

# Frustrated sellers turning to rent-to-own arrangements

By Joanne Cleaver

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MILWAUKEE — It's a sprawling Arts and Crafts house on Milwaukee's east side, with a brand-new kitchen, a brand-new master suite and vintage details like leaded glass windows in the built-in china cabinet.

Last fall, David and Elizabeth Rubin put it on the market for \$475,000. Now they're asking \$439,000 — a price that reflects a loss on the \$100,000 they've spent on remodeling.

With no offers, they're now offering the house for sale a month at a time: If a qualified buyer is amenable, the Rubins will consider offering the house on a rent-to-own basis.

They'd rather do that than drop the price. "It's like the stock market: You don't sell at the bottom," says Elizabeth Rubin.

As houses sit, and sit, and sit on the market, some fed-up sellers are turning to rent-to-own, a tactic that all but disappeared from the market when home loans were easier to get. Also called lease-to-own, the arrangement appeals to would-be buyers who are stuck because of the same market dynamics: They want to buy, but their down payment is locked up in their own house that won't sell.

Rent-to-own is fraught with pitfalls, say lawyers and real estate brokers. It's harder than it looks to construct a fair contract, and sellers don't always get what they want: an easy, automatic sale.

The Rubins bought their circa 1925 house when the market was hot and resale hassles were far from homeowners' minds. As recently as 2005, according to statistics compiled by the Metro MLS, which records sales through brokers, the average time to sell a City of Milwaukee house was 59 days.

Now, it takes an average of 100 days. When buyers are scarce, sellers get creative.

"It's filled with potential problems on both sides," says real estate lawyer Jeff Patterson. "There are all sorts of situations that the parties can't anticipate."

Typically, a rent-to-own agreement stipulates that part of the monthly rent check is held in escrow for a down payment if the renter buys the house at the end of the lease. If the renter doesn't buy the house, the seller gets the escrowed money.

The title is held by the seller, who usually is responsible for paying taxes. The rest of the details are up for negotiation: who pays for maintenance and repairs; how much money is held in escrow for the sale; security deposits; and tenant behavior and use of the property.

Too often, sellers are relieved to get someone — anyone — into the property, says Barbara Nichols, author of "The No Lawsuit Guide to Real Estate Transactions" (McGraw Hill, 2007) and

a Beverly Hills real estate broker for two decades.

But sellers need to treat the deal as though the sale is imminent, she says. That means doing a credit check, ensuring that the buyer qualifies for a mortgage, and ordering an inspection to document the condition of the house.

What if somebody else wants to buy the house before the lease is up? "The seller is out of luck. It does tie up the seller's property," Nichols says.

If the renter decides to buy, the house still has to be appraised, financing arranged and the transaction completed.

Nasty surprises sometimes emerge, says Paul A. Maranan, a lawyer who often handles real estate transactions. If a prospective buyer doesn't keep up with the rent payments, the seller might not be able to make the mortgage payments, and the house might teeter into foreclosure.

A long-term rental might violate the mortgage if it contains a clause requiring it to be paid when the house is sold, he said. And buyers need to make sure that owners don't run up liens against the property, such as home equity loans.

If the renters continue to rent, the sellers might find themselves running afoul of the requirement that the house be their primary residence for two of the last five years to qualify for favorable tax benefits, points out Patterson.

Of course, the whole point of rent-to-own is that it's a temporary arrangement for everyone.

Chris Muellenbach, owner of My Dwelling, a residential leasing firm in Milwaukee, has found a niche handling rent-to-own deals eschewed by real estate agents, who typically prefer to focus on transactions.

The sudden availability of houses for rent has been a boon to people relocating to Milwaukee who can't sell their houses or prefer to rent while they get to know the area, he says.

The Gillespie family is moving from Michigan back to the Milwaukee area and isn't having any luck selling its four-bedroom bi-level, asking \$153,000, says Erin Gillespie.

"We're going to rent until the house sells," she says. "We don't even want to write a contingent offer. It's too scary."

They want to rent where they'll eventually buy so their children won't have to switch school districts.

Every rental house she has found in the suburban areas they are targeting has been a rent-to-own.

