

## Memorandum

TO: Carl H. Lisman, Chair, Scope and Program Committee

FROM: Dale G. Higer, Chair, Study Committee on Installment Land Contracts

DATE: May 25th, 2017

SUBJECT: Report of Study Committee

During the Annual Meeting of the Scope and Program Committee, consideration was given to the recommendation from the JEB-Uniform Real Property Acts to appoint a study committee to evaluate the advisability of a possible uniform or model act on installment land contracts, the nature of the rights and responsibilities held by a purchaser and a seller under an installment land contract, and the remedies available to the seller following purchaser default. Installment land contracts are effectively a form of mortgage substitute. In economic substance, the installment land contract is functionally comparable to a purchase money mortgage in which the seller provides financing of the purchase price. Currently these contracts are used for substandard housing, so that warranty and other tenant protections may not apply. The JEB believes that a uniform or model law on the characterization and enforcement of installment land contracts would provide much needed clarity in an area of law and practice with great practical significance for homebuyers who cannot qualify for institutional mortgage financing. After discussion, the Committee on Scope and Program recommended that a study committee be appointed and approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of state legislation on installment land contracts.**

This resolution was approved by the Executive Committee and a study committee was appointed by President Rich Cassidy. The study committee added several interested parties as observers. A list of the committee members and observers is attached as Exhibit A. The committee believes the observers represent the various stakeholders who would have an interest in this project.

On its November 16, 2016 conference call the Committee decided that the scope of the committee project was as follows:

- a. Is there a problem and if so, how extensive is it?
- b. The scope should be limited to residential property.
- c. What remedies should be allowed under an installment land contract?
- d. Should there be disclosures in installment land contracts about conditions of the property?
- e. Should there be attorney fee provisions?
- f. Can an act addressing the issues covered be enacted in the states?

The Committee decided to appoint a Subcommittee to survey all fifty states as to the law of installment land sale contracts. The Subcommittee reported at the Committee's February 1 conference call that it had drafted a survey which was approved by the Committee. Each

commissioner member was assigned states to survey with instructions to have the surveys completed by April 30, 2017. A copy of the survey is attached as Exhibit B.

The Committee held a conference call on May 4, 2017 and discussed the survey results. The Committee received 40 survey responses covering 25 states. A summary of the results is attached as Exhibit C. Survey results show a perceived need to address this area of the law, but significant doubt as to whether a uniform or model act could be enacted in state legislatures.

A little over 82% of the states covered in the survey showed that there are statutory or common law remedies for a default by either the buyer or seller of a contract for deed. Disclosures of property or building conditions are required for the sale of residential properties in a little over 74% of the states and this requirement applies to contracts for deed in 61% of the states. A contract for deed buyer has a right of redemption upon foreclosure or forfeiture in 47% of the states.

In 45% of the states some evidence of the contract for deed is recorded and sometimes recorded in 48% of the states. The survey respondents found problems or abuses with contract for deed in 80% of the states and in only 22% of the states have the legislature or courts addressed the contract for deed issues. The respondents indicated that the law is functioning as intended in only 35% of the states. 68% of the respondents felt a uniform law was needed, but only 38% felt that a uniform act would pass in their state.

The discussion during the conference call indicated that to have the best chance of enactment, the scope of any act should be narrow and well-defined. Possible limitations:

- a. Sales of residential property only
- b. Only provide remedies for breach
- c. Only provide default remedies, which may be altered by contract
  - i. Should certain remedies be mandatory?
- d. Provide contract buyers with the same rights as a mortgagor under State law
  - i. Should there be a threshold of partial performance to trigger the Buyer's remedy?
  - ii. Does it matter that foreclosure procedures vary widely from state to state?

Other issues to decide whether to address in the scope of a uniform or model act?

- a. Warranties of habitability
- b. Clearing title after a forfeiture
- c. Whether the seller must provide a document in recordable form
- d. Rights of lienholders (particularly for involuntary liens)
- e. Sales of manufactured homes that do not qualify as real estate under state law
- f. Required disclosure of property defects
- g. Required disclosure of available remedies

The Committee addressed the foregoing issues on a conference call held on May 23, 2017. As a result of that call, the Committee recommends to Scope and Program that a drafting committee on installment land contracts be appointed with the following scope:

- a. The act would be limited to sales of residential property.
- b. The act would address remedies for breach of the contract, including, but not limited to, being able to foreclose the contract as a mortgage and whether any of those remedies could be altered by contract.
- c. Whether the act should provide contract buyers with the same rights as a mortgagor under state law and whether there should be a threshold of partial performance to trigger the buyer's remedies.
- d. What are the rights and duties of the contract sellers.
- e. What disclosures the seller should make concerning property defects.
- f. Whether the seller should provide a document in recordable form.
- g. Whether the seller should disclose available remedies to the buyer.
- h. Whether any forfeiture would provide a mechanism for clearing title.
- i. Whether the seller should warrant in the contract that the property is habitable.
- j. Whether the buyers right should be assignable or transferrable.



Installment Land Contracts Study Committee Roster					
Last Name	First Name	Member	Position	Affiliation	Company
Eagle	Steven	Steven J. Eagle	ABA Section Advisor	ABA, RPTE and State and Local Gov. Sections	George Mason University School of Law
Lucero	Orlando	Orlando Lucero	ABA Section Advisor	ABA, Real Property Trust and Estate	Fidelity National Title Group
Higer	Dale	Dale G. Higer	Chair	ULC	
Ramasastry	Anita	Anita Ramasastry	Chair Exec. Committee	ULC	University of Washington School of Law
Lisman	Carl	Carl H. Lisman	Chair, Scope & Program Committee	ULC	Lisman Leckerling, P.C.
Ward	Cam	Cam Ward	Division F Chair	ULC	State Senator
Karsai	Liza	Liza Karsai	Executive Director	ULC	
Baker	Mark	Mark Baker	Member	ULC	
Benfield	Marion	Marion W. Benfield	Member	ULC	University of Texas, School of Law
Benton	Levi	Levi J. Benton	Member	ULC	Levi Benton & Associates PLLC
Cawood	Stephen	Stephen C. Cawood	Member	ULC	Cawood & Johnson, PLLC
Edmonds	Thomas	Thomas A. Edmonds	Member	ULC	
Martineau	Reed	Reed L. Martineau	Member	ULC	
Sackett	Rosemary	Rosemary S. Sackett	Member	ULC	5401 Lake Shore Dr.
Searle	Duane	Duane M. Searle	Member	ULC	Legislative Reference Bureau
Snow	V. Lowry	V. Lowry Snow	Member	ULC	Snow Jensen and Reece
Walker	H. Clayton	H. Clayton Walker	Member	ULC	Walker & Reibold, LLC
Weidner	Donald	Donald J. Weidner	Member	ULC	Florida State University College of Law
Cox	Thomas	Thomas A. Cox	Observer		Maine Attorneys Saving Home
Durham	James	James G. Durham	Observer	ABA, Real Property, Trust and Estate Law	University of Dayton School of Law
Foote	Fred	Fred Foote	Observer		First National Bank of America
Forrester	Julie	Julie P. Forrester	Observer	American College of Mortgage Attorneys	Southern Methodist University
Guggenheim	Andrew	Andrew Guggenheim	Observer		American Bankers Association
Kahn	Walker	Walker N. Kahn	Observer		University of Wisconsin
Kaufman	Thomas	Thomas F. Kaufman	Observer	American College of Real Estate Lawyers	Montfort Fiduciary Advisors LLC
Ladd	Mark	Mark Ladd	Observer	Property Records Industry Association	Simplifile
Macnamara	Jack	Jack Macnamara	Observer		Loyola University Center for Urban Research and Learning
Mancini	Sarah	Sarah B. Mancini	Observer		Atlanta Legal Aid Society
Martindale	Suzanne	Suzanne Martindale	Observer		Consumers Union
Mencarow	W.J.	W.J. Mencarow	Observer		The Paper Source, Inc.
Merchant	John	John Merchant	Observer		
Randall	Chet	Chet Randall	Observer		Pine Tree Legal Assistance
Rizzo	James	James G. Rizzo	Observer		National Association of Home Builders
Ryan	Doug	Doug Ryan	Observer		Corporation for Enterprise Development
Taylor	Scott	Scott R. Taylor	Observer		Investors Financial Corporation
Wrucke	Kay	Kay Wrucke	Observer	National Association of County Recorders	
Cassidy	Richard	Richard T. Cassidy	President Ex Officio	ULC	Rich Cassidy Law
Orzeske	Benjamin	Benjamin Orzeske	Staff Liaison	ULC	ULC
Robinson	Katie	Katie Robinson	Style Liaison	ULC	ULC
Lebrun	Gene	Gene N. Lebrun	Vice Chair	ULC	Lynn, Jackson, Shultz & Lebrun



## CONTRACTS FOR DEED SURVEY

**This survey uses the term “contract for deed” to refer all types or forms of instruments by which the real estate buyer agrees to pay the real estate seller over time, and upon payment in full the seller delivers a deed to the buyer. These instruments are known by many different names including installment contracts, installment land contracts, real estate contracts, and land contracts. When responding to this survey, please identify the name for this instrument in your state.**

1. In what state do you live?
2. Are there any statutory or common law remedies for a default by either the buyer or seller of a contract for deed in your state?
  - a. What are the current remedies?
3. Are there any disclosures of property or building conditions required in the sale of residential properties in your state?
  - a. Are contracts for deeds covered by these required disclosures?
  - b. What are those required conditions and how are the requirements enforced?
4. How does the law in your state characterize the seller’s interest and the buyer’s interest in the real property in a contract for deed transaction?
  - a. How does that affect the remedies available to the seller upon the buyer’s default?
5. Does a contract for deed buyer have any right of redemption upon a foreclosure or forfeiture of a contract for deed in your state?
  - a. If so, what are the redemption or forfeiture rights?
6. May contracts for deeds be used for any real property (i.e., residential, commercial, vacant, farm and ranch) in your state?
  - a. Explain any exceptions.
7. Are contracts for deed, or some evidence of the contract for deed, recorded in the land records of your state?
  - a. If not the full contract for deed, what evidence of it can be recorded?

- b. If contracts for deed or some evidence of the contract for deed are not recorded, what is the legal effect with respect to third parties?
8. Have there been any particular problems or abuses with seller remedies with respect to contracts for deeds in your state?
- a. Please identify the problems, if any.
9. Do you believe that either the legislature or the courts have appropriately addressed contract for deed issues in your state?
- a. What issues have been addressed and are they successful?

**The following questions refer to “uniform” and “model” acts – two types of legislation produced by the Uniform Law Commission. An act is designated as “uniform” if there is an expectation that it will be adopted by a large percentage of the states and uniformity of law is a principal objective. An act is designated as “model” if uniformity is desirable, but not essential, and states could benefit from enacting the legislation either in whole or in part.**

10. Do you believe that there is a need for a uniform or model law regarding of contracts for deed in your state?
- a. Would you suggest a uniform act or a model act?
11. Do you think that either a uniform or model law on contract for deed could pass in your state?
- a. Please explain your position.
12. What entities or organizations would support a uniform or model law in your state?
- a. Please identify each.
13. What entities or organization would oppose a uniform or model law in your state?
- a. Please identify each.
14. May we contact you with follow up questions?

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_



# Contracts for Deed Survey

## Q1 In what state do you live?

Answered: 40 Skipped: 0

Answer Choices	Responses
Name:	0.00% 0
Company:	0.00% 0
Address:	0.00% 0
Address 2:	0.00% 0
City/Town:	0.00% 0
State:	100.00% 40
ZIP:	0.00% 0
Country:	0.00% 0
Email Address:	0.00% 0
Phone Number:	0.00% 0

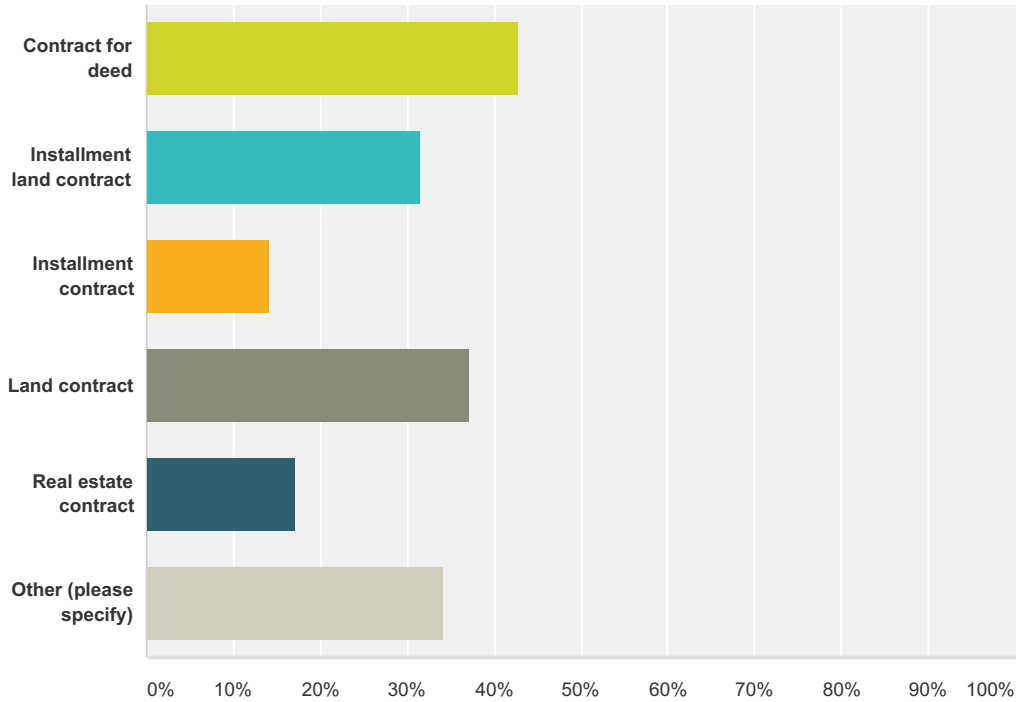
#	Name:	Date
	There are no responses.	
#	Company:	Date
	There are no responses.	
#	Address:	Date
	There are no responses.	
#	Address 2:	Date
	There are no responses.	
#	City/Town:	Date
	There are no responses.	
#	State:	Date
1	MT	5/1/2017 9:03 AM
2	WY	5/1/2017 7:25 AM
3	WV	5/1/2017 7:18 AM
4	VA	5/1/2017 7:08 AM
5	OH	5/1/2017 6:46 AM
6	WA	5/1/2017 6:38 AM
7	RI	5/1/2017 6:26 AM
8	DE	4/24/2017 7:03 AM
9	NY	4/21/2017 9:57 PM
10	NJ	4/19/2017 4:29 AM
11	NM	4/12/2017 12:24 PM
12	IA	4/12/2017 8:13 AM
13	OR	4/12/2017 2:30 AM

## Contracts for Deed Survey

14	AR	4/4/2017 8:53 AM
15	PA	4/4/2017 7:29 AM
16	NM	4/4/2017 5:01 AM
17	ME	4/4/2017 4:56 AM
18	AR	4/4/2017 12:26 AM
19	MN	3/31/2017 2:12 AM
20	TN	3/30/2017 11:02 PM
21	TN	3/28/2017 7:03 AM
22	MI	3/28/2017 1:49 AM
23	PA	3/23/2017 6:07 AM
24	GA	3/22/2017 6:19 AM
25	PA	3/22/2017 5:38 AM
26	MI	3/22/2017 4:33 AM
27	IN	3/22/2017 3:49 AM
28	AL	3/20/2017 4:42 AM
29	WI	3/13/2017 10:39 AM
30	CT	3/3/2017 12:54 AM
31	FL	3/2/2017 2:55 AM
32	CT	3/1/2017 8:06 AM
33	ME	3/1/2017 8:02 AM
34	OH	2/20/2017 4:31 AM
35	ND	2/15/2017 8:13 AM
36	WA	2/13/2017 10:14 AM
37	NE	2/13/2017 7:47 AM
38	LA	2/9/2017 9:15 AM
39	ID	2/9/2017 8:07 AM
40	SD	2/8/2017 8:32 AM
<b>#</b>	<b>ZIP:</b>	<b>Date</b>
	There are no responses.	
<b>#</b>	<b>Country:</b>	<b>Date</b>
	There are no responses.	
<b>#</b>	<b>Email Address:</b>	<b>Date</b>
	There are no responses.	
<b>#</b>	<b>Phone Number:</b>	<b>Date</b>
	There are no responses.	

## Q2 What terms are commonly used in your state to describe the instrument used for an installment sale of real property?

