

STATE OF NEW YORK

6361

2025-2026 Regular Sessions

IN SENATE

March 11, 2025

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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:

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

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

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

ARTICLE 36-E

PROHIBITION OF UNFAIR REAL ESTATE SERVICE AGREEMENTS

15 Section 778-aaa. Definitions.

16 778-bbb. Prohibition against unfair service agreements; record-
17 ing thereof.

18 778-ccc. Deceptive acts and practices.

19 778-ddd. Enforcement; action by the attorney general.

20 778-eee. Severability.

21 § 778-aaa. Definitions. As used in this article, the following terms,
22 unless the context requires otherwise, shall have the following mean-
23 ings:

24 1. "Person" means a natural person, partnership, association, cooper-
25 ative, 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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1 2. "Real estate service agreement" means a written contract under
2 which a person agrees to provide services in connection with the mainte-
3 nance of or purchase or sale of residential real estate.

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

7 4. "Residential real estate" means real property located in this state
8 which is used primarily for personal, family, or household purposes and
9 is improved by one to four dwelling units, including condominium units.

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

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

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

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

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

22 (b) Notwithstanding the foregoing, an agreement shall not be consid-
23 ered an unfair real estate service agreement if it is a valid:

24 (i) home warranty or similar product that covers the cost of mainte-
25 nance of a major home system for a fixed period;

26 (ii) insurance contract;

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

29 (iv) declaration created in the formation of a common interest commu-
30 nity or an amendment thereto;

31 (v) maintenance or repair agreement entered by a homeowners' associ-
32 ation in a common interest community;

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

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

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

38 § 778-bbb. Prohibition against unfair service agreements; recording
39 thereof. 1. No unfair real estate service agreement shall be enforceable
40 in the state.

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

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

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

51 § 778-ccc. Deceptive acts and practices. Any person in this state who
52 enters into or causes a consumer to enter into an unfair real estate
53 service agreement shall be considered to have violated section three
54 hundred forty-nine of this chapter.

55 § 778-ddd. Enforcement; action by the attorney general. 1.(a) Whenever
56 the attorney general shall believe from evidence satisfactory to the

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

9 (b) The provisions of this article may be enforced concurrently by the
10 director of a municipal consumer affairs office, or by the town attor-
11 ney, city corporation counsel, or other lawful designee of a munici-
12 pality or local government, and all moneys collected thereunder shall be
13 retained by such municipality or local government.

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

23 § 778-eee. Severability. If any provision of this article is, for any
24 reason, declared unconstitutional or invalid, in whole or in part, by
25 any court of competent jurisdiction, such portion shall be deemed sever-
26 able, and such unconstitutionality or invalidity shall not affect the
27 validity of the remaining portions of this article, which remaining
28 portions shall continue in full force and effect.

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