

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 320

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO REAL ESTATE; ENACTING THE REAL ESTATE INSTALLMENT CONTRACT ACT; REQUIRING DISCLOSURE OF LIENS AND ENCUMBRANCES, PROPERTY CONDITION, TAX PAYMENTS, INSURANCE COVERAGE AND FINANCE TERMS; PROVIDING FOR REAL ESTATE INSTALLMENT CONTRACT REQUIREMENTS AND PROHIBITED PROVISIONS; PROVIDING FOR A PURCHASER'S RIGHT TO CANCEL; PROVIDING FOR A SELLER'S REMEDIES UPON DEFAULT; PROVIDING FOR A PURCHASER'S RIGHT TO CURE DEFAULT; PROVIDING FOR NOTICE OF A SELLER'S REMEDIES UPON DEFAULT; PROHIBITING A WAIVER OF ANY OF THE PROVISIONS OF THE REAL ESTATE INSTALLMENT CONTRACT ACT; REQUIRING RETROACTIVE APPLICABILITY; PROVIDING FOR CIVIL LIABILITY AND PENALTIES.

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

SECTION 1. SHORT TITLE.--This act may be cited as the "Real Estate Installment Contract Act".

.182893.6

underscored material = new
~~[bracketed material] = delete~~

1 SECTION 2. DEFINITIONS.--As used in the Real Estate

2 Installment Contract Act:

3 A. "accelerate the contract" means requiring a
4 purchaser to repay all or part of an outstanding loan under a
5 real estate installment contract upon the purchaser's default;

6 B. "credit-bid" means a bid made by or on behalf of
7 a seller at a foreclosure sale;

8 C. "cure the default" means to perform the
9 obligations under a real estate installment contract described
10 in a notice of default necessary to reinstate the contract;

11 D. "default" means the failure to perform any
12 obligation or duty set forth in a real estate installment
13 contract;

14 E. "forfeiture" means the termination of all of a
15 purchaser's rights, title and interest in property that is the
16 subject of a real estate installment contract due to a default
17 by the purchaser;

18 F. "immediate family member" means a husband, wife,
19 father, stepfather, mother, stepmother, brother, stepbrother,
20 sister, stepsister, son, stepson, daughter, stepdaughter,
21 grandson, stepgrandson, granddaughter, stepgranddaughter,
22 nephew and niece, whether related by natural birth or adoption;

23 G. "option fee" means an amount paid by a purchaser
24 to a seller for the option to cancel a real estate installment
25 contract;

.182893.6

1 H. "purchaser" means a person, or any legal
2 successor in interest to that person, that purchases an
3 interest in property under a real estate installment contract;

4 I. "real estate installment contract" means a
5 contract for conveyance of residential real property, a
6 contract for deed, a contract to convey, an agreement for sale
7 or any similar contract, including a lease-purchase or rent-to-
8 own contract, through which a seller has conveyed to a
9 purchaser equitable title in property and under which the
10 seller is obligated to convey to the purchaser fee simple
11 interest in the subject property upon payment in full of the
12 contract. A "real estate installment contract" does not
13 include a loan secured by a mortgage or deed of trust;

14 J. "rescission" means a cancellation of a real
15 estate installment contract upon default of an obligation under
16 the real estate installment contract and the restoration of the
17 seller and purchaser to the same position they held before
18 entering into the contract;

19 K. "residential real property" means real estate
20 designed and suited or intended for use and occupancy by one to
21 four families, including use and occupancy of manufactured
22 housing;

23 L. "seller" means a person, or any legal successor
24 in interest to that person, that makes a sale of property by
25 means of a real estate installment contract;

underscoring material = new
~~[bracketed material] = delete~~

1 M. "services and utilities" means access to
2 utilities and water, sewer, gas and fire protection services;
3 and

4 N. "subject property" means the property described
5 in a real estate installment contract.

6 SECTION 3. DISCLOSURES--PROPERTY CONDITION--TAX
7 PAYMENTS--INSURANCE COVERAGE--CONTRACT TERMS.--No less than
8 seven calendar days prior to the execution of a real estate
9 installment contract, a seller shall:

