



INDIANA HOUSING ISSUES: THE MESS THE FORECLOSURE CRISIS LEFT BEHIND

JUDITH FOX, NOTRE DAME LAW SCHOOL



VACANT AND ABANDONED HOUSING

Increased nearly 50% in
Indiana from 2000-2010

Decreasing, but still
above 2005 levels

Table 3: MSAs with the Most Abandoned Foreclosures, January 2008 through March 2010

MSA	Vacant Properties		Total housing stock
	Charged off after foreclosure initiation (abandoned foreclosures)	Charged off without foreclosure initiation	
Detroit-Warren-Livonia, MI	1,500	1,957	1,561,961
Chicago-Naperville-Joliet, IL-IN-WI	499	361	2,797,890
Cleveland-Elyria-Mentor, OH	497	382	769,283
Indianapolis-Carmel, IN	396	303	606,834
Memphis, TN-AR-MS	232	287	438,545
Atlanta-Sandy Springs-Marietta, GA	206	137	1,659,052
Akron, OH	184	156	257,560
Columbus, OH	182	118	627,580
Miami-Fort Lauderdale-Pompano Beach, FL	180	64	1,427,458
St. Louis, MO-IL	175	317	1,022,950
Tampa-St. Petersburg-Clearwater, FL	164	64	896,181
Kansas City, MO-KS	155	197	726,356
Dayton, OH	139	106	323,097
Fort Wayne, IN	135	125	146,102
Jacksonville, FL	134	84	431,125
Youngstown-Warren-Boardman, OH-PA	133	79	225,395
Cape Coral-Fort Myers, FL	126	67	244,349
Cincinnati-Middletown, OH-KY-IN	121	96	722,182
Toledo, OH	117	72	241,293
Pittsburgh, PA	114	122	925,347

Source: GAO analysis of servicer, GSE, and USPS data; Global Insight.

BANK WALKAWAYS, ABANDONED FORECLOSURES

Indiana had a high number of bank walkaways: situations where the bank:

Started and abandoned the foreclosure

Never started the foreclosure

Foreclosed and “un-foreclosed”

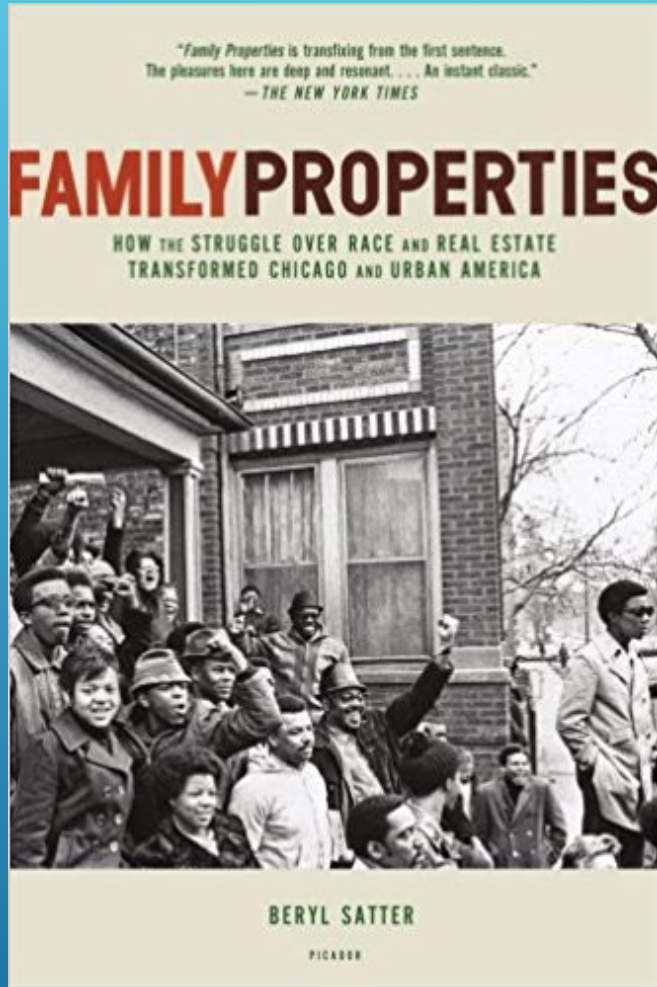
- ▶ 2010: HUD Pilot Program to sell non-performing loans
- ▶ 2012: HUD announced DASP (Distressed Asset Stabilization Program)
- ▶ 2014: Freddie Mac
- ▶ 2015: All three

