



HOUSE BILL 422: Unfair Real Estate Agreements Act.

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 15, 2023
Introduced by:	Reps. K. Hall, Miller, Blackwell, Alston	Prepared by:	Bill Patterson*
Analysis of:	Fourth Edition		Staff Attorney

OVERVIEW: *House Bill 422 would do the following:*

- *Prohibit unfair real estate service agreements.*
- *Prohibit the recording of unfair real estate service agreements.*
- *Provide remedies for owners harmed by the recording of unfair real estate service agreements.*

CURRENT LAW: Chapter 75 of the General Statutes establishes State laws related to monopolies, trusts, and consumer protection.

G.S. 75-1.1 makes the following unlawful:

- Unfair methods of competition in or affecting commerce
- Unfair or deceptive acts or practices in or affecting commerce

G.S. 75-9 requires the Attorney General to investigate corporations or persons doing business in the State to determine whether they are doing business in violation of law. In exercising this duty, G.S. 75-10 authorizes the Attorney General to compel examination of officers, agents, or employees, as well as any relevant books and papers.

G.S. 75-14 authorizes the Attorney General to seek mandatory orders, including permanent or temporary injunctions and temporary restraining orders, to enforce the requirements of Chapter 75.

G.S. 75-16 creates a private right of action for persons injured by actions in violation of Chapter 75. A plaintiff who succeeds in such a claim receives treble damages.

BILL ANALYSIS: **Section 1** of House Bill 422 would create a new Article in Chapter 93A of the General Statutes that would do the following:

- Prohibit real estate service agreements that are unfair to an owner of residential real estate or to other persons who may become owners of the residential real estate in the future.
- Prohibit the recording of unfair real estate service agreements.
- Provide remedies for owners who are inconvenienced or damaged by the recording of unfair real estate service agreements.

A real estate service agreement would be defined as a written contract between a service provider and the owner or potential buyer of residential real estate to provide current or future services in connection with the maintenance, purchase, or sale of residential real estate.

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Unfair Real Estate Service Agreements

A real estate service agreement would be unfair and void if it is to be in effect for more than one year and either expressly or implicitly aims to do any of the following:

- Run with the land or bind future owners of residential real estate identified in the real estate service agreement.
- Allow for assignment of the right to provide services without notice or consent of the owner or buyer.
- Create a lien, encumbrance, or other real property security interest.

A service provider would not be entitled to a refund for any consideration paid in connection with an unfair real estate service agreement.

The Article would not apply to certain types of agreements, including home warranties, insurance contracts, or property management contracts.

Recording an Unfair Real Estate Service Agreement

Section 1 would also prohibit the recording of an unfair real estate service agreement. With respect to any unfair real estate service agreement recorded in violation of this prohibition, the following would apply:

- The recording would not operate as a lien, encumbrance, or security interest.
- No owner or buyer would be required to record any document voiding the recording.
- The recording would not provide actual or constructive notice to any person interested in the residential real estate.
- The recording would violate G.S. 14-118.6(a), which makes it a Class I felony to file a false lien or encumbrance.

Any person with an interest in the residential real estate identified in a voided recording would have a private right of action against the service provider to recover damages, costs, and attorney's fees. Any recovery available would not be offset by the consideration paid by the service provider to the owner or buyer of the residential real estate.

Deceptive Act

Any violations of the Article would constitute an unfair or deceptive trade practice under G.S. 75-1.1. A party aggrieved by a violation of the Article would have a private right of action. Any recovery available would not be offset by the consideration paid by the service provider to the owner or buyer of the residential real estate. The Attorney General would be authorized to enforce the Article as allowed by Chapter 75 of the General Statutes.

Section 2 would require costs to be awarded to the plaintiff, upon recovery, for any action brought under the new Article.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to unfair real estate service agreements that are executed, modified, extended, or amended on or after that date.

**Brian Gwyn, Staff Attorney for the Legislative Analysis Division, substantially contributed to this summary.*