CHAPTER 28

Prohibition of Unfair Real Estate Service Agreements

Editor's Note

2024 Act No. 165, Section 2, provides as follows:

"SECTION 2. This act takes effect upon approval by the Governor and applies to any unfair real estate service agreements that are recorded on the effective date of this act or that are executed, modified, extended, or amended on or after the effective date of this act."

**SECTION 27‑28‑10.** Short title.

 This chapter may be cited as the "Prohibition of Unfair Real Estate Service Agreements Act".

HISTORY: 2024 Act No. 165 (S.881), Section 1, eff May 20, 2024.

**SECTION 27‑28‑20.** Purpose; definitions.

 (A) This chapter 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 chapter 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) As used in this chapter:

 (1) "Person" means any individual, partnership, corporation, company, or association.

 (2) "Real estate service agreement" means 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" means real property located in this State which is used primarily for personal, family, or household purposes.

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

 (5) "Unfair real estate service agreement" means a real estate service agreement that violates Section 27‑28‑30 or Section 27‑28‑40.

HISTORY: 2024 Act No. 165 (S.881), Section 1, eff May 20, 2024.

**SECTION 27‑28‑30.** Unfair real estate service agreements; exceptions.

 (A) A real estate service agreement is unfair, void, and in violation of this chapter 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 the assignment of the right to provide services without notice or consent of the owner or buyer; or

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

 (B) 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) This chapter 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) an option to purchase contract executed with a lease agreement or a contract for a deed;

 (4) a declaration created pursuant to Chapters 30 (Homeowner Association Act), 31 (Horizontal Property Act), and 32 (Vacation Time Share Plan) of this title or created pursuant to Chapter 31 of Title 33 (Nonprofit Corporation Act);

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

 (6) a security agreement under Title 36 (the Uniform Commercial Code) relating to the sale or rental of personal property or fixtures;

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

 (8) a property management contract; or

 (9) any actions regarding mechanics', laborers', or materialmen's liens or commercial real estate broker liens.

HISTORY: 2024 Act No. 165 (S.881), Section 1, eff May 20, 2024.

**SECTION 27‑28‑40.** Recordings of unfair real estate service agreements.

 (A) Any recorded unfair real estate service agreement or notice or memorandum of an unfair real estate service agreement is void.

 (B) All the following shall apply to a recording that is void under subsection (A):

 (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.

 (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) 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 are not offset by the consideration paid by the service provider to the owner or buyer of the residential real estate.

HISTORY: 2024 Act No. 165 (S.881), Section 1, eff May 20, 2024.

**SECTION 27‑28‑50.** Violations of chapter; remedies.

 In addition to any other rights provided by law, a violation of this chapter constitutes an unfair trade practice under Chapter 5 of Title 39, the South Carolina Unfair Trade Practices Act. Any party aggrieved by a violation of this chapter may bring a cause of action against the service provider and is entitled to the relief available in Section 39‑5‑140. Any recoveries available under Section 39‑5‑140 against the service provider are not 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 empowered to enforce this chapter as allowed by Chapter 5 of Title 39.

HISTORY: 2024 Act No. 165 (S.881), Section 1, eff May 20, 2024.