



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 361

127th General Assembly
(As Introduced)

**Reps. Yuko, Driehaus, Foley, Healy, B. Williams, Fende, Koziura, Ujvagi,
Luckie, Skindell, Lundy, Chandler, DeGeeter**

BILL SUMMARY

- Prohibits any vendor from entering into a land installment contract for real estate that contains a residential structure unless that vendor has obtained, and has attached to the contract, a copy of a written appraisal report of the real property and the residential structure conducted within the previous year by a person who is a state-certified residential real estate appraiser and a copy of an inspection of the residential structure conducted by a home inspector who is a member of the American Society of Home Inspectors.
- Provides that generally any action for forfeiture of a vendee's interest in a property containing a residential structure may be brought only pursuant to an action for forfeiture and restitution under the Land Installment Contract Law.
- Regulates the execution of a residential lease option contract between a landlord and a tenant, deems such a contract as a rental agreement that is subject to the requirements of the Landlord-Tenant Law, requires the contract to clearly state that the tenant is renting the property and has all the rights and responsibilities of a tenant under that Law and that the contract is not a contract to purchase, requires the contract to disclose the amount of the option fee, and prescribes the maximum allowable amount of that fee.
- Prohibits a landlord from offering a residential lease option contract to a tenant unless the contract contains all of the listed information and statements in addition to other requirements in the bill.

- Requires a landlord to provide the tenant prior to the signing of a residential lease option contract a completed and signed copy of the residential real property disclosure form required under existing law and any other documents required by law.
- Authorizes a court to find a landlord who fails to substantially comply with the bill's requirements pertaining to the contents and format of a residential lease option contract liable for monetary damages and to void the contract and authorizes a tenant to seek relief in court for a landlord's failure to comply with the bill.

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CONTENT AND OPERATION

Land installment contract for real estate containing residential structure

Background

The Land Installment Contract Law (R.C. Chapter 5313.) regulates the execution and enforcement of a land installments contract, defined as an executory agreement which by its terms is not required to be fully performed by one or more of the parties to the agreement within one year of the date of the agreement and under which the "vendor" agrees to convey title in real property located in Ohio to the "vendee" and the vendee agrees to pay the purchase price in installment payments, while the vendor retains title to the property as security for the vendee's obligation. Option contracts for the purchase of real property are not land installment contracts. (See **COMMENT 1** for definitions of terms in quotation marks.) The law requires every land installment contract to be executed in

duplicate and to contain at a minimum specified information, statements, and provisions, and requires that a copy of the contract be provided to the vendor and the vendee. (R.C. 5313.01(A) and 5313.02(A).)

Appraisal and inspection requirements

The bill modifies the Land Installment Contract Law by prohibiting any vendor from entering into a land installment contract for real estate that contains a "residential structure" (see "**Definition for purposes of land installment contracts**," below) unless that vendor has obtained, and has attached to the contract, both of the following (R.C. 5313.02(B)):

(1) A copy of a written appraisal report of the real property and the residential structure, conducted within the previous year by a person who is a state-certified residential real estate appraiser pursuant to R.C. Chapter 4763.;

(2) A copy of an inspection of the residential structure conducted by a home inspector who is a member of the American Society of Home Inspectors.

Forfeiture of vendee's interest

Continuing law. The Land Installment Contract Law provides that if the land installment contract has been in effect for less than five years, in addition to any other remedies provided by law and after the expiration of the periods prescribed by R.C. 5313.05 and 5313.06 (see **COMMENT 2**), if the vendee is still in default of any payment the vendor may bring an *action for forfeiture* of the vendee's rights in the land installment contract and for *restitution* of the vendor's property under R.C. Chapter 1923. (Forcible Entry and Detainer (Eviction) Law). When bringing the eviction action under that Chapter, the vendor complies with the requirement in R.C. 1923.04(A) to notify the adverse party to leave the premises three or more days before bringing the eviction action by serving notice pursuant to R.C. 5313.06 (see **COMMENT 2**). The court may also grant any other claim arising out of the contract. (R.C. 5313.08.)

The bill. The bill provides that except as otherwise provided in R.C. 5313.07 (see **COMMENT 3**), any action for forfeiture of the vendee's interest in a property that contains a residential structure may be brought only pursuant to an action for forfeiture and restitution as described in the preceding paragraph (R.C. 5313.06(C)).

Definition for purposes of land installment contracts

The bill defines "residential structure," as used in the Land Installment Contract Law, as a structure that contains one to four dwelling units with each unit intended for occupancy as a home, residence, or sleeping place by one or more

persons who maintain a household. "Residential structure" includes a single-family home. (R.C. 5313.01(F).)

Residential lease option contracts

The bill regulates the execution of residential lease option contracts, provides that those contracts are subject to the requirements of the Landlord-Tenant Law, and states that residential lease option contracts are *not* land installment contracts (R.C. 5313.01(A) and 5321.20(A)).