10 A. provide the purchaser with the following items:

11 (1) a survey or plat of a survey of the
12 subject property that accurately reflects the status of the
13 subject property;

14 (2) a written statement, executed by the
15 seller and purchaser and attached to the real estate
16 installment contract, that includes:

17 (a) a list describing whether, to the
18 best of the seller's knowledge, the following services are
19 available on the subject property: 1) electric service and an
20 easement for electric service; 2) potable water service and an
21 easement for potable water service; 3) gas service and an
22 easement for gas service; 4) a wastewater or sewer system and
23 an easement for a wastewater or sewer system; 5) a septic
24 system and an easement for a septic system or, if a septic
25 system is needed, the appropriate approval for installation of

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 a septic system; and 6) paved roads to the property boundary,
2 the names of the entities responsible for maintenance of the
3 paved roads and easements for the paved roads; and

4 (b) a statement that the list in
5 Subparagraph (a) of this paragraph will better inform the
6 purchaser of the condition of the property;

7 (3) the most recent notice of valuation from
8 the county assessor for the subject property; and

9 (4) a legible copy of any insurance policy,
10 binder or other evidence of coverage relating to the subject
11 property that indicates:

12 (a) the name of the insurer and insured;

13 (b) a description of the insured
14 property; and

15 (c) the amount for which the property is
16 insured;

17 B. provide a written statement to the purchaser
18 that:

19 (1) the seller is not responsible for
20 providing services and utilities not in place on the subject
21 property at the time of sale unless the seller and purchaser
22 have negotiated otherwise; provided that the subject property
23 has been legally subdivided in accordance with the New Mexico
24 Subdivision Act;

25 (2) permits may be required before services

.182893.6

underscored material = new
[bracketed material] = delete

1 and utilities or improvements to services and utilities can be
2 installed; and

3 (3) the process for obtaining permits for
4 services and utilities from the appropriate government agencies
5 can be complex and may be negatively affected by the absence of
6 required easements; and

7 C. provide the purchaser with a copy of the
8 completed real estate installment contract.

9 SECTION 4. REAL ESTATE INSTALLMENT CONTRACTS--
10 REQUIREMENTS.--

11 A. A purchaser shall acquire an interest in the
12 subject property in proportion to the amount of principal that
13 has been paid upon the payment of twenty percent of the
14 principal or the equivalent of sixty monthly payments,
15 whichever occurs first.

16 B. A real estate installment contract shall be in
17 writing, dated, signed by the seller and the purchaser and
18 completed as to all essential provisions.

19 C. The typed portion of the real estate installment
20 contract, other than instructions for completion, shall be in a
21 size equal to at least ten-point type. The contract shall be
22 designated "real estate installment contract" and shall contain
23 substantially the following notice typed in at least fourteen-
24 point bold font:

25 "NOTICE TO THE PURCHASER. YOU ARE ENTITLED TO THE

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 PROTECTIONS OF THE REAL ESTATE INSTALLMENT CONTRACT ACT. DO
2 NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS
3 BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU
4 SIGN."

5 D. The real estate installment contract shall
6 contain the names and addresses of the seller and the
7 purchaser.

8 E. The real estate installment contract shall
9 contain the following items:

- 10 (1) a legal description of the subject
11 property;
- 12 (2) the purchase price of the subject
13 property;
- 14 (3) the amount of the purchaser's down
15 payment, if any;
- 16 (4) the interest rate charged under the real
17 estate installment contract or, if the interest rate is
18 variable, the minimum variable interest rate to be charged
19 along with a statement that the actual variable interest rate
20 charged could be higher;
- 21 (5) the total amount of principal and interest
22 to be paid under the real estate installment contract, or if
23 the interest rate is variable, the total amount of principal
24 and the minimum amount of interest to be paid under the real
25 estate installment contract with a statement that the actual

.182893.6

underscored material = new
[bracketed material] = delete

1 total amount may be higher;

2 (6) the late charge amount, if any, that may
3 be assessed under the real estate installment contract;

4 (7) the remedies available to the seller upon
5 a purchaser's default; and

6 (8) a statement that the purchaser shall not
7 be penalized or charged any fee for paying either the entire
8 amount due or any other payment in addition to the monthly
9 payment as provided in the real estate installment contract.

