

TMC 1765
Division of Housing
Mike Badik (Ext. 2602)

ORD. 531-07

**Creating a new Chapter 1765 in the Toledo Municipal Code titled
“Conditions for Conveyance of Property by Land Installment Contract”.**

SUMMARY & BACKGROUND:

The Toledo Housing Policy Task Force has recommended adoption of a new Toledo Municipal Code Chapter 1765, entitled, “Conditions for Conveyance of Property by Land Installment Contract” to bring residential properties being sold through land installment contracts up to a minimum standard. While understanding that land installment contracts are appropriate in some cases, the Task Force members nevertheless came to see the abuses associated with many land installment contracts, the inadequacy of existing local legislation to address these abuses and the need for a more proactive legislation. The new Chapter 1765 would add the needed legal teeth to assure that the health, safety and welfare of the vendees of land installment contracts and their households would be protected. Additionally, the legislation would ensure that property values and the visual appeal of the surrounding neighborhoods would be maintained.

This ordinance will require all land contracts to be recorded within twenty (20) days after execution by both parties. Additionally, the legislation will require the vendor/vendee to obtain an inspection by a Registered Inspector or a City of Toledo Building Inspector and receipt of a Certificate of Property Code Compliance or a Temporary Certificate of Property Code Compliance prior to conveying any interest through a land installment contract. Prospective purchasers will be notified of individual code violations and an estimated cost of repairs to bring said property into compliance with the Property Maintenance Code and/or a certification that the property meets the minimum standards. With the inspection report, the vendee purchasing residential property will now have some knowledge of the general condition of the residential property to be purchased. Furthermore, this legislation will allow for civil penalties to be levied on those who violate this Chapter and for appeals by vendors charged with a Notice of Liability. NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

SECTION 1. That new Chapter 1765, entitled “Conditions for Conveyance of Property by Land Installment Contract”, be enacted to read as follows:

1765.01. Definitions.

The following definitions shall apply to this Chapter:

- (a) "Certificate of Property Code Compliance" (CPCC) is a certificate issued by the Commissioner of Building Inspection upon proof that an inspection, pursuant to this Chapter, has been made of the residential property to be conveyed through land installment contract by a Registered Inspector and the property is in code compliance.
- (b) "Code Compliance" means any construction or installation, inclusive of electrical, plumbing, heating and structural, that is in a safe, sanitary and habitable condition and meets the Property Maintenance Code of the State of Ohio.

- (c) "Dwelling" means any enclosed space which is wholly or partly used or intended to be used for living, sleeping, cooking and eating by human occupants, except for mobile homes located in a designated mobile home park
- (d) "Dwelling Unit" means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking or eating.
- (e) "Land Installment Contract" means an executory agreement which by its terms is not required to be fully performed by one or more of the parties to the agreement within one year of the date of the agreement and under which the vendor agrees to convey title in real property located within the City of Toledo to the vendee and the vendee agrees to pay the purchase price in installment payments, while the vendor retains title to the property as security for the vendee's obligation.
- (f) "Owner" means any person who, alone or jointly or severally with others:
- (1) Has title of a residential property to be conveyed by land installment contract with or without accompanying actual possession except for mortgagees who have not acquired through a foreclosure action or are not in actual possession of the property; or
 - (2) Has charge, care or control of any residential property to be conveyed by land installment contract as owner or agent of the owner including, but not limited to trustee, guardian of the estate of the owner, or executor or administrator who with the approval of the probate court has assumed the responsibility of management. Any such person thus representing the actual owner shall be bound to comply with the provisions of this requirement, to the same extent as if he or she was the owner; or
 - (3) Any person defined as an owner in Section 1726.01.
- (g) "Person" means any individual, firm, corporation, association or partnership, or governmental agency.
- (h) "Registered Inspector" means City of Toledo Building Inspector or any private sector person certified or licensed through I.C.C. (International Code Council) or other similar certifying or licensing entity, deemed equivalent by the Commissioner of Building Inspection to conduct the type of inspection required by this regulation and is registered with the Commissioner of Building Inspection.
- (i) "Vendor" means any individual, partnership, corporation, association, trust, or any other group of individuals however organized making a sale of property by means of a land installment contract.
- (j) "Vendee" means the person who acquires an interest in property pursuant to a land installment contract, or any legal successor in interest to that person.
- (k) "Violation of Toledo Municipal Health/Housing Code" means the failure to comply with any order issued by the Director of Neighborhoods, the Director of Toledo Lucas County Health Department or the Commissioner of Building Inspection or any of their designated representatives.

1765.02. Certificate of Property Code Compliance Required.

Prior to conveying an interest in residential property within the City of Toledo by land installment contract, the vendor shall apply for and obtain a Certificate of Property Compliance (CPC), pursuant to this section.

1765.03. Application for Certificate of Property Code Compliance, Application for Temporary Certificate of Property Code Compliance, Issuance.

