Illinois Enacts New Law to Protect Home Buyers from Predatory Rent-to-Own Contracts
Alexandra M. Harrington
Student Fellow
Loyola University Chicago School of Law
Institute for Consumer Antitrust Studies

During recessions, inability to obtain standard mortgages has forced less privileged buyers to finance their homes through predatory rent-to-own contracts. These contracts are minimally regulated financing agreements that favor the seller and subject buyers to onerous terms. For example, in these contracts, the buyer pays the seller every month, but acquires no equity in the property until the final payment is made. In the meantime, the buyer must pay for repairs and is subject to removal after even one missed payment, with no recourse to recover equity or funds the buyer expended to repair the home. Nearly ten years after predatory rent-to-own contracts resurfaced during the Great Financial Crisis of 2008, Illinois passed the Installment Sales Contract Act ("Act") to protect consumers who enter into predatory rent-to-own contracts for housing.1 The Act, which took effect in January of 2018, provides unprecedented protection for sellers who enter into rent-to-own contracts. But it could go farther to protect consumers: rent-to-own contracts do not award buyers equity in their homes, leaving them stuck in their properties until their homes are fully paid off.

I. HISTORY OF UNFAIR TERMS IN CONTRACT RENT-TO-OWN CONTRACTS

Rent-to-own contracts have long oppressed less privileged home buyers in the United States. Due to historic racial discrimination in mortgage origination in America, and especially in Illinois, African Americans were largely unable to obtain traditional mortgages after the Great Depression.2 As a result, they had to seek other means to finance their homes. One of the most

2 A large source of discrimination in loan origination began when the Federal Housing Administration (FHA) was created in 1934 as a part of the New Deal. David Reiss, The Federal Housing Administration and African-American Homeownership, 26 J. AFFORDABLE HOUSING & COMMUN. DEV. L. 123, 124 (2017). To aid people whom the Great
popular strategies was predatory rent-to-own contracts. The arrangements accounted for an estimated 85 percent of home sales to African Americans in Chicago in the 1950s.\(^3\) Rent-to-own arrangements resurfaced after the financial crisis and persist today. They have become so prevalent in low-income communities that, in 2015, “more homes were bought in Detroit . . . using such ‘land contracts’ or ‘contracts for deeds’ than conventional mortgages.”\(^4\)

Both historically and now, predatory rent-to-own contracts harm consumers. The contracts “sell” grossly overpriced homes, the value to be repaid over an extended period of time, only at the end of which does the purchaser officially own the home.\(^5\) But the fact that sellers retain ownership of the home until it is fully repaid has historically allowed them to impose harsh penalties for missed payments, including removal for being late on even a single payment.\(^6\) Many of these contracts require the tenant to fund repairs; such funds would not be repaid if the tenant was removed.\(^7\) And, because these contracts are not traditional mortgages, sellers previously did not need to follow foreclosure or eviction procedures, both of which protect consumers.\(^8\) Last, because most consumers that enter into predatory rent-to-own contracts


\(^{5}\) Id.; Jack Macnamara, Remarks at Loyola University Chicago School of Law, Combatting Systematic Discrimination that Impacts the Dream of Home Ownership for Minorities (Oct. 29, 2018).

\(^{6}\) CONTRACT BUYERS LEAGUE, supra note 3; Macnamara, supra note 5.

\(^{7}\) Controversial Resurgence, supra note 3.

\(^{8}\) Jeanine Skowronsksi, Understanding your Foreclosure Rights: A Consumer Law Review, CREDIT.COM (Nov. 21, 2016), https://www.credit.com/debt/understanding-your-foreclosure-rights/ (explaining that, once foreclosure proceedings begin, homeowners are given time to cure any default that has accrued, something that was not a given in predatory rent-to-own contracts); The Renter’s Guide to Tenant Privacy Rights, PRIVACY RIGHTS CLEARINGHOUSE, https://www.privacyrights.org/consumer-guides/renters-guide-tenant-privacy-rights (last updated
have never previously purchased a home, they likely do not know the availability or advisability of hiring an inspector to warn them of any defects they would be left to repair with their own funds.9

II. ILLINOIS’S ACT PROTECTS CONSUMERS FROM PREDATORY ASPECTS OF RENT-TO-OWN CONTRACTS

The Federal Housing Act10 and other federal laws designed to protect home buyers from discrimination are available to redress consumer harms related to housing, but their general protections have not adequately regulated rent-to-own contracts.11 In order to address this shortcoming, and due to predatory rent-to-own contracts’ resurgence after the 2008 recession, Illinois enacted the Installment Sales Contract Act, which applies to certain sellers and provides added protections for those who enter into contract sales.12 The Act helps consumers in two ways: It provides consumers with enough information to ensure they can “make an informed

---

9 See Rebecca Burns, The Infamous Practice of Contract Selling Is Back in Chicago, CHI. READER (Mar. 1, 2017), https://www.chicagoreader.com/chicago/contract-selling-redlining-housing-discrimination/Content?oid=25705647 (discussing a recent case of predatory rent-to-own contracts, where the buyer, who had never purchased a home before, was unaware of the advisability of retaining a home inspection before signing the contract).