DISTRESSED ASSET SALES



SOME OF THE BIG PLAYERS

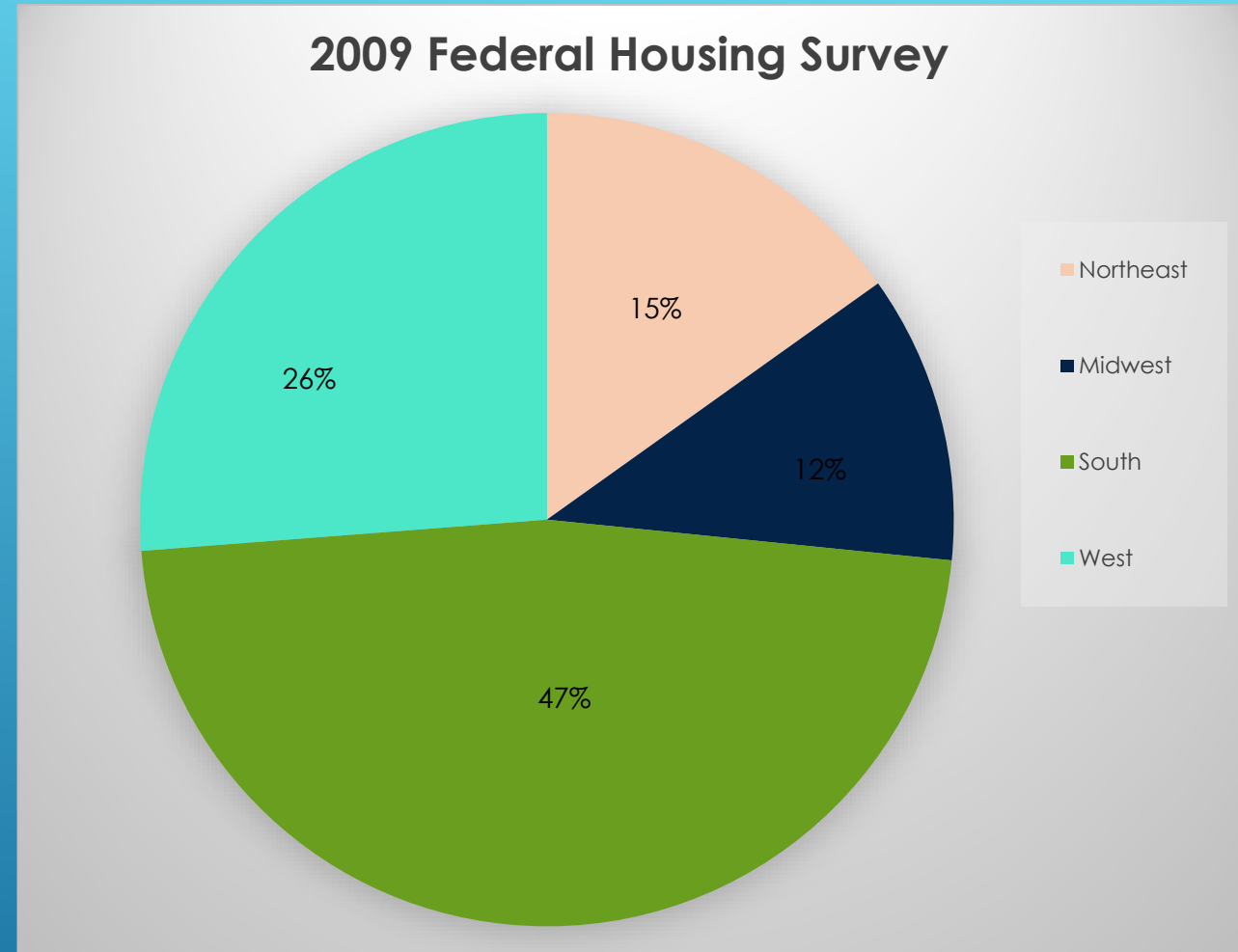
- ▶ Harbour Portfolio
- ▶ Venture Capital
- ▶ Kaja
- ▶ Equity Point
- ▶ Rainbow Realty