Answered: 35 Skipped: 5



Answer Choices	Responses
Contract for deed	42.86% 15
Installment land contract	31.43% 11
Installment contract	14.29% 5
Land contract	37.14% 13
Real estate contract	17.14% 6
Other (please specify)	34.29% 12
<b>Total Respondents: 35</b>	

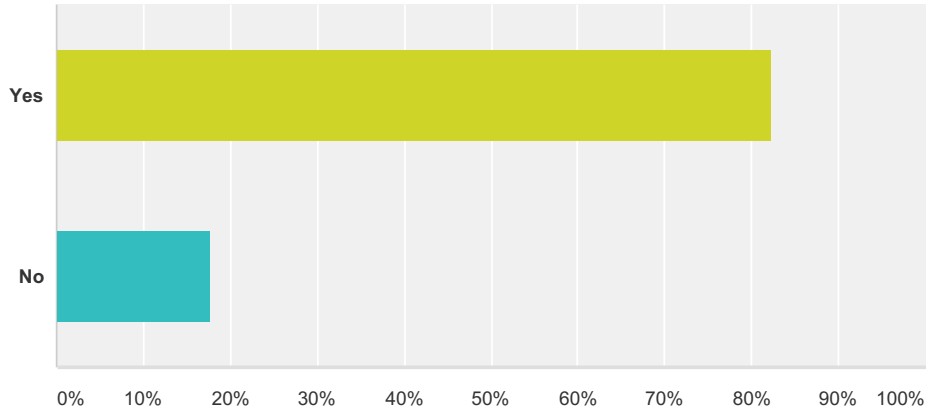
#	Other (please specify)	Date
1	Sometimes abbreviated as "REK"	5/1/2017 6:38 AM
2	no consistent term; 19th century law would make them mortgages	4/19/2017 4:29 AM
3	all of above	4/12/2017 8:13 AM
4	Land Sale Contract	4/12/2017 2:30 AM
5	Rent-to-own	4/4/2017 7:29 AM
6	Lease Purchase / Lease to Own	3/30/2017 11:02 PM
7	Lease-to-own	3/28/2017 7:03 AM

## Contracts for Deed Survey

8	Rent to Own	3/23/2017 6:07 AM
9	Rent to Own (by laypersons)	3/22/2017 5:38 AM
10	Lease with option to purchase (but the terms make it clear that it is a purchase)	3/22/2017 3:49 AM
11	Often called a "Bond for Deed" although functionally it is really a contract for deed and the word bond is just an old term simply carried forward	3/3/2017 12:54 AM
12	Bond for Deed	2/9/2017 9:15 AM

**Q3 Are there any statutory or common law remedies for a default by either the buyer or seller of a contract for deed in your state?**

Answered: 34 Skipped: 6



Answer Choices	Responses
Yes	82.35% 28
No	17.65% 6
<b>Total</b>	<b>34</b>

#	What are the current remedies?	Date
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## Contracts for Deed Survey

1	<p>Montana. In Montana, real estate transactions are commonly handled as a Buy – Sell Agreement on one of the forms provided by the Montana Association of Realtors. A still-available option, although archaic in nature, is a Contract for Deed, which is called just that. The vehicle is not standardized, but typically consists of following three documents: A. Contract for Deed itself; B. A Notice of Buyer's Interest, which is the only document which is recorded, and which provides constructive notice of future purchasers and encumbrancers; and C. A Warranty Deed. In Montana, a Contract for Deed is essentially a conditional sale (i.e., an installment sales contract) in which the seller retains title until the purchase price has been paid in full. Unlike the forms offered by the Montana Association of Realtors, the terms of a Montana Contract for Deed are not standardized. They vary substantially. A typical provision (not always present) includes a contractual right to terminate the contract and thereby cause forfeiture of the buyer's previously paid installments. Such a provision invokes two statutes: a. Montana Code Annotated (M.C.A.) Section 28-1-104 allows a party to a contract to be relieved of a forfeiture "upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty." and b. M.C.A. Section 28-2-721, the liquidated damages statute, allows liquidated damages if "(i) the parties agree on an amount in advance; and (ii) it would be impracticable or extremely difficult to fix the actual damages." However, in the Montana Supreme Court decision in <i>Arrowhead School District v. Kylap</i>, 318 Mont. 103, 123 (2003), the Court established a new test for liquid damages which is unconscionability. In <i>Arrowhead</i>, a small rural school district hired a teacher to both teach academic classes and to coach various sports. His salary was \$2,500.00, and the contract with the School District provided that if the teacher breached the contract after a specified date in July, he would be required to pay twenty percent of his salary as damages. The District consisted of only one school, and teacher Kylap was employed to teach math, language arts, and physical education for sixth, seventh, and eighth grade. He was also to start a sports program and coach flag football, basketball and volleyball. Three weeks before school was to start, Kylap advised the district that he would not be appearing for work. He had obtained a job with another district which paid a somewhat greater salary. Because of the last minute change, the district was unable to obtain an equally qualified teacher. It had to hire a less experienced teacher who had missed all of the staff development training, and who was unable to provide all of the coaching activities which Kylap was scheduled to handle. The question before the Supreme Court was whether the liquidated damages clause requiring a forfeiture of twenty percent of Kylap's salary was valid. Because previous Montana cases on liquidated damages were inconsistent, the court adopted a new test for determining the validity of a liquidated damages provision in a contract. The rule adopted in <i>Arrowhead</i> is well summarized in a subsequent opinion of the court in <i>Highway Specialties, Inc. v. State Department of Transportation</i>, 351 Mont. 527 (2009). In this latter opinion, the court noted that under the new test, the question of whether a stipulated damages provision is enforceable or an unenforceable penalty is a question of law for determination by the court. The court then synthesized a new rule as follows: "After <i>Arrowhead</i>, liquidated damages are presumed enforceable and will be enforced unless the party opposing the provision has established that it is unconscionable 'as indicated by the nature of the bargaining process between the parties.' Unconscionability is a two-step inquiry: (1) whether the provision fits a doctrine of a contract of adhesion such that the weaker bargaining party had no meaningful choice regarding its acceptance; and (2) whether the contractual provisions are unreasonably favorable to the drafter, usually the party with superior bargaining power. . . Under the second step, courts will inquire into whether the provision 'is within the reasonable expectations of the weaker party or is unduly oppressive to the weaker party.'" (Emphasis added) Although it seems likely that the Supreme Court will apply the new unconscionability test to future Contract for Deed cases, that result is not absolutely clear, because in the <i>Arrowhead</i> case itself, the court stated: "We also note in making this holding that it is not intended to address forfeiture under Section 28-1-104, M.C.A. [the anti-forfeiture statute] because the issue, particularly as presented in contracts for deed, is not properly before us." (Emphasis added) Because the Montana Contract for Deed is not standardized, the remedies available vary from case to case, but often include: (i) The right to sue for damages; (ii) Specific performance, or (iii) Termination of the Contract with an accompanying forfeiture by the buyer of the buyer's previous payments. The liquidated damages issue is obviously the most litigated one, and is the one governed by <i>Arrowhead</i>. One other factor makes predictability of enforceability of particular remedies more difficult to forecast. It appears that the Montana Supreme Court's opinions over a period of time (prior to <i>Arrowhead</i> with respect to the seller's right to elect termination and forfeiture under a defaulted Contract for Deed. During the 1980s, capital from third-party lenders was in short supply in Montana. During that period of time, the Court appeared to be endeavoring to preserve the efficacy of a Contract for Deed as a financing device, in order to avoid the negative economic effect of other capital sources which were "drying up" at the time.</p>	5/1/2017 5:06 PM
2	<p>Contracts for Deed are recognized and can be enforceable through a claim for specific performance if they are drawn correctly as a true contract for deed. Wyoming courts look to the actual plain language of the contract to determine whether it is, in fact, a contract for deed. Wyoming courts also tend to strictly apply the common law rule that forfeitures of contract rights are not favored and will not be presumed and use that rule to strictly read and enforce contract for deed terms. See, e.g., <i>Reynolds v. Milatzo</i>, 2007 WY 104, 161 P.3d 509 (Wyo. 2007). Usually ends up being damages but specific performance is possible if the default provision of the contract are followed carefully by the seller. See <i>Reynolds v. Milatzo</i>, 2007 WY 104, 161 P.3d 509 (Wyo. 2007).</p>	5/1/2017 3:27 PM

## Contracts for Deed Survey

3	Residential (improved by a dwelling) – by statute – 1) if the land contract has been in effect for five years or more, or 20% or more of the contract amount has been paid (the “threshold requirement”), the vendor must foreclose in the same manner as a mortgage; or 2) if the land contract does not meet the threshold requirement, the vendor is entitled to forfeiture and damages. Non-residential – common law – and the Ohio courts (including the Ohio Supreme Court) were moving away from allowing forfeiture on equitable grounds until the residential statute was passed. As a result of the legislative recognition of forfeiture for residential land contracts, it appears to me that courts are more likely to grant forfeiture for non-residential land contracts.	5/1/2017 2:47 PM
4	There is a statutory procedure for forfeiture. In addition, there is a process by which the property may be sold at a public sale. Finally, the REK may be foreclosed as a mortgage.	5/1/2017 2:38 PM
5	There are no common law remedies specific to contracts for deed. Rather, the common law remedies for breach of contract would apply. The only statutory remedy is in Title 5, Chapter 80 of the R.I. Gen. Laws dealing with foreclosure purchasers who agree to re-convey the property to the mortgagor. The statute mandates certain terms for such agreements, including disclosures.	5/1/2017 2:30 PM
6	If seller defaults, buy can file an action at law for breach of contract to recover money damages or an action in equity for specific performance. If buyer defaults, the remedies for such default would normally be contained in the installment land contract and could include forfeiture by the buyer of amounts paid to the seller prior to the date of default.	4/24/2017 3:06 PM
7	Old case law would make them mortgages with mortgagor's right as to equity. I have no confidence that that law would be known and applied. They are not common, but I would bet that they exist. I saw an add for one about 20 years ago and have seen references to them within the last few years.	4/19/2017 12:33 PM
8	Forfeiture of the property	4/12/2017 10:32 AM
9	There are no statutory remedies. There is a statute that governs these types of contracts but it has limited application. However, sellers will try to utilize the eviction process to evict buyers, which is inappropriate. Case law establishes that these agreements should be treated as mortgages and buyers should be protected, at least in part, by the foreclosure process: The Superior Court has held that a land installment contract “should not be denied treatment as a ‘residential mortgage’ solely because the vendor retains legal title as security for payment of the contract price . . .” Anderson Contracting Co. v. Daugherty, 417 A.2d 1227, 1232 (Pa. Super. 1979). The rights and remedies provided for in Act 6, specifically the right to cure a default, extend to purchasers under land installment contracts.	4/4/2017 3:33 PM
10	Requires foreclosure.	4/4/2017 12:56 PM
11	Not sure what this question is asking. We are a strictly common law state—there are no statutes regarding contracts for deed. If a seller defaulted the buyer could sue for breach. If a buyer defaults, the seller is entitled to the property and all past payments made, but if the buyer has quite a bit of equity, it's not uncommon for a court to order a foreclosure. However, there is no guarantee this will happen.	4/4/2017 8:30 AM
12	mn stat 559.21 date of service of the notice. § Subd. 1c. For contract executed before 5/1/1980. If a default occurs in the conditions of a contract for the conveyance of real estate or an interest in real estate executed after August 1, 1976, and prior to May 1, 1980, that gives the seller a right to terminate it, the seller may terminate the contract by serving upon the purchaser or the purchaser's personal representatives or assigns, within or outside the state, a notice specifying the conditions in which default has been made. The notice must state that the contract will terminate 30 days after the service of the notice if the purchaser has paid less than 30 percent of the purchase price, 45 days after service of the notice if the purchaser has paid 30 percent or more of the purchase price but less than 50 percent, or 60 days after service of the notice if the purchaser has paid 50 percent or more of the purchase price; unless prior to the termination date the purchaser: (1) complies with the conditions in default; (2) pays the costs of service of the notice, including the reasonable costs of service by sheriff, public officer, or private process server; except payment of costs of service is not required unless the seller notifies the purchaser of the actual costs of service by certified mail to the purchaser's last known address at least ten days prior to the date of termination; and (3) pays an amount to apply on attorneys' fees actually expended or incurred, of \$75 if the amount in default is less than \$750, and of \$200 if the amount in default is \$750 or more; except no amount is required to be paid for attorneys' fees unless some part of the conditions of default has existed for at least 45 days prior to the date of service of the notice.	3/31/2017 10:15 AM

## Contracts for Deed Survey

13	<p>"Every gift, grant, conveyance of lands, tenements, hereditaments, goods, or chattels, or of any rent, common or profit out of the same, by writing or otherwise; and every bond, suit, judgment, or execution, had or made and contrived, of malice, fraud, covin, collusion, or guile, to the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures; or to defraud or to deceive those who shall purchase the same lands, tenements, or hereditaments, or any rent, profit, or commodity out of them, shall be deemed and taken, only as against the person, such person's heirs, successors, executors, administrators, and assigns, whose debts, suits, demands, estates, or interest, by such guileful and covinous practices, shall or might be in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void; any pretense, color, feigned consideration, expressing of use, of any other matter or thing, to the contrary notwithstanding." (T.C.A. §66-3-101). "If the owner knowingly misrepresents information required to be disclosed by this section, the lessee's remedies, at the option of the lessee, for such misrepresentation on the disclosure statement shall be either: (1) An action for actual damages suffered as a result of known defects existing in the property as of the date of execution of the lease. Any action brought under this subdivision (b)(1) shall be commenced within one (1) year from the date the lessee received the disclosure statement or the date of occupancy, whichever occurs first; or (2) Termination of the lease." (T.C.A. §66-7-108)</p>	3/28/2017 3:03 PM
14	<p>Specific performance, forfeiture or foreclosure are all remedies available to the seller. Buyers get a minimum of 15 days to cure default before seller can enforce remedies. This grace period may be extended as a term of the contract.</p>	3/28/2017 9:51 AM
15	<p>When a buyer defaults, subject to the terms of the contract, the seller has four legal remedies. Two of the four remedies include the same first step – rescinding the contract. The four possible remedies are: (1) sue on the contract; (2) foreclose; (3) rescind the contract and bring ejectment; (4) rescind the contract, re-enter and re-possess. (Douglas v. Vourtsanis, 203 Ga. 64, 45 S.E.2d 203 (1947); Watkins v. Maddox Med. Assocs., 270 Ga. 404, 509 S.E.2d 614 (1998)). Rescinding the contract requires that the seller pay back the buyer any money necessary to restore his or her position before the contract was entered into (Douglas v. Vourtsanis). However, the seller may keep any money necessary to prevent him or her from experiencing a loss. Crowell v. Williams, 274 Ga. App. 676, 678 (2005).</p>	3/22/2017 2:20 PM
16	<p>Act 6, 41. P.S. § 401, et seq., &amp; Act 91, 35 P.S. § 1680.403c, are mortgage regulations that have been extended to installment sales agreements. Right to notice, right to cure, right to apply for state rescue loans. Also extends compliance with RESPA and TILA to these transactions. Land Installment Sales Act, 68 P.S. § 901, et seq. (applicable to Philly &amp; Pittsburgh only). Right to accounting, right to reimbursement is seller defaults, limitation on seller's right to encumber property with mortgages and other liens, etc. Under common law principles in our state, buyers have equitable ownership rights, are entitled to notice for various in rem proceedings, and can have priority over other lien holders that acquire their rights subsequent to the buyer. Kinch v. Fluke, 166 A. 905 (Pa. 1933), Rowe v. Ream, 1884 WL 13101 (Pa. 1884) (possession of the property serves as notice equal in weight to recording), Malamed v. Sedelsky, 80 A.2d 853, 855 (Pa. 1951). Buyers/mortgagees have a duty to inquire of party in possession to determine potential ownership interest Woods v. Farmere, 7 Watts 382, cited in Jamison v. Dimock, 95 Pa 52, 55; 1880 Pa. LEXIS 279, 10. Statute of frauds requirements can be overcome Hart v. Carroll, 85 Pa. 508 (1877), Haskell v. Heathcote, 363 Pa. 184; 69 A.2d 71 (1949), Glasgow v. G.R.C. Coal Company, 442 A.2d 249, 250 (Pa. Super. Ct. 1981). Must have 2 of the items on this list: Full or partial payment Possession Repairs/improvements to the property</p>	3/22/2017 1:50 PM
17	<p>Forfeiture or foreclosure. Forfeiture seeks the unpaid obligation to date and provides for a 3 or 6 month redemption period; Foreclosure accelerates the entire balance due and provides for a higher court process.</p>	3/22/2017 12:35 PM
18	<p>If the buyer has paid a "substantial" number of payments (not defined, but courts usually look at 10%), then the seller must use foreclosure. Otherwise, the seller can evict through summary eviction procedures. Buyers have the ability to sue for deceptive practices or truth in lending violations if the seller is regularly in the business (4 in a year) of selling on land contract.</p>	3/22/2017 11:50 AM
19	<p>The most frequent remedy is strict foreclosure under Wis. Stat. 846.30 (2016-2017) Additional remedies include: (1) The action for the sale of the land and the application of the proceeds to the satisfaction of the unpaid purchase price, (an action that is analogous to the foreclosure of mortgages) (2) The vendor may sue for specific performance of the land contract. (3) The vendor may sue for the balance, or each delinquent payment as it comes due in the case where there is no acceleration clause in the contract. (4) If the buyer has abandoned the property, the vendor may sue to terminate the land contract and extinguish the purchaser's interest, similar to a quiet title action.</p>	3/13/2017 6:53 PM