10 The Fair Housing Act protects against discrimination in contract terms based on prohibited classifications. Fair Housing Act, 42 U.S.C. § 804(b) (2012). But, if a person buying a house via rent-to-own sale is given the same terms as all other purchasers, it may be difficult to show discrimination. The Fair Housing Act does provide disparate impact liability but, plaintiffs must show not only that a disparate impact exists, but also that a company’s specific policy caused that impact, a difficult element to prove. See Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507 (2015).

11 Controversial Resurgence, supra note 3. Other consumer protection laws that could be applicable include the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), and the Community Reinvestment Act (CRA). Under ECOA, creditors may not discriminate based on, among other classifications, race, color, religion, or national origin. 12 C.F.R. § 1002.2(z) (2018). But, ECOA would not provide redress to a person who purchased their home through a rent-to-own sale, because ECOA only applies to creditors, and a party that sells homes via rent-to-own contract would not be considered a creditor. Id. § 1002.2(l). HMDA and CRA similarly do not provide adequate redress for consumers in rent-to-own contracts. Both simply provide disclosure obligations for lending institutions aimed at ensuring equity in lending. 12 U.S.C. §§ 2803, 2903(a)(1).

decision about whether or not to enter into a rent-to-own contract to buy a home,” and it also protects buyers from onerous default and forfeiture provisions.\textsuperscript{13}

\textbf{A. Helping Consumers Make Informed Decisions: Disclosure}

First, the Installment Sales Contract Act requires a written contract\textsuperscript{14} which contains certain provisions notifying buyers of their rights. These include disclosure of the home’s fair cash value, “as defined in the Property Tax Code and set forth on the real estate tax bill for the year immediately prior to the sale.”\textsuperscript{15} This protects buyers from purchasing a home at a highly inflated price and would limit the seller’s ability to take advantage of buyers should a buyer not know the advisability of obtaining an appraiser before agreeing on a price. Although that disclosure protects buyers from purchasing largely price-inflated homes, the contract must also clearly state the advisability of obtaining an appraisal.\textsuperscript{16}

The seller must disclose in the contract any of the home’s building code violations, \textsuperscript{17} and, if the home has previously been condemned, the seller must clearly disclose that fact to the buyer.\textsuperscript{18} This protects buyers from unwittingly purchasing a home that is unsafe and directly addresses the possibility that first-time buyers may not hire an inspector before entering into an agreement to purchase a home.\textsuperscript{19} The disclosures also must state “any known liens or mortgages or other

\textsuperscript{13} Law Protecting Rent-to-Own Homebuyers in Illinois Goes into Effect, supra note 12 (quoting Bob Palmer, the policy director for Housing Action Illinois).
\textsuperscript{14} 765 ILL. COMP. STAT. 67/10(a).
\textsuperscript{15} Id. 67/10(c)(10).
\textsuperscript{16} Id. 67/10(c)(25). The disclosure must be “in large bold font,” and state something substantially similar to “NOTE TO BUYER: BEFORE SIGNING THE CONTRACT, THE BUYER HAS THE OPTION OF OBTAINING AN INDEPENDENT THIRD PARTY INSPECTION AND/OR APPRAISAL SO THAT THE BUYER CAN DETERMINE THE CONDITION AND ESTIMATE MARKET VALUE OF THE RESIDENTIAL REAL ESTATE AND DECIDE WHETHER TO SIGN THE CONTRACT.” Id.
\textsuperscript{17} Id. 67/10(c)(24).
\textsuperscript{18} Id. 67/10(c)(26). The disclosure must be “in large bold font.” Id. The section provides an example of such disclosure: “NOTE TO BUYER: THE RESIDENTIAL REAL ESTATE BEING SOLD THROUGH THIS CONTRACT HAS BEEN CONDEMNED BY THE UNIT OF GOVERNMENT HAVING JURISDICTION.” Id.
\textsuperscript{19} Burns, supra note 9.
limitations on title,” which would assist buyers who do not have the means to hire an attorney to perform a title search.

Another major protection the Act provides is a mandatory cooling off period, which mandates that the contract will bind neither buyer nor seller until three business days after the “unexecuted installment sales contract has been accepted by the buyer and seller in the contract’s full and final form.” This gives buyers a chance to look over the contract terms without pressure from the seller, and it gives buyers an opportunity to seek guidance from others not involved in the deal.

