

SENATE BILL 368

By Niceley

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18 and Title 66, relative to service
agreements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, is amended by adding the following
as a new chapter:

66-33-101. Short title.

This chapter is known and may be cited as the "Prohibition of Unfair Service
Agreements Act."

66-33-102. Definitions.

As used in this chapter:

- (1) "Person" means a natural person, partnership, association,
cooperative, corporation, trust, or other legal entity;
- (2) "Recording" means presenting a document to a county recorder in
this state for official placement in the public land records;
- (3) "Residential real estate" means real property located in this state
which is used primarily for personal, family, or household purposes and is
improved by one (1) to four (4) dwelling units;
- (4) "Service agreement" means a contract under which a person agrees
to provide services in connection with the maintenance of or purchase or sale of
residential real estate; and
- (5) "Service provider" means a person that provides services to a
consumer.

66-33-103. Unfair service agreements.

(a) The general assembly finds:

(1) The public policy of this state favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property; and

(2) An unfair service agreement violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the contract or the amount of the consideration set forth in the agreement.

(b) A service agreement is deemed unfair if any part of the service subject to the agreement is not to be performed within one (1) year after the time the agreement is entered into and has one (1) or more of the following characteristics:

(1) The service agreement purports to run with the land or to be binding on future owners of interests in the real property;

(2) The service agreement allows for assignment of the right to provide service without notice to and consent of the owner of residential real estate; or

(3) The service agreement purports to create a lien, encumbrance, or other real property security interest.

(c) This chapter does not apply to:

(1) A home warranty or similar product that covers the cost of maintenance of a major home system, including plumbing, heating, ventilation, and air conditioning (HVAC), and electrical, for a fixed period;

(2) An insurance contract;

(3) An option or right of refusal to purchase the residential real estate;

(4) A declaration created in the formation of a common interest community or an amendment to the declaration;

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

(6) A mortgage loan or a commitment to make or receive a mortgage loan;

(7) A security agreement under the Uniform Commercial Code, compiled in title 47, chapters 1-9, relating to the sale or rental of personal property or fixtures; or

(8) Water, sewer, electrical, telephone, cable, or other regulated utility service providers.

(d) This chapter does not impair the rights granted or applied to mechanics' and materialmen's liens pursuant to title 66, chapter 11.

66-33-104. Unfair service agreements unenforceable.

A service agreement deemed unfair under this chapter is unenforceable.

66-33-105. Deceptive acts.

If a service provider enters into an unfair service agreement with a consumer, then the agreement is deemed a deceptive act.

66-33-106. Recording prohibited.

(a) A service provider shall not record or cause to be recorded an unfair service agreement or notice or memorandum thereof in this state.

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

(c) Notwithstanding chapter 24 of this title, a register in this state may refuse to accept for recordation an unfair service agreement and is not liable for mistakenly recording an unfair service agreement.

(d) If an unfair service agreement is recorded in this state, then it does not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

66-33-107. Recording of court order.

If an unfair service agreement or a notice or memorandum thereof is recorded in this state, then a person with an interest in the real property that is the subject of that agreement may apply to a court of competent jurisdiction in the county where the recording exists to record a court order declaring the agreement unenforceable.

66-33-108. Rights of recovery.

If an unfair service agreement or a notice or memorandum thereof is recorded in this state, then a person with an interest in the real property that is the subject of the agreement may recover, in addition to the statutory damages described in § 66-33-106(b), actual damages, court costs, and attorney's fees. The person also has all rights and remedies as those found in § 47-18-109. This chapter may also be enforced by the attorney general and reporter on behalf of the citizens of this state.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.