- (a) The vendor of the residential property to be conveyed through land installment contract shall apply to the Commissioner of Building Inspection for the Certificate of Property Code Compliance (CPCC). The application shall contain the name, business address and telephone number of the inspector who inspected the residence for the owner. The inspector must be registered with the Commissioner of Building Inspection as provided by this Chapter.

A Certificate of Property Code Compliance Inspection shall include an inspection of the electrical, heating, and plumbing systems and building structure (e.g., roof, gutters, siding, etc.) 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. Any Certificate of Property Code Compliance Inspection Report shall be on the form provided by the City of Toledo. Minimally, the Certificate of Property Code Compliance Inspection Report shall list individual violations and a rough estimate of the cost to cure each violation or deficiency, signed by a Registered Inspector. The Commissioner of Neighborhood Revitalization or the Commissioner of Building Inspection may, at his or her discretion, accept alternative inspection report forms. The Certificate of Property Code Compliance Inspection Report shall be completed and filed with the Commissioner of Neighborhood Revitalization or the Commissioner of Building Inspection within thirty (30) days of the date of application.

- (b) A Temporary Certificate of Property Code Compliance shall provide for a ninety (90) day period to complete the repairs for any code violation or deficiency identified in the Certificate of Property Code Compliance Inspection Report. The application for the Temporary Certificate of Property Code Compliance shall be on a form provided by the City of Toledo and identify the individual violations and a rough estimate of the cost to cure each violation or deficiency, and the responsible party to the land installment contract who is responsible to cure each violation or deficiency. Following review and acceptance by the Commissioner of Neighborhood Revitalization or Commissioner of Building Inspection, the Commissioner of Building Inspection will issue a Temporary Certificate of Property Code Compliance. The vendor will file another Certificate of Property Code Compliance Inspection Report with the Commissioner of Neighborhood Revitalization or the Commissioner of Building Inspection within ninety (90) days of the date of issuance of the Temporary Certificate of Property Code Compliance. The ninety (90) day period may be expanded by one additional 90-day period by the Commissioner of Building Inspection or the Commissioner of Neighborhood Revitalization with the filing of another application for a Temporary Certificate of Property Code Compliance.
- (c) The Certificate of Property Code Compliance shall be issued by the Commissioner of Building Inspection to the owner of the real estate interest for the subject real estate, notwithstanding the number of units in the real estate, but only upon (1) proof of Property Code Compliance Inspection, as provided herein (e.g. filing of inspection

report) for each unit, and either (2) proof of property code compliance or (3) proof of property code correction of any code deficiency identified in the inspection report.

- (d) The Certificate of Property Code Compliance shall expire three (3) years after the date of issuance. However, the Certificate of Property Code Compliance may be voided by the Commissioner of Building Inspection after an investigation and upon proof that the residential property has been fire damaged, vandalized, or housestripped, or becomes structurally unsound or uninhabitable or in some other way no longer meets the Property Maintenance Code of the State of Ohio.
- (e) Denial or voiding of the Certificate of Property Code Compliance may be appealed to the Board of Nuisance Abatement/Housing Appeals pursuant to provisions in T.M.C. Chapter 1726.
- (f) Accepted Certificate of Property Code Compliance Inspection Reports - in addition to the Certificate of Property Code Compliance Inspection Reports authorized by this section, any inspection conducted by a "Registered Inspector" as defined herein may be accepted as complying with this Section, pursuant to determination by the Commissioner of Neighborhood Revitalization, or the Commissioner of Building Inspection.
- (g) 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 Commissioner of Neighborhood Revitalization or the Commissioner of Building Inspection, to have been caused by a vendee, the vendor shall cooperate with the Commissioner of Neighborhood Revitalization or the Commissioner of Building Inspection in his or her investigation of the matter, including providing information to assist in the identification of the vendee.

1765.04. Registration of Inspector; Fees.

- (a) Any person certified by I.C.C. (International Code Council) and the Commissioner of Building Inspection to conduct the type of inspection required by the Certificate of Property Code Compliance Inspection shall register with the Commissioner of Building Inspection, on the form provided, for a fee of one hundred dollars (\$100.00) annually.
- (b) The Commissioner of Building Inspection shall determine minimum qualifications required for an inspector to be registered pursuant to this chapter. The Commissioner of Building Inspection is authorized to register any person, deemed qualified, to conduct the Certificate of Property Code Compliance Inspection.

1765.05. Recording of Land Installment Contracts.

- (a) Before the execution of a land installment contract, the vendor shall deliver to the vendee a copy of the current Certificate of Property Code Compliance Inspection Report and current Certificate of Property Code Compliance or Temporary Certificate of Property Code Compliance.
- (b) Within twenty days of the execution of a land installment contract, the vendor

shall record, as provided in R.C. 5301.25, the land installment contract installment with the county recorder and deliver a copy to the county auditor.

1765.06. Prohibition; Notice of Liability.

(a) No vendor shall convey any interest in a residential property through land installment contract unless a Certificate of Property Code Compliance or Temporary Certificate of Property Code Compliance has been issued, pursuant to this section.

