

SENATE, No. 1945

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Senator NIA H. GILL
District 34 (Essex and Passaic)

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 one or more of the parties to the agreement within one year of
21 the date of the agreement and under which the seller agrees to
22 convey title to a property to the purchaser and the purchaser agrees
23 to pay the purchase price in installment payments while the seller
24 retains title to the property as security for the purchaser’s
25 obligation.

26 “Seller” means any person conveying an interest in property by
27 means of a real estate installment contract.

28
29 3. a. A real estate installment contract shall be in writing and
30 the seller shall provide a copy of the contract to the purchaser at or
31 before the time the purchaser signs the contract. The contract shall
32 contain at least the following:

33 (1) the names and mailing addresses of all the parties to the
34 contract;

35 (2) the date on which the contract was signed by each party;

36 (3) a legal description, by metes and bounds or block and lot
37 numbers, of the property conveyed;

38 (4) the purchase price of the property conveyed;

39 (5) any charges or fees for services that are included in the
40 contract separate from the purchase price;

41 (6) the amount of the purchaser’s down payment;

42 (7) the principal balance owed, which shall be the contract price
43 less the down payment;

44 (8) the amount and due date of each installment payment;

45 (9) a complete description of any mortgage or other lien
46 encumbering or secured by the property, including the identity and
47 address of the owner of record as to each mortgage or lien and the
48 total amount due under the mortgage or lien;

1 (10) a requirement that, if the seller defaults on a mortgage on
2 the property, the seller shall notify the purchaser and the purchaser
3 may, at the purchaser's option, make payments on that mortgage
4 and receive credit from the seller for any amounts paid toward any
5 payments required on the contract;

6 (11) a requirement that the seller shall deliver a deed and
7 convey marketable title to the purchaser upon completion of the
8 contract;

9 (12) a requirement that the seller shall be responsible for the
10 payment of taxes, assessments, and other charges against the
11 property from the date of the contract, unless otherwise agreed to by
12 both parties; and

13 (13) a description of any pending order of any public agency
14 against the property.

15 b. A seller shall not place or hold a mortgage on property sold
16 pursuant to a real estate installment contract in an amount greater
17 than the balance due under the real estate installment contract.

18 c. Within 20 days after a real estate installment contract has
19 been signed by both the seller and purchaser, the seller shall record
20 the contract, or a short form thereof, in the office of the county
21 clerk in the county where the property is located.

22

23 4. Upon default by a seller of any provision of a real estate
24 installment contract, which default continues beyond the expiration
25 of any applicable notice provision and period to cure the default
26 provided for in the contract, or upon the failure of a seller to
27 comply with any provision of this act, the purchaser may bring an
28 action for legal and equitable relief in Superior Court. Equitable
29 relief in the action may include rescission of the contract and
30 restitution to the purchaser in an amount equal to all amounts the
31 purchaser paid to the seller plus the reasonable value of any
32 improvements to the property made by the purchaser and any other
33 proximately caused or incidental damages, less the fair rental value
34 of the property for the period of time that the purchaser was in
35 possession of the property.

36

37 5. a. If a purchaser fails to make a payment or otherwise
38 defaults on a real estate installment contract, the seller may initiate
39 the forfeiture of the interest of a purchaser under the contract by
40 serving on the purchaser a written notice which:

41 (1) reasonably identifies the contract and describes the property
42 covered by it;

43 (2) specifies the terms and conditions of the contract which have
44 not been complied with; and

45 (3) notifies the purchaser that the purchaser's interest in the
46 contract will be forfeited unless the purchaser performs the terms
47 and conditions of the contract within 30 days of the completed
48 service of notice.

1 b. The seller shall serve the notice by hand delivery to the
2 purchaser or by delivery by certified mail to the last known address
3 of the purchaser. The seller shall not enforce the forfeiture of the
4 interest of the purchaser under the contract pursuant to section 6 of
5 this act until 30 days after the date of the completed service of the
6 notice. A purchaser in default may avoid the forfeiture of the
7 purchaser's interest under the contract by making all payments
8 currently due and any fees or charges for which the purchaser is
9 liable or by otherwise performing the purchaser's obligations under
10 the contract within the 30-day period.

11
12 6. If a purchaser fails to make a payment or otherwise defaults
13 on a real estate installment contract and if the purchaser is still in
14 default after the expiration of the period prescribed by section 5 of
15 this act, the seller, after complying with the notice requirement set
16 forth in section 5 of this act, shall only enforce the forfeiture of a
17 purchaser's interest under the contract as follows:

18 a. If a purchaser has paid in accordance with the terms of a real
19 estate installment contract for a period of less than five years from
20 the date of the first payment and the purchaser has made payments
21 of less than twenty percent of the purchase price of the property
22 under the contract, the seller may bring an action in Superior Court
23 for forfeiture of the purchaser's interest in the contract and for
24 recovery of possession of the property.

