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City of Youngstown Council
City Hall, 4th Floor
26 S. Phelps Street
Youngstown, OH 44503

HAND DELIVERED and separately emailed to Council Members

*Re: Land Installment Contracts Ordinance – Chapter 550 of the
Codified Ordinances of the City of Youngstown, Ohio (the “City”)*

Dear Council Members,

This office represents the Youngstown Columbiana Association of Realtors, Inc. (“YCAR”). The membership of YCAR is composed of residential and commercial real estate brokers, agents, property managers, appraisers, and others engaged in the real estate industry of the Mahoning Valley. YCAR’s purpose is to serve its members by protecting and enhancing their rights and capabilities to conduct their real estate business, which includes review and analysis of legislation affecting the real estate industry and private property rights. To that end, the Legislative Committee of YCAR has requested that I review the recently enacted “Chapter 550 Land Installment Contracts” (the “LIC Ordinance”) of the Codified Ordinances of the City of Youngstown, Ohio. The LIC Ordinance was passed by City Council on February 6, 2019 and signed into law by Mayor Brown on February 7, 2019.

Introduction

Several provisions of the LIC Ordinance mirror provisions of Ohio’s “Land Installment Contracts” statute located at Chapter 5313 of the Ohio Revised Code (the “Ohio LIC Code”). The LIC Ordinance also contains several provisions that do not exist in the Ohio LIC Code, including, for example, a vendee’s right to enforce the LIC Ordinance through a private cause of action, and a requirement that the vendor obtain a certification of property code compliance before executing a land installment contract.

This analysis identifies several specific concerns regarding the LIC Ordinance, including the inspection and certification requirement, uncertainty regarding the types of certification an inspector is required to have, and uncertainty regarding circumstances in which a vendee is responsible for the condition of a property. Concern is also raised as to the specific definitions of “predatory contract” and “unconscionable”, and how the LIC Ordinance would be put into

effect. YCAR has requested this analysis of the LIC Ordinance in order to present it to City Council and to recommend possible amendments that could clarify certain ambiguities and to make the LIC Ordinance potentially less burdensome on realtors, and vendors and vendees engaging in land installment contracts.

Summary of the LIC Ordinance

The key substantive provisions of the Ohio LIC Code are largely incorporated into the text of the LIC Ordinance. For example, with the exception of the addition of an appraisal requirement (discussed below), the text of Section 550.02 of the LIC Ordinance, titled “Required Provisions of Land Installments Contracts,” essentially mirrors the text of Section 5313.02 of the Ohio LIC Code, which is likewise titled “Required Provisions of Land Installments Contracts.” In large part, the provisions of the LIC Ordinance that do not exist in the Ohio LIC Code are located in Sections 550.10 through 550.99 of the LIC Ordinance. Below is a summary of the key provisions of the LIC Ordinance that are not also in the Ohio LIC Code.

Appraisal Requirement: Section 550.02(a)(13) requires that a land installment contract include “a provision that the vendor provide evidence of appraisal value of the real property. Evidence of appraisal value is satisfied if the Mahoning County Auditors Tax Statement is provided.”¹

Certificate of Property Code Compliance Requirement: Under Section 550.10 of the LIC Ordinance, before conveying an interest in residential property within the City by land installment contract, the vendor must apply for and obtain a Certificate of Property Code Compliance (“CPCC”).² Under Section 550.11(d), a CPCC expires three years after the date of issuance.³

Inspection Requirement: In order to obtain a CPCC, a “Registered Inspector”⁴ must inspect the property and certify that it satisfies basic habitability standards. In particular, a CPCC inspection requires that the electrical, heating, and plumbing systems and building structure (e.g., roof, gutters, siding, etc.) be inspected to ensure that the residential property is in a “safe, sanitary and habitable condition and meets the Property Maintenance Code (PMC) of the State of Ohio.”⁵

Vendee Right to Enforce LIC Ordinance by Private Cause of Action: If a vendor does not comply with the requirements of the LIC Ordinance or the Ohio LIC Code, Section 550.04 of the LIC Ordinance authorizes the vendee to enforce such provisions by a private cause of action. In particular, a vendee can, by private action, rescind the

¹ LIC Ord. §2(a)(13).

² LIC Ord. §10

³ LIC Ord. §11(d).

