



AGENDA
AD HOC COMMITTEE ON RENTAL AND
LAND CONTRACT HOUSING CONDITIONS
Friday, October 28, 2016 @ 1:00 p.m.
Council Conference Room, 10th Floor

Councilmember Kathie Dunbar, Chair
Councilmember Judi Brown Clarke, Member
Councilmember Tina Houghton, Member
Councilmember Carol Wood, Member

1. Call to Order
2. Minutes:
 - March 24, 2016
3. Public Comment
4. Discussion
 - A. Land Contract Process and Registration Process
5. Other
6. Adjourn

[illegible]



UNDERSTANDING LAND CONTRACTS

A BUYER'S GUIDE

INFORMATION FOR BUYERS AND POTENTIAL BUYERS

Brought to you by
Ingham County Treasurer
Eric Schertzing

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The purpose of this guidebook is to provide information about the rights and responsibilities of buyers and potential buyers of land contract properties. It includes:

- Important definitions in understanding land contracts
- Buyer and seller rights and responsibilities

Signing a land contract is a serious commitment. It is important to understand the process.

For a checklist of what to do before and after buying a land contract or for additional resources, see pages 13 and 14.

LAND CONTRACTS: THE NUTS AND BOLTS

Land contract: Land contracts are a way of selling property where the seller finances the sale and acts as “the bank.” Instead of having a buyer get a loan from the bank, the buyer makes payments to the seller directly until he or she pays off the balance of the purchase price. In the meantime, the seller keeps legal title to the home. Another way of explaining a land contract is that it is an agreement to sell an interest in property where (a) the purchase price is paid in installments, and (b) the seller keeps the legal title until the buyer makes the final installment payment.

Vendee: The buyer. We will use the term “buyer” in this guidebook, but other documents may use the term “vendee” instead.

Vendor: The seller. We will use the term “seller” in this guidebook, but other documents may use the term “vendor” instead.

Deed: A written document by which a person(s) transfers an interest in land to another person(s). The two primary deeds are Quit Claim and Warranty. With a Quit Claim Deed, the seller transfers (and “quits”) whatever interest they have in the land to the buyer. With a Warranty Deed, the seller guarantees a good title to the property. To be fully effective, a deed must be recorded with the county Register of Deeds.

Title: Title is an ownership interest in the property. In a land contract, the seller keeps the legal title to the property until the buyer makes the final payment. Until making the final payment, the buyer has equitable title, which usually includes the right to use and occupy the land and transfer that interest, subject to the seller’s interest.

Foreclosure and forfeiture: These are two different types of processes in court where the land contract seller tries to take the property back from the buyer. A seller can only do this if the buyer defaults on the land contract. The differences between foreclosure and forfeiture are discussed in-depth later in this guide.

Memorandum of land contract: A document that explains a land contract exists between the parties, but it does not include the specific terms, such as where you should make payments or whether there are prepayment penalties. To keep the terms private, some people record a memorandum of land contract with the county Register of Deeds instead of the entire land contract.

Balloon payment: A payment made on a land contract or a loan that is higher than the ones before it. It is done at the end of the period. It pays what is left after the last installment payment.

WHY USE A LAND CONTRACT?

Buyers and sellers often have different reasons for wanting to buy property using a land contract. Land contracts can be useful tools for family members (or other people who know and trust each other) to sell homes to one another without needing the buyer to be approved for a loan.

There are pros to purchasing a home using a land contract, such as monthly payments that can be comparable to what you pay in rent. There are also cons to purchasing on land contract, such as title problems, high interest rates and repair issues. This section discusses why you should approach all land contracts with caution.

PROS TO USING A LAND CONTRACT

Become a homeowner

A land contract may provide a way for someone who can't, or doesn't want to, get a mortgage loan to purchase a home. Instead of the buyer getting a loan from a bank or credit union, the seller finances the sale.

Little (or no) down payment

A traditional mortgage loan can require as much as a 20 percent down payment, meaning a buyer needs to save up before purchasing a home. Land contracts often require little to no down payment. It is possible to qualify for a traditional mortgage loan with a small down payment.

Contact the resources on page 14 for more information on down payment assistance programs that can get you into a traditional mortgage loan.



**HOLD ON TO
YOUR HOME**
HOLDONTOYOURHOME.ORG

This website is designed to give you all of the information you need to deal with your personal situation.