B. Protecting Consumers Who Have Entered Into these Contracts: Default Protections and Prohibitions Against Predatory Terms

For buyers who choose to enter into rent-to-own contracts, the Installment Sales Contract Act contains multiple provisions that offer protection. First, and importantly, the Act requires that buyers have ninety days to cure any defaults before the seller may remove them from their home. This directly addresses issues seen in past contract sales where buyers could have been paying their rate monthly for years, just to have their home and the money spent on repairs forfeited after a single missed payment. The ninety-day cure period brings rent-to-own buyers’ protections more in line with the protection given homebuyers in foreclosure proceedings. If buyers do default, they can use any money that they contributed to repair preexisting defects in the home toward the late payment. And, the Act amends the Mortgage Foreclosure

---

20 765 ILL. COMP. STAT. 67/10(c)(18).
21 Id. 67/10(c)(27).
22 Law Protecting Rent-to-Own Homebuyers in Illinois Goes Into Effect, supra note 12 (explaining that, during this time, parties “can review an educational disclosure document provided by the seller and prepared by Office of the Attorney General that will describe issues to consider, such as having the property appraised and inspected, before signing the contract”).
23 765 ILL. COMP. STAT. 67/10(c)(28).
24 CONTRACT BUYERS LEAGUE, supra note 3.
25 See Skowronsksi, supra note 8.
26 765 ILL. COMP. STAT. 67/80.
Act to apply to real estate installment contracts and requires foreclosure proceedings to be followed if the buyer had repaid over 20 percent of the home’s value. This provides contract buyers some of the same protections as traditional mortgage holders.

Further, the Act forbids certain predatory contract provisions outright. It outlaws terms “that would put the buyer in default for failing to make improvements and repairs” that mitigate conditions which predated the sale. It also bans provisions that penalize the buyer for repaying the principal balance early. Additionally, it protects buyers’ rights by disallowing mandatory arbitration clauses that are “oppressive, unfair, unconscionable, [or] substantially in derogation of the rights of either party.” Finally, to protect sellers from potential scams or disputes as to their title to the home once all payments are made, the seller must “create public record of the sale” with the county recorder.

III. DOES THE ACT GO FAR ENOUGH?

The Installment Sales Contract Act directly and effectively addresses many common challenges consumers face when considering or entering into a rent-to-own contract. In traditional mortgages, banks desire to ensure the real estate collateral on a loan is worth enough money to secure payment. This is why many banks require potential buyers to have their home appraised and inspected. The Act takes the bank’s place by advising inspection and appraisal, which puts rent-to-own buyers in a similar position to those fortunate enough to obtain mortgage financing.

27 Id. 67/905.
28 Id. 67/65.
29 Id. 67/60.
30 Id. 67/55.
31 Law Protecting Rent-to-Own Homebuyers in Illinois Goes Into Effect, supra note 12 (referencing § 20(a)).
Although the Act provides broad and extremely beneficial protections for consumers who purchase homes through rent-to-own contracts, it should go one step further. A major hole in the Act is that it does not require that buyers retain equity in the home proportionate to the amount of payment they completed on the home. So, if buyers want to move before their home is fully paid off, they are not statutorily entitled to obtain the funds they had already paid toward the purchase price. Adding an equity-retention provision would further align rent-to-own consumers with those who can obtain a mortgage. It should also be noted that the Act does not apply retroactively to contracts created before it went into force, which leaves consumers who entered into rent-to-own contracts without the same redress as those who choose to enter into them after the Act’s enactment.\textsuperscript{32}

Some may predict the Act will harm consumers by disincentivizing rent-to-own sellers from entering into such contracts, thus limiting the amount of affordable housing available to would-be rent-to-own buyers. But this seems unlikely to occur. The disincentives to provide rent-to-own options are still minimal. First, the administrative burdens that the Act increases are extremely negligible. The new disclosure requirements placed upon sellers are easy to provide; they merely contain information most homeowners would already know and otherwise simply require recommendations protecting consumers.

And, the newfound protections that buyers who enter into rent-to-own contracts are now afforded in Illinois are no different than those afforded people who obtain regular mortgages. Rather than creating a paternalistic law disallowing these contracts altogether, the Act simply provides symmetry in negotiating power between consumers and sellers in rent-to-own contracts. This protects buyers from sales in which the business model assumes buyers will default, while

\textsuperscript{32} 765 ILL. COMP. STAT. 67/90.
not creating so many burdens upon sellers that they are likely to forgo providing these arrangements in the future.

CONCLUSION

The Installment Sales Contract Act provides unprecedented consumer protection for buyers who enter into rent-to-own contracts to purchase homes. It directly addresses issues that rent-to-own sales pose by requiring increased disclosure and protections to consumers in the case of default, although it could do more. Nonetheless, the Act effectively mitigates many challenges that those unable to obtain mortgages have traditionally faced. In turn, these protections may allow less privileged consumers to obtain affordable housing on fair terms.