



Housing Rights ADVOCATE

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The Austin Tenants' Council

www.housing-rights.org

Lease-Purchase: New Rights but Buyers Beware

Over the years, Contract-for-Deed deals, which include "rent-to-own" or "lease-to-own" agreements, have become increasingly widespread. Frequently, these arrangements are legally murky and have left homebuyers vulnerable to numerous abuses.

Under a Contract-for-Deed, a homebuyer does not technically own the house until it is entirely paid off, which can take decades.

Furthermore, the homebuyer is prohibited from borrowing on the equity of their home until the end of the contract. Lease purchase agreements have also left homebuyers without any equity if they broke the agreement towards the end of the lease.

Homebuyers were robbed of the financial assets painstakingly poured into the home over the years. Furthermore, because Contract-for-Deed agreements create a disincentive to improve the home, they contribute to urban blight.

Contract-for-Deed deals used by unscrupulous landlords have also been cited by fair housing advocates as a contributing factor in the creation of so-called "colonias"- vast, disorganized residential developments near the Mexican border, which lack basic infrastructure or tenant protection. Because Contract-for-Deed arrangements are often not officially recorded, enforcements of important provisions, such as the upkeep of basic infrastructure, are almost impossible. Furthermore, high interest rates on rent-to-own agreements reinforce the cycle of poverty and are frequently targeted at recent immigrants.

During the 79th regular session of the Texas State Legislature, in an effort to solve many of these problems, Representative Harold Dutton (D-Houston) introduced HB 1823 in the Texas House, while State Senator Eddie Lucio (D-Brownsville), introduced the companion SB 629 in the Texas Senate. The legislation contained provisions that reduce the potential for abuse of Contract-to-Deed deals. The two

bills sailed through the legislature with bipartisan support and little opposition. Governor Rick Perry signed the legislation into law in a special ceremony on June 28, 2005. It came into effect on September 1, 2005, though some provisions did not take effect until January 1, 2006. The name of this new law

is "Act Providing Colonia and Low Income Residents Rights Under Contracts for Deed Law." It is codified in the Texas Property as §5.061 - §5.085.

With the new protections provided by this legislation, and some protections which already existed, people attempting to buy property under Contract-to-Deed arrangements:

- Must be given time (30 to 60 days, depending on the situation) to cure a default they have experienced in meeting the contract
- Must be furnished with copies of all contracts, disclosure notices and other relevant documents in the buyer's primary language
- May convert their contract into a traditional mortgage

"Ms. Villeda was not an employee at Palm Harbor Homes, but she walked four different people around the lot and showed them homes. Ms. Villeda received up to \$10,000 dollars from prospective buyers in cash ... and they received nothing."

ATC Fair Housing Scams and Fraud Alert!

Most people who buy a home have great stories to tell about their experiences with sellers, but we have recently received reports of scams and fraud.

Recognizing Scams

Most scams or fraud involve one or more of the following:

- Proposed transaction involves prospective buyer making a large deposit or down payment directly to an "agent"
- Proposed agent claims that they can approve home loans with a large deposit
- Proposed transaction involves deceptive advertising

Types of scams

1. Manufactured Homes and Deposits

Prospective buyers respond to advertisement offering a manufactured home for sale. Seller claims to work for bank or a mortgage company and can approve a home loan for you without any problems. The seller then asks buyer to make a large down payment. Once payment is made, the seller is never seen again.

Continued on Page 5

Inside:

- 2 - City Council Considers CDBG Funding Proposal
- 3 - Noticias sobre el Inquilino-Propetario
- 4 - Noticias sobre el Vivendo Justa

Continued on Page 2

City Council Considers CDBG Funding Proposal

As readers may know, the budget for the U.S. Department of Housing and Urban Development's City Development Block Grant Program was cut by 15% by the U.S. Congress in this past Spring's budget process. As a result, the Department of Neighborhood Housing and Community Development must cut its programs to make up for the shortfall. Per the City's Consolidated Plan for 2006-2007, the Austin Tenants' Council and other agencies are facing a 15% reduction in funding as of 10/1/2006.

The 15% cut in CDBG funds to ATC represents the second cut in the last two years and will be more damaging than the 10% reduction we experienced in 2005. ATC was able to offset that loss by supplementing agency programs with other HUD monies, but that will not be possible this year. Instead, we will have to lay off one full-time staff person.

