

# – OLD WINE IN PRIVATE EQUITY BOTTLES? The Resurgence of Contract-for-Deed Home Sales in US Urban Neighborhoods

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## **Abstract**

*This article describes the reemergence, in the wake of the mortgage crisis, of a predatory financial practice in predominantly black neighborhoods in the US: the contract for deed (CFD). The CFD has a notorious urban history; it was a focus of social justice organizing in 1960s Chicago, which helped lay the groundwork for advocacy that culminated in two important laws in the US: the Home Mortgage Disclosure Act of 1975 and the Community Reinvestment Act of 1977. This article places the reemergence of the CFD in the post-crisis cycle of housing investment and disinvestment, estimates the minimum scale of CFD ownership, and examines the geography of a well-known CFD seller in the Atlanta area. As policymakers in the US took efforts to restrict predatory lending fueled by private-label securitization following the subprime crisis, capital markets shifted toward private equity financiers who provided a new supply of lightly regulated capital for urban housing markets. Predominantly black neighborhoods became prey for high-return schemes meant to extract as much cash flow out of vulnerable residents as possible, offering them the illusion of homeownership. The findings show that the CFD seller focused on black neighborhoods and suggests that its profits from this activity have been quite lucrative.*

## **Introduction**

The history of housing markets in the US is one repeatedly marked by segmentation, duality and exploitation. Race has always been, and continues to be, a powerful shaper of such segmentation and exploitation (Massey and Denton, 1988; Immergluck, 2004; Wylie *et al.*, 2012; Faber, 2013). Before the globalized financialization of housing markets, many of the financing mechanisms that fueled racially segmented markets were locally based and constrained. With the advent of globalized financial markets in the latter decades of the twentieth century, capital has continually flowed from the global to the local to ferret out opportunities to maximize returns by exploiting segmented markets, taking advantage of those denied access to more advantageous sources of credit and housing opportunity (Aalbers, 2009; Newman, 2009). The speed of financialization and globalization has allowed this exploitation to move rapidly and effectively. Moreover, if one source of capital—private-label securitization for example—becomes constrained or restricted by increased regulation, another source, such as global private equity, arises to quickly fill the void. The fluctuation among the channels of financialization have changed the mechanics of how global capital seeks out rent-seeking opportunities, but the end results tend to look familiar. Families and communities of color, especially those who have suffered at the hands of previous cycles of financialization and exploitation, are served by being rapidly connected to high-cost and predatory sources of finance, while more advantaged households and communities have low-cost providers competing vigorously to serve them with fairer and more advantageous financial services.

This article is the first scholarly article to describe the reemergence, in the wake of the US mortgage crisis, of a predatory financial practice in urban, minority

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neighborhoods: the contract for deed (CFD), or installment land contract. The product has a notorious urban history, made more broadly known recently by Coates' (2014) 'The Case for Reparations' and by Satter's (2009) *Family Properties*. The CFD was the focus of a key social justice organizing effort in 1960s Chicago, which started in the Lawndale neighborhood on Chicago's West Side and grew to become the Contract Buyers' League, which helped lay the groundwork for the later organizing efforts of Gale Cincotta and National People's Action around access to fair mortgage credit, culminating in the Home Mortgage Disclosure Act of 1975 and the Community Reinvestment Act of 1977 (Immergluck, 2004; Satter, 2009).

In short, a CFD is neither a regular home purchase transaction nor a conventional lease. It is, in fact, a hybrid that Coates (2014) has called a 'predatory agreement' that combines 'all the responsibilities of homeownership with all the disadvantages of renting—while offering the benefits of neither'. Under a CFD, a 'buyer' makes a downpayment and then makes payments over a long period of time, often 20 or 30 years. The buyer is responsible for property taxes, insurance, and the maintenance and repair of the property. In these respects, the transaction resembles a home purchase using a traditional mortgage. However, unlike such a purchase, borrowers do not gain title to the home at purchase, nor do they build equity in the home, even after years of making payments. In most states, the buyer is also not covered by laws that protect homeowners purchasing a home with a traditional mortgage. Also, because an institutional lender is not involved, there is far less scrutiny of the condition of the collateral (the house), which the buyer becomes responsible for even though she does not obtain title to the property until the end of the contract. Some CFDs actually stipulate that it is the borrower's responsibility to bring the property up to habitable condition within a prescribed timeframe. Thus, the buyer is forced to be not just a buyer but a buyer-rehabber, often without knowledge of what it will cost to repair the property adequately (Battle *et al.*, 2016).

The appeal of the CFD to the 'buyer' is a supposed entry, or perhaps reentry, into property ownership and possession. However, such possession is, in fact, a fiction. If homeownership via a subprime loan is 'fleeting possession', then a CFD is certainly a step down the ladder of property claims. It is a form of 'illusory possession'; that is, a promise of ownership when none really exists. If homes purchased with subprime loans are 'insecurely possessed by the dispossessed', as suggested by Roy (2017), then it is fair to call CFD homes *fully* dispossessed by the dispossessed. In fact, CFD pseudo-owners are frequently worse off than even the fragile, exploited renters in Desmond's (2016) *Evicted* because they have no claim at all on the true owner (the 'seller') to maintain the property in even barely livable condition.

Unlike the era of CFD selling that permeated black neighborhoods in the 1950s and 1960s, which was a locally financed operation in which local savings and loans funded CFD sellers, the post-crisis rebirth of CFD sellers has been funded by the emergence of private equity as the key instigator of a new round of financialized housing assets, assets sold off by mortgage servicers and government-sponsored secondary market firms (Battle *et al.*, 2016; Goldstein and Stevenson, 2016). These firms were anxious to rid themselves of 'nonperforming assets', regardless of how those assets might be later deployed, how they might be sold to families, or how their spillover effects might affect surrounding neighborhoods.

