

SB228 INTRODUCED



1 Q3ME11-1
2 By Senators Roberts, Givhan, Shelnutt
3 RFD: County and Municipal Government
4 First Read: 20-Apr-23
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SYNOPSIS:

Under existing law, a buyer may enter into a purchase and sale contract with a homeowner without disclosing to the homeowner his or her intent to wholesale the property by marketing it to other prospective purchasers willing to pay more than the contract price for the property and to assign its interest to one of those purchasers for a fee.

Under existing law, a real estate company may enter into an agreement to list certain residential real estate owner's property for a period up to 40 years and to record the agreement creating an encumbrance on the property for the duration of the agreement.

This bill would require a buyer of a single-family residential property, who intends to wholesale the property, to make certain disclosures explaining to the homeowner and other prospective parties to the transaction about the aspects of the intended transaction.

This bill would deem unenforceable certain long-term agreements between real estate companies and certain residential real estate owners.

This bill would also provide certain civil and criminal penalties for certain violations.



SB228 INTRODUCED

29 Section 111.05 of the Constitution of Alabama of
30 2022, prohibits a general law whose purpose or effect
31 would be to require a new or increased expenditure of
32 local funds from becoming effective with regard to a
33 local governmental entity without enactment by a 2/3
34 vote unless: it comes within one of a number of
35 specified exceptions; it is approved by the affected
36 entity; or the Legislature appropriates funds, or
37 provides a local source of revenue, to the entity for
38 the purpose.

39 The purpose or effect of this bill would be to
40 require a new or increased expenditure of local funds
41 within the meaning of the amendment. However, the bill
42 does not require approval of a local governmental
43 entity or enactment by a 2/3 vote to become effective
44 because it comes within one of the specified exceptions
45 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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52 Relating to residential real estate transactions; to
53 require buyers to make certain disclosures to homeowners and
54 other interested parties that the buyer intends to engage
55 aspects of a wholesale transaction; and to deem unenforceable
56 certain unfair service agreements purporting to establish a



SB228 INTRODUCED

57 long-term right to list between real estate companies and
58 residential real estate owners; and in connection therewith
59 would have as its purpose or effect the requirement of a new
60 or increased expenditure of local funds within the meaning of
61 Section 111.05 of the Constitution of Alabama of 2022.

62 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

63 Section 1. The Legislature finds and declares all of
64 the following:

65 (1) Wholesaling real property occurs when a buyer
66 enters into a contract for purchase and sale of a
67 single-family residential property with the seller of the
68 property thereby creating the buyer's equitable interest in
69 the property, the buyer then finds a subsequent purchaser
70 willing to pay a higher price for the property and then
71 assigns its interest to the subsequent purchaser for a fee.

72 (2) Certain unfair service agreements provide a real
73 estate company with the right to market, list, or assist in
74 selling a residential property for up to 40 years, binding
75 homeowners and successors in interest through a recorded
76 memorandum and penalizing the homeowner or successor in
77 interest for breach of the agreement.

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

81 (4) The lack of any restrictions enables predatory
82 practices against homeowners, especially those who have lived
83 in a home for a long period of time, leading to financial loss
84 and resulting in confusion for unsuspecting subsequent



SB228 INTRODUCED

85 purchasers.

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

88 a. Disclosure of the limited interest, marketing, and
89 assignment of the buyer's equitable interest in the
90 homeowner's property should be required of buyers engaging in
91 wholesaling.

92 b. Unfair service agreements create clouds on the
93 titles of Alabama homes and burden Alabama homeowners with
94 false promises, are against the public interest, and
95 constitute unreasonable restraints on the alienation of real
96 property.

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

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

104 (2) To the seller of the property, the buyer's intent
105 to market its equitable interest prior to commencing any
106 marketing of the property.

107 (3) To the seller of the property, the effective date
108 of any assignment of the buyer's interest to a subsequent
109 purchaser of the property at least three business days prior
110 to the effective date of any assignment.

111 (b) Written disclosure under subsection (a) shall be
112 required for the intent to market and transfer an equitable



SB228 INTRODUCED

113 interest in residential real property, as limited by
114 subsection (d), whether by assignment, novation, or other
115 similar method of transferring interest in real property.

116 (c) (1) A violation of this section is a Class C
117 misdemeanor:

118 (2) In addition to criminal penalties, a person
119 violating this section may be liable to the person to whom
120 disclosure is required in an amount equal to three times the
121 fee or amount received by the buyer pursuant to the
122 assignment.

123 (d) This section shall only apply to transactions
124 involving single-family residential property and shall not
125 apply to any other property.

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

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

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

132 (2) RESIDENTIAL REAL ESTATE. Real property located in
133 this state which is used primarily for a dwelling and contains
134 one to four dwelling units.

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

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

140 (5) UNFAIR SERVICE AGREEMENT. A service agreement in



SB228 INTRODUCED

141 which the services subject the agreement is not to be
142 performed within three years after the date upon which the
143 service commences provides any of the following:

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

146 b. Allows for assignment of the right to provide the
147 service without notice and agreement of the owner of
148 residential real estate.

149 c. Purports to create a lien, encumbrance, or other
150 real property security interest.

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

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

156 (2) An insurance contract.

157 (3) An option to purchase or right of refusal to
158 purchase real estate.

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

161 (5) Agreements to manage residential real estate.

162 (6) A declaration of any covenants, conditions, or
163 restrictions created in the formation of a homeowners'
164 association, a group of condominium owners, or other common
165 interest community, or an amendment to the declaration.

166 (7) A mortgage loan or commitment to make or receive a
167 mortgage loan.

168 (8) A security agreement under Alabama's Uniform



SB228 INTRODUCED

169 Commercial Code, relating to the sale or rental of personal
170 property or fixtures.

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

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

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

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

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

186 (1) Any probate office may, but is not required to,
187 refuse to accept for recordation an unfair service agreement.

188 (2) If an unfair service agreement is recorded in this
189 state, it shall not provide actual or constructive notice
190 against an otherwise bona fide purchaser of the residential
191 real property to which it pertains, or against a creditor with
192 a security interest in the residential real property to which
193 it pertains.

194 (3) A service provider who records or causes to be
195 recorded an unfair service agreement or notice or memorandum
196 thereof in this state is liable to an affected party for ten



SB228 INTRODUCED

197 thousand dollars (\$10,000) in statutory damage.

198 (g) If an unfair service agreement, or notice or
199 memorandum of an unfair service agreement, is recorded in the
200 state, any party with an interest in the residential real
201 property to which it pertains may take either or both of the
202 following actions:

203 (1) Apply to the probate court in the county where the
204 recording exists to seek a court order declaring the agreement
205 is void and of no effect.

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

210 Section 4. Although this bill would have as its purpose
211 or effect the requirement of a new or increased expenditure of
212 local funds, the bill is excluded from further requirements
213 and application under Section 111.05 of the Constitution of
214 Alabama of 2022, because the bill defines a new crime or
215 amends the definition of an existing crime.

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