

## **Model Act**

### **Prohibition of Unfair Service Agreements**

#### **Preamble**

This Act is intended to prohibit the use of service agreements that are unfair to an owner of residential real estate who enters into such an agreement or to persons who may become owners of that real estate in the future. The Act also prohibits the recording of such agreements so that the public records will not be clouded by them, and future owners will not be put to the burden of bringing suits to remove them from their chains of title and provides remedies for owners who are inconvenienced or damaged by the recording of such agreements.

#### **Article I. Definitions**

Section 101. "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.

Section 102. "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.

Section 103. "Recording" means presenting a document to a [county recorder] in this State for official placement in the public land records.

Section 104. "Service provider" means an individual or entity that provides services to a person.

Section 105. "Person" means a natural person, partnership, association, cooperative, corporation, trust, or other legal entity.

#### **Article II. Unfair Service Agreements**

Section 201. **Characteristics of Unfair Service Agreements.**

- (a) A service agreement is unfair under this Act if any part of the service subject to the agreement is not to be performed within one year after the time it is entered into and has any 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; or
  - (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.

(b) This Act does not apply to:

- (1) A home warranty or similar product that covers the cost of maintenance of a major home system (for example, plumbing, HVAC or electrical wiring) for a fixed period; or
- (2) An insurance contract; or
- (3) An option or right of refusal to purchase the residential real estate; or
- (4) A declaration created in the formation of a common interest community or an amendment thereto; or
- (5) A maintenance or repair agreement entered by a homeowners' association in a common interest community; or
- (6) A mortgage loan or a commitment to make or receive a mortgage loan; or
- (7) A security agreement under the UCC relating to the sale or rental of personal property or fixtures; or
- (8) Water, sewer, electrical, telephone, cable, or other regulated utility service providers.

(c) This statute does not impair the rights granted by the mechanics lien statute of this state [insert citation].

Section 202. **Unfair Service Agreements Unenforceable.** If a service agreement is unfair under this Act it is unenforceable.

Section 203. **Deceptive Act.** If a person enters into an unfair service agreement with a consumer as defined in [insert citation], that agreement shall *per se* be deemed a deceptive act under the [Unfair and Deceptive Acts and Practices] Statute of this State [insert citation].

Section 204. **Recording Prohibited.**

- (a) No person shall record or cause to be recorded an unfair service agreement or notice or memorandum thereof in this State.
- (b) [A person who records or causes to be recorded an unfair service agreement or notice or memorandum thereof of in this State shall be guilty of a Class A misdemeanor.]
- (c) [Notwithstanding the recording statute of this state, [insert citation]] a [county recorder] in this State may refuse to accept for recordation an unfair service agreement.
- (d) If an unfair service agreement is recorded in this state, it shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

Section 205. **Recording of Court Order.** If an unfair service agreement or a notice or memorandum thereof is recorded in this state, any person with an interest in the real property that is the subject of that agreement may apply to a [district] court in the county where the recording exists to record a court order declaring the agreement unenforceable.

Section 206. **Rights of Recovery.** If an unfair service agreement or a notice or memorandum thereof is recorded in this state, any person with an interest in the real property that is the subject of that agreement may recover such actual damages, costs and attorney's fees as may be proven against the service provider who recorded the agreement.