As in past crises, the subprime meltdown forced a restructuring of capital flows and 'mediating institutions' to allow global financial markets to open new channels of capital to flow to the secondary circuit (real estate), as suggested by Harvey (1978). As the private-label securitization of housing assets slowed drastically, the private-equity channel grew. Secondary circuit capital partially switched from asset-backed securities to private equity channels. The supply of private equity dollars looking to invest in real estate grew rapidly after 2010. The total amount of 'dry powder' (money available to

invest in real estate) among private equity funds increased from \$148 billion to \$167 billion from December 2010 to December 2012, and to \$186 billion by December 2014 (Prequin, 2016). A substantial portion of this flowed into residential real estate. Private equity flowing into the residential sector was not a new phenomenon (e.g. Fields, 2015). However, the crisis gave the sector new profit-making opportunities, including at the bottom end of the real estate market. Mortgage servicers and the government-sponsored secondary market firms Fannie Mae and Freddie Mac were under pressure to unload ‘distressed’ assets quickly, providing a buyers’ market for such assets. Despite pressure by some housing advocates to pressure Fannie and Freddie to selling homes to nonprofit community developers, the government ‘conservator’ of the two firms, the Federal Housing Finance Agency, put pressure on the firms to unload distressed, foreclosed homes to whomever was ready to purchase them quickly (Immergluck, 2015).

There are clearly differences in the scale and nature of the new private-equity-financed CFD market segment compared with the CFDs of the 1950s and 1960s. Today, CFDs, at least at this point, do not appear to constitute a dominant share of the homebuying market, even in predominantly black neighborhoods where they are concentrated. However, it is difficult to know the extent of the revival of the practice given the lack of recording of CFDs and data on their prevalence. Wright (2016) looks to national numbers to argue that CFD activity is more prevalent among Hispanic homeowners than among black homeowners. However, she relies on data on the share of surveyed homeowners indicating that they purchased via CFD no later than 2009, when the American Housing Survey (AHS) stopped tracking CFD ownership. The post-crisis phenomenon described here is dated to 2011 and later, as the CFD sellers acquired homes in larger quantities beginning in 2011 and beyond. It certainly may be the case that CFD purchases have a higher incidence among Latino homebuyers, especially because some immigrants may be less likely to utilize institutional lenders. In particular, we know more about the prevalence of CFD buying in the Colonias along the Texas–Mexico border due to exhaustive research that has attempted to measure the prevalence of CFDs (Ward *et al.*, 2012). The empirical work presented here, however, focuses on a large urban county where the black population is large and the Latino population is modest.<sup>1</sup>

Notwithstanding some differences in scale and context between the post-crisis reemergence of CFD selling and that of the 1950s and 1960s in Chicago and other large cities, there are significant similarities. Both CFD eras were enabled by a segmentation of the homebuying market, in which the difficulty of accessing institutional mortgage markets in many urban neighborhoods resulted in an opportunity for predatory CFD sellers to capitalize on the situation by purchasing properties for low prices, mark them up by large margins, and then sell them via CFDs. The nature of CFDs shields the speculative seller from a great deal of risk, pushes risk onto the buyer, and results in expected returns that are much higher than would be the case if the sellers purchased and resold homes to buyers using conventional mortgages.

This article outlines the mechanics of the CFD and the speculative-CFD process, places the CFD in the post-crisis cycle of housing investment and disinvestment, characterizes the minimum national scale of CFD ‘ownership’ (which is expected to have grown since the latest available estimates), and examines the geographic patterns of one well known CFD seller in Fulton County, Georgia, which includes the bulk of the city of Atlanta as well as a variety of suburban communities. Unfortunately, in most states there is no requirement to record CFD transactions; they are effectively treated as leases not subject to required recording as a sale. Even in states where recording is required, there is generally not a mechanism to enforce such recording, and there are

1 The Atlanta metropolitan area has a significant Latino population, but only a very small portion of it is located in Fulton County. Most of the Latino population is suburban.

incentives for the seller to avoid recording the transaction. Georgia is a state where recording is not required and not generally practiced.

Based on a series of in-depth investigative reports by the *New York Times*, and a 2016 report by the National Consumer Law Center and staff attorneys from Atlanta Legal Aid, a number of investment firms have been identified as using CFDs as their primary methods for selling properties (Battle *et al.*, 2016; Goldstein and Stevenson, 2016; Stevenson and Goldstein, 2016). The most active of these firms, Harbour Portfolio, has been active in Fulton County and is the focus of the analysis here. By analyzing residential property sales records in the county from 2011 through 2015, we can identify the geographic patterns of Harbour's activities and compare it to other buyers of properties from the same source, the federally sponsored enterprise, Fannie Mae. This article is the first to identify the racialized patterns of contemporary CFD sales across urban space.