Thanks to the vision and commitment of the City of Lansing and The Ingham County Treasurer's Office, this site and any resources referred to on this site are free.

CONS TO USING A LAND CONTRACT

Maintenance and “as is” properties

In a land contract, there is no calling a landlord to fix the roof! The maintenance of the property is the responsibility of the buyer. This can mean expensive repairs are your responsibility. Land contract purchases are “as is.”

This means that unless the seller agrees otherwise in writing, the buyer is generally on the hook for any problems with the property that are discovered later.

Some dishonest sellers may verbally promise to make repairs to convince a buyer to purchase a property, only to fail to follow through after the land contract is signed. Even in these situations it can be almost impossible for buyers to force the sellers to make these repairs.

If the repair problems are bad enough, local code enforcement can condemn the home and kick you out — even if the seller promised they'd handle it.

Property taxes

Unlike renting, where the property taxes are the responsibility of a landlord, the seller and buyer need to work out who pays for the property taxes.

The land contract should spell out how property taxes are supposed to be paid. The buyer is typically responsible for payment of property taxes after the closing. If the seller is responsible for paying the property taxes, but they don't make the payments on time, you could lose your home to property tax foreclosure — even if you made all your payments on time.

Foreclosure, forfeiture and title issues

If a seller doesn't have a clear title to the property, a buyer probably can't purchase it using a traditional mortgage. A land contract may be the only way a seller can unload a property. That's because when a bank or credit union gives a buyer a traditional mortgage to buy a home, they will only lend the money if they can be sure no one else is going to come along and claim an interest in the property like another bank that has a mortgage, another person who has a better deed to the property or a county that's about to foreclose for unpaid property taxes.

Under some land contracts, the seller is allowed to have a mortgage on the property. In other situations, the seller may be purchasing the property on a land contract and reselling it to you.

If the seller falls behind on his mortgage or land contract, he or she may lose the house to foreclosure or forfeiture. As with property tax foreclosure, you could lose your home to mortgage foreclosure even if you were paying on time.



CONS TO USING A LAND CONTRACT

Even if there is no mortgage when you buy the property, the land contract may allow the seller to remortgage the property even after he or she sells it to you.

This can happen without your knowledge, depending on the terms of the land contract.

Limited legal protections

Compared to extensive regulations a consumer can count on with a traditional mortgage loan, land contracts are not typically regulated, so does not provide that protection to buyers.

For example, a bank or credit union may be required to consider you for a loan modification if you have a financial setback, disclose how your interest rate works and provide you with regular monthly statements. Most land contracts are not covered by these governmental protections.

Hard to get financing in the future

Land contract payments generally don't help you build credit. When you build credit, it's because your creditors are telling the three major credit reporting companies about your line of credit and payment history. Banks, credit unions and credit card companies use the records from the credit reporting companies to determine whether to give you a loan or a credit card.

It costs money to report to the credit reporting companies, so land contract sellers almost never do so. Because your land contract seller will not have told the credit reporting companies about your

payments, you won't have a record of your payments with the major credit reporting agencies and you won't have built credit.

Potentially high interest rates

Land contract sellers often set interest rates much higher than traditional mortgage lenders. As a result, you may end up paying more over time than you would under a traditional mortgage loan. **Keep in mind the maximum legal interest rate for a land contract in Michigan is 11 percent.**

Vague terms

Traditional mortgages are often lengthy legal documents, but they tend to include the rights and responsibilities of both parties in all circumstances. Land contracts — especially those not written by lawyers — often fail to include important information such as who is responsible for property taxes.

Predatory sellers can use these vague or unclear terms to take advantage of buyers.

Balloon payments

Land contracts often require balloon payments. With most traditional mortgages, your monthly payment will be exactly what's needed to pay off the contract by the end of its term. With a balloon payment, your monthly payments will be smaller than needed to finish paying at the end of the term. You will have to make a large payment — the balloon — to pay off the contract and avoid a default.

