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THE REGULATION OF RENT-TO-OWN TRANSACTIONS

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I. Introduction

In the last 10 years, rent-to-own stores have sprouted in every main street in America.[1] A typical rent-to-own transaction, also known as a lease-purchase agreement, works in the following way. A consumer could purchase a television set for a cash price of $400. Instead, the consumer rents the television set for $18 per week. The rent-to-own contract provides that the consumer will own the set if rental payments are made for seventy-eight weeks. Like the grain of sand in William Blake's aphorism, "the world in a grain of sand," this transaction raises a number of fascinating issues in traditional contract and consumer law.

Professor John Ayer posits that "[a]ll of the common uses of leases are designed to avoid some other rule of law which produces an unfavorable result in a particular case."[2] In other words, a transaction is cast in the form of a lease largely to evade some public policy. The lease-purchase evades Articles 2 and 9 of the Uniform Commercial Code, the Fair Debt Collection Practices Act,[3] usury laws,[4] the Truth in Lending Act,[5] and states' retail installment sales acts.[6] Furthermore, because these statutes are not applicable, it is not clear what body of law should be applied to the lease.

This article will first explain how the rent-to-own transaction evades the above mentioned statutory restraints. Second, the article explores the purpose of regulating consumer transactions. Next, the common terms of a rent-to-own transactions are examined. Finally, the article discusses existing state regulation and analyzes appropriate regulation to correct the current inequities of many rent-to-own transactions.

II. The Evasive Nature Of The Rent-To-Own Transaction

A. Articles 2 and 9 of the Uniform Commercial Code

Under the Uniform Commercial Code ("UCC") standards which distinguish between a lease and a disguised credit sale of goods, the rent-to-own transaction qualifies as a true lease. The rent-to-own transaction is a true lease because the lessee is not obligated to make all payments, but is obligated only to make the first payment and may terminate the lease at any time thereafter.[7] Therefore, the transaction when entered does not qualify as a sale of goods, thus avoiding Article 2 of the UCC.

In addition, the typical rent-to-own transaction allows the lessor to reclaim its property against third parties.[8] The transaction evades Article 9 of the UCC because the lessor, unlike a secured party, is able to retain its interest in the goods without the necessity of filing a financing statement. For example, assume a consumer purchases a television under an installment purchase agreement, then defaults on the purchase agreement and sells the TV to her neighbor. Under Article 9, a creditor would not be able to reclaim the TV unless the creditor has filed a financing statement.[9] Conversely, the lessor under a lease purchase agreement can still reclaim the TV.

Moreover, since the transaction is not governed by Article 9, its repossession provisions afford no relief. These provisions would be quite useful to the lessee because they are designed largely to protect the debtor. Many rent-to-own agreements provide that on default the lessor may enter the premises to recover the goods. These provisions are probably proscribed by public policy. Nevertheless, the fact that they are unlawful does not prevent the lessor from including them in the agreement for *in terrorem* effect.

After repossession, the resale provisions of Article 9 do not apply. Unlike an Article 9 secured creditor, the rent-to-own store has no duty to apply the resale proceeds to mitigate any liability the consumer may have to the store. In short, the lessee loses both the goods and all payments made toward eventual purchase of the goods.[10]

B. Fair Debt Collection Practices Act

A lessee who misses payments under a lease purchase agreement receives no protection from the Fair Debt Collection Practices Act because the Act does not apply to creditors who collect their own debts.[11] Therefore, the lessor can use strong means of persuasion to encourage voluntary payment or restoration of the goods. If these efforts are not successful, the lessor can try to recover the goods themselves.