### **The racialized history of the CFD**

The CFD has been studied by urban scholars for over four decades, but almost no work has looked at the resurgence of this predatory practice since the US foreclosure crisis. Much of the earliest work on CFDs focuses on the practice in predominantly black, low-income urban neighborhoods in Chicago and Baltimore (Mixon, 1970; Stegman, 1972; Sagalyn, 1983). The CFDs of the 1950s and 1960s are now relatively well known due to the story of the Contract Buyers League (CBL) of Chicago, which has been told recently by Satter (2009) and Coates (2014). The CBL began as the Contract Buyers of Lawndale on the West Side of Chicago. The CBL was formed both by CFD buyers who sought to join with other buyers to fight to renegotiate their abusive contracts. The CBL was also assisted by people like Monsignor Jack Egan, a legendary Chicago community organizer, and Jack MacNamara, a Jesuit priest who pulled in volunteers to help buyers in their fight for keeping their homes and renegotiating the associated financing (McPherson, 1972; Satter, 2009). The CBL eventually filed two major federal lawsuits against CFD sellers, as well as the banks and savings and loans that financed them, bringing sorely needed attention to the practice. The CBL spurred the formation of the Gamaliel Foundation, a faith-based community organization, and laid the groundwork for the anti-redlining movements that Chicago birthed in the early 1970s (Immergluck, 2004; Satter, 2009).

While there are no clear figures on the prevalence of CFDs in the late 1950s and 1960s, the practice appears to have been widespread in black communities in Chicago. Again, the lack of a requirement to record CFDs makes precisely estimating their prevalence at the time difficult. Satter (2009) cites lawyers active in assisting CFD buyers as estimating that as many as 85% of black Chicagoans used CFDs to purchase their homes in the middle of the twentieth century. Other reports suggest a prevalence closer to 50% among black homeowners, still a very high level (McPherson, 1972). Both private and Federal Housing Administration (FHA) lenders routinely redlined black neighborhoods, and especially neighborhoods that were in some stage of racial transition (Immergluck, 2004; Satter, 2009). Finding it difficult to access mortgages, and facing a restricted selection of homes for sale of any kind, many blacks had no other alternative but to purchase their homes through CFDs.

CFD sellers in Chicago in the 1950s and 1960s, at least, were also clearly connected to the mechanics of blockbusting and panic peddling that fueled racial turnover in many city neighborhoods, especially on the city's West and South Sides during the 1950s and 1960s. Sellers were often realtors, or worked with realtors, who instigated panicky sellers in neighborhoods so as to create a flood of selling, thereby lowering acquisition prices and providing for a low-cost supply of homes to then turn around and sell, at inflated prices, to black families using CFDs (Sagalyn, 1983; Satter, 2009). These speculator-sellers worked with local banks and savings and loans to

finance low-cost acquisitions, and then effectively arbitrated between very affordable acquisitions and the high-cost sales and predatory financing that they then employed to sell the properties to black families. This is in the context of black families who were often highly motivated to leave their existing neighborhoods and overcrowded, dilapidated housing, a condition itself created by decades of residential segregation (Hirsch, 1978).

An in-depth study of the details of CFD contracts and pricing in the 1950s and 1960s was conducted by Sagalyn (1983). She examined a sample of 300 CFD transactions that occurred from 1956 to 1968 in Chicago and found that, on average, sellers sold properties for a price 69% above their purchase price plus any repairs they made on the properties. The average downpayment was 6% of the purchase price, but it is important to note that this was based on the inflated price of the homes, so as a percentage of the true value of the homes, the average downpayment would have been considerably higher. Sagalyn calculated the effective interest rate charged on the CFDs when comparing the monthly payments with the true market value of the homes. This effective interest rate was 15% for the sales from 1956 to 1961 and 13% later when the market for CFDs became somewhat more competitive. However, the 13% was still approximately twice the interest rate shown on the contracts, on average, and twice the market interest rate for mortgages at the time.

The high effective interest rate of the financing was not the only problem with CFDs. The CFDs required the buyers to repair and maintain properties. Some buyers could not afford these costs, especially if the house needed repairs, while others worked multiple jobs to afford their homes (McPherson, 1972). Then, because the sellers controlled title, they could encumber the properties with mortgages (which they used to finance their continued acquisitions), which could result in clouded title later when borrowers took title to the properties. Moreover, some sellers structured the transactions in ways that made it highly likely that buyers would miss a payment, which would allow the seller to repossess the property, and then restart the CFD process with a new buyer.

The scale of CFDs in Chicago in the 1950s and 1960s and the effects on families and neighborhoods drew the attention of community organizers. The CBL formed first on the West Side, but then also became active on the South Side, where builders of new homes were using CFDs to sell them. With the support of the progressive wing of the Catholic Church, led by Monsignor Jack Egan, the CBL received the support of lawyers from major firms, including Jenner and Block (McPherson, 1972; Satter, 2009). The legal team employed the US Civil Rights Act of 1866, which prohibits racial discrimination in the sale or lease of residential property. In 1969, Nixon's Justice Department filed a friend of the court brief on the side of the CBL. In the end, the CBL federal lawsuits were unsuccessful (Satter, 2009). However, there were intermediate victories along the way and, more importantly, the activism around the CBL helped foment a larger community reinvestment movement in Chicago, some of whose members were directly involved in the creation of the Home Mortgage Disclosure Act of 1975 and the Community Reinvestment Act of 1977 (Satter, 2009).

The identification of CFDs as exploitative financing instruments helped lead some states to impose varying levels of regulations on CFDs. In some states, Oklahoma and Florida for example, CFD buyers are automatically converted to mortgagors — sometimes after making a minimum number of payments — giving them the rights that owners with mortgages receive, including the ability to build equity and the protections that borrowers receive under state mortgage law (Way, 2010). In some other states, buyers have the option to convert the CFD to a warranty deed and mortgage, although they must have the knowledge to do so, and usually this process entails some costs. Some states also require that CFDs be recorded, although compliance with such laws is unclear.

