an addendum to a Listing Contract dated \_\_\_\_\_, 20\_\_\_\_  
between \_\_\_\_\_ ("Seller")  
and \_\_\_\_\_ ("Brokerage Firm")  
for the Property located at: \_\_\_\_\_ ("Property").

**CYA = "Consult Your Attorney"**

It is acknowledged by the parties hereto that the Seller may provide financing or extend credit to a buyer through the use of a land contract or other arrangement by which the Seller extends credit which is secured by a mortgage or an equivalent consensual security interest on a residential dwelling or on land on which the buyer intends to construct a residential dwelling ("Seller Financing").

Seller understands that neither Brokerage Firm nor any person affiliated with Brokerage Firm can provide legal advice or financial advice with regard to Seller Financing. The process and terms of Seller Financing may be subject to both federal and state regulation, including but not limited to the Michigan Mortgage Loan Originator Licensing Act, the Michigan Mortgage Brokers, Lenders, and Servicers Licensing Act, the Federal Secure and Fair Enforcement for Mortgage Licensing Act, the federal Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act ("Regulation Z"). This list of potentially applicable federal and state law(s) and regulations is not exhaustive. Seller is advised to consult with an attorney as to any transaction involving Seller Financing. There can be substantial penalties and adverse consequences if a Seller fails to comply with applicable federal and state laws and regulations when providing Seller Financing.

Listed by: \_\_\_\_\_ REALTOR® Seller: \_\_\_\_\_  
Agent for: \_\_\_\_\_ Brokerage Firm Seller: \_\_\_\_\_

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More Info:  
NAR Summary of  
Dodd-Frank CFPB Rule

NAR Summary  
narfocus.com/  
billdatabase/  
clientfiles/  
172/4/1720.pdf

Impact of Loan Originator Final Rule on  
Seller Financing  
(February 8, 2013)

The new final rule establishing Loan Originator Compensation Requirements<sup>1</sup> applies broadly to loan originators, including seller financiers that do not qualify for an exclusion from the definition. The Consumer Financial Protection Bureau (CFPB) released the rule on January 20, 2013, as part of its implementation of amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted on July 21, 2010. The rule takes effect on January 10, 2014, except for two provisions related to loan originator qualifications that take effect on June 1, 2013.

The definition of loan originator is broad. It covers anyone who, for compensation, performs any activities related to the origination of mortgage loans, including (but not limited to): taking an application or offering, arranging, or assisting a consumer in obtaining or applying for credit.

TILA, as amended, and CFPB's implementing regulations exclude from the definition of loan originator some sellers who provide seller financing. Because the requirements are extremely complex, unless seller financiers qualify for exclusion, they will as a practical matter have to use another approach for financing the sale of the property, including engaging a licensed loan originator without performing loan origination activities themselves. This is similar to the situation under the SAFE Act's loan originator licensing requirements where, unless you are exempt from licensing under the state law enacted to implement the SAFE Act, it is not usually practicable to provide seller financing directly.

In response to NAR and many other commenters, CFPB has provided some flexibility in the new final rule by excluding from the definition of loan originator two categories of seller financing: those that sell 3 or fewer properties in any 12-month period and those that sell only one in any 12-month period, and in both cases meet other criteria. If you sell one property using the less restrictive exclusion rules and then seek to sell a second property, the safest course would be to wait for the expiration of 12 months after consummation of the first sale before selling the second property. Though the CFPB made minor changes to the statute, such as the one-property exclusion noted above and not requiring proof of documentation of a borrower's ability to repay, the Bureau determined to not eliminate the criteria in the seller financing exclusion as defined in the Dodd-Frank Act.

**Seller Financers—3-Property Exclusion**

This exclusion applies to "persons" as defined broadly under TILA, to include not only "natural" persons but also a wide range of organizations such as corporations, partnerships, estates, and trusts. To be excluded from the definition of loan originator using the 3-property exclusion, you must meet all of the following criteria:

- i. The person provides financing for the sale of 3 or fewer properties in any 12-month period. Each property must be owned by the seller and serve as security for the financing.
- ii. The person has not contracted, or acted as construction contractor for, a residence on the property in the ordinary course of business of the person.
- iii. The person provides seller financing that meets the following requirements:
  - A. The financing is fully amortizing (no balloon mortgages or negative amortization).