C. State Usury Statutes

Similarly, the transaction evades state usury statutes. These statutes generally limit credit charges to no more than fifteen to twenty percent annual interest.[12] In the case of the TV rented for seventy-eight weeks at $18 per week, the payments total $1404. If the consumer had purchased the $400 TV on these identical credit terms, the interest charge would have been over 225% annual percentage rate. Because the lessee has no obligation to pay $1404, but only the first payment of $18, there is no loan or forbearance as required by the usury statutes.[13]

D. Federal Truth in Lending Act

Rent-to-own transactions are exempt from Truth in Lending disclosures. The Truth in Lending Act ("TILA") applies only to credit transactions.[14] A credit transaction is defined as requiring more than four payments;[15] rent-to-own transactions require only one payment. Therefore, the rent-to-own lessee does not benefit from the disclosure provisions from TILA.

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For example, under TILA the lender must disclose the effective rate of interest regardless of whether the credit charges are regarded as usurious.[16] Thus, if a $400 TV were sold on credit for seventy-eight payments of $18, the time price doctrine would permit the seller to charge 226% interest, but it would be illegal for the seller to fail to disclose to the consumer that the interest rate was 226%.

The rent-to-own lessor is not required by TILA to disclose to the consumer that the effective interest rate for the $400 TV is 226%. The theory behind disclosure is that it allows the market to work. Theoretically, consumers who know what interest rates are offered by various sellers will "shop around" for favorable credit terms just as they shop around for the price of the goods themselves. A duty to disclose the effective interest rate would allow consumers to compare the rent-to-own price with the credit price. In addition, the absence of the effective interest rate makes a comparison of various rent-to-own offerings more difficult.

Cases have held that the rent-to-own transaction is a lease for purposes of the Truth in Lending Act,[17] but these cases predate the 1982 amendment to the Truth in Lending regulations. These regulations now define a "credit sale" as including "a bailment or lease (unless terminable without penalty at any time by the consumer) ...."[18] Therefore, the Truth in Lending Act probably does not apply to rent-to-own transactions because the consumer can terminate a rent-to-own agreement at any time without penalty. Similarly, state retail installment sales acts, because they govern obligations to purchase the goods, are generally held inapplicable to lease-purchases.[19] Once again, the consumer's opportunity to terminate the lease frees the transaction from regulation.

E. Applicable Law

While the cost over time is the essential term of the rent-to-own transaction there are other significant terms such as the right to prepayment, repair and loss obligations, and late fees. If disputes regarding these terms or other legal issues arise under the agreement, it is not clear what law applies to the transaction. Article 2 of the UCC applies directly to sales. In some situations courts have applied Article 2 by analogy to leases. Although the Uniform Laws Commission has proposed Article 2A, a statutory scheme for leases, only ten states have adopted this approach. In fact, most states have no leasing statutes. Therefore, it is difficult to predict a court's determination in a particular transactional dispute under existing law.

III. The Purposes of Regulation of Consumer Transactions

Traditionally, contract analysis distinguishes between commercial and consumer contracts.[20] It is presumed that unlike commercial parties, consumers:

1. do not have personal knowledge and cannot obtain adequate information about the contract;
2. lack access to sophisticated resources for guidance, such as attorneys; and
3. lack bargaining power to alter contracts of adhesion.

In response to these presumptions, the government often intervenes to assist consumers by creating a situation more like the free market. Thus, consumer law traditionally facilitates three functions: (1) the *disclosure function* to provide consumers with essential information, (2) the *representation function* to act as the bargaining agent for the consumer by mandating substantive provisions consumers would otherwise be unable to obtain, and (3) the *bargaining function* to offer consumers a choice. An examination of the common terms of a rent-to-own agreement reveals how regulation of the transaction serves these functions.

IV. Terms of the Common Rent-to-Own Transaction

A. Cost

The most significant term is the cost of the lease. It is fair to say that most consumers enter rent-to-own transactions because they are not eligible for credit financing. This is exemplified by the fact that rent-to-own opportunities are commonly found in low income neighborhoods, among student communities, and near military bases.

Studies also show that many consumers, particularly low-income consumers, do not shop for the best deal in objective economic terms, but seek the lowest weekly or monthly payment.[21] There are obviously many variables in the terms of a transaction and the lowest payment terms do not necessarily signify a bargain. For instance, a bank advertisement may promote the availability of lower monthly payments on automobile financing; however, the bank simply extends the standard car loan from three years to four years.