⁴ Section 550.01 (m) defines a “Registered Inspector” as the “City of Youngstown Superintendent of Housing, Demolition and Code Enforcement, or his/her designee, or any private sector person certified or license through L.C.C. (International Code Council) or other similar certifying licensing entity, deemed equivalent by the Superintendent of Housing, Demolition and Code Enforcement to conduct the type of inspection required by this regulation and is registered with the City of Youngstown.”

⁵ LIC Ord. § 550.11(a).

transaction, or recover “actual economic damages plus an amount not to exceed five thousand dollars in noneconomic damages.” However, if a court deems the vendor’s actions to be “unconscionable,” then the vendee may recover treble damages (i.e., three times the amount of the vendee’s actual damages) or two hundred dollars, whichever is greater, plus an amount not to exceed five thousand dollars in noneconomic damages.⁶ In the alternative, a vendee may bring a civil action against the vendor.⁷

Note: As will be discussed in the Analysis section below, the LIC Ordinance contains a second provision that addresses vendee’s remedies for noncompliance by a vendor. Specifically, Section 550.16 states: “If a vendor fails to comply with this Chapter, the vendee may rescind the land installment contract and may recover his/her actual damages and attorney’s fees and costs.”⁸

ANALYSIS

Issue: **The LIC Ordinance should be revised to clarify that the requirement that a vendor obtain a CPCC prior to conveying a residential property by land installment contract is a one-time requirement, not a continuing obligation.**

Under Section 550.10 of the LIC Ordinance, before conveying an interest in residential property within the City by land installment contract, the vendor must apply for and obtain a CPCC.⁹ Pursuant to Section 550.11(d) a CPCC expires three years after the date of issuance.¹⁰ The CPCC requirement can be interpreted in the following two ways:

Interpretation 1: CPCC is a One-Time Requirement

The LIC Ordinance does not expressly require that a residential property conveyed under a land installment contract be inspected and a CPCC issued every three years. As a result, the CPCC provisions can be interpreted as establishing a one-time CPCC requirement that must be satisfied by the vendor before conveying a residential property by land installment contract rather than a continuing obligation. Under this interpretation, a CPCC that is issued on March 22, 2019 would remain valid until March 22, 2022. If the property for which the CPCC was issued does not sell for an extended period of time, or if the vendor decides to rent out the property for a couple of years before selling it, the CPCC would remain valid (and the property would not have to re-inspected) for a full three-year period. Under Interpretation 1, as long as the vendor has a valid CPCC for the property at the time of sale, the vendor has satisfied the CPCC requirement, and has no further requirement to re-inspect the property and renew the CPCC.

⁶ LIC Ord. § 4.

⁷ *Id.*

⁸ LIC Ord. § 16.

⁹ LIC Ord. § 10.

¹⁰ LIC Ord. § 11(d).

Interpretation 2: CPCC is a Continuing Obligation

On the other hand, the LIC Ordinance also does not expressly state that the CPCC requirement is a one-time requirement rather than a continuing obligation. At least one provision of the LIC Ordinance suggests that CPCC requirement may be an ongoing one. Section 550.11(g) - the shortcomings of which are discussed separately below - purports to address circumstances in which code violations identified during a CPCC inspection are demonstrated to be caused by the vendee rather than the vendor. Under Section 550.01(c) and (d) of the LIC Ordinance, a “vendee” (buyer) is a person who acquires an interest in the property under a land installment contract from a “vendor” (seller). Therefore, logically a violation identified during a CPCC inspection could only be attributed to a vendee if the CPCC inspections itself occurred after the vendee acquired the property via land installment contract. This suggests that the CPCC inspection can or will occur after a property is conveyed by land installment contract. Under Interpretation 2, a vendor would need to have a valid CPCC at the time of sale, and then would need to have the property re-inspected and obtain a new CPCC every three years while the contract is in effect.

The ambiguity of the LLC Ordinance creates uncertainty whether **Interpretation 1** (i.e., CPCC only required before a vendor can convey residential property by land installment contract) or **Interpretation 2** (i.e., a property conveyed by land installment contract must be inspected and issued a CPCC every three years) applies. In order to eliminate this uncertainty, the City should revise the LIC Ordinance to clarify that the vendor is required to have a valid CPCC only at the time it conveys the residential property by land installment contract. The City’s interest in protecting homebuyers from purchasing a home that does not meet “basics minimum standards of habitability” is served by requiring that the vendor obtain a CPCC prior to conveying a residential property by land installment contract, not by requiring the property be re-inspected every three years after the property is conveyed.