10 F. The real estate installment contract shall
11 contain a notice in immediate proximity to the space reserved
12 for the purchaser's signature advising the purchaser of the
13 purchaser's right to cancel the real estate installment
14 contract pursuant to Section 9 of the Real Estate Installment
15 Contract Act. The notice shall contain the following
16 information typed in at least fourteen-point bold font:

17 "YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT FOR ANY REASON
18 BY _____. THE ATTACHED NOTICE OF CANCELLATION FORM FURTHER
19 EXPLAINS YOUR RIGHT TO CANCEL THIS CONTRACT."

20 SECTION 5. FOREIGN LANGUAGE REQUIREMENT--PURCHASER'S
21 RIGHT TO COPIES OF DOCUMENTS.--

22 A. The seller shall provide the purchaser with
23 copies of the following documents in English or Spanish, at the
24 option of the purchaser:

25 (1) the real estate installment contract;

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

- 1 (2) a notice of cancellation form;
- 2 (3) accounting statements; and
- 3 (4) notices of default.

4 B. The seller shall provide all other written
5 documents in English.

6 SECTION 6. REAL ESTATE INSTALLMENT CONTRACTS--PROHIBITED
7 PROVISIONS.--No real estate installment contract shall contain
8 a provision that:

9 A. imposes a late payment fee that exceeds eight
10 percent of the amount of the payment past due;

11 B. imposes an interest rate that is in excess of
12 five percentage points above the prime rate as published by the
13 western print edition of *The Wall Street Journal* within seven
14 days of the date that the real estate installment contract is
15 executed;

16 C. prohibits a purchaser from pledging the
17 purchaser's interest in the subject property as security to
18 obtain a loan to place improvements on the subject property,
19 including improvements to services and utilities; provided that
20 the purchaser has paid at least twenty percent of the principal
21 amount or the equivalent of sixty monthly payments;

22 D. imposes a prepayment penalty or similar fee for
23 paying the entire amount due before the final scheduled payment
24 date as provided in the real estate installment contract or any
25 other payment in addition to the monthly payment as provided in

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 the real estate installment contract; or

2 E. forfeits an option fee or other option payment
3 as a result of a late payment.

4 SECTION 7. PURCHASER MAY REFINANCE.--A purchaser may
5 refinance a loan for residential real property subject to a
6 real estate installment contract with a lender of the
7 purchaser's choice, and the seller shall cooperate by taking,
8 in a timely manner, all action necessary to complete the
9 refinance transaction, including providing all necessary
10 documents related to the subject property.

11 SECTION 8. RECORDING--TITLE TRANSFER.--

12 A. Within thirty days of execution of a real estate
13 installment contract, the seller shall record in the
14 appropriate county clerk's office:

15 (1) the original real estate installment
16 contract, executed by the seller and the purchaser; or

17 (2) a notice of interest in the subject
18 property or other memorandum of the real estate installment
19 contract that identifies the names of the seller and the
20 purchaser and a legal description of the subject property.

21 B. Upon cancellation of a real estate installment
22 contract, the seller shall record the notice of cancellation.

23 C. The seller shall pay all recording fees unless
24 the purchaser agrees otherwise.

25 D. A county clerk shall record a real estate

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 installment contract even if an approved plat of a subdivision
2 has not been recorded. This recording shall not be construed
3 to limit a seller's liability under the New Mexico Subdivision
4 Act.