Further information on consumer habits might help us analyze a proposal to treat the transaction as a disguised credit sale subject to the terms of the Truth in Lending Act.[22] A rent-to-own transaction is a disguised credit sale only if consumers rent the property for the full term. Consumers often intend to use the rent-to-own transaction for other purposes. For example, a consumer might regard it as a test period to use the product for a few weeks to determine whether it is suitable for purchase. Similarly, a consumer might be in temporary housing and may intend to rent the goods for only a few weeks. In fact, surveys indicate that only twenty-five percent of customers actually purchase the goods.[23]

B. Services

Treating the transaction as equivalent to a credit transaction may impinge upon rent-to-own stores and consumers because rent-to-own transactions provide benefits that consumers do not receive in credit transactions. A lessee in a rent-to-own transaction may have a more advantageous repair policy than that offered by a credit transaction. For example, a manufacturer's warranty may expire in one year, but a rental agreement may extend repair provisions beyond the one year period to cover the entire life of the rental transaction. Even if the warranty terms were

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co-extensive with the rental terms, the consumer would still have the advantage of returning the item, while a standard warranty only calls for repair or replacement.

C. Risk of Loss

Another problem associated with the cost of the lease is the lessor's risk of loss. Are the apparent high costs of lease-purchases justified by the losses from nonpayment, destruction, or theft? The lessor bears a substantial risk of such losses. The industry estimates that five percent of leased goods are damaged or stolen.[24] It can be argued that the lessor who incurs these risks is entitled to reduce these risks by increasing its security and its ability to recover on this security. Rent-to-own stores presently do this through higher prices, strongarm collection and repossession practices, and contractual provisions that make the lessee an insurer of the goods.

Others argue that such overreaching must be prohibited to protect consumers. Advocates of such regulation appeal to the bargaining function, maintaining that consumers do not know what they are getting into, and even if they do know, they have no power to bargain. The notorious case of *Williams v. Walker-Thomas Furniture Co., Inc.*,[25] is illustrative.

In *Williams,* the court held that it may be unconscionable for a business to use a "cross collateralization clause" to obtain more security.[26] In addition, the recently enacted Federal Trade Commission Credit Practices Rules further limit the security devices used by creditors.[27] These provisions cover lease-purchase agreements, but will rarely apply since the lessor does not extend credit or obtain security.

D. Prepayment Penalties and Late Fees

In addition to the total cost, prepayment penalties and late fees are important to consumers. The consumer often encounters the issue of prepayment. Does the consumer have the right to prepay the lease and, if so, what amount is payable? Analogy to prepayment of loans is appropriate. Consumer legislation dealing with the extension of credit, such as retail installment sales acts, usually regulate prepayment of loans. These regulations often codify the Rule of 78s which is a method of computing refunds of unearned finance charges upon prepayment so that the refund is proportional to the monthly unpaid balance. Similarly, although the lessee has no obligation to complete payments, the lessee who does so should receive a discount.

Late fees for failure to make a periodic payment are significant provisions in a rent-to-own agreement. It may be useful to consider a default in the context of contract law, which divides obligations into conditions and promises. If the agreement makes prompt payment a condition of continuance of the agreement, then the lessee stands to lose all of his or her investment in the item. If timely payment is a promise, the remedy for breach is damages. These damages can prove to be extremely costly to the consumer.

Damages are often stated in the form of late fees, a topic that has been insufficiently examined in the literature of consumer law. Traditionally, the contract remedy for breach of a promise is the damage caused by the breach. When the promise is a promise to pay at a particular time, the damage is the loss of the use of that money for that time—the interest. If the interest is measured by market rates (or even worse, statutory rates which are often below market), the recovery is minimal, probably not even enough to compensate for sending the notice that the payment is late.[28] For this reason, businesses seek to impose a more onerous charge for late payment.

