

ASSEMBLY, No. 3458

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

The “Real Estate Installment Contract Act.”

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning real estate installment sales contracts and
2 supplementing Title 46 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the “Real Estate
8 Installment Contract Act.”

9
10 2. As used in this act:

11 “Property” means any real property located in this State which
12 has no more than four dwelling units, one of which shall be or is
13 intended to be occupied by the purchaser or a member of the
14 purchaser’s immediate family as a residence at the time that a real
15 estate installment contract is originated.

16 “Purchaser” means any person acquiring an interest in property
17 by means of a real estate installment contract.

18 “Real estate installment contract” or “contract” means an
19 agreement which by its terms is not required to be fully performed
20 by the parties to the agreement within one year of the date of the
21 agreement and under which the seller agrees to convey title to a
22 property to the purchaser and the purchaser agrees to pay the
23 purchase price by periodic installment payments while the seller
24 retains legal title to the property, and the purchaser retains an
25 equitable interest therein.

26 “Seller” means any person conveying title by means of a real
27 estate installment contract.

28 “Title” means the fee simple estate, leasehold estate, or estate for
29 years vested in the seller at the time of the execution of a real estate
30 installment contract.

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32 3. a. A real estate installment contract shall be in writing, and,
33 upon execution by the seller and purchaser, the seller shall deliver
34 the original or a duplicate original of the contract to the purchaser
35 in recordable form. The contract shall contain the following
36 information:

37 (1) the names and mailing addresses of the parties to the
38 contract;

39 (2) the date on which the contract was signed by each party and
40 the effective date of the contract;

41 (3) a description of the property which is the subject of the
42 contract, which description shall be in a form legally sufficient to
43 convey title to real property;

44 (4) the aggregate purchase price of the property affected;

45 (5) any additional charges or fees imposed on the purchaser by
46 the terms of the contract;

47 (6) the amount of the purchaser’s down payment, if any;

- 1 (7) the principal balance owed, which shall be the aggregate
2 purchase price less the down payment;
- 3 (8) the amount and due date of each installment payment;
- 4 (9) a complete description of any mortgage or other lien
5 encumbering the property, including the name and address of the
6 holder of each mortgage or lien and the amount due to each holder
7 thereof, or, in the alternative, a statement that no such liens exist;
- 8 (10) a statement that, if the seller defaults in payment of a
9 mortgage or other lien encumbering the property, the purchaser
10 may, at the purchaser's option, make payments, which payments
11 shall be credited by the seller against any payments required to be
12 made by the purchaser under the terms of the contract;
- 13 (11) a statement that, once the purchaser has fully performed all
14 of the purchaser's obligations under the contract, the seller shall
15 deliver to the purchaser a deed conveying all of seller's right, title
16 and interest in and to the property described in the contract;
- 17 (12) a statement as to which party shall be responsible for the
18 payment of taxes, assessments, and other municipal charges against
19 the property from the effective date of the contract;
- 20 (13) a statement containing a description of any pending order
21 issued by any public agency against the property arising from a
22 violation of any statute, administrative regulation or local
23 ordinance, or in the alternative, a statement that no such order
24 exists; and
- 25 (14) acknowledgment of the execution of the contract by both
26 seller and purchaser before a notary public or other officer entitled
27 by law to take acknowledgements.
- 28 b. A seller shall not encumber a property sold pursuant to a
29 contract, by execution of a mortgage unless the indebtedness
30 secured by the mortgage, or aggregate indebtedness if there is more
31 than one mortgage, is less than the balance due under the contract.
- 32 c. Within 20 days after a contract has been executed by both
33 the seller and purchaser, the seller shall record the contract, or a
34 short form thereof, in the office of the county clerk or register in the
35 county where the property is located.
- 36 d. Within 30 days of the date that the purchaser shall have fully
37 performed all of the purchaser's obligations under the contract, the
38 seller shall deliver a deed to the purchaser in recordable form,
39 conveying to the purchaser all of the seller's right, title and interest
40 in the property.
- 41
- 42 4. a. Upon breach or default by any party with respect to any
43 provision of a contract, which default continues beyond the
44 expiration of any applicable notice provision and period to cure the
45 default provided for in the contract, or upon the failure of any party
46 to comply with any provision of this act, the party aggrieved
47 thereby may bring an action for legal or equitable relief in Superior
48 Court as may be appropriate in the circumstances; except that if the

1 seller seeks relief against the purchaser on the grounds set forth in
2 section 5 of this act, the seller shall comply with the provisions
3 thereof before commencing suit.