5 E. A seller shall transfer to a purchaser who
6 complies with all of the purchaser's obligations in the real
7 estate installment contract the recorded and legal title of the
8 subject property no later than thirty calendar days after
9 fulfillment of the real estate installment contract.

10 SECTION 9. PURCHASER'S RIGHT TO CANCEL WITHIN FOURTEEN
11 CALENDAR DAYS OF THE EXECUTION OF A REAL ESTATE INSTALLMENT
12 CONTRACT.--

13 A. A purchaser may cancel a real estate installment
14 contract for any reason within fourteen calendar days of
15 execution of the real estate installment contract by sending by
16 certified mail, return receipt requested, or by delivering in
17 person to the seller, a signed, written notice of cancellation
18 as described in Subsection B of this section.

19 B. The seller shall provide to the purchaser at the
20 time of execution of the real estate installment contract a
21 notice of cancellation form. The notice of cancellation form
22 shall be designated "Notice of Cancellation" in at least
23 fourteen-point bold font. The notice shall contain the
24 following information, typed in at least ten-point font:

25 (1) the date of the execution of the real

underscoring material = new
~~[bracketed material] = delete~~

1 estate installment contract;

2 (2) the date by which the purchaser may cancel
3 the real estate installment contract;

4 (3) a statement that the purchaser will not be
5 penalized if the purchaser cancels a real estate installment
6 contract;

7 (4) a statement that the purchaser must
8 provide a completed, signed and dated notice of cancellation
9 form to the seller by certified mail, return receipt requested,
10 or by delivering the completed, signed and dated notice of
11 cancellation form in person to the seller;

12 (5) the name and address to whom the notice of
13 cancellation shall be delivered; and

14 (6) a statement that no more than ten calendar
15 days after the seller receives the notice of cancellation from
16 the purchaser, the seller shall return the canceled real estate
17 installment contract and any consideration and tax payments
18 made by the purchaser to the seller and cancel any security
19 interest arising out of the real estate installment contract.

20 C. No later than ten calendar days after receipt of
21 notice of cancellation from the purchaser, the seller shall:

22 (1) return the canceled real estate
23 installment contract and any consideration made to the seller
24 and any payments made to a taxing authority for the subject
25 property made by the purchaser on the subject property; and

.182893.6

1 (2) cancel any security interest arising out
2 of the real estate installment contract.

3 SECTION 10. PURCHASER'S RIGHT TO CANCEL--IMPROPER
4 PLATTING OR SUBDIVISION.--

5 A. A purchaser may cancel a real estate installment
6 contract within one year of the date on which a purchaser
7 learns that a seller has not properly platted or subdivided the
8 property described in the real estate installment contract
9 according to law. A purchaser who exercises the right to
10 cancel a real estate installment contract pursuant to this
11 section shall send by certified mail, return receipt requested,
12 or by delivering in person to the seller, a completed, dated
13 and signed notice of cancellation pursuant to Subsection B of
14 Section 9 of the Real Estate Installment Contract Act.

15 B. No later than ten calendar days after receipt of
16 cancellation from the purchaser, the seller shall send by
17 certified mail, return receipt requested, or by delivering in
18 person to the purchaser, a signed and dated written notice of
19 intent to plat or subdivide the subject property within one
20 calendar year after the date the seller receives the
21 purchaser's notice of cancellation.

22 C. A seller shall have one calendar year after
23 receiving a purchaser's notice of cancellation to properly plat
24 or subdivide the subject property. Within ninety days of
25 receiving a purchaser's notice of cancellation, the seller

.182893.6

underscoring material = new
[bracketed material] = delete

1 shall provide the purchaser with evidence of a good faith
2 effort to properly plat or subdivide the subject property.
3 After one calendar year, if the subject property is not
4 properly platted or subdivided, the seller shall return to the
5 purchaser:

6 (1) the amount of principal that the purchaser
7 has paid toward the loan on the subject property to a purchaser
8 that has paid at least twenty percent of the principal or the
9 equivalent of sixty monthly payments;

