

STATE OF NEW YORK

6361--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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:

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

LBD05484-03-5

1 1. "Person" means a natural person, partnership, association, cooper-
2 ative, corporation, trust, or other legal entity.

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

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

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

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

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

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

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

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

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

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

28 (ii) insurance contract;

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

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

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

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

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

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

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

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

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

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

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

1 § 778-ddd. Enforcement; action by the attorney general. 1.(a) Whenever
2 the attorney general shall believe from evidence satisfactory to the
3 attorney general that any person or agent or employee thereof has
4 engaged in or is about to engage in any of the acts or practices stated
5 to be unlawful pursuant to this section, the attorney general may bring
6 an action in the name and on behalf of the people of the state of New
7 York to enjoin such unlawful acts or practices and to obtain restitution
8 of any moneys or property obtained directly or indirectly by any such
9 unlawful acts or practices. In such action preliminary relief may be
10 granted under article sixty-three of the civil practice law and rules.

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

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

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

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