CONS TO USING A LAND CONTRACT

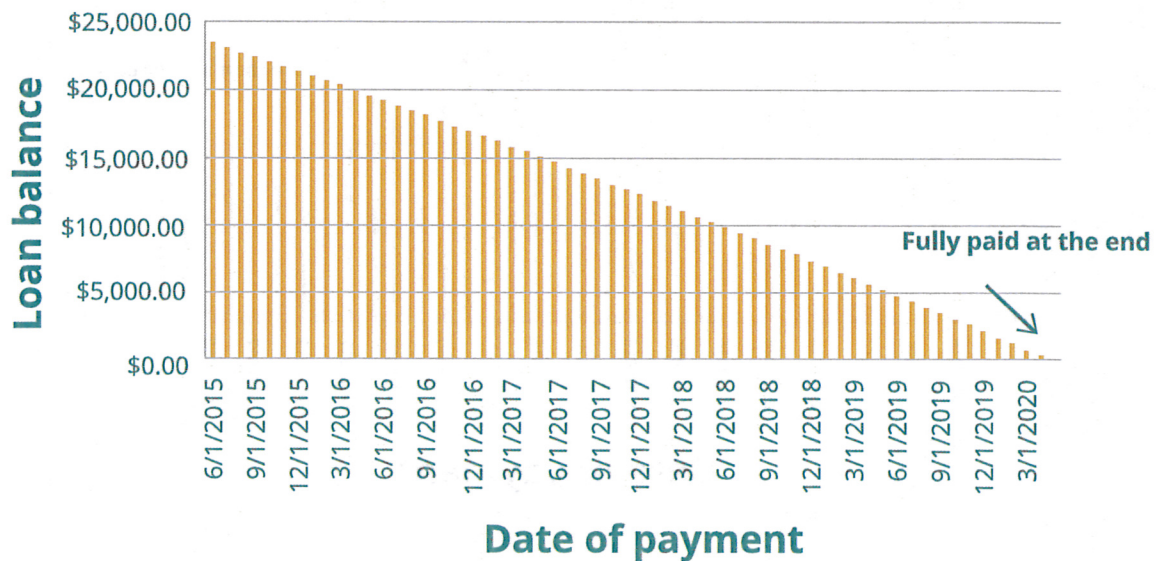
Sellers use a balloon payment to shorten the contract length and attract buyers with an apparently lower monthly payment.

Most buyers need to refinance the land contract to make a balloon payment. This can be difficult because you probably haven't been building credit with your monthly land contract payments, so a traditional lender may not give you a loan. If the buyer can't make a balloon payment, the seller can declare a default and pursue forfeiture or foreclosure.

Example of a land contract WITHOUT a balloon payment:

Buyer purchases a house on land contract for \$25,000 with a down payment of \$1,000, an interest rate of 5 percent, monthly payments of \$452.91 and a term of **five years**. At the end of five years, the buyer has completely paid off the land contract.