10 (2) all payments made by the purchaser in
11 excess of the fair rental value of the subject property to a
12 purchaser that has paid less than twenty percent of the
13 principal and has paid less than the equivalent of sixty
14 monthly payments. The fair rental value of the subject
15 property shall be determined by a New Mexico certified
16 appraiser. Any fees incurred for an appraisal of the
17 improvements shall be paid by the seller;

18 (3) any payments that the purchaser made to a
19 taxing authority for the property;

20 (4) the reasonable value of any improvements
21 made to the subject property by the purchaser. The reasonable
22 value of improvements shall be determined by a New Mexico
23 certified appraiser. Any fees incurred for an appraisal of the
24 improvements shall be paid by the seller; and

25 (5) costs of any action and reasonable

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 attorney fees related to the recovery of payments and
2 reimbursements described in this subsection.

3 D. The seller shall not terminate a purchaser's
4 possession of the subject property before the purchaser
5 receives all payments and reimbursements pursuant to Subsection
6 C of this section.

7 SECTION 11. LIENS AND ENCUMBRANCES--DISCLOSURE--
8 NOTIFICATION--PURCHASER'S RIGHT TO CANCEL.--

9 A. A seller:

10 (1) shall, at the time of sale, disclose to a
11 purchaser any lien or other encumbrance, including a judgment
12 lien, placed on the subject property of which the seller is
13 aware;

14 (2) shall not place a lien or encumbrance on
15 the subject property after execution of a real estate
16 installment contract except where:

17 (a) the purchaser provides consent in
18 writing of placement of a lien or encumbrance; and

19 (b) the lien or encumbrance is for the
20 purpose of providing services and utilities or otherwise
21 improving the subject property; and

22 (3) shall notify a purchaser of any legal
23 action taken in connection with a lien or encumbrance placed on
24 the subject property within sixty days of receipt of notice of
25 the legal action.

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 B. A purchaser may cancel a real estate installment
2 contract within one year of the date on which a purchaser
3 learns that a seller has violated the provisions of Subsection
4 A of this section. A purchaser who exercises the right to
5 cancel a real estate installment contract pursuant to this
6 section shall send by certified mail, return receipt requested,
7 or by delivering in person to the seller, a completed, dated
8 and signed notice of cancellation pursuant to Subsection B of
9 Section 9 of the Real Estate Installment Contract Act.

10 C. No later than ten calendar days after receipt of
11 cancellation from the purchaser, the seller shall send by
12 certified mail, return receipt requested, or by delivering in
13 person to the purchaser, a signed and dated written notice of
14 intent to make a full satisfaction of the debt secured by the
15 lien or encumbrance within sixty calendar days after the date
16 the seller receives the purchaser's notice of cancellation.

17 D. A seller shall have sixty days after receiving a
18 purchaser's notice of cancellation to make a full satisfaction
19 of the debt secured by the lien or encumbrance. After sixty
20 calendar days, if the seller has not made a full satisfaction
21 of the debt, the seller shall return to a purchaser:

22 (1) the amount of principal that the purchaser
23 has paid toward the loan on the subject property to a purchaser
24 that has paid at least twenty percent of the principal or the
25 equivalent of sixty monthly payments;

.182893.6

underscored material = new
~~[bracketed material] = delete~~

1 (2) all payments made by the purchaser in
2 excess of the fair rental value of the subject property to a
3 purchaser that has paid less than twenty percent of the
4 principal and has paid less than the equivalent of sixty
5 monthly payments. The fair rental value of the subject
6 property shall be determined by a New Mexico certified
7 appraiser. Any fees incurred for an appraisal of the
8 improvements shall be paid by the seller;

9 (3) any payments that the purchaser made to a
10 taxing authority for the property;

11 (4) the reasonable value of any improvements
12 made to the subject property by the purchaser. The reasonable
13 value of improvements shall be determined by a New Mexico
14 certified appraiser. Any fees incurred for an appraisal of the
15 improvements shall be paid by the seller; and

16 (5) costs of any action and reasonable
17 attorney fees related to the recovery of payments and
18 reimbursements described in this subsection.