### The CFD in the twenty-first century

In the last quarter of the twentieth century, access to institutional mortgage credit for black homebuyers improved markedly (Immergluck, 2004). These improvements were due to a series of federal policies, as well as community organizing and advocacy. The Home Mortgage Disclosure Act was passed in 1975, followed by the Community Reinvestment Act (CRA) of 1977 and later improvements to the Fair Housing Act and the CRA in the late 1980s. Then in the early 2000s, the subprime lending boom, fueled by private-label securitization, moved from the refinance market to the home purchase market. Subprime loans were often underwritten and structured irresponsibly, so that households would be left with debt burdens exceeding well over half of their income (Engel and McCoy, 2010; Immergluck, 2015). The aggressiveness of subprime lenders likely diminished the demand for CFD transactions.

As expected, Table 1 shows that the 2000s saw a decline in the number of outstanding CFDs, at least as measured through the AHS survey.<sup>2</sup> This is likely due to the substantial growth in home purchase loans, including subprime loans that frequently targeted minority homebuyers (Immergluck, 2015). At the same time, while CFDs among black homeowners declined in raw numbers and as a proportion of both financed homes (from 12.3% to 8.7%) and owner-occupied homes (from 7.7% to 5.6%) between 2001 and 2009, the number of CFDs among Latinos remained fairly constant as a share of financed homes (from 12.4% to 12.3%) and as a share of owner-occupied homes (from 8.3% to 8.4%). The higher rate of CFD purchases among Latinos may be partly because some Latino immigrants may be less likely to apply to a regular mortgage lender.<sup>3</sup> Table 1 also shows that the prevalence of CFDs is somewhat higher in the South than in the rest of the country.

**TABLE 1** Prevalence of contract for deed (CFD) in the American Housing Survey, 2001 and 2009 (all numbers in thousands)

	2001 American Housing Survey			2009 American Housing Survey		
	CFDs	% of financed homes	% of owner-occupied homes	CFDs	% of financed homes	% of owner-occupied homes
US total	4,136	9.5	5.9	3,488	7.3	4.6
Black	484	12.3	7.7	367	8.7	5.6
Hispanic	393	12.4	8.3	542	12.3	8.4
White/Asian/other	3,259	9.0	5.5	2,579	6.6	4.1
South	1,741	11.7	6.5	1,646	9.6	5.6

Table 2 indicates that there can be substantial variation in the prevalence of CFDs across different metropolitan areas and between central cities and suburbs. The prevalence of CFDs in the New Orleans metropolitan area is much larger, at 7.2%, than in Detroit (2.9%) or Chicago (1.7%). The prevalence of CFDs may be due, in some part, to the level of regulation that the transactions are subject to in different states, but also to the availability of institutional mortgage credit in different regions. For example, institutional lenders may be more reluctant to lend to homebuyers in New Orleans,

2 It might be expected that the number and prevalence of CFDs is underestimated in the AHS. The question in the AHS is as follows: 'Is your mortgage a land contract?' (US Census Bureau, 2013). It may be that the respondent does not understand the terminology of 'land contract' or recall exactly how the home was obtained. As a result, some respondents may not be aware that their home is financed with a CFD, especially if the respondent was not directly involved in the transaction.

3 It may be that undocumented immigrants are particularly unlikely to seek financing from institutional lenders. While undocumented immigrants may be able to obtain a mortgage using an individual taxpayer identification number, many lenders do not make such loans, and undocumented households may be reluctant to apply for a mortgage regardless.

**TABLE 2** Prevalence of contract for deed (CFD) in three major metros, American Housing Survey, 2009

	New Orleans		Chicago		Detroit	
	CFDs	% of financed homes	CFDs	% of financed homes	CFDs	% of financed homes
Total metro	11,000	7.2	24,300	1.7	22,500	2.9
Black	4,600	12.8	3,400	2.6	9,000	8.2
Hispanic	200	2.0	6,600	3.2	1,900	8.1
White/Asian/other	6,200	5.8	14,300	1.3	11,600	1.8
Central city	3,800	10.0	11,400	3.8	4,800	6.5

especially following Hurricane Katrina. The lower level of CFDs in the Chicago area might be related to a more active climate of community reinvestment and fair lending activism in Chicago. What is consistent across the three metros is that CFD prevalence is higher in central cities and among black homeowners.

Unfortunately, the AHS stopped collecting data on CFDs after the 2009 survey. There are no national data on the prevalence of CFDs covering the years following the foreclosure crisis. However, given that mortgage markets have remained tight since the crisis, we might expect there to have been an increase in CFD purchases. Even at what is likely to be a relative trough in the number of CFDs, the total estimate from the 2009 AHS is almost 3.5 million owner-occupied housing units, hardly a trivial number. Moreover, in 2009, among homeowners with some sort of home financing, 9% of black households and 12% of Latino households reported having CFDs.

In recent years, lawyers representing lower-income homeowners in different cities across the US have reported an increase in CFD activity (Battle *et al.*, 2016). National investigative journalists have identified several investment companies that have specialized in purchasing foreclosed homes in the wake of the crisis and selling them via CFD (Goldstein and Stevenson, 2016). The combination of a sudden supply of low-cost foreclosed homes together with a large number of households no longer able to qualify for regular mortgages was an ideal combination of conditions for investors ready to flip properties to buyers through CFDs.

