STATE OF NEW YORK

5886

2025-2026 Regular Sessions

IN ASSEMBLY

February 24, 2025

Introduced by M. of A. CRUZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting unfair residential real estate service agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "prohibition of unfair real estate service agreements act".

§ 2. Legislative intent. In an effort to protect consumers from fraud and abuse by unscrupulous actors, this act prohibits the use of real estate service agreements that are unfair to an owner of residential real estate or to other persons who may become owners of that real estate in the future, and further prohibits the recording of such residential real estate service agreements so that the public records will not be clouded by them and provides remedies for owners who are inconvenienced or damaged by the recording of such agreements.

§ 3. The general business law is amended by adding a new article 36-E to read as follows:

ARTICLE 36-E

PROHIBITION OF UNFAIR REAL ESTATE SERVICE AGREEMENTS

Section 778-aaa. Definitions.
778-bbb. Prohibition against unfair service agreements; recording thereof.
778-ccc. Deceptive acts and practices.
778-ddd. Enforcement; action by the attorney general.
778-eee. Severability.

§ 778-aaa. Definitions. As used in this article, the following terms, unless the context requires otherwise, shall have the following meanings:

1. "Person" means a natural person, partnership, association, cooperative, corporation, trust, or other legal entity.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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2. "Real estate service agreement" means a written contract under which a person agrees to provide services in connection with the maintenance of or purchase or sale of residential real estate.

3. "Recording" means presenting a document to a recording officer, whether the county clerk of the county or the register of the county, consistent with the real property law.

4. "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 to four dwelling units, including condominium units.

5. "Service provider" means an individual or entity that provides services to a person.

6. (a) "Unfair real estate service agreement" means any real estate service agreement that is not to be performed within one year after the time it is entered into and either:

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

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

(iii) purports to create a lien, encumbrance, or other real property security interest, other than a mechanics lien properly issued pursuant to the provisions of the lien law.

(b) Notwithstanding the foregoing, an agreement shall not be considered an unfair real estate service agreement if it is a valid:

(i) home warranty or similar product that covers the cost of maintenance of a major home system for a fixed period;

(ii) insurance contract;

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

(iv) declaration created in the formation of a common interest community or an amendment thereto;

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

(vi) mortgage loan or a commitment to make or receive a mortgage loan;

(vii) security agreement under the uniform commercial code relating to the sale or rental of personal property or fixtures; or

(viii) contract with a water, sewer, electrical, telephone, cable, or other regulated utility service provider.

§ 778-bbb. Prohibition against unfair service agreements; recording thereof. 1. No unfair real estate service agreement shall be enforceable in the state.

2.(a) No person shall record or cause to be recorded an unfair real estate service agreement or notice or memorandum thereof.

(b) If an unfair real estate service agreement is recorded in this state, it shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

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

§ 778-ccc. Deceptive acts and practices. Any person in this state who enters into or causes a consumer to enter into an unfair real estate service agreement shall be considered to have violated section three hundred forty-nine of this chapter.

§ 778-ddd. Enforcement; action by the attorney general. 1.(a) Whenever the attorney general shall believe from evidence satisfactory to the

attorney general that any person or agent or employee thereof has engaged in or is about to engage in any of the acts or practices stated to be unlawful pursuant to this section, the attorney general may bring an action in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules.

(b) The provisions of this article may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government.

2. In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in their own name to enjoin such unlawful act or practice, an action to recover actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorneys' fees to a prevailing plaintiff.

§ 778-eee. Severability. If any provision of this article is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this article, which remaining portions shall continue in full force and effect.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law.