WHAT'S OLD IS NEW AGAIN: THE RESURGENCE OF CONTRACT BUYING

HISTORIC PATTERNS FOR LAND INSTALLMENT CONTRACTS

26% black or Hispanic
10% elderly



REAL PROPERTY POSSESSION AND LEASE AGREEMENT
Sweat Equity Program

THIS REAL PROPERTY POSSESSION AND LEASE AGREEMENT

referred to as the "Agreement") made as of the 22nd day
April 2016, by and between Joint Ops Properties, LLC (hereafter referred

Acct #45005731

AGREEMENT FOR DEED
(Land Contract)

CONTRACT SUBJECT TO ARBITRATION

THIS AGREEMENT FOR DEED is entered into on this 1st day of March, 2012
between Harbour Portfolio VII, LP hereafter known as the "Seller" and Donald Whittaker &
Athena Whittaker hereafter known as the "Purchaser".

LAND CONTRACT

This Land Contract is entered into on this day 1ST of JULY, 2015
(hereinafter known as the "VENDOR") and ANDRIANA L. SEDA (hereinafter known as the "PURCHASER")

CONTRACT FOR CONDITIONAL SALE OF REAL ESTATE

THIS CONTRACT, made and entered into by and between EQUITYPOINT MANAGEMENT, INC. AS
TRUSTEE, as Indiana Company, as Trustee (and not personally) under the provisions of a Trust Agreement dated July 11, 2012,

WHAT'S A LAND CONTRACT?

ENTER THE INVESTORS

“REAL ESTATE INVESTORS STARTED TAKING VERY LARGE “DOWN PAYMENTS” FROM RENTERS. INVESTORS WENT TO “BOOT CAMPS” AND SEMINARS, AND WERE TAUGHT THAT LARGE “DOWN PAYMENTS,” COUPLED WITH REGULAR TURNOVER OF TENANTS, EQUATED TO A SOURCE OF STEADY INCOME OF “OPTION MONEY,” MUCH LIKE MONTHLY RENT PAYMENTS THEMSELVES.”

- ▶ “EVICTION RATES DID NOT FALL. TO THE CONTRARY, **LANDLORDS WERE ENCOURAGED TO EVICT TENANTS AFTER COLLECTING THOSE LARGE OPTION FEES.** AND SO, TENANTS WHO WERE NOT QUALIFIED TO BE BUYERS PAID BIG BUCKS AND SIGNED “RENT TO OWN” CONTRACTS, ON THE PROMISE OF HOME OWNERSHIP IN THE FUTURE. LATER, THOSE TENANTS WERE EVICTED, AND NEW TENANTS TOOK THEIR PLACES, SIGNED NEW LEASE-OPTIONS, AND PAID MORE OPTIONS FEES. AND, LANDLORDS LAUGHED ALL THE WAY TO THE BANK.”

- ▶ *Lease-options & Land Contracts in Indiana: An essential Guidebook for Real Estate Investors and Landlords in Indiana, Griffith Law Group, 2014*

- ▶ Land contract is a sale: an equitable mortgage
- ▶ Breach requires a foreclosure
- ▶ Forfeiture and eviction only if:
 - ▶ Buyers has made minimal payments
 - ▶ Buyer abandons

SKENDZEL V. MARSHALL
301 N.E. 2d (IND. 1973)

- ▶ Failure to disclose conditions (no heat, mold, lead paint)
- ▶ Lack of adequate plumbing
- ▶ Claimed exemptions from statutes requiring habitability in tenancies
- ▶ Required buyer/tenants to make all the repair

SAFE AND HABITABLE

**“‘RENT-TO-BUY’ AGREEMENT IS NOT A
LAND-SALE CONTRACT BUT A RENTAL
AGREEMENT SUBJECT TO INDIANA’S
RESIDENTIAL LANDLORD-TENANT STATUTES”**

**Rainbow Realty Group, Inc. v. Carter, 131
N.E.3d 168 (Ind. 2019)**

- ▶ Failure to record the land contract
- ▶ Summary eviction even after substantial payments
- ▶ Burdens of ownership without the benefits
- ▶ Most do not result in ownership
- ▶ Prevents access to emergency disaster programs
- ▶ Denial of homestead exemptions