Another contributor to an increase in CFDs in lower-income, minority neighborhoods since the foreclosure crisis was the decrease in the number of home purchase loans being originated by institutional lenders for amounts less than \$50,000. Given the disproportionate decline and slower recovery of home values in many minority neighborhoods (Immergluck, 2015; Wang, 2016), the scarcity of mortgage loans under \$50,000 is expected to have a particularly strong impact on such areas.

Seidman and Bai (2016) examined mortgage loans for under \$50,000 in 10 mid-sized metropolitan areas from 2005 to 2014 and compared these trends to the number of properties priced at under \$50,000 in these metros. They found the share of homes valued at under \$50,000 increased in all 10 metros, sometimes quite markedly (e.g. in Tampa the share went from 5% in 2007 to 11% in 2014). These home value declines are clearly associated with the foreclosure crisis beginning in the middle part of the 2000s (Wang, 2016). Seidman and Bai (2016) also found that the share of mortgage originations under \$50,000 declined in these cities, and that the share of low-value homes with mortgages under \$50,000 also declined across these 10 metros. Finally, they found that denial rates in 2014 for loan applications under \$50,000 were substantially higher than those for loans in the \$50,000–\$100,000 range.

Seidman and Bai (2016) point out that the sharp decline in smaller dollar home lending must be associated with one of three phenomena: fewer sales at small dollar levels; more all-cash sales (which are more common among investors rather than

homeowners); or more seller financing, including contracts for deed. The data suggest that the first reason is quite unlikely as the number of low-value properties increased in most cities during this period. The second phenomenon appears to have occurred, but primarily among investors purchasing homes. Among homebuyers, the third reason seems the most plausible.

### Examining the practices of a CFD seller

Without access to reliable post-crisis data, either nationally or locally, on all CFD activity, an alternative approach is to examine the geographic patterns of one known CFD seller in one large city. Fortunately, in 2016, in a series of articles, investigative journalists at the *New York Times* identified at least two sizable CFD sellers, Harbour Portfolio and Vision Property Management (Goldstein and Stevenson, 2016; Stevenson and Goldstein, 2016). In addition, the National Consumer Law Center, together with staff from Atlanta Legal Aid, published a report documenting some of the patterns and practices of Harbour Portfolio, the most active of the identified CFD sellers (Battle *et al.*, 2016). Harbour was active in the Atlanta metropolitan area—especially in the city of Atlanta and the core county—Fulton County.<sup>4</sup> Harbour Portfolio was an active purchaser of properties in Fulton County during the 2011–15 period.<sup>5</sup>

Beginning in 2011, Harbour, based in Dallas, Texas, bought over 6,500 homes in purchases from the government-sponsored enterprise Fannie Mae across a variety of states, and located primarily in lower-income neighborhoods. Harbour was identified as active in the state of Georgia.

To identify how active this firm was in the core of Atlanta, comprehensive data on all real estate transactions from 2011 through 2015 were obtained from the Fulton County Tax Assessor via a large data dump. Fulton County is the central county of the Atlanta metropolitan area and includes almost the entirety of the city of Atlanta (a very small portion of the city is located in neighboring DeKalb County) as well as a substantial number of suburban communities to the north and south of the city. The county has a population of over 1,000,000 and is very diverse racially and economically, containing both the poorest and most affluent census tracts in the metropolitan area. Thus, the county provides a diverse sample of neighborhoods and home sales with which to examine Harbour's practices. The county sales data required cleaning and culling out those sales transactions which were not 'regular' transactions. These irregular transactions include foreclosure sales, bank-to-bank transactions, bank-to-Fannie Mae or Freddie Mac transactions, gifts, sales under \$1,000 and other unusual transactions.

The Fulton County sales transactions showed that Harbour Portfolio purchased 85 single-family properties during the study period. All 85 Harbour properties were purchased from Fannie Mae, consistent with the notion that they acquired the bulk of their properties from the government-sponsored secondary market firm. Goldstein and Stevenson (2016) and Battle *et al.* (2016) report that the Harbour's dominant business model was to then sell the properties to consumers via CFDs. Thus, by identifying properties that were purchased by Harbour, we effectively know the locations of properties that the firm then sold to buyers through CFDs. There is no evidence that Harbour sold properties to consumers through regular mortgage-financed transactions.

Harbour purchased its properties from Fannie Mae at low prices. The median price in Fulton County was \$10,482. This compares to a median tax-appraised value of \$29,040 for these same properties. The median ratio of the price Harbour paid for a property compared with its tax-appraised value was 35.7%, suggesting that Harbour

4 Vision Property Management was not detected as an active buyer of properties in Fulton county records. It is possible that they purchased properties under different names, but, if so, the names of these entities are not known.

5 Harbour Portfolio also purchased properties in other states according to the *New York Times* coverage, including in Michigan, Ohio, Missouri and Alabama. Access to county sales records for these states was not available for this analysis.

received a substantial discount. Like the CFDs of the middle twentieth century, a significant portion of the profit in Harbour’s model is purchasing properties at fire-sale prices, and then reselling them at significantly higher prices and financing them at above-market interest rates. Harbour’s nominal interest rates are reported to have been 9.9%, at a time when market mortgage rates were well under 5% (Goldstein and Stevenson, 2016). While data on the CFD sale prices are generally not available, if one assumes, as a conservative estimate, that the resale price was equal to the tax appraised value, we can estimate that the (nonannualized) gain on sale by Harbour averaged 177%. However, this calculation ignores the gain that Harbour would receive by lending at a very high interest rate. Using the averages above, if Harbour purchased a home for \$10,400 and turns around and sells it for about \$29,000 (similar to the average tax appraised value) at an interest rate of 9.9% on a 30-year amortization schedule, it would receive a payment for principal and interest of \$252.36 per month. Such a scenario results in an effective interest rate to Harbour of just over 28%, which is five to six times the regular market interest rate for mortgages at the time.<sup>6</sup> Based on a small sample of the CFDs in the Atlanta area obtained from attorneys representing some CFD buyers, it is likely that these homes are priced higher than the tax-appraised values, which implies an even higher effective yield to Harbour.