With numerous weekly payments on a rent-to-own transaction, there is bound to be a late payment somewhere along the line. In fact, one mainstream rent-to-own store, Rent-A-Center, reports that on any given due date, about twenty percent of the accounts are overdue.[29] The loss to an individual consumer of a dollar or two is trivial, and the individual is unlikely to seek recourse. However, when multiplied over millions of consumers, the numbers represent an enormous transfer of wealth from consumers to lessors. Furthermore, each late payment may trigger efforts at collection and ultimately repossession.

V. Existing Regulation

Approximately half of the states have enacted statutes specifically regulating rent-to-own transactions.[30] Most of these statutes reflect similar approaches to regulation. An examination of the New York statute[31] provides a good example of required disclosures, prohibitions and substantive provisions.[32]

A. General Disclosures

The New York statute requires rent-to-own agreements to provide certain disclosures to protect consumers. First, the disclosures must be written in plain English.[33] Second, the agreement must state whether the goods are new or used.[34] Third, the renter's payment obligations must be described including:

1. the amount and timing of rental payments,[35]
2. the cash price,[36]
3. the number of payments, and
4. the total amount payable to acquire ownership, which must be designated "total cost."[37]

Fourth, the disclosure must provide the payments or fees in addition to rental payments.[38] Finally, the consumer must be informed about who is liable for loss or damage.[39]

B. Prohibitions

Under the New York statute, rent-to-own agreements are prohibited from including certain provisions. Several of these provisions are duplicative of other consumer protection laws. For example, a rent-to-own agreement may not include a confession of judgment,[40] or a waiver of defenses.[41] In addition, the lessor may not breach the peace in an attempt to repossess the goods.[42] Unique to the rent-to-own transaction is the prohibition of any provision which requires the

consumer to purchase insurance from the lessor.[43]

C. Substantive Provisions

1. Total Cost

The total cost may not exceed twice the cash price of the goods.[44] For example, if a TV has a cash price of $400, the total cost may not exceed $800. The lessor could offer the goods in seventy-eight weekly payments of $10.25, fifty-two weekly payments of $15.00, or whatever other schedule the lessor desires, so long as total payments do not exceed $800. Because of the time value of money, lessors will undoubtedly prefer the shorter lease periods.

"Cash price" is defined in the statute as the price at which a merchant in the ordinary course of business would sell the merchandise for cash.[45] Since most rent-to-own stores do not have significant sales other than through leases, the lessor has little incentive to designate a low cash price and will probably designate the list price even for goods that are widely discounted. The cash price of used goods can also be problematic.

2. Late Fees

A statutory grace period for late payment of three days is created in a weekly agreement and seven days in a monthly agreement.[46] The amount of the late fee may not be more than the greater of ten percent of the amount due or three dollars for weekly agreements and five dollars for monthly agreements.[47]

3. Right of Reinstatement

Recall that a lessee who misses a payment and loses the property also loses the "equity" built up in the property. The provision itself is complicated, but it basically provides for reinstatement during designated time periods that increase as more payments are made and if the goods have been returned.[48]

4. Liability for loss

The liability for loss may not exceed the price the consumer would have paid to exercise an early purchase option.[49]

5. Early Purchase Option

The consumer has the right to purchase for a price of the cash price less fifty percent of all previous purchase payments made.[50] For example, if a TV with a cash price of $400 was rented at $15 per week for fifty-two weeks, the total cost would be $780. After twenty-six weeks, when the consumer has paid $390, the consumer may purchase the TV for the cash price ($400) less fifty percent of all payments made ($195) = $205. At that point, the consumer will have paid a total of $595 for the TV. As with total cost, the cost of the early purchase option may be inflated by an unrealistic cash price.

6. Remedies

Statutory remedies include actual damages, reasonable attorney's fees, and court costs,[51] plus punitive damages when a lessor has acted in bad faith.[52] A violation of the statute is also a deceptive trade practice.[53]

VI. Policy Analysis of Appropriate Regulation

A. The Purpose

In looking at proposed solutions to the problem of lease-purchase, we should examine whether any proposed regulation serves the three above noted functions of consumer protection: the disclosure function, the representation function, and the bargaining function.