Recommendation: For the reasons discussed above, YCAR would urge the City to revise Sections 550.10 and 550.11 of the LIC Ordinance to clarify that a vendor must hold a valid CPCC for residential property on the date it is conveyed by land installment contract, but is not required to have the property re-inspected or obtain a new CPCC after that.

Issue: **Section 550.11(g) of the LIC Ordinance purports to establish rules regarding situations where code deficiencies identified during an inspection are attributable to the conduct of a vendee rather than the vendor, but it does not actually do that.**

Section 550.11(g) of the LIC Ordinance, titled “Code Deficiencies to Vendee Conduct,” states:

Code Deficiencies Due to Vendee Conduct – in those cases where the code deficiencies identified in the Certificate of Property Code Compliance Inspection are demonstrated, to the satisfaction of the Superintendent of Housing, Demolition and Code Enforcement inspection in his or her investigation of the

matter, including providing information to assist in the identification of the vendee.¹¹

As discussed further below, this provision is neither a complete sentence nor a complete provision. While the heading suggests that Section 550.11(g) addresses instances where code deficiencies identified during an inspection are attributable to vendee conduct, the sentence ends abruptly without ever actually addressing the topic. As a result, there is a significant gap in the LIC Ordinance with respect to code violations caused by the vendee rather than the vendor. Put simply, Section 550.11(g) raises the issue but fails to address it.

Recommendation: YCAR brings this significant shortcoming of Section 550.11(g) to the attention of City Council and urges the City to consider suspending enforcement of the LIC Ordinance until Section 550.11(g) is revised to address circumstances where code deficiencies identified during an inspection are attributable to the conduct of the vendee rather than the vendor. This would be necessary if the above-described **Interpretation 2** applies.

Issue: **The LIC Ordinance appears to address “predatory” land installment contracts indirectly by allowing vendees to recover treble damages in cases where “an act or practice [of a vendor is] determined to be unconscionable by the court.”**

The LIC Ordinance does not define or directly address “predatory” land installment contracts. Instead, the LIC Ordinance appears to indirectly address such contracts through Section 550.04(a)(2), which states:

Where the violation was an act or practice determined to be unconscionable by the court of this state, the vendee may rescind the transaction or recover three times the amount of the vendee’s actual economic damages or two hundred dollars, whichever is greater, plus an amount not to exceed five thousand dollars in noneconomic damages.¹²

The LIC Ordinance does not identify the basis for this “treble damages” provision. However, in Ohio the concept of awarding treble damages in cases where the consumer is harmed by an unconscionable act or practice in connection with a transaction appears to be well founded in the Consumer Sales Practices Act (CSPA). Under Section 1345.09(B) of the CSPA, treble damages can be awarded in cases where “the violation was an act or practice declared to be deceptive or *unconscionable* by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based.”¹³ In determining whether an act is “unconscionable,” the CSPA provides the following factors to be considered by the courts:

1. Whether the supplier has knowingly taken advantage of the inability of the consumer reasonably to protect the consumer’s interests because of the consumer’s physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of an agreement;

¹¹ LIC Ord. § 550.11(g).

¹² LIC Ord. § 4(a)(2).

¹³ Ohio Rev. Code § 1345.09 (emphasis added).

2. Whether the supplier knew at the time the consumer transaction was entered into that the price was substantially in excess of the price at which similar property or services were readily obtainable in similar consumer transactions by like consumers;
3. Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction;
4. Whether the supplier knew at the time the consumer transaction was entered into that there was no reasonable probability of payment of the obligation in full by the consumer;
5. Whether the supplier required the consumer to enter into a consumer transaction on terms the supplier knew were substantially one-sided in favor of the supplier;
6. Whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to the consumer's detriment;
7. Whether the supplier has, without justification, refused to make a refund in cash or by check for a returned item that was purchased with cash or by check, unless the supplier had conspicuously posted in the establishment at the time of the sale a sign stating the supplier's refund policy.¹⁴

By contrast, the LIC Ordinance does not define the term “unconscionable” and lacks standards to be applied by the courts in determining whether or not a vendor’s act or practice is unconscionable. Consequently, it is not clear on what basis the courts would determine whether or not a particular violation is “unconscionable” under the LIC Ordinance. If the City intended that the courts would apply the “unconscionable” factors contained in Section 1345.03 of the CSPA, then the LIC Ordinance should be revised to explicitly reflect such intent. If, however, the City intended for unconscionable to have a different meaning, then the LIC Ordinance should be revised to include objective standards or criteria for determining whether an “act or practice” of the vendor in a land installment contract transaction is “unconscionable.”

