

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

S

1

SENATE BILL 344

Short Title: Unfair Real Estate Agreements Act. (Public)

Sponsors: Senators Krawiec, Overcash, and Lowe (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 22, 2023

A BILL TO BE ENTITLED
AN ACT TO PROHIBIT UNFAIR REAL ESTATE SERVICE AGREEMENTS FOR
RESIDENTIAL REAL ESTATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93A of the General Statutes is amended by adding a new
Article to read:

"Article 7.

"Prohibition of Unfair Real Estate Service Agreements.

"§ 93A-85.1. Purpose, definitions.

(a) This Article is intended to prohibit the use of Real Estate Service Agreements that are unfair to an owner of Residential Real Estate who enters into such an agreement or to other parties who may become owners of that real estate in the future. This Article also prohibits the recording of such Residential Real Estate Service Agreements so that the public records will not be clouded by them and provides remedies for owners who are inconvenienced or damaged by the recording of such agreements.

(b) For the purposes of this Article, the following definitions apply:

(1) Agent. – A real estate broker as defined in G.S. 93A-2(a).

(2) Person. – A person as defined in G.S. 105-228.90(b)(23).

(3) Real Estate Service Agreement. – A written contract between an Agent, Service Provider, Person, and the owner of Residential Real Estate or a potential buyer of Residential Real Estate to provide services, current or future, in connection with the maintenance, purchase, or sale of Residential Real Estate.

(4) Residential Real Estate. – Real property located in this State which is used primarily for personal, family, or household purposes, by owner, tenant, or any other party.

(5) Service Provider. – An individual or entity that provides a service related to Residential Real Estate.

"§ 93A-85.2. Unfair Real Estate Service Agreements.

Unfair Real Estate Service Agreements Defined. – A Real Estate Service Agreement is unfair under this Article if it is effective and binding for more than one year from the effective date of the Real Estate Service Agreement and has any of the following characteristics:

(1) The Real Estate Service Agreement purports to run with the land or is binding on future owners of Residential Real Estate identified in the Real Estate Service Agreement.



- (2) The Real Estate Service Agreement expressly allows for assignment of the right to provide those services without notice or consent of the owner or buyer.
- (3) The Real Estate Service Agreement purports to create a lien, encumbrance, or other real property security interest.

"§ 93A-85.3. Exemptions.

This Article does not apply to the following types of agreements:

- (1) A home warranty or other type of similar product that covers the cost of maintenance of a major housing system (for example, plumbing or electrical wiring) for a set period of time from the date a house is sold.
- (2) An insurance contract.
- (3) Any transactions governed by Chapter 47G (Option to Purchase Contracts Executed with Lease Agreements) or Chapter 47H (Contracts for Deed) of the General Statutes.
- (4) A maintenance or repair agreement entered into by a homeowners' association in a common interest community.
- (5) A security agreement under the Uniform Commercial Code relating to the sale or rental of personal property or fixtures.
- (6) Provision of water, sewer, electrical, telephone, cable, natural gas, propane, fuel oil, or other regulated utility service.
- (7) A property management contract as defined in G.S. 105-164.3(189).
- (8) Any actions arising from Part 2 of Article 2 of Chapter 44A of the General Statutes regarding mechanics', laborers', and materialmen's liens, or Part 4 of Article 2 of Chapter 44A of the General Statutes regarding commercial real estate broker liens.

"§ 93A-85.4. Unfair Real Estate Service Agreements unenforceable.

Any agreement that is in violation of G.S. 93A-85.2 is an Unfair Real Estate Service Agreement and is void and unenforceable. An Agent, Service Provider, or Person has no right to a refund of the consideration paid to the owner or buyer in connection with the Unfair Real Estate Service Agreement.

"§ 93A-85.5. Deceptive act.

(a) The recording of any Unfair Real Estate Service Agreement, or notice or memorandum thereof, that is in violation of this Article is also in violation of G.S. 14-118.6(a).

(b) A violation of any provision of this Article constitutes an unfair or deceptive trade practice under G.S. 75-1.1. Any party whose real property is encumbered by an Unfair Real Estate Service Agreement may bring a cause of action against the Agent, Service Provider, or Person and is entitled to the relief available in Chapter 75 of the General Statutes. Any recoveries available under Chapter 75 of the General Statutes against the Agent, Service Provider, or Person will not be offset by the consideration paid by an Agent, Service Provider, or Person to the owner or buyer in connection with the Unfair Real Estate Service Agreement. The Attorney General is hereby empowered to enforce this Article as allowed by Chapter 75 of the General Statutes.

"§ 93A-85.6. Recording prohibited.

(a) An Unfair Real Estate Service Agreement, or notice or memorandum thereof, is void and unenforceable and shall not operate as a lien, encumbrance, or security interest. No owner or buyer shall be required to record any document voiding an Unfair Real Estate Service Agreement, or notice or memorandum thereof, recorded in violation of this section.

(b) Notwithstanding G.S. 14-118.6(b), the register of deeds is authorized, but is not required, to refuse to accept an Unfair Real Estate Service Agreement, or notice or memorandum thereof, for recordation.

(c) Notwithstanding G.S. 14-118.6(b), an Unfair Real Estate Service Agreement, or notice or memorandum thereof, that is recorded does not provide actual or constructive notice to

1 any party interested in the Residential Real Estate that is identified in the Unfair Real Estate
2 Service Agreement.

3 **"§ 93A-85.7. Rights of recovery.**

4 In addition to any other rights in this Article or at law, if an Unfair Real Estate Service
5 Agreement, or notice or memorandum thereof, is recorded in this State, any party with an interest
6 in the Residential Real Estate that is identified in the Unfair Real Estate Service Agreement may
7 recover damages, costs, and attorney's fees that may be proved against the Agent, Service
8 Provider, or Person named in the Unfair Real Estate Service Agreement. Any actual damages,
9 costs, and attorney's fees that are proved against the Agent, Service Provider, or Person will not
10 be offset by the consideration paid by the Agent, Service Provider, or Person to the owner or
11 buyer of the Unfair Real Estate Service Agreement."

12 **SECTION 2.** G.S. 6-18 is amended by adding a new subdivision to read:

13 **"(6)** In any action brought under Article 7 of Chapter 93A of the General Statutes."

14 **SECTION 3.** This act is effective when it becomes law and applies to Unfair Real
15 Estate Service Agreements that are executed, modified, extended, or amended on or after that
16 date.