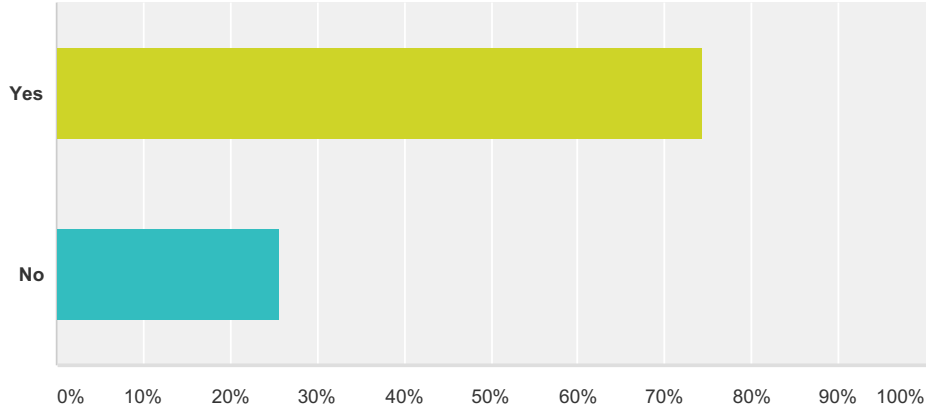


## Contracts for Deed Survey

20	No statute on point but a number of cases sounding in equity which attempt to avoid forfeiture and force the seller to provide a remedy similar to a foreclosure of a mortgage so that there is some possibility of getting back some equity. There is in existence both the common law doctrine of equitable conversion which is sometimes used affirmatively to prevent forfeiture of a deposit paid by purchaser under the contract without protection for the deposit amount in excess of damages sustained by the vendor. This is now also codified with a statute providing protection for a "purchasers lien" if the contract or bond for deed ( or a proper notice thereof) is recorded on the land records. The doctrine in equity is more useful for protecting subsequent payments made by the installment buyer or the value of improvements made to the subject property, since the statutory lien only protects the initial deposit made by the purchaser. However the ability of the purchaser to enforce the lien of the purchase money deposit by foreclosure may get the purchaser into court ( directly or in a counter claim) where equity may be applied to other aspects of the sellers attempt to enforce a total forfeiture, and thus it could end up being the proverbial tail that wagged the dog in the hands of creative counsel.	3/3/2017 9:45 AM
21	Florida Statute section 697.01 deems these instruments to be mortgages that must be foreclosed through the judicial foreclosure process set forth in Florida Statute section 702. The common law has interpreted section 697.01 very broadly so that any instrument for the payment of money where real estate is used as security is deemed a mortgage	3/2/2017 10:57 AM
22	14 M.R.S. § 6203-F requires a specific form of default notice and a 30 day right to cure. The statute then allows for a 60 day redemption period with the right in the buyer to apply to court to extend the redemption to up to 1 year. 33 M.R.S. § 482 sets out the minimum requirements for the content for a Maine land installment contract. It does not state what the consequence is of non-compliance.	3/1/2017 4:10 PM
23	Commin law Actipn for breach or specific performance	3/1/2017 4:09 PM
24	Ohio Revised Code states in 5313.04 that the buyer may obtain "appropriate relief" from a court if the seller fails to comply Chapter 5313. 5313.05 provides that the seller may enforce forfeiture of the land installment contract only after a buyer has been in default for a thirty-day period. The buyer may avoid forfeiture by curing his default within those thirty days. 5313.06 sets out the procedure for forfeiture after the thirty-day period. But 5313.07 requires actual foreclosure proceedings if the buyer has paid in accordance with the terms of the contract for a period of five years.	2/20/2017 12:46 PM
25	Cancellation of contract for deed by notice or by action Foreclosure of contract for deed by action	2/15/2017 4:13 PM
26	Contracts generally provide several alternate remedies for sellers--sue for delinquent installment--accelerate the contract and sue on the entire balance--forfeiture. Forfeiture is handled by statute--RCW 61.30. Basically a Notice of Intent to Declare a Forfeiture is given to purchaser and others with an interest in the real property as provided by the statute and the notice is also recorded with the county auditor. If cure does not occur within 90 days or such longer time as provided in the real estate contract, a Notice of Forfeiture is recorded with the county auditor which completes the forfeiture process. Buyers remedies are generally as provided in the contract. Buyer has statutory protection from Seller accelerating and then forfeiting--buyer can cure and avoid forfeiture by paying amounts due under the contract without acceleration. Buyer also has a statutory right to require a public sale rather than forfeiture if the fair market value of the property substantially exceeds the unpaid and unperformed obligations secured by the contract and any other liens having priority over the seller's interest in the real property.	2/13/2017 6:46 PM
27	No statutory changes, but common law allows strict foreclosure only when property is worth less than amount due (as accelerated) and no chance of a surplus. Otherwise it must be foreclosed as a mortgage. Mankiewicz v. J.J. & Associates, 245 Neb. 568 (1994)	2/13/2017 3:49 PM
28	When the buyer defaults, the seller must give notice to the buyer that if payment is not made as provided in the bond for deed within forty-five days from the mailing date of the notice, the bond for deed shall be cancelled. (statutory) Also, if the buyer defaults then although the seller can retake the property he must return the amounts paid to the buyer, less fair rental value for occupancy so enjoyed by the buyer (jurisprudential) When the seller sells by bond for deed contract any real property encumbered by a mortgage without first obtaining and recording a written guarantee from the mortgage holder that it will release the property upon payment by the buyer of a stipulated mortgage release price, then the seller shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both. (statutory)	2/9/2017 5:28 PM
29	The Idaho Courts have ruled that in some cases, a forfeiture under a land sale contract is inequitable and a seller may be required to conduct a judicial foreclosure.	2/9/2017 4:09 PM
30	Seller remedy - Foreclosure under SDCL 21-50. No specific Buyer statutory remedy.	2/8/2017 4:33 PM

### Q4 Are disclosures of property or building conditions required for the sale of residential properties in your state?

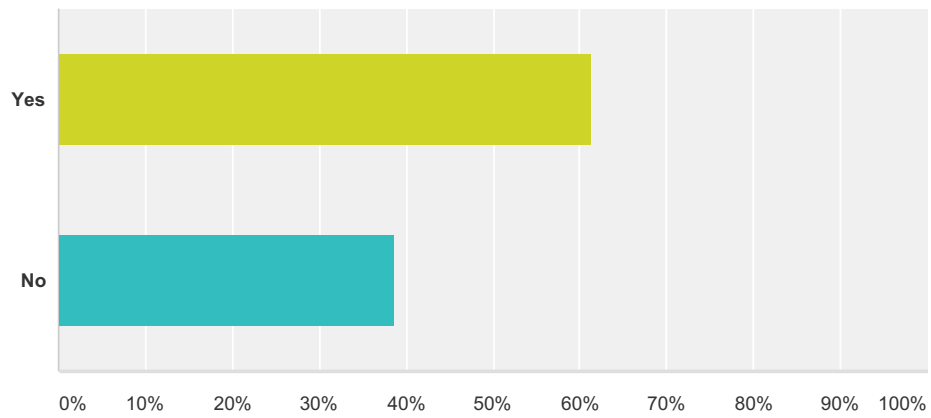
Answered: 35 Skipped: 5



Answer Choices	Responses	
Yes	74.29%	26
No	25.71%	9
<b>Total</b>		<b>35</b>

### Q5 Are those disclosures required for installment sales using a contract for deed?

Answered: 31 Skipped: 9



Answer Choices	Responses	
Yes	61.29%	19
No	38.71%	12
<b>Total</b>		<b>31</b>

## Q6 What conditions must be disclosed and how is disclosure enforced?

Answered: 27 Skipped: 13

#	Responses	Date
1	<p>3A. The requirements of Montana law with respect to disclosures apply to all real estate transactions, and do not differentiate between whether they are handled under a Montana Association of Realtors form or under a Contract for Deed. Various Montana statutes require disclosures of the following environmental issues: (i) Lead paint in any building built before 1978; (ii) Radon gas; (iii) Asbestos; (iv) Mold; (v) Underground tanks; (vi) Noxious weeds (especially on farm and ranch land); (vii) Wetlands; (viii) Prior production of meth on the premises; (ix) Water quality; (x) Air quality (particulates); (xi) CERCLA liability issues (federal statute opposing liability without fault) All of these required disclosures are typically enforced by the Montana courts when squarely presented. There is a large body of law in Montana relating to required disclosures. The requirements depend, in substantial part, on whether the seller is represented by a real estate agent. A. If the seller is represented by a realtor: The big difference in Montana law in this area is that under MCA Section 37-51-313(3) a seller's agent is "obligated to the buyer to: disclose to a buyer or the buyer's agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller." This negation of any duty to inspect resulted from the earlier California decision in <i>Easton v. Strassburger</i>, which in California imposed a very specific obligation on seller's real estate agents who were owed a duty of inspection and disclosure. If a real estate agent (whether broker or sales person) is involved in a transaction, the realtor's obligations are specified by MCA Section 37-51-313, which specifies that it is intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The statute requires the following: (a) Act solely in the best interests of the principal [seller or buyer, as the case may be]; (b) Obey promptly and efficiently all lawful instructions of the [principal]; (c) Disclose all relevant and material information that concerns the real estate transaction and that is "known" to the agent and not known or discoverable by the [principal], unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the agent; but if the agent is a dual agent, he or she must disclose to a buyer or seller any adverse material fact that are known to the dual agent, "regardless of any confidentiality considerations;" (d) Disclose to the other party or the other party's agent when the disclosing agent (whether representing seller or buyer) has no personal knowledge of the veracity of information regarding adverse material facts that concern the property. [In other words, if an agent has no personal knowledge about such adverse material facts, he/she must say so.] (e) Safeguard the [principal's] confidences; (f) Exercise reasonable care, skill, and diligence in pursuing [principal's] objectives and in complying with the terms established in the listing agreement; (g) Fully account to the [principal] for any funds or property of the [principal] that comes into the agent's possession; and (h) Comply with all applicable federal and state laws, rules and regulations. (i) Property Managers. The 2007 Legislature amended the statute to clarify that if a licensed broker or licensed salesperson is acting as a property manager [i.e., managing real property for the owners], he/she need only comply with the provisions of part 6 of the chapter (M.C.A. " 37-51-601 et seq.,) and the rules of the board which govern licensed property managers. This same section 37-51-313 also: (a) spells out the duties of a dual agent, and (b) the conditions under which a buyer's agent may concurrently represent competing buyers. [This latter provision, enacted as subsection 4(a), reversed an earlier case which held that a buyer's agent could not represent multiple competing potential buyers.] In <i>Walters v. Luloff</i>, 341 Mont. 158 (2007), the seller had misrepresented the production of a well on the subject property. The Supreme Court imposed liability on both the sellers and the broker for negligent misrepresentation. Whenever the seller is represented by a real estate agent, the Montana Association of Realtors form for "sellers disclosures" which contains a very detailed listing of items which are typically of interest to a potential buyer and which should be disclosed. The opinion in <i>May v. ERA Landmark Real Estate Co.</i>, 302 Mont. 326 (2000), the property involved was a commercial service station and auto repair facility. It was listed for sale on an "as is" basis and on the further condition that the sellers would not assume tank removal expenses or toxic cleanup costs. The realtor told the seller that he was signing the document only to acknowledge that he received the offer, but he mistakenly signed the line or acceptance. Supreme Court imposed personal liability on the real estate agent for misrepresentation or an actual fraud, for which punitive damages can be obtained. The causes of action alleged in the complaint included claims of fraud, breach of contract, breach of fiduciary duty, bad faith, intentional infliction of emotional distress, negligent misrepresentation, professional negligence, and negligent infliction of emotional distress. The Court in the <i>May</i> case also held that the "as is" provision in the contract did not protect the realtor against liability for misrepresentation. "As is" and "Independent Investigation" provisions do not insulate a seller. An "as is" provision in the sale contract does not relieve a seller of his obligation to disclose a latent defects where the realtor makes a material misrepresentation in the listing. <i>Wagner v. Cutler</i>, 232 Mont. 332 (1988) and MCA Section 28-10-602. Similarly, an "independent investigation by the buyer" clause does not preclude reliance on even an innocent misrepresentation. <i>Parkhill v. Fuselier</i>, 194 Mont. 415 (1981). In <i>Cechovic v. Hardin &amp; Associates</i>, 273 Mont. 104, 116-117 (1995), the Montana Supreme Court held that the trial court properly refused to instruct the jury that a purchaser of property has a duty to make a reasonable investigation. However, under MCA Section 37-51-315: a. A party</p>	5/1/2017 5:10 PM

## Contracts for Deed Survey

(principal) is not liable for a real estate agent's misrepresentation unless: i. The party has actual knowledge of the misrepresentation; or ii. The agent is merely repeating what the party (principal) told the agent; and b. An agent is not liable for misrepresentation by the principal unless the agent has actual knowledge of the misrepresentation. B. Duties of seller, whether or not represented by a realtor. When a seller by words or conduct creates a false impression concerning serious impairments in real property, or other important matters, and subsequently fails to disclose irrelevant facts, he may be guilty of constructive fraud, even in the absence of a fiduciary duty. H-D Irrigating, Inc. v. Kimble Properties, 301 Mont. 34, 43-44 (2000). There the seller of land had filled in a prior river channel and did not compact the fill or install protective rip rap. This materially increased erosion, the cause of which was not disclosed by the seller. In Moschelle v. Hulse, 190 Mont. 532, 539 (1980), the seller made statements concerning the physical condition of a building and profitability of a business. Held: Seller had a duty to make disclosure of the facts necessary to erase the false impressions. Other potential soils and geologic problems which must be disclosed are: a. Expansive soil; b. Uncompacted fill; c. Geologic instability, including: i. Slide planes; ii. Ice in the soil, as in the Alaskan earthquake of 1964; and iii. Uncompacted soil from old ocean or lake bottoms. Hence, the general rule, which is consistent with the common law, is that there is a duty to disclose material facts which are not apparent to a buyer, and which if disclosed may materially affect the buyer's willingness to purchase or the price which a buyer is willing to pay. See Atherton Condo Bd. v. Blume Development, 799 P.2d 250, 261 (Wash. 1990). There, the builder – vendor had a duty to disclose concealed defects in residential dwelling when vendor knows about it and (i) a defect is dangerous to the property or the buyer's health or life, (ii) the defect is unknown to the buyer and would not be disclosed by a careful reasonable inspection by the buyer, and (iii) the defect substantially and adversely affects the value of the property or materially impairs or defeats the transaction. In Estate of Kindsfather, 326 Mont. 192 (2005) a mother who owned a farm had sold a portion of it to her son and his wife on a Contract for Deed. The buyers failed to make timely payments and incurred an interest delinquency of \$65,000. The son and his wife both told the mother that they did not believe the farm would produce enough income to pay off the delinquent interest, and that they were suffering from hard times. The buyers were in fact financially capable of making old payments and had simply failed to do so. The buyers also had not told the mother what the amount of interest was that they asked her to waive. She waived the interest without that knowledge. After the mother died, the court concluded that the mother's consent to the waiver document had been obtained by fraud and that it could be rescinded by the personal representative of her estate. Montana law contains a substantial body of cases dealing with various aspects of fraud, many of which cases involve real estate. Under Montana law, a claim of constructive fraud requires proof similar to that for actual fraud, except that the plaintiff need not prove the fifth element relating to intent to deceive or dishonesty of purpose. The H-D Irrigating, Inc. case cited above is an example of constructive fraud. Use of the Consumer Protection Act. In Rohrer v. Knudson, 349 Mont. 197, 203-206 (2009), the Defendant was the developer/builder of a new home which settled badly. The case arose before the enactment of the current statute which requires a builder/developer to issue an express one year warranty on a new residence. In a case of first impression in Rohrer, the Supreme Court applied the Montana Consumer Protection Act, MCA Sections 30-14-101 et seq., and held that the Act provides a private cause of action. The Act declares that "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. The court there adopted the unfairness test stated by the U.S. Supreme Court in FTC v. Sperry & Hutchinson, 405 U.S. 233 (1972). Implied Warranty for Newly Constructed Residences. In Chandler v. Madison, 197 Mont. 234, 239 (1982) the Court stated: "We hold that the builder – vendor of a new home impliedly warrants that the residence is constructed in a workmanlike manner and is suitable for habitation." In 2009, the legislature adopted MCA Section 28-2-2201 and 2202. Those statutes impose an express warranty that is valid for a period of one year from the completion of construction. It requires a detailed disclosure of components that are included. The second statute applies to the sale of a newly constructed residence that has not been previously occupied, and requires a parallel one year express warranty.