OTHER CONCERNS

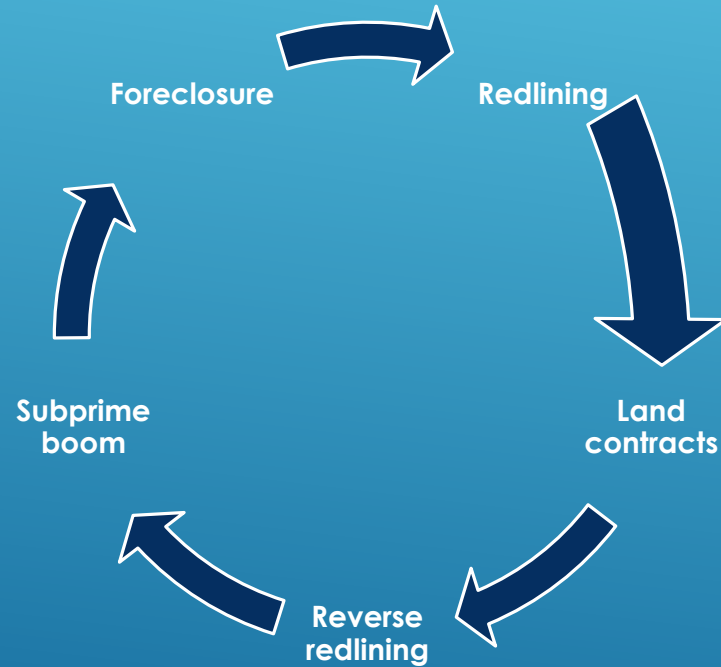
- ▶ Many states, especially in the Midwest, have updated or added protections for contract buyers
 - ▶ Ohio: requires recording, right to cure
 - ▶ Illinois: requires recording; certificate of habitability
 - ▶ Michigan (introduced, pending)
- ▶ Texas: strongest protections for contract buyers: automatically treated as mortgages

AN OVERVIEW OF OTHER STATE RESPONSES

- ▶ Truth in Lending
- ▶ Home Owner Equity Protection Act
- ▶ Equal Credit Opportunity Act
- ▶ Fair Housing Act
- ▶ S.A.F.E. Act

**FEDERAL LAW TREATS LAND
CONTRACTS LIKE MORTGAGES**

FAIR HOUSING ISSUES



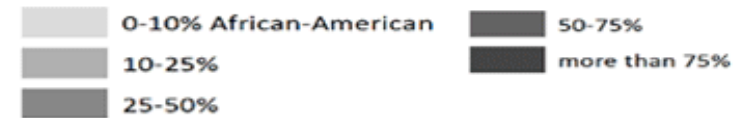
Map of Corporate Contracts for Deed in Metropolitan Atlanta and Percent of the Population That Is African-American



2013 Corporate-Owned Contract for Deed Properties

- Owned by known corporate seller of CFD
- Recently purchased from known corporate seller of CFD
- Interstate highways

Percent population that is African-American by census block group



RECENT FEDERAL CASES SOUTHERN DISTRICT OF INDIANA

FHCI v. Rainbow Realty Group

1:17-cv-01782

- ▶ Violation of several state and federal law, including Fair Housing
- ▶ Rent to own (lease for 2 years that converts to land contract)
- ▶ Pending

FHCI v. Marshall Welton et. al.