19 E. The seller shall not terminate a purchaser's
20 possession of the subject property before the purchaser
21 receives all payments and reimbursements pursuant to Subsection
22 D of this section.

23 **SECTION 12. ACCOUNTING STATEMENT.**--A seller shall send by
24 certified mail, return receipt requested, or deliver in person
25 to a purchaser, by January 31 of each year for the term of the

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 real estate installment contract, and within fourteen calendar
2 days upon written request from a purchaser, an accounting
3 statement that includes:

4 A. the amount that the purchaser has paid as of the
5 date of the accounting statement toward satisfying the real
6 estate installment contract, itemized into the total amount of
7 principal paid and the total amount of interest paid;

8 B. the balance due under the real estate
9 installment contract;

10 C. the estimated number of payments remaining under
11 the real estate installment contract;

12 D. the amount paid to a taxing authority on the
13 purchaser's behalf;

14 E. an accounting of any insurance proceeds the
15 seller has received and has applied to the subject property;

16 F. a legible copy of all insurance binders or other
17 evidence of coverage insuring the subject property;

18 G. disclosure of any liens or encumbrances on the
19 property of which the seller is aware; and

20 H. a notification that the purchaser can pay the
21 entire amount due before the final scheduled payment date, as
22 provided in the real estate installment contract, without
23 penalty.

24 SECTION 13. DISPOSITION OF INSURANCE PROCEEDS.--

25 A. The named insured under an insurance policy,

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 binder or other coverage relating to the subject property shall
2 inform the insurer within ten calendar days after the coverage
3 is obtained or a real estate installment contract is executed,
4 whichever is later:

5 (1) that the subject property has been
6 conveyed under a real estate installment contract; and

7 (2) of the names and addresses of all parties
8 to the real estate installment contract.

9 B. An insurer that disburses proceeds under an
10 insurance policy, binder or other coverage for damage to the
11 subject property shall issue proceeds jointly to the seller and
12 the purchaser.

13 C. Any insurance proceeds shall be used to repair
14 or remedy the damage for which the proceeds were issued.

15 SECTION 14. SELLER'S REMEDIES ON DEFAULT--PURCHASER'S
16 RIGHT TO CURE THE DEFAULT.--

17 A. Upon a purchaser defaulting on a real estate
18 installment contract after paying more than twenty percent of
19 the principal or the equivalent of sixty monthly payments, and
20 after the purchaser is given an opportunity to cure the default
21 pursuant to Subsection E of this section, the seller may:

22 (1) sell the subject property through a
23 judicial foreclosure pursuant to Chapter 39, Article 5 NMSA
24 1978; or

25 (2) refinance a real estate installment

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 contract with the purchaser for the subject property; provided
2 that the principal on the new loan shall not exceed the
3 principal due at the time of default on the original loan by
4 more than double the amount defaulted upon.

5 B. A seller that chooses to sell the subject
6 property pursuant to Subsection A of this section shall allow
7 the purchaser to choose:

8 (1) to be compensated for the reasonable value
9 of any improvements made by the purchaser to the subject
10 property. The reasonable value of the improvements shall be
11 determined by a New Mexico certified appraiser. Any fees
12 incurred for an appraisal of the improvements shall be paid by
13 the purchaser; or

14 (2) to limit the seller's recovery from the
15 sale of the subject property to the amount due on the contract,
16 with any excess money paid to the purchaser.