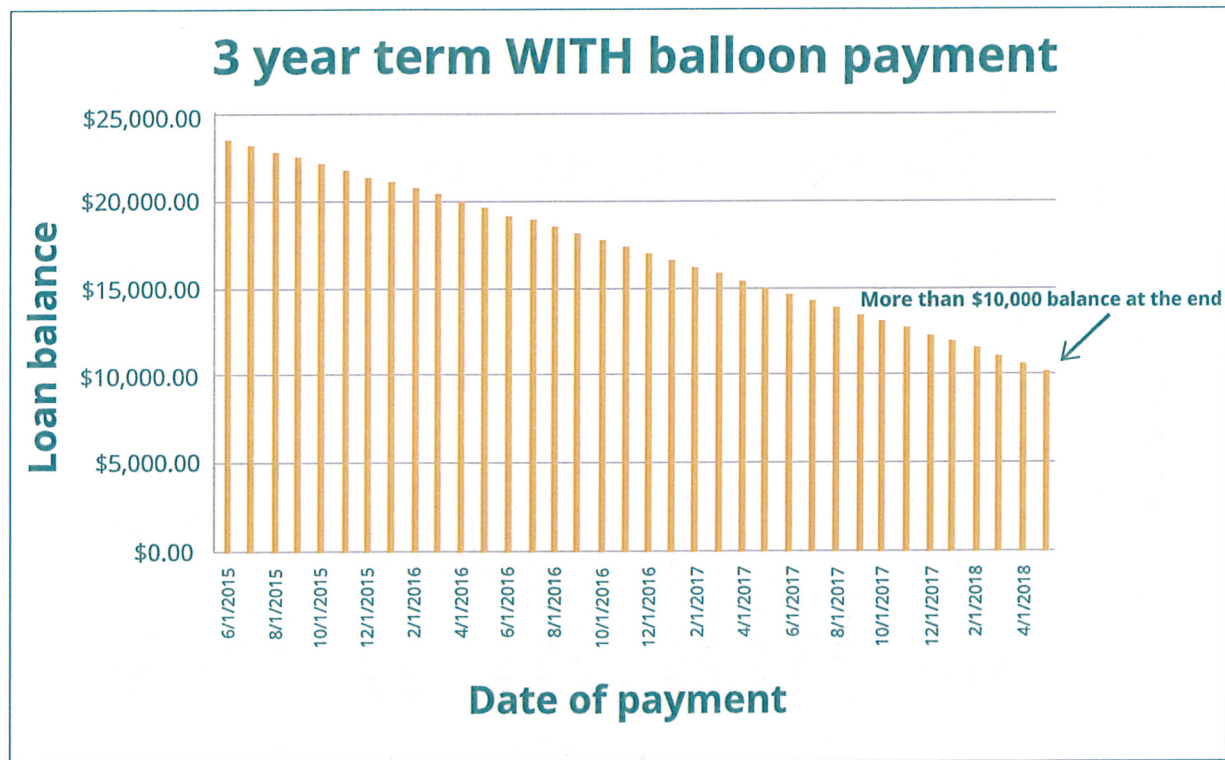
5 year term with NO balloon payment



CONS TO USING A LAND CONTRACT

Example of a land contract WITH a balloon payment:

Buyer purchases a house on land contract for \$25,000 with a down payment of \$1,000, an interest rate of 5 percent, monthly payments of \$452.91, and a term of **three** years. The buyer makes monthly payments of \$452.91 every month for three years. At the end of three years, the buyer still owes \$10,323.58 on the land contract. Unless the buyer can pay off the full amount or get a loan for the balance, the seller can file a foreclosure or forfeiture suit.



SIGNING THE BEST POSSIBLE LAND CONTRACT

What does a good land contract include?

A good land contract is all in the writing. It is in the interest of both parties that everyone has the same understanding of the purchase. A good land contract doesn't favor one party over the other and clearly states what the seller and buyer's rights and responsibilities are.

Unfortunately, many land contracts aren't good. You should always seek legal advice before you sign the contract.

For assistance, contact Legal Services of South Central Michigan at 888-783-8190.

While land contracts come in a variety of forms, there are certain things that should be included in all land contracts to make sure both parties are in agreement about their rights and responsibilities.

These items include:

- All payment terms including the sale price, down payment, remaining balance, amount of monthly installments, interest rate, number of years of the land contract and any balloon payment and its requirements.
- Requiring the seller to provide evidence to the buyer of a title insurance policy. This way all parties know what interest the seller has to give to the buyer.
- Requiring the seller to deliver a warranty deed to the buyer upon the buyer's performance of the terms of the land contract, and that the deed be signed at closing and held in escrow until the buyer makes the final payment.
- Requiring the buyer to maintain the property in good condition, with an allowance for reasonable wear and tear.
- A description of what changes a buyer can make to the property, such as building additions, tearing down a garage or shed or making other structural changes to the property.
- Whether either party can transfer their interest in the property.
- Whether the seller can place mortgages on the property.
- Who is responsible for paying recording fees and transfer taxes.
- Who is responsible for paying property taxes, special assessments and insurance.
- Who is responsible for recording the land contract with the Register of Deeds.
- What legal remedies the seller has if the buyer defaults.

WHAT ARE SOME RED FLAGS?

Land contracts are not a one-size-fits-all situation, but as a buyer, some items can be red flags or warning signs.