Additionally, the LIC Ordinance provides the remedy of “rescission” which is intended to cause the affected land installment contract to be cancelled, and to restore the parties to their original status. This would mean that monies tendered by a vendee to a vendor thereunder, would have to be repaid by the vendor to the vendee. In providing this remedy, the LIC Ordinance fails to establish a time requirement for a vendee to seek this remedy. Conceivably, a vendee could wait a significant amount of time before seeking the remedy in order to compound potential damages in the form of repayment. The rescission remedy should require a vendee to seek the remedy within a reasonable time after discovering the grounds for it, and before there is substantial compounding of potential additional damages.

Recommendation: The LIC Ordinance should be revised to include objective standards or criteria for determining whether an “act or practice” of the vendor in a land installment contract transaction is “unconscionable”, and also to establish a reasonable time requirement in seeking the rescission remedy.

¹⁴ Ohio Rev. Code § 1345.03.

Issue: The CPCC “Registered Inspector” requirement conflicts with Ohio Rev. Code Chapter 4764.

On December 12, 2018, the Ohio Legislature passed SB255 enacting Ohio Rev. Code Chapter 4764, which has an effective date of April 5, 2019 (the “Home Inspection Law”). Pursuant to the Home Inspection Law only a licensed home inspector can conduct a home inspection for compensation. The Home Inspection Law sets forth a list of requirements that an applicant for a home inspector license must meet prior to being certified.¹⁵ Although the effective date for the Home Inspection Law is April 5, 2019, the date by which all home inspectors must be licensed is November 1, 2019, at which time the Home Inspection Law will be enforced. Section 550.12 of the LIC Ordinance pertaining to the qualifications of an inspector does not comport with the Home Inspection Law which, pursuant to Ohio Rev. Code §4764.99, makes noncompliance a criminal act. Without amendment, this provision would have the City potentially liable for registering and causing unlicensed inspectors to inspect properties. Further, vendors and vendees could be relying upon home inspection reports issued by unlicensed inspectors, raising additional concerns of potential liability.

Recommendation: For the reasons discussed above, the City should revise Section 550.12 of the LIC Ordinance to require that all “Registered Inspectors” be in compliance with the Home Inspection Law in accordance with its date of enforcement.

Issue: The existence of several redundant or conflicting provisions and other apparent drafting errors suggests that the LIC Ordinance was not fully vetted and was rushed to adoption.

Below are several examples of redundant or conflicting and other apparent drafting errors that suggest that the LIC Ordinance was not adequately vetted prior to adoption. This is not an exhaustive list, but is provided as an illustration of the nature and scope of the problem.

Repetitive Definitions of Land Installment Contract. Section 550.01 of the LIC Ordinance defines the term “land installment contract” twice. The first definition, located at **Section 550.01(a)**, appears to be a verbatim copy of the definition contained in the Ohio LIC Code. The second one, located at **Section 550.01(j)**, is virtually identical, with the exception that it changes the phrase “real property located within the state” to “real property located within the City of Youngstown.”

Repetitive Recording Requirements. The LIC Ordinance also contains two provisions that require land installment contracts to be recorded. First, **Section 550.02(c)** states that within “twenty days after a land installment contract has been signed by both the vendor and the vendee, the vendor shall cause a copy of the contract to be recorded as provided in Section 5301.25 of the Ohio Revised Code and a copy of the contract to be delivered to the county auditor.”¹⁶ Next, **Section 550.13(b)** states: “Within twenty days of the execution of a land installment contract, the vendor shall record, as provided in the Ohio Revised Code 5301.25, the

¹⁵ Ohio Rev. Code Chapter 4764

¹⁶ LIC Ord. § 2(c).

land installment contract installment with the county recorder and deliver a copy to the county auditor.”¹⁷