**The geography of a CFD seller**

Because Harbour purchased properties exclusively from Fannie Mae, it makes sense to compare the locations of Fannie Mae real estate owned (REO) purchased by Harbour to those of all other Fannie Mae REO purchased by other buyers. In total, there were 4,306 properties sold by Fannie Mae during the 2011–15 period. Four sales, however, could not be linked to a valid parcel number so could not be associated with a neighborhood (census tract). Using the parcel identification numbers of the properties, the census tract locations of the remaining 4,302 Fannie REO sales, including the 85 homes purchased by Harbour, were identified.

Data from the 2014 American Community Survey were used to characterize the demographics of all census tracts in the county. These data allowed the comparison of neighborhood characteristics of Harbour’s purchases of Fannie Mae REO to those of Fannie Mae REO purchased by other parties. Table 3 provides the results of an independent samples t test identifying the statistically significant differences in the racial composition (percentage black) and the median income (median family income)

**TABLE 3** Purchases of Fannie Mae REO properties by Harbour Portfolio versus other purchases of Fannie Mae REO properties, 2011–15

	Harbour purchases of Fannie REO	Other purchases of Fannie REO	Mean difference	Standard error of mean difference	Signif.*
Mean percentage black of census tract	86.9%	57.7%	29.2%	1.5%	0.000
Standard deviation	13.3%	35.4%			
Number of purchases	85	4,217			
Mean median family income of tract	\$35,267	\$69,016	-\$33,749	\$1,538	0.000
Standard deviation	\$12,923	\$41,091			
Number of purchases	85	4,217			

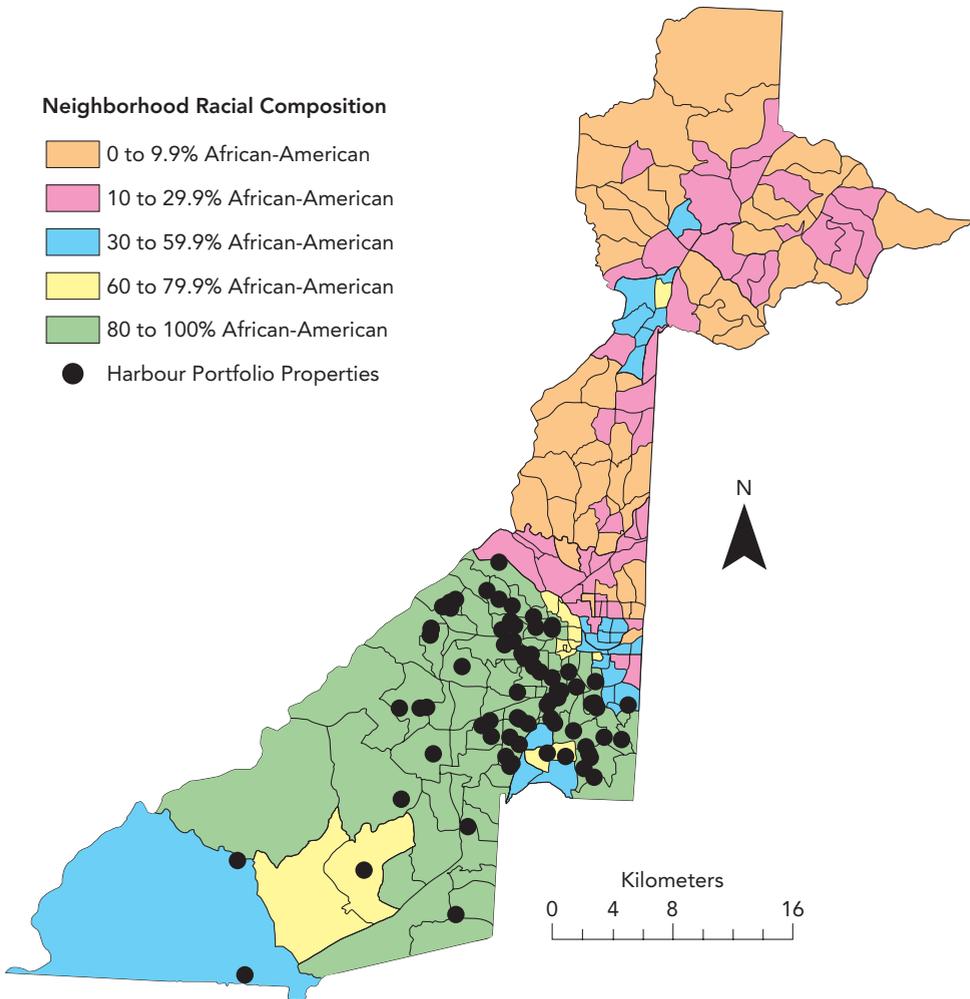
\*Equal variances not assumed.

sources: Author calculations of Fulton County Real Estate Sales data; American Community Survey

6 This calculation is of an internal rate of return where the initial investment was \$10,500 and the monthly payment received was \$252.36 over 360 months.

of the neighborhoods where these two sets of properties are located. The average racial composition of census tracts where Harbour properties are located is 86.9% black, compared with 57.7% black for Fannie REO purchased by other buyers. This almost 30 percentage point difference is highly significant statistically, with a p value below 0.001. Figure 1 illustrates the location of Harbour properties versus the percentage of the population who are black.