Definitions

The bill adds the following definitions in R.C. Chapter 5321. (Landlord-Tenant Law), which governs residential lease option contracts under the bill (see **COMMENT 4** for existing law's definitions of terms in quotation marks) (R.C. 5321.01(O) and (P)):

"Residential lease option contract" means any executory agreement without regard to its title, description, or whether comprised of a single document, a portion of a document, or a number of documents, that does all of the following:

- (1) Contains an "option agreement" (defined below) that confers upon the "tenant" a qualified or unqualified right to purchase the "landlord's" interest in the "residential premise" that the tenant occupies or intends to occupy;
- (2) Requires the tenant to pay a fee for the option to purchase upon execution of the contract and to pay rent during the term of the contract;
- (3) Retains the landlord's legal and equitable title to the residential premise until the tenant exercises the option and purchases the property.

"Residential lease option contract" does *not* include a lease for agricultural, business, or commercial purposes, personal property, intangible personal property, a lease with a tenant that is not an individual, or a contract to purchase that is a "land installment contract" as defined in R.C. 5313.01 (see "**Background**" under "**Land installment contract for real estate containing residential structure**," above).

"Option agreement" means a contract or the portion of a contract that is executory in nature and defines the terms and conditions under which a tenant may purchase the residential premise that the tenant occupies or intends to occupy.

Law governing residential lease option contracts

The bill provides that a residential lease option contract is deemed to be a "rental agreement" that is subject to the requirements of the Landlord-Tenant Law. A person who offers a residential lease option contract to a tenant is a landlord pursuant to that Law, and a person who enters into a residential lease option contract as a tenant is a tenant pursuant to that Law. A residential lease option contract must clearly state that the tenant is renting the property and has all rights and responsibilities of a tenant pursuant to the Landlord-Tenant Law. (R.C. 5321.20(A) and (B).)

Format and contents of residential lease option contract

The bill requires a residential lease option contract to contain the following statements printed clearly and conspicuously in boldface type of the same size font as used for the text of the contract and in close proximity to the statement of the amount of the option fee (R.C. 5321.20(B)):

"The tenant is renting this property and has all rights of a tenant under The Ohio Landlords and Tenants Law, Chapter 5321. of the Revised Code.

The tenant has paid an additional fee of \$..... for the right to purchase the property located at

If the tenant does not pay the monthly rent or violates other terms of the lease, the landlord may initiate eviction proceedings pursuant to Chapters 5321. and 1923. of the Revised Code."

The bill requires any residential lease option contract to clearly set forth that the contract is not a contract to purchase. The contract must contain, at the top of the first page of the contract and again directly above the tenant's signature on the same contract, the following printed in at least 14-point boldface type in all capital letters (R.C. 5321.21(A)):

THIS IS NOT A CONTRACT TO BUY. THIS CONTRACT GIVES YOU THE RIGHT TO BUY THE PROPERTY DESCRIBED IN IT. YOU WILL NOT OWN THE PROPERTY UNTIL YOU FIND FINANCING TO PAY THE PURCHASE PRICE IN FULL AND FULFILL THE OTHER TERMS OF THIS CONTRACT.

A residential lease option contract must disclose the amount of the option fee and include a statement that sets forth, in United States dollars, the amount of the option fee that will be credited against the purchase price if the tenant exercises the option to purchase. The contract must contain the following

statement printed clearly and conspicuously in at least 14-point boldface type in all capital letters (R.C. 5321.21(B)):

THE OPTION FEE PAID PURSUANT TO THIS CONTRACT IS NOT A SECURITY DEPOSIT AND MAY NOT BE REFUNDED IF YOU DO NOT BUY THE PROPERTY FOR ANY REASON.

The bill prohibits a landlord from offering a residential lease option contract to a tenant unless that contract contains all of the following in addition to any other requirements of the Landlord-Tenant Law (R.C. 5321.21(C)):

- (1) The full name and mailing address of each party to the contract;
- (2) The date each party signs the contract;
- (3) The amount of the tenant's monthly rent;
- (4) The period of time during which the tenant may exercise the right to buy the property;
- (5) The agreed upon sales price of the property and any adjustments that may be made to the sales price, the circumstances under which those adjustments may be made, and the amount of rent that will be applied to reduce the sales price;
- (6) A legal description of the property by metes and bounds or lot numbers of a recorded plat, including a description of any portion of the property subject to an easement or reservation;
- (7) A statement of any known encumbrances or encumbrances that could be reasonably ascertained against the property;
- (8) A statement of any pending order of a public agency against the property;
- (9) A statement specifying any liens and mortgages against the property for which the tenant will assume responsibility at the time of closing and the current dollar amount of each;
- (10) A statement that the landlord will remove any liens and mortgages against the property prior to the time of the closing, except those specified in the contract to be assumed by the tenant;
- (11) A statement that the tenant has received, reviewed, and signed a completed copy of the residential real property disclosure form the Director of Commerce prescribed pursuant to R.C. 5302.30 (see **COMMENT 5**);

