

SB228 ENROLLED



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



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1 Enrolled, An Act,

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

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

24 (2) Certain unfair service agreements provide a real
25 estate company with the right to market, list, or assist in
26 selling a residential property for up to 40 years, binding
27 homeowners and successors in interest through a recorded
28 memorandum and penalizing the homeowner or successor in



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29 interest for breach of the agreement.

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

33 (4) The lack of any restrictions enables predatory
34 practices against homeowners, especially those who have lived
35 in a home for a long period of time, leading to financial loss
36 and resulting in confusion for unsuspecting subsequent
37 purchasers.

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

40 a. Disclosure of the limited interest, marketing, and
41 assignment of the buyer's equitable interest in the
42 homeowner's property should be required of buyers engaging in
43 wholesaling.

44 b. Unfair service agreements create clouds on the
45 titles of Alabama homes and burden Alabama homeowners with
46 false promises, are against the public interest, and
47 constitute unreasonable restraints on the alienation of real
48 property.

49 Section 2. (a) A person may acquire an equitable
50 interest in a single-family residential property as the buyer
51 under a contract for the purchase and sale of the property and
52 then may assign or offer to assign the interest for a fee if
53 the buyer discloses in writing all of the following:

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

56 (2) To the seller of the property, the buyer's intent



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57 to market its equitable interest prior to commencing any
58 marketing of the property.

59 (3) To the seller of the property, the effective date
60 of any assignment of the buyer's interest to a subsequent
61 purchaser of the property at least three business days prior
62 to the effective date of any assignment.

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

68 (c) (1) A violation of this section is a Class C
69 misdemeanor:

70 (2) In addition to criminal penalties, a person
71 violating this section may be liable to the person to whom
72 disclosure is required in an amount equal to three times the
73 fee or amount received by the buyer pursuant to the
74 assignment.

75 (d) This section shall only apply to transactions
76 involving single-family residential property and shall not
77 apply to any other property.

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

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

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

84 (2) RESIDENTIAL REAL ESTATE. Real property located in



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85 this state which is used primarily for a dwelling and contains
86 one to four dwelling units.

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

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

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

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

98 b. Allows for assignment of the right to provide the
99 service without notice and agreement of the owner of
100 residential real estate.

101 c. Purports to create a lien, encumbrance, or other
102 real property security interest.

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

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

108 (2) An insurance contract.

109 (3) An option to purchase or right of refusal to
110 purchase real estate.

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



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113 (5) Agreements to manage residential real estate.

114 (6) A declaration of any covenants, conditions, or
115 restrictions created in the formation of a homeowners'
116 association, a group of condominium owners, or other common
117 interest community, or an amendment to the declaration.

118 (7) A mortgage loan or commitment to make or receive a
119 mortgage loan.

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

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

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

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

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

135 (f) No person shall record or cause to be recorded an
136 unfair service agreement, or notice or memorandum of an unfair
137 service agreement in the state.

138 (1) If an unfair service agreement is recorded in this
139 state, it shall not provide actual or constructive notice
140 against an otherwise bona fide purchaser of the residential



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141 real property to which it pertains, or against a creditor with
142 a security interest in the residential real property to which
143 it pertains.

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

148 (g) If an unfair service agreement, or notice or
149 memorandum of an unfair service agreement, is recorded in the
150 state, any party with an interest in the residential real
151 property to which it pertains may take either or both of the
152 following actions:

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

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

160 Section 4. Although this bill would have as its purpose
161 or effect the requirement of a new or increased expenditure of
162 local funds, the bill is excluded from further requirements
163 and application under Section 111.05 of the Constitution of
164 Alabama of 2022, because the bill defines a new crime or
165 amends the definition of an existing crime.

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



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB228
Senate 27-Apr-23
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 09-May-23

By: Senator Roberts