The program currently funds about five full-time staff people so there will be about a 20% loss in manpower, and a comparable drop in services provided. This means, for instance, that instead of assisting 100 households with repair problems that threaten their health and safety through our repair mediation services, we can only help 80. Over the summer, ATC opened its program to people whose air conditioning does not work. City of Austin Building Codes do not require air conditioning so tenants have no one other than ATC to help them with this problem. We helped several families with children, the elderly and others who were without A/C in June and July in Texas. Every year, we help people with these and other repair problems such as roof leaks, lack of smoke detectors, inadequate or unsafe locks, etc.

Another important service we provide is in-house counseling. ATC's helps clients understand their lease and other agreements, and how to properly enforce their rights without getting evicted. Tenants often find out too late that they cannot withhold their rent if the landlord doesn't make repairs – they just get evicted, or that the landlord cannot lock them out of their apartment without judicial process. Instead of helping 563 people through this service, we can only help 454 when there

are already more than 563 people that need help. We currently restrict this counseling to afternoons, four days a week, but will have to cut it further.

Similarly, we will have to reduce the number of presentations given to community and tenant groups. At these presentations, we train novice tenants on how to avoid being taken advantage of and the importance of signing a contract. We also help tenants organize to better their community and provide other information about tenant rights and responsibilities.

The CDBG funding that ATC receives is also part of a package of services that are dependent on each other. CDBG funds are leveraged to secure funding from HUD for our Fair Housing Initiatives Program and our Housing Counseling program. One of the reasons ATC has been so successful in receiving funding from HUD is because of the large amount of leveraged resources that our CDBG funding provides by sharing administrative and other costs such as rent and utilities. This means that a 15% cut in our CDBG funding may result in an additional loss of other funding.

However, there is hope that these cuts won't occur. Councilmember Betty Dunkerly proposed increasing the Neighborhood Housing budget by the same amount cut by HUD using monies from the General Revenue Fund. On August 17, 2006, the Austin City Council heard testimony from interested organizations and individuals regarding the proposal. At press time, the City Council is still considering the proposal as part of its own budget process. ATC will update readers in the next newsletter about the outcome of this process and any effects it has on the services we can provide.

Lease-Purchase Rights

Continued from page 1

- May obtain full disclosure from the seller on whether the property has been properly platted/subdivided (which will greatly help curb the type of abuses prevalent in colonias)
- May obtain full disclosure of tax and insurance information and financing terms
- Are given the right to cancel the contract at any time without cause

The new legislation clearly defines a Contract-to-Deed agreement as an "executory contract," which gives basic legal protections to those entering into such agreements. Furthermore, a provision included in HB 1823 and SB 629 states decisively that any waiver of rights or exemptions from liability written into such an agreement is null and void.

Critics of the legislation, primarily business and investment groups, claim that the law will make it more difficult in the long run for low-income persons to own homes. Their reasoning is that the legislation will pressure many property owners to stop using Contracts-to-Deed in favor of traditional mortgages and many people using Contract-for-Deed deals cannot quality for traditional mortgages. The Realty Investment Club of Houston (RICH) said that the law "contains many contradictions, inconsistencies and ambiguities."

Of course, laws as extensive as those covering Contracts for Deed and lease-purchase agreements are complicated and have ambiguities, but the Austin Tenants' Council is still pleased that there are these protections that primarily help low-income persons, even if the RICH aren't.

Anybody considering entering into a Contract for Deed or lease-purchase agreement should contact an attorney or other qualified person for advice.

One other note to homeseekers considering a lease-purchase agreement. Many times, buyers can qualify for traditional financing on a conventional home, which provides even better protections for the buyer. The Austin Tenants' Council has a Guide to Purchasing a conventional home that is available at our offices for anyone that wants to understand the process of finding and financing a home.



“Lease-Purchase” - Los Nuevos Derechos

Con el paso de los años, los tratos de un Contrato de Escritura, que incluyen acuerdos de “rent-to-own” (alquilar para poseer) o “lease-to-own” (arrendar para poseer), se han visto cada vez más. Con frecuencia, estos arreglos están legalmente oscuros y han dejado a compradores de vivienda vulnerables a numerosos abusos.

Bajo un Contrato de Escritura, un comprador de vivienda no posee técnicamente la casa hasta que este pagada completamente, que puede tomar décadas. Además, el comprador de vivienda esta prohibido sacar un préstamo bajo la equidad de su hogar hasta el fin del contrato. Los acuerdos de la compra del arrendamiento han dejado a compradores de vivienda sin cualquier equidad si ellos rompen el acuerdo llegando al fin del contrato. Los compradores de vivienda han sido robados de su dinero que tan cuidadosamente invirtieron en el hogar con el paso de los años. Además, porque los acuerdos de un Contrato de Escritura no motivan a la gente a mejorar el hogar, causan la desertización urbana.