2	No specific State requirements. Federal requirements that apply to Bank or federal loan transactions apply under federal law.	5/1/2017 3:27 PM
3	See §55-517 et seq., Code of Virginia, 1950, as amended.	5/1/2017 3:11 PM
4	A new form was effective in 2004 – "material matters relating to the physical condition of the property to be transferred." It is enforced by civil lawsuit by the buyer against the seller.	5/1/2017 2:48 PM
5	There is a disclosure requirement for residential properties (and commercial properties) in Washington. There seems to be no reason why REKs would not be covered by the statute. Until the disclosures are made the (if not within a short period) the purchaser may rescind the contract. The disclosures are not warranties.	5/1/2017 2:40 PM
6	Section 5-20.8-5 of the R.I. Gen. Laws provides that "every agreement for the purchase and sale of residential real estate located in the state shall contain an acknowledgement that a completed real estate disclosure form has been provided to the buyer by the seller." Section 5-20.8-1 defines an agreement to transfer as "a purchase and sale agreement, installment sales contract . . . or other agreement intended to effect the transfer of real estate from a seller to a buyer", so contracts for deeds are included. The specific disclosure requirements are set forth in Section 5-20.8-2 (copy attached to this response). The penalty for violations is a civil penalty of \$100 per occurrence.	5/1/2017 2:30 PM
7	Typical installment sales contract occur infrequently and are more typically done directly between seller and buyer and between parties not represented by legal counsel. Under that scenario, the legal maxim of let the buyer beware would apply, except in cases involving fraud or misrepresentation by the seller and in situation involving substantial disparities between the levels of sophistication and relative bargaining positions of the parties.	4/24/2017 3:11 PM

## Contracts for Deed Survey

8	seller has a duty, but all remedies in ordinary sales end with the deed. However builders have additional duties. See Schipper v. Levitt	4/19/2017 12:35 PM
9	None. The only required disclosure (which can be waived by the buyer) is estimated property tax information. Disclosure is not affirmatively enforced, but rather is incentivized through immunity to brokers when the information is disclosed.	4/12/2017 8:44 PM
10	Property condition, insurance warnings, zoning warnings, lead based paint warnings. Enforced through statutory remedies available to buyer	4/12/2017 10:35 AM
11	n/a	4/4/2017 1:02 PM
12	known defects for real estate sales but not for land installment contracts	4/4/2017 12:57 PM
13	T.C.A §66-5-202 states a residential property disclosure form must be provided to the purchaser documenting the condition of the property and any known defects, OR "a residential property disclaimer statement stating that the owner makes no representations or warranties as to the condition of the real property or any improvements thereon and that purchaser will be receiving the real property "as is," that is, with all defects which may exist, if any, except as otherwise provided in the real estate purchase contract." Disclosure is enforced per T.C.A. §66-5-204 as follows: "(a) The owner shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this part if: (1) The error, inaccuracy or omission was not within the actual knowledge of the owner or was based upon information provided by public agencies or by other persons providing information as specified in subsection (b) that is required to be disclosed pursuant to this part, or the owner reasonably believed the information to be correct; and (2) The owner was not grossly negligent in obtaining the information from a third party and transmitting it. (b) The delivery by a public agency or other person, as described in subsection (c), of any information required to be disclosed by this part to a prospective purchaser shall be deemed to comply with the requirements of this part, and shall relieve the owner of any further duty under this part with respect to that item of information. (c) The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood destroying insect control expert, contract or other home inspection expert, dealing with matters within the scope of the professional license or expertise, shall satisfy the requirements of subsection (a) if the information is provided to the owner pursuant to request therefor, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this part and, if so, shall indicate the required disclosure or portions thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or portions thereof, other than those expressly set forth in this statement."	3/28/2017 3:03 PM
14	Seller must disclose state of the appliances and fixtures, electrical system, basement, roof, crawlspace, insect infestations, flooding, mineral rights. etc - see MCL565.957.	3/28/2017 9:53 AM
15	The Official Code of Georgia 44-1-16 provides for disclosures under death or infectious disease, and the Ga. Code Ann., § 44-5-63 does require a seller to inform a buyer about any known material (important) defects in the condition of the home. But that's all.	3/22/2017 2:21 PM
16	68 P.S. Sec. 7301 et seq. - real estate seller disclosure law. Heightened liability and burden shifting for failure to accurately disclose, or failure to provide disclosure at all. technically applicable to all sales, but functionally only required in advance of closing. So unclear whether it is required at point of creation of installment contract, or before deed is delivered at end of contract.	3/22/2017 1:53 PM
17	Disclosures are not required in state law but they are required in some cities (eg., Detroit) at point of sale.	3/22/2017 12:36 PM
18	Wis. Stat. 709.02 (2016-2017) requires the vendor to furnish to the vendee a copy of a completed Real Estate Condition Report (RECR) within 10 days after a binding sales contract has been formed. The RECR requires sellers to indicate whether they have notice or knowledge of twenty-seven <sup>49</sup> enumerated defects relating to such things as the roof, electrical system, plumbing system, hazardous or toxic substances, special assessments, proposed construction, and other defects which affect the property if a seller fails to disclose a known defect, the only buyer remedy specifically created by this statutory enactment is the right to rescind.	3/13/2017 6:53 PM
19	It is not as clear as would be ideal but I think it would be a winning argument to contend that the requisite disclosure must be made even in an installment sale. Unfortunately the statutory penalty for not doing so is only \$500 ( given as a credit to the buyer ( and is often assumed by seller to simply be a cost of doing business). There are very few current ( in the last 50 years) transactions which would involve installment sales of real property for any kind, let alone residential, so there is little case law guidance.	3/3/2017 9:50 AM
20	By case law, latent defects which materially affect the value of residence must be disclosed. This is a general law which applies to all residential real estate contracts and not just specifically contracts for deed.	3/2/2017 10:58 AM

## Contracts for Deed Survey

21	The Director of Commerce has adopted a "disclosure form" which has to be completed by the seller which pertains to the following: the water supply' the sewer system, roof, water intrusion, structural components, wood destroying insects/termites, mechanical systems, presence of hazardous materials, underground storage tanks/wells, flood plain, drainage/erosion, zoning code violations/ assessments/homeowners' association, boundary lines/encroachments/shared driveway/party walls, and any other material defects.	2/20/2017 2:09 PM
22	Disclosure of latent material defects known to the seller and not readily discoverable by a buyer by an inspection of the property (by court decision)	2/15/2017 4:13 PM
23	See RCW 64.06 regarding specific required disclosures and remedies.	2/13/2017 6:47 PM
24	Found in statute Neb. Rev. Stat. 76-2,120. Enforced through litigation, not real estate licensure. Apply to sale of real estate. No litigation on installment K that I've found.	2/13/2017 3:59 PM
25	Whether there's been flooding, mold, any other conditions that may be dangerous to health and safety, known servitudes/encroachments, size of property, wetland status, history of termites or other wood-destroying insects, any structural defects, foundation issues, plumbing/sewage/electrical problems, HVAC issues, or HOA obligations. Enforcement is handled through private litigation, usually through showing fraud or to buttress a claims under one of Louisiana's warranties of condition.	2/9/2017 5:32 PM
26	Structural defects, appliance and utility problems, zoning issues, lot line disputes, non-permitted improvements, hazardous materials, pest infestations. A proposed sale can be rescinded within three days of receiving a late-delivered report. The transferor can be held liable for the amount of actual damages suffered as a result of failure to disclose.	2/9/2017 4:14 PM
27	Numerous conditions are required to be disclosed in the form codified in SDCL 43-4-44	2/8/2017 4:36 PM

## Contracts for Deed Survey

### Q7 How does the law in your state characterize the seller's interest and the buyer's interest in the real property in a contract for deed transaction?

Answered: 34 Skipped: 6

#	Responses	Date
1	The buyer under a Montana Contract for Deed holds an equitable property interest. Orme v. U.S., 269 F.3d 991, 994 (9th Cir. 2001). The earlier Montana opinion in Calvin v. Custer County, 111 Mont. 162, 169 (1940) quoted an earlier opinion as follows: "[a]n enforceable contract for the purchase and sale of real property passes to the purchaser the equitable and beneficial ownership thereof, leaving only the naked legal title in the seller, as trustee for the purchaser, and as security for the unpaid purchase price. [The court then quoted CJS as follows: "A contract for the sale of land works a conversion, equity treating the vendor as holding the land in trust for the purchaser, and the purchaser as a trustee of the purchase price for the vendor. The vendor's interest thereafter in equity is in the unpaid purchase price, and is treated as personalty, but the purchaser's interest is in the land, and is treated as realty." Emphasis added. However, the interests under a Contract for Deed are chameleon-like nature, in that they may vary in their characteristics, depending on the purpose for which the analysis is made. The buyer's interest under such a contract accordingly constitutes equitable title for equitable purposes, but under a common law analysis, it is simply a contract right, and is therefore personal property. Under MCA Section 76-3-303, the Montana Code dealing with Local Regulation of Subdivisions allows a subdivider to enter into a Contract for Deed with a buyer after the preliminary plat of a subdivision has been approved if certain conditions are satisfied, but no buyer's funds may be disbursed to the subdivider until the final plat has been filed. Under the Arrowhead case discussed above, it does not appear that the Montana Supreme Court applied any equitable principles in reaching its conclusion.	5/1/2017 5:11 PM
2	A true contract for deed is a simple escrow and the buyer can lose any perceived equity if he defaults after considerable payments.	5/1/2017 3:28 PM
3	Common law characterizes buyer's interest as equitable title; no statute or case law.	5/1/2017 3:19 PM
4	The buyer acquires equitable title in the property while the seller retains legal title	5/1/2017 3:11 PM
5	Functionally the same as a deed and mortgage transaction. The residential land contract statute makes no distinction, but requires foreclosure as the vendor's sole remedy if the threshold requirement (5 years or 20%) is met.	5/1/2017 3:00 PM
6	For many purposes we have the doctrine of equitable conversion applied to REKs.	5/1/2017 2:41 PM
7	Rhode Island law is not clear on the nature of the seller's interest and the buyer's interest.	5/1/2017 2:30 PM
8	A buyer signing a contract of sale holds an equitable interest while the seller holds legal title until a deed is passed to the buyer.	4/24/2017 3:13 PM
9	no law. Seller would claim to be a landlord; buyer would claim that it is a mortgagee.	4/19/2017 12:37 PM
10	Seller is legal owner, with legal title held in trust as security. Buyer has an equitable ownership interest.	4/12/2017 9:08 PM
11	Vendor/ Vendee.	4/12/2017 10:37 AM
12	Case law treats the buyer as having a mortgage. However, this rule is rarely enforced because sellers utilize the eviction process.	4/4/2017 3:35 PM
13	seller holds legal title, buyer holds equitable title	4/4/2017 1:04 PM
14	it is a vendor and vendee relationship with no legal interest in the property until conclusion of the contract except the right to a transfer upon completion	4/4/2017 12:59 PM
15	Buyer has equitable title, seller has legal title, agreement is an executory contract.	4/4/2017 8:31 AM
16	n/a	3/31/2017 7:21 AM
17	It does not appear that specific guidelines exist in Tennessee for contract for deed transactions. Buyers' and sellers' interests can only be estimated from the remedies for misrepresentation or nondisclosure in T.C.A §66-5-208.	3/28/2017 3:24 PM
18	Seller retains legal title until completion of contract, while buyer immediately gains equitable title and gains legal title at completion of contract.	3/28/2017 9:56 AM
19	The contract for deed creates a security interest, not an equitable title.	3/22/2017 2:22 PM



## Contracts for Deed Survey

20	Buyer is an equitable owner. Possession constitutes notice for any future purchasers or lien holders - on par with an actual recorded interest. These are not codified, they are common law principles. Kinch v. Fluke, 166 A. 905 (Pa. 1933), Rowe v. Ream, 1884 WL 13101 (Pa. 1884) (possession of the property serves as notice equal in weight to recording), Malamed v. Sedelsky, 80 A.2d 853, 855 (Pa. 1951). Buyers/mortgagees have a duty to inquire of party in possession to determine potential ownership interest Woods v. Farmere, 7 Watts 382, cited in Jamison v. Dimock, 95 Pa 52, 55; 1880 Pa. LEXIS 279, 10.	3/22/2017 1:56 PM
21	Seller has legal title and buyer has equitable title	3/22/2017 12:38 PM
22	seller is owner/landlord. The buyer has a beneficial interest in the property.	3/22/2017 11:52 AM
23	Upon the execution of a land contract, the vendee acquires equitable title to the property while the vendor retains the legal title as security for the unpaid balance. The vendor has legal title to the property until the contract is paid in full, and then must convey the property by deed to the purchaser	3/13/2017 6:59 PM
24	Equitable title resides in the purchaser if the contract is recorded on the land records but legal title resides in the seller pending the completion of the contract terms and conditions. The purchaser has the right of occupancy until the contract is completed or terminated, although the seller would have no ability to force the purchaser out of occupancy except by initiating a summary process action in the Housing Court ( residential and non-residential) where the equitable claims of the purchaser may be asserted to prevent a total forfeiture or inequitable outcome.	3/3/2017 9:56 AM
25	The Doctrine of Equitable Conversion applies once a binding contract is reached and buyer receives an equitable interest.	3/2/2017 11:01 AM
26	nospecific law	3/1/2017 4:19 PM
27	Seller owns the legal title and the buyer has a mere contract right.	3/1/2017 4:12 PM
28	If the buyer defaults on his obligations under the contract and does not cure within 30 days, the seller can simply declare a forfeiture and the buyer's rights will have been forfeited. But, if either the contract has been in existence for at least five years, or the buyer has paid at least 20% of the purchase price at the time of the default, the seller's remedy is to initiate a foreclosure proceeding in which the seller "...shall be entitled to proceeds of the sale up to and including the unpaid balance due on the land installment contract."	2/20/2017 2:18 PM
29	Seller - vendor - legal title Buyer - vendee - equitable title	2/15/2017 4:13 PM
30	Generally the functional equivalent of using a deed and deed of trust. Seller's interest has a personal property component--right to receive payment--and a real property interest--right to forfeit on default. Purchaser's interest is generally considered a real property interest.	2/13/2017 6:47 PM
31	legal title remains in the seller. buyer has equitable title.	2/13/2017 4:00 PM
32	It is characterized as a buyer-seller relationship except that the effects of the contract of sale (the transfer of ownership particularly) is suspended until the full purchase price has been paid.	2/9/2017 5:34 PM
33	The seller continues to hold legal title and the buyer has a contractual interest in the property. If equity requires, the law can consider the buyer to have equitable title.	2/9/2017 4:17 PM
34	Seller's interest is personal property and an executory contract under the bankruptcy code. Buyer's interest is real property which can be mortgaged.	2/8/2017 4:38 PM