ANNOUNCEMENT

In the Recent Legislative Activity section, the editors report on a recently enacted rent-to-own statute in South Dakota. The statute requires disclosures similar to those recommended by Professor Burnham in this article. Lease purchase agreements under the statute must provide disclosures including the total cost, the timing and amount of payments, and the risk of loss.

Refer to the Recent Legislative Activity section for significant state and federal legislative developments which affect consumers.

The last two functions are usually served indirectly. Sometimes an incentive to representation is offered by a statute that exempts a transaction from consumer protection if the consumer is represented by an attorney. More often, the government is the representative who sets the terms by legislative fiat. Alternatively, the government may serve the bargaining function by mitigating the harshness of the contract of adhesion. Requiring the creditor to allow examination of the contract, providing for choices by the consumer, and ultimately allowing a cooling-off period to rescind the transactions are examples of the law serving the bargaining function.

B. Disclosures in Plain Language

Plain language laws that require the business to explain the contract terms serve both the bargaining function and the disclosure function. For example, the provision in *Williams v. Walker-Thomas Furniture Co.*[54] looked like this:

> If I am now indebted to the Company on any prior leases, bills or accounts, it is agreed that the amount of each periodical installment payment to be made by me to the Company under this present lease shall be inclusive of and not in addition to the amount of each installment payment to be made by me under such prior leases, bills or accounts; and all payments now and hereafter made by me shall be credited pro rata on all outstanding leases, bills and accounts due the Company by me at the time such payment is made.

In plain language, it might look like this:

> If I fail to make a payment on time, you may repossess everything you have ever sold me on credit.

The most important provision in a rent-to-own transaction is cost. This term might be served by disclosure, though disclosure is only effective if there is not so much disclosure that the important disclosures are lost. As previously mentioned, disclosure through the

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Truth in Lending Law is unlikely and perhaps not appropriate. Therefore, a statute should be specially tailored to the transaction and should use disclosure instead of regulation where effective.

The cash price and total cost over the life of the transaction should be conspicuously disclosed. One subtle problem with rent-to-own transactions is that with so many goods returned after short lease periods, the lessor may in fact be leasing used goods. The used goods have a lower cash value, and hence more of the cost goes to imputed credit. It is therefore incumbent upon the lessor to designate the goods as new or used and to value them accordingly.

Without terming the transaction a credit sale, regulation could require the creditor to disclose the amount of imputed interest as if the rental were for the full term. For example, a disclosure provision might advise:

> If you end up buying this item, you will be paying interest of _X_ %. It might cost you less to buy it on credit. If you can not obtain credit, compare this cost with the cost at another store. It pays to shop around.

Disclosure of prepayment terms and late fees would also be appropriate. However, the disclosure would probably not be meaningful to the consumer. While consumers might be induced to shop for better price terms, it is unlikely they would shop for better prepayment or late fee terms even if they understood them. To serve the representation function, therefore, these terms should probably be regulated so that the costs are not excessive.

Other important terms, such as the availability of repairs should be clearly enumerated. If choices were offered, the bargaining function would be served. For example, the format of the warranty disclosure in the FTC Used Car Buyers Guide[55] might be used, with choices to be checked off indicating:

> ____ WE PAY FOR REPAIRS. We will make all repairs at our expense during the time you use the item.
>
> or,
>
> ____ YOU PAY FOR REPAIRS. You are responsible for the cost of any repairs during the time you use the item. You may return the item instead of having it repaired.

C. Applicable Law

An important function of the law is predictability. There should be a clear body of law applicable to those rent-to-own agreement terms that are not regulated. Such a clear body of leasing law is found in proposed Article 2A of the UCC. Article 2A contains warranty provisions similar to those found in Article 2. Most importantly, § 2A-108 contains an unconscionability provision that provides for mandatory attorney's fees when a court finds unconscionability in a consumer lease. Article 2A should be enacted in every jurisdiction.

