

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
PROPOSED SENATE COMMITTEE SUBSTITUTE H422-PCS30387-TG-27

Short Title: Unfair Real Estate Agreements Act.

(Public)

Sponsors:

Referred to:

March 22, 2023

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

4 The General Assembly of North Carolina enacts:

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

7 "Article 7.

8 "Prohibition of Unfair Real Estate Service Agreements.

9 "**§ 93A-85.1. Purpose; definitions.**

10 (a) This Article is intended to prohibit the use of real estate service agreements that are
11 unfair to an owner of residential real estate or to other persons who may become owners of that
12 real estate in the future. This Article also prohibits the recording of such residential real estate
13 service agreements so that the public records will not be clouded by them and provides remedies
14 for owners who are inconvenienced or damaged by the recording of such agreements.

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

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

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

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

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

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

27 "**§ 93A-85.2. Unfair real estate service agreements.**

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

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

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



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- 1 (3) Create a lien, encumbrance, or other real property security interest.
- 2 (b) No Right to Refund. – A service provider has no right to a refund of the consideration
3 paid to the owner or buyer in connection with an unfair real estate service agreement.
- 4 (c) Exemptions. – This Article does not apply to the following types of agreements:
- 5 (1) A home warranty or other type of similar product that covers the cost of
6 maintenance of a major housing system, such as plumbing or electrical wiring,
7 for a set period of time from the date a house is sold.
- 8 (2) An insurance contract.
- 9 (3) Any transactions governed by Chapter 47G (Option to Purchase Contracts
10 Executed with Lease Agreements) or Chapter 47H (Contracts for Deed) of the
11 General Statutes.
- 12 (4) A declaration created pursuant to Chapter 47A (Unit Ownership), Chapter
13 47C (North Carolina Condominium Act), or Chapter 47F (North Carolina
14 Planned Community Act) of the General Statutes.
- 15 (5) A maintenance or repair agreement entered into by a homeowners' association
16 in a common interest community.
- 17 (6) A security agreement under the Uniform Commercial Code relating to the sale
18 or rental of personal property or fixtures.
- 19 (7) Provision of water, sewer, electrical, telephone, cable, natural gas, propane,
20 fuel oil, or other regulated utility service.
- 21 (8) A property management contract as defined in G.S. 105-164.3(189).
- 22 (9) Any actions arising from Part 2 of Article 2 of Chapter 44A of the General
23 Statutes regarding mechanics', laborers', and materialmen's liens, or Part 4 of
24 Article 2 of Chapter 44A of the General Statutes regarding commercial real
25 estate broker liens.

26 **"§ 93A-85.3. Recording prohibited.**

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

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

- 31 (1) The recording shall not operate as a lien, encumbrance, or security interest.
- 32 (2) No owner or buyer shall be required to record any document voiding the
33 recording.
- 34 (3) The recording shall not provide actual or constructive notice to any person
35 interested in the residential real estate that is identified in the unfair real estate
36 service agreement.
- 37 (4) The recording violates G.S. 14-118.6(a).

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

44 **"§ 93A-85.4. Deceptive act.**

45 A violation of any provision of this Article constitutes an unfair or deceptive trade practice
46 under G.S. 75-1.1. Any party aggrieved by a violation of this Article may bring a cause of action
47 against the service provider and is entitled to the relief available in Chapter 75 of the General
48 Statutes. Any recoveries available under Chapter 75 of the General Statutes against the service
49 provider will not be offset by the consideration paid by the service provider to the owner or buyer
50 in connection with the unfair real estate service agreement. The Attorney General is hereby
51 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.