## Contracts for Deed Survey

### Q8 How does the characterization of interests affect the remedies available to the seller upon the buyer's default?

Answered: 32 Skipped: 8

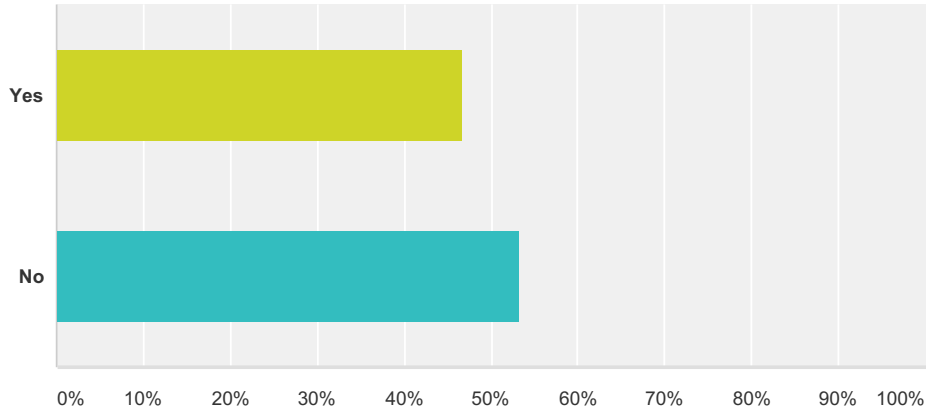
#	Responses	Date
1	Our courts will enforce a clear contract for deed on that basis.	5/1/2017 3:28 PM
2	No law on the subject.	5/1/2017 3:19 PM
3	No law on the subject, but judgments against the buyer attach to the property. See In re Griffin, 397 B. R. 356 (2008)	5/1/2017 3:11 PM
4	The Ohio courts have not been careful to lay out what they are doing, but since courts have long allowed possibility that the vendee might be able to tender the full amount or insist on foreclosure as the vendor's remedy, in my opinion they have never clearly distinguished between the land contract versus a deed and mortgage.	5/1/2017 3:00 PM
5	Because of the statutory process this doesn't affect the remedies on default.	5/1/2017 2:41 PM
6	There is no reported case law on this question.	5/1/2017 2:30 PM
7	The seller holds legal title and would limit the seller to an action to collect the balance due if the seller is not willing to accept forfeiture of all amounts paid by the buyer as their remedy.	4/24/2017 3:13 PM
8	No case appears	4/19/2017 12:37 PM
9	Not at all.	4/12/2017 9:08 PM
10	Allows seller to retake the property after complying with forfeiture notice and chance to cure process.	4/12/2017 10:37 AM
11	See above.	4/4/2017 3:35 PM
12	seller and buyer typically execute and escrow 2 deeds (1) deed to seller and (2) deed to buyer. If buyer defaults, escrow agent records first deed. If buyer completes the contract, escrow agent records second deed.	4/4/2017 1:04 PM
13	our state law provides that land installment contracts be enforced by judicial foreclosure upon default	4/4/2017 12:59 PM
14	See above.	4/4/2017 8:31 AM
15	n/a	3/31/2017 7:21 AM
16	T.C.A. §66-3-101 states that if either party can be proven to have defrauded the other, property can be "deemed and taken." Nevertheless, given the guidelines laid out for seller's in T.C.A. §66-5, it would be more difficult to prove that the seller had defaulted.	3/28/2017 3:24 PM
17	Foreclosure or forfeiture of a land contract is treated the same as foreclosure of a residential mortgage (MCL 565.360). MLC 600.5744 specifies an equitable right of redemption for land contract buyers.	3/28/2017 9:56 AM
18	Yes, the security interest is junior to all senior claims, and may be preempted by the seller's other liens.	3/22/2017 2:22 PM
19	Seller is not supposed to be able to bring an eviction in small claims court. They are supposed to bring an ejectment in Court of Common Pleas (longer, more protracted process). Under Act 6 and Act 91, installment sales contracts are mortgages. Gives 30 day notice requirement of any default. Gives right to cure. Gives access to state's mortgage rescue loan program (HEMAP).	3/22/2017 1:56 PM
20	Equitable title does not provide sufficient title to obtain federal Hardist Hit funds to avoid foreclosure;	3/22/2017 12:38 PM
21	Sellers hold all the cards in Indiana	3/22/2017 11:52 AM
22	Wis. Stat. § 846.30 requires that in strict foreclosure a circuit court must issue a final order to confirm a land contract vendee's failure to redeem prior to the expiration of the redemption period, and that only upon entry of the final order does a land contract vendee's equitable title revert to the land contract vendor.	3/13/2017 6:59 PM
23	This is covered above but the device is used so rarely it is difficult to predict whether the remedies more than 50 years old would still be viable. Many practitioners think not and shy away from such contracts especially for residential property.	3/3/2017 9:56 AM
24	It does not affect in a buyer default situation unless the buyer has been granted possession prior to closing or has made substantial improvements (with consent of Seller) prior to closing	3/2/2017 11:01 AM

## Contracts for Deed Survey

25	Because the seller is not considered to be a mortgagee, it does not have to use our civil action foreclosure process to retake the property after the buyer's default.	3/1/2017 4:12 PM
26	See above.	2/20/2017 2:18 PM
27	Not affected	2/15/2017 4:13 PM
28	See answer to #6	2/13/2017 6:47 PM
29	seller may only foreclose strictly (exercise the forfeiture remedy) if there is basically no equity in the property	2/13/2017 4:00 PM
30	The contract is thereby governed by the law of sale in the Louisiana Civil Code, although the lease-like relationship might suggest lease codal provisions might apply (this has not been fully developed).	2/9/2017 5:34 PM
31	If the buyer is characterized as the equitable owner of the property, a judicial foreclosure may be required to remove the buyer's interest.	2/9/2017 4:17 PM
32	Seller is required to foreclose under the statutes, without regard to the wording in the contract.	2/8/2017 4:38 PM

### Q9 Does a contract for deed buyer have any right of redemption upon a foreclosure or forfeiture of a contract for deed in your state?

Answered: 30 Skipped: 10



Answer Choices	Responses
Yes	46.67% 14
No	53.33% 16
<b>Total</b>	<b>30</b>

#	If so, what are the redemption or forfeiture rights?	Date
1	Because the Montana Contract for Deed is not uniform in its provisions, there typically is no right of redemption. The only exception appears to be in bankruptcy. In <i>Re Frazer</i> , 377 B.R. 621 (9th Cir. Bap. Mont. 2007), the Ninth Circuit Bankruptcy Appeal Panel held, in a Ninth Circuit case of first impression, that the bankruptcy statute, 11 USC, Section 1322 governed the time of cure and was not trumped by the more general provision of Section 108 governing extensions of time. It cited the U.S. Supreme Court's decision in <i>United States v. Whiting Pools</i> , saying: "The Supreme Court's <i>Whiting Pools</i> analysis is not consistent with post-petition insistence on strict compliance with a short-fused state law redemption procedure when a debtor is proposing to cure a default through a plan."	5/1/2017 5:11 PM
2	No law on the subject.	5/1/2017 3:20 PM
3	Not by statute or case law.	5/1/2017 3:12 PM
4	For residential land contracts – 1) if the threshold requirement is met (5 years or 20% paid), the vendee has the same rights as a defaulting mortgagor; and 2) if the threshold requirement is not met, the vendee has no claim to any amount paid and may be liable for damages.	5/1/2017 3:01 PM
5	There is a right to cure up to the forfeiture, but no post forfeiture rights. But if the property is foreclosed as a mortgage there may be post-sale redemption rights.	5/1/2017 2:41 PM
6	Unclear. There is no reported case law on this question.	5/1/2017 2:31 PM
7	I think so. Since there is no modern case, I cannot be sure. And I have not done real legal research for this survey. I think that this is a good project. But only is there is consensus for a one-page uniform law making these things treated as mortgages. It is sad to see what was won with so much effort in the late nineteenth century having to be fought again.	4/19/2017 12:41 PM
8	But does have a right to cure the default.	4/12/2017 10:38 AM
9	Buyer may file claim for unjust enrichment or equitable nonforfeiture.	4/4/2017 1:05 PM
10	60 day redemption	4/4/2017 12:59 PM

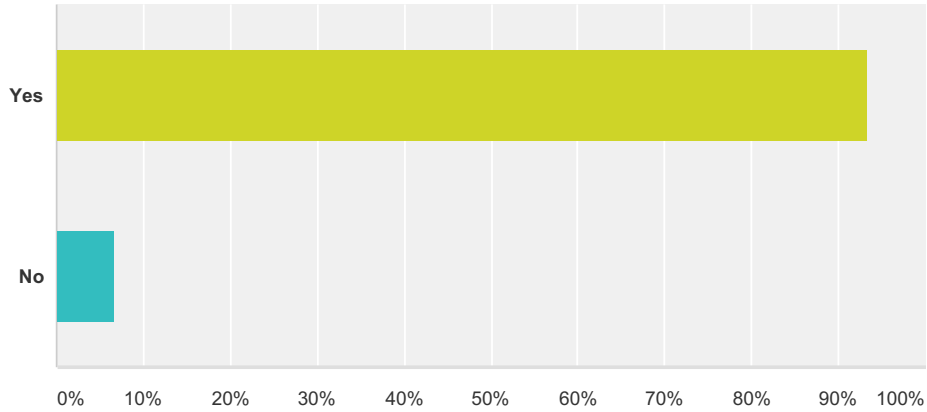
## Contracts for Deed Survey

11	In the case of foreclosure, the redemption period is between 90 and 180 days (depending on the amount paid on the contract—see MCL 600.5744), and 10 days to cure in the case of forfeiture.	3/28/2017 9:56 AM
12	Not necessarily. If a buyer defaults on a contract for deed, it is likely that he will not have the ability to obtain any equity in the property.	3/22/2017 2:23 PM
13	Not a true right of redemption (which is exclusively in tax foreclosures for 9 months post-Sheriff's sale). But they do retain a right to cure. Right to cure may be limited to 30 days after notice, under Act 6. If Act 91 is applicable, then right to cure remains until judgment. We can also use bankruptcy, Chapter 13, as a method to cure.	3/22/2017 1:58 PM
14	If more than 50% of principal has been paid, forfeiture provides for a 6 month redemption period; otherwise the redemption period is 3 months (to essentially reinstate -- catch up the payments to the date of forfeiture judgment).	3/22/2017 12:39 PM
15	Wis. Stat 846.30 mandates a minimum 7 day redemption period for the buyer, but judges may extend this as equity demands	3/13/2017 7:00 PM
16	As explained above, there is no complete statutory remedy but a combination of a foreclosure of the statutory purchasers lien and the assertion of equitable claims for build up of equity may be asserted in court. There is insufficient recent activity in last 50 years to draw many conclusions from the record.	3/3/2017 9:59 AM
17	Payment of the outstanding judgment amount within ten days after foreclosure sale (or shorter time if ordered by the trial court judge)	3/2/2017 11:02 AM
18	60 days, with the right in the buyer to apply to the court to extend redemption up to 1 year.	3/1/2017 4:13 PM
19	After a foreclosure action pursuant to 5313.07, the buyer would be entitled to any money remaining after the "unpaid balance due on the land installment contract" has been paid to the seller.	2/20/2017 2:28 PM
20	Cancellation by notice - 6 months if debt is more than 662/3% of original debt; otherwise one year Cancellation by action - as set by the court Foreclosure by action - A party in a foreclosure action or the successor of a party may redeem from the foreclosure sale within sixty days after the sale, except for agricultural land. Agricultural land may be redeemed within three hundred sixty-five days after the filing of the summons and complaint in the office of the clerk of district court or the time of the first publication of the notice by advertisement. The final date for redemption of agricultural land may not be earlier than sixty days after the sheriff's sale.	2/15/2017 4:13 PM
21	I believe that requiring foreclosure as a mortgage will trigger an equity of redemption, but to my knowledge it hasn't been litigated. My research into that question is shallow, however.	2/13/2017 4:04 PM
22	If a judicial foreclosure is required, a redemption period of 6 months exists for properties of less than 20 acres and for one year for properties exceeding 20 acres. If a forfeiture is upheld, no redemption right exists.	2/9/2017 4:18 PM
23	Court sets the length of the redemption period which by statute cannot be less than 10 days.	2/8/2017 4:39 PM

Contracts for Deed Survey

**Q10 May contracts for deed be used to transfer any type of real property (i.e., residential, commercial, vacant, farm and ranch) in your state?**

Answered: 30 Skipped: 10

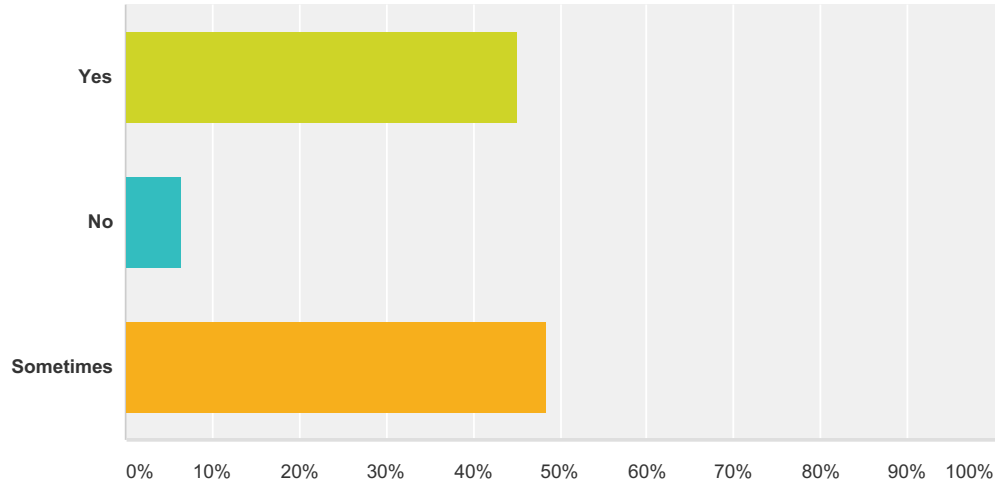


Answer Choices	Responses
Yes	93.33% 28
No	6.67% 2
<b>Total</b>	<b>30</b>

#	Explain any exceptions.	Date
1	The Montana Contract for Deed may be used for any sort of real estate transaction, including residential. This vehicle is most frequently used in the eastern part of the state, because it was imported there from the Midwest in the 1800s. A Contract for Deed is not appropriate, however, if there is also personal property involved in the sale, such as a going business.	5/1/2017 9:12 AM
2	They are not regulated by statute.	5/1/2017 7:29 AM
3	No statutory exceptions.	5/1/2017 7:20 AM
4	No statutory exceptions.	5/1/2017 7:12 AM
5	There seem to be no limits on the use of the REK. In fact, since our non-judicial sale statute can't be used for agricultural land, REKs are commonly used there (because there is the forfeiture under statute).	5/1/2017 6:41 AM
6	We are not aware of any exceptions.	5/1/2017 6:31 AM
7	An installment land contract does not effectuate a transfer of title to real estate until the buyer pays all amounts due to the seller and the seller delivers to the buyer a properly executed deed transferring title to the buyer.	4/24/2017 7:15 AM
8	See above. Not applicable. Who knows?	4/19/2017 4:42 AM
9	unsure	4/4/2017 4:59 AM
10	There is no exclusion of any category of which I am aware.	3/3/2017 2:00 AM
11	5313.0(B) restricts land installment contracts to "Property..in this state improved by virtue of a dwelling having been erected on the real property."	2/20/2017 6:31 AM
12	None	2/8/2017 8:39 AM

**Q11 Are contacts for deed, or some evidence of the contract for deed, recorded in the land records of your state?**

Answered: 31 Skipped: 9



Answer Choices	Responses	
Yes	45.16%	14
No	6.45%	2
Sometimes	48.39%	15
<b>Total</b>		<b>31</b>

## Contracts for Deed Survey

### Q12 If the full contract for deed is not recorded, what evidence of the contract can be recorded?

Answered: 25 Skipped: 15

#	Responses	Date
1	They can be recorded but usually aren't. Sometimes memorandums of them are recorded to establish simple constructive notice. Memorandum includes legal description of property and parties' acknowledged signatures.	5/1/2017 3:30 PM
2	Abstracts may be recorded.	5/1/2017 3:21 PM
3	Not mandatory, but recommended. Note: transfer taxes are due to the County and State upon recordation. An abstract may be recorded instead of the contract.	5/1/2017 3:14 PM
4	Typically the full contract is recorded.	5/1/2017 3:02 PM
5	The statute allowing forfeiture requires that the REK or some memorandum be recorded as a condition to allowing the forfeiture. So some memorandum or the statute can be recorded.	5/1/2017 2:42 PM
6	They may be recorded, but recording is not required. Either the contract itself or as memorandum of the contract may be recorded.	5/1/2017 2:32 PM
7	If the contract is properly executed with notarized signatures, it could be recorded unless the contract prohibits recording by the buyer. Sellers typically prohibit recording by buyer.	4/24/2017 3:17 PM
8	Any record acknowledged or proved that affects interests in land may be recorded. There is no requirement. And I do not know what the effect of a provision in the contract saying it may not be recorded would be.	4/19/2017 12:48 PM
9	Memorandum of Sale	4/12/2017 10:40 AM
10	It may be recorded but this is rarely done.	4/4/2017 3:36 PM
11	owner, owner address	3/31/2017 7:34 AM
12	(4) "All deeds for absolute conveyance of any lands, tenements or hereditaments, or any estate therein" (T.C.A. §66-24-101)	3/28/2017 4:24 PM
13	Contracts must be recorded	3/22/2017 2:25 PM
14	Legally recording is permitted, but the parties do not use this in practice.	3/22/2017 1:59 PM
15	Memorandum of land contract	3/22/2017 12:41 PM
16	Only a full contract can be recorded	3/22/2017 11:53 AM
17	A notice of contract to secure the statutory lien of purchasers deposit can be recorded with names of parties, date and property identification may be recorded on the land records if completed with the formalities of a deed such as witnesses and notarization.. All such contracts or notice thereof should be recorded but I am informed anecdotally that many times they are not so recorded.	3/3/2017 10:06 AM
18	Any portion thereof, including a memorandum agreement	3/2/2017 11:03 AM
19	At sellers option a memorandum of the contract may be recorded instead of the full contract.	3/1/2017 4:16 PM
20	The full contract is to be recorded by the seller per 53'3.02(C).	2/20/2017 2:34 PM
21	Notice of CFD with pertinent details	2/15/2017 4:14 PM
22	Practice is to record the entire real estate contract, although the statute allows for the recording of a memorandum of the contract.	2/13/2017 6:47 PM
23	nothing else	2/9/2017 5:36 PM
24	A memorandum of contract.	2/9/2017 4:19 PM
25	The parties may record a Short Form Contract which lists the parties and the legal description and a statement that the parties have executed a contract for deed.	2/8/2017 4:43 PM



## Contracts for Deed Survey

### Q13 If contracts for deed or some evidence of the contracts for deed are not recorded, what is the legal effect with respect to third parties?