D. Other Regulatory Forces

The economic forces of the market also affect rent-to-own transactions. Economists (and judges, such as Richard Posner of the Seventh Circuit, who favor an economic analysis) tell us that as each restraint is imposed on creditors, one of two things will happen: (1) the costs will be passed on to consumers in the form of higher prices for the goods, which will put products further beyond the reach of low income persons; or (2) businesses will choose not to operate in this market.

Regulators face a difficult challenge in addressing the problems caused by rent-to-own transactions. The issues are made more complex by a growing division within the rent-to-own industry. The rent-to-own market is not monolithic. It is divided between mainstream corporate lessors such as Rent-A-Center and Remco, found frequently in upscale neighborhoods, and the more predatory independent stores found more often in low-income neighborhoods.

The market may indeed be working in the former case.[56] In fact, many of the corporate lessors do not oppose all regulation, as it would largely curb the independent lessors who operate on the fringe.[57] Therefore, some problems with rent-to-own contracts might be resolved through the market, particularly in those segments in which consumers are more sophisticated.

Other problems may be resolved through the courts. Common law reform has proved to be a laborious process, as victories are rare when consumers seek a change in the rules.[58] And even the rare victory may be hollow, for the result will be limited, in the best case law tradition, to the facts of the case and will have to be relitigated when the seller changes its terms or the circumstances of the transaction.[59]

Many clients and most attorneys will not want to litigate small claims, such as a $2 late fee, and the costs of a class action suit may be overwhelmingly high. On the other hand, some incentive to lawsuits is provided by many consumer protection statutes that award attorney's fees to the prevailing consumer. This policy, in essence, makes an attorney who represents a consumer a private attorney general in the fight against unfair or deceptive practices. Private enforcement of consumer protection acts has had a positive impact for consumers. Therefore, the possibility of enforcement through this mechanism should not be overlooked for rent-to-own transactions.[60]

VII. Conclusion

When representing a consumer in a rent-to-own dispute, check whether your state has enacted a statute regulating the rent-to-own transactions. If so, a resolution can probably be worked out with the individual store or through the small claim courts.

If the state has no specific statute, the most helpful resource will be the state's consumer protection act. However, a high price in itself has rarely been found to be a violation of these acts.[61] Look for other violations, using the rent-to-own statutes of other states as a guide. While they are not mandatory authority, the prohibitions indi-

cate what other states have found to be unfair or deceptive acts or practices.

The major abuses of rent-to-own transactions can be prevented. In order for prevention to take place, states must first enact statutes which impose disclosure and substantive requirements for rent-to-own transactions. Second, a clear body of law, such as Article 2A of the UCC, must be adopted to govern leases. The statutory combination of disclosure and regulation, coupled with the possibility of lawsuits under the consumer protection act (that may include attorney's fees) should be sufficient to bring the rent-to-own transaction into the mainstream of commercial life.

