

News-Press

June 13, 2006

Section: National

Edition: Fort Myers

Page: A1, A2

Rent-to-buy deal puts area family in a bind
Housetraders Realty faces lawsuit after jacking up price
Layout space:
Dick Hogan
Staff

By DICK HOGAN

dhogan@news-press.com

Richard and Melissa McGlade thought they were on the verge of owning their own home.

Instead, they find themselves entangled in a legal dispute over a rent-to-buy contract for the Cape Coral home they've lived in for two years.

Experts say the McGlades and their four children are among many who have run into trouble with rent-to-buy ownership, a common real estate purchase method around the country. It's generally used by people with poor credit or low income who can't qualify for immediate property ownership.

Rising real estate prices in Southwest Florida have only added to their problems. The median price of an existing single-family home was \$280,500 in April — up 52 percent from the April 2004 figure of \$184,100, according to the Florida Association of Realtors.

April Charney of Jacksonville Legal Aid, an expert in landlord tenant and foreclosure issues, said what happened to the McGlades is a "variation on the theme" for rent-to-buy arrangements.

Usually, she said, "What happens is people don't get to the point of being able to say, 'I've paid everything, give me my deed.' The first time they miss a payment, they're slammed with that eviction notice. The 'renter' loses absolutely everything the first time they miss a payment."

The Florida attorney general has received 13 rent-to-buy complaints in the past year and is investigating Affordable Property Management Inc., a rent-to-own housing company owned by businessman Riyad Khleif of Venice.

Charney said there could be an increase in rent-to-buy problems if increasing interest rates and soft real estate prices force more people into foreclosure.

The answer, she said, is first for people to avoid rent to buy.

"I'm really down on rent-to-buy transactions," she said. "That's not a solution for folks who can't get conventional financing. It's way too risky."

In the McGlades case, they agreed to let Housetraders Realty buy their house and put them in another Cape Coral house that they could buy for \$165,000 after paying rent for two years.

Then, Melissa McGlade said, they faithfully paid their rent for two years until the agreed-upon date of April 1, 2006.

With the help of their mortgage broker, Linda Ireland, they prepared to close the deal.

But the deadline came and went, and Housetraders refused to close the deal. McGlade said the company offered to sell but for \$120,000 more than the original price.

They've filed a lawsuit in Lee Circuit Court to force Housetraders to sell, but the company maintains in court papers filed by attorney Augustin Simmons that the contract doesn't obligate Housetraders to sell. Simmons did not return calls from The News-Press and a Housetraders official declined to comment.

But the McGlades' lawyer, Esmond Lewis, said Housetraders' obligation is clear under the contract: "To sell the house at the price the parties agreed to two years ago."

Even at \$165,000, he said, "they're still going to make a pretty penny."

Charney said that in the long run, rent-to-buy problems will be solved only by an organized effort to help people before they get to that point.

"We need community-based debt management centers so people who are low-income or in dire straits can go and access specialized debt default management. We need to have places where people can get access to credit rehabilitation."

Kevin Jursinski, a Fort Myers-based real estate attorney who's also a real estate investor, said rent to buy can be a risky proposition for both sides.

He represented the tenant in a case similar to the McGlades' last year and won, he said — but cautioned that a lot depends on the exact wording of the contract.

He cautioned that "if there's an ambiguity, it's construed against the maker. If you were writing it, you should have made it clearer."

Trying to set a price for what a tenant will pay two years from now probably isn't a good idea because it's too far out to make a good guess, Jursinski said. "You really can't predict it."

He's trying to lease out a house and may go the rent-to-buy route, but wouldn't set the decision date later than one

year out if a specific price is specified. Longer terms would need some kind of formula, perhaps based on the prevailing price of homes.

Attorney general spokeswoman JoAnn Carrin said people should look before they leap. "The main thing is they need to read the contract very carefully before they sign it. They might even want to have someone experienced in real estate read it for them and just be aware of what they're signing and what the conditions of the lease to buy the property are."

Melissa McGlade said the dispute with Housetraders has thrown a crimp into the family's efforts to get back on solid financial ground.

She works full time at Iguana Mia restaurant in Cape Coral and her husband is a transmission technician at Dixie Buick in Fort Myers.

But times are still tough, Melissa McGlade said. Their son Nicholas, 5, is doing well now but has needed heart surgery since infancy and will require more in the future. That means more trips to All Children's Hospital in St. Petersburg.

"It's not right," she said. "We've been excellent tenants. Whenever there have been repairs that needed to be made, we've done it. They know my son has heart problems. How can you do this to a family?"

BUYING A HOUSE

Here are some tips on what to look for in a contract to buy a home:

- What: A legal description of the property as well as the street address
- How much: The selling price
- Mortgage contingency: Subject to obtaining a mortgage (if applicable) and the specifics of the mortgage amount, rate and term. Application to be made in set number of days.
- Deposit: How much money accompanies the contract and who will hold it?
- Closing: When and where
- Inclusions and exclusions: What is and is not included in the sale of the property?
- Home inspection: Contingency for and to be done in set number of days
- Warranties: Any that are included with the house and description of the warranty
- Well and septic: If applicable, they must be tested and pass.
- Termite and pest infection: Who will pay and if there is infestation or damage, who will repair?
- Possession date: When do the buyers take possession of the house before, at or after closing?
- Acceptance: How long do sellers have to respond to the offer with either acceptance or a counter-offer?
- Arbitration: Any provisions for arbitration of disputes
- Insurance: Whose insurance covers property up until the closing date?
- Property disclosures: Notices of any property disclosures concerning the house

SOURCE: Real-Estate-Agents.com