

1 SENATE BILL 449

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Gerald Ortiz y Pino

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10 AN ACT

11 RELATING TO REAL PROPERTY; ENACTING THE REAL ESTATE CONTRACT  
12 ACT; DEFINING TERMS; PROVIDING REQUIREMENTS FOR RECORDING REAL  
13 ESTATE CONTRACTS; PROVIDING PROTECTION FOR THE INTERESTS OF  
14 BUYERS PURSUANT TO REAL ESTATE CONTRACTS; PROVIDING CIVIL  
15 REMEDIES FOR NONCOMPLIANCE.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
19 cited as the "Real Estate Contract Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
21 Real Estate Contract Act:

22 A. "buyer" means the person who is obligated to  
23 make payments to the seller pursuant to a real estate contract;

24 B. "date of sale" means the date that the seller  
25 and buyer execute a real estate contract;

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1 C. "down payment" means a payment, other than the  
2 ordinary periodic payment, made at or near the time of the  
3 execution of the real estate contract;

4 D. "dwelling" means a private home or residence or  
5 a building or structure intended for residential use;

6 E. "real estate contract" means a written contract  
7 or agreement, including a contract for deed, bond for deed,  
8 rent-to-own agreement, rental agreement with option to purchase  
9 or any other legal device whereby a seller agrees to sell and a  
10 buyer agrees to buy a dwelling in which the consideration for  
11 the sale is payable in installments for a period of at least  
12 one year after the buyer takes possession of the dwelling and  
13 the seller continues to have an interest in the property; and

14 F. "seller" means the owner of a legal or  
15 beneficial interest in a dwelling who uses a real estate  
16 contract to transfer ownership of the dwelling.

17 SECTION 3. [NEW MATERIAL] RECORDING OF REAL ESTATE  
18 CONTRACT REQUIRED.--

19 A. Within thirty days after the date of sale and  
20 prior to any subsequent sale or other transfer of interest in a  
21 dwelling or real estate contract by a seller, the seller shall  
22 record the real estate contract with the county clerk.

23 B. If a seller fails to record the real estate  
24 contract as required by Subsection A of this section, the buyer  
25 has the right to terminate the real estate contract without

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1 penalty until such time as the seller records the real estate  
2 contract. In the event of such termination, the seller shall  
3 return to the buyer the full amount of any down payment made  
4 pursuant to the real estate contract.

5 C. If a seller fails to record a real estate  
6 contract as required by Subsection A of this section and title  
7 to the property becomes clouded for any reason, including  
8 another person buying the property, a judgment lien being  
9 placed on the property or a consensual mortgage or some other  
10 third-party interest affecting the title arises, the buyer has  
11 the option to terminate the real estate contract without  
12 penalty at any time within ninety days of discovering the cloud  
13 on the title. In the event of such termination, the seller  
14 shall return to the buyer the full amount of any down payment  
15 made pursuant to the real estate contract.

16 D. In the event of failure to record a real estate  
17 contract as required by Subsection A of this section, a buyer  
18 may be awarded civil damages not to exceed fifty dollars  
19 (\$50.00) per day for each day of violation. Proof of monetary  
20 damage, loss of profits or intent to deceive or take unfair  
21 advantage of any person is not required.

22 E. The county clerk shall record a real estate  
23 contract presented for recording even if not presented within  
24 thirty days of the date of sale.

25 F. A seller shall have until November 1, 2023 to  
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1 record any real estate contract executed before July 1, 2023.  
2 A seller's failure to record a real estate contract by November  
3 1, 2023 shall constitute a failure to meet the requirement set  
4 forth in Subsection A of this section and the buyer may pursue  
5 the remedies set forth in Subsections B through D of this  
6 section as well as any other remedies to which the buyer may be  
7 entitled.

8 G. This section applies to residential real estate  
9 contracts entered into before, on or after July 1, 2023.  
10 However, real estate contracts entered into before July 1, 2023  
11 shall not be subject to the provisions of the Real Estate  
12 Contract Act until November 1, 2023.

13 SECTION 4. [NEW MATERIAL] MORTGAGES.--

14 A. A seller shall not place or hold any mortgage on  
15 any property sold pursuant to a real estate contract in any  
16 amount greater than the balance due pursuant to the real estate  
17 contract, nor may any mortgage require payments in excess of  
18 the periodic payments required pursuant to the real estate  
19 contract.

20 B. A seller shall not mortgage any interest in a  
21 property subject to a real estate contract after the contract  
22 is executed without the express written permission of the  
23 buyer.

24 C. All periodic payments due pursuant to a real  
25 estate contract shall first be applied to any outstanding

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1 amounts due pursuant to any mortgage contract on the same  
2 property.

3 SECTION 5. [NEW MATERIAL] RIGHT TO CURE.--Prior to the  
4 initiation of any action to enforce a real estate contract due  
5 to an alleged default, a seller shall deliver to the buyer  
6 written notice of any alleged default and provide the buyer  
7 with thirty days from the date of delivery of that notice to  
8 cure any such alleged default.

9 SECTION 6. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2023.