Installment Sales Contract Act

765 ILCS 67
What's in a name? That which we call a rose
By any other name would smell as sweet.

-Juliet, Romeo and Juliet (Act II, Scene ii)
What’s in a name?

- Installment sales contract
- Land contract
- Contract for deed
- Bond for deed
- Agreement for deed
- Agreement to purchase
- Lease with option to purchase
- Rent-to-own
That which we call rent-to-own by any other name would smell as foul.

- Rent-to-own
  - You are a tenant
  - You don’t get title until all payments are made
- But you often have the responsibilities of an owner
  - Taxes and insurance
  - Maintenance and repairs
- Often comes with a own-payment
- Often comes with surprises
  - Bad conditions
  - Liens
How is rent-to-own like other kinds of predatory (e.g., auto) lending?

• Buy here pay here
• But you only get title later
• Credit score does not matter
• Over-priced products at inflated interest rates
• You pay more if you are poor
• High default rate
• Crime may not pay but flipping sure does
Section 5: Definitions

• Covers sales of 1-4 unit residential dwelling
• In installments
• Lasting at least one year
• Where seller keeps interest in property
• And where seller is defined as someone who does > 3 deals in a 12-month period
Section 10: Terms and conditions of installment sales contract

- Rescission allowed until written contract executed
- Written contract must disclose
  - All items related to price and all payments due by contract buyer
  - Details and amounts related to all payments of taxes and insurance
  - Assessed value of property
  - Liens and code violations
  - Buyer repair duties
  - Details as to when and how title is conveyed
  - Buyer’s 90-day right to cure any default
Section 15: Applicability of other Acts

- Installment Sales Contracts are covered by all laws related to property sales such as
  - Lead Poisoning Prevention Act
  - Residential Real Property Disclosure Act
  - Illinois Radon Awareness Act
  - High Risk Home Loan Act
Section 20: Recording of contract required

- Seller must record contract or memorandum thereof (citing bare bones information)
- Must record within 10 days
- If not, buyer has right to rescind contract if not recorded
Section 25: Repairs

- Seller is responsible for repairs unless and to the extent that, as per Section 10(c)(20) of the Act, the contract sets forth in writing what repairs the buyer is required to make.
Section 30: Account statements

• Seller must provide an account statement upon buyer’s request
• One statement free of charge every 12 months
Section 35: Insurance proceeds

• Insurance proceeds issue as a result of damage will be used to make repairs
• Unless buyer and seller split proceeds via a written agreement
• Or if seller’s mortgage requires paying down principal, in which case buyer will get a corresponding credit to the amount due on the contract
Section 40: Right to cure default

- Buyer has 90-day right to cure default
Section 45: Unlawful acts

- No oral or written misrepresentations allowed
Section 50: No waiver

- No waiver of any provisions of this Act
- Any provisions or agreement contrary to this Act are void and unenforceable
Section 55: Circumstances voiding mandatory arbitration provisions

- Arbitration provisions are void and unenforceable if
  - Oppressive
  - Unfair
  - Unconscionable
  - Substantially in derogation of the rights of either party
Section 60: Prepayment penalties prohibited

• No penalty, fee, or finance charge if buyer elects to make early payment of the outstanding principal balance
Section 65: Prohibited contract terms

- Buyer cannot be in default for failing to make any repairs to conditions existing prior to date of sale.
Section 70: Cooling-off period

- Buyer can rescind contract within 3 business days of executing a written contract
- Contract must be accompanied by Attorney General Notice and a signed acknowledgment of receipt thereof
Section 75: Installment sales contract disclosures

- Attorney General to develop educational document for provision to buyer
- Includes highlighted Notice of 3-day cooling-off period
Section 80: Credits towards deficiency in the case of default

- If buyer defaults, seller shall credit buyer with any amount spent to repair defects in the property that existed before the sale
Section 85: Enforcement.

- Any violation of this Act constitutes an unlawful practice under the Illinois Consumer Fraud and Deceptive Business Practices Act
Section 90: Applicability of Act

- Act applies to contracts executed on or after effective date of this Act (January 1, 2018).
Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1106)

• Prior to the Act, a land contract buyer had to foreclosed rather than evicted if principal paid down below 80% and contract longer than 5 years

• Now, the second (5-year length) requirement has been removed
Case #1: defending against an eviction

- From tax buyer to contract seller
- Eviction case filed 6 years in to a 10-year contract
- Case made harder by contract modification in Year 6
  - Did contract have a duration of > 5 years? (not an issue under new law)
  - Had client paid down below 80% of balance?
Case #2: enforcing conveyance of title

- Client paid down-payment and full payments over 24-month term
- Monthly payments included amounts for principal, interest, taxes, and insurance
- But taxes were sold because contract seller did not pay taxes
- We are now suing for money damages and to force conveyance of title
- Seller claims she still owes money for “real estate development classes”
Questions or referrals?

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