17 C. The seller may purchase the subject property
18 subject to a credit-bid.

19 D. If a purchaser defaults on a real estate
20 installment contract after the purchaser has paid less than
21 twenty percent of the principal and has paid less than the
22 equivalent of sixty monthly payments, and after the purchaser
23 has been given an opportunity to cure the default pursuant to
24 Subsection E of this section, the seller may accelerate the
25 contract and enforce the remedies of rescission or forfeiture;

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 provided that the seller:

2 (1) permits the purchaser a reasonable
3 opportunity to remove any improvements made by the purchaser to
4 the subject property; or

5 (2) compensates the purchaser for the
6 reasonable value of any improvements made by the purchaser to
7 the subject property. The reasonable value of the improvements
8 shall be determined by a New Mexico certified appraiser. Any
9 fees incurred for an appraisal of the improvements shall be
10 paid by the purchaser.

11 E. A purchaser in default under a real estate
12 installment contract may cure the default and avoid enforcement
13 of a seller's remedies on default described in this section by
14 complying with the terms of the contract within sixty calendar
15 days after receiving a notice of default from the seller.

16 SECTION 15. NOTICE OF SELLER'S REMEDIES UPON DEFAULT--
17 METHOD OF DELIVERY--CONTENT.--

18 A. Notice to a purchaser of a seller's remedies on
19 default shall be effective only when the notice is:

20 (1) delivered in person to the purchaser or a
21 responsible agent of the purchaser; or

22 (2) sent by certified mail, return receipt
23 requested and posted on an exterior door of the dwelling unit,
24 or if there is no dwelling unit, posted conspicuously elsewhere
25 on the subject property.

underscored material = new
[bracketed material] = delete

1 B. A notice shall be designated "Notice of Default"
2 in at least fourteen-point bold type and uppercase typewritten
3 font and shall include the following information, typewritten
4 in at least ten-point font:

5 (1) a statement that the purchaser has failed
6 to comply with the terms of the real estate installment
7 contract;

8 (2) the term or terms to which the purchaser
9 has failed to comply;

10 (3) the delinquent amount, if any, itemized
11 into principal and interest and the time period to which the
12 delinquency applies;

13 (4) a description of any other additional
14 charges, if any, such as late fees or attorney fees, and the
15 time period to which the additional charges apply;

16 (5) a description of the specific action that
17 the purchaser must perform to come into compliance with the
18 real estate installment contract;

19 (6) the date by which the act of compliance
20 must be taken; and

21 (7) the remedies that the seller may enforce
22 pursuant to the Real Estate Installment Contract Act.

23 **SECTION 16. ADVERTISEMENTS FOR PROPERTY FOR SALE UNDER**
24 **REAL ESTATE INSTALLMENT CONTRACTS--REQUIREMENTS.--An**
25 advertisement for the sale of real property where the method of

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 conveyance is intended to be a real estate installment contract
2 shall disclose information regarding the availability of
3 services and utilities.

4 SECTION 17. WAIVER.--Any waiver of the provisions of the
5 Real Estate Installment Contract Act shall be unenforceable and
6 void.

7 SECTION 18. REAL ESTATE INSTALLMENT CONTRACT IS AN
8 EXTENSION OF CREDIT.--A real estate installment contract is an
9 extension of credit pursuant to the Unfair Practices Act.

10 SECTION 19. PROVISIONS APPLICABLE TO OUTSTANDING REAL
11 ESTATE INSTALLMENT CONTRACTS.--

12 A. For the purposes of this section, "outstanding
13 real estate installment contract" includes real estate
14 installment contracts executed prior to July 1, 2011 in which
15 the obligations of the seller or the purchaser have not been
16 completed.

17 B. A seller shall, within thirty days of a request
18 of a purchaser with an outstanding real estate installment
19 contract, provide a copy of the real estate installment
20 contract to the purchaser, executed by the seller and the
21 purchaser.

22 C. Within ninety days of July 1, 2011, a seller
23 shall record all documents related to an outstanding real
24 estate installment contract pursuant to Subsection A of Section
25 8 of the Real Estate Installment Contract Act and provide

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 copies of the recorded documents to the purchaser within thirty
2 days of the recording.

3 D. A seller shall, at the request of a purchaser
4 with an outstanding real estate installment contract, provide
5 annual accounting statements due on and after January 1, 2012
6 and notices of default delivered after July 1, 2011 in Spanish.

