



HOUSE BILL 422: Unfair Real Estate Agreements Act.

2023-2024 General Assembly

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| Committee: | | Date: | December 5, 2023 |
| Introduced by: | | Prepared by: | Bill Patterson Staff Attorney |
| Analysis of: | S.L. 2023-117 | | |

OVERVIEW: *S.L. 2023-117 does the following:*

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

This act became effective August 24, 2023, and applies to unfair real estate service agreements that are executed, modified, extended, or amended on or after that date.

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 S.L. 2023-117 created a new Article 7 in Chapter 93A of the General Statutes that does the following:

- Prohibit real estate service agreements that are unfair to an owner of residential real estate or to other persons who can 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 is 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 is 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 is not entitled to a refund for any consideration paid in connection with an unfair real estate service agreement.

Article 7 does not apply to certain types of agreements, including home warranties, insurance contracts, or property management contracts.

Recording an Unfair Real Estate Service Agreement

The recording of an unfair real estate service agreement is prohibited. The following apply to any unfair real estate service agreement recorded in violation of this prohibition:

- The recording does not operate as a lien, encumbrance, or security interest.
- No owner or buyer is required to record any document voiding the recording.
- The recording does not provide actual or constructive notice to any person interested in the residential real estate.
- The recording violates 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 has a private right of action against the service provider to recover damages, costs, and attorney's fees. 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.

Deceptive Act

A violation of any provision of Article 7 constitutes an unfair or deceptive trade practice under G.S. 75-1.1. A party aggrieved by such a violation has a private right of action, and any recovery available under Chapter 75 of the General Statutes is not offset by the consideration paid by the service provider to the owner or buyer of the residential real estate. The Attorney General is authorized to enforce the Article as allowed by Chapter 75 of the General Statutes.

Section 2 requires costs to be awarded to the plaintiff upon recovery in any action brought under the new Article.

EFFECTIVE DATE: The act became effective August 24, 2023, and applies to unfair real estate service agreements that are executed, modified, extended, or amended on or after that date.

**Legislative Analysis Division Staff Attorney Brian Gwyn and Research Assistant Keshawna Roberts substantially contributed to this summary.*