Here are a few examples:

- **There is a large balloon payment at the end.** If the land contract requires you to come up with a large sum of money at the end, think about where this money is going to come from. Will you be able to take out a loan? If so, maybe you should consider a traditional mortgage loan to purchase the house instead of a land contract.
- **The seller promises to make repairs, but does not put it in writing.** Once the land contract is signed, it can be difficult — both from a legal and practical perspective — to force the seller to make repairs.
- **The seller agrees to provide a Quit Claim Deed instead of a Warranty Deed.** A Warranty Deed provides a buyer more protection, because the seller is making a guarantee of its good title. A Quit Claim Deed does not guarantee the seller actually has the right to sell the property; it only means they have quit their claim to it, or will not try and assert the land is theirs.
- **No one is allowed to record the land contract or memorandum of land contract with the Register of Deeds.** The best and proper way to let everyone know you are buying the property is to record the land contract with the county Register of Deeds.
- **There are prepayment penalties.** Prepayment penalties occur when the buyer makes a payment larger than the planned installment payment. A provision that says there will be a penalty if the buyer pays more than the monthly payment, or pays off the contract before the term ends, almost never benefits a buyer.

To ensure there are no penalties, a good land contract should state, “the buyer may pay the monthly installment or more at the buyer’s option.” This language is clear enough to show the buyer has the option to make a larger payment without a penalty.
- **The seller has a mortgage on the property, or can take one out in the future.** If the seller falls behind on their mortgage payments, the house can be lost to foreclosure, even if the buyer is making their payments on time.
- **The contract says the seller can take out a mortgage on the property after the contract begins.** The buyer should avoid a provision that says this mortgage will have priority over the buyer’s interest. These provisions are known as subordination clauses.
- **The seller is responsible for taxes, assessments and insurance.** While the idea of these items being included in a monthly payment is appealing, if the seller fails to make a payment, the buyer can be left unprotected. By being in charge of these payments, the buyer knows everything is paid in full and on time.

WHAT IF SOMETHING GOES WRONG?

Land contracts, for any number of reasons, sometimes do not work out for the parties. Each party has a set of remedies. For example, either party can sue for breach of contract. Some remedies, however, are specific to buyers or sellers. **For a checklist on what to do before and after buying a land contract, see page 13.**

REMEDIES FOR A BUYER

Generally, upon a buyer's fulfillment of the land contract, the seller should give the buyer the required deed conveying the property free of liens created by the seller. A seller who fails to provide the required deed may be in breach of the contract.

If the seller is unwilling or unable to give the required deed, the buyer may have various options, including legal action for: 1) Specific performance of the land contract, including a court order directing the seller to give the required deed; 2) Quiet title; 3) Cancellation of the land contract, seeking the return of the money paid by the buyer in exchange for all of the buyer's rights in the property; 4) Money damages.

REMEDIES FOR A SELLER

Like a buyer, a seller can sue for breach of contract if the buyer breaks it. The seller may also foreclose on the buyer or have the buyer forfeit the property. The buyer can remain in the property until the end of all court processes. The differences between foreclosure and forfeiture are as follows:

Forfeiture

- Moves through the court process quickly.
- Buyer can keep the property by making any past due payments within 90 days of a court judgment.
- If buyer loses the property, they are not responsible for the remaining balance.
- Seller can only do this if the land contract specifically allows for forfeiture.

Foreclosure

- Moves through the court process slowly.
- Buyer may only keep the property by paying the entire balance owed (all past and future payments).
- If buyer loses the property, they may be responsible for the difference between what the property sells for at Sheriff's Sale and what they owe on the property.
- Seller can do this regardless of whether the land contract specifically discusses foreclosure.

WHAT TO DO WHEN CLOSING A LAND CONTRACT

When closing on a land contract, there's more to it than simply signing the contract and walking away. Here are some steps parties need to take when closing:

- If there is an underlying land contract or mortgage, have the seller provide written confirmation that it is current and the amount of the balance.
- Exchange Social Security or Tax ID numbers for income tax purposes.
- The buyer should fill out a Principal Residence Exemption Affidavit (if this is where you live). A Principal Residence Exemption Affidavit will ensure you pay the lowest possible property taxes.
- The buyer should fill out a Property Transfer Affidavit. After closing, deliver it to the local taxing unit (generally the city or township where the property is located). A Property Transfer Affidavit puts the local taxing unit on notice that you now have an interest in the property.

For a checklist on what to do before and after buying a land contract, see page 13.

WHAT ARE ALTERNATIVES TO LAND CONTRACTS?

A land contract isn't right for everyone. The two main alternatives are a traditional rental and a traditional mortgage.

TRADITIONAL RENTAL

Unlike a land contract, a traditional rental does not result in the ownership of the property at the end of the term. However, the payments are usually less expensive, and renters have some rights land contract buyers don't.