(b) No vendor shall fail to deliver to the vendee a copy of the current Certificate of Property Code Compliance or Temporary Certificate of Property Code Compliance prior to the execution of the land installment contract.

(c) No vendor shall fail to record, as provided in R.C. 5301.25, the land installment with the county recorder and deliver a copy to the county auditor within twenty days of the execution of a land installment contract.

(d) In a conveyance of any interest of a residential property through land installment contract sale, no vendor shall knowingly require a vendee, as a condition of the sale, to sign a “quit claim” deed, deeding the property in question to the vendor in the event of a default by the vendee.

(e) No inspector registered pursuant to this Chapter to conduct a Certificate of Property Code Compliance Inspection shall fail or refuse to file an inspection report within the time required pursuant to an application for a Registered Inspector or pursuant to an order issued by the Commissioner of Building Inspection.

(f) In addition to any other penalty and/or notice of liability provided for in Chapter 963, Chapter 1393, Chapter 1725, Chapter 1726 or Chapter 1763, the Director of Neighborhoods or his/her designee may issue a Notice of Liability to the vendor of the residential property who conveys any interest in a residential property through land installment contract, found to be in violation of the Toledo Health and/or Housing Code and located in the City of Toledo without the dwelling unit(s) having been issued a Certificate of Property Code Compliance, Temporary Certificate of Property Code Compliance or fails to comply with Section 1765.02 through Section 1765.06 , pursuant to this section, if required.

Said notice shall describe the location and nature of the violation, the time and date it was observed and the fine assessed to the owner. No notice of liability may be issued to an owner more than once during any seventy-two (72) hour period for the same violation at the same premises.

(1) The Notice of Liability provided for by this section shall be served upon the owner by certified United States mail return receipt requested or by personal service. In the event of failure of certified mail service on the basis that the return receipt is endorsed “unclaimed” or “refused”, service shall be perfected by sending the notice to the address where certified mail was attempted by United States First Class postage.

(2) The following rebuttable presumption shall apply to violations of this section.

A. The owner of the premises whose name is listed in the records of the Lucas County Auditor is presumed, for purposes of this section, to be the owner of said premises.

(3) Any owner charged with a Notice of Liability may appeal said notice as provided by Section 1726.04. The failure to file an appeal shall constitute a waiver of the right to contest the Notice and shall constitute an admission of the Notice of Liability.

- (g) Any vendor of the residential property who conveys any interest in a residential property through land installment contract and is found to be in violation of the Toledo Health and/or Housing Code and located in the City of Toledo without the dwelling unit(s) having been issued a Certificate of Property Code Compliance, Temporary Certificate of Property Code Compliance or fails to comply with Section 1765.02 through Section 1765.06, pursuant to this section, shall be fined two hundred fifty dollars (\$250.00). A second violation within two years by an owner shall result in a fine of five hundred dollars (\$500.00). A third and any subsequent violation by an owner within two years shall result in a fine of one thousand dollars (\$1,000.00).
- (h) Any owner found liable of a violation of Section 963.25 shall be fined \$500.00.
- (i) Payment of any fine authorized under this code section may be enforced by means of a civil action or any other method provided for by the Ohio Revised Code or the Toledo Municipal Code.

1765.07. Systematic Inspections.

- (a) Nothing in this Chapter shall be construed as preventing the Department of Neighborhoods from conducting a program of systematic inspections of dwelling unit(s) as authorized by Toledo Municipal Code Section 1743.02. Any code deficiencies found during such systematic inspections shall be remedied in accordance with the provisions of this Chapter and all procedures contained in this Chapter, including the payment of fees, shall apply to such systematic inspections.
- (b) When a complaint or a systematic inspection is performed on a building with multiple dwelling units, the Commissioner of Neighborhood Revitalization or the Commissioner of Building Inspection shall use his or her discretion as to whether additional dwelling unit(s) in the building are to be inspected pursuant to this Regulation.

1765.08. Vendee's Remedies for Non-Compliance.

If a vendor fails to comply with Section 1765.02 through Section 1765.06, the vendee may rescind the land installment contract and may recover his/her actual damages and attorney's fees and costs.

1765.99. Penalty.

- (a) Whoever fails to comply with Section 1765.02 through Section 1765.06, pursuant to this section, shall be guilty of a misdemeanor third degree on the first offense, a misdemeanor of the second degree for a second subsequent offense or a misdemeanor of the first degree for a third subsequent offense.
- (b) All fines for citations and non-compliance fees issued in accordance with Chapter 1765, shall be deposited in the Nuisance Abatement Trust Fund 90/1610/T31306, which TMC fines and fees shall be used by the Division of Housing for purposes not inconsistent with this chapter, with the exception of court costs which will be deposited as required by law.

SECTION 2. That this Ordinance shall be in force and effect 180 days after its passage.

Passed: November 13, 2007: yeas 7, nays 5.

Attest:
Gerald E. Dendinger
Clerk of Council

Michael Ashford
President of Council

Approved:

November 20, 2007
Carleton S. Finkbeiner
Mayor