4 b. If, in any action commenced in Superior Court to enforce the
5 terms of a contract, the seller demands forfeiture of the interest of
6 the purchaser in the property, the action shall be deemed to be one
7 in the nature of a strict foreclosure of a mortgage encumbering real
8 property, in which case the seller shall be deemed to be the
9 mortgagee and the purchaser shall be deemed to be the mortgagor.

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11 5. a. If a purchaser defaults in a payment or payments due, or
12 otherwise defaults on a contract, or is in breach of any other
13 obligation imposed upon the purchaser by the contract, the seller,
14 prior to commencing an action in Superior Court to enforce the
15 terms of the contract as provided in section 4 of this act, shall serve
16 upon the purchaser a written notice which:

17 (1) reasonably identifies the contract and describes the property
18 affected thereby;

19 (2) specifies the nature and extent of the breach or default by the
20 purchaser; and

21 (3) notifies the purchaser that unless the breach or default is
22 cured within 30 days of service of the notice, the seller may file suit
23 in Superior Court to enforce the terms of the contract, in which case
24 judgment may be entered against the purchaser, which may result in
25 the forfeiture of the purchaser's interest in the property and the
26 removal of the purchaser from the property.

27 b. The notice shall be entitled "Notice of Breach or Default
28 under Real Estate Installment Contract." The seller shall serve the
29 notice upon the purchaser by hand or by registered or certified mail,
30 return receipt requested, to the last known address of the purchaser.
31 If a purchaser cures the breach or default within 30 days after
32 service of the notice, the seller shall be barred from filing suit in
33 Superior Court to enforce the contract. If the purchaser fails to cure
34 the breach or default within 30 days after the service of the notice,
35 the seller may file suit in Superior Court to enforce the contract, as
36 provided in section 4 of this act.

37 c. The seller may only bring an action to enforce the forfeiture
38 of the purchaser's interest in the property and for recovery of
39 possession of the property by use of the procedures for foreclosure
40 and judicial sale of residential real property available to lenders
41 pursuant to the provisions of the "Fair Foreclosure Act," P.L.1995,
42 c.244 (C.2A:50-53 et seq.). For purposes of an action to enforce a
43 contract under this act, the seller shall be deemed to be a lender, and
44 the purchaser shall be deemed to be a debtor, as those terms are
45 defined in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53
46 et seq.).

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1 default and which notifies the purchaser that if the purchaser does
2 not cure the default within 30 days of receiving the notice, the seller
3 may file suit in Superior Court to enforce the terms of the contract,
4 in which case judgment may be entered against the purchaser,
5 which may result in the forfeiture of the purchaser's interest in the
6 property and the removal of the purchaser from the property. The
7 seller may only bring an action to enforce the forfeiture of the
8 purchaser's interest in the property and for recovery of possession
9 of the property by use of the procedures for foreclosure and judicial
10 sale of residential real property available to lenders pursuant to the
11 provisions of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-
12 53 et seq.).

13 The bill clarifies that the State's civil and criminal usury laws
14 apply to real estate installment contracts in a manner to be
15 prescribed by the Commissioner of Banking and Insurance by
16 regulation. As an alternative to the more traditional use of a
17 mortgage to finance the purchase of real property, a real estate
18 installment contract allows a purchaser of real estate to make
19 installment payments to the seller towards the eventual purchase of
20 the property, while the seller retains title to the property as security
21 for the purchaser's completion of all contract terms. While the
22 regulation of real estate installment contracts under the bill includes
23 some provisions relating to mortgage loan law, to which usury laws
24 normally apply, other provisions relate to contract law, to which
25 usury laws do not normally apply. Accordingly, the bill clarifies
26 that the protections afforded consumers by the State's usury laws
27 also apply to real estate installment contracts.

28 The bill allows the commissioner to take anticipatory
29 administrative action in advance of the effective date of the bill as
30 necessary for the enforcement of usury laws.