For example, a landlord is required to keep the rental property in good repair. With a land contract, those responsibilities fall to the buyer. Unexpected repairs, like a broken hot water heater, can eat up a budget for months. With a rental, the tenant does not need to budget for these repairs.

TRADITIONAL MORTGAGE

A traditional mortgage is a loan given by the bank so a buyer can buy the property. The loan is secured by the property, which means if the buyer does not make payments, the lender has a right to take the property.

In comparison to land contracts, traditional mortgages are way more regulated. They should have substantially lower interest rates than land contracts. There are a number of down payment assistance programs available, such as Michigan State Housing Development Authority's MI First Home.

For more information on traditional mortgages, contact the resources on page 14.

FINAL TIPS

Talk to a lawyer

A lawyer may spot something you did not notice or understand. This can save you time, frustration and money. **Contact Legal Services of South Central Michigan for more information.**

Have a professional home inspection

Paying a fee to a home inspector can save you significant money down the line. If there is a defect in the property, no matter how major or minor, once you sign the land contract, the seller generally does not have a responsibility to fix or pay for the defect. Unless the seller makes some warranty about the condition of the property, property sold on land contract is "as is."

An investment in the inspection could not only save money, but even lives in cases of structural damage. Also, if an inspection reveals problems you didn't know about, you can use it to negotiate a lower price.

Survey the land

Before signing, take the time to protect your investment by making sure you own what you have been paying for. A land survey can cost between \$200-\$800, depending on the size of the property, but may defend against third parties from making a claim later. Surveyors often find defects that may cause renegotiation of price.

FINAL TIPS

Don't rush

Things may arise or become clearer after a few hours of thinking on the land contract. Take the time to think about what you are signing, even if you believe you are completely sure it is what you want.

Be realistic about your finances

People may sometimes be overly optimistic about the time and money they can afford to put into a land contract. Do you have enough money for the installments down the road? Has either party considered the cost of taxes, repairs and other costs that arise from homeownership? What are your plans for the property after the contract is complete?

Read the contract

Read the contract several times. Be aware of what it says and what your responsibilities are. Failure to know or understand the contract's terms is rarely an excuse if there is legal action.

Use the resources throughout this guide to ensure you're making the best possible decision about a land contract.



LAND CONTRACT CHECKLIST

Before you buy, make sure the following list applies to your land contract:

- ☐ Hire title company to determine tax status and ensure owner has clear title.
- ☐ Confirm the total amount to be paid, including monthly payment, late fees, balloon payment and interest rate.
- ☐ Confirm it explains who is responsible for paying property taxes, hazard insurance and any information about an escrow arrangement.
- ☐ Have a licensed inspector do a complete inspection of any property you intend to purchase.
- ☐ Be aware of clauses limiting your legal rights to eviction proceedings, mortgaging the property or mandating disputes be settled via mediation.
- ☐ Have a lawyer review your land contract before you sign. Contact Legal Services of South Central Michigan at 888-783-8190.

After you buy:

- ☐ Record the entire land contract at the Register of Deeds.
- ☐ Ensure you receive a signed and notarized copy that is stamped as having been recorded.
- ☐ Confirm with your insurance agent that the property, and any personal property, is covered.
- ☐ If this is where you live, file a Principal Residence Exemption Affidavit with the local assessor.

Notes: _____

WHERE CAN I GO FOR HELP?

There is FREE help waiting for you. For more information, contact:

Eric Schertzing

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341 S. Jefferson St.
Mason, MI 48854
517-676-7220
eschertzing@ingham.org
<http://tr.ingham.org>

Center for Financial Health

3815 W. St. Joseph St., B200
Lansing, MI 48917
517-708-2550
www.centerforfinancialhealth.org

Legal Services of South Central Michigan

3490 Belle Chase Way, Suite 50
Lansing, MI 48911
888-783-8190
www.lsscm.org

Office of Financial Empowerment

124 W. Michigan Ave., Third Floor
Lansing, MI 48933
517-483-4550
www.lansingmi.gov/fec

Consumer Financial Protection Bureau

**At the federal level, CFPB accepts complaints
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Iowa City, IA 52244
855-411-CFPB (2372)
www.consumerfinance.gov/complaint

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