(12) A statement of the landlord's ownership interest in the property and information regarding the location of documentation of that ownership interest;

(13) A provision requiring the landlord to provide evidence of title and to deliver a general warranty deed, or the best available deed if unable to deliver a general warranty deed, at the closing upon exercise of the option;

(14) A statement setting forth which expenses of closing and sale are the responsibility of the landlord and which are the responsibility of the tenant.

Residential real property disclosure form and other requirements; option fee

The bill requires that prior to the tenant signing a residential lease option contract, the landlord must provide the tenant with a completed and signed copy of the residential real property disclosure form and any other documents federal, state, or local law require. The landlord must provide each tenant who is a party to a residential lease option contract a copy of the contract signed by the landlord and by each tenant and a receipt for any fees paid to the landlord pursuant to the contract. (R.C. 5321.22.)

Any landlord who enters into a residential lease option contract, at the request of a tenant, must provide an updated statement of the current purchase price that shows all calculations used to reach that price, including any credit toward the purchase price and any addition to the purchase price. The landlord must prepare the updated statement within ten days of a tenant's request and either deliver the statement in person, with the tenant signing a copy of the statement as evidence of its receipt, or by certified mail to the property address. A landlord is obligated to provide the information required under this paragraph not more than twice during any 12-month period.

During any year in which a residential lease option contract is in effect, the fee for the option to purchase may not exceed one and one-half times the amount that is charged for one month's rent that year. During the entire term that the option is in effect, the total of the fees charged for the option may not exceed four times the amount of the monthly rent that was charged during the first year of the option. (R.C. 5321.23.)

Civil liability

A court of competent jurisdiction may find any landlord who fails to substantially comply with the provisions described above in "**Law governing residential lease option contracts**" and "**Format and contents of residential lease option contract**" liable for damages in an amount not less than \$90 and not more

than \$500 for each violation, together with actual damages and reasonable attorney's fees, and may void the contract and order any fees or deposits be returned to the tenant. A tenant may seek enforcement of the bill's provisions in a municipal court, county court, or court of common pleas, and, upon determining that the landlord has failed to comply with any of those provisions, the court must grant appropriate relief. (R.C. 5321.99.)

COMMENT

1. The Land Installment Contract Law defines the following terms and the definitions apply to the bill's provisions (R.C. 5313.01(B), (C), and (D)):

"Vendor" means any individual, partnership, corporation, association, trust, or any other group of individuals however organized making a sale of "property" by means of a land installment contract.

"Vendee" means the person who acquires an interest in "property" pursuant to a land installment contract, or any legal successor in interest to that person.

"Property" means real property located in Ohio and improved by virtue of a dwelling having been erected on the real property.

2. R.C. 5313.05, not in the bill, provides that when the vendee of a land installment contract defaults in payment, forfeiture of the interest of the vendee under the contract may be *enforced only after the expiration of 30 days from the date of the default*. A vendee in default may, prior to the expiration of the 30-day period, avoid the forfeiture of the vendee's interest under the contract by making all payments currently due under the contract and by paying any fees or charges for which the vendee is liable under the contract. If such payments are made within the 30-day period, forfeiture of the vendee's interest cannot be enforced.

R.C. 5313.06 provides that following expiration of the period of time described in the preceding paragraph, forfeiture of the interest of a vendee in default under a land installment contract is initiated by the vendor or by the vendor's successor in interest, by serving or causing to be served on the vendee or the vendee's successor in interest, if known to the vendor or the vendor's successor in interest, a written notice that: (1) reasonably identifies the contract and describes the property covered by it, (2) specifies the terms and conditions of the contract that have not been complied with, and (3) notifies the vendee that the contract will stand forfeited unless the vendee performs the terms and conditions of the contract within *ten days of the completed service of notice* and notifies the vendee to leave the premises.

3. R.C. 5313.07, not in the bill, provides that if the vendee of a land installment contract has paid in accordance with the terms of the contract for a period of *five years or more* from the date of the first payment or has paid toward the purchase price a total sum *equal to or in excess of 20% of the purchase price*, the vendor may recover possession of the property *only* by use of a proceeding for *foreclosure and judicial sale of the foreclosed property* as provided in R.C. 2323.07 (sale of foreclosed mortgaged property). Such action may be commenced after expiration of the period of time described in **COMMENT 2**, above. In such an action, as between the vendor and vendee, the vendor is entitled to proceeds of the sale up to and including the unpaid balance due on the land installment contract.