ENDNOTES

1 There are more than 6000 outlets doing a business of more than $2 billion annually. N.Y. Times, June 4, 1988, § 1, at 56, col. 3.
2 Ayer, *Further Thoughts on Lease and Sale,* 1983 ARIZ. ST. L.J. 341, 344.
3 15 U.S.C. §§ 1692 - 1693r (1988).
4 *See infra* note 12 and accompanying text.
5 15 U.S.C. § 1601 et. seq. (1988).
6 *See infra* note 19 and accompanying text.
7 *See, e.g.,* U.C.C. § 1-201(37) (1990), providing that "a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease *not subject to termination by the lessee...*" (emphasis added.)
8 *But see In re Puckett,* 60 B.R. 223 (Bankr. M.D. Tenn. 1986), *aff'd,* 838 F.2d 471 (6th Cir. 1988), holding a lease-purchase a security device for purposes of bankruptcy.
9 U.C.C. § 9-307(2) (1990). Some jurisdictions, significantly California, have not enacted this section.
10 *Cf.* U.C.C. §§ 9-504 and 9-505 (1990), which require resale with the proceeds credited to the debt.
11 U.S.C. § 1692a(6)(A) (1983).
12 1 C.C.H. Consumer Credit, paras. 505, 520, 540, 560, 570, 630 (1988).
13 Even where an obligation to pay exists, as in the standard installment credit arrangement, the law in most jurisdictions provides an exception to usury in the so-called "time price doctrine." Under that doctrine, the seller is not seen as selling a $400 item at 200% interest; rather, the seller is seen as having two prices: a price of $400 if the buyer pays cash and a price of $1404 if the buyer pays over time. This doctrine protects creditors when market interest rates exceed the statutory usury limit.
14 15 U.S.C. § 1631 (1988).
15 Id. at § 1602f.
16 15 U.S.C. § 1601 *et seq.* (1983).
17 *See, e.g., Clark v. Rent-It Corp.,* 685 F.2d 245 (8th Cir. 1982).
18 12 C.F.R. § 226.2(a)(16) (1990).
19 There are exceptions. For example, North Carolina and Pennsylvania amended their RISAs to include lease-purchases, thereby limiting the effective interest to reasonable rates. N.C. GEN. STAT. § 25A-2(b) (Supp. 1985); PA. STAT. ANN. tit. 69 § 1201(6) (Purdon Supp. 1990). The Pennsylvania statute was declared unconstitutional because of procedural irregularities in its passage in *Pa. Ass'n of Rental Dealers v. Commonwealth,* 123 Pa. Commw. 533, 554 A.2d 998 (1989).
20 For a discussion of the position of the consumer in today's market, *see* J. CALAMARI & J. PERILLO, CONTRACTS §§ 10-1-10-5 (3d ed. 1987).
21 Whitford, *The Functions of Disclosure Regulation in Consumer Transactions,* 1973 WIS. L. REV. 400, 403-405.
22 Two attempts to modify Truth-in Lending have failed. The regulatory burden has therefore fallen to the states. *See* Part V *infra.*
23 N.Y. Times, June 4, 1988, § 1, at 56, col. 3. The article did not report whether the other 75% chose not to purchase or defaulted on their payments.
24 *Id.,* quoting J. Samuel Choate of the Association of Progressive Rental Organizations.
25 350 F.2d 445 (D.C. Cir. 1965).
26 *Id.* at 449 - 450. *See infra* note 54 and accompanying text.
27 16 C.F.R. §§ 444.1 - 444.5 (1990).
28 *E.g.,* if a payment of $100 is two weeks late, at 6%, the statutory rate in many states, the damages would be about 23 cents less than the cost of a postage stamp.
29 Forbes, May 18, 1987, at 73.