As one might expect given the general geographic confluence of race and income, the median incomes of the tracts where Harbour purchases tend to be significantly lower than the tracts where others purchased Fannie REO. Table 3 shows that the mean tract median family income where Harbour purchased was \$35,267, while the mean tract median family income where other purchases of Fannie REO occurred was \$69,016. This difference of almost \$34,000 is highly significant statistically, with a p value below 0.001. So, Harbour’s properties were located in neighborhoods with a significantly higher black population, and with a significantly lower income, than the neighborhoods of Fannie REO purchased by other buyers.



**FIGURE 1** Locations of homes purchased by Harbour Portfolio (source: author calculations of Fulton County Real Estate Sales data, American Community Survey)

Because the income and racial characteristics of neighborhoods are somewhat correlated, it is useful to examine whether, after controlling for income, the racial composition of a neighborhood is still a significant predictor of whether Harbour is likely to have purchased a Fannie REO property compared with other buyers of Fannie REO. To do this, we need to conduct a multivariate analysis. Because the dependent variable of interest is a dichotomous variable (yes = purchased by Harbour, no = purchased by someone else), and because the large majority of the purchases were not by Harbour, a logistic regression model is well suited for the analysis.<sup>7</sup>

The basic structure of the model is one in which the dependent variable for each transaction takes on the value of 1 when Harbour was the buyer and 0 when anyone else was the buyer. (The seller is always Fannie Mae.) Table 4 provides the results of the multivariate model in three stages. The first set of results, which is shown in the first set of four columns (labeled ‘model 1’), is for a simple bivariate regression of the dichotomous variable (indicating Harbour as the buyer) on the percentage of residents in the associated census tract who were black. The highly significant results show, in line with the t test in Table 3, that, by itself, percentage black is a significant predictor of whether the REO sale is to Harbour versus another buyer. The second model also includes the median family income of the tract. Thus, the coefficient on the percentage black variable now indicates that this variable is a significant predictor of a Harbour purchase, even *after* controlling for the median income of the tract.

The third model, in the right-most columns in Table 4, includes three additional variables, including the percentage of housing units that are owner occupied, the median age of housing units, and the percentage of residents who are Latino.<sup>8</sup> These are the key results. They measure the importance of neighborhood racial composition on Harbour purchases, while controlling for the median income, age of housing stock, ethnicity, and owner-occupancy rate of the neighborhood. The last column in Table 4 provides the ‘odds ratio’ for each dependent variable. This is the effect of a one-unit increase in the independent variable on the odds that a Fannie Mae REO was bought by Harbour versus another buyer. Since the overall odds of a Harbour purchase are quite low (at 1 to 50), it is important to consider the effects expressed as a change in probabilities of a Harbour purchase.

The odds ratio for the percentage black variable is 1.02988. This means that a 1 percentage point increase in the proportion of residents who are black (e.g. a neighborhood that is 61% black versus a neighborhood that is 60% black) is associated with a 2.988% greater odds of the REO buyer being Harbour (versus another Fannie REO buyer). This effect is statistically significant at a confidence level above 95% and not at all trivial. Going from a neighborhood that is 10% black to one that is 90% black, for example, is an increase of 80 percentage points in percentage black. Controlling for income, age of housing and the other variables, a change of this magnitude is associated with an increase in the odds of a Fannie REO being purchased by Harbour by 10.55 times.<sup>9</sup> The overall odds of being a Harbour purchase is about 1 to 50 (often expressed as 1:50, which corresponds to the ratio of 85 Harbour purchases to 4,217 non-Harbour purchases). Increasing these average odds by 10.55 times yields an odds of 10.55:50, which is equivalent to a probability of being a Harbour purchase versus a non-Harbour purchase of 17.4%. This is a very high probability given that the overall probability of being a Harbour purchase is just under 2%.

7 A linear probability model is not well suited due to the overall low percentage of Fannie REO sales that went to Harbour (about 2%).

8 The size of the model is somewhat limited by the potential problem of severe multicollinearity, in which some of the independent variables in the regression are too closely correlated. While there is not a problem of severe multicollinearity in the models in Table 4, adding additional variables (e.g. poverty rate) would cause such problems, making inference of the significance of different variables problematic. If the dataset had many more Harbour purchases, it might allow for a larger model.

9 This is calculated by taking the odds ratio of 1.02988 and raising it to the 80th power, that is,  $1.02988^{80} = 10.55$ .

**TABLE 4** Logistic regression results

	Model 1				Model 2				Model 3				
	Coefficient	Clustered SE	z stat.	Signif.	Coefficient	Clustered SE	z stat.	Signif.	Coefficient	Clustered SE	z stat.	Signif.	Odds ratio [Exp(b)]
Constant	-6.8297	0.5608	-12.18	0.000	-4.2136	0.83644	-5.04	0.000	-6.6375	1.53429	-4.33	0.000	0.00131
Percentage black	0.03868	0.00627	6.17	0.000	0.02372	0.00803	2.96	0.003	0.02945	0.01346	2.19	0.029	1.02988
Median family income (\$)					-3E-05	6.68E-06	-4.87	0.000	-3E-05	1.3E-05	-2.21	0.027	0.99997
Percentage owner occupied unit									0.0086	0.01101	0.78	0.435	1.00864
Median age of unit									0.0325	0.00878	3.7	0.000	1.03303
Percentage Latino									0.02915	0.01908	1.53	0.127	1.02958
Pseudo R <sup>2</sup>	0.087				0.1204				0.1508				
N	4,302				4,302				4,302				

NOTES: Standard errors (SE) are clustered at the census tract level. Dependent variable = Fannie REO purchased by Harbour Portfolio versus other buyers, 2011 through 2015. Italicized rows indicate significance level below 0.05.

