

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 422
Committee Substitute Favorable 3/29/23
Committee Substitute #2 Favorable 4/4/23

Short Title: Unfair Real Estate Agreements Act.

(Public)

Sponsors:

Referred to:

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 or to other persons 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) Person. – A person as defined in G.S. 105-228.90(b)(23).

(2) Real estate service agreement. – A written contract between a service provider and the owner or potential buyer of residential real estate to provide services, current or future, in connection with the maintenance, purchase, or sale of residential real estate.

(3) Residential real estate. – Real property located in this State which is used primarily for personal, family, or household purposes.

(4) Service provider. – A person who provides a service related to residential real estate, including a real estate broker.

(5) Unfair real estate service agreement. – A real estate service agreement that violates G.S. 93A-85.2.

"§ 93A-85.2. Unfair real estate service agreements.

(a) Unfair Real Estate Service Agreements. – A real estate service agreement is unfair, void, and in violation of this Article if the agreement is to be in effect for more than one year and either expressly or implicitly aims to do any of the following:

(1) Run with the land or bind future owners of residential real estate identified in the real estate service agreement.

(2) Allow for assignment of the right to provide services without notice or consent of the owner or buyer.

(3) Create a lien, encumbrance, or other real property security interest.



(b) No Right to Refund. – A service provider has no right to a refund of the consideration paid to the owner or buyer in connection with an unfair real estate service agreement.

(c) 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, such as 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 declaration created pursuant to Chapter 47A (Unit Ownership), Chapter 47C (North Carolina Condominium Act), or Chapter 47F (North Carolina Planned Community Act) of the General Statutes.

(5) A maintenance or repair agreement entered into by a homeowners' association in a common interest community.

(6) A security agreement under the Uniform Commercial Code relating to the sale or rental of personal property or fixtures.

(7) Provision of water, sewer, electrical, telephone, cable, natural gas, propane, fuel oil, or other regulated utility service.

(8) A property management contract as defined in G.S. 105-164.3(189).

(9) 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-85.3. Recording prohibited.

(a) Recording an unfair real estate service agreement is prohibited. If an unfair real estate service agreement, or notice or memorandum thereof, has been recorded, it is void.

(b) All of the following shall apply to a recording that is void under subsection (a) of this section:

(1) The recording shall not operate as a lien, encumbrance, or security interest.

(2) No owner or buyer shall be required to record any document voiding the recording.

(3) The recording shall not provide actual or constructive notice to any person interested in the residential real estate that is identified in the unfair real estate service agreement.

(4) The recording violates G.S. 14-118.6(a).

(c) In addition to any other rights provided by law, any person with an interest in residential real estate identified by a recording that is void under subsection (a) of this section may recover damages, costs, and attorney's fees that may be proved against the service provider named in the unfair real estate service agreement. Any actual damages, costs, and attorney's fees that are proved against the service provider will not be offset by the consideration paid by the service provider to the owner or buyer of the residential real estate.

"§ 93A-85.4. Deceptive act.

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 service provider 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 service provider will not be offset by the consideration paid by the service provider 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."

- 1 **SECTION 2.** G.S. 6-18 is amended by adding a new subdivision to read:
2 "(6) In any action brought under Article 7 of Chapter 93A of the General Statutes."
3 **SECTION 3.** This act is effective when it becomes law and applies to unfair real
4 estate service agreements that are executed, modified, extended, or amended on or after that date.