Answered: 29 Skipped: 11

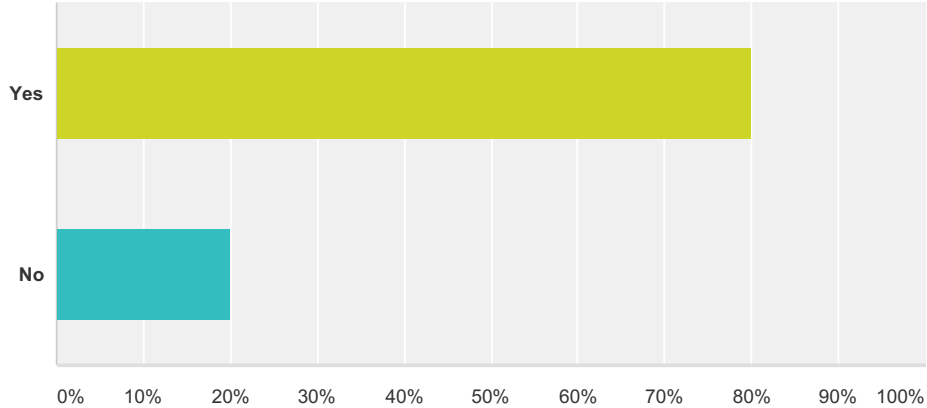
#	Responses	Date
1	As noted above, the components of a Montana Contract for Deed typically include three documents, being: (a) the Contract for Deed itself, which is not recorded, (b) a Notice of Buyer's Interest, which is recorded, and which provides constructive notice to future purchasers and encumbrancers; and (c) a warranty deed which is typically held by an escrow agent, bank or title company until the contract has been fully paid, at which time the deed is recorded; (d) some lawyers require the buyers to execute and deliver unto the escrow holder a Quitclaim deed which is to be delivered back to the seller in the event of default. The efficacy of that procedure is now very doubtful under the Arrowhead case discussed above.	5/1/2017 5:13 PM
2	If it can be shown that there is no actual or constructive notice of a true contract for deed by a third-party, then the third-party could qualify as a bona fide purchaser.	5/1/2017 3:30 PM
3	No effect on rights of third parties unless recorded.	5/1/2017 3:21 PM
4	No effect on third parties unless third parties have actual knowledge.	5/1/2017 3:14 PM
5	For residential land contracts, the statute requires recording but states no consequence. Ohio courts have interpreted that to mean that the vendee may sue for violation of the statute if the vendee can show damage. I have seen no third party asserting damage resulting from violation of the statute. For all land contracts, there is no effect as to third parties if the vendee is in possession – Ohio courts have held that possession constitutes constructive notice to inquire as to the basis for the possession.	5/1/2017 3:02 PM
6	If not recorded it would have the same effect as an unrecorded deed.	5/1/2017 2:42 PM
7	This would be governed by Rhode Island's recording act, R.I. Gen. Laws section 34-13-2, which provides a pure notice rule. The buyer's possession would provide notice of a possessory interest, but probably not a purchase interest.	5/1/2017 2:32 PM
8	There is no notice of the equitable interest of the buyer to the public.	4/24/2017 3:17 PM
9	Third parties with knowledge would be subject to legal effect. And there is a case saying that a buyer cannot say he did not know that another might have rights in the property if that person is in residence.	4/19/2017 12:48 PM
10	Unenforcable against them, unless they had actual notice.	4/12/2017 10:40 AM
11	affects only third parties with actual notice of contract	4/4/2017 1:08 PM
12	we are a notice state consequently, third parties without knowledge have a strong claim	4/4/2017 1:01 PM
13	This is a problem and there have been at least two cases in recent years--see Walls v. Humphries. Seller sold mineral rights out from under buyer. It's a problem. I am told by practitioners that about 50% of contracts for deed are recorded. There's no requirement. I have advocated a statute to require recording. There's lots of strong opposition. Some sellers refuse to sell if the buyer asks to record the deed.	4/4/2017 8:34 AM
14	n/a	3/31/2017 7:34 AM
15	They are not legally recognized if they are not recorded (T.C.A §66-26-101).	3/28/2017 4:24 PM
16	All of the liens on the property recorded before the contract for deed are senior to the contract for deed (regardless of when the contract was actually entered into). Ga. Code, § 44-2-6.	3/22/2017 2:25 PM
17	Possession constitutes notice Kinch v. Fluke, 166 A. 905 (Pa. 1933), Rowe v. Ream, 1884 WL 13101 (Pa. 1884) (possession of the property serves as notice equal in weight to recording), Malamed v. Sedelsky, 80 A.2d 853, 855 (Pa. 1951). Buyers/mortgagees have a duty to inquire of party in possession to determine potential ownership interest Woods v. Farmere, 7 Watts 382, cited in Jamison v. Dimock, 95 Pa 52, 55; 1880 Pa. LEXIS 279, 10.	3/22/2017 1:59 PM
18	Third party is a bfp	3/22/2017 12:41 PM
19	If they are not recorded, there is no effect on a third party purchaser.	3/22/2017 11:53 AM

## Contracts for Deed Survey

20	An unrecorded purchaser would lose to any subsequent buyer or encumbrancer without actual notice but if there are none, and the contract is a sufficient writing to meet statute of frauds, the purchaser should be able to contend with the vendor and defend against inequitable conduct.	3/3/2017 10:06 AM
21	A contract for deed does not bind third party purchasers without knowledge of the sale.	3/2/2017 11:03 AM
22	Our statute mandates recording, but does not state what the consequence is for failure to record.	3/1/2017 4:16 PM
23	See above.	2/20/2017 2:34 PM
24	No constructive notice	2/15/2017 4:14 PM
25	No effect unless the third party has actual notice of the real estate contract.	2/13/2017 6:47 PM
26	Subsequent purchasers can take free of the equitable claim of a seller, but this depends on the recording act's application.	2/13/2017 4:06 PM
27	there is no effect at all - it is as though the transaction does not exist (we are a pure race recording system state)	2/9/2017 5:36 PM
28	A bona fide third party purchaser or encumbrancer will have rights superior to the contract purchaser if they had no actual knowledge of the contract.	2/9/2017 4:19 PM
29	Third parties are bound if they have notice.	2/8/2017 4:43 PM

### Q14 Have there been any particular problems or abuses with respect to contracts for deeds in your state?

Answered: 30 Skipped: 10



Answer Choices	Responses
Yes	80.00% 24
No	20.00% 6
<b>Total</b>	<b>30</b>

#	Please identify the problems, if any.	Date
1	The problems have been extensive in the past because of the inconsistency in the Montana Supreme Court opinions prior to the Arrowhead opinion. There are, however, practical problems which are inherent in the Contract for Deed vehicle, because legal title is not conveyed until the final payoff: (a) practical difficulties are often involved when two or more Contracts for Deed are entered into on the same property, in succession. In an attempt to control these problems, the second such Contract for Deed typically provides for a payment on the second contract to be escrowed with an escrow company, bank or title company, to assure that the payments due under the first contract are in fact made. (b) A more serious problem is the risk of the seller attempting to convey legal title before the final payoff. This is not a right, but is in fact a power, and if the seller records such a deed to a third party, litigation unavoidably ensues. (c) A significant risk is also posed by the possibility of a federal tax lien being imposed while legal title is still in the hands of the seller under the Contract for Deed. In the Orme case cited above, 269 F.3d 991, the Ninth Circuit held that if a federal tax lien was filed more than thirty days before the attempted termination by the seller; and (ii) the seller terminated the contract without giving the thirty day notice to the IRS required by IRC Section 7425(b), that the federal tax lien continued in force. Special Rules for Indian Land. In Stewart v. U.S. Dept. of Interior, 109 F.3d 1380 (Ninth Circuit 1997), the court held that when an Indian-owned land on an Indian reservation is sold under a land sale contract, by an enrolled member of a federally recognized Indian tribe, and there is a direct conflict between the Montana and a forfeiture law in the Federal law, the court may apply the Federal law.	5/1/2017 5:14 PM
2	Banks will not loan on contracts for deed for obvious reasons. Realtors tend to avoid them due to a lack of understanding about them and how they work and the low change that a bank would loan on a contract for deed transaction. They tend to be used in private transactions where the buyer cannot marshal conventional loan qualifications. Private sellers like them if they can get a buyer to sign them because they can work heavily in the sellers favor on default.	5/1/2017 3:32 PM
3	There is no statutory or judicial remedy, so there is or may be confusion.	5/1/2017 3:22 PM
4	Because the statutes and the courts have been largely silent, there are questions regarding default and forfeiture, especially if not addressed with specificity in the contract. This raises the side issues of liens, whether filed against the buyer or the seller.	5/1/2017 3:15 PM

## Contracts for Deed Survey

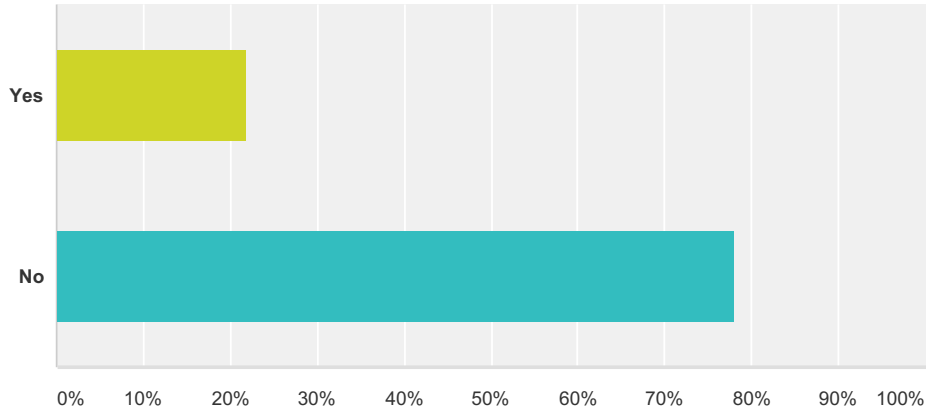
5	Since most residential land contracts concern lower value properties, it has provided the basis for the "rent to own" industry. Frequently these transactions are characterized as leases with options to purchase (and some portion of the "rent" being applied to the purchase price), but most courts see through that and characterize them as land contracts. But, again, it only matters if the vendee meets the threshold requirement (5 years or 20% paid). As to non-residential land contracts, there have been very few reported cases in the last many years.	5/1/2017 3:04 PM
6	There were some difficulties in the past and that is why the statute regulating and regularizing forfeitures was enacted in 1985.	5/1/2017 2:43 PM
7	The main problem has been with so-called foreclosure rescue arrangements, in which a third party agrees that, if it is the successful bidder at a foreclosure sale, it will transfer the property back to the mortgagor for a stated consideration. Seller abuses have included oppressive terms, fraud, and potential usury violations.	5/1/2017 2:34 PM
8	Forfeiture of monies paid by buyers; Failure of seller to provide recordable deed on payment completion; Sales to another buyer without notice to the first buyer.	4/24/2017 3:24 PM
9	do not know	4/19/2017 12:49 PM
10	Sellers routinely "sell" houses that are not fit for habitation. Often they have been cited for code violations or have even been condemned. Buyers are then - under the contract - obligated to make the repairs to property to make it livable. Buyers can rarely afford to do this. Sellers charge significant down-payments and high interest on monthly payments. Sellers then utilize the eviction process to evict buyers, casting the agreement as a lease. Buyers then lose all the money put into the property as a down-payment and all the money put into repairs.	4/4/2017 3:42 PM
11	Wraparound contracts, predatory lending, sale of property not owned by seller, improperly evicting buyers under summary eviction process that is exclusive to landlord tenant relationship, unfulfilled promises by seller to make repairs, refusals by seller to give receipts for cash payments and subsequent failure to account for those payments, seller's acceptance of down payment and subsequent refusal to refund the payment where deal not consummated, sale of substandard properties	4/4/2017 1:13 PM
12	the terms are often not clear; there is no duty to return the down payment; sometimes contracts for deeds are coupled with a promissory note that continues to be enforceable; properties are often in poor condition; terms are often not affordable	4/4/2017 1:02 PM
13	See Q. 13. I am also told that right now there's a fair amount of victimization of Hispanic residents going on, they are sold mobile homes on installment contracts at exorbitant prices and then forfeit everything on default.	4/4/2017 8:39 AM
14	<a href="http://www.wmcactionnews5.com/story/14848784/the-investigators-dont-do-it">http://www.wmcactionnews5.com/story/14848784/the-investigators-dont-do-it</a> "Buyers" are not protected.	3/31/2017 7:39 AM
15	Various companies in the Memphis area may be participating in this practice.	3/28/2017 4:26 PM
16	See Joel Kurth, "Land Contracts Trip Up Would-Be Homeowners," Detroit News, Feb. 29, 2016. In 2015, there were more land contracts than home mortgages in Detroit (and not coincidentally, Detroit leads the nation in evictions). Investors are buying decayed properties en mass (200 to 600 a year) and selling them "as is" on contract (properties often have no heat or hot water). These properties wouldn't pass inspection if they were rented. People sign the contracts because they seem like a good deal and there is no other way to find housing. They put all the money they have into making the places habitable, then fall behind and are evicted. Because they are sold properties at grossly inflated prices in the first place, they don't have a chance. When you add the fact that these homes are in terrible shape, what you find is a scheme that forces people to pay to upgrade properties that they then quickly lose. The owners are free to repeat the scheme with the next desperate buyer.	3/28/2017 10:07 AM
17	I suspect that there is, but have not studied the problem myself; Ga. had one of the worst foreclosure crises in the entire country in the wake of the 2008-09 Great recession;	3/22/2017 2:31 PM
18	Disparate power of sellers v. buyers. Sellers control the creation of the documents. Sellers create them as "rent to own" and often execute two documents, lease + separate purchase contract (or a rider, addendum, or "option to purchase"). Documents are rarely if ever notarized, which makes them ineligible to be recorded. Sellers will often fraudulent represent the transaction as a straight tenancy to evict and circumvent all the installment sales rights. They get away with it because the buyers don't right back and don't know they have more rights.	3/22/2017 2:08 PM
19	Often not recordable; substantial repair and/or tax arrearage burdens shifted to purchaser; substantial downpayments required; language converting purchaser to tenant in event of default;	3/22/2017 12:43 PM
20	We are seeing an increase in problems. Some of the land contracts have very abusive terms ( restrictions of remedies). There is a tendency to put all repairs and code violations on the buyers, but then to limit the ability of them to be reimbursed for any improvements. We have also seen more people selling properties by land contract when the property is owned by someone else (usually a GSE who seems to have abandoned it).	3/22/2017 11:57 AM

## Contracts for Deed Survey

21	I have not seen or been involved in such a transaction in nearly 50 years of practice ( passed bar in 1968). My only contact with one in a case was for purposes of deciding whether the contract purchaser ( who eventually did get full title) was able to tack on his years of equitable rights as a tenant under a bond for deed for purposes of establishing adverse possession. The Appellate Court did uphold tacking of such equitable ownership to his subsequent full ownership for purposes of establishing 15 year holding period for adverse possession of certain right of way which was part of the deal. That was a 2005 case and I don't think the phrase "bond for deed " was used in any opinion later than that., but I have made no exhaustive search nor used the more modern substitute terms used in most other jurisdictions.	3/3/2017 10:21 AM
22	Contracts for deed are little used these days but historically were used to dispossess purchasers without the protections of the Florida statues regarding mortgages. Hence, the Florida Legislature adopted section 697.01 to ensure that contracts for deeds were deemed mortgages that needed to be foreclosed in accordance with the Florida statues on foreclosing mortgages.	3/2/2017 11:06 AM
23	1. The buyer might have paid 95% of the purchase price, but could still lose the property upon default and get no credit money paid. 2. There are no statutory provisions giving buyer the right to contest a wrongfully asserted default--the judicial foreclosure process will not apply.	3/1/2017 4:29 PM
24	I simply marked Yes in order to be complete. I am not sufficiently informed to answer this question one way or the other.	2/20/2017 2:46 PM
25	Perceived abuses and inconsistent treatment by the courts led to codification of the forfeiture process in 1985. Unaware of any particular problems or abuses since then.	2/13/2017 6:52 PM
26	Not that I've seen.	2/13/2017 4:07 PM
27	Taking advantage of vulnerable buyers by having them enter into unfavorable agreements Keeping the entirety of their past payments in the event of a default by the buyer when only a reasonable rental amount may be kept Lack of an ability by buyers to exercise the limited protections afforded to them under the La. Bond for Deed Act.	2/9/2017 5:38 PM
28	Sellers frequently collect payments from buyers but fail to pay underlying, superior encumbrances, resulting in foreclosure by the superior lien holder.	2/9/2017 4:21 PM

### Q15 Do you believe that either the legislature or the courts have appropriately addressed contract for deed issues in your state?