25 b. If a purchaser has paid in accordance with the terms of a real
26 estate installment contract for a period of five years or more from
27 the date of the first payment or has made payments in excess of
28 twenty percent of the purchase price of the property under the
29 contract:

30 (1) for purposes of the "Fair Foreclosure Act," P.L.1995, c.244
31 (C.2A:50-53 et seq.), the contract shall be deemed to be a
32 residential mortgage, the seller shall be deemed to be a lender, and
33 the purchaser shall be deemed to be a debtor; and

34 (2) the seller may bring an action to enforce the forfeiture of the
35 purchaser's interest in the property and for recovery of possession
36 of the property by use of the procedures for foreclosure and judicial
37 sale of residential real property available to lenders pursuant to the
38 provisions of the "Fair Foreclosure Act."

39
40 7. This act shall take effect on the 60th day following
41 enactment and shall apply to real estate installment contracts
42 entered into on after that date.

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45 STATEMENT

46
47 This bill, entitled the "Real Estate Installment Contract Act,"
48 provides that, in connection with the use of a real estate installment

1 contract to purchase residential real property, the contract must
2 contain certain disclosures, the purchaser has legal and equitable
3 remedies available upon a seller's default on the contract, and a
4 seller must adhere to certain procedures in enforcing the contract
5 upon a purchaser's default. As an alternative to the more traditional
6 use of a mortgage to finance the purchase of real property, a real
7 estate installment contract allows a purchaser of real estate to make
8 installment payments to the seller towards the eventual purchase of
9 the property, while the seller retains title to the property as security
10 for the purchaser's obligations until the completion of all contract
11 terms.

12 The bill requires a real estate installment contract to be in writing
13 and to disclose certain information, including: any charges or fees
14 for services that are included in the contract separate from the
15 purchase price, the principal balance owed, the amount and due date
16 of each installment payment, and a complete description of any
17 mortgage or other lien encumbering or secured by the property. In
18 addition, the bill requires the seller to record either the contract or a
19 short form of the contract, and puts certain restrictions on the
20 seller's ability to hold or place mortgages on the property.

21 The bill provides that if the seller defaults under any provision of
22 a real estate installment contract and the default continues beyond
23 the expiration of any applicable period allowed to cure the default,
24 or if the seller fails to comply with any of the bill's provisions, the
25 purchaser may bring an action for legal and equitable relief in
26 Superior Court. Equitable relief in the action may include rescission
27 of the contract and restitution to the purchaser in an amount equal to
28 all amounts the purchaser paid to the seller, plus the reasonable
29 value of any improvements to the property made by the purchaser
30 and any other proximately caused or incidental damages, less the
31 fair rental value of the property for the period of time that the
32 purchaser was in possession of the property.

33 The bill also establishes certain procedures to be followed in
34 situations in which the purchaser defaults on a payment or
35 otherwise defaults on the contract and the seller seeks to enforce the
36 forfeiture of the purchaser's interest in the contract. If a purchaser
37 fails to make a payment on the contract or otherwise defaults on the
38 contract, the seller may initiate the forfeiture of the interest of a
39 purchaser under the contract by providing the purchaser with a
40 written notice that the purchaser is in default. If the purchaser does
41 not cure the default within 30 days of receiving the notice, the seller
42 may enforce the forfeiture of the purchaser's interest in the property
43 only as follows:

44 (1) If a purchaser has paid in accordance with the terms of the
45 contract for a period of less than five years from the date of the first
46 payment and the purchaser has made payments of less than 20
47 percent of the purchase price of the property under the contract, the
48 seller may bring an action in Superior Court for forfeiture of the

1 purchaser's interest in the contract and for recovery of possession of
2 the property; or
3 (2) If a purchaser has paid in accordance with the terms of the
4 contract for a period of five years or more from the date of the first
5 payment or has made payments in excess of twenty percent of the
6 purchase price of the property under the contract, the seller may
7 bring an action to enforce the forfeiture of the purchaser's interest
8 in the property and for recovery of possession of the property by
9 use of the procedures for foreclosure and judicial sale of real
10 property available to lenders pursuant to the provisions of the "Fair
11 Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.). This
12 requirement to bring the forfeiture action as a judicial foreclosure
13 action under the "Fair Foreclosure Act" ensures that in situations in
14 which the purchaser has achieved a certain level of equitable
15 interest in the property by making installment payments, the
16 purchaser has certain rights of redemption to cure the default and
17 also has the right to apply for any surplus funds if the amount
18 realized from the foreclosure sale of the property is in excess of the
19 amount necessary to repay the seller under the contract.