Tratos de un Contrato de Escritura utilizados por propietarios poco escrupulosos han sido citados por defensores de la envoltura justa como un factor contribuidor en la creación de “colonias”- los enormes desarrollos residenciales y desorganizados cerca de la frontera Mexicana, que les falta una infraestructura básica y la protección de un arrendatario. Porque los arreglos de un Contrato de Escritura muchas veces no se registran oficialmente, las aplicaciones de provisiones importantes, tal como el mantenimiento de la infraestructura básica, es casi imposible. Además, los tipos de intereses altos en el alquiler para poseer refuerzan el ciclo de la pobreza y son concentrados frecuentemente en inmigrantes recientes.

Durante la sesión regular 79 del poder legislativo del estado de Tejas, en un esfuerzo de resolver muchos de estos problemas, el Representativo Harold Dutton (D-Houston) introdujo HB 1823 en la Casa de Representantes, mientras el Senador Eddie Lucio (D-Brownsville), introdujo el conjunto SB 629 en el Senado de Tejas. La legislación contuvo las provisiones que

de Tejas. La legislación contuvo las provisiones que reducen la potencial para el abuso de tratos de un Contrato de Escritura. Las dos cuentas pasaron la legislatura con apoyo bipartito y muy poca oposición. El Gobernador Rick Perry firmó y se convirtió en ley la legislación en una ceremonia especial en el 28 de junio de 2005. Entró en efecto el 1 de septiembre de 2005, aunque algunas provisiones no surtieron efecto hasta el 1 de enero de 2006. El nombre de esta nueva ley es “La Acta que Proporciona Colonia y Derechos a Residentes de Ingresos Bajos en un Contrato de Escritura.” Se ha agregado en la Propiedad de Tejas como §5.061 - §5.085.

Con las nuevas protecciones proporcionadas por esta legislación, y por algunas protecciones que ya existían, un persona que procuran comprar la propiedad bajo arreglos de un Contrato de Escritura:

- Debe tener tiempo (30 a 60 días, dependiendo de la situación) de resolver un defecto que haya experimentado en siguiendo los términos de su contrato.
- Debe ser proporcionado con copias de todos sus contratos, notas de revelación y otros documentos pertinentes en el idioma primario del comprador.
- Puede convertir su contrato en una hipoteca tradicional.
- Puede obtener la revelación completa del vendedor sobre si la propiedad ha sido apropiadamente subdividida. Esto debe ayudar mucho a limitar el tipo de abusos predominantes en las colonias.
- Puede obtener la revelación repleta de información de impuestos y seguros y términos financieros.
- Tiene el derecho de cancelar su contrato a cualquier tiempo sin causa particular.

La nueva legislación define claramente un acuerdo de un Contrato de Escritura como un “contrato ejecutorio,” que da protecciones legales básicas a personas que van a entrar en tales acuerdos. Además, una provisión incluida en HB 1823 y SB 629 dice decisivamente que cualquier renuncia de derechos o exenciones de

obligación escrita en un Contrato de Escritura es nula y sin efecto.

Los críticos de la legislación, principalmente grupos de negocio e inversión, reclaman que la ley lo hará más difícil a la larga para personas de ingresos bajos que poseen hogares. Su razonamiento es que la legislación presionará a muchos dueños de la propiedad para parar los Contratos de Escritura a favor de las hipotecas tradicionales y muchas personas que utilizan los Contratos de Escritura no califican para hipotecas tradicionales. El Club de la Inversión de Bienes de Houston (RICO) dijo que la ley “contiene muchas contradicciones y ambigüedades.”

Por supuesto, las leyes tan extensas como esas bajo los Contratos de Escritura o acuerdos de alquilar para poseer complican y tienen ambigüedades, pero al Concilio para los Arrendatarios de Austin nos da mucho gusto que haya protecciones que ayudan principalmente a personas de ingresos bajos, aunque los RICOS no lo hagan.

Cualquiera considerando entrar en un Contrato de Escritura o un acuerdo de alquilar para poseer debe contactar a un abogado o a otra persona calificada para que lo aconseje. Muchas veces, los compradores pueden calificar para el financiamiento tradicional en un hogar convencional, que proporciona protecciones aún mejores para el comprador, pero simplemente no saben que pueden.



¡ATC Estafas de Envoltura Justa y Alerta de Fraude!

La mayoría de las personas que compran un hogar tienen historias interesantes para decir acerca de sus experiencias con vendedores. Desgraciadamente, un número creciente de estas historias implican los informes de estafas y fraude financieros graves.

