

SB228 ENGROSSED



1 Q3ME11-2
2 By Senators Roberts, Givhan, Shelnutt
3 RFD: County and Municipal Government
4 First Read: 20-Apr-23
5
6 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to residential real estate transactions; to require buyers to make certain disclosures to homeowners and other interested parties that the buyer intends to engage aspects of a wholesale transaction; and to deem unenforceable certain unfair service agreements purporting to establish a long-term right to list between real estate companies and residential real estate owners; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature finds and declares all of the following:

(1) Wholesaling real property occurs when a buyer enters into a contract for purchase and sale of a single-family residential property with the seller of the property thereby creating the buyer's equitable interest in the property, the buyer then finds a subsequent purchaser willing to pay a higher price for the property and then assigns its interest to the subsequent purchaser for a fee.



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29 (2) Certain unfair service agreements provide a real
30 estate company with the right to market, list, or assist in
31 selling a residential property for up to 40 years, binding
32 homeowners and successors in interest through a recorded
33 memorandum and penalizing the homeowner or successor in
34 interest for breach of the agreement.

35 (3) The practices of wholesaling residential real
36 estate, and recording these unfair service agreements, pose a
37 significant risk to Alabama homeowners if left unregulated.

38 (4) The lack of any restrictions enables predatory
39 practices against homeowners, especially those who have lived
40 in a home for a long period of time, leading to financial loss
41 and resulting in confusion for unsuspecting subsequent
42 purchasers.

43 (5) The Legislature concludes the following in the
44 interest of protecting Alabama homeowners and home buyers:

45 a. Disclosure of the limited interest, marketing, and
46 assignment of the buyer's equitable interest in the
47 homeowner's property should be required of buyers engaging in
48 wholesaling.

49 b. Unfair service agreements create clouds on the
50 titles of Alabama homes and burden Alabama homeowners with
51 false promises, are against the public interest, and
52 constitute unreasonable restraints on the alienation of real
53 property.

54 Section 2. (a) A person may acquire an equitable
55 interest in a single-family residential property as the buyer
56 under a contract for the purchase and sale of the property and



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57 then may assign or offer to assign the interest for a fee if
58 the buyer discloses in writing all of the following:

59 (1) To any potential subsequent purchaser or assignee,
60 the nature of the buyer's equitable interest.

61 (2) To the seller of the property, the buyer's intent
62 to market its equitable interest prior to commencing any
63 marketing of the property.

64 (3) To the seller of the property, the effective date
65 of any assignment of the buyer's interest to a subsequent
66 purchaser of the property at least three business days prior
67 to the effective date of any assignment.

68 (b) Written disclosure under subsection (a) shall be
69 required for the intent to market and transfer an equitable
70 interest in residential real property, as limited by
71 subsection (d), whether by assignment, novation, or other
72 similar method of transferring interest in real property.

73 (c) (1) A violation of this section is a Class C
74 misdemeanor:

75 (2) In addition to criminal penalties, a person
76 violating this section may be liable to the person to whom
77 disclosure is required in an amount equal to three times the
78 fee or amount received by the buyer pursuant to the
79 assignment.

80 (d) This section shall only apply to transactions
81 involving single-family residential property and shall not
82 apply to any other property.

83 (e) This section shall not infringe on the right of the
84 parties to otherwise agree by contract.



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85 Section 3. (a) For purposes of this section the
86 following terms have the following meanings:

87 (1) RECORDING. Presenting a document to a county judge
88 of probate for official placement in the public land records.

89 (2) RESIDENTIAL REAL ESTATE. Real property located in
90 this state which is used primarily for a dwelling and contains
91 one to four dwelling units.

92 (3) SERVICE AGREEMENT. A contract under which a person
93 agrees to provide services in connection with the purchase or
94 sale of residential real estate.

95 (4) SERVICE PROVIDER. An individual or entity that
96 provides services to another party under a service agreement.

97 (5) UNFAIR SERVICE AGREEMENT. A service agreement in
98 which the services subject to the agreement are not performed
99 within one year after the date upon which the agreement
100 commences and provides any of the following:

101 a. Purports to run with the land or to be binding on
102 future owners of interests in the real property.

103 b. Allows for assignment of the right to provide the
104 service without notice and agreement of the owner of
105 residential real estate.

106 c. Purports to create a lien, encumbrance, or other
107 real property security interest.

108 (b) This act does not apply to any of the following:

109 (1) A home warranty or other type of similar product
110 that covers the cost of maintenance of a major housing system,
111 such as plumbing or electrical wiring, for a set period of
112 time from the date a house is sold.



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113 (2) An insurance contract.

114 (3) An option to purchase or right of refusal to
115 purchase real estate.

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

118 (5) Agreements to manage residential real estate.

119 (6) A declaration of any covenants, conditions, or
120 restrictions created in the formation of a homeowners'
121 association, a group of condominium owners, or other common
122 interest community, or an amendment to the declaration.

123 (7) A mortgage loan or commitment to make or receive a
124 mortgage loan.

125 (8) A security agreement under Alabama's Uniform
126 Commercial Code, relating to the sale or rental of personal
127 property or fixtures.

128 (9) Water, sewer, electrical, telephone, cable, or
129 other regulated utility service providers.

130 (c) This statute does not impair the rights granted by
131 a mechanic's or materialman's lien under Section 35-11-210,
132 Code of Alabama 1975, et seq, or by another judicially imposed
133 lien.

134 (d) If a service agreement is unfair under this
135 section, it is unenforceable.

136 (e) If a person enters into an unfair service agreement
137 with a consumer, that agreement shall be deemed a deceptive
138 act under the Alabama Deceptive Trade Practices Act,
139 commencing with Section 8-19-1, Code of Alabama 1975.

140 (f) No person shall record or cause to be recorded an



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141 unfair service agreement, or notice or memorandum of an unfair
142 service agreement in the state.

143 (1) If an unfair service agreement is recorded in this
144 state, it shall not provide actual or constructive notice
145 against an otherwise bona fide purchaser of the residential
146 real property to which it pertains, or against a creditor with
147 a security interest in the residential real property to which
148 it pertains.

149 (2) A service provider who records or causes to be
150 recorded an unfair service agreement or notice or memorandum
151 thereof in this state is liable to an affected party for ten
152 thousand dollars (\$10,000) in statutory damage.

153 (g) If an unfair service agreement, or notice or
154 memorandum of an unfair service agreement, is recorded in the
155 state, any party with an interest in the residential real
156 property to which it pertains may take either or both of the
157 following actions:

158 (1) Apply to the circuit court in the county where the
159 recording exists to seek a court order declaring the agreement
160 is void and of no effect.

161 (2) In addition to the statutory damages described in
162 subsection (f)(3), recover actual damages, plus costs and
163 attorney fees as may be proven against the service provider
164 who recorded the agreement.

165 Section 4. Although this bill would have as its purpose
166 or effect the requirement of a new or increased expenditure of
167 local funds, the bill is excluded from further requirements
168 and application under Section 111.05 of the Constitution of



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169 Alabama of 2022, because the bill defines a new crime or
170 amends the definition of an existing crime.

171 Section 5. This act shall become effective on the first
172 day of the third month following its passage and approval by
173 the Governor, or its otherwise becoming law.

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176 Senate

177 Read for the first time and referred20-Apr-23
178 to the Senate committee on County
179 and Municipal Government
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181 Read for the second time and placed25-Apr-23
182 on the calendar:
183 1 amendment
184
185 Read for the third time and passed27-Apr-23
186 as amended
187 Yeas 31
188 Nays 0
189 Abstains 0
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191

Patrick Harris,
Secretary.

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