7 E. Beginning on January 1, 2012, a seller shall
8 provide accounting statements to a purchaser with an
9 outstanding real estate installment contract pursuant to
10 Section 12 of the Real Estate Installment Contract Act.

11 SECTION 20. PERSONS TO WHOM PROVISIONS OF ACT NOT
12 APPLICABLE.--

13 A. A purchaser that conveys any portion of a
14 subject property to an immediate family member shall be exempt
15 from all provisions of the Real Estate Installment Contract Act
16 with the exception of the provisions of Section 8 of that act.

17 B. A seller that conveys a subject property with a
18 purchase price above two hundred thousand dollars (\$200,000)
19 shall be exempt from all provisions of the Real Estate
20 Installment Contract Act with the exception of the provisions
21 of Section 8 of that act.

22 SECTION 21. VIOLATIONS--CIVIL LIABILITY AND PENALTIES.--

23 A. If a seller violates Section 3, 4 or 5 or
24 Subsection D of Section 19 of the Real Estate Installment
25 Contract Act, the purchaser, the attorney general or a district

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 attorney may bring an action within four years of the violation
2 and recover the actual costs incurred by the purchaser as a
3 result of the violation or one thousand dollars (\$1,000),
4 whichever is greater.

5 B. If a seller violates Subsection A of Section 8
6 or Subsection B or C of Section 19 of the Real Estate
7 Installment Contract Act, the purchaser may bring an action
8 within one year of the violation, or the attorney general or a
9 district attorney may bring an action within four years of the
10 violation, and recover:

11 (1) one hundred dollars (\$100) per day for
12 each day the seller fails to:

13 (a) provide a copy of the outstanding
14 real estate installment contract after a request from the
15 purchaser; or

16 (b) record the outstanding real estate
17 installment contract or a notice of interest or other memoranda
18 of the real estate installment contract; or

19 (2) costs of the action and reasonable
20 attorney fees.

21 C. If a seller violates Subsection E of Section 8
22 of the Real Estate Installment Contract Act, the purchaser, the
23 attorney general or a district attorney may bring an action
24 within four years of the violation and recover:

25 (1) two hundred fifty dollars (\$250) for each

underscored material = new
[bracketed material] = delete

1 day the seller fails to transfer title of the subject property
2 to the purchaser; and

3 (2) costs of the action and reasonable
4 attorney fees.

5 D. If a seller violates Section 12 or Subsection E
6 of Section 19 of the Real Estate Installment Contract Act, the
7 purchaser, the attorney general or a district attorney may
8 bring an action within ninety days of the violation and
9 recover:

10 (1) one hundred dollars (\$100) per day for
11 each day the seller fails to provide an accounting statement to
12 the purchaser within the time specified in that section; and

13 (2) costs of the action and reasonable
14 attorney fees.

15 E. Where a trier of fact finds that a seller
16 charged with violating a provision of the Real Estate
17 Installment Contract Act has willfully violated the provision,
18 the court may award up to three times actual damages or three
19 hundred dollars (\$300), whichever is greater, to the party
20 complaining of the violation.

21 F. A trier of fact upon good cause shown may adjust
22 the penalties described in this section.

23 **SECTION 22. PURCHASER'S RIGHT TO DEDUCT.**--If a seller is
24 liable to a purchaser pursuant to Section 21 of the Real Estate
25 Installment Contract Act, a purchaser may, without taking

.182893.6

underscoring material = new
~~[bracketed material] = delete~~

1 judicial action, deduct the amount of liability from any
2 amounts owed to the seller under the terms of the real estate
3 installment contract. Within ten days of receipt of request
4 from the seller, the purchaser shall provide the seller with an
5 itemization of all amounts deducted.

6 SECTION 23. SEVERABILITY.--If any part or application of
7 the Real Estate Installment Contract Act is held invalid, the
8 remainder or its application to other situations or persons
9 shall not be affected.

10 SECTION 24. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2011.