Reconociendo Estafas

La mayoría de las estafas o el fraude implican uno o más de lo siguiente:

- La transacción propuesta implica al comprador futuro que haga un depósito o desembolso inicial directamente a un "agente."
- El agente asegura que puede aprobar préstamos para la vivienda con un depósito grande.
- La transacción propuesta implica publicidad engañosa.

Tipos de Estafas

1. Los Hogares Fabricados y Depósitos

En este tipo de estafa, un futuro comprador de vivienda responde a un anuncio que ofrece una casa fabricada en venta. El "vendedor" dice que trabajar para un banco o una compañía hipotecaria y dice que ellos pueden aprobar un préstamo para la vivienda. El "vendedor" entonces pide que el futuro comprador haga un desembolso inicial grande. Una vez que el pago se hace, el vendedor nunca es visto otra vez.

2. Hogares en Venta y la Publicidad Falsa

En esta estafa, un futuro comprador de vivienda responde a un letrero que lee "en venta" localizó en casas. Al igual que con el ejemplo encima, un agente responde que dice ser un representante de bienes y pide un desembolso inicial grande. El futuro comprador de vivienda paga el desembolso inicial y recibe un recibo. Al día siguiente, el comprador es contactado por un representante bancario falso, que le dice que su préstamo a sido aprobado.

Después de esa llamada, sin embargo, el comprador de vivienda nunca oye otra vez de nadie. Más tarde, se descubre también que la casa nunca estuvo en venta..

3. Pagos de Hipoteca

Un futuro comprador responde a un anuncio para comprar un hogar. Un representante contacta al comprador, obtiene un depósito grande y aprueba un préstamo grande. El comprador se cambia al nuevo hogar y empieza a hacerle pagos al representante. Sin embargo, se descubre que el representante no ha estado adelantando los pagos a la compañía apropiada. En vez de eso, el agente se queda con todo el dinero. Finalmente, la compañía hipotecaria verdadera contacta al comprador porque esta delincuente en sus pagos.

Si usted sospecha que una transacción de envoltura inclusive alquilar o venta de una propiedad puede formar parte de una estafa, por favor póngase en contacto con nosotros inmediatamente con los detalles.

Casos recientes

Según noticias de KVUE, Delia Fernández-Corona y su marido llamaron a un número en el Condado de Hayes y preguntaron por una casa fabricada. La mujer que contestó dijo que ella trabajaba para un banco y podría aprobar préstamos para la vivienda. Pidió un desembolso inicial de \$2.000, que los futuros compradores pagaron. Después que le entregaron el dinero en efectivo, la

Sra. Fernández-Corona y su marido nunca vieron al agente otra vez.

En otra historia de KVUE, una mujer conocida como Noelia Villeda fingió ser una empleada de un establecimiento de Hogares de Puerto de Palma, que vende hogares fabricados. La Sra. Villeda camino con cuatro personas diferentes alrededor del terreno y les mostró hogares, y al mismo tiempo les dijo a los empleados verdaderos que ella era una futura compradora que le estaba mostrando a su familia las casas que ella pensaba comprar. La

Sra. Villeda pidió un desembolso inicial y recibió hasta \$10.000 dólares en efectivo de futuros compradores, aún escribiendo recibos. Los compradores no recibieron nada.

Según noticias de KEYE, Narcissa De La Fuente compró una propiedad de fideicomiso de una persona que dijo ser el abogado del fideicomiso. El "representante"

"La Sra. Villeda camino con cuatro personas diferentes alrededor del terreno y les mostró hogares, y al mismo tiempo les dijo a los empleados verdaderos que ella era una futura compradora que le estaba mostrando a su familia las casas que ella pensaba comprar. La Sra. Villeda pidió un desembolso inicial y recibió hasta \$10.000 dólares en efectivo de futuros compradores, aún escribiendo recibos. Los compradores no recibieron nada."

tomó un desembolso inicial grande y la aprobó para un hogar. Después que se movió, empezó a hacerle pagos al abogado. Sin embargo, el abogado se quedo con el dinero y nunca pagó le pago a la compañía hipotecaria verdadera. No fue hasta que la compañía hipotecaria verdadera se puso en contacto con la Sra. Fuente acerca de su cuenta delincuente que se dio cuenta de que había si estafada.