So far, the Gillespies have looked at two rent-to-own deals offered by sellers who have already purchased their next houses. "But it makes me nervous," Gillespie says. "What if the houses sell," forcing the Gillespies out?

A more appealing option, she says, would be for a full year's lease offered by an owner who is moving and doesn't

want to put the old house up for sale until the market rebounds. That would give the Gillespies a year's respite from the pressures of the market.

"Everyone else," Gillespie says, "is, 'Please take this house off our hands.'"

## DETAILS, DETAILS

Rent-to-own arrangements are studied with obstacles, say real estate lawyers. Here are a few:

— Sellers/landlords

How will you put the house back on the market if the renters don't want it, especially before their lease expires?

Who will tend to and pay for routine maintenance? Repairs?

What are the costs of setting up and managing an escrow account for the portion of rent allotted to the down payment?

Will you manage the property yourself, or hire an agent?

Chris Muellenbach, owner of My Dwelling, a Milwaukee residential leasing firm, says the fee for managing a single-family house ranges from \$100 to \$300 a month, depending on how much attention is demanded by the house and landscaping. A single-family, three-bedroom house on Milwaukee's North Shore rents for about \$2,500 a month, he adds.

— Buyers/renters

How much of the rent is going to the down payment?

How much flexibility is there to extend the lease if you don't want to buy the house but want to continue living there?

Will you feel pressured to buy the house by the owner/landlord?

If the house is put back on the market before your lease expires, will you be expected to keep it in ready-to-show condition, and comply with expectations of the owner or real estate broker?

Do you hope to strengthen your credit rating by paying rent on time, and if so, will the owner report your good habits to credit bureaus?

Rent-to-own shouldn't be confused with a land contract, warns real estate attorney Jeff Patterson.

A land contract is an installment sale in which the title is held by the seller as collateral while the buyer pays in monthly installments.

"A land contract is Wisconsin's wording for an installment sale," he says.

The State Bar of Wisconsin has approved a particular form of land contract, which most lawyers are likely to prefer to use for this sort of agreement, says Patterson, but rent-to-own agreements can be anything hammered out between the seller and buyer.

"I sure wouldn't want to unleash buyers and sellers to draft contracts to rent-to-buy themselves. They're likely to run into differing expectations as to what their rights and obligations actually are," says Patterson.

## 10-minute home improvement projects

When time is short and desire is long, what can homeowners do to achieve instant results in the home with just a minimal investment? Try using synthetic millwork from Fypon to create these 10 fast economical 10-minute projects to enhance the home:

**Project 1 - Create a unique window treatment by hanging a pair of classic mini scroll brackets (priced at just \$20 each) to flank a window. Insert a dowel rod through the brackets and drape with fabric for a fast and easy window treatment.**

**Project 2 - Use a crosshatch square decorative panel made of lightweight urethane to serve as a see-through room divider or "gate" to keep toys, pets and children separated from expensive knick-knacks.**

**Project 3 - Add a window crosshead to the wall to serve as a fast and easy shelf. A variety of crossheads are available with prices starting at \$55.**

**Project 4 - Flank the window-sized opening between two rooms (like a kitchen and family room) with a pair of lightweight urethane shutters. Two-panel shutters, which can be painted or stained, have a price starting at \$89 for the pair.**

**Project 5 - Add a keystone (starting at just \$10 each) to the top of any interior room door to give an elegant look to the entryway.**

**Project 6 - Install a two-piece ceiling medallion around ceiling fans and chandeliers. These interlocking medallions go up in minutes without removing electrical fixtures and are available starting at just \$17 each.**

**Project 7 - Use a one-piece cathedral louver trim piece to frame a favorite painting or poster. The white louver trim (which starts at pricing of \$59) can be painted or faux finished to accent the image inside.**

**Project 8 - Make a fast towel rack by drilling holes in the center of two cove brackets (available for \$26 each). Insert a painted dowel rod and you have an instant way to hang towels.**

**Project 9 - Install carved leaf or grapevine brackets (starting at \$29 each) under kitchen countertops and shelves to add dimension and visual appeal to a room.**

**Project 10 - To add a farmhouse feel to a room, add wagon wheel brackets (available for \$23 each) to the upper areas of interior doorframes.**

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