Answered: 32 Skipped: 8



Answer Choices	Responses
Yes	21.88% 7
No	78.13% 25
<b>Total</b>	<b>32</b>

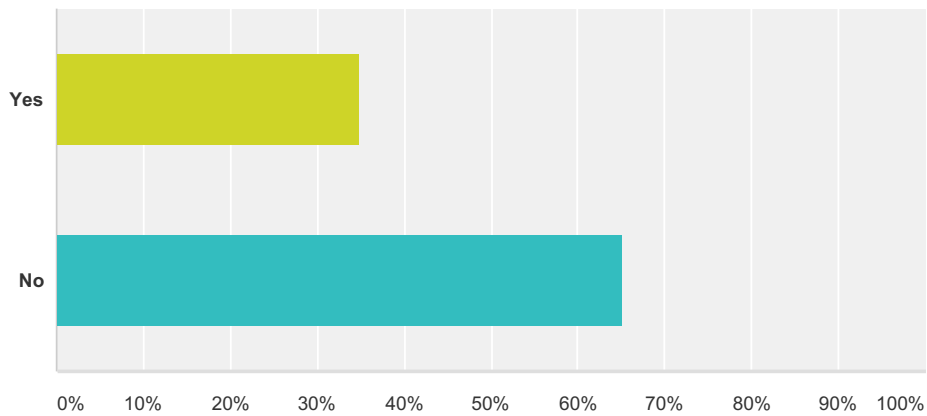
#	What issues have been addressed?	Date
1	Because the content of a Montana Contract for Deed is not standardized, the cases dealing with such contracts vary materially. The Arrowhead opinion appears to have satisfactorily resolved the issues involving liquidated damages, although as noted above, there is not absolute certainty that the opinion will be applied to Contract for Deed cases when those are squarely presented. As presently constituted, the Montana Contract for Deed vehicle is archaic in nature, and poses substantial risks for both the buyer and the seller. The saving grace for this vehicle, if there is one, is in the economic circumstance in which institutional loans are not readily available, such as occurred in Montana in the 1980s. In that situation, a Contract for Deed may be the only vehicle available for financing a sale of real property. Some of the older lawyers in Montana have noted to the undersigned that they continue to use Contracts for Deed simply "because they know how to do that." Except for the circumstance in which institutional loans are not readily available, Montana Contracts for Deed appear to be regularly diminishing in frequency of use. It is predictable that the Contract for Deed will probably die a natural death over the next few years because of its many problems and uncertainties.	5/1/2017 5:14 PM
2	The legislature has not really addressed them at all. The Wyoming courts have addressed them as set out above, they tend to be strictly read and enforced on default. See, e.g., See Reynolds v. Milatzo, 2007 WY 104, 161 P.3d 509 (Wyo. 2007).	5/1/2017 3:32 PM
3	None, really.	5/1/2017 3:22 PM
4	The Commonwealth has generally repealed most provisions of the Subdivided Land Sales Act (§55-336, et seq.). Other sections of the Code state that the provisions apply (among others) to installment sales contracts. (Septic tank permits, e.g.)	5/1/2017 3:15 PM
5	Only in part. The legislature has addressed only the foreclosure-rescue abuse situation, and its solution is not comprehensive.	5/1/2017 2:34 PM
6	Enforcement of rights favors the seller and disfavors the buyer, especially when the buyer is less sophisticated and is not able to obtain third party financing to complete the purchase and obtain a deed from the seller.	4/24/2017 3:24 PM

## Contracts for Deed Survey

7	Although case law states that these agreements should be treated as mortgages, this is rarely observed. The legislature should codify this rule and make it explicit that these agreements are not leases subject to the eviction process. The legislature should also require disclosures of defects and address the situation where sellers are selling houses that are uninhabitable or have been condemned.	4/4/2017 3:42 PM
8	None. Legislature has twice rejected proposals for REC legislation.	4/4/2017 1:13 PM
9	In Walls v. Humphries, the court said the oil company would not be a BFP if there was enough evidence that buyers were occupying the property. It was remanded to determine that. That got oil company attorneys all riled up. I believe (haven't looked at these in years) that a few cases say the buyer is entitled to a foreclosure in those cases. I am told that courts will do this. Don't have any citations. There are also a few cases that discuss waiver and the opportunity for buyer to win if seller has been accepting late payments.	4/4/2017 8:39 AM
10	I'm not sure - but given that the abuses continue, clearly not enough has been done.	3/28/2017 10:07 AM
11	The installment sales law is not applicable to the full state. The law also doesn't provide remedies to buyers for poor housing conditions/habitability. The law also only allows most remedies for the buyer ONLY after the buyer surrenders possession of the property. This is an impossible option for many clients. The law also is horribly punitive towards buyers for even a minor delinquency in payment. We really need an updated statute that recognizes the power imbalance between seller and buyer. The courts have filled many of these gaps through common law and other general consumer law. The courts could do better about identifying cases that are installment sales contracts. I'd love to see standard screening practice in courts that handle eviction cases to ensure they are not evicting buyers (LL/T court doesn't have jurisdiction over land sales contracts).	3/22/2017 2:08 PM
12	interest rate caps.	3/22/2017 12:43 PM
13	They have addressed the issue of equity. However, Indiana gives contract rights undue deference, so they essentially let sellers require almost anything.	3/22/2017 11:57 AM
14	The current widely reported misuse of bond for deeds of distressed property sold to unsophisticated and sometimes desperate buyers sounds like something which could be more directly limited or prohibited by disclosure statutes and other remedies limiting the potential for abuse. The techniques I have described above all require legal representation that may not be easily available for the victims of abusive installment sale schemes. Fee shifting statutes might be a good way to incent private attorneys to take on such abuse cases if the contract or its enforcement involves sub standard property not brought code compliant or is otherwise determined to be abusive.	3/3/2017 10:21 AM
15	The former practice of using contracts for deed to dispossess purchasers without foreclosure protections has been addressed by the adoption of Florida Statute section 697.01	3/2/2017 11:06 AM
16	virtually none	3/1/2017 4:29 PM
17	Some of the problems in the law which I can identify include the failure to regulate inflated sales prices, excessive interest rates, forfeiture is too easy, failure to require that Seller warrant that the dwelling meets all applicable housing codes, failure to require the dwelling to pass an inspection by a State of Ohio inspector, and and failure to prohibit arbitration clauses.	2/20/2017 2:46 PM
18	See RCW 61.30 which provided a consistent predictable forfeiture process in the event of default together with appropriate protection of buyers as noted above.	2/13/2017 6:52 PM
19	treating them as mortgages seems to protect the purchaser from forfeiture, but it can diminish the utility of the transfer mechanism.	2/13/2017 4:07 PM
20	Seller has to foreclose. Buyer is not entitled to a lien after foreclosure based on any equity the Buyer had.	2/8/2017 4:46 PM

### Q16 Is the law functioning as intended to address the issues identified?

Answered: 23 Skipped: 17



Answer Choices	Responses	Count
Yes	34.78%	8
No	65.22%	15
<b>Total</b>		<b>23</b>

#	Please explain:	Date
1	I've described the basics of the 1969 Ohio "reform" act for residential land contracts. I think it was a industry driven statute to reinstate forfeiture since the Ohio courts were trending away from it. I think it's regressive, and I think it should be amended to provide for mortgage protections for land contract vendees (viva the Restatement!). As to non-residential land contracts, I think the courts are backsliding.	5/1/2017 7:04 AM
2	The statute seems to work reasonably well.	5/1/2017 6:43 AM
3	Not always.	4/24/2017 7:24 AM
4	Yes, I think a uniform law would be a good idea.	4/19/2017 4:49 AM
5	no law.	4/4/2017 5:13 AM
6	I know some attorneys who will not draft contracts for deed because they believe they are fundamentally unfair. Buyers are victimized, routinely in some instances. Sellers will refuse to record.	4/4/2017 12:39 AM
7	TN Residential Lending Brokerage and Servicing Act - 2009 TN Home Loan Protection Act (THLPA) - 2006 Both acts fail to adequately address these types of agreements in the first place.	3/30/2017 11:39 PM
8	From review of the existing statutes, it appears that the seller has the upper hand in these disputes when they are brought to court in Tennessee.	3/28/2017 8:26 AM
9	See above. Even if the law requires disclosure of conditions, it does nothing to prevent the extreme overcharging that contract buyers face (properties purchased for a few hundred dollars that are resold for tens of thousands of dollars). It doesn't protect people from predatory contracts.	3/28/2017 2:07 AM
10	I	3/22/2017 6:31 AM
11	The installment sales law is not applicable to the full state. The law also doesn't provide remedies to buyers for poor housing conditions/habitability. The law also only allows most remedies for the buyer ONLY after the buyer surrenders possession of the property. This is an impossible option for many clients. The law also is horribly punitive towards buyers for even a minor delinquency in payment. We really need an updated statute the recognizes the power imbalance between seller and buyer.	3/22/2017 6:08 AM
12	Caps are too high --11%	3/22/2017 4:43 AM

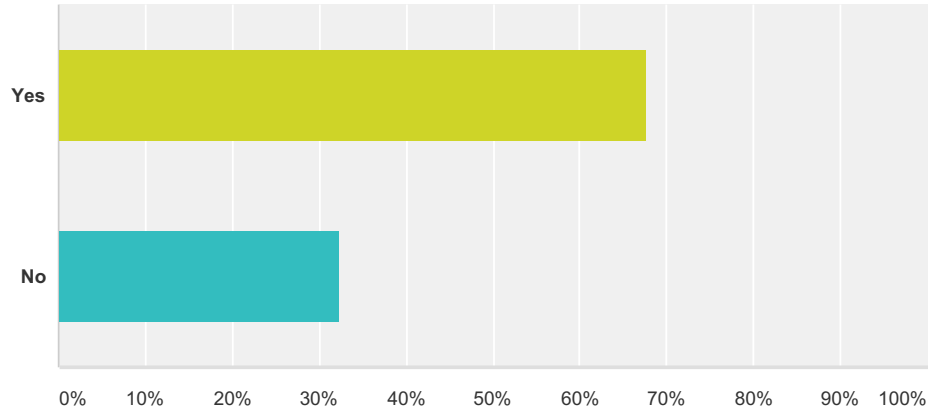


## Contracts for Deed Survey

13	People are being abused. One of the most obvious ways is in the way these contracts are now being characterized. More and more they are being called "options" when they are clearly land contracts. So, for instance, it is an "option to buy" but you have to exercise the option in order to move in. Or it is an "option " to buy but there is no real way to exercise the option.	3/22/2017 3:57 AM
14	N/A	3/13/2017 11:01 AM
15	Such little experience in recent decades it is hard to determine. It would seem inadequate to be fully effective if such abusive tactics became more common in Connecticut.	3/3/2017 2:21 AM
16	Contracts for deed and variations thereof are put through the judicial foreclosure process, which process has multiple protections for borrowers/purchasers.	3/2/2017 3:06 AM
17	Yes, if you mean that the law gives almost no protection to the buyer and that was the intent of the laws as enacted.	3/1/2017 8:29 AM
18	The law does not address any of the issues identified in # 17.	2/20/2017 6:46 AM
19	Idaho law does not address in any significant way contracts for sale.	2/9/2017 8:21 AM

### Q17 Do you believe that there is a need for a uniform or model law regarding of contracts for deed in your state?

Answered: 31 Skipped: 9



Answer Choices	Responses
Yes	67.74% 21
No	32.26% 10
<b>Total</b>	<b>31</b>

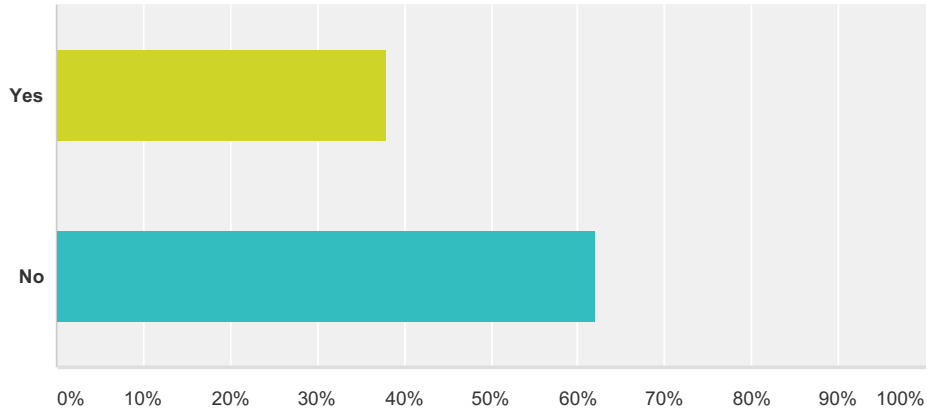
#	Would you suggest a uniform act or a model act?	Date
1	I think that the value of a uniform or model act would be doubtful. Because Montana law has contained such a hodge podge of cases dealing with Contracts for Deed, it is difficult to predict whether the Montana Supreme Court would apply earlier opinions to some aspects of a new model or uniform law. If the court did do that, the efficacy of any such uniform or model statute could be rendered doubtful.	5/1/2017 5:15 PM
2	No. Not really. The current caveat emptor and Bank lending environment self-regulates fairly well. As set out above, the courts also tend to read and apply contract for deed agreements strictly to avoid a forfeiture if the contract is not clear and followed very strictly on default.	5/1/2017 3:33 PM
3	Not sure if there is enough demand for installment sales contracts to justify an Act. Either would be helpful	5/1/2017 3:23 PM
4	Installment sales contracts are not favored, and most lawyers try to dissuade their clients, steering them to seller financing instead.	5/1/2017 3:16 PM
5	Model law – Unlike mortgages, there is not a national market, so a model law would work well.	5/1/2017 3:05 PM
6	Washington has three choices for real estate financing Mortgages—foreclosed judicially Deeds of trust—foreclosed non-judicially, but may be foreclosed judicially as a mortgage REKs—with forfeiture, but may be foreclosed judicially Since the uniform act would change some of this (presumably) and since there is no national market (as far as I know) for REK financing I don't think there is much need for uniformity and so I am not sure about the value of a uniform act.	5/1/2017 2:44 PM
7	Either a uniform or a model act would be appropriate. If I had to choose one or the other, I would suggest a uniform act, because the scope of the problem and the types of solutions should not vary from state to state.	5/1/2017 2:35 PM
8	Model act	4/24/2017 3:26 PM
9	In ULC speak, a model act is one that the body thinks is a mistake	4/19/2017 12:54 PM
10	unsure. I find model acts fail to be adequately responsive	4/4/2017 1:04 PM
11	I think uniform would be appropriate here.	4/4/2017 8:42 AM
12	Uniform is the dream.	3/31/2017 7:43 AM

## Contracts for Deed Survey

13	Uniform	3/28/2017 4:44 PM
14	uniform	3/22/2017 12:46 PM
15	model act	3/13/2017 7:03 PM
16	Model Act since it is my understanding that current law around the country is extremely diverse making it inappropriate for a none size fits all approach.	3/3/2017 10:26 AM
17	model act	3/1/2017 4:32 PM
18	I do not see why uniformity is essential and so a "model" act would be acceptable.	2/20/2017 2:49 PM
19	Model Act	2/9/2017 5:39 PM

### Q18 Do you think that either a uniform or model law on contract for deed could pass the legislature in your state?

Answered: 29 Skipped: 11



Answer Choices	Responses
Yes	37.93% 11
No	62.07% 18
<b>Total</b>	<b>29</b>

#	Please explain your position.	Date
1	It is very difficult to predict whether such a uniform or model law would pass the Montana Legislature. As presently constituted, the Legislature is generally very conservative, and many of its members apparently believe that there should be fewer, not more, regulatory provisions. If that outlook were to prevail, such a uniform or model act could face serious opposition.	5/1/2017 5:15 PM
2	My opinion is that it would not pass right now or in the conceivable future. Our legislature tends to be very conservative and averse to adding new laws like that if they might impair free contracting.	5/1/2017 3:33 PM
3	50-50 chance. The legislature in West Virginia is consumed with passing legislation that are solutions in search of problems, such as addressing the disposition of deer antlers, or introducing a bill to regulate where pants may be worn on the waist. Bills that solve real problems usually get stuck in committee.	5/1/2017 3:23 PM
4	The Commonwealth has been early adopters of uniform acts, and historically has been progressive in enacting them.	5/1/2017 3:16 PM
5	I'd love to say "yes!" But, I have my doubts. The Ohio legislature has passed laws to protect the payday loan industry, for example, and I think there may be those who would lobby for the rent to own industry.	5/1/2017 3:05 PM
6	I have my doubts about passage. A number of years ago I was part of a group that proposed streamlining and regularizing our system of real estate security (see above) into a single type of transaction that would allow for judicial or non-judicial sale, and would also allow for "forfeiture" as a type of deed-in-lieu process. We were met by much opposition by the bar and the idea simply faded.	5/1/2017 2:44 PM
7	A uniform act would be well-received in our legislature. However, the main challenge might be overcoming the view that, in Rhode Island, a uniform act might be a solution in search of a problem.	5/1/2017 2:35 PM
8	Yes, if the legislators are convinced there are abuses that should be corrected.	4/24/2017 3:26 PM
9	A wonderful principle: Anyone can predict what the Legislature will do. If he does not mind being wrong. But I think this is possible, if there things appear to be proliferating.	4/19/2017 12:54 PM
10	Unknown	4/12/2017 10:41 AM