SOURCES: Author calculations of Fulton County Real Estate Sales data; American Community Survey

Percentage Latino (ethnicity) is not significantly associated with the probability of a Harbor purchase, in Fulton County at least. However, the coefficient is positive and the p value (0.127) is not large, suggesting that a larger sample size—or a larger number of predominantly Latino census tracts—might have yielded statistically significant results. The predominantly Latino census tracts in the Atlanta metropolitan area are located outside of Fulton County.

Given that many predominantly black neighborhoods also have lower incomes (which is independently associated with a higher probability of a Harbour purchase), it becomes clear that race and income were both, independently, associated with the likelihood of Harbour purchasing Fannie REO. However, the key takeaway is that race has a substantial and statistically significant effect, which is independent of income and the other independent variables in Table 4.

### **Conclusion**

Global capital surpluses are hard to restrain. They try to flow to wherever opportunities for higher returns are exploitable and where regulation is unlikely to impede them. As Harvey (1978: 112) suggests, they may ‘start as a trickle and become a flood as the potential for expanding the production of surplus value by such means becomes apparent’. They also can switch to more capital-friendly channels and geographies if community activism and regulation attempt to constrain the predatory proclivities of a particular channel.

As policymakers in the US made efforts to restrict predatory mortgage lending fueled by private-label securitization, capital markets shifted toward private equity financiers who, in turn, provided a new supply of lightly regulated capital for deployment in urban housing markets. Just as minority homebuyers who had been excluded from mainstream, lower-cost mortgage markets were targeted by high-cost and often predatory mortgage lenders, these communities became prey for new high-return financialization schemes meant to extract as much cash flow out of vulnerable residents as possible.

Private equity has fueled fringe, low-road real estate operations like Harbour Portfolio by exploiting both the CFD as a financing scheme as well as the disadvantages of the rental market in many black, lower-income urban neighborhoods (Desmond, 2016). At this point, there are at least two key difference between these contemporary CFD operations and those of 1950s and 1960s Chicago. The first is the connection between today’s CFD sellers and global capital surpluses via private equity channels. The second is one of scale *vis à vis* the institutional mortgage market. Alternatives for financing home purchases by blacks were much more severely restricted in the 1950s and 1960s than they are today. FHA loans were often not available to black homebuyers, especially in racially transitioning neighborhoods. Today, FHA loans tend to be a key source of home purchase credit for minority home buyers. During the foreclosure crisis, FHA programs grew rapidly and became the largest source of mortgage credit for black homebuyers (Immergluck, 2011).

Besides the racially disparate impact of the CFDs examined here, the reemergence of CFD sellers has at least three longer-term implications for urban housing markets and for policymakers. First, the channels of global capital can rapidly switch from one channel to another. As regulators attempt to constrain the flow of one type of predatory, exploitive finance, global financial markets often find other channels to exploit households not well served by mainstream, low-cost financial services. Regulation must be dynamic and adaptive to new or reemerging predatory financial services.

Second, the existing policy and market environment matters. The limited scale of CFD sellers thus far is linked to the availability of FHA purchase lending in minority neighborhoods. In the 1950s and 1960s, many if not most black homebuyers

had essentially no way to purchase a home through traditional mortgage-financed, fee-simple homeownership. The FHA effectively redlined black and transitioning neighborhoods as did conventional lenders. In the aftermath of the foreclosure crisis, conventional lenders, together with Fannie Mae and Freddie Mac, dramatically cut back on mortgage lending, especially in lower-cost market segments. If FHA lending had not grown so rapidly following the crisis, opportunities for predatory financing such as CFDs would have been much greater. As policymakers continue to debate the future of housing finance in the US, the availability of low-cost home financing in minority communities must remain at the center of such deliberations.

Finally, both community resistance and higher-level policy responses to housing market predation are crucially important, and can have long-term transformative effects on communities of color. While the Contract Buyers League ultimately failed in their court cases against CFD sellers and financiers, the movement seeded the anti-redlining movement that was effectively birthed in Chicago and led to the federal Home Disclosure and Community Reinvestment Acts of the 1970s, both of which increased the role of institutional mortgage credit in communities of color, leaving less room for CFDs.

For now, resistance to the reemergence of CFD activity is in an early, fragile stage. Like the CBL actions, a good deal of the opposition has come from wronged borrowers seeking help from public-interest lawyers who take up their cases (Battle *et al.*, 2016; Goldstein and Stevenson, 2016). However, when dealing with financial markets, local responses and resistance are often insufficient. After all, when Gale Cincotta and others organized for the 1975 Home Mortgage Disclosure Act, they found allies in key congressional actors and a sympathetic executive branch (Immergluck, 2004). In the latter half of 2016, the Consumer Financial Protection Bureau (CFPB), which was formed in the wake of the US foreclosure crisis, turned its attention to the reemergence of CFDs as a serious concern (Goldstein and Stevenson, 2017). Unfortunately, at the time of this writing, the Trump Administration has begun rolling back the strengthened, post-crisis regulatory regime, including weakening the CFPB. As a result, continued prospects for regulatory action that constrains CFD activity appear, at best, highly uncertain.

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