<sup>1</sup> See 12 CFR section 1026.36.



# Hardcore Regulations: Land Contracts & Seller Financing What's Next?

What we covered:

Michigan Laws & Rules

Federal Laws & Regulations

What's the same? What's changed? What will happen?

**MOST EXPERTS PREDICT THE FOLLOWING...**

## What will Happen? -- CFPB

A "Public Hanging" is predicted

No Case Law--No one wants to be the test case

Current or former employees, contractors,  
vendors and competitors can blow the whistle

Whistleblower@cfpb.gov

CFPB Testing Consumer Complaint Hotline:  
Call 4311 for a connection with the Bureau.

Obligation to "Demonstrate Compliance"

Intentionally evading TILA is a crime.

## Risk-Reward Analysis





## Consumer Financial Protection Bureau & Federal Housing Finance Agency National Database



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## Federal Housing Finance Agency & CFPB National Database

Match credit bureau files on borrower payment histories with Home Mortgage Disclosure Act (HMDA) database, property valuation models, and other data files (NMLS) to create a comprehensive picture for each mortgage.

Monitor mortgage markets and consumers.

Provide insight on consumer decision making

Monitor new and emerging products in the mortgage market

View both 1st and 2nd lien mortgages for a given borrower

Understand impact of consumers' debt burden.

share database information with other federal agencies, academics, and the public.

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## CFPB - New Cop on the Beat

Well-funded and aggressive hybrid:

Industry Watchdog,

Lobbyist,

Politician,

and Policing Authority,

That One Must Learn to Fear and Respect

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## CFPB Enforcement Authority

Proactive and reactive (amicus briefs)

Different than the old "RESPA Rangers"

The bureau is not subject to Congressional Appropriations authority for its budget, and CFPB Director can only be fired by the President "for cause."

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## CFPB Enforcement Authority

CFPB is authorized to conduct investigations to determine whether any person is, or has, engaged in conduct that violates Federal consumer financial law.

Investigations may be conducted jointly with other regulators, and may include subpoenas or civil investigative demands for testimony, responses to written questions, documents, or other materials.

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## CFPB Enforcement Authority (continued 2)

CFPB may bring administrative enforcement proceedings or civil actions in Federal district court.

This differs from Cabinet Level Depts. that must present their case to Dept. of Justice, which then reviews the issue to decide whether to sue.

The Bureau can obtain “any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law,” including, but not limited to:

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## CFPB Enforcement Authority (continued 3)

Rescission or reformation of contracts.

Refund of money or return of real property.

Restitution.

Disgorgement or compensation for unjust enrichment.

Payment of damages or other monetary relief.

Public notification regarding the violation.

Limits on the activities or functions of the person against whom the action is brought.

Civil monetary penalties-up to \$1 million a day.

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## CFPB Enforcement Authority (continued 4)

CFPB is required by the Act to refer a violation of Federal criminal law to the Department of Justice (DOJ) for further review and action.

CFPB is also required under the Act to refer information identifying possible tax law non-compliance to the Internal Revenue Service (IRS).

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## CFPB Director: Cop, Judge, Jury, Executioner

The CFPB can commence civil actions on its own behalf in its own name, with its own attorneys.

Investigations conducted by CFPB enforcement division under the authority of the Director, by assistant director — appointed by the Director.

Hearing conducted by Administrative Law Judge who was also appointed by the Director.

Appeal heard and decided by the Director.

Final penalties were imposed by the Director.

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## CFPB: No Statute of Limitations for RESPA Violations

Cordray also decided that the CFPB is not subject to RESPA's three-year statute of limitations when the CFPB challenges a RESPA violation in an administrative proceeding.

Cordray wrote that the "section of the [Consumer Financial Protection Act] that authorizes the bureau to enforce laws through administrative proceedings does not contain a statute of limitations."

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## CFPB: No Statute of Limitations

Cordray held that RESPA's statute of limitations applies to the Bureau only if it brings an enforcement action in court. Therefore, Cordray said that the RESPA time limit did not apply because the proceeding against the mortgage lender was administrative.

