



Texas Central uses option contract land as collateral for \$300 million loan from offshore Japanese entity

For years, Texas Central has [promoted](#) its “Option Purchase Program,” by which it would offer to purchase all or a portion of a landowner’s property through an “option contract.” In exchange for a 4% down payment of the total purchase price, Texas Central would obtain the right to exercise its option to purchase the property prior to the expiration of an option period. Believing they had no other choice, numerous landowners signed away their property rights to Texas Central through these option contracts.

Although Texas Central was able to pay the 4% down payments on the total purchase price, it did not have the money to close on them. As a result, in 2018, the [Japan Bank for International Cooperation](#), a public financial institution and export credit agency wholly owned by the Japanese government, [created a special purpose vehicle](#), Japan Texas High-Speed Railway Cayman LP, to loan \$300 million to Texas Central. At the time, Texas Central [told](#) the press it would “use the funds to move ahead on permitting, design and engineering, as well as other preliminary work needed to launch construction during 2019.” In fact, Texas Central used the money on loan from the Japanese government to close on its option contracts. To date, it has already closed on more than 100 of them.

Based on a series of recently recorded real property transactions in counties along the affected route, it appears the Japanese government required Texas Central to put up the land as collateral for the sizeable loan. In each county ([Leon](#), [Waller](#), [Madison](#), [Harris](#), [Grimes](#), Dallas, Ellis, etc.), Texas Central filed a “Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing” relating to property owned by Texas Central in that county. The beneficiary of these Deeds of Trust is an offshore entity named “Japan Texas High-Speed Railway Cayman GP (in its Capacity as General Partner of the Japan Texas High-Speed Railway Cayman LP),” and the named Trustee is [Dallas-based attorney Keenan Kolendo](#). Texas Central did not disclose the existence of this offshore beneficiary to any of the landowners it convinced to sign an option contract. Nor did it disclose its plans to use the property purchased through the option contracts to secure a loan from the Japanese government.

The Deeds of Trust were executed by the debtor and property owner (Texas Central), to a trustee (attorney Keenan Kolendo), who will hold the property in trust for the creditor (Japan Texas High-Speed Railway). Although the Deeds of Trust do not convey actual title to the offshore Japanese entity, the security interest can quickly and easily be converted to full legal and possessory title without judicial foreclosure if Texas Central defaults on its loan payments.

Given its [ongoing](#) and [widely-reported financial struggles](#), Texas Central will likely default on its loan. Or, Texas Central could simply choose to intentionally default in order to put the property into the hands of its Japanese backers. In either event, upon default and foreclosure of the Deeds

of Trust, the Japanese government will own *all* of the property subject to them. Although Texas Central [claims](#) it works “hand-in-hand with landowners” and deals “in good faith in a fair and respectful process,” it did not disclose this scheme to landowners at the negotiating table.

During the 2019 legislative session, Texans Against High-Speed Rail worked with numerous state officials to introduce bills designed to protect Texas landowners from Texas Central’s option contract scheme. For example, [House Bill 1367](#) gave landowners who signed option contracts under the threat of eminent domain the right to get their property back from Texas Central if it was used for something other than the proposed high-speed rail project, or if the project was cancelled. Had this bill been enacted into law, landowners would now be in a position to reacquire their property if Texas Central defaults on its loan or cancels the project. As it stands, however, upon default the property will be transferred to the Japanese government to be used for some other purpose, and the landowners will have no means of getting it back.

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