The Land Installment Contract Law does not prevent the vendor or vendee of a land installment contract from commencing a quiet title action to establish the validity of the claim to the property conveyed under a land installment contract or bringing an action for unpaid installments and does not prevent the vendor and vendee from cancelling their interest in a land installment contract under R.C. 5301.331.

4. Existing R.C. 5321.01(A) to (F) defines the following terms as used in the Landlord-Tenant Law and the definitions apply to the bill's provisions:

"Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.

"Landlord" means the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement.

"Residential premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. "Residential premises" includes a dwelling unit that is owned or operated by a college or university. "Residential premises" does *not* include any of the following:

(a) Prisons, jails, workhouses, and other places of incarceration or correction, including, but not limited to, halfway houses or residential arrangements that are used or occupied as a requirement of a community control sanction, a post-release control sanction, or parole;

(b) Hospitals and similar institutions with the primary purpose of providing medical services and homes licensed pursuant to R.C. Chapter 3721.;

(c) Tourist homes, hotels, motels, recreational vehicle parks, recreation camps, combined park-camps, temporary park-camps, and other similar facilities where circumstances indicate a transient occupancy;

(d) Elementary and secondary boarding schools, where the cost of room and board is included as part of the cost of tuition;

(e) Orphanages and similar institutions;

(f) Farm residences furnished in connection with the rental of land of a minimum of two acres for production of agricultural products by one or more of the occupants;

(g) Dwelling units subject to R.C. 3733.41 to 3733.49 (agricultural labor camps);

(h) Occupancy by an owner of a condominium unit;

(i) Occupancy in a facility licensed as an SRO (single room occupancy) facility pursuant to R.C. Chapter 3731. (hotels), if the facility is owned or operated by an organization that is exempt from taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 26 U.S.C.A. 501, as amended, or by an entity or group of entities in which such an organization has a controlling interest, and if either of the following applies: (i) the occupancy is for a period of less than 60 days or (ii) the occupancy is for participation in a program operated by the facility, or by a public entity or private charitable organization pursuant to a contract with the facility, to provide services licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of mentally ill persons, developmentally disabled persons, adults or juveniles convicted of criminal offenses, or persons suffering from substance abuse, or to provide shelter for juvenile runaways, victims of domestic violence, or homeless persons.

(j) Emergency shelters operated by organizations exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986" for persons whose circumstances indicate a transient occupancy, including homeless people, victims of domestic violence, and juvenile runaways.

"Rental agreement" means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.

"Security deposit" means any deposit of money or property to secure performance by the tenant under a rental agreement.

"Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

5. R.C. 5302.30 (D)(1), not in the bill, requires that prior to July 1, 1993, the Director of Commerce, by rule adopted in accordance with R.C. Chapter 119., must prescribe the *disclosure form* to be completed by transferors of residential real property, by sale, land installment contract, lease with option to purchase, exchange, or lease for a term of 99 years and renewable forever. The form must all be designed to permit the transferor to disclose material matters relating to the physical condition of the property to be transferred, including, but not limited to, the source of water supply to the property; the nature of the sewer system serving the property; the condition of the structure of the property, including the roof, foundation, walls, and floors; the presence of hazardous materials or substances, including lead-based paint, asbestos, urea-formaldehyde foam insulation, and radon gas; and any material defects in the property that are within the actual knowledge of the transferor. The form also must set forth a statement of the purpose of the form, including statements substantially similar to the following: that the form constitutes a statement of the conditions of the property and of information concerning the property actually known by the transferor; that, unless the transferee is otherwise advised in writing, the transferor, other than having lived at or owning the property, possesses no greater knowledge than that which could be obtained by a careful inspection of the property by a potential transferee; that the statement is not a warranty of any kind by the transferor or by any agent or subagent representing the transferor in this transaction; that the statement is not a substitute for any inspections; that the transferee is encouraged to obtain the transferee's own professional inspection; that the representations are made by the transferor and are not the representations of the transferor's agent or subagent; and that the form and the representations contained therein are provided by the transferor exclusively to potential transferees in a transfer made by the transferor, and are not made to transferees in any subsequent transfers.

The disclosure form must include instructions to the transferor for completing the form, space in which the transferor or transferors must sign and date the form, and space in which the transferee or transferees must sign and date the form acknowledging receipt of a copy of the form and stating that the transferee or transferees understand the purpose of the form as stated thereon.

Not later than January 1, 2006, the Director must revise the disclosure form to include a statement that information on the operation and maintenance of the type of sewage treatment system serving the property is available from the Department of Health or the board of health of the health district in which the property is located (R.C. 5302.30(D)(2)).

The prescribed disclosure form is found in the appendix to section 1301:1-4-10 of the Administrative Code.

HISTORY

ACTION	DATE
Introduced	10-23-07

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