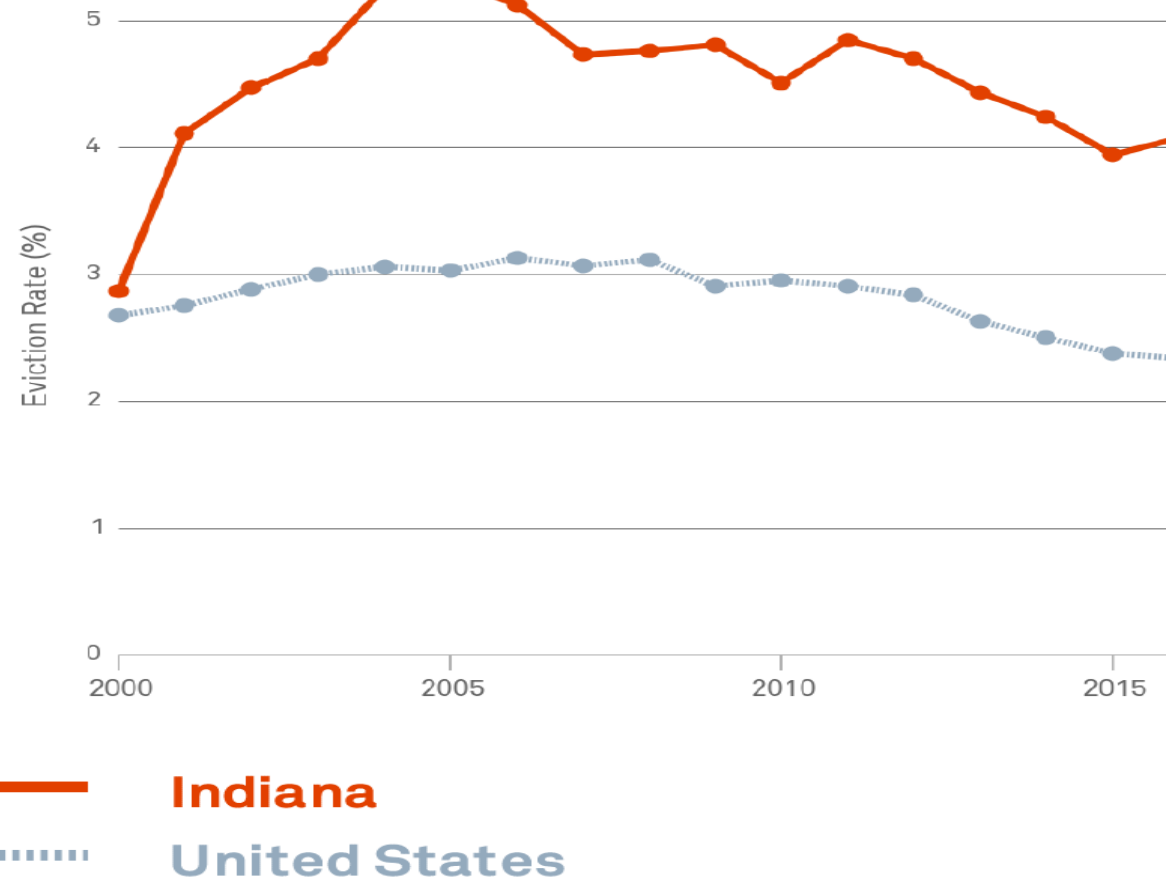
1:18-cv-01098

- ▶ Direct marketing to Hispanics
- ▶ Rent with rent to own/land contracts/rent with option
- ▶ Intentional discrimination
- ▶ Case settled with a consent decree
Nov 8: agreement to comply with federal law going forward and paying \$395,000 in damages

- ▶ Land Contracts present numerous challenges
 - ▶ Lack of habitability
 - ▶ Chain of title (lack of recording)
 - ▶ Inflated interest rates
 - ▶ Inflated prices
 - ▶ Common violation of Federal Statutes
 - ▶ Loss of Equity

SUMMARY

COMPARISON OF EVICTION RATES OVER TIME



EVICTION IN INDIANA
EVICTION LAB.ORG DATA

APPENDIX

SOME ADDITIONAL INFORMATION THAT MAY BE
USEFUL REGARDING COSTS OF HOUSING IN
INDIANA

Household Survival Budget, Indiana Average, 2016		
Household Survival Budget, Indiana Average, 2016		
	SINGLE ADULT	2 ADULTS, 1 INFANT, 1 PRESCHOOLER
Monthly Costs		
Housing	\$487	\$714
Child Care	\$-	\$832
Food	\$158	\$525
Transportation	\$348	\$695
Health Care	\$214	\$800
Technology*	\$55	\$75
Miscellaneous	\$149	\$400
Taxes	\$224	\$362
Monthly Total	\$1,635	\$4,403
ANNUAL TOTAL	\$19,620	\$52,836
Hourly Wage**	\$9.81	\$26.42

ALICE SURVIVAL BUDGET

THE REALITY OF THE NUMBERS



A Family of 4 with 2 parents making minimum wage:

Yearly income: 29,000

Monthly gross: \$2,400

Net assuming only taxes: \$1989

Median Rent: \$745

Rent Burden: 37%

Add in other expenses:

Food: \$611

Health care: \$ 587

Transportation: \$702

Misc. \$375

End of the month: **-\$481.00**