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CFPB Deems Contracts for Deed 'Credit' Subject to Regulation Z

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On August 13, 2024, the Consumer Financial Protection Bureau (CFPB) issued an advisory opinion stating that contracts for deed are "credit" under Regulation Z, and therefore subject to its myriad requirements. Unlike a traditional mortgage, a contract for deed is a home sale directly financed by the seller where the seller retains legal title of the home until the borrower completes the course of payments. The advisory opinion was accompanied by the release of a report on contracts for deed highlighting potential risks to consumers and finding the products "are disproportionally concentrated in low-income, Black, Hispanic, immigrant, and some religious communities."

According to the CFPB, in the typical contract for deed arrangement (also known by other names, including "land contracts" or "installment land contracts"), the buyer is responsible for paying taxes, insurance and maintaining the home. However, the contracts often are accompanied by forfeiture provisions, including immediate eviction for failing to make repairs on the home, missing a payment or not being able to pay a balloon payment at the end of the contract. In these instances, buyers can lose not only the home, but also any down payment or equity.

At a public hearing accompanying the report and advisory opinion release, CFPB Director Rohit Chopra stated that the contracts "come with inflated home prices, above average interest rates, and tricks to increase the odds of foreclosure so that the seller can keep all the payments, turn around, and do it all again to another family." In addition, the report accompanying the advisory opinion provided the history of contract for deed arrangements and how they can harm consumers.

Advisory opinion highlights

Contracts for deed are closed-end credit

The advisory opinion takes the position that contracts for deed fall under the broad definition of credit under the Truth in Lending Act (TILA) and Regulation Z. The CFPB further advised that contracts for deed are typically closed-end credit under TILA and Regulation Z.

Contracts for deed secured by a home are subject to mortgage rules

Because contracts for deed are typically secured by a consumer's real property or primary dwelling, the CFPB generally expects contracts for deed to be treated as "residential mortgage loans" under TILA and Regulation Z, meaning those requirements also will apply, including assessing the buyer's ability to repay the loan and restrictions on balloon payments.

The CFPB underscored that determining whether a contract for deed is also a residential mortgage loan may depend on how "security interest" is defined in state laws.

What's next

To accompany the advisory opinion, the CFPB issued a consumer advisory article informing consumers directly that contracts for deed are subject to Regulation Z and that they are entitled to certain protections as a result.

In issuing the advisory opinion, Chopra warned investors and sellers of the potential repercussions of "ignoring their obligations under the Truth in Lending Act," including significant sanctions, borrower lawsuits, and state enforcement action. The CFPB also encouraged consumers to report issues related to contracts for deed and said it will publish descriptions of complaints that the CFPB receives to keep the focus on risks to consumers.

The advisory opinion reflects the CFPB's broader push to bring nontraditional products within the definition of "credit" for purposes of consumer financial protection laws. Earlier this year, the CFPB issued interpretive rules clarifying that Regulation Z applies to other types of products and services, including earned wage access and buy now, pay later products. The CFPB also has initiated enforcement activity in connection with income share agreements in the education finance space and lease-to-own products.

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