

# Protections for Rent-to-own Homebuyers

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Installment Sales Contract Act (765 ILCS 67)

# LAF (Legal Assistance Foundation)

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- Provides comprehensive civil legal aid to residents of Cook County, Illinois
- 5 Practice Groups: Consumer, Housing, Public Benefits, Children & Family, IWR (Immigrant and Workers' Rights)
- Income guidelines are 150% of the poverty limit but can go higher for homeowners, seniors, veterans, victims of domestic violence, crime victims or households affected by HIV/AIDS
- To seek help call 312-341-1070 or go online to ILAO (Illinois Legal Aid Online)

# What's in a name?

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- 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

# Upside

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- A land contract may offer the only way for someone to buy a home

# Downsides

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- *Rent-to-own*: you are a tenant and don't get title until all payments are made
- But you often have the responsibilities of an owner – e.g., taxes, insurance, maintenance, repairs
- Can cost a lot – high down-payment, high interest rate
- And sometimes you move in and discover some very bad surprises such as bad conditions or outstanding liens

# Section 5: Definitions

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- 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

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- 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

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- 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

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- 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

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- 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

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- Seller must provide an account statement upon buyer's request
- One statement free of charge every 12 months

# Section 35: Insurance proceeds

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- 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

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- Buyer has 90-day right to cure default

# Section 45: Unlawful acts

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- No oral or written misrepresentations allowed

## Section 50: No waiver

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- 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

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- Arbitration provisions are void and unenforceable if
  - Oppressive
  - Unfair
  - Unconscionable
  - Substantially in derogation of the rights of either party

## Section 60: Prepayment penalties prohibited

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- No penalty, fee, or finance charge if buyer elects to make early payment of the outstanding principal balance

# Section 65: Prohibited contract terms

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- Buyer cannot be in default for failing to make any repairs to conditions existing prior to date of sale

# Section 70: Cooling-off period

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- 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

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- 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

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- 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

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

# Section 90: Applicability of Act

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- 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)

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- 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

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- 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 (affirmative state court suit)

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- 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 sued for money damages and to force conveyance of title
- Seller claimed our client still owed money for “real estate development classes”
- We won, enforced transfer of title, got money judgment; still need to collect and/or otherwise redeem property taxes

## Case #3: enforcing conveyance of title (chapter 13 bankruptcy)

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- 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
- Filed bankruptcy to enforce conveyance of title and redeem taxes

# Questions or referrals?

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