Finalmente, en una historia reportada por el Austin-American Stateman, Laticia Saldivar llamó a un número que ella había visto en un letrero que leía "en venta" localizado en una casa que supuestamente estaba en venta. Una persona que dijo ser un representante le devolvió la llamada y

Continúa a Página 5

Fair Housing News

Lease-Purchase Rights

Continued from page 1

3. Mortgage Payments

Prospective buyers respond to an advertisement to buy a home. A representative contacts you and gets a large deposit and approves you for a loan. You move into your new home and begin making payments to the representative. However, the representative hasn't been forwarding your payments to the appropriate company. Instead, the agent keeps the money and eventually the actual mortgage company contacts you asking for payments because you are delinquent.

If you suspect that a housing transaction including renting or selling of property may be part of a scam, please contact us immediately with the details.

Recent Cases

Delia Fernandez-Corona, as reported by KVUE News, and her husband called a number in Hays County and asked about a manufactured home. A woman answered and asked for a down payment immediately of \$2000. The woman claimed she worked for a bank and could approve home loans, so the prospective buyers handed over the cash. After handing over the cash, Ms. Fernandez-Corona and her husband never see the agent again.

Noelia Villeda, as reported by KVUE News, showed up at Palm Harbor Homes, which sells manufactured homes, and pretended she was interested in looking at the houses. Ms. Villeda was not an employee at Palm Harbor Homes, but she walked four different people around the lot and showed them homes. Ms. Villeda received up to \$10,000 dollars from prospective buyers in cash for a down payment on a Palm Harbor home, and the buyers received nothing.

Narcissa De La Fuente, as reported by KEYE News, purchased a trust property from a person claiming to be the lawyer for the trust. The representative took a large down payment and approved her for a home. After she moved in, she began making payments to the lawyer. However, the lawyer pocketed the money and never

paid the actual mortgage company. It wasn't until the actual mortgage company contacted Ms. Fuente about her delinquent account she realized that there was a serious problem.

Finally, Laticia Saldivar, as reported by the Austin American Statesman, called a number on a for sale sign located at the house allegedly being sold. A representative called her back and asked for a large down payment. Ms. Saldivar paid the deposit. A couple of days later, she was contacted by another representative informing her that her loan had been approved. However, she has never seen either agents again and the home supposedly being sold was not actually for sale at all.

Who should I notify about scams and fraud?

- Call the ATC Telephone Counseling Program 512-474-1961.
- Call the ATC main office number to schedule appointment 512-474-7007.
- Call the Texas Attorney General's Office of Consumer Protection - 1-800-621-0508.

Alerta de Fraude

Continued from page 1

la pidió un desembolso inicial grande, que ella pagó. Un par de días después, ella fue contactada por otra persona que dijo ser un representante informándole que su préstamo había sido aprobado. Sin embargo, ella nunca vio a ningún agente otra vez y el supuesto hogar en venta no estaba realmente en venta.

¿A quién debo notificar acerca de estafas y fraude?

- Llame al Programa de Consejo de ATC por Teléfono al 512-474-1961
- Llame al número de la oficina principal de ATC para una cita al 512-474-7007
- Llame al Número de la División de Protección al Consumidor de la Procuraduría General de Tejas al 1-800-621-0508.



TENANTS

ATC's Rental Repair Assistance Program can help if you have repair problems that threaten your health or safety. Call ATC at 474-1961 for more information.

LANDLORDS

Protect your investment. Purchase an ATC Lease Packet and be a better informed and more confident landlord. Call 474-4007 or come by our office for more information.



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This service is certified as a lawyer referral service as required by the State Bar of Texas under Article 320d, Revised Statutes.

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The Austin Tenants' Council, as a sub-recipient of the City of Austin, is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modification and equal access to communications will be provided upon request. Please call 512-474-1961 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

Programs and Services/Programas y Servicios

**FAIR HOUSING
 VIVIENDA JUSTA**

THE FAIR HOUSING PROGRAM / EL PROGRAMA DE VIVIENDA JUSTA - This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under State and Federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 474-7007.

**TENANT-LANDLORD
 INQUILINO-PROPIETARIO**

TELEPHONE COUNSELING / CONSEJOS POR TELEFONO - Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 474-1961.

IN-HOUSE COUNSELING / CONSEJOS EN LA OFICINA - Counseling information and materials are provided to clients in need of more in-depth assistance. Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 474-7007.

CRISIS INTERVENTION / INTERVENCION CRISIS - Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. Consejeros median en nombre del inquilino a resolver una emergencia que amenass su vivienda. Call / llame al 474-1961.

RENTAL REPAIR ASSISTANCE / AYUDA CON REPARACIONES EN SU VIVIENDA - The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 474-7007.

LEASE FORMS / CONTRATOS - ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 474-7007.

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