30 ALA. CODE §§ 8-25-1 - 8-25-6 (Supp. 1990); ARK. STAT. ANN. §§ 4-92-101 - 4-92-107 (Supp. 1989); COLO. REV. STAT. §§ 5-10-101 - 5-10-604 (Supp. 1990); FLA. STAT. ANN. §§ 559.9231 - 559.9241 (West Supp. 1991); GA. CODE ANN. §§ 10-1-680 - 10-1-689 (Harrison Supp. 1987); ILL. REV. STAT. ch. 121 1/2, paras. 1801 - 1857 (1989); IND. CODE ANN. §§ 24-7-1-1 - 24-7-9-7 (West Supp. 1990); IOWA CODE ANN. §§ 537.3601 - 537.3624 (West Supp. 1990); KAN. STAT. ANN. § 367.976 *et seq.* (1990); MASS. ANN. Laws ch. 93, §§ 90 - 94 (Law. Co-op. Supp. 1990); MD. COM. LAW CODE ANN. §§ 12-1101 - 12- 1112 (1990); MICH. COMP. LAWS §§ 445.951 - 445.970 (West 1989); MINN. STAT. ANN. §§ 325F.84 - 325.F98 (West Supp. 1991); MO. ANN. STAT. §§ 407.660 - 407.679 (Vernon 1990); NEB. REV. STAT. §§ 69-2101 - 69-2115 (1990); N.Y. PERS. PROP. LAW §§ 500 - 507 (McKinney Supp. 1991); OHIO REV. CODE ANN. §§ 1351.01 - 1351.09 (Page Supp. 1990); OKLA. STAT. ANN. tit. 59, §§ 1950 -1957 (West 1989 & Supp. 1991); R.I. GEN. LAWS §§ 6-44-1 - 6-44-10 (Supp. 1990); S.C. CODE ANN. §§ 37-2-701 - 37-2-714 (Law. Co-op. 1989); TENN. CODE ANN. §§ 47-18-601 - 47-18-614 (1988 & Supp. 1990); TEX. BUS. & COM. CODE ANN. §§ 35.71 - 35.74 (Vernon 1987); VA. CODE ANN. §§ 59.1-207.17 - 59.1-207.27 (Supp. 1990).
31 N.Y. PERS. PROP. LAW §§ 500 - 507 (McKinney Supp. 1991). The summary of this statute is not intended to be exhaustive.
32 *See also* ALA. CODE §§ 8-25-1 - 8-25-6 (Supp. 1990), which provides a model form for disclosures, and COLO. REV. STAT. §§ 5- 10-101 - 5-10-604 (Supp. 1990), which contains large print warnings that must be given to consumers. Colorado also requires the registration of rent-to-own stores, with a public administrator to act as a watchdog.
33 N.Y. PERS. PROP. LAW § 501(1) (McKinney Supp. 1991).
34 *Id.* at § § 501(7)(b).
35 *Id.* at § § 501(7)(c).
36 *Id.* at § § 501(7)(h).
37 *Id.* at § 501(7)(d).
38 *Id.* at § 501(7)(e).
39 *Id.* at § 501(7)(f).
40 *Id.* at § 501(3)(a).
41 *Id.* at § 501(3)(c).
42 *Id.* at § 501(3)(b).
43 *Id.* at § 501(3)(d).
44 *Id.* at § 503.
45 *Id.* at § 500(2).
46 *Id.* at § 501(3)(e).
47 *Id.*
48 *Id.* at § 501(5)(b),(c).
49 *Id.* at § 501(7)(f).
50 *Id.* at § 504.
51 *Id.* at § 507(1).
52 *Id.* at § 507(2).
53 *Id.* at § 507(3).
54 350 F.2d 445 (D.C. Cir. 1965).
55 *See* 16 C.F.R. § 455.2 (1990).
56 Consumer Electronics, June, 1987, at 16.
57 N.Y. Times, June 4, 1988, § 1, at 56, col. 3.
58 *See* Galanter, *Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change,* 9 LAW & SOC'Y REV. 95 (1974). Galanter analyzes a problem in terms of whether the parties are Repeat Players or One-Shot Players. If I represent a consumer against a rent-to-own corporation, I am a One-Shot player and the corporation is a Repeat Player. They have a number of advantages over me, including the ability to offer me a terrific settlement if it looks like a decision in my favor would change the rules. I am then faced with a dilemma. Do I take the settlement, securing a terrific result for my client, or do I spurn it, hoping for a result that will not be as good for my client but will be better for consumers in general?
59 *See* Schrag, *Bleak House 1968: A Report on Consumer Test Litigation,* 44 N.Y.U. L. REV. 115 (1969), for a depressing account of such litigation.
60 *See, e.g.,* state consumer protection acts. These acts would be the vehicle for enforcing violations of FTC regulations, for the FTC Act affords no private right of action.
61 *Remco Enterprises, Inc. v. Houston,* 9 Kan. App. 2d 296, 677 P.2d 567 (1984). *But see Murphy v. McNamara,* 36 Conn. Supp. 183, 416 A.2d 170 (Super. Ct. 1979).