Inconsistent Vendee Remedies Provisions. The LIC Ordinance contains two conflicting vendee’s remedies provisions. First, **Section 550.04**, titled “Vendee to Enforce Chapter Provisions,” gives vendees the right to enforce the requirements of the LIC Ordinance if a vendor fails to comply with the requirements of the LIC Ordinance or the Ohio LIC Code. Specifically, Section 550.04 authorizes a vendee to rescind the transaction, or recover its “actual economic damages plus an amount not to exceed five thousand dollars in noneconomic damages.” Moreover, if a court deems the vendor’s actions to be “unconscionable,” then the vendee can recover three times the amount of his/her actual damages (i.e., treble damages) or two hundred dollars, whichever is greater, plus an amount not to exceed five thousand dollars in noneconomic damages.¹⁸

By contrast, **Section 550.16**, title “Vendee’s Remedies for Non-Compliance,” simply provides that: “If a vendor fails to comply with this Chapter, the vendee may rescind the land installment contract and may recover his/her actual damages and attorney’s fees and cost.”¹⁹

The conflict between Sections 550.04 and 550.16 is plain to see – the former allows a vendee to collect up to \$5,000 in noneconomic damages and, if a vendor’s actions are deemed “unconscionable,” treble damages, while the latter does not. This raises the question: In the case of a vendor violation of the LIC Ordinance or the Ohio LIC Code, which provision controls with regard to the remedies available to the vendee, Section 550.04 or Section 550.16?

Potentially Significant Drafting Error. As passed by the City Council on February 6th and signed by the Mayor the next day, Section 550.04(a)(2) states: “Where the violation was an act or practice determined to be unconscionable by the court of this state, the vendee may rescind the transaction or recover three times the amount of the vendee’s actual economic damages or two hundred dollars, whichever is greater, plus an amount not to exceed five thousand dollars in noneconomic damages.”²⁰ On first glance, the \$200 figure appears to be extremely low (particularly in light of the treble damages clause), or perhaps erroneous. This notion is supported by a recent news article on the passage of the LIC Ordinance, which describes the vendee’s remedies provision as follows:

The addition included in the bill approved Wednesday: ... In cases where the violation is “determined to be Unconscionable by the court,” the buyer can rescind the transaction or recover three times the amount of the economic damages or \$200,000, whichever is greater.²¹

¹⁷ LIC Ord. § 13(b).

¹⁸ LIC Ord. § 4.

¹⁹ LIC Ord. § 16.

²⁰ LIC Ord. § 550.04(a)(2) (emphasis added).

²¹ “Youngstown council cracking down on predatory land contracts,” *The Vindicator* (February 7, 2019).

While it is conceivable that the \$200,000 figure quoted by the media is incorrect, logic suggests that a potential penalty up to \$200,000 for an “unconscionable” act by a vendor in violation of the LIC Ordinance or the Ohio LIC Code would be more appropriate than a mere \$200 fine.

Incomplete Provision. Section 550.11(g) of the LIC Ordinance, titled “Code Deficiencies Due to Vendee Conduct,” appears to be an incomplete provision. It states:

Code Deficiencies Due to Vendee Conduct – in those cases where the code deficiencies identified in the Certificate of Property Code Compliance Inspection are demonstrated, to the satisfaction of the Superintendent of Housing, Demolition and Code Enforcement inspection in his or her investigation of the matter, including providing information to assist in the identification of the vendee.²²

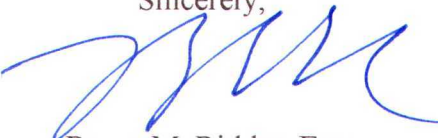
This is neither a complete sentence nor a complete provision. Although the heading suggests that Section 550.11(g) addresses the instances where code deficiencies identified during an inspection are attributable to vendee conduct, the sentence ends abruptly without ever actually addressing the topic.

The quantity and variety of redundant or conflicting provisions and other apparent drafting errors suggests that the LIC Ordinance was not carefully vetted for form or accuracy and was rushed to adoption. This suggests that the substance of the LIC Ordinance may not have been fully reviewed and carefully considered either.

Conclusion

The deficient, redundant and conflicting provisions, and the other apparent drafting errors discussed above, tend to show that the LIC Ordinance was rushed to adoption without being carefully and thoughtfully vetted. In light of these significant shortcomings, YCAR urges the City to consider suspending enforcement of or repealing the LIC Ordinance, and to reexamine issues related to land installment contracts in the city of Youngstown in order to develop a more appropriate response to those issues.

Sincerely,



Bryan M. Ridder, Esq.

cc: YCAR Board of Directors
City of Youngstown Law Director

BMR:ae

²² LIC Ord. § 550.11(g).