## Contracts for Deed Survey

11	In Pennsylvania, the landlord lobby prevents the passing of many tenant protections. For example, the landlord lobby successfully petitioned the legislature for the right to garnish wages of tenants following judgments in eviction - first for judgments based on damages and then for judgments based on unpaid rent. They have also prevented legislation re bedbug issues from being passed.	4/4/2017 3:44 PM
12	don't know. Two attempts to pass REC legislation have failed.	4/4/2017 1:15 PM
13	possibly	4/4/2017 1:04 PM
14	Real estate investors and realtors are incredibly powerful here. We're the only state with no implied warranty of habitability for tenants. The AG's office supported such a bill about 10 years ago. It was immediately killed.	4/4/2017 8:42 AM
15	TN has done an okay job of modeling legislature.	3/31/2017 7:43 AM
16	Legislation originating in the Tennessee state legislature is generally conservative and in favor of business interests.	3/28/2017 4:44 PM
17	It's possible that a model law could pass.	3/28/2017 10:09 AM
18	Maybe, but probably only if it had significant support in other southern states with Republicans in power; the banking and real estate lobbies have strong influence with the Ga. Legislature, it might be a tough fight here	3/22/2017 2:37 PM
19	Deeply divided state legislature. Also very hostile regional differences (Philly and Pittsburgh are viewed with disdain by legislators from other parts of the state).	3/22/2017 2:14 PM
20	Efforts to recently amend the mortgage foreclosure statute ended in disaster with mediation provisions repealed and redemption periods eliminated.	3/22/2017 12:46 PM
21	You should have a "not sure" in there. The landlord lobby is strong and they tend to like to unload homes this way. It would really depend on what the law looks like. It is hard to predict otherwise.	3/22/2017 11:59 AM
22	I believe that model legislation would have a chance at passing the Wi. State Legislature if it defined and strengthened the rights of buyers and sellers of land. There are opportunities for a win-win bill.	3/13/2017 7:03 PM
23	Because there has been no widely reported abuse there will not be much traction for such a statute until after some reported abusive cases where publicity is given to the inadequacy of current law.	3/3/2017 10:26 AM
24	There does not seem to be a big need for it	3/2/2017 11:07 AM
25	We are pretty good at lobbying our legislature to protect Maine homeowners, and have overcome major financial industry opposition a number of times. I also believe that Maine banks might actually support this legislation since it might drive more lending business to them.	3/1/2017 4:32 PM
26	Not at this point, the General Assembly would have to be primed for it to pass such a reform.	2/20/2017 2:49 PM
27	The law in ND seems to be working well as is. Don't see many actions to cancel or foreclose a CFD by action. Don't see many cancellation notices published. Property could be conveyed back to a seller by a quit claim deed if there is no dispute.	2/15/2017 4:17 PM
28	General acceptance of the current codified procedure and a reluctance to change. Attitude might change if a number of other states adopted a uniform or model law.	2/13/2017 7:02 PM
29	Uniform laws tend to get a favorable reception in Nebraska. Insofar as K's for Deed are concerned, I don't anticipate much push back, at least insofar as forfeiture is concerned. After all, the courts already treat them as mortgages.	2/13/2017 4:09 PM
30	There is a desire to protect vulnerable consumers, both at the legislature and among the judiciary, when it comes to bond for deed contracts. Some courts have even advocated getting rid of them altogether.	2/9/2017 5:39 PM
31	I do not think it would be deemed necessary.	2/8/2017 4:49 PM

## Contracts for Deed Survey

### Q19 What entities or organizations would support a uniform or model law in your state? Please identify each.

Answered: 31 Skipped: 9

#	Responses	Date
1	In the past, uniform laws which have been presented have typically been presented by the Business Estates Trust Tax and Real Estate section of the State Bar of Montana, supported by the Montana members of the Uniform Law Commission. However, not all uniform acts have been proposed in Montana. Both the Bar and the Commissioners have historically evaluated each proposed uniform statute on its own merits. If both the Bar and the Commissioners believed a uniform law would be helpful, it would be offered. (With rare exceptions, uniform laws proposed by the Bar and the Commissioners have typically passed the Legislature.) I cannot hazard an opinion as to whether the Bar and the Commissioners would or would not propose enactment in Montana of a uniform law dealing with Contracts for Deed.	5/1/2017 5:15 PM
2	Unsure.	5/1/2017 3:33 PM
3	Realtors, maybe the bar.	5/1/2017 3:23 PM
4	Realtors likely would favor because it would give them another tool for sales.	5/1/2017 3:16 PM
5	Likely local legal aid societies and progressive groups.	5/1/2017 3:05 PM
6	I really can't identify the support or opposition without knowing more about what a uniform or model act would look like. I suspect that the bar would be the key factor since REKs are not much used in institutional financing and so banks and the like wouldn't have a position. I am not sure how real estate brokers might react	5/1/2017 2:44 PM
7	Rhode Island Housing Mortgage Finance Corp. Housing Network of Rhode Island Rhode Island Legal Services State of Rhode Island Housing Resources Commission Rhode Island Foundation	5/1/2017 2:35 PM
8	Unknown to the respondent.	4/24/2017 3:26 PM
9	Probably the NJSBA and Land Title Assn.	4/19/2017 12:54 PM
10	Unknown	4/12/2017 10:41 AM
11	Legal services organizations	4/4/2017 3:44 PM
12	Legal service providers, NM Attorney General's office	4/4/2017 1:15 PM
13	Potentially Coastal Enterprises Inc.; Maine Equal Justice; Pine Tree Legal Assistance	4/4/2017 1:04 PM
14	Citizens First Congress Possibly county clerks (more business for them) Possibly Arkansas Land Title Association	4/4/2017 8:42 AM
15	Memphis Fair Housing Center of Memphis Area Legal Services	3/31/2017 7:43 AM
16	Memphis Area Legal Services Mid-South Peace and Justice Center-Memphis United Housing-Memphis Community Action Committee-Knoxville Tennessee Association of Realtors Tennessee Citizen Action	3/28/2017 4:44 PM
17	Any housing rights group.	3/28/2017 10:09 AM
18	If it was strong and prevented exploitation I suspect the Atlanta Housing Justice League would support it; other community organizations and CDCs would as well.	3/22/2017 2:37 PM
19	Regional Housing Legal Services Pennsylvania Legal Aid Network	3/22/2017 2:14 PM
20	Hopefully local governments; county registers of deeds, the courts and neighborhood groups	3/22/2017 12:46 PM
21	again, it will all depend on the law.	3/22/2017 11:59 AM
22	Sen. Tammy Baldwin, the Dane County Govt.	3/13/2017 7:03 PM
23	Legal assistance groups, consumer law advocates, affordable housing advocates	3/3/2017 10:26 AM
24	Florida Bar Real Property Section; Florida Bar Public Interest Section	3/2/2017 11:07 AM
25	Pine Tree Legal Assistance Legal Assistance for the Elderly. possibly AARP Maine Peoples Alliance	3/1/2017 4:32 PM
26	I have no idea.	2/20/2017 2:49 PM

## Contracts for Deed Survey

27	Unknown	2/15/2017 4:17 PM
28	See above. Probably none at this point. If adopted by a number of other states first, may get some support from the state bar association or the title insurance industry.	2/13/2017 7:02 PM
29	Louisiana Budget Project Public Affairs Research Council of Louisiana Council for a Better Louisiana Louisiana Appleseed Southeast Louisiana Legal Services Corporation Louisiana Progress	2/9/2017 5:39 PM
30	Don't know.	2/9/2017 4:22 PM
31	?	2/8/2017 4:49 PM

## Contracts for Deed Survey

### Q20 What entities or organization would oppose a uniform or model law in your state? Please identify each.

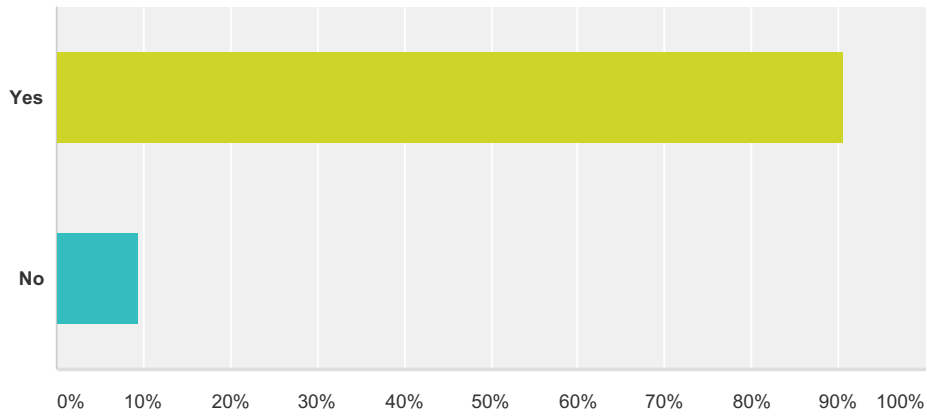
Answered: 29 Skipped: 11

#	Responses	Date
1	In the past, the title insurance companies have opposed proposed Legislation which would have enacted new forms of agreement or new forms of security interests relating to real property. One of the long-time managers of a leading Montana title company told the undersigned that he felt that such opposition typically was grounded on the fact that the title insurers are already familiar with the existing law and basically don't want to have to learn a new procedure.	5/1/2017 5:15 PM
2	Unsure.	5/1/2017 3:33 PM
3	Troglydotes who generally oppose anything that even has the appearance of being progressive.	5/1/2017 3:23 PM
4	The bar would likely oppose because of their perception of risks to clients.	5/1/2017 3:16 PM
5	I don't have the knowledge to give a good answer.	5/1/2017 3:05 PM
6	Possibly: RI Bankers Association RI Mortgage Bankers Association	5/1/2017 2:35 PM
7	Unknown to the respondent.	4/24/2017 3:26 PM
8	Maybe commercial real estate interests	4/19/2017 12:54 PM
9	Unknown	4/12/2017 10:41 AM
10	Landlord organizations	4/4/2017 3:44 PM
11	real estate industry	4/4/2017 1:15 PM
12	Uncertain	4/4/2017 1:04 PM
13	Arkansas Realtors Association	4/4/2017 8:42 AM
14	Tennessee Chamber of Commerce Tennesseans for Conservative Action	3/28/2017 4:44 PM
15	Real estate interests.	3/28/2017 10:09 AM
16	I don't know the entities but obviously the business interests who are making \$\$ off current situation	3/22/2017 2:37 PM
17	There is a fairly powerful landlord lobby in PA. We have wondered what side they would come down on this issue. If they viewed the law as threatening the business practices of its membership, it could be a difficult fight.	3/22/2017 2:14 PM
18	Investor groups (including landlords with their powerful lobby).	3/22/2017 12:46 PM
19	see above	3/22/2017 11:59 AM
20	Gov. Scott Walker	3/13/2017 7:03 PM
21	None known to me except lethargy in the face of no currently known problems	3/3/2017 10:26 AM
22	Florida Bar Real Property Section; Florida Bar Public Interest Section	3/2/2017 11:07 AM
23	I don't know. Perhaps the Maine Realtors Association	3/1/2017 4:32 PM
24	Any organizations representing real estate developers or agents.	2/20/2017 2:49 PM
25	Unknown	2/15/2017 4:17 PM
26	Don't know of any entities or organization which would actively oppose, but as noted above, probably no support and thus no action unless a lot of other states led the way.	2/13/2017 7:02 PM
27	Not certain. Unknown special interests.	2/9/2017 5:39 PM
28	Real Estate agents/brokers. Possibly banks.	2/9/2017 4:22 PM
29	?	2/8/2017 4:49 PM



## Q21 May we contact you with follow up questions?

Answered: 32 Skipped: 8



Answer Choices	Responses
Yes	90.63% 29
No	9.38% 3
<b>Total</b>	<b>32</b>

#	Please provide your name, phone number, and email address.	Date
1	Charles W. Willey 406-370-2770 or 406-549-3852 Email address: awwilley@earthlink.net Charles W. Willey, Author of Montana Real Estate Transactions	5/1/2017 5:15 PM
2	Name: Anthony Wendtland – WWLLP – Sheridan, Wyoming Phone Number: 307.673.4696 E-Mail Address: tony@wendtlandlaw.com	5/1/2017 3:33 PM
3	Name: Stephen C. Gregory Phone Number: 703-850-1945 E-Mail Address: 75cavalier@gmail.com	5/1/2017 3:24 PM
4	Name: Stephen C. Gregory Phone Number: 703-850-1945 E-Mail Address: 75cavalier@gmail.com	5/1/2017 3:17 PM
5	James Geoffrey Durham Professor of Law, University of Dayton School of Law Phone: 937.229.3228 Email: jdurham1@udayton.edu	5/1/2017 3:06 PM
6	John Weaver—Seattle University School of Law Phone 206 398 4308 Email jwweaver@seattleu.edu	5/1/2017 2:44 PM
7	Name: Thomas S. Hemmendinger Phone Number: 401.453.2300 ext. 107 E-Mail Address: themmendinger@brcsm.	5/1/2017 2:35 PM
8	John Cannel 973 648 4575 cannel@njlrc.org	4/19/2017 12:55 PM
9	Tom Prettyman NM Legal Aid 505-814-6516 thomasp@nmlegalaid.org	4/4/2017 1:15 PM
10	Chet Randall Pine Tree Legal Assistance 207-552-3101 Crandall@ptla.org.	4/4/2017 1:04 PM
11	Lynn Foster, 501-324-9945, lcfoster@ualr.edu	4/4/2017 8:43 AM
12	Jennifer Marshall, 901-326-9594, jennjmarsh@gmail.com	3/31/2017 7:44 AM
13	Trey McCarter (865) 804-0332 jtmccrtr@memphis.edu	3/28/2017 4:44 PM
14	Beryl Satter, 646-378-9073. Email: satter@newark.rutgers.edu, or garnett59@gmail.com. I'm a historian who has written about effects of exploitative contract selling in Chicago in mid-20th century. We need to learn from that history and do what we can to stop this resurgence of predatory contract selling -- even more predatory than the mid-twentieth century version (we have mark-ups of 2000 percent now, instead of the old mark-ups of 200%).	3/28/2017 10:11 AM

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15	I haven't studied this issue directly; also I am not an attorney or real estate person. I am a professor of social work and I know some of the community organizations that would support a decent law like the Housing Justice League--which is at the forefront in Atlanta of fighting exploitative housing policies such as evictions. Fred Brooks 404-413-1059 fbrooks2003@gmail.com	3/22/2017 2:41 PM
16	Jennifer Schultz Senior Staff Attorney Community Legal Services of Philadelphia North Philadelphia Law Center 1410 W. Erie Ave. Philadelphia, PA 19140 (p) (215) 227-2400 x2420 (f) (215) 227-2435 jschultz@clsphila.org	3/22/2017 2:17 PM
17	Marilyn Mullane (313) 964-4130 extn 404 mmullane@michiganlegal.org	3/22/2017 12:46 PM
18	Judy Fox, 574 631 7795, jfox@nd.edu PS I would love to be involved if this actually becomes an ULC project	3/22/2017 11:59 AM
19	Walker Kahn 847-471-1806 wkahn@wisc.edu	3/13/2017 7:04 PM
20	Barry C. Hawkins 203-324-8104 ( cell 203-253-0360) bhawkins@goodwin.com	3/3/2017 10:48 AM
21	Manuel Farach mfarach@mcglinchey.com (954) 3456-2528	3/2/2017 11:08 AM
22	Thomas A. Cox, Esq. P.O. Box 1314 Portland, ME 04104 207-749-6671 tac@gwi.net	3/1/2017 4:33 PM
23	Peter L. Cassady Beckman Weil Shepardson LLC 895 Central Avenue Cincinnati, Ohio 45249 petercassady@beckman-weil.com 513-621-2100	2/20/2017 2:50 PM
24	Lawrence R. Klemin Schweigert Klemin & McBride PC P.O. Box 955 Bismarck, ND 58502-0955 lklemin@bis.midco.net (701) 471-5802	2/15/2017 4:19 PM
25	J Patrick Aylward 509-662-3685 pata@jdsalaw.com	2/13/2017 7:02 PM
26	Anthony Schutz Associate Professor of Law University of Nebraska College of Law 402-466-1380 anthony@unl.edu	2/13/2017 4:09 PM
27	Christopher K. Odinet Horatio C. Thompson Assistant Professor of Law Southern University Law Center P.O. Box 9294 Baton Rouge, LA 70813 Cell: 504-666-0035	2/9/2017 5:40 PM
28	Mark D. Perison (208) 331-1200 mark@markperison.com	2/9/2017 4:22 PM
29	Haven Stuck 605-791-6496 hstuck@lynnjackson.com	2/8/2017 4:49 PM