Consequently, it appears from Cordray's ruling that the CFPB is not bound by any statute of limitations at all when it seeks to enforce laws provided it does so through its own administrative forum rather than in a court of law.

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## UDAAP

CFPB also has specific authority to prevent persons subject to its supervision from committing or engaging in unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

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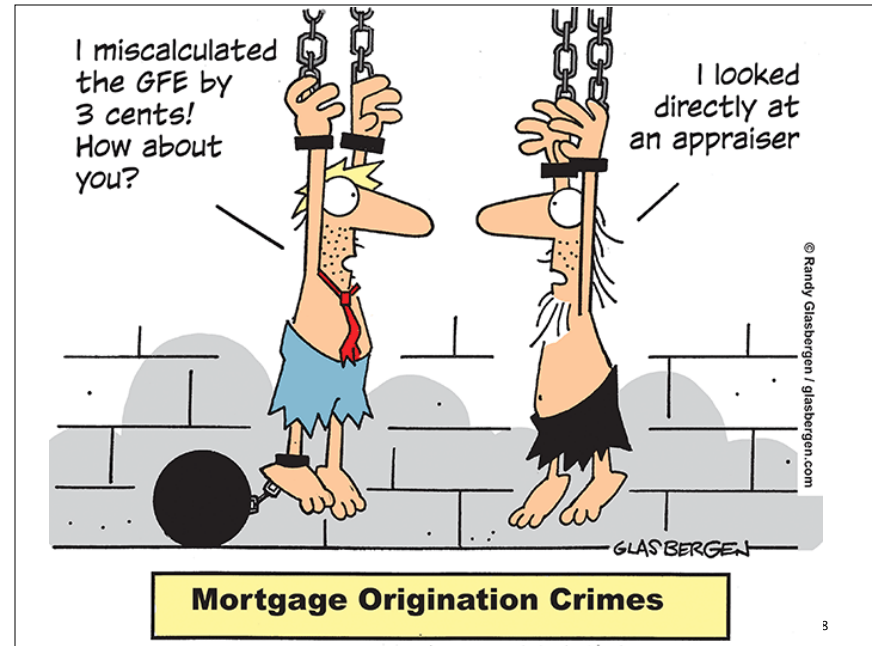
## UDAAP

Unfair, Deceptive, or Abusive Acts or Practices  
CFPB is required to promulgate rules regarding abusive practices

Rules have not been promulgated, so this section of Dodd-Frank Act took effect anyway.  
an individual loan originator (broker or loan officer) as well as the creditor can be sued for a violation of the Ability to Repay (ATR) Rule

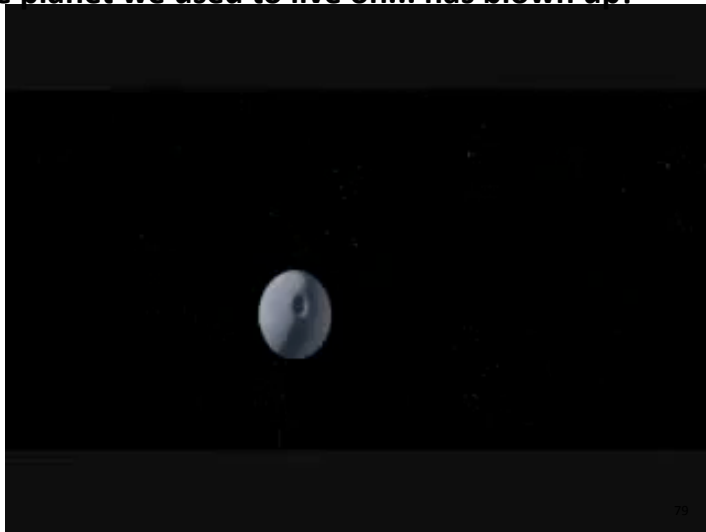
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## Hardcore Regulations: The planet we used to live on... has blown up!



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## Hardcore Regulations: Marketplace Land Contracts & Seller